SECTION 11.0: LAWS AND REGULATIONS

This section contains information about the most important laws and regulations connected with water in our province.

Laws and Regulations.

There are two important Acts which regulate your activities in the protection and restoration of fish habitats in Nova Scotia. They are the:

- Nova Scotia Environment Act administered by the Nova Scotia Department of Environment and Labour and
- Fisheries Act administered by the Department of Fisheries and Oceans Canada

Other Acts can come into play to regulate activities on or around the water, but for the purposes of work conducted under this program, they only required in rare situations or large projects. If you are proposing a project, an application for Approval to the Nova Scotia Department of Environment and Labour will trigger referral systems, which will circulate your proposal to all relevant Federal and Provincial government agencies. Staff will review your proposal to ensure it is in compliance with all the laws and regulations. The permit from NSDEL does not always give you permission from these other agencies so be sure to wait until you have all the permits and letters of permission you need before you start work. If in doubt contact your local Nova Scotia Department of the Environment and Labour office or the NSSA coordinator.

Government management in the watersheds is to protect water resources and maintain healthy ecosystems, and best management practices need to be developed and implemented in conjunction with regulators and in partnership with the landowners.

The following is an outline of the Acts that can come into play when working on or near the watercourse. For up to date information, policies, and programs see the Department web sites.

Department of Fisheries & Oceans authorization.

The Fisheries Act, Section 35 (1), makes it illegal to harmfully alter, disrupt, or destroy (HADD) fish habitat in all freshwater, coastal, and marine areas. The Minister of Fisheries & Oceans may authorize the HADD under Section 35(2).

Project proponents are responsible for assessing the impact of their activities on the productive capacity of the aquatic habitats to produce fish, which contribute to an aboriginal, commercial, or recreational fishery. If the project is going to harmfully alter disrupt or destroy fish habitat, an authorization from DFO is required. If you have any doubt contact your local Fisheries office for advice.

Habitat restoration, when done properly should not harmful alter the habitat, but to be sure you are planning the project properly, you should consult the local Area office of DFO. DFO may be willing to aid you in the preparation of the provincial Approval application for restoration or enhancement.

Habitat Management Division has developed a restoration template that is attached to the "Watercourse Alteration" application. This template provides DFO, HMD with additional information when reviewing projects

The Canadian Environmental Assessment Act (CEAA)

Certain pieces of legislation are on the Law List under the Canadian Environmental Assessment Act (CEAA) and trigger an environmental assessment. The requirement to obtain an authorization under the Fisheries Act is one such trigger. At this time restoration work done by hand is very unlikely to harm fish habitat, but machinery used in the watercourse may result in the requirement for an environmental review. Some of the structures used in restoration are being approved through a class screening process so, if you are going to do the work according to the approved methods, you may not have to prepare a formal environmental impact statement.

The Species at Risk Act (SARA)

This Act makes it illegal to disrupt the habitats of endangered or threatened species listed in the regulations. Information on the current list and the designation of critical habitats can be found at http://www.sararegistry.gc.ca. Your application for restoration work will be reviewed for impacts on these species but it is good to check before you undertake detailed planning. Your watershed restoration plan should include the protection and restoration of habitats of listed species and all the techniques in this manual are aimed at restoring the natural productivity of the watercourse but this may at times conflict with one or more of these species. You should be aware of the status of the Inner Bay of Fundy Atlantic salmon and the Atlantic Whitefish.

Navigable Waters Protection Act (NWPA)

Navigable Water is any body of water capable of being navigated by floating vessels of any description for the purpose of transportation, commerce or recreation. This includes both inland and coastal waters. The final authority to determine the navigability of a waterway rests with the Minister of Transport or his/her designated representative. A permit is required for any work including:

- any bridge, boom, dam, wharf, dock, pier, tunnel or pipe and the approaches or other necessary or associated works,
- any dumping of fill or excavation of materials from the bed of a navigable water,
- any telegraph or power cable or wire, or
- any structure, device or thing, whether similar in character to anything referred to in this definition or not, that may interfere with navigation.

