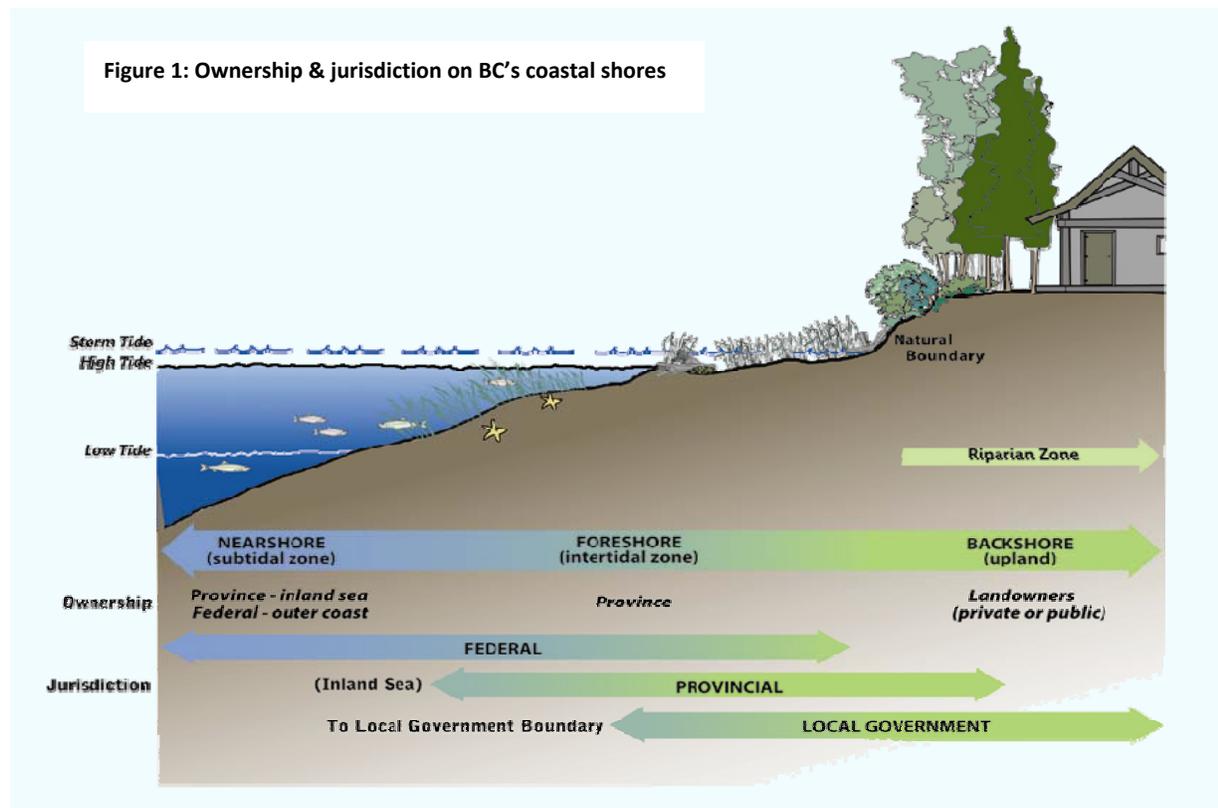


Coastal Shore Jurisdiction in British Columbia

Ju r i s d i c t i o n: the power, right and authority to interpret and apply the law. (Merriam Webster on-line)

Who's in charge of coastal shores?

All levels of government have some role in managing coastal shores in BC (Figure 1 and Table 1).



The provincial government owns most of the foreshore (the area between the low water level and the natural boundary¹) with a few exceptions,² as well as the beds of inland seas such as the Strait of Georgia, Juan de Fuca Strait and Johnstone Strait. The Integrated Land Management Bureau (under the Ministry of Forests and Range) administers these aquatic lands and issues permits, licences or leases for a wide range of uses – private and public moorage, wharves, marinas, aquaculture, and log storage to name a few. The Province also establishes regional coastal zone plans where these are needed.

