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**HONOURABLE CATHY McGREGOR  
MINISTER OF ENVIRONMENT,  
LANDS AND PARKS**

**BILL 25 -- 1997**

**FISH PROTECTION ACT**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**Definitions**

**1 (1)** In this Act:

**"application"** means an application under the *Water Act*;

**"bank to bank dam"** means

(a) a structure that is capable of impounding or storing water and that spans a stream from bank to bank, or

(b) structures that together are capable of impounding or storing water and that span a stream by spanning

(i) from one bank to a natural or other feature or structure in the stream, and

(ii) from the feature or structure to the other bank of the stream or, if applicable, between features or structures and to the other bank of the stream;

**"construction of a bank to bank dam"** includes the alteration of an existing structure such that it becomes a bank to bank dam but does not include the alteration of an existing bank to bank dam;

**"fish habitat"** means the areas in and about a stream, such as spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes;

**"local government"** means

(a) the council of a municipality, including the City of Vancouver,

(b) the board of a regional district, and

(c) a local trust committee of the Islands Trust or the executive committee of the Islands Trust acting as a local trust committee;

**"protected river"** means a stream that is a protected river under section 4 (1);

**"sensitive stream"** means a stream designated under section 6 and, unless expressly excluded, includes the tributaries of the designated stream;

**"streamflow protection purpose"** means the maintaining of water in a stream for fish or fish habitat.

(2) Unless the context indicates otherwise, words and expressions not defined in this Act have the meaning given to them under the *Water Act*.

### **Relationship with aboriginal and treaty rights**

**2** For greater certainty, the provisions of this Act are intended to respect aboriginal and treaty rights in a manner consistent with section 35 of the *Constitution Act, 1992*.

### **Relationship with the *Water Act***

**3** (1) Except as expressly provided, this Act does not limit the authority of the minister, the comptroller, a regional water manager, an engineer or any other public officer under the *Water Act*.

(2) To the extent of any conflict between this Act or a regulation under this Act and the *Water Act* or a regulation under that Act, this Act or the regulation under it prevails.

### **No new dams on protected rivers**

**4** (1) The main stem of the following, excluding their tributaries unless expressly included, are protected rivers under this section:

- (a) the Adams River;
- (b) the Alsek River;
- (c) the Babine River;
- (d) the Bell-Irving River;
- (e) the Blackwater River;
- (f) the Clearwater River;
- (g) the Fraser River;
- (h) the Nass River;
- (i) the Skagit River;
- (j) the Skeena River;
- (k) the Stikine River;
- (l) the Stuart River;
- (m) the Taku River;
- (n) the Tatshenshini River;
- (o) the North Thompson River, the South Thompson River and the Thompson River;
- (p) a stream prescribed under section 13 (2) (a).

(2) Despite section 27 (4) of the *Interpretation Act*, a stream prescribed by a regulation under section 13 (2) (a) remains a protected river unless this protection is changed by an Act.

(3) A person must not construct a bank to bank dam anywhere on a protected river.

(4) The comptroller or regional water manager must not issue or amend a licence, approval or permit to authorize the construction of a bank to bank dam anywhere on a protected river.

(5) A licence, approval or permit issued or an amendment made contrary to subsection (4) has no effect.

(6) Despite any other enactment, this section prevails to the extent of any conflict or inconsistency between this section and any other enactment.

(7) This section does not apply to a dam authorized by a licence, permit or approval issued under the *Water Act* before the section comes into force, whether or not construction of the dam has been completed or is under way when this section comes into force.

(8) For certainty, this section does apply to a proposed dam for which, at the time the section comes into force, an application for a licence, permit, approval or amendment to authorize its construction has been made, but for which no licence, approval, permit or amendment has been issued authorizing its construction.

### **Fish and fish habitat considerations in licensing 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,

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.

(9) Even though a licence, approval or amendment could be issued under subsection (6), (7) or (8), the comptroller or regional water manager may refuse to issue the licence, approval or amendment if, in his or her opinion, there is a reasonable alternative source of water reasonably available to the applicant.

(10) For the purposes of transition, subsections (4) to (8) do not apply to applications that have been made but not decided before the time of the applicable designation under subsection (2).

