

**Habitat Officer's Terms and Conditions for changes in and about a stream specified by
Ministry of Water, Land, and Air Protection Habitat Officers, Okanagan Region**

Section 42 (1) of the *Water Regulation* gives authority to a Habitat Officer to add specific conditions to ensure the protection of habitat in addition to the conditions of general application. Under this authority, Ministry of Water, Land, and Air Protection (MWLAP) Habitat Officers, Okanagan Region, require the following mandatory terms and conditions:

42 (1) To protect habitat, a person making a change in and about a stream¹ under this regulation, other than under section 44(1)(o) to (s) or (2), must make that change in accordance with terms and conditions specified by the habitat officer with respect to

(a) The timing window or the period or periods of time in the year during which the change can proceed without causing harm to fish, wildlife or habitat,

Fish and Fish Habitat

All activities in fish streams, as well as tributaries that have a risk of depositing sediment into fish streams must be undertaken within a window of least risk to fish and fish habitat. Windows of least risk are designed to protect all fish species known to occur in a stream. One way fish presence can be confirmed is through a fish inventory database (<http://www.bcfisheries.gov.bc.ca/fishinv/>). Please note if using this database that the lack of fish records for a particular area is not necessarily equivalent to fish absence. All streams are assumed to have both spring and fall spawners, until proven otherwise. Windows of least risk for most [streams](#) and [lakes](#) in Okanagan Region can be found on the [work windows](#) webpage.

If works are proposed outside the listed windows the proponent must engage a qualified professional to assess species and habitats present and identify a specific plan to ensure compliance with the *Fisheries Act*. The recommendations and the technical rational must be developed, signed and sealed by an appropriately qualified professional(s). The report should be maintained by the proponent in the event the works are monitored or a compliance inspection is conducted. If impacts cannot be mitigated to avoid a harmful alteration, disruption or destruction to fish and/or fish habitat, and the proponent wishes to continue to seek approval for the operations to proceed, the proponent must proceed with the process outlined in section (h) below.

Notwithstanding the above, the fisheries timing window is not applicable if the stream channel is naturally dry (no flow) or frozen to the bottom at the worksite and the instream activity will not adversely impact fish habitat (e.g. result in the introduction of sediment into fish habitat or damage to fish habitat).

Wildlife

Most species of wildlife are at their highest risk for disturbance during the period where they raise their young. Some may be at risk during their dormant or hibernating period. Wildlife observation records

¹ . A “stream” is defined in the *Water Act* as “a natural watercourse or source of water supply, whether usually containing water or not, ground water, and a lake, river, creek, spring, ravine, swamp and gulch”. For the purposes of this document, the definition of “stream” includes all those watercourses that are considered to be fish habitat, including channelized streams, and ditches that are fish habitat.

can be obtained through the Conservation Data Centre (<http://srmwww.gov.bc.ca/cdc/access.html>), although the absence of an observation record does not confirm that a species is not present.

Windows of least risk for wildlife including some species at risk in Okanagan Region can be found on the [work windows](#) webpage.

A qualified professional may be able to determine minor variances to these least risk work windows based on the location in the region and species presence.

Minimize the amount of time the work site is in a disturbed state by completing work as quickly as possible, while considering worker safety and minimizing environmental risk

(b) The minimum instream flow or the minimum flow of water that must remain in the stream while the change is being made,

The natural rate of water flow must be maintained upstream and down stream of the worksite during all phases of instream activity.

(c) The removal of material from the stream or stream channel in connection with the change,

- In fish streams, the permanent removal of stable, naturally occurring material from the stream or stream channel is not permitted.
- In non fish streams with a species at risk or habitat of a species at risk, the permanent removal of stable, naturally occurring material from the stream or stream channel is not permitted.
- In non-fish streams, the permanent or temporary removal of stable, naturally occurring material must be minimized and completed only as necessary to make the change in accordance with Part 7 of the *Water Regulation*.
- The removal of material must not lead to stream channel instability or increase the risk of sedimentation into the watercourse.
- Any spoil materials must be placed in a manner that ensures that sediment or debris does not enter the watercourse.
- The spoil must be placed where it will not impact riparian habitats or impact habitats of species at risk

(d) The addition of substance, sediment, debris or material to the stream or stream channel in connection with the change,

- Instream activities must be conducted in the dry and the worksite must be isolated from water flowing in the stream channel.
- Measures must be taken to ensure that no harmful material (e.g. fuel and other hydrocarbons, soil, road fill, or sediment), which could adversely impact water quality, fish and other aquatic life, species at risk and/or fish habitat(including riparian and or emergent vegetation), can enter the wetted perimeter as a result of the project activities.
- All equipment must be located and operated outside of the wetted perimeter of the stream unless operated from a barge where deleterious substances can be contained and in a manner that will not result in grounding of the barge.

- Equipment used in close proximity to the wetted perimeter must be free of deleterious material (e.g. hydrocarbons) and in good mechanical condition (e.g. no fuel or hydraulic leaks).
- Erosion and sediment control structures are to be available onsite and utilized as necessary.
- Do not work in weather conditions likely to substantially increase the risk of sediment introduction to the stream
- If approved, beaver dam removal must occur slowly, a bit at a time, in order to minimize scouring and the addition of silt to downstream areas. A dam breach should normally not exceed 0.2 square metres in area (i.e., a typical breach could measure 1.0 metre x 20 centimetres in size). All material removed from a beaver dam must be disposed of in such a manner that it cannot re-enter the stream.

(e) The salvage or protection of fish or wildlife while the change is being made or after the change has been made,

- If dewatering of the worksite is necessary, fish salvage must occur on a fish-bearing stream prior to commencing works. A fish salvage permit must be obtained from the Ministry of Water, Land, and Air Protection prior to commencing salvage activities (<http://wlapwww.gov.bc.ca/pasb/index.htm>).
- If an area is de-watered as a result of beaver dam removal or modification and results in the stranding of fish, then these fish must be salvaged and returned to the stream.
- Measures must be taken to ensure that equipment (e.g. water pumps) does not harm aquatic life.

(f) The protection of natural materials and vegetation that contribute to habitat or stream channel stability,

Minimize disturbance to natural materials and vegetation that contribute to habitat or stream channel stability. In addition to fish habitats this includes protection of riparian habitats of wildlife, (e.g. regionally significant species and species at risk or plant communities at risk)

(g) The restoration of the work site after the change has been made, and

- Complete restoration activities (including erosion control), as required, that will lead to natural pre-disturbance conditions.
- Any disturbed areas must be restored to function as they did in their pre-disturbance condition (e.g. riparian areas, including grasslands). Appropriate native seed/plant/tree species must be used to restore the site to pre disturbance conditions.
- Restoration must be completed in a manner that will minimize colonization and spread of noxious weeds.

(h) The requirement to obtain an approval from the federal Department of Fisheries and Oceans in connection with the change.

- **Proponents are responsible for complying with the federal *Fisheries Act*.** No harmful alteration, disruption or destruction (HADD) of fish habitat is authorized by this document.
- Fisheries and Oceans Canada (DFO) Habitat technologists may authorize a net loss of fish habitat, or HADD, where a mitigation/compensation package can be negotiated between DFO and the proponent.

- Proponents are responsible for determining whether the federal Department of Fisheries and Oceans (DFO) must be consulted with, and whether an authorization from DFO is required, prior to making the change.

This document does not supersede the requirements of the *Water Act* and *Regulations, BC Wildlife Act, Wildlife Amendment Act*, Federal *Fisheries Act, Species at Risk Act, Local Government Act* or any other related legislation. The proponent is obligated to comply with all applicable federal, provincial or municipal enactments.