USING LAWS AND LEGISLATION TO PROTECT YOUR WETLANDS

Posted by *Alana Higginson* on May 7, 2021 · *Leave a Comment*

BOG BLOG
Using Laws & Regulations to Protect Wetlands
BCWF

PART 1 OF THE BACKYARD STEWARD SERIES

Have you ever seen someone filling in, draining, or destroying a wetland and wondered,

> *"Are they allowed to do that?"*

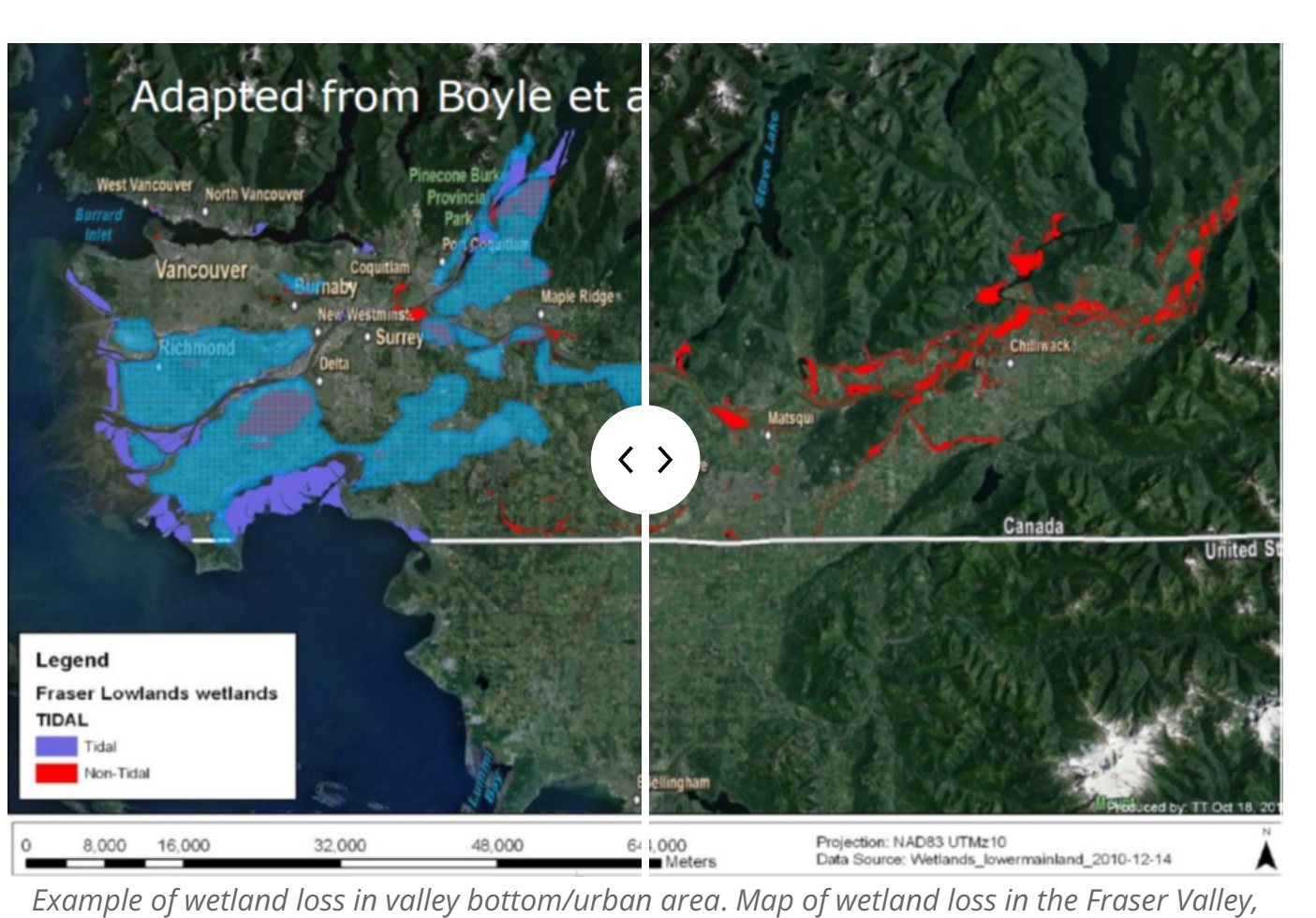
Maybe it's your neighbour harming a wetland on their private property and you have concerns about it. Or, maybe there's a new development proposed that will pollute your favourite wetland. Now that the value of natural ecosystems is becoming more appreciated and understood as a critical component of our landscape, it is important to learn how we can protect these features!

