

Riparian Areas Regulation

Local Government Implementation

January, 2006

The bottom portion of the slide features a decorative graphic of several concentric, semi-transparent blue circles that resemble ripples on water, set against the teal background.

Purpose

- To provide an understanding of the legislation, regulation, and guidebook to assist local governments implement the regulation

Agenda

1. Introduction
2. The RAR model
3. Overview of Section 12 of the Fish Protection Act (FPA)
4. Overview of the Riparian Areas Regulation
5. Legal Opinion
6. Coffee
7. Implementation Guidebook
8. Q&A
9. Lunch
10. Implementation Tools and Approaches
11. Coffee
12. Overview of Cooperation Agreement
13. Monitoring and Compliance
14. Q&A

The Assignment

- Develop results-based alternative to Streamside Protection Regulation
- Key Design Principles
 - certainty and flexibility to developers
 - satisfy requirements of *Fisheries Act*
 - not dependent on limited local, provincial and federal government resources

The New Model

- 30 meter riparian assessment area
- Local governments may not make final decision to allow development to proceed until notification by provincial government that harmful alteration is either avoided or by the federal government it is authorized
- Qualified Environmental Professional (QEP) must review site and proposal using methodology specified in regulation
- QEP must conclude that development will not result in harmful alteration of riparian fish habitat
- If no harmful alteration, project may proceed without further involvement of province or federal government
- If there will be harmful alteration, approval required from Fisheries and Oceans Canada

Process



Products

- Regulation, including science-based assessment methodology
- Agreement confirming implementation responsibilities of three governments
- Implementation Guidebook
- Government and QEP training
- Monitoring strategy, including notification

The Process

- Regulation developed with Ministry of Attorney General, UBCM and Ministry of Community Services
- Assessment methodology developed with Fisheries and Oceans Canada

Risk Management Approach

- Risk management approach to reduce litigation potential and minimize local government's liability exposure:
 - Detailed science based assessment attached to the regulation,
 - Training course on the Assessment Methods for QEPs
 - QEP skill descriptions for the various components of the Assessment
 - Requirement for notifications to senior governments with assessment results of proposed development.
 - Requirement for QEPs to certify are qualified, have followed the Assessment Methods, and professional opinion on HADD.
 - Requirement for development of strategies for final review sign-off by QEPs and reporting back to senior governments on the implementation of the assessment prescriptions.
 - Compliance and efficacy monitoring.
 - Working with the professional associations.
 - Education and brochure.
 - Cooperation Agreement for adaptive management

Scope

- The Riparian Areas Regulation deals with riparian fish habitat, and only in association with new residential, commercial and industrial development on land under local government jurisdiction
- Although beyond the scope of section 12 of the *Fish Protection Act*, it is recognized that attention also needs to be given to:
 - hydrological impacts on fish habitat resulting from land use and development and the associated creation of impervious surfaces;
 - water quality impacts on fish from point and non-point source pollution; and
 - the role and importance of riparian ecosystems to terrestrial species.
- It is anticipated that local governments will choose – as many already have – to address these matters through comprehensive, watershed-based, integrated stormwater and stream corridor planning and management.

Section 12 of the Fish Protection Act

- *Section 12, Fish Protection Act* enables Province to provide direction to local governments to protect riparian fish habitat by:
 - include riparian area protection provisions in its zoning bylaws and permits, in accordance with the directive, or
 - ensure that its bylaws and permits under Part 26 of the *Local Government Act* provide, in the opinion of local government, a level of protection that is comparable to or exceeds that of the directive.)