NWPA Review Process

The NWPA is also on the CEAA Law List and may require an environmental review. Before you start your project, contact

Transport Canada
P.O. Box 1000
Dartmouth, Nova Scotia
B2Y 3Z8
Phone: (902) 426-2726
Fax: (902) 426-7585

A Navigable Waters Protection (NWP) Officer will assist you in determining what information and documentation is required for preparing and submitting an application under the NWPA.

Once you have finalized the project design, submit your application to the nearest NWPA office, in your area including details regarding the applicant (yourself or your agent), the nature of the work, other permits obtained, property ownership and drawings and plans of proposed work. It is extremely important that plans be drawn accurately. Freehand sketches may not be acceptable and could delay approvals.

An "approval" issued under the NWPA authorizes the work only in terms of its effect on navigation. It remains the owner's responsibility to obtain any other permits (i.e. federal, provincial or municipal) which may be required. Therefore, early in the planning stages you are encouraged to contact your local conservation authority, provincial Departments of Natural Resources/Environment/Fisheries and municipal offices to discuss their specific requirements.

Concerning construction of new works, there are two types of processes which can be followed:

- the approval process subsection 5(1) of the NWPA
- the determination process subsection 5(2) of the NWPA

The approval process, subsection 5(1) is followed when the work has the potential to **interfere with navigation**.

The determination process subsection 5(2) is followed when NWPA officer determine that the work **does not** interfere with navigation.

The approval process, subsection 5(1) is usually longer, requiring you to complete additional steps, including public advertisement of the details of the proposed work and the completion of an environmental assessment in accordance with requirements defined under the Canadian

Environmental Assessment Act *(*CEAA). During the advertisement period and over the course of the CEAA review process, the public will have an opportunity to comment on the project's potential impact on navigation and on the environment. If approval of your proposed work is granted, it may include conditions that you must follow in order to mitigate certain impacts your work may have on navigation and the environment.

The determination process, subsection 5(2) does not require formal advertisement or an environmental assessment.

To obtain an Application Form please contact your Regional NWPA office at Transport Canada.

http://www.tc.gc.ca/marinesafety/Ships-and-operations-standards/nwp/guide.htm

Nova Scotia

Water Approval: Watercourse Alteration

Who Needs This Approval?

Any persons or persons who wish to use or alter a ***watercourse*** or a ***water resource*** or any natural body of water by:

a. constructing or maintaining a culvert;

b. constructing or maintaining a bridge which is in the water course, or using equipment closer than 3 metres from the water course;

c. constructing or maintaining a causeway, wharf, weir, fishway or other instream structure;

d. removing material from a surface water course;

e. diverting a water course from its natural channel;

f. installing or maintaining fishing equipment, fishway, counting fence, **fish habitat improvement structure**, aquaculture cage or any similar structure in a water course;

g. dredging or any other modification of a surface water course;

h. installing or maintaining a pipeline, cable or other equipment in a surface water course;

i. placing rock or other erosion protection material in a surface water

course;

j. any other alteration of a surface water course or the flow of the water.

An approval is **not** required for:

a. use of seawater;

b. use of brackish water from an intertidal zone of a river estuary;

c. maintenance of lands and structures incorporated by marsh bodies under the *Marshland Reclamation Act* .

Issuing Department/Agency: Nova Scotia Environment and Labour

Where can you get this Approval and/or further information? Any Regional or District Office of Environment and Labour http://www.gov.ns.ca/enla/offloc.htm

OR

HeadOffice
Nova Scotia Environment and Labour

Phone: (902)424-5300
Fax: (902)424-0503
e-mail: ecs@gov.ns.ca

Office Location:
Terminal Road Building
5151 Terminal Road
5th Floor
Halifax, NS

Mailing Address:
P.O.Box 697
Halifax, NS B3J 2T8

Application Forms & Process:

You can get an application form for this Approval from any Regional or District Office of the Department. After it has been completed, it is submitted to the Department.

