

Water Allocations and Approvals on General Streams

Under the Fish Protection Act - A Backgrounder

General Streams Regulations to be Enacted Soon

A proposed general streams regulation under the British Columbia Fish Protection Act is designed to incorporate consideration of potential impacts on fish and fish habitat in water allocation decisions or approvals for changes in or about streams. The proposed regulation will codify existing policies and practices.

The draft regulation to implement the general streams initiative has been prepared following initial consultation with government agencies, First Nations, water users, community groups and industry stakeholders. During the Spring of 2000, staff from the Ministry of Environment Lands and Parks will be holding information sessions to discuss the proposed regulation and associated policies. These sessions will provide opportunities to learn more about the proposals and to let staff know of any questions or concerns you may have.

Your input is important. Your comments will be considered in preparing the final regulation, and become part of the 'Regulatory Impact Statement', both of which we hope to send to Cabinet this Fall. Cabinet will assess the benefits to fish as well as potential impacts on water users when considering the proposed regulations. The Regulatory Impact Statement becomes a public document following approval of the general streams regulations.

The Fish Protection Act

British Columbia's Fish Protection Act was developed to ensure that fish and fish habitat are sustained for present and future generations. It aims to balance the needs of fish with the needs of people, to the benefit of both.

The Fish Protection Act was passed in July 1997. At that time, only one major section of the Act – prohibiting the construction of new dams on 14 rivers – was brought into force. Some minor sections of the Act relating to offences and creative sentencing have also been implemented. In March 2000, Cabinet brought Sections 6 and 7 – Sensitive Streams and Recovery Plans – into force along with the Sensitive Streams Designation and Licensing Regulation.

The remaining sections of the Act will come into effect over the next few years as supporting regulations, policies and procedures are developed.

The Act has four major objectives:

- *Ensuring sufficient water for fish;*
- *Protecting and restoring fish habitat;*
- *Improving riparian (streamside) protection and enhancement; and*
- *Giving local government greater powers for environmental planning.*

Ensuring Sufficient Water for Fish

The general streams initiative of the Fish Protection Act relates primarily to the first objective of the Act – ensuring sufficient water for fish.

The Act identifies three categories of streams for the purposes of water allocation and approval decisions:

- *Sensitive streams (under section 6 of the Act);*
- *General streams where fish are present and flow or habitat concerns exist (section 13(2)(b) of the Act); and*
- *General streams where fish and fish habitat are not an immediate concern (section 5 of the Act).*

This background paper deals with general streams – i.e. all those streams which are NOT designated as sensitive streams.

Why is the General Streams Regulation 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 General Streams Regulation will help prevent further deterioration from occurring.

Water managers will now have specific legislative authority to consider impacts to fish and fish habitat on all streams in the province. The General Streams Regulation will apply to:

- *applications for new licences;*
- *amendments to existing licences;*
- *applications for approvals (both short term use of water and changes in and around a stream or stream channel); and*
- *amendments to existing approvals.*

What Does The General Streams Regulation Mean?

It is important to emphasise that in most cases the Fish Protection Act merely brings into legislation many existing practices and policies already in use today. However, the proposed regulation will also provide the following benefits to the province's water management program:

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

With respect to specific water application processes on general streams, the proposed regulation may affect applicants in the following ways:

*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 to address potential impacts.*

How Does this Differ from Current Practices?

Fish and fish habitat considerations are routinely being taken into account in accordance with existing water management policies. In most cases applicants for small volume water licences and approvals will not notice any significant impact. Applicants for larger volume or more complex water licences or approvals may, however, be required to provide more detailed information or data regarding fish and fish habitat in the application process. In addition, more stringent conditions may be incorporated into new licences or approvals for the protection of fish and fish habitat.

Proposed General Streams Regulation

In support of section 5 of the Fish Protection Act, the proposed general streams regulation will guide how fish and fish habitat considerations are accommodated in the adjudication of an application for a water licence, approval or amendment. The proposed regulation codifies and brings consistency to numerous existing policies and practices, recognising that the flow of water in a stream is the primary component of fish habitat. It will also outline a suite of conditions that may be incorporated into a licence or approval for the protection of fish and fish habitat.

Instream Flow Methodologies

The Comptroller or Regional Water Manager will be empowered to determine an appropriate methodology, or methodologies, for assessing the instream flow requirements for fish and fish habitat, for streams within his or her jurisdiction. The determination will be based on information provided by the Regional Fish and Wildlife Manager or a designated Habitat Officer, BC Fisheries, and/or Fisheries and Oceans Canada.