The federal government has jurisdiction over offshore waters – from the low water mark out to 12 nautical miles along the outer coast. The federal Dept. of Fisheries and Oceans is responsible for managing and protecting fish populations and fish habitat under the *Fisheries Act*, including shoreline “riparian” habitats, as well as for maintaining maritime safety through the Coast Guard. Transport Canada is responsible for preserving the public right of navigation under the *Navigable Waters Protection Act*. Port Authorities are also established under federal legislation to manage major harbours and facilities that are federal Crown lands³, such as Victoria, metro Vancouver, Port Alberni, Prince Rupert and Nanaimo harbours.

This Issue Sheet is based on research and interpretation by the Green Shores Technical Working Group, with review by applicable government staff. It does not represent a legal opinion.

Local governments (municipalities and regional districts) hold the authority to plan and regulate land use within their respective boundaries, which may extend over foreshore and nearshore areas. They do this through official community plans, zoning, development permits, subdivision authority, building permits, and a variety of regulatory bylaws that affect land development.

First Nations have authorities similar to provincial and local governments over upland and aquatic lands within Indian Reserves. Outside Reserves, traditional rights to marine resources are the subject of ongoing Treaty negotiations for many of the First Nations along BC’s coast. The provincial and federal governments have a duty to consult with First Nations on any shoreline tenure applications to ensure that they do not significantly affect aboriginal or treaty rights.

Table 1 - Who Governs on Coastal Shores

	Local Government - municipal, regional	Provincial Government	Federal Government	First Nations
Backshore	Plan and regulate land use through OCPs, zoning, development permits, etc.	Issue tenures (permit, licence of occupation, lease or grant) and sale of provincial Crown lands	Fish habitat ⁴ protection, including shoreline/ riparian vegetation and timing windows ⁵	Planning and regulation in Reserve lands; may be negotiating Treaty rights elsewhere
Foreshore	Land use planning & regulation extends into foreshore that lies within LG boundary	Issue tenures over all foreshores	Fish and fish habitat protection Protect public navigation	Same as above
Nearshore	Land use planning and regulation extends into nearshore areas that lie within LG boundary	Issue tenures over all nearshore areas in inland seas	Fish and fish habitat protection Protect public navigation	Same as above

What “rights” do waterfront property owners have with respect to coastal shores?

Under what is known as “common law”, shoreline owners in BC enjoy certain “riparian rights” that run with the upland property. These include:

- The right to unimpeded access to and from any point along the natural boundary of their property to deep water for the purpose of navigation. This also means that if someone constructs an improvement along their waterfront, it cannot interfere with the right of access of neighbouring properties.
- The right to protect their property from erosion or flooding by installing protective structures on their own land. Extending structures below the *current* natural boundary requires the approval of the Province.
- The right to acquire land that slowly and naturally accretes to the shore once that land takes on upland characteristics. This does not apply to land created by a sudden deposit due to a flood, filling or an artificial interference in natural processes. To claim accretions, landowners must have the accreted land surveyed and apply to the provincial Surveyor General to have the revised legal survey adopted in the land title registry.

What “rights” does the public have with respect to coastal shores?

The public enjoys a privilege to use the foreshore and other aquatic lands held by the Crown. The only public *rights* that exist, however, are the right to land boats on and embark from the foreshore in cases of emergency, and the rights of navigation, anchoring, mooring and fishing over lands covered by water.⁶

In addition, when the Province issues tenure in the form of a foreshore lease, the leaseholder may restrict public access to the leased area; tenures in the form of a permit or licence of occupation do not allow the holders to restrict access.

What happens to waterfront property if a shoreline erodes?

When shore land naturally erodes causing the natural boundary to recede, the land lost becomes part of the foreshore and consequently, becomes Crown land owned by the Province.

