

17.65.030 Fish and Wildlife Habitat Conservation Areas.

- A. Purpose. The purpose of this chapter is to protect and manage fish and wildlife habitats in the city.
- B. Designation.
 - 1. All areas within the city meeting one or more of the following criteria are designated as fish and wildlife habitat conservation areas and are subject to the provisions of this chapter.
 - a. Areas with which State or Federally Designated Endangered, Threatened, and Sensitive Species have a Primary Association.
 - i. Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered.
 - ii. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats.
 - b. State Priority Habitats and Areas Associated with State Priority Species. Priority habitats and species are identified by the Washington Department of Fish and Wildlife.
 - c. Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the city pursuant to BMC 17.65.030.B.3, Designation of Habitats and Species of Local Importance.
 - d. Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16. Waters of the State in the city regulated under this chapter include Jewett Creek and Dry Creek. The Columbia River is regulated pursuant to the locally adopted shoreline master program.

- e. Areas of Rare Plant Species and High Quality Ecosystems. Areas of rare plant species and high quality ecosystems are identified by the Washington State Department of Natural Resources through the Natural Heritage Program.
 - f. Land Useful or Essential for Preserving Connections Between Habitat Blocks and Open Spaces.
2. The approximate locations and extents of habitat conservation areas may be shown on, but shall not be limited to, the following list of maps. The maps are for reference only and do not provide a final critical area designation.
- a. Washington Department of Fish and Wildlife Priority Habitat and Species maps.
 - b. Washington State Department of Natural Resources water type maps.
 - c. Washington State Department of Natural Resources Natural Heritage Program maps.
 - d. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors reports published by the Washington Conservation Commission.
 - e. Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.
3. Designation of Habitats and Species of Local Importance. The city shall accept and consider nominations for habitat areas and species to be designated as locally important.
- a. Process.
 - i. Habitats and species may be nominated by any person.
 - (a) The nomination should indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries) or whether the habitat or ecosystem is being nominated in its entirety.
 - (b) The nomination may include management strategies for the species or habitats. Management strategies must be supported by the best available science, and where restoration of habitat is proposed, a specific

plan for restoration must be provided prior to nomination.

- ii. The administrator shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to BMC 17.65.030.B.3.b, Characteristics, and make a recommendation to the city council.
 - iii. The city council shall hold a public hearing on the proposal and vote on the nomination.
- b. Characteristics. Habitats and species to be designated must exhibit the following characteristics:
- i. Local populations of native species in danger of extirpation based on existing trends, including local populations of native species that are likely to become endangered or are vulnerable or declining.
 - ii. The species or habitat has recreation, commercial, game, tribal, or other special value;
 - iii. Long-term persistence of a species is dependent on the protection, maintenance, and/or restoration of the nominated habitat;
 - iv. Areas nominated to protect a particular habitat or species represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape;
 - v. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in Bingen; and
 - vi. Without protection, there is a likelihood that the species or habitat will be diminished over the long term.

C. Critical Areas Report for Fish and Wildlife Habitat Conservation Areas.

- 1. When Required. A critical area report for fish and wildlife habitat conservation areas shall be required when:

- a. A project area is located within 150 feet of the ordinary high water mark of a waterbody subject to this chapter; or
 - b. A project area is located within the potential critical area buffer width and building setback of other fish and wildlife habitat conservation areas meeting the criteria of BMC 17.65.030.B, Designation. This provision does not apply to other fish and wildlife habitat conservation areas located waterward of the ordinary high water mark of a waterbody subject to this chapter.
2. Additional Requirements. In addition to the general critical area report requirements of BMC 17.65.010.L, Critical Area Report, critical area reports for fish and wildlife conservation areas must meet the requirements of this subsection.
- a. Preparation by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.
 - b. Areas Addressed. The following areas shall be addressed in a critical area report for fish and wildlife habitat conservation areas:
 - i. The project area of the proposed activity;
 - ii. All habitat conservation areas and buffers within 150 feet of the project area; and
 - iii. All shoreline areas, floodplains, other critical areas, and related buffers within 125 feet of the project area.
 - c. Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical area report for a habitat conservation area shall contain a habitat assessment including, at a minimum, the following information:
 - i. A detailed description of vegetation on and adjacent to the project area and its associated buffer;
 - ii. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

- iii. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
 - iv. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
 - v. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with BMC 17.65.010.M.2, Mitigation Sequencing; and
 - vi. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.
3. Additional Information May Be Required. When appropriate due to the type of habitat or species present or the project area conditions, the administrator may also require the habitat assessment to include:
- a. An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate; or
 - b. A request for consultation with the Washington Department of Fish and Wildlife or other appropriate agency or tribe.

