

Rationale – Approval of FSWs in the Prince George Resource District
Fisheries Sensitive Watersheds # F-7-001 to F-7-005

In approving the five Fisheries Sensitive Watershed (FSWs): Seebach Creek (F-7-001), Framstead Creek (F-7-002), Milk River (F-7-003), Goat River (F-7-004), and Chehischic Creek (F-7-005), each of the tests under the *Government Actions Regulation* (GAR) was considered.

GAR 2 – Limitations on Actions

1. The orders are consistent with established objectives.

In my review of objectives established by government under the *Forest Planning and Practices Regulation* (FPPR), I find the orders are consistent with Section 5 (soils), s.6 [timber; as outlined below in my rationale relevant to the *Government Action Regulation* s.2(1)(b) and 2(1)(c)], s.8 (water, fish, wildlife and biodiversity in riparian areas), s.8.2 (community watersheds), s.9 (wildlife and biodiversity – landscape level), s.9.1 (wildlife and biodiversity – stand level), s.9.2 (visual quality), and s.10 (cultural heritage resources).

In review of the existing objectives established under the *Land Act*, *Land Use Objectives Regulation*, and *Government Action Regulation* (GAR) orders, I have determined that the objectives contained in these orders are consistent with objectives and direction established in the higher level plans for the Prince George Resource District for fish and fish habitat. Furthermore, I note that in the Milk River, Goat River, and Framstead Creek watersheds, consistent with provincial policy to co-locate multiple actions to reduce impacts to the operable provincial forest landbase, there is considerable overlap with an established caribou UWR (U-7-003) and various Old Growth Management Areas.

Having considered all available information pertaining to these orders, I find that there are no elements of these orders that would be inconsistent with established objectives applicable to forest and range practices and planning within the Prince George TSA, Robson Valley TSA or TFL 30.

2. The orders would not unduly reduce the supply of timber from British Columbia's forests

The *Forest and Range Practices Act* (FRPA) does not define “unduly” so I will consider dictionary definitions of “unduly”, such as “excessive”, “disproportionate” and “unwarranted”, when assessing the test under s. 2(1)(b).

The test of whether an action will unduly reduce the supply of timber from British Columbia's forests needs to be considered in light of government's timber supply impact policy for the establishment of similar actions. I am guided by relevant policies and practices that have been completed over time that apply to similar decisions. Timber supply impact policy for the province states that watershed management (for fisheries

sensitive and community watersheds) will not result in impacts to provincial AAC in excess of 1%. I note that a timber supply impact analysis was conducted for the purposes of establishing objectives under these orders and that this analysis concluded that there would be no detectable impact associated with the special management requirements laid out in these orders.

I further note that s. 47(4) of the FPPR establishes benchmark practices associated with riparian vegetation management and conservation, and that these orders specify additional riparian management and conservation requirements along some stream classes above what the FPPR normally provides. In 1999, and again in 2007, government direction was provided to *Forest Act* agreement holders involving increased retention on S4 streams (and to a lesser extent S5 and S6 streams) to maintain, among other habitat forming processes, large woody debris recruitment to fish streams. While no specific TSR calculation has been made to account for an AAC net-down associated with this measure, it can be assumed that as government policy a small reduction in timber supply would not unduly impact the supply of timber from British Columbia's forests.

Finally, I note that these orders specify equivalent clearcut area (ECA) targets for subsections of the area for which these orders apply. I understand that where there have been high rates of harvest in a watershed that the ECA requirement may result in rescheduling of harvest plans to allow hydrologic recovery in a watershed to occur. I also recognize that this may represent a short-term short fall in planned harvest opportunity in watershed affected by a ECA objective. As an ECA objective does not increase the standard forest harvest rotational age it does not affect the overall amount of timber that can be harvested across a TSA or TFL nor the affected watershed to which the order applies. Rather the ECA objective may necessitate, depending on the amount and timing of harvest area within the fisheries sensitive watershed either (or both): (i) rescheduling of timber harvest across the planning area (TSA or TFL) so as to achieve hydrologic stability and recovery in the FSW, or (ii) utilizing alternative silvicultural systems (e.g. partial cutting) so as to maintain greater canopy closure and minimize ECA impacts while realizing continued harvest opportunities.

Having considered all the available information I find that the five FSWs established by these orders, and which encompass a combined total area of 160,153 ha, will have no detectable impact to the provincial timber supply nor the Timber Harvesting Landbase (THLB) of the Prince George Resource District. Therefore, these orders will not unduly reduce the supply of timber from British Columbia's forests.

3. ***The benefits to the public derived from these orders would outweigh any material adverse impact of these orders on the delivered wood costs of a holder of an agreement under the Forest Act that would be affected by these orders.***

The FRPA does not define "material adverse impact". Furthermore, the test under s. 2(1)(c)(i) is a "material adverse impact" not just an "adverse impact". Accordingly, I will consider "material" effect as it is often defined as an effect that is "highly important" or "significant".

