



Whatever Happened to Streamside Protection?

The *Streamside Protection Regulation (SPR)* has never been actively implemented by the provincial government. Despite agreement with the purpose of the regulation—that fish habitat must be protected—stakeholder groups continue to express concerns about implementation, monitoring, financing, scientific approaches, and how the federal, provincial, and local governments will work together.

The Beginning

The *SPR* came into force on January 19, 2001, as a regulation under the *Fish Protection Act*. It establishes streamside setbacks designed to prevent the deterioration or destruction of the water flow and habitat upon which a healthy fish population depends.

The *SPR* requires local governments be the primary protectors of fish habitat, using legislative authority established in the *Local Government Act*.

The regulation applies streamside setbacks to urban areas—setbacks that previously applied only to forest streams. The setbacks range from 5 to 30 metres, depending on the amount of existing or potential streamside vegetation and whether the stream is:

- fish bearing;
- permanent non-fish bearing; or
- non-permanent, non-fish bearing.

By the year 2006, local governments are to establish streamside protection and enhancement areas in residential, commercial, and industrial zones and to identify these areas through their land-use plans.

Second Look

The British Columbia Real Estate Association (BCREA) was among many groups that expressed concerns when the *SPR* was introduced. BCREA supports legislation that protects fish habitat; the legislation, however, fails to address several of BCREA's concerns.

- Private land within 30 metres from the highwater marks of watercourses, including ditches, is expropriated *de facto*, without compensation to the owners.
- Provincial environmental responsibility is being downloaded to local governments without a commitment to providing them with secure and consistent funding.
- First Nations, institutional, and Crown

lands are exempted from the regulation.

- All freshwater bodies are potentially impacted by the legislation, regardless of whether fish and/or fish habitat are present.
- The regulation does not reflect the latest scientific approaches to protecting fish habitat.

On several occasions, BCREA recommended that the provincial government include the following in streamside protection legislation.

- Compensation, equal to the market value, of the loss paid to the affected landowners. Such compensation should be provided through an efficient, timely, and transparent process.
- An appeal system for those parties unsatisfied with the compensation awarded

In 2001 the government established the *Streamside Protection Regulation Advisory Group (SPRAG)* to consider ongoing

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concerns about the implementation of the regulation. SPRAG included members from the Union of British Columbia Municipalities; Urban Development Institute (UDI); BCREA; District of Maple Ridge; Stewardship Action Network; National Association of Industrial and Office Properties (NAIOP); The T. Buck Suzuki Foundation; the Department of Fisheries and Oceans Canada (DFO); and the Ministry of Water, Land, and Air Protection.

The government delayed active implementation of the *SPR*, pending the SPRAG report. The group was not able, however, to reach consensus. Discord arose over how to protect fish in an urban environment, given government's responsibility to balancing the needs of society with preserving and enhancing fish habitat. Released in March 2002, the report contained both recommendations to improve the *SPR* and alternatives to replace it.

Third Look

After the release of the SPRAG report, BCREA, UDI, and NAIOP called for the repeal and rewriting of the regulation, asking for a more balanced, science-based,

adaptive approach emphasizing sustainable development principles. Other groups also expressed concerns about the *SPR*.

In 2003 then-Minister of Water, Land, and Air Protection Joyce Murray indicated to BCREA the government was undertaking yet another review of the regulation, proposing a new model to replace it.

The British Columbia Stewards for Streamside Protection report that the 2001 *SPR* will be replaced. According to the former minister, the government is collaborating with the Union of British Columbia Municipalities and DFO to develop a new approach to urban fish habitat protection that provides certainty and flexibility to development; is not dependent on limited local, provincial, and federal government resources; and ensures protection of the province's valuable fisheries resource.

To date, no public consultation has taken place on the proposed model and no drafts have been circulated.

What Next?

The replacement for the *SPR* was expected

to be introduced in the Fall of 2003. The 2005–2006 service plan for the Ministry of Water, Land, and Air Protection, now headed by The Honourable Bill Barisoff, states the assessment of the *SPR* should be completed in 2003–2004. Therefore, an announcement regarding the new regulation is expected in Spring 2004, at the latest.

BCREA will continue to monitor the development of streamside protection legislation to ensure that the rights of property owners are protected. ▲

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