

## *Why are the New Rules Important?*

*Eleven per cent or more of salmon and trout populations in larger streams in B.C. are already extinct or at serious risk of becoming extinct, and 30 per cent of the province's freshwater fish species are threatened or endangered. Fish require a sustainable flow of clean, cool water to survive. Low water flows can seriously impact fish survival by increasing temperatures, lowering oxygen concentrations, and hindering spawning and migration. The new rules will help prevent further deterioration from occurring.*

*Water managers now have specific legislative authority to consider impacts to fish and fish habitat on all streams in the province. The new water allocation rules apply to:*

- applications for new licences;*
- amendments to existing licences; and*
- applications for Approvals (for short term use of water or changes in and around a stream. Approvals may be issued, for instance, to install a culvert in a stream).*

*In addition, the Act provides for the designation of sensitive streams. Sensitive streams are streams where fish are at risk due to inadequate water flow or habitat concerns. On sensitive streams, there will be a "fish first" policy exercised on new water licence applications. Streams will not be designated as sensitive where fish flow concerns are being addressed under the B.C. Hydro Water Use Planning licence review process.*

## *How Does this Differ from Current Practices?*

*Fish and fish habitat considerations are routinely taken into account in accordance with existing water management policies. In most cases the new rules will not significantly impact small volume water licence and approval applications. However, applicants for larger volume or more complex water licences or approvals may be required to provide more detailed information or data regarding fish and fish habitat.*

*On sensitive streams, granting of new water licences, approvals or amendments will be prohibited unless there is sufficient water and habitat for fish, or acceptable mitigation or compensation measures can be put in place.*

## What Do The New Rules Mean?

*It is important to emphasize that in most cases the Act merely brings into legislation many existing practices and policies already in use today. However, the new rules also provide the following benefits to the water management program:*

- formalizing and bringing consistency to many existing provincial policies and practices;*
- increasing the level of certainty by clearly defining requirements and potential issues at the outset of the process.*

*With respect to specific water application processes on general streams and designated sensitive streams, the new rules may affect water licence applicants in the following ways:*

General Streams (section 5) - applicants may be required to:

- provide habitat and stream flow data and analysis of the proposed water licence prepared by a qualified professional;*
- comply with water licence conditions established to protect fish and fish habitat interests;*
- monitor the impact of water use on fish and fish habitat;*
- install and operate a stream flow measuring device; and/or*
- develop mitigation or compensation measures.*

Sensitive Streams (section 6) - in addition to the provisions listed above for general streams, applicants on sensitive streams must:

- at the discretion of the water manager, show that no alternate sources of water are reasonably available;*
- provide more detailed information on fish and fish habitat prepared by a qualified professional;*
- demonstrate that the proposed use will not significantly impact fish and fish habitat; and*

*develop mitigation or compensation measures if the proposed licence would result in significant adverse impacts to fish or fish habitat. The measures must be acceptable to both the ministry and DFO.*

## Water Licences and Approvals in British Columbia

*A water licence is an authorization by the province to use a specified amount of water from a stream for a particular purpose. The licence establishes a right and priority to use water. It also protects the licence holder from unauthorized diversions of water. Generally, water licences are granted in perpetuity subject to continued beneficial use and payment of annual licence fees. Currently, there are approximately 42,000 active water licences in British Columbia with approximately 2,300 applications under consideration.*

*Approvals may be granted to authorize changes in or about a stream or stream channel, or to authorize the short term use of water for a period not exceeding 12 months.*

*To acquire a water licence or approval in British Columbia a person must file an application, including a fee, with the water manager. The applicant may be required to notify any potentially affected land owners or water licensees on the stream. These people will have an opportunity to voice any concerns they may have. The application may also be referred to provincial and federal fish agencies and other agencies to identify potential fish and fish habitat concerns and other public and private interests. Water management staff investigate the application taking into account any objections or concerns. The decision to grant a water licence or Approval is made under the Water Act by the water manager. This decision can be appealed to the Environmental Appeal Board.*

## An Example of Federal & Provincial Harmonization

*Conserving fish and fish habitat is an example of shared jurisdiction between the federal and provincial governments. Most of the direct authority over fish and fish habitat rests with the federal government. Federal Fisheries Act provisions provide for fish and fish habitat protection and are generally described as reactive in nature. Usually this means that the provisions can only be used after fish habitat has been damaged. Although the Fisheries Act has been used successfully in prosecutions, the cases—which are of a criminal nature—are often long and costly, and fish habitat continues to be lost at an alarming rate. Furthermore, the time and resources required to restore or rehabilitate lost or degraded habitats can be significant.*