However, eroded land is not automatically removed from the title of the associated upland property, reverting to the Crown. A new land survey showing the revised natural boundary is required. This typically occurs when an owner wishes to subdivide a parcel, but can also occur with the consent of the upland owner or, if necessary, a court declaration. “On occasion, the {Ministry of Agriculture and Lands} will find it necessary to take formal notice of the fact that a waterfront property owner’s natural boundary has moved inland as a result of gradual and imperceptible erosion. To protect the interests of the public, particularly to maintain the privilege of public foreshore access and use, and also to provide for other uses of aquatic Crown land, the Ministry may lay claim to eroded land.”⁷

If I want to protect my shoreline or build along the shore of my property, what do I need to do?

In BC, various agencies review shoreline proposals to ensure that development in and around shorelines will: avoid hazards and be safe; protect the shoreline environment and habitats; maintain water quality; and respect public access. Table 2 outlines the approvals that a proposed shoreline project *may* be required to obtain.

Table 2 – Approvals for Shoreline Projects

WHO	WHAT IS REQUIRED	WHEN/WHERE IS IT REQUIRED
Municipality or regional district	Development permit Building permit	If the shoreline is in a Development Permit Area designated under an OCP For structures over a certain size specified in the local building bylaw
BC Integrated Land Management Bureau	Temporary permit (for works or activities less than 2 years in duration). Lease or licence of occupation (for permanent works or structures)	If any proposed works or structures will project into the foreshore (i.e., seaward of the natural boundary)
Federal Dept of Fisheries and Oceans (DFO)	Operational Statement Notification or Letter of Advice or Fisheries Act Authorization	The proposed activity is covered by an Operational Statement ⁸ and can comply with all of its requirements. Any harm to fish habitat can be avoided by taking measures outlined by DFO staff. Fish habitat will be harmed, but may be acceptable if mitigation and compensation measures are followed; an Environmental Assessment under the <i>Canadian Environmental Assessment Act</i> is also required before an authorization can be issued.
Transport Canada	Approval under the <i>Navigable Waters Protection Act</i> (NWPA).	For any project that would erect a structure or work in, on, over, under, through or across any navigable water.
BC Ministry of Environment	A Wildlife Management Area permit	If the property lies within a Wildlife Management Area, such as the Parksville-Qualicum Beach WMA.

Where do I go to get approval for a shoreline project?

You may need to go to more than one agency, but it’s usually best to start with your local municipal (if you live in a city, town or other incorporated area) or regional district office (if you live in a rural area). Some local governments are able to provide a ‘one-stop’ service in terms of advice, checking your application and referring it to other agencies. In other situations, the local government may direct you to the local office of the applicable provincial or federal agency, and suggest additional information that you may need to provide.

If your plans extend below the existing natural boundary or high water mark, you will most likely need to apply for a foreshore tenure from the Province. In most cases, that process starts with a visit to Front Counter BC at 1-877-855-3222 or- www.frontcounterbc.gov.bc.ca/.

What do I need to provide in an application for shoreline works?

If the work is being contracted, the permitting process would in most cases be handled by your project designer or contractor. Information with the application required by local governments or other approving agencies may include (*check with your local agency for specifics*):

- The landowner's name, address, telephone number and, if available, a fax number and e-mail address;
- the water body name and location of the work site, including the complete legal description, and, if known, the latitude and longitude;
- proof of ownership for the properties where the work will be done and the most recent legal survey(s);
- the type of activity being proposed, such as tree removal, bank reinforcement, installing bulkheads, dock building, etc.
- the rationale for the project;
- a detailed description of the work site including a signed and dated site map or sketch with dimensions indicating the location of existing buildings, property lines and the natural boundary;
- a copy of your plans containing a description of construction details, timing, building techniques and materials, and, if possible, a description of any alternative designs being considered;
- a list of equipment to be used;
- photographs of the work site and the surrounding shoreline during ice-free and snow-free conditions if possible;
- the proposed start and end date for the project;
- a description of the substrate at the work site (sand, silt, clay, rock, gravel and aquatic vegetation, etc.);
- a description of existing fish habitat and fish communities (species names) at or near the site, and whether any endangered species or plant communities inhabit the site;
- any mitigation measures you plan to introduce to minimize harmful impact (e.g., working in the dry, sediment erosion controls, etc.); and
- federal, provincial, territorial, or municipal government agencies you have contacted or that have contacted you.