Wetlands are worth protecting. They're invaluable and provide countless ecosystem services such as:

- Providing critical habitat for birds, fish, and other wildlife. They are among the most biologically diverse and productive types of habitats and are home to over two-thirds of the species at risk in BC.
- Filtering and sequestering pollutants out of water before polluted water flows into lakes, rivers, and streams. They are the kidneys of the earth.
- Preventing major flood events. Wetlands act as sponges on the landscape to provide water regulation. During storms and heavy rainfall, wetlands slow the movement of storm waters by absorbing excess water. They take in rain and snowmelt during wet seasons and then release this stored water during drier seasons.
- Wetlands provide raw materials and food resources. Rice, cranberries, and fish are common foods that are harvested from wetlands. Raw materials collected from wetlands can be used in many ways, for example as construction materials, for food, medicines, and more.
- They provide education and recreational opportunities for people of all ages. Wetlands are great spaces for birdwatching, wildlife viewing, hunting, fishing, hiking, canoeing, and more!

Wetland biodiversity matters for the climate
Ramsar

Although the benefits and values of these ecosystems are understood, wetlands are still disappearing at unprecedented rates. In fact, it's estimated that more than half of the world's original wetlands have disappeared since the 1900s, and they are being lost and degraded more quickly than any other ecosystem type.[1] In Canada, over 70% of our wetlands have been lost or degraded while B.C. has seen up to 85% of our wetlands disappear, most commonly in valley bottoms and urban areas.[2] [3]



Example of wetland loss in valley bottom/urban area. Map of wetland loss in the Fraser Valley, B.C. since the early 1800s. Blue is where wetlands used to exist on the land, while red and purple are what remain.

Although there are some overarching protections at the federal and provincial levels, municipal governments also have major roles to play in protecting these ecosystems. There has not been a more crucial time to ensure the protection of wetlands, especially now that citizens are rallying together to get governments to make more green choices. **This blog will briefly explain some of the strongest pieces of legislation that can be utilized if there are concerns about the destruction of local wetlands, where to find more information on these regulations, and how you can make a difference! Provincial and local legislation have the strongest policies for protecting wetlands, so we will address these two first.**

PROVINCIAL LEGISLATION FOR PROTECTING WETLANDS

There are many Provincial Acts that inadvertently protect wetlands through the protection of other ecosystems or species. This includes legislation such as but not limited to:

- Water Sustainability Act;
- Fish Protection Act;
- Riparian Areas Regulation;
- Wildlife Act and Wildlife Amendment Act;
- Forest and Range Practices Act and;
- Environmental Management Act.

These are all very detailed pieces of legislation that have sections that are applicable to wetland management, but none of them directly address wetland loss. Out of these, the Water Sustainability Act (WSA) has the most power when it comes to regulating activities occurring in or near wetlands. This Act protects 'streams' and aquatic environments which, by its legal definition, includes some classes of wetlands such as marshes, fens, and swamps, but leaves out other common classes such as bogs. To manage developments in and near riparian and aquatic environments, one must obtain one of two Provincial Permits: a Provincial Notification or Provincial Approval/Provincial Water Licence.