Riparian Areas Regulation

- Two parts to regulation
 - Legal framework and requirements
 - Assessment methods (schedule)

Section 1- Definitions and Interpretation

- Focuses application of regulation by defining streams, riparian assessment areas and development proposal
- Focuses approach by defining qualified environmental professional, assessment methods and report, and natural features, functions and conditions
- Focuses outcome by defining streamside protection and enhancement area

Development Definition

“**development**” means any of the following associated with or resulting from the local government regulation or approval of residential, commercial or industrial activities or ancillary activities to the extent that they are subject to local government powers under Part 26 of the *Local Government Act*:

- (a) removal, alteration, disruption or destruction of vegetation;
- (b) disturbance of soils;
- (c) construction or erection of buildings and structures;
- (d) creation of nonstructural impervious or semi-impervious surfaces;
- (e) flood protection works;
- (f) construction of roads, trails, docks, wharves and bridges;
- (g) provision and maintenance of sewer and water services;
- (h) development of drainage systems;
- (i) development of utility corridors;
- (j) subdivision as defined in section 872 of the *Local Government Act*,

“**development proposal**” means any development that is proposed in a riparian assessment area that is within or partly within the boundaries of an area administered by a local government; as regulated by Part 26 of the *Local Government Act*

Stream Definition

“**stream**” includes any of the following that provides fish habitat:

(a) a watercourse, whether it usually contains water or not;

(b) a pond, lake, river, creek or brook;

(c) a ditch, spring or wetland that is connected by surface flow to a watercourse, a pond, lake, river, creek or brook

QEP

“**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

Other

“riparian area”

“riparian assessment area”

“streamside protection and enhancement area”

“assessment methods”

“assessment report”

Section 2 – Purposes

- Enable riparian areas to provide natural features, functions and conditions that support fish life processes
- Provide direction to cooperation among ministry, Fisheries and Oceans Canada, UBCM and individual local governments

Section 3 – Application

- Applies to exercise of powers under Part 26 of Local Government Act
- Does not apply to reconstruction or repair as per section 911(8) of LG Act

Section 4- Assessment Reports

- Two pre-conditions of development approval:
 1. A qualified professional:
 - a) certifies qualified to conduct the assessment
 - b) certifies assessment methods followed and
 - c) provides professional opinion no HADD, and
 - d) the local government is notified by MOE that MOE and DFO have:
 - been notified,
 - provided with QEP assessment report that meets the conditions in a), b), and c), or
 2. DFO authorization for harmful alteration

Section 5 - Strategies

- Local government must work with DFO and MOE to develop strategies for
 - QEP confirmation and reporting that projects completed as defined,
 - monitoring and reporting
 - public education

Section 6 – Local Government Powers

- Local government to act according to regulation

Section 7- Assessment Report

- QEP must follow assessment process set out in regulation and report on:
 - Width of streamside protection and enhancement area and measures to protect integrity

Section 8 – Transition

- If local government has followed Streamside Protection Regulation direction, deemed to have met requirements of this regulation
- If local government wants to amend previous direction, must follow RAR
- If no previous direction, RAR applies

Local Government Options

- Include riparian area protection provisions in accordance with the direction in RAR section 4 (*Assessment reports required before development*), in zoning and rural land use bylaws, or
- Ensure that bylaws or permits under Part 26 of the *Local Government Act* provide a level of protection that, in the opinion of your local government, is comparable to or exceeds that established by the RAR, or
- Prior to the RAR effective date of March 31, 2005, establish Streamside Protection and Enhancement Areas in accordance with the direction in sections 6(1) to (4) of the Streamside Protection Regulation and rely on RAR section 8 (*Transitional*).