*The Province owns the water and most of the land in British Columbia and can therefore indirectly legislate with respect to fish and fish habitat. In addition, BC has constitutional authority to legislate with respect to local works and undertakings, property and civil rights and matters of a local nature. The Province also relies on agreements with the federal government to secure a direct role in the management of fisheries.*

*In summary, the federal and provincial governments both contribute to fish protection by legislating in areas which are within their control. The federal Department of Fisheries*

*and Oceans (which administers the Fisheries Act, Canada), the Ministry of Environment, Lands and Parks (which administers the Water Act and the Fish Protection Act) and the BC Ministry of Fisheries have adopted a cooperative approach to the development of regulations under the Fish Protection Act. Both levels of government are committed to work together to ensure that fish and fish habitat are adequately protected for future generations.*

## *Some Questions & Answers*

*What are "sensitive streams"?*

*Under the FPA, certain streams can be designated as sensitive by the Lieutenant Governor in Council. This designation is designed to protect a population of fish whose sustainability is at risk due to inadequate water flow or degradation of habitat. A designation includes the stream's tributaries unless they are expressly exempted. Sensitive streams are subject to the water allocation rules set out in section 6 of the Act and supporting regulations*

*(s. 13(2)(c)).*

*What are "general streams"?*

*All streams in British Columbia that are not designated sensitive under the FPA are considered "general streams" and are subject to water allocation rules set out in section 5 of the Act and supporting regulations (s. 13(2)(b)).*

*Will the new rules affect existing licences or approvals?*

*No. There will be no impact on existing water holders may choose to become involved in recovery plans developed for sensitive streams. The new rules will not impact on existing approvals. However, those applying for approvals on an annual basis will be subject to the new rules.*

*What will the new rules cost British Columbians?*

*It is anticipated that there will be minimal new costs associated with small volume water licence and approval applications or applications on most major lakes and rivers. However, in the case of applications for large volumes of water, or on streams where there is a water flow concern, the new rules may have financial implications. For example, applicants may incur additional costs to:*

*acquire and provide stream flow information and fish habitat assessments, prepared by a qualified professional, during the application process;*

- *comply with water licence terms and conditions;*
- *monitor stream flow and water diversion rates;*
- *provide adequate habitat compensation if required; and*
- *demonstrate on sensitive streams that a suitable alternative water source is not reasonably available.*

*How will you balance fish protection values with other community values such as ensuring adequate water for agriculture purposes?*

*future water applications may be refused in favour of fish protection goals. However, efforts will be made to accommodate water users through improved communication and planning processes as well as consideration of compensation and mitigation measures.*

*Are the new rules in force?*

*No. They are currently under development. The new rules will be finalized only after consultation with stakeholders and other government agencies, including First Nations. In the interim, the current rules will apply.*

*How will the new rules affect water licence and approval applications?*

*Potential impacts on fish and fish habitat will be considered when adjudicating applications on general streams after the supporting section has been proclaimed. This applies to both outstanding and future applications. However, the special requirements respecting sensitive streams will apply only to applications filed after the stream has been designated as sensitive.*

*What can I do if I disagree with a decision of the Water Manager?*

*Water allocation decisions can be appealed to the Environmental Appeal Board.*

*How much time will the new rules add to the time it takes?*

*In most cases, we anticipate that the new rules will not significantly add to the time required to process new small volume applications. However, on larger more complex applications additional time may be required to obtain and analyze additional information*

What are "mitigation and compensation" measures?

*Applicants for water licences on sensitive streams will be required to show that alternate sources of water are not reasonably available. In addition, applicants will be expected to provide information required for the water manager to determine whether the proposal will have a significant impact on fish. That information may include proposed mitigation or compensation measures.*

*The goal of mitigation measures is to off-set potential impacts of the proposal on fish habitat. For example, an applicant may be required to provide off-stream storage of water to augment naturally available water flows. In exceptional circumstances, compensation may be considered on sensitive streams if mitigation efforts are not sufficient to off-set impacts of the proposal on fish habitat. For example, an applicant may be permitted to enhance or replace fish habitat. Authority under the Federal Fisheries Act will be required for all fish habitat compensation measures.*

## *Relevant Sections of the Fish Protection Act*

### *Fish and fish habitat considerations in licencing decisions*

*5 (1) Subject to the regulations, in making a decision on an application for a licence, an approval or an amendment to a licence or an approval, the comptroller or regional water manager may*

- (a) consider impact on fish and fish habitat, and*
- (b) include conditions respecting fish and fish habitat in the licence, approval or amendment.*