A Provincial Notification is used for smaller, and low risk projects that have minimal impacts on the environment or third parties, such as maintenance of a culvert or a bridge already present. If a project is of higher risk and improved complexity, including the diversion, use, or storage of surface water, groundwater, and streams, it requires Provincial Approval or a Water License. An Approval is a temporary, short-term authorization for up to 24 months whereas a Water License allows for longer-term diversion, storage, and water-use. For more information on these permits, check the *Provincial Government website*.

There is a general misconception that the Water Sustainability Act does not apply to private land, but this is not true, formal approval and notification is required on all land in British Columbia. As well, there are misconceptions about the legalities of altering wetlands on Agricultural Land Reserves (ALR). Some believe that since the land is protected for the priority use by agriculture and farming, that owners can destroy wetlands on the property to make it viable farmland. The Agricultural Land Commission (ALC) sets out principles and broad rules for the protection of agricultural land in B.C., but it does not supersede the wetlands protections contained in the Water Sustainability Act (Okanagan Wetlands Action Plan). **For more detailed information on how the Water Sustainability Act provides opportunities for wetland protection and conservation, *click here*!** For more information or other provincial Acts that apply to activities on or near wetlands, see *Wetland Ways*, an Interim Guideline for Wetland Protection and Conservation in British Columbia.

Learn about the Water Sustainability Act (WSA) here

MUNICIPAL LEGISLATION FOR PROTECTING WETLANDS

Municipalities are cities, towns, or districts which possess corporate status and usually powers of self-government or jurisdiction. Every municipality has designated powers to enact bylaws to deal with local issues and concerns, allowing flexibility to respond to varying needs and changing circumstances of each community. **Bylaws will differ in from municipality to municipality, so to find out what local bylaws are relevant to wetland protection in your area, look up the name of your municipality followed by bylaws** (e.g., Surrey Bylaws). There are certain bylaws or regulations that municipalities can enact for the protection of natural environments, so searching for these specific ones can help find useful information regarding the protection of wetlands or watercourses:

- Development Permit Areas (and Environmental Development Permit Areas if a property gets flagged with having a watercourse or ecosystem of concern on/near it)
- Zoning Bylaws
- Official Community Plans (including Local Area & Watershed Plans)
- Soil Removal & Deposit Bylaw
- Pesticide Use Bylaw
- Landscaping Bylaw
- Tax Exemptions for Conservation[4]

With regards to wetland protection, municipalities can enforce bylaws that may offer additional protections and regulations which one must go through before altering wetland habitat. If the proper provincial permitting has been collected, that does not mean the development automatically follows municipal legislation. For example, people living in Prince George, Kelowna, and Richmond must follow the Soil Removal and Deposit Regulation Bylaws as well as obtain the proper provincial permitting.

Bylaws differ between each city, but most municipalities have bylaws in place to limit the amount of soil that can be moved on and off a property or between properties. This means that if a landowner wants to fill a wetland with soil, they must get approval to move the soil needed for infilling on top of provincial approvals needed to modify a wetland. Though it may seem redundant to require permits from two levels of government to complete the same work, it ensures further protection of sensitive habitats and allows local governments to have more say with regards to their communities and natural assets. Municipalities can strengthen existing provincial laws by creating new bylaws that they consider necessary or desirable for their community.

The core thing that municipalities can do to protect the natural environment is effective land-use planning, which includes developing long-term Regional Growth Strategies (RGS) and Official Community Plans (OCP) to work towards the purposes and goals of RGSs. Through these, local governments create land-use plans outlining what sort of developments or activities can occur on parcels of land throughout their region, which includes designating zones as environmentally sensitive areas to encourage permanent protection of sensitive ecosystems. These plans are created with input from community members and are updated every 5-10 years. If you are concerned about the disruption of a wetland you can look for a map of the zoning regulations on your municipality's website, you can contact your local government and ask for the zoning map or **ask for an environmental officer or bylaw officer to check on works being done to ensure the proper permits were secured.**

For more information and examples of local bylaws used to protect wetlands, see the *Green Bylaws Toolkit*. This amazing resource explains how to use tools such as planning and regulatory bylaws to protect wetlands and other sensitive ecosystems in municipalities across B.C.