Instream Flow Assessment

In evaluating an application and assessing the water flow necessary for fish and fish habitat, the comptroller or regional water manager may:

- o apply the appropriate methodology, or methodologies,*
- o consider provisions of a Water Allocation Plan, Water Management Plan, or other similar plan that addresses fish and fish habitat concerns,*
- o consider the measures identified to protect fish and fish habitat by the regional fish and wildlife manager or habitat officer, or Fisheries and Oceans Canada, respecting applications on particular streams, or applications of a particular type, volume or purpose,*
- o require additional information respecting fish and fish habitat from the applicant, or*
- o refer a copy of the application to provincial and/or federal fish agencies for review and comment.*

Mandatory Consideration Under Specific Circumstances

The comptroller or regional water manager will be required to consider fish and fish habitat in the adjudication of an application for a water licence where:

- a. the stream provides habitat for a species of fish which is designated as threatened or endangered by the Lieutenant Governor in Council under section 6 of the Wildlife Act, or*
- b. the stream provides habitat for a species of fish that is on the red list or blue list of Species at Risk in British Columbia, as designated by the Conservation Data (chinook, coho, pink, sockeye, and chum), kokanee, or steelhead, or*
- c. the stream provides habitat for other regionally significant fish species.*

Conditions for Protection of Fish and Fish Habitat

Water Managers will have the discretion to impose certain conditions within licences or approvals for the protection of fish and fish habitat. In addition to those conditions specified in section 5 of the Act, the proposed regulation outlines a suite of additional conditions that may be incorporated in a licence or approval, such as:

- *construction or installation of fish guards, screens, or fishways and onsite monitoring during construction of works;*
- *off-stream storage of water;*
- *restrictions on the rate and time of diversion of water from a stream or reductions or changes in the diversion, storage or use of water from a stream in particular circumstances to protect instream flow requirements for fish or fish habitat;*
- *measuring and providing data on the diversion or use of water from a stream, water quality or temperature in a stream;*
- *planting, protecting or maintaining riparian vegetation;*
- *measures or practices to conserve water, protect water quality, or protect stream and channel stability; or*
- *any other measures for the protection of fish or fish habitat that are recommended by provincial or federal fish agencies, including any approved compensation for potential loss of fish habitat.*

Some Questions & Answers

What are "general streams"?

All streams in British Columbia that are not designated "sensitive" under the Fish Protection Act are considered "general streams" and are subject to section 5 of the Act and the proposed general streams regulation (s. 13(2)(b)).

Will the proposed regulation affect existing licences or approvals?

No. There will be no impact on existing water licences unless they need to be amended in the future. The proposed regulation will not impact on existing approvals. However, those applying for approvals on an annual basis will be subject to the new rules.

Are the new rules in force?

No. They are currently in draft form. The proposed regulation will be finalised only after this consultation which involves stakeholders and other government agencies, including First Nations. In the interim, the current rules apply.

How will the proposed regulation affect water licence and approval applications?

The new rules are a codification of existing policies and practices currently being applied in decision making. After the regulations are brought into force, potential impacts on fish and fish habitat will still be considered when adjudicating applications on general streams. This applies to both outstanding and future applications, except those that meet the requirements for Quick Licensing. Changes in and about streams covered by the Forest Practices Code Act are not affected.

Will this initiative add to the time it takes for a water application to be considered?

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, or on streams where there is an absence of information on fish and fish habitat, additional time may be required to obtain and analyse additional information.

Will there be additional costs to British Columbians?

It is anticipated that there will be minimal new costs associated with small volume water licence and approval applications. 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 for protection of fish and fish habitat;*
- monitor stream flow and water diversion rates;*
- develop mitigation strategies; and/or*
- provide adequate habitat compensation if required.*

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

In some circumstances water flows will require protection for the survival of fish. This means that future water applications may be refused in favour of fish protection goals. However, efforts will be made to accommodate water users through consideration of mitigation and compensation measures as well as improved communication and planning processes. The consideration of fish and fish habitat is, and has been, an integral part of the policies and practices applied to all applications. Now, that consideration has a statutory mandate.

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

Decisions of the Water Manager can be appealed to the Environmental Appeal Board. Alternatively, you may discuss the decision with the water manager or Ministry Regional Director.

What are "mitigation and 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 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.

Let Us Know What You Think!

If you have any information, comments or suggestions regarding general streams or the proposed regulations/procedures we would like to hear from you.

- 1. Do you agree with the intent of the proposed regulations and procedures for general streams as described? Why? Why not?*
- 2. In what ways will the proposed regulations and procedures benefit you/your community/your activities? (please describe)*
- 3. In what ways will the proposed regulations and procedures have negative effects on you/your community/your activities? (please describe)*
- 4. Are you satisfied with the approach being proposed for the consideration of fish and fish habitat in water management decisions? Why? Why not?*

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

This, and other Fish Protection Act documents can be viewed on the Ministry of Environment, Lands & Parks' website at:

<http://www.elp.gov.bc.ca/fsh/papers.html>