

Ministry of **Forests, Lands and
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Riparian Areas (Protection) Regulation (RAPR) – 2019 Amendments

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Webinar outline

1. Presentation slides (background, review of amendments, deeper dive on report review) (~45 min)
2. Selected submitted questions (~30 min)
3. Questions from the group via messenger (~30 min)
4. Follow up support and materials

Note: We will not be outlining RAR application, so knowledge of the regulation is necessary

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Introduction

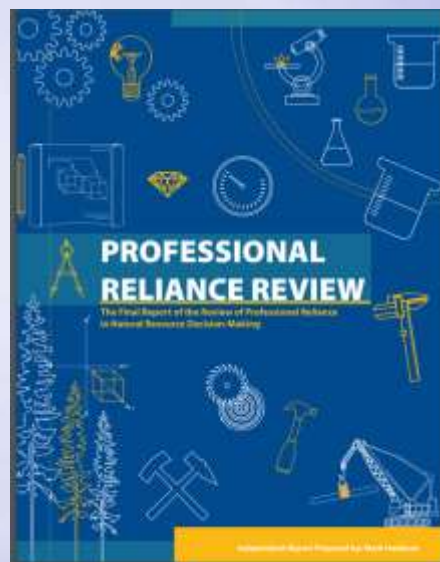
- RAR is a directive to local governments under the *Riparian Areas Protection Act* to protect habitat in accordance with the legislation
- RAR functions in a Professional Reliance model with a prescriptive, repeatable assessment methodology
- Supports permitting for residential, commercial and industrial development



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BC Ombudsperson's Report on RAR / Provincial Professional Reliance Review

- Both provided congruent recommendations on improving RAR
- Majority of these relate to strengthening the PR model and ministry oversight
- Recommended development of professional guidelines by relevant professional associations (complete)
- **Both reports identified improved oversight supports local governments in their delivery of the regulation**





Important Context – what hasn't changed

- **Amended Regulation is in place and comes into force Nov. 1, 2019**
- Fundamental requirements under the RAR for local governments, proponents and QEPs have not changed
- Assessment methodology (simple / detailed), reporting requirements (notification) and review standards are unchanged
- *Features, Functions and Conditions* that contribute to fish habitat are unchanged
- Option for a DFO authorization is retained and remains the same as previous legislation



Key Amendment 1: Ability to Approve / Reject Reports

- Notification to local government may be withheld until any deficiencies in an assessment report are rectified
- Review of reports based on compliance with methodology (components now specifically described in regulation)
- Review of all reports will continue until compliance threshold met

Addressing local government concerns

- In current regulation, ministry cannot approve / reject, only recommend amendments
- Required notification sent immediately on report submission
- Lack of clarity for local governments when amendments are identified by ministry
- Under amended regulation, notification can be withheld until deficiencies rectified

Key Amendment #2: Variance Protocol

- Variance protocol language / method is now incorporated into the regulation
- Prescriptive method for managing *Undue Hardship* situations
- Cannot be used where alternatives are available (avoidance)

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Addressing local government concerns

- Variance Protocol has been available as guidance only and did not have regulatory force
- All report submissions including a variance are currently assessed as not meeting methods = confusion for local governments
- New regulatory language provides quantitative approach to determining allowable encroachment
- Provides a definition for *Undue Hardship*

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Key Amendment #3: Mandatory QEP training

- All QEPs must now take approved RAR training course
- Recertification interval / bringing into effect TBC
- If course has been completed in the past five years QEP is qualified
- More discussion to come w/ professional associations & professional guidance secretariat





Addressing local government concerns

- Local governments have raised concerns about variability in the detail and rigour of reports submitted
- Allows local governments to provide more guidance to proponents on the selection of QEPs



Administration of Assessment Reports



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Administration of assessment reports by minister

- 6** (1) A qualified environmental professional may submit an assessment report to the minister in the manner and form required by the minister.
- (2) On receiving an assessment report under subsection (1), the minister may
- (a) provide a copy of the report to a local government, or
 - (b) reject the report in accordance with subsection (3).
- (3) The minister may reject an assessment report under subsection (2) (b) if the minister considers that
- (a) the assessment that is the subject of the report was not carried out in accordance with section 12 [assessments], or
 - (b) the report was not prepared in accordance with section 14 [assessment reports] or is not complete.
- (4) For certainty, nothing in this section **requires** the minister to review a report that the minister does not reject.