### **Recovery plans for sensitive streams**

**7 (1)** For the purposes of this section, "**recovery plan**" means a plan in relation to a sensitive stream under section 6, the purpose of which is to protect and, if possible, provide for the recovery of the protected fish population such that the authority under section 6 (3) may be exercised.

(2) The minister may

(a) direct that a recovery plan be prepared, or

(b) in response to a proposal for the development of a recovery plan, approve and provide assistance to the development of the recovery plan.

(3) The development of a recovery plan must include a process for public participation.

(4) Without limiting the content of a recovery plan, it may include any or all of the following:

(a) measures to be undertaken by the government or other persons for providing a sufficient flow of water in the stream or for restoring fish habitat;

(b) recommendations on agreements to promote cooperative efforts for the protection and recovery of the protected fish population and its habitat;

(c) any other measures to be undertaken by the government or other persons for the protection of fish or fish habitat.

(5) If the Lieutenant Governor in Council considers a proposed recovery plan to be in the public interest, the Lieutenant Governor in Council may approve the recovery plan.

(6) For the purposes of implementing an approved recovery plan, the Lieutenant Governor in Council may, by regulation applicable in relation to the sensitive stream, restrict

(a) the issuance or amendment of licences, approvals, permits or other authorizations under an enactment, or

(b) the exercise of a power under an enactment.

(7) As a limit on subsection (6), a regulation under that subsection may not be made in relation to

(a) the *Forest Practices Code of British Columbia Act*, or

(b) the *Forest Act* or the *Range Act*, respecting an authorization or the exercise of a power under those Acts, if the *Forest Practices Code of British Columbia Act*, or the standards or regulations under that Act, apply in relation to the activity authorized or the power.

(8) A licence, approval, permit or other authorization issued or an amendment made contrary to a regulation under subsection (6), or the exercise of a power contrary to a regulation under that subsection, has no effect.

(9) The Lieutenant Governor in Council may, by order, direct Fisheries Renewal BC or Forest Renewal BC to provide assistance to the development of a recovery plan or the implementation of an approved recovery plan.

### **Streamflow protection licences**

**8** (1) A licence for a streamflow protection purpose

(a) may only be issued on the direction of the Lieutenant Governor in Council,

(b) may only be issued to an organization that the Lieutenant Governor in Council considers has a community based interest in the stream for which the licence would be issued,

(c) may be issued to an organization even though it would not otherwise be eligible as a licensee under section 7 of the *Water Act*,

(d) may not be issued in combination with any other purpose,

(e) must specify the point or points on the stream in relation to which the streamflow rights under the licence apply, and

(f) must include a condition that the licensee organization undertake works in relation to fish and fish habitat in the stream to which the licence applies.

(2) An organization that wishes to obtain a licence for a streamflow protection purpose must submit to the minister

(a) an application for a licence in accordance with the *Water Act*, and

(b) a proposal respecting

(i) works in relation to fish and fish habitat in the stream to which the licence applies, and

(ii) any other works or activities related to fish or fish habitat

that the applicant will undertake if the licence is granted.

(3) Without limiting the works and activities that may be included in a proposal under subsection (2), the organization may propose works or activities

(a) to enhance fish habitat,

(b) to provide educational programs about fish and fish habitat, and

(c) to promote the more efficient use of water for the purposes of protecting fish and fish habitat.

(4) After considering an application and proposal under subsection (2), the minister may

(a) refuse the proposal and application, or

(b) direct the comptroller or regional water manager to consider the proposal and the application and prepare a report for the Lieutenant Governor in Council.

(5) On consideration of a report under subsection (4) (b), the Lieutenant Governor in Council may direct that a licence for a streamflow protection purpose be issued to the applicant organization, subject to any directions the Lieutenant Governor in Council considers advisable.

(6) A licence under this section

(a) may include, in addition to the required condition under subsection (1) (f), conditions that the licensee organization undertake other works or activities proposed under subsection (2), and

(b) may specify that one or more of the conditions under paragraph (a) or under subsection (1) (f) must be met in order for the licensee organization to be considered to have made beneficial use of the water specified in the licence.

(7) A licence under this section may authorize the construction, maintenance and operation of works required as a condition under subsection (6).

(8) Despite section 13 of the *Water Act*, no appurtenancy is required for a licence under this section.

(9) A decision of the comptroller or regional water manager in issuing a licence under this section is not appealable under section 40 of the *Water Act*.