When the Department receives an application, staff review it to see if all the required information is on the form, and if the required supporting information has been provided. If not, the application package is returned with an explanation as to what is missing.

Once an application has been accepted by the Department as complete, the application form and supporting documentation undergo a technical review and evaluation. This is to decide if the activity being proposed meets the minimum standards, policies, guidelines, procedures and regulations that are administered by the Department.

Review by the Department of Fisheries and Oceans (Canada), Transport Canada, local authorities and community organizations may form part of the review process.

If an applicant fails to meet these criteria, staff will tell them which specific criteria have not been met to the satisfaction of the Department.

If an applicant meets all the criteria, the Approval will be sent to the applicant by mail. This Approval will list any terms and conditions that the applicant must satisfy.

Waiting Period: A maximum of 60 days, provided that all the items that must accompany the application have been received.

Expiry & Renewal:

This approval is valid until the expiry date included on the approval. It can be renewed. Note, it is the responsibility of the Approval holder to contact the Department before it expires; NO NOTICE of renewal will be sent out by the Department.

Price: $100. Restoration projects planned through Adopt-a-Stream may be exempt from this fee.

Related Requirements:

Terms and conditions will be issued for each specific proposal and activity.

Other permits approvals that may be required:

a. Navigable Water Protection Act, 1985, Transport Canada;

b. Use of Crown Lands; See http://www.gov.ns.ca/snsmr/paal/dnr/paal066.asp

Additional Information:

1) **"Watercourse"** means any creek, brook, stream, river, lake, pond, spring, lagoon or any other natural body of water, and includes all the water in it, and also the bed and the shore (whether there is actually any water in it or not). It also includes all ground water.

2) **"Water resource"** means all fresh and salt (marine) waters, including all surface water, groundwater and coastal water.

Legislative Authority: Environment Act, Statutes of Nova Scotia, 1994-95, Chapter 1, http://www.gov.ns.ca/legi/legc/statutes/environ1.

http://www.gov.ns.ca/snsmr/paal/enviro/paal181.asp

Habitat Management Division of DFO has developed a restoration template that is to be attached to the “Watercourse Alteration” application. This template provides DFO, HMD with additional information they need when reviewing the restoration project.

DFO APPLICATION FOR THE INSTALLATION OF INSTREAM STRUCTURES FOR FISH HABITAT RESTORATION

NOTE:
Works built or placed in, on, over, under, through or across a navigable waterway may require an approval under the *Navigable Waters Protection Act* (NWPA).

Mr. Jon Prentiss, Navigable Waters Protection Officer, NWP Program, Transport Canada, P.O. Box 1000, Dartmouth, N.S., B2Y 3Z8, (902) 426-0797 should be contacted before any restoration work is done.

It is the responsibility of the proponent to obtain any other federal, provincial or municipal approvals.

Please note: It is important that sufficient information be supplied in the application to expedite the administration of legal documents and ensure all regulatory requirements are met.

APPLICATION FOR THE INSTALLATION OF INSTREAM STRUCTURES FOR FISH HABITAT RESTORATION

A: Name of contact: _____

Name of organization: _____

Mailing Address:

_____

_____

_____

Phone numbers: Business _____ Home_____
Cell _____ Fax _____

Email Address: _____

DFO Stewardship and Science Liaison Unit Contact:

Name: _____ Phone number: _____

Type of equipment to be used: (circle all that apply) Excavator; Backhoe; Pay-loader; Other _____

Hand tools

If work is not being undertaken by "A", please provide the following:

Company or Organization operating mechanical equipment:
_____

Contact person:
_____

Mailing Address:
_____

_____

_____

Phone numbers: Business _____ Home_____
Cell _____ Fax _____

Email Address:
_____

Location of work site (Identify work site(s) on map attached to this application)

Name of waterway: _____

County _____ Province _____

Latitude _____ Longitude _____

Name of nearest community to the proposed work (city, town, and village)

_____

Topographical map _____ or Hydrographic chart _____

Name of upland owner _____

Has owner ever been contacted Yes ____ No ____ N/A ____

If yes, please provide written confirmation.