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Methods
Schedule



Minister's
Manual

Significantly improved
detail & clarity

Addressing local government concerns

- Moving to Manual format transfers report specifications to the regulation itself & increases rigour
- Significantly decreases misinterpretation from former methods preamble
- Simple & Detailed methodology retained
- Allows for a more adaptive methodology as required

Review Standards

- Key point: QEP provides opinion on HADD in former regulation

4(2)(b)(iii) provides the professional opinion of the qualified environmental professional that

(A) if the development is implemented as proposed there will be no [HADD] of natural features, functions and conditions that support fish life processes in the riparian assessment area, or

(B) if the [SPEAs] identified in the report are protected from the development, and the measures identified in the report as necessary to protect the integrity of those areas from the effects of the development are implemented by the developer, there will be no [HADD] of natural features, functions and conditions that support fish life processes in the riparian assessment area.

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Riparian protection standard

10 (1) Subject to subsections (2) to (4), a proposed development meets the riparian protection standard if the development

- (a) will not occur in the streamside protection and enhancement area, **and**
- (b) in the case of a detailed assessment, will not result in any [HADD] of natural features, functions and conditions in the streamside protection and enhancement area that support the life processes of protected fish.

Opinion on development

17 An assessment report must set out the opinion of the primary qualified environmental professional by or under whose direction the report was prepared as to

- (a) whether the site of the proposed development is subject to undue hardship, and
- (b) whether the proposed development will meet the riparian protection standard if the development proceeds as proposed in the report and complies with the measures, if any, recommended in the report.

- Key point: To meet standard, no development in SPEA

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Key points

- Riparian Protection Standard
 - No development in SPEA
 - Appropriate *Measures* to protect SPEA
- No longer includes opinion on HADD except with respect to *Measures*

Addressing local government concerns

- Local governments have identified lack of mechanism to refuse development in SPEAs if QEP certifies no HADD
- Creates a consistent standard and removes variability surrounding interpretation of HADD

SPEA definition

"streamside protection and enhancement area" means an area

- (a) adjacent to a stream that links aquatic to terrestrial ecosystems and includes both existing and **potential** riparian vegetation and existing and potential adjacent upland vegetation that exerts an influence on the stream, and
- (b) the size of which is determined according to this regulation on the basis of an assessment report provided by a qualified environmental professional in respect of a development proposal

9 (1) The streamside protection and enhancement area for a stream is the portion of the riparian assessment area for the stream that

- (a) includes the land, adjacent to the stream boundary, that
 - (i) links aquatic to terrestrial ecosystems, and
 - (ii) is capable of supporting streamside vegetation, and
- (b) in the case of a simple assessment, extends far enough upland from the stream that development outside the streamside protection and enhancement area will not result in any [HADD] of natural features, functions and conditions in the area referred to in paragraph (a) that support the life processes of protected fish.

(2) Without limiting subsection (1) (a) (ii), an area of human disturbance must be considered to be capable of supporting streamside vegetation if the area would be capable of supporting streamside vegetation were the area in a natural condition.

Review Standards

3 (2) This regulation does not apply to a development permit or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 911 (8) of the *Local Government Act* if the structure remains on its existing foundation.