D. Performance Standards.

- 1. General Standards.
 - a. Alterations. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat.
 - b. Approvals of Activities. The city may condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions must be based on the best available science and may include, but are not limited to, the following:

- i. Establishment of buffer zones;
 - ii. Preservation of critically important vegetation and/or habitat features;
 - iii. Limitations on access to the habitat area; or
 - iv. Seasonal restriction of construction activities.
- c. Buffers.
- i. Establishment of Buffers. The city shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington Department of Fish and Wildlife. Habitat conservation areas and their buffers shall be preserved in perpetuity through the use of recorded documents and native growth protection areas in accordance with BMC 17.65.010.K, General Critical Area Protective Measures.
 - ii. Habitat Buffer Averaging. The city may allow habitat area buffer widths to be reduced in accordance with a critical area report, the best available science, and the management recommendations issued by the Washington Department of Fish and Wildlife, if:
 - (a) It will not reduce stream or habitat functions;
 - (b) It will not adversely affect salmonid habitat;
 - (c) It will provide additional natural resource protection, such as buffer enhancement;
 - (d) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
 - (e) The buffer area width is not reduced by more than 25

percent in any location.

- iii. Habitat Buffer Reduction. Buffers may be reduced by 25 percent where the applicant demonstrates through a report relying on best available science and prepared by a qualified professional that through buffer enhancement the smaller buffer would provide equal or better protection than the larger buffer. Enhancement techniques can include, but are not limited to:
 - (a) Planting of native trees or shrubs, increasing the diversity of plant cover, replacing exotic plant species with native species.
 - (b) Removal of man-made structures, including non-functioning armoring.
 - (c) In fish-bearing streams, fish habitat enhancement and/or fish barrier removal.

- v. Fencing. The city shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, the city shall condition any permit or authorization issued pursuant to this section to require the applicant to install a permanent fence at the edge of critical area or buffer. Fencing installed as part of a proposed activity or as required by this subsection shall be designed to not interfere with species migration and shall be constructed in a manner that minimizes habitat impacts.

- e. Subdivisions. The subdivision and short subdivision of land in fish and wildlife habitat conservation areas and associated buffers is subject to the following:
 - i. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.
 - ii. Land that is located partially within a habitat conservation area or its buffer may be subdivided provided that the developable portion of each new lot and its access is located outside of the habitat conservation area or its buffer and is equal to or greater than the minimum lot size requirements.

- iii. Access roads and utilities serving the proposed development may be permitted within the habitat conservation area and associated buffers only if the city determines that no other feasible alternative.
 - f. Non-indigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.
 - g. Mitigation and Contiguous Corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.
 - h. Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.
- 2. Specific Standards for Riparian Habitat Areas.
 - a. Riparian Habitat Areas.
 - i. Unless otherwise allowed in this chapter, all structures and activities must be located outside of a riparian habitat area.
 - ii. Standard riparian habitat area widths are shown in the table below and are based on the Permanent Water Typing System described in WAC 222-16-03.
 - (a) Type S waters are those inventoried as shorelines of the state under chapter 90.58 RCW.
 - (b) Type F waters are perennial or seasonal, fish bearing streams.
 - (c) Type Np waters are non-fish bearing perennial streams.

- (d) Type Ns waters are non-fish bearing seasonal streams.

Riparian Habitat Area Widths.

Type	Buffer (feet)
S	(see shoreline master program)
F	100
Np	50
Ns	50
Ns – Dry Creek from Lincoln Street to Railroad	15*

*Building setback not applicable.