I note that these draft orders were created in close collaboration with licensees (and other interested parties). As such, major *Forest Act* agreement holders had additional opportunity to provide their input and expertise into the content of these draft orders prior to the orders undergoing GAR s.3(1)(b) and 3(2) review and comment requirements.

The review and comment process was conducted consistent with established (2008) policy for the GAR orders. I also note that, due to the applied-pilot nature of the FSW evaluation procedure leading to the creation of these orders, two review and comment periods were provided to ensure all comments were received and concerns considered.

Comments received from major licensees pertaining to delivered wood costs included concerns with: the prescriptive nature of the order, maintenance of flexibility, and interpretation of specific objectives. Government and licensees worked together to revise the draft orders such that the concerns were addressed without compromising the resource values of interest.

One of the fisheries sensitive watersheds affected by these orders (Chehishic watershed) contains three woodlot license areas. One licence is entirely within the watershed while a small portion of two others overlap with the perimeter of the watershed boundary. Review and comment with the three woodlot licensees was conducted in conjunction with the District Woodlot Forester and separately at the provincial policy level. Discussions with the provincial woodlot policy staff and the provincial Woodlot Working Group are ongoing. In the latter discussions the principle of disproportionality was established where government would exempt woodlot licensees from specific aspects (i.e. objectives) of an order where these have an adverse material impact on the licensee's delivered wood costs, but where an order (e.g. objective) would not provide the desired conservation or protection for the values of interest. In this case, because the woodlots situated within the watershed represented an insignificant forested area relative to the overall watershed's forested area, woodlot licensees were exempted from the equivalent clearcut area requirement as this would significantly and disproportionately affected their operations.

In addition to considering the potential for these orders to have a material adverse impact on delivered wood costs, I have considered the public benefits that will be derived from this order. These orders are intended to maintain and conserve the habitat of fish including, but not limited to: bull trout (blue and Identified Wildlife Management Strategy {IWMS} listed species-at-risk), chinook (population of regional concern), and rainbow trout. The information I have considered, including comments from the affected *Forest Act* agreement holders, does not indicate that these orders would create a material adverse impact on delivered wood costs. I find the public benefit of these orders to be compelling relative to the potential for material adverse impact on the delivered wood costs of a holder of any agreement under the *Forest Act* that would be affected by these orders.

- 4. *The benefits to the public derived from these orders would outweigh any undue constraint on the ability of a holder of an agreement under the Forest Act that would be affected by these orders to exercise the holder's rights under the agreement.***

The FRPA does not define “undue” so I will consider dictionary definitions of “undue”, such as “excessive”, “disproportionate”, and “unwarranted”, when assessing the test under section 2(1)(c)(ii).

I note that these draft orders were created in close collaboration with licensees (and other interested parties). As such, major *Forest Act* agreement holders had additional opportunity to provide their input and expertise into the content of these draft orders prior to these orders undergoing GAR s.3(1)(b) and 3(2) review and comment requirement.

The review and comment process was conducted consistent with established (2008) government policy for GAR orders. Due to the applied-pilot nature of the FSW evaluation procedure leading to the creation of these orders, two review and comment periods were provided to ensure all comments were received and concerns considered.

Comments received from major licensees included concerns with: the prescriptive nature of the order, maintenance of flexibility, and interpretation of specific objectives. As noted above, government and licensees worked together to revise the draft orders such that the concerns were addressed without compromising the resource values of interest.

One of the fisheries sensitive watersheds affected by these orders (Chehischic watershed) contains three woodlot license areas. One licence is entirely within the watershed while a small portion of two others overlap with the perimeter of the watershed boundary. Review and comment with the three woodlot licensees was conducted in conjunction with the District Woodlot Forester and separately at the provincial policy level. Discussions with the provincial woodlot policy staff and the provincial Woodlot Working Group are ongoing. In the latter discussions the principle of disproportionality was established where government would exempt woodlot licensees from specific aspects (i.e. objectives) of an order where these would have an undue constraint on the holder to exercise their rights under agreement, but where an order (objective) would not provide the desired conservation or protection for the values of interest. During review and comment no undue constraints on the holder of woodlot licences in the Chehischic watershed were expressed.

In addition to considering the potential for these orders to unduly constrain agreement holders from exercising their rights, I have considered the public benefits that would be derived from these orders. These orders are consistent with the objectives set by government (FPPR), government Fisheries & Ecosystem Program Plans, and the Prince George Land and Resource Management Plan (LRMP) and the Robson Valley LRMP. Furthermore, these orders are intended to maintain and conserve the habitat of fish including, but not limited to: bull trout¹ (blue and IWMS listed species-at-risk), chinook (population of regional concern), and rainbow trout.