(10) A licence under this section may not be amended, transferred or apportioned without the approval of the minister, who may specify terms and conditions for this approval.

(11) The minister may cancel a licence issued under this section without compensation to the licensee if

(a) the licensee organization contravenes a term or condition of the licence, or

(b) the minister considers the cancellation to be in the public interest.

### **Temporary reduction may be ordered in cases of drought**

**9** (1) This section applies if the minister considers that, because of a drought, the flow of water in a stream is or is likely to become so low that the survival of a population of fish in the stream may be or may become threatened.

(2) In the circumstances referred to in subsection (1), for the purposes of protecting the fish population, the minister may make temporary orders regulating the diversion, rate of diversion, time of diversion, storage, time of storage and use of water from the stream by holders of licences or approvals in relation to the stream, regardless of precedence under the *Water Act*.

(3) The minister may only make an order under subsection (2) after giving due consideration to the needs of agricultural users.

### **Fish and fish habitat considerations in water management plans**

**10** (1) Without limiting the issues that may be addressed in a proposed water management plan under section 22.2 of the *Water Act*, the terms of reference may include identifying measures to provide additional water for fish and fish habitat, including

(a) measures to conserve water,

(b) measures to promote more efficient use of water, and

(c) measures under section 11 of this Act.

(2) If the terms of reference include a provision referred to in subsection (1) (c), notice must be given to all licensees within the water management area that

- (a) a water management plan is proposed to be developed for the area, and
- (b) the licensees' rights under their licences may be affected by a reduction under section 11 of this Act.

### **Reduction of water rights in accordance with plan**

**11** (1) This section applies in relation to licences that authorize one or more of the use, diversion or storage of water from within a water management area if

(a) a water management plan for the area provides for reductions under this section for the purpose of providing additional water for fish and fish habitat, and

(b) the Lieutenant Governor in Council, by order, authorizes the comptroller or regional water manager to make the reductions in relation to the area.

(2) Subject to this section and any applicable regulations, in relation to

(a) the passing of the licence with a conveyance or other disposition as referred to in section 16 of the *Water Act*,

(b) a transfer of some or all of the rights and obligations under the licence as referred to in section 19 of the *Water Act*, or

(c) the apportionment of rights and obligations under the licence as referred to in section 20 of the *Water Act*,

the comptroller or regional water manager may, for the purpose of providing additional water for fish and fish habitat, reduce the quantity of water under the licence affected by the transfer.

(3) The maximum amount of a reduction under subsection (2) on a passing, transfer or apportionment is 5% of the quantity of water authorized by the applicable licence before the reduction.

(4) A reduction under subsection (2) may be made

(a) in issuing the licence or amendment as a consequence of the passing, transfer or apportionment, or

(b) by issuing a new licence or making an amendment to the affected licence.

(5) A licence or amendment making a reduction under subsection (2) may include conditions respecting the manner in which the quantity is to be reduced including, without limiting this, requirements respecting the diversion, rate of diversion, time of diversion, storage, time of storage and use of water.

(6) No action lies or may be brought, and no compensation is payable, in respect of a reduction or other change made in relation to a licence under this section.

(7) A decision under this section is not appealable under section 40 of the *Water Act*.

### **Provincial directives on streamside protection**

**12** (1) Subject to subsection (2), the Lieutenant Governor in Council may, by regulation, establish policy directives regarding the protection and enhancement of riparian areas that the Lieutenant Governor in Council considers may be subject to residential, commercial or industrial development.

(2) Directives under subsection (1) may only be established after consultation by the minister with representatives of the Union of British Columbia Municipalities.

(3) Policy directives under subsection (1) may be different for different parts of British Columbia and in relation to different local government powers and different circumstances as established by the directives.

(4) If a policy directive under subsection (1) applies, a local government must

(a) include in its zoning and rural land use bylaws riparian area protection provisions in accordance with the directive, or

(b) ensure that its bylaws and permits under Part 26 of the *Municipal Act* or Part XXVII of the *Vancouver Charter*, as applicable, provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.

(5) For the purpose of transition, a policy directive under subsection (1) may establish a time period during which a local government to which the directive applies must review and, if necessary, amend its bylaws in order that they meet the requirements of subsection (4) by the end of the period.

