

**PROTOCOL AGREEMENT
RESPECTING THE IMPLEMENTATION OF BRITISH COLUMBIA'S
RIPARIAN AREAS REGULATION**

BETWEEN

**FISHERIES AND OCEANS CANADA
("DFO")**

AND

**THE MINISTRY OF WATER, LAND AND AIR PROTECTION
("WLAP")**

AND

**THE UNION OF BRITISH COLUMBIA MUNICIPALITIES
("UBCM")**

INTRODUCTION

WLAP passed the Riparian Areas Regulation (RAR) under the authority of the provincial *Fish Protection Act* in on July 27, 2004 to become effective March 31, 2005. The purpose of the RAR is to establish directives to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes, and to facilitate this intergovernmental agreement between the Ministry of Water Land and Air Protection, Fisheries and Oceans Canada and the Union of British Columbia Municipalities.

WHEREAS:

- The Department of Fisheries and Oceans is the federal agency responsible for the implementation of the federal *Fisheries Act*, guided by national policies, guidelines, standards and procedures; and
- The Ministry of Water, Land and Air Protection is the lead provincial agency responsible for environmental protection of water, land, and air quality, including environmental stewardship of biodiversity and environmental monitoring and enforcement; and
- Local governments, as represented by the Union of British Columbia Municipalities (UBCM), have responsibility for land use decisions within their jurisdictions which relate to the protection, conservation and enhancement of

the environment; and

- The Parties recognize the importance of fisheries resources and fish habitats for the economic well being and social fabric of British Columbia communities and are committed to conserving, enhancing and protecting the fisheries resource, fish habitats and the aquatic environment; and
- The well-being of British Columbia's economy and society is integrally linked with the health of its environment and is of concern to all the parties; and
- Effective cooperation between the federal, provincial and local governments will lead to certainty and predictability of environmental regulation, and promote public confidence and sound economic planning; and
- There is a need to clarify and define the roles and responsibilities of Canada, the Province and local governments in delivery of the requirements under the provincial Riparian Areas Regulation (RAR); and

NOW THEREFORE DFO and WLAP and UBCM agree as follows:

1.0 DEFINITIONS

In this Protocol Agreement, to be congruent with the definitions under the provincial Fish Protection Act and Riparian Areas Regulation,

"Local government" means

- (a) the boards of the regional districts of Capital, Central Okanagan, Columbia-Shuswap, Comox-Strathcona, Cowichan Valley, Fraser Valley, Greater Vancouver, Nanaimo, North Okanagan, Okanagan-Similkameen, Powell River, Squamish-Lillooet, Sunshine Coast, Thompson-Nicola; and
- (b) the councils of all municipalities within the regional districts specified in (a) above, including the City of Vancouver; and
- (c) a local trust committee of the Islands Trust or the executive committee of the Islands Trust acting as a local trust committee;

"Streamside Protection and Enhancement Area" means an area adjacent to a stream that links aquatic to terrestrial ecosystems and includes both the riparian area vegetation and the adjacent upland vegetation that exerts an influence on the stream, the width of which is determined according to section 6;

"Adaptive management" is a systematic process for continually improving management policies and practices by learning from the outcomes of operational programs.

“Qualified Environmental Professional” means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if

- (a) the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, acting under that association’s code of ethics and subject to disciplinary action by that association,
- (b) the individual’s area of expertise is recognized in the assessment methods as one that is acceptable for the purpose of providing all or part of an assessment report in respect of that development proposal, and
- (c) the individual is acting within that individual’s area of expertise.

“Regionally Significant Fish” means regionally important fish as defined in section 71.(2) of the Forest Practices Code Operational Planning Regulation 107/98, or its successor.

2.0 SCOPE OF APPLICATION

This agreement applies to all freshwater fish habitats within the geographic areas covered by the Riparian Areas Regulation (refer to definition of “Local Government” in this protocol agreement).

3.0 EFFECT AND INTERPRETATION

- 3.1 This Protocol Agreement is an expression of the mutual intentions and spirit of cooperation of the Parties.
- 3.2 Nothing in this Protocol Agreement is intended to replace or change any obligation that any Party is bound to or required to perform by operation of law. The regulatory and legal decision making authority of the parties are not delegated or otherwise affected by this agreement.
- 3.3 This Protocol Agreement is to be interpreted to not conflict with or derogate from federal or provincial statutes, and to be subject to them. If any provision of this Protocol Agreement conflicts with or derogates from any federal or provincial statute, the provision is without effect.
- 3.4 This Protocol and any subsidiary agreements to the Protocol will respect the spirit and intent of the Protocol for Sharing Environmental Responsibilities between UBCM, the Ministry of Water, Land and Air Protection, the Ministry of Sustainable Resource Management and the Ministry of Community, Aboriginal and Women’s Services signed September 27, 2001. It will also respect the principles of municipal-provincial relations under the *Community Charter* (2003).