¹ Note that bull trout is a fish species that is IWMS listed and is ranked as 2 under the Conservation Framework for both (a) “B.C.’s contribute to global efforts for species and ecosystem conservation and (b) “Prevent species and ecosystems from becoming at risk”.

Considering the information available to me, I find the public benefit of these orders to be compelling relative to the potential for any undue constraints on the ability of a *Forest Act* agreement holder to exercise the holder's rights under the agreement.

GAR 3 – Consultations and Reviews

- 1. An opportunity for review and comment was provided to the holders of agreements under the Forest Act or the Range Act that will be affected by these orders***
- 2. Consultation was carried out with holders on whom these orders may have a material adverse effect.***

Objectives were crafted in collaboration with licensees and other interested parties in a workshop process lead by government experts (hydrologists, ecosystem biologist, and fisheries biologists) and using the best available science. Workshops were conducted on two occasions (Nov 27-28, 2008 and again on April 7th, 2009) and assessment materials were made available to participants throughout the process leading to and including the crafting of these orders.

As a pilot, the review and comment period was extended to allow affected parties to fully consider the implications of establishing these objectives. Licensees, First Nations, as well as other interested parties were provided with two separate opportunities to review FSW objectives and provide comment. Review and comment periods included a 60 day period (April 29, 2009 to June 24, 2009) and a subsequent 40 day period (July 23, 2010 to August 31, 2010).

Given the steps taken as described here I am satisfied that due diligence was exercised to ensure that:

- a) any holder of an agreement under the *Forest Act* that would potentially be affected by these orders was given an opportunity to review and comment on these proposed orders; and
- b) consultation was carried out with any and all agreement holders on whom these orders may have a material adverse effect.

All comments received by Forest, Lands and Natural Resource Operations (FLNRO) staff during review/comment or consultation were made available for my consideration.

GAR 14 – Fisheries Sensitive Watersheds

- 1. The objectives in these orders are necessary to protect or conserve the habitat of fish in a watershed identified as having both (i) significant downstream fisheries values and (ii) significant sensitivity.***

The FSW objectives established by these orders were crafted after the assessment and confirmation of both significant fish values and watershed sensitivity by qualified professionals using the best available science. The objectives are consistent with current standards of practice, are supported by the best available science, and have been made available to agreement holders for review and comment. Therefore, I am satisfied that

the objectives established by these orders are necessary to protect and conserve the habitat of fish.

By establishing the FSW and its associated objectives for the five mentioned watersheds I am satisfied that the government's broad objectives (GAR s.14(1)(a) and (b)) for fisheries sensitive watersheds are met.

2. *The regulations under the Forest and Range Practices Act, or another enactment, do not otherwise provide for that protection or conservation.*

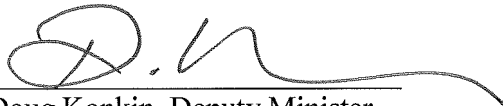
Immediately applicable provisions contained in other statutes or regulations such as the federal *Fisheries Act*² or the Forest Planning and Practices Regulation apply at the stand to site-specific or possibly reach-specific levels. The existing regulatory provisions and the federal statute do not have any application to planning forestry activities at the landscape scale level consistent with government's intent to protect fish habitat from cumulative impacts of forestry activities across a fisheries sensitive watershed.

The regulatory authority to identify Fisheries Sensitive Watersheds, and set objectives for these watersheds, was granted recognising that there are no other legal provisions currently in force to direct watershed management at the landscape scale. These provisions are meant to ensure that fish habitat in identified watersheds is not subject to material adverse impacts that may be the result of cumulative hydrological effects from primary forestry activities that would adversely affect stream channels, stream banks, natural variations in water flows, or other naturally occurring watershed processes that regulate or influence the condition of fish habitat. The objectives in the FSW orders have been crafted to draw attention to these specific special management needs.

While other regulations or enactments may deliver some of the special management required for the protection or conservation of the FSW, these measures are not specific to landscape-level watershed management nor is there any alternative mechanism that will provide ongoing protection to the watershed's fish and fish habitat values.

Therefore, the objectives established by these orders are necessary and I am satisfied that the regulations under the *Forest and Range Practices Act* or another enactment do not otherwise provide for protection or conservation of the watersheds addressed by these orders.

Signed this 25 day of March, 2013



Doug Konkin, Deputy Minister
Ministry of Forest, Lands and Natural Resource Operations

² Federal statutes such as the *Fisheries Act* underwent significant changes in 2012 and provisions for the protection of fish habitat appear to have changed such that more emphasis is placed with provincial agencies for the protection of fish habitat.