(3) This regulation does not apply in relation to a development that consists only of

- (a) repairs or other non-structural alterations or additions to a building or other structure, if the structure
 - (i) will remain on its existing foundation and within its existing footprint, and
 - (ii) is not damaged or destroyed to the extent described in section 532 (1) [*repair or reconstruction if damage or destruction \geq 75% of value above foundation*] of the *Local Government Act*, or
- (b) the maintenance of an area of human disturbance, other than a building or other structure, if the area is not extended and the type of disturbance is not changed.

Important Definitions

"**stream boundary**", in relation to a stream, means whichever of the following is farther from the centre of the stream:

- (a) the visible high water mark of a stream where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the stream a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;
- (b) the boundary of the **active floodplain**, if any, of the stream

"**active floodplain**", in relation to a stream, means land that is

- (a) adjacent to the stream,
- (b) inundated by the **1 in 5 year** return period flow of the stream, and
- (c) capable of supporting plant species that are typical of inundated or saturated soil conditions and distinct from plant species on freely drained upland sites adjacent to the land

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Area of Human Disturbance

MANUAL: Existing permanent structures, roads and other development within riparian protection areas are “grand parented.” Landowners can continue to use their property as they always have even if a streamside protection and enhancement area is designated on it.



"area of human disturbance" means an area that is subject to enduring disturbance as a result of human occupation or activity and includes, without limitation,

- (a) footprints of buildings and other structures,
- (b) areas where soil or vegetation has been added, removed or altered, and
- (c) without limiting paragraphs (a) and (b), the following areas:
 - (i) areas modified for agricultural use, including, without limitation, for crops, pasture, range, hayfields and normal farm practices;
 - (ii) areas that are or have been used for resource extraction and have not been restored to their natural conditions;
 - (iii) areas occupied by invasive plant species to an extent that precludes the unassisted reestablishment of native plant species;

Clarifies “Grandparenting”

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Also of note

- Establishing expiry date for assessment reports
- New online submission system will support the amended regulation





Submitted Questions



Retroactive Assessments: Do QEPs continue to submit Condition & Impact Assessment Reports to local government?

Yes. The RAPR has defined language precluding development in SPEA. This is a local government bylaw infraction where the ministry does not have jurisdiction.

Also: HADD provisions have returned to the Fisheries Act. The ministry is working with DFO to outline the approach to these situations.

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Does the RAPR still apply to the same *streams* as defined in the RAR?

Yes. The definition of stream is unchanged. The RAPR applies to all the same watercourses (including channelized watercourses and ditches) as the RAR.

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"I see that a RAR is required when development is proposed within the RAA of a stream that provides fish habitat (this seems consistent with current rules), but that a SPEA is required for all streams. There's no mention of fish in 9(1)(a). Would we then have to assign a SPEA for non-fish habitat streams?"

Application to developments

3(1) Subject to this section, this regulation applies in relation to a development if

(b) the development is proposed to occur in a *riparian assessment area* of a *stream* that provides *fish habitat* to *protected fish*

"**fish habitat**" means water frequented by fish and any other areas on which **fish depend directly or indirectly to carry out their life processes**, including spawning grounds and nursery, rearing, food supply and migration areas

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“There appears to be somewhat of an overlap with this RAPA regulation and the requirements for approvals under the Water Sustainability Act Section 11 “Changes in an about a stream”. Could you please indicate how these two pieces of legislation will be administered?

Two different pieces of legislation with separate approval processes. In general, works “about” a stream do not incorporate RAPR RAA. Reminder that RAPR only applies to development requiring a local government permit

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“If a letter of advice, or an approval under the Federal Fisheries Act section 35 (2) (b) or (c) is received by a developer, does this Federal authorization supersede the need for adherence to the RAPR regulation, and/or the WSA Section 11 requirement?”

Only a section 35(2) Authorization allows exemption from the RAR. Letters of advice have not been issued by DFO since pre-2013; triage responses do not meet the standard of the regulation. In no case does communication from DFO summarily exempt a project from provincial standards.

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Questions

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