(6) On request by a local government, the minister may extend a time period under subsection (5).

### **Regulation making authority**

**13** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) in relation to section 4, prescribing a stream as a protected river under that section;

(b) in relation to section 5,

(i) specifying streams in relation to which and establishing circumstances under which the comptroller or regional water manager must consider fish and fish habitat in making decisions referred to in that section,

(ii) establishing procedures that must be followed and criteria that must be applied by the comptroller and regional water managers in making decisions referred to in that section,

(iii) establishing information that may be required by the comptroller or regional water manager in relation to making decisions referred to in that section, and

(iv) without limiting the authority to include conditions under section 5 (1) (b), establishing conditions in relation to fish and fish habitat that may or must be included in a licence, approval or

amendment, including conditions requiring mitigation or compensation and related provisions respecting matters referred to in paragraph (c) (iii) and (iv) of this subsection;

(c) in relation to section 6,

(i) establishing procedures that must be followed and criteria that must be applied by the comptroller and regional water managers in making decisions referred to in that section,

(ii) establishing or restricting the information that may be required by the comptroller or regional water manager in relation to making decisions referred to in that section,

(iii) prescribing what forms of compensation may be accepted,

(iv) prescribing how the value of acceptable compensation is to be determined, and

(v) restricting the authority of the comptroller or regional water manager to accept compensation;

(d) in relation to section 11,

(i) establishing procedures that must be followed and criteria that must be applied by the comptroller and regional water managers in making decisions under that section, and

(ii) establishing restrictions on the authority of the comptroller and regional water managers under that section, including exemptions from that section.

### **Consequential Amendments**

#### ***Waste Management Act***

***14 Section 54 of the Waste Management Act, R.S.B.C. 1996, c. 482, is amended***

***(a) by adding the following subsection:***

(13.1) A person who contravenes an order under section 56.1 or 56.2 commits an offence and is liable to the penalties provided for the offence in relation to which the order was made. ,

***(b) by repealing subsection (18), and***

***(c) by adding the following subsection:***

(21) A proceeding, conviction or penalty for an offence under this Act or the regulations does not relieve a person from any other liability.

***15 The following section is added:***

#### **Time limit for bringing charges**

**54.1** (1) The time limit for laying an information respecting an offence under this Act or the regulations is 2 years after the facts on which the information is based first came to the knowledge of the minister.

(2) A document purporting to have been issued by the minister, certifying the day on which he or she became aware of the facts on which an information is based, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.

*16 The following sections are added:*

**Creative sentencing**

**56.1** (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;

(c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;

(d) directing the person to perform community service;

(e) directing the person to pay Fisheries Renewal BC or the Habitat Conservation Trust Fund an amount of money the court considers appropriate;

(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

(g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;

(h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

(2) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.

(3) If

(a) an order under this section or section 56.2 directs a person to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (2) of this section,

the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

### **Variation of section 56.1 orders**

**56.2** (1) An application for variation of an order under section 56.1 may be made to the court that made the order by

(a) the Attorney General, or

(b) the person against whom the order under section 56.1 was made.

(2) Before hearing an application under subsection (1), the court may order the person against whom the order under section 56.1 was made to give notice of the application in accordance with the directions of the court.

(3) On an application under subsection (1), if the court considers variation appropriate because of a change in circumstances, the court may make an order doing one or more of the following:

(a) changing the original order or any conditions specified in it;

(b) relieving the person absolutely or partially from compliance with all or part of the original order;

(c) reducing the period for which the original order is to remain in effect;

(d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.

(4) If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 56.1 except with leave of the court.

### *Water Act*

*17 Section 1 of the Water Act, R.S.B.C. 1996, c. 483, is amended*

*(a) by repealing the definition of "licence" and substituting the following:*

**"licence"** means a licence issued under this or a former Act or a licence issued under section 8 of the *Fish Protection Act*; , **and**

*(b) by adding the following definitions:*

**"debris"** means

(a) clay, silt, sand, rock or similar material, or

(b) any material, natural or otherwise, from construction or demolition;

**"fish habitat"** means the areas in and about a stream, such as spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes;

**"streamflow protection purpose"** means the maintaining of water in a stream for fish or fish habitat;

**"water management area"** means an area designated under section 22.1;

**"water management plan"** means a water management plan developed under section 22.2 and approved by the minister after submission under subsection (4) of that section; .