*(2) Without limiting subsection (1), for the purposes of*

- (a) monitoring the impact of water use or diversion by the licensee on fish and fish habitat, or*
- (b) verifying the information in relation to fish and fish habitat used in determining whether to issue the licence, approval or amendment,*
- (c) a licence, approval or amendment may include conditions that the holder of the licence or approval construct, install, operate, maintain and provide data from a streamflow measuring device in accordance with the directions of the comptroller or regional water manager.*

Designation of sensitive streams for fish sustainability

6 (1) In this section:

*"proposal" means any or all of the use, diversion, storage, works or activities proposed by an application for a licence, an approval or an amendment to a licence or an approval;*

*"protected fish population" means the population of fish in relation to which a designation under this section is made.*

*(2) The Lieutenant Governor in Council may, by regulation, designate a stream as a sensitive stream under this section if the Lieutenant Governor in Council considers that the designation will contribute to the protection of a population of fish whose sustainability is at risk because of inadequate flow of water within the stream or degradation of fish habitat.*

*(3) The Lieutenant Governor in Council may repeal a regulation under subsection (2) if the Lieutenant Governor in Council considers that*

*(a) the sustainability of the protected fish population is no longer at risk,*

*(b) the implementation of a recovery plan under section 7 will reduce that risk such that the designation of the stream is no longer required, or*

*(c) removal of the designation is in the public interest.*

*4) A licence, an approval or an amendment to a licence or an approval, in relation to a sensitive stream, may only be issued by the comptroller or regional water manager*

*(a) in accordance with and subject to the regulations, and*

*(b) if the applicant has satisfied the comptroller or regional water manager as provided in subsection (6), (7) or (8).*

*(5) Subject to the regulations, an applicant must provide the comptroller or regional water manager with the information the comptroller or regional water manager considers necessary to make determinations under subsections (6) to (8).*

*(6) The comptroller or regional water manager may issue the licence, approval or amendment if satisfied that any adverse impact of the proposal on the sustainability of the protected fish population is likely to be insignificant.*

*(7) The comptroller or regional water manager may issue the licence, approval or amendment if satisfied that the application includes mitigation measures such that the proposal is not likely to have a significant adverse impact on fish or fish habitat.*

*(8) If the comptroller or regional water manager considers that the proposal is likely to have a significant adverse impact on fish or fish habitat that*

*(a) cannot be addressed by mitigation measures referred to in subsection (7), or*

*(b) cannot be fully addressed by mitigation measures referred to in subsection (7),*

*the comptroller or regional water manager may only issue the licence, approval or amendment if satisfied that compensation measures, in place of or supplemental to the mitigation measures, will enhance or enable the enhancement of fish or fish habitat elsewhere to fully compensate for the significant adverse impact of the proposal.*

### *What Are the Next Steps?*

*Designating the first set of "sensitive streams" under the FPA.*

*Drafting water allocation policies and procedures for the consideration of water flows for fish and fish habitat.*

*Focusing consultations on this background paper and the draft water allocation policies and procedures.*

*Identifying potential effects of the proposed water allocation policies and procedures on key interest groups and First Nations.*

*Finalizing water allocation policies and procedures.*

*Proclaiming sections 5, 6 & 13 of the Fish Protection Act.*

## *Other Water Management Tools Being Developed under the FPA*

*Recovery Plans* - on certain designated sensitive streams recovery plans may be developed to address water flow or habitat issues, the purpose of which is to protect and if possible provide for the recovery of fish populations at risk.

*Streamflow Protection Licences* - for the first time in BC an organization with a community based interest in a stream may hold a water licence for the protection of water flows for fish.

*Temporary Reduction Orders* - in times of drought, the Minister of Environment, Lands & Parks can make temporary orders to ensure sufficient water flows for fish.

*Water Management Plans* - the Minister of Environment, Lands & Parks may establish a comprehensive water planning process to address regional conflicts between water users, risks to water quality and fish and fish habitat concerns.

### *Let Us Know What You Think!*

*If you have any comments or suggestions on what should be included in the proposed new water allocation rules we would like to hear from you. Here are three ways to let us know your views and comments:*

*Write us at:*

*Water Allocation Consultation Team  
Water Management Branch  
Ministry of Environment, Lands & Parks  
PO Box 9340 Stn Prov Govt  
Victoria, BC V8W 9M1*

*Fax us at: (250) 953-5124*

*E-Mail us directly at: [Randy.Cairns@gems1.gov.bc.ca](mailto:Randy.Cairns@gems1.gov.bc.ca)*

*Your thoughts on this initiative will help us develop new water allocation rules that reflect your community values and needs. You are urged to provide us with your feedback by the end of October 1999.*

This, and other Fish Protection Act documents can be viewed on the Ministry of Environment, Lands & Parks' website at: [www.env.gov.bc.ca](http://www.env.gov.bc.ca)