- 3.5 This Protocol and any subsidiary agreements to the Protocol will respect the spirit and intent of the Canada – British Columbia Agreement on the Management of Pacific Salmon Fishery Issues (1997), the Canada – British Columbia Fish Habitat Management Agreement (2001) and the MOU between the British Columbia Conservation Officer Service and Department of Fisheries and Oceans, Conservation and Protection, Fisheries Management Sector respecting Mutual Assistance (2002).
- 3.6 Nothing in this agreement abrogates or derogates from any Aboriginal, treaty or other rights of Aboriginal People including self-government.

4.0 PURPOSE OF PROTOCOL AGREEMENT

- 4.1 To define the roles and responsibilities of the parties in the implementation and ongoing delivery of British Columbia's Riparian Areas Regulation (RAR).
- 4.2 To create a management structure to oversee implementation and ongoing delivery of the RAR.
- 4.3 To define the review, reporting and resource requirements for the implementation and ongoing delivery of the RAR, as set out in ANNEXES 1 and 2

5.0 RAR EXECUTIVE COMMITTEE

- 5.1 The parties agree to establish a tripartite RAR Executive Committee, at the director level or equivalent, within three months of signing this Protocol to represent the parties in the execution of this agreement.
- 5.2 The specific arrangements for the RAR Executive Committee are set out in ANNEX 2 to this Protocol.

6.0 ROLES AND RESPONSIBILITIES OF PARTIES

- 6.1 The specific commitments of the parties can be found in ANNEX 1.

7.0 PARTNERSHIPS WITH LOCAL GOVERNMENTS

- 7.1 WLAP and DFO are prepared to enter into intergovernmental cooperation agreements with local governments, to further clarify the roles and responsibilities of the parties in the execution of local implementation strategies designed to bring existing planning, regulatory and development approval processes into compliance with the RAR and the federal *Fisheries Act*.

8.0 PARTNERSHIPS WITH OTHER PARTIES

8.1 The Parties will pursue cooperative arrangements with First Nations, industries and non-governmental organizations, and, subject to the agreement of all parties, other interested partner agencies, to enhance implementation of the RAR.

9.0 FINANCIAL RESOURCES

9.1 Each government shall be responsible for its own direct costs. The parties may jointly fund and support project and initiatives that relate to the Riparian Areas Regulation implementation.

9.2 Nothing in this agreement shall be construed as limiting the ability of the parties to institute cost recovery mechanisms associated with responsibilities assigned under this agreement.

9.3 Cost recovery mechanisms developed by one party will not result in direct costs to implement and/or deliver the RAR to the other parties of this Protocol Agreement.

10.0 DISPUTE RESOLUTION

10.1 In the spirit of partnership and the efficient use of public resources, the parties agree to attempt to resolve disputes or conflicts at the lowest possible staff level.

10.2 If the issue cannot be resolved at the lowest possible staff level, the relevant staff will report the issue to the RAR Executive Committee. If issues cannot be resolved at that level, then they will be reported to the most senior officials in the relevant agencies for resolution and thereafter to those signatory to this Agreement.

11.0 TERM OF AGREEMENT

11.1 This Protocol Agreement comes into effect when signed by all Parties.

11.2 This Protocol Agreement may be amended by written agreement duly executed by the Parties to this Protocol Agreement.

11.3 This Protocol Agreement remains in effect until replaced by another agreement or terminated in accordance with 11.4

11.4 Any Party to this Protocol Agreement may terminate it upon provision of sixty days written notice to the other Parties of its intention to terminate.

12.0 NOTICE

12.1 All notices or communications provided for in this Protocol Agreement will be in writing and will be mailed or delivered.

12.2 Any such notice or communication given by mail is deemed to have been delivered 72 hours after having been deposited in the mail service with first class postage prepaid. If given by personal delivery, then the notice or communication is deemed effective when delivered.

THIS Protocol Agreement is signed by the Parties at _____ as of _____, 2005.

FOR CANADA:

FOR BRITISH COLUMBIA:

Regional Director General, Pacific Region
Fisheries and Oceans Canada

Deputy Minister
Ministry of Water, Land and Air Protection

FOR THE UNION OF BC MUNICIPALITIES:

President
Union of British Columbia Municipalities