Riparian Assessment

- Two options available
 1. Simple assessment
 - Use information on presence of fish, permanence of stream and type of vegetation to calculate 5, 15 or 30 meter Streamside Protection and Enhancement Area (SPEA)
 2. Detailed site-specific assessment
 - Focus is on determining how a sites riparian vegetation provides the features, functions and conditions to maintain fish habitat (SPEA), and develop measures to maintain the integrity of the SPEA

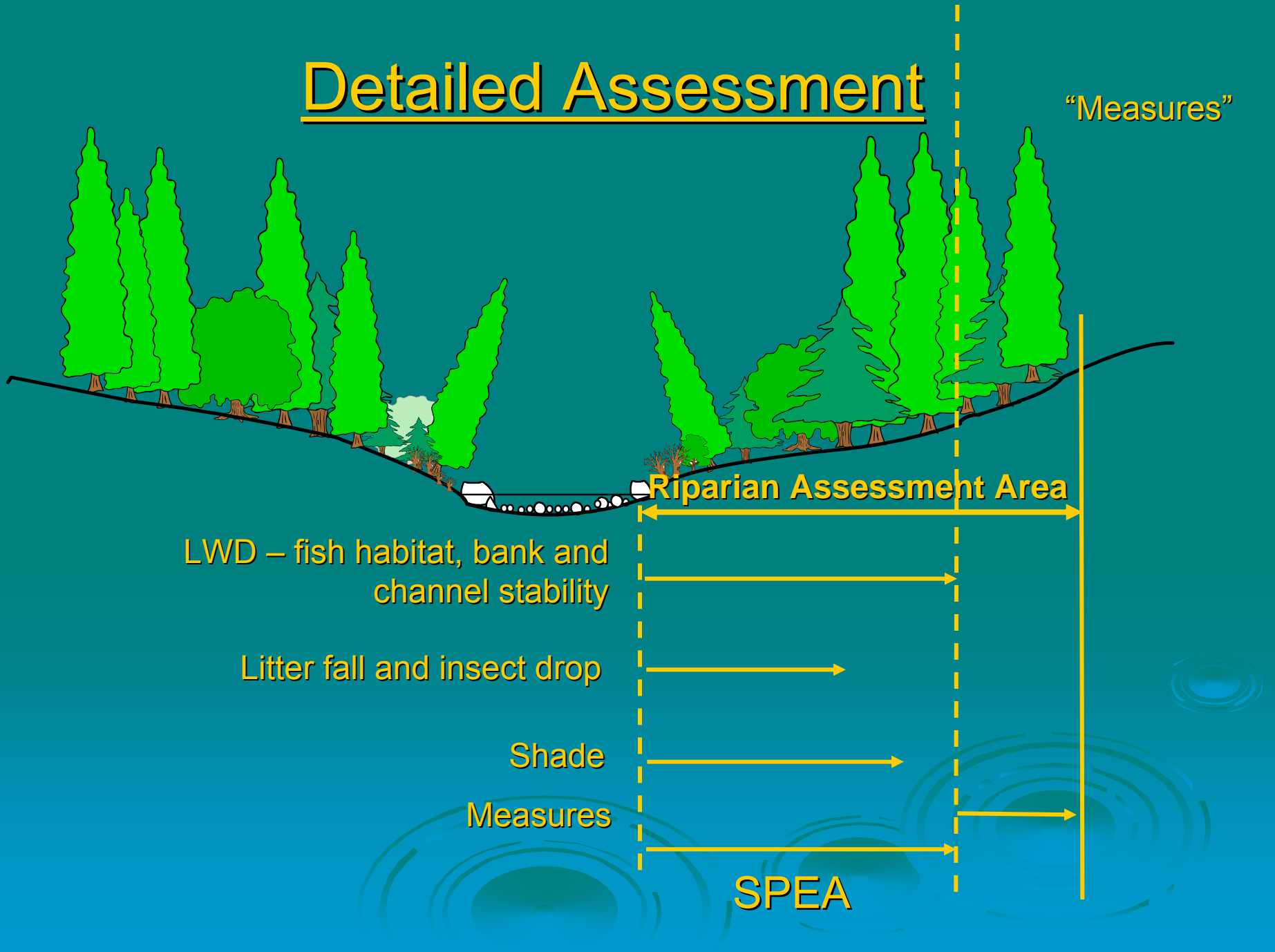
Simple Assessment

Table 3-1: Methodology

<i>Existing or potential streamside vegetation conditions</i>	<i>SPEA Width</i>	
	<i>Fish bearing</i>	<i>Non-Fish bearing</i>
	<i>Permanent</i>	<i>Non Permanent</i>
Continuous areas $\geq 30\text{m}$ or discontinuous but occasionally $> 30\text{m}$ to 50m	At least 30 m	At least 15 m
Narrow but continuous areas = 15m or discontinuous but occasionally $> 15\text{m}$ to 30m	Greater of: existing width or potential width or 15 m	15 m
Very narrow but continuous areas up to 5m or discontinuous but occasionally $> 5\text{m}$ to 15m		At least 5 and up to 15 m

Detailed Assessment

“Measures”



LWD – fish habitat, bank and channel stability

Litter fall and insect drop

Shade

Measures

SPEA

Measures

QEP must evaluate the risk to the integrity of the SPEA based on the site and nature of the development:

- danger trees and the provision of large trees
- windthrow
- slope stability
- drip zone and rooting strength
- encroachment
- sediment and erosion control measures
- floodplain concerns
- on-site stormwater management

Assessment Training

➤ RAR Full course:

<http://www.mala.ca/faep/aquaculture/courses/rar.htm>

- A three-day classroom and field-based training program.

SPR vs RAR

SPR



Accept standard setbacks



Option for site specific solution

Methodology for Option

Role of QEP

Measures to maintain the SPEA

RAR



Legal Opinion

- Jointly commissioned by UBCM and MOE
- Recommendations:
 - Revise section 4 to meet original intent
 - Revise section 3 to tie to development
 - Include statement in notification system re reliance of government on QEP report
 - Include language in notification to local governments consistent with section 4
 - Investigate clarifying two implementation options in legislation
- Further questions recommend seek counsel

Guidebook

➤ Mike

Monitoring Strategy

- DFO, MOE and LG involved in monitoring
- Components:
 - Compliance monitoring
 - Effectiveness monitoring
 - Complaint response
 - QEP post development review and report
 - Professional Association review of members

Monitoring Strategy

- Compliance monitoring:
 - QEP compliance with assessment methods
 - Developer compliance with QEP assessment
 - Stratified by time, risk, and proactive vs. reactive
- Efficacy monitoring:
 - Ecological results i.e. maintain features and functions.
 - Stratified by risk

Monitoring Strategy

- Monitoring will be stratified by:
 - Time (before, during and after development)
 - Risk (watershed sensitivity, and impact of development)

Table 1. Representation of a risk-based sampling domain in the context of the Streamside Protection Regulation as a function of risk (aquatic sensitivity and projected severity of impact) before, during and after development.