If no, is there intent to make contact? Yes _____ No _____ N/A _____

Please explain:

_____
_____
_____

Access road to proposed work site (i.e. Route number, highway series number or civic number)

_____
_____

Briefly describe location of site (i.e. other existing works, notable landmarks, etc.)

_____
_____
_____
_____
_____
_____

Description of Work to be done at site(s)

1. Please circle appropriate work and indicate number of structures

Rock sills; Groyens; Digger Logs; Bank stabilization; Deflectors;

Plantings; Fords; Other _____

2. Please check status of project: New ___ Existing ____ Maintenance ____

3. Will the work be completed this season? Yes ____ No _____

If no, please explain and timeframe of installation

_____
_____
_____

4. Please describe the type and size of materials that will be used (ie. Non-acid bearing rocks, etc.)

_____
_____
_____

5. Average width and depth of waterway at the proposed work site

_____

6. Type of navigation (recreation/commercial) _____

7. Have you included photos and aerial photos or provided these electronically?
Yes _____ No _____

Please ensure the following documents/information are included

- A detailed project description with construction schedule
- Property ownership status (if you are not the upland owner, attach a letter of permission from the owner)
- A map or chart to show location of project
- A sketch or drawing of your project, including side and top view and showing all dimensions of the project
- A survey plan or sketch with dimensions indicating the location of existing shoreline structures, bridges, cables, property lines, high and low water marks, etc.
- Current photographs of the proposed work site
- Photographs or drawings of the specific type(s) of structure to be used.

Description of Project

General (Location, rationale for work, proponent and associates)

The installation of a rock sill in the Little Sackville River is part of a research project conducted by the Department of Fisheries and Oceans, Oceans and Environment Branch, in cooperation with the Sackville Rivers Association. These rock sills are structures designed to restore the natural habitat of rivers by rebuilding the banks and creating pools and riffles in areas where rivers have been widened and water levels have dropped. Rock sills are structures constructed of small or large boulders, dependent on the size and current of the river, which are dug into the riverbed and lined up at a 30° angle to the bank.

Specifics of the site (Where, when, structures to restore what? Expected maintenance schedule)

Rock sills will be placed at various locations along the Little Sackville River. They will start from the mouth of the Bedford Basin and run throughout the river until it meets the Sackville River. They will be positioned in a manner to aid in the restoration of the natural meander of the river. This is to be determined by the Habitat Management Division, Department of Fisheries and Oceans once they have walked the river to determine the pattern of meander. After a distance has been determined, the structures will be positioned to restore the meander of the river and stabilize the riverbanks. An aerial photo and map of the area are attached with the location of the rock sills to be shown later. The installation of these structures will occur between the dates of July 1st, 2003 and July 31st, 2003 (dependent on weather conditions). These structures are to be left in the river permanently and should not require much maintenance or repair. The structures will be inspected biyearly to determine any maintenance required.

The dimensions of the rock sills will be dependent on the width of the river at the points of installation (See attached photo). The rocks will be placed at a 30° angle to the bank and will alternate from left bank to right bank (See attached photo and drawing for exact construction).

Known Navigation

The Little Sackville River is a shallow salmonid river, which is not navigable by canoes and kayaks during normal flows.

Include a detailed map of individual site(s), identifying locations of work to be done

Air Photo - Identify location(s) of site(s) where work will be done

Stream Enhancement

Plan view diagram

IDENTIFICATION OF WORK TO BE DONE

Digger Log installation

Average Width:
Average Depth:

MATERIAL

Large boulders (12-15") in diameter. Rocks.
Excavator and payloader.

INSTALLATION

1/ Dig out trench to insert the rocks.

Cross Section diagram

2/ Insert boulders into trench at a **30** degree angle. Make sure that all rocks are sitting at the same height.

3/ Move the rocks downstream of the rock sill to speed up the digging of the pool. Place these rocks above the rock sill to keep it in place.

Photograph of the View Downstream

Photograph of the View Upstream

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