Many regions in the province want a common vision to guide wetland conservation and have created action plans for wetlands which often include local legislation. For example, the Okanagan Basin Water Board created a *Wetlands Action Plan* for local governments and communities to use to enhance the protection of wetlands in the region and explores how regulations, guidelines, and policies apply to wetlands in the Okanagan.

Lastly, as a part of the Environmental Assessment (EA) process, land developers must consult the public before beginning works. At this time, **if there is a proposed development that you believe will impact a wetland either directly or indirectly (e.g., it will harm the wetlands water source or its environmental values), you can file complaints or grievances with the environmental office in your city stating that you are opposed or concerned.** Developers are legally required to address these concerns during their approval process. A great way to protect wetlands is to let your city council or environmental office know that there are citizens concerned about the integrity of their wetlands. Advocating for the protection of wetlands during development planning processes is important and shows local governments that people care about these invaluable ecosystems, and that they are worth conserving.

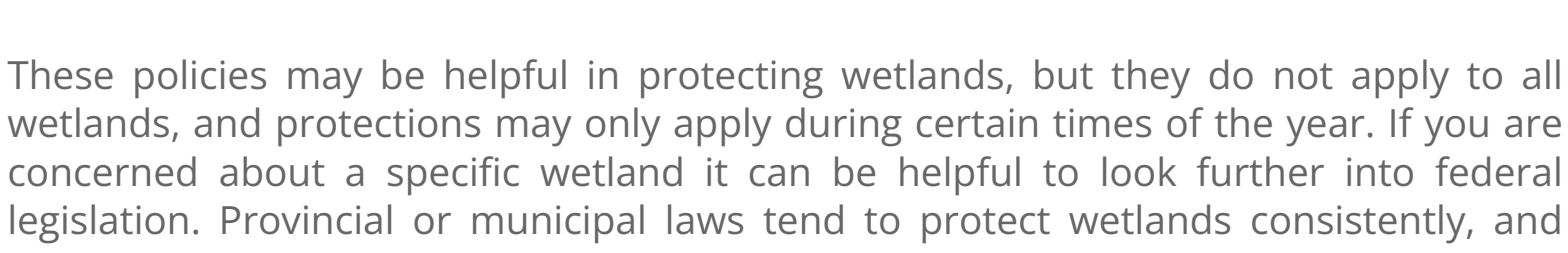
FEDERAL LEGISLATION FOR PROTECTING WETLANDS

Although provincial and municipal legislation is more powerful as it pertains to more of B.C.'s land base, there are some federal laws and regulations that can help protect wetlands. Legislation can be overwhelming to read through and decipher, so it is important to remember that only selected portions of legislation may apply to the protection of wetlands within much larger Acts. The three main pieces of federal legislation that may apply to wetlands in BC are the *Canada Fisheries Act*, *Migratory Birds Convention Act*, and the *Canada Species At Risk Act* (SARA).

If a wetland provides habitat for fish, the Canada Fisheries Act takes effect, which prohibits the 'pollution of any water frequented by fish' and the 'harmful alteration, disruption, and destruction of fish habitat' without approval by Fisheries and Oceans Canada (FOC).

Under the Migratory Birds Convention Act, no disturbances to nests or nesting birds is allowed during breeding and nesting periods, which is generally from early April to late August in B.C. This will apply only to migratory birds listed in the *Migratory Birds Convention Act*, but will encompass many wetlands as they provide crucial habitat for feeding, breeding, and a place for birds to refuel and rest during migration.

Finally, SARA provides legal protection of *federally listed wildlife species* and their habitat (e.g., nest or den, which can be in wetlands). If an animal that is federally listed is found to live in a certain location, then the area that they physically live in and surrounding area required for their basic, core habitat needs is protected by federal law. If violations are identified, there are penalties including varying fines of up to $1,000,000, and possible jail time.[5] For more information on this Act or the definition of habitat, see the *Government of Canada's guide to SARA*.