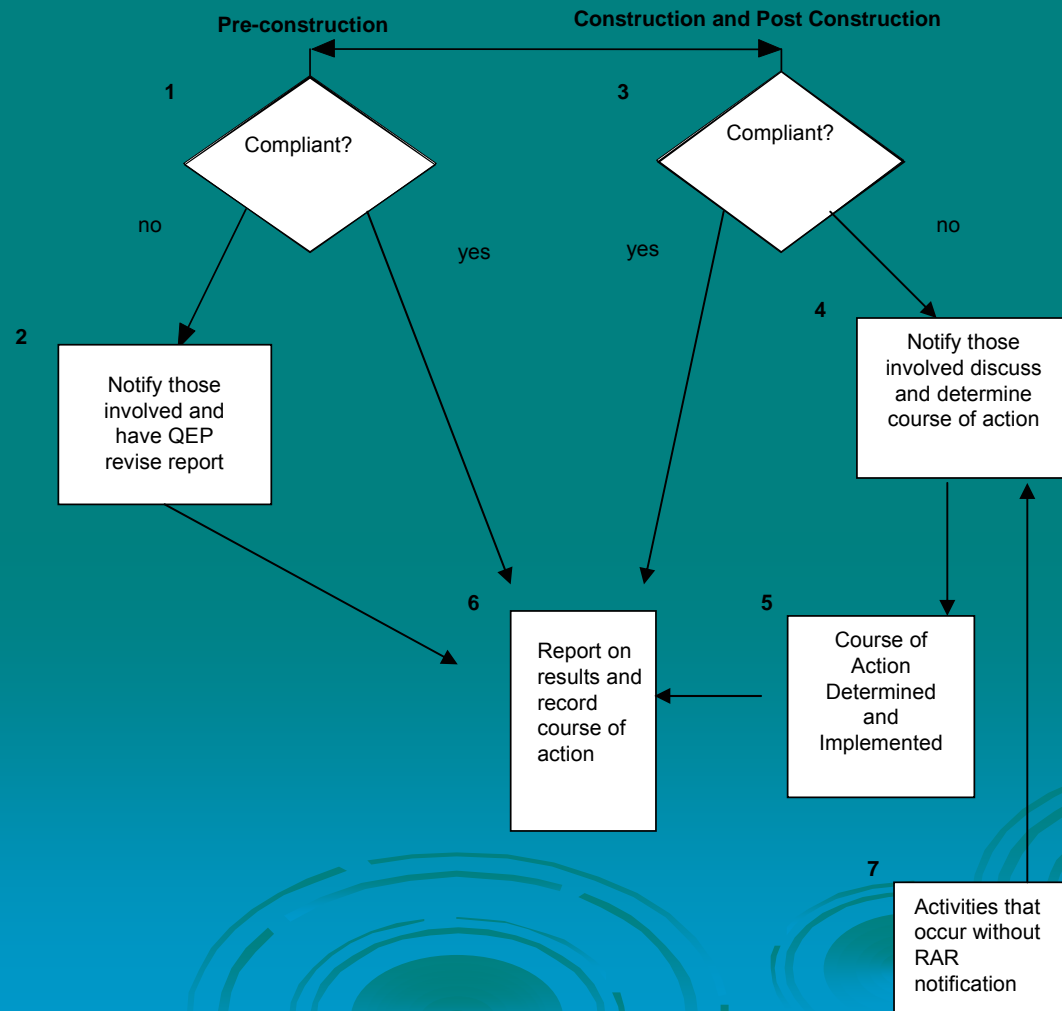
		<i>Time Continuum</i>					
		<i>"Before"</i>		<i>"During"</i>		<i>"After"</i>	
		Aquatic Sensitivity					
		<i>L</i>	<i>H</i>	<i>L</i>	<i>H</i>	<i>L</i>	<i>H</i>
Projected Severity of Impact	<i>L</i>	LL	LH	LL	LH	LL	LH
	<i>H</i>	HL	HH	HL	HH	HL	HH

Key:

- L** Low risk
- M** Moderate risk (This implicit level need not be shown here.)
- H** High risk