- iii. Widths shall be measured outward in each direction, on the horizontal plane, from the ordinary high water mark, or from the top of bank, if the ordinary high water mark cannot be identified.
- iv. Standard riparian habitat area widths may be increased if the standard width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area.
- v. Standard riparian habitat area widths exceptions.
 - (a) Where a legally established road crosses a riparian habitat area buffer, the administrator may approve a modification of the minimum required buffer width to the waterward edge of the improved road. If the improved roadway corridor is wider than 20 feet, a study is not required. For roadway corridors less than 20 feet wide, a study must be submitted by the applicant and prepared by a qualified professional that demonstrates that the part of the buffer on the upland side of the road sought to be reduced does not provide additional protection of the waterbody and provides insignificant biological, geological or hydrological buffer functions relating to the waterward portion of the buffer adjacent to the waterbody.
 - (b) Where an existing sediment pond is located along a regulated water, the buffer shall not extend beyond

the line of existing vegetation surrounding the sediment pond.

- vi. Mitigation of adverse impacts to riparian habitat areas shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted.
 - vii. The performance standards set forth in this subsection may be modified at the city's discretion if the applicant demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.
- b. Clearing and Grading. When clearing and grading is permitted as part of an authorized activity or as otherwise allowed in these standards, the following shall apply:
- i. Grading is allowed only during the dry season, which is typically regarded as beginning on May 1 and ending on October 1, provided that the city may extend or shorten the dry season on a case-by-case basis, determined on actual weather conditions.
 - ii. Soils shall remain undisturbed to the maximum extent possible. Where feasible, any soil disturbed shall be redistributed to other areas of the project area.
 - iii. The moisture-holding capacity of the topsoil layer shall be maintained by minimizing soil compaction or reestablishing natural soil structure and infiltrative capacity on all areas of the project area not covered by impervious surfaces.
 - iv. Erosion and sediment control that meets or exceeds city standards must be provided.
- c. Streambank Protection. If bank protection cannot be avoided, the bank protection recommendations in the Washington State Integrated Streambank Protection Guidelines (Washington State Aquatic Habitat Guidelines Program), as amended, shall be followed.
- d. Roads, Trails, Bridges, and Rights-of-Way. Construction of trails, roadways, and minor road bridging may be permitted in accordance with an approved critical area report subject to the following standards:

- i. There is no other feasible alternative route with less impact on the environment;
 - ii. The crossing minimizes interruption of downstream movement of wood and gravel;
 - iii. Roads in riparian habitat areas or their buffers shall avoid and minimize running parallel to the waterbody;
 - iv. Trails shall be located on the outer edge of the riparian area or buffer, except for limited viewing platforms and crossings;
 - v. Crossings, where necessary, shall only occur as near to perpendicular with the waterbody as possible;
 - vi. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;
 - vii. Trails and associated viewing platforms shall not be made of continuous impervious materials.
- e. Utility Facilities. New utility lines and facilities may be permitted in accordance with an approved critical area report, if compliant with the following standards:
- i. Fish and wildlife habitat conservation areas shall be avoided to the maximum extent possible.
 - ii. Utility facilities shall be contained within the footprint of an existing road or utility corridor where possible.
 - iii. Utility corridors shall avoid paralleling streams.
 - iv. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the waterbody and channel migration zone, where feasible.
- f. Instream Structures. Instream structures, such as high-flow bypasses, sediment ponds, instream ponds, retention and detention facilities, and weirs shall be only be allowed by the city upon acquisition of any required state or federal permits. Structures must be designed to avoid modifying flows and water quality in ways that may adversely affect habitat conservation areas.

- i. Structures that prevent the migration of salmonids shall not be allowed in the portion of waterbodies currently or historically used by anadromous fish. Fish bypass facilities must be provided.
- g. Stormwater Conveyance Facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:
 - i. No other feasible alternatives with less impact exist;
 - ii. Mitigation for impacts is provided;
 - iii. Stormwater conveyance facilities shall incorporate fish habitat features if applicable; and
 - iv. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to minimize erosion, filter out sediments, and shade the water.