These policies may be helpful in protecting wetlands, but they do not apply to all wetlands, and protections may only apply during certain times of the year. If you are concerned about a specific wetland it can be helpful to look further into federal legislation. Provincial or municipal laws tend to protect wetlands consistently, and local governments are more engaged with their community members and residents.

HOW TO REPORT VERIFIED OR SUSPECTED WETLAND VIOLATIONS

If you see someone draining, dumping, or filling a wetland and are concerned, there are two ways you can handle it. Depending on your relationship with the person (i.e., if they are a close neighbour or friend), you can talk to them directly and see if they have obtained approval or a water license under the Water Sustainability Act.

When you do not know the individual, or are not comfortable talking to them, you can use the *Report All Poachers and Polluters (RAPP) hotline or online report* or the *BCWF Conservation App* to send a report with details of any suspected violations of fisheries, wildlife, or environmental protection laws to the appropriate enforcement agency. Although these reports can be made anonymously, your privacy is respected under the *Freedom of Information and Protection of Privacy Act* and the chances of a successful investigation are far greater if a conservation officer can contact you directly. **If the information you provide leads to a conviction, you may be eligible for a cash reward of up to $2,000 through the B.C. Wildlife Federation's rewards program.** Both report lines operate 24/7 and are simple, safe, and effective. The BCWF Conservation App works in areas that fall outside of cell service, which is a good option for those in remote areas. The app also allows you to add geo-referenced pictures to reports, so agencies know the exact location of the violation.

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Google play
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RAPP
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24 Hr Hotline:
1-877-952-RAPP
Cellular Dial: #7277
(on Telus Network)
rapp.bc.ca

WANT TO BECOME A BACKYARD STEWARD?

The legislation discussed above is a good place to start in learning about the legal and policy avenues available to protect wetlands in your community. There are far more laws, bylaws, and regulations that can be used to protect wetlands. Laws and bylaws can reflect the community, and are created to protect the things that citizens care about. You can create a culture that cares about the environment, can mobilize broad constituencies, and then push for laws and regulations that demonstrate the concerns that communities have for their wetlands.

Keep your eyes open for our next post in the Backyard Steward Series, where we will discuss how to advocate and support your community to help protect wetlands. Legislation is just one way to protect nature. Mobilizing communities, getting people to care and take interest in the environment, and speak up to share their concerns is another avenue to explore in protecting B.C.'s wetlands. Policy makers and people in positions of power will listen to the community members who show up to development meetings, who respectfully express their concerns, and who are willing to support their community as stewards for the environment.

For further information and resources on wetland protection options, see below:

Wetland Protection Options 2021 Download

REFERENCES & RESOURCES

[1] *Ramsar Convention*

[2] *Nature Conservancy of Canada*

[3] *Wetland Stewardship Partnership*

[4] *Islands Trust Natural Areas Protection Tax Exemption Program*

[5] *Government of Canada*

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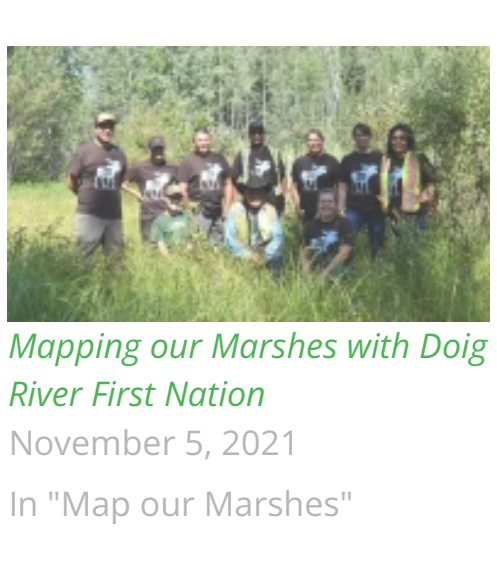

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