NOTES

¹ The common definition of **natural boundary** is "the visible high water mark of any lake, stream, or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed of the lake, river stream, or other body of water a character distinct from that of the banks, both in vegetation and in the nature of the soil itself" (*BC Land Act*). In marine systems, the natural boundary is generally determined as the lower elevation of terrestrial vegetation or the upper boundary of distinctive aquatic vegetation.

² Small areas of foreshore are privately owned (through historical Crown granted waterlots) and some is owned by the federal government in, for example, major harbours. (D. Berry, ILMB: pers.comm.)

³ Crown land is a general term for all lands or lands covered by water that are not privately owned and remain in public ownership with either the federal or provincial government. In BC, the vast majority of Crown land (94% of all land in the province) lies with the Province. When an individual or organization wishes to these lands, the Province may agree to enter into a tenure agreement to lease the land for a certain purpose over a set period of time.

⁴ Under the federal *Fisheries Act*, fish habitat means "all areas that fish depend on directly or indirectly throughout their life stages. It includes spawning grounds and nursery, rearing, food supply and migration areas"; this also includes shoreline

riparian areas. Examples of activities that could potentially harm fish habitat include removing riparian vegetation, introducing sediment into aquatic habitat, infilling foreshore or nearshore areas, dredging, and building or removing a dock.

⁵ DFO establishes seasonal timing windows (also known as “work” or “operating” windows), which are time spans considered to present the least risk of harm to fish, including their eggs, juveniles, spawning adults and/or organisms on which they feed. Timing windows vary for different parts of the BC coastline, and may differ by species; check with the Pacific Region’s website http://www-heb.pac.dfo-mpo.gc.ca/decisionsupport/os/timing_marine_e.htm or contact the local DFO office for specifics.

⁶ BC Ministry of Agriculture and Lands, 2008b; p. 5

⁷ BC Ministry of Agriculture and Lands, 2008b; p. 18

⁸ DFO has issued [Operational Statements](#) (OS) that outline acceptable practices for a number of routine activities in and around aquatic systems that pose little risk to fish habitat. A project may proceed without DFO review when the conditions and “Measures to Protect Fish and Fish Habitat” found within the applicable OS are met. If there is no OS developed for an activity or if the conditions of an OS cannot be met, the proposal must be submitted to DFO for review.

References –

BC Ministry of Agriculture and Lands. 2008a. Land Procedure – Accretions and Derelictions. 2p. www.agf.gov.bc.ca/clad/leg_policies/procedures/accretions.pdf -

BC Ministry of Agriculture and Lands. 2008b. Riparian Rights and Public Foreshore Use in the Administration of Aquatic Crown Lands. Occasional Paper No. 5. 22p. www.al.gov.bc.ca/clad/tenure_programs/cabinet/riparian.pdf
Dept. of Fisheries and Oceans Canada– Reviews and Authorizations: <http://www.dfo-mpo.gc.ca/regions/central/habitat/os-eo/os-eo3-eng.htm>

Dept. of Fisheries and Oceans Canada– Pacific Region Operational Statements: http://www-heb.pac.dfo-mpo.gc.ca/decisionsupport/os/operational_statements_e.htm

Dept. of Fisheries and Oceans Canada– Habitat Enforcement: http://www-heb.pac.dfo-mpo.gc.ca/habitat_policy/enforcing_the_act_e.htm