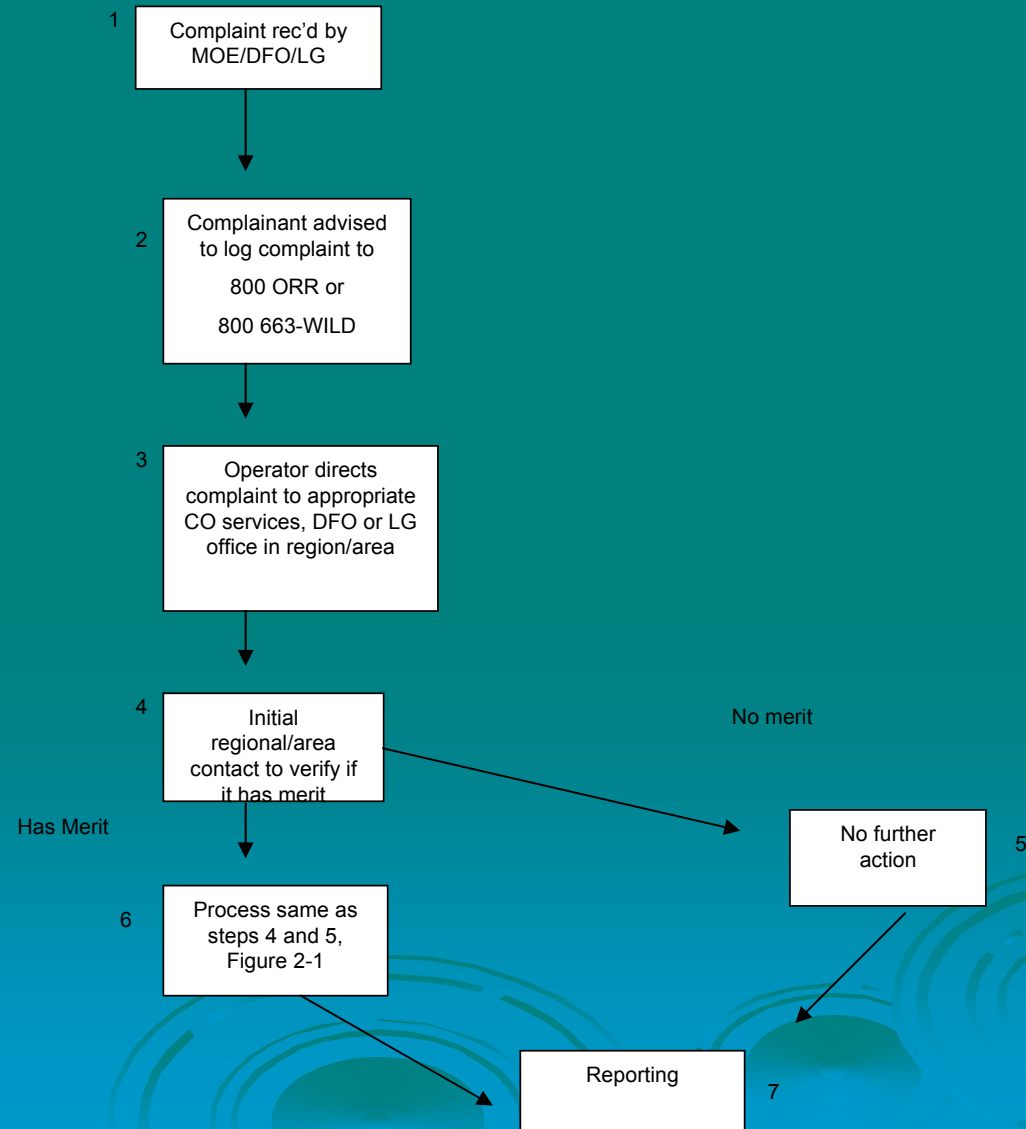
Compliance Monitoring

Compliance Monitoring



Complaint

Complaint-Based Monitoring



Division of Labour.

- Five participants in the monitoring strategy for the RAR. These are:
 - Provincial government – MOE
 - DFO
 - Local Governments
 - Possibly, NGOs such as Stream Keepers; and the general public.
 - Professional Associations

Members of the Public

- Potential role:
 - generate a complaint.

Professional Associations

- Holding members accountable
- Ensuring that members are qualified i.e. training
- Feedback on complaints:
 - How resolved
 - Recommendations for improvement

Cooperation Agreement

- Mechanism for the adaptive approach
- Establishes an Executive Committee that will direct implementation receive recommendations and make adaptive decisions
- Addresses:
 - Monitoring
 - Research
 - Notification
 - QEP Training
 - Interaction with Professional Associations
 - Communications
- Is not binding on local government but empowering

Resources

- This session
- Guidebook
 - Chapter 4
 - Pilots
- MOE web site
- UBCM web site
- Legal Opinion
- Regulation
- Legislation
- Civic net
- Other local governments
- MOE staff