*18 The following sections are added:*

### **Water management areas**

**22.1** (1) The minister may, by order, designate an area as a water management area if the minister considers that the development of a water management plan will assist in addressing

- (a) conflicts between water users or between water users and instream flow requirements, or
- (b) risks to water quality

for that area, including but not limited to concerns relating to fish or fish habitat.

(2) The designation of a water management area must include the reasons for the designation.

(3) The designation of a water management area may be by any delineation of the area that adequately describes it including, for example, name, map, plan, legal description, reference to a geological formation or part of one, depth or other dimension, or by any combination of methods.

### **Development of water management plan**

**22.2** (1) The minister may, by order, establish the process by which a proposed water management plan for a water management area is to be developed including, without limiting this,

- (a) establishing who is to be responsible for preparing the proposed plan, and
- (b) establishing the terms of reference for the plan, or authorizing the preparation of some or all of the terms of reference subject to approval by the minister.

(2) Without limiting the terms of reference that may be established for a proposed water management plan,

- (a) they must include
  - (i) the purpose of the plan,
  - (ii) the issues to be addressed in the plan,
  - (iii) a process for public consultation, and
  - (iv) a time limit for completion of the plan, and

(b) they may include considerations relating to surface water runoff not in a stream and groundwater, whether or not a regulation under section 3 has been made.

(3) In preparing a proposed water management plan, consideration must be given to the results or progress of Provincial government or local government strategic, operational and land use planning processes within the water management area.

(4) After a proposed water management plan has been prepared, it must be submitted to the minister for approval.

(5) The minister may, by order, direct that a water management plan be reviewed to determine whether amendments should be made, and subsections (1) to (4) apply to this review and to any amendment to the plan proposed by the review.

### **Consideration of plan in making statutory decisions**

**22.3** If a water management plan includes provisions regarding decisions under an enactment,

(a) if the enactment is one administered by the minister, persons making those decisions must consider the plan in making the decision, and

(b) if the enactment is not administered by the minister, the Lieutenant Governor in Council may, by order, direct that persons making those decisions must consider the plan in making the decision.

### **Regulations implementing plan**

**22.4** (1) For the purposes of implementing a water management plan, the Lieutenant Governor in Council may, by regulation applicable in relation to the water management area, restrict

(a) the issuance or amendment of licences, approvals, permits or other authorizations under an enactment, or

(b) the exercise of a power under an enactment.

(2) As a limit on subsection (1), a regulation under that subsection may not be made in relation to

(a) the *Forest Practices Code of British Columbia Act*, or

(b) the *Forest Act* or the *Range Act*, respecting an authorization or the exercise of a power under those Acts, if the *Forest Practices Code of British Columbia Act*, or the standards or regulations under that Act, apply in relation to the activity authorized or the power.

(3) A licence, approval, permit or other authorization issued or an amendment made contrary to a regulation under subsection (1), or the exercise of a power contrary to a regulation under that subsection, has no effect.

### ***19 Section 23 (2) (c) is repealed and the following substituted:***

(c) failure by the licensee for one year to pay the rentals due to the government in respect of the licence; .

**20 Section 39 is amended**

**(a) by repealing subsection (1) (f) and (g) and substituting the following:**

(f) order the construction, installation, operation, maintenance or provision of data from a measuring device in accordance with the directions of the comptroller or regional water manager;

(g) regulate, in person or through an officer or a water bailiff, and make orders with respect to the diversion, rate of diversion, time of diversion, storage, time of storage, carriage, distribution and use of water; ,

**(b) by repealing subsection (1) (j) and substituting the following:**

(j) order a person to cease putting or not to put any debris, sawdust, timber, tailings, refuse, carcass or other thing or substance into a stream; , **and**

**(c) by repealing subsection (3) and substituting the following:**

(3) Subject to the direction of an engineer, an officer may do one or more of the following:

(a) regulate, close or lock any works;

(b) regulate the construction of any works;

(c) regulate, in person or through a water bailiff, the diversion, rate of diversion, time of diversion, storage, time of storage, carriage, distribution and use of water;

(d) order a person to cease putting or not to put any debris, sawdust, timber, tailings, refuse, carcass or other thing or substance into a stream.

**21 The following sections are added:**

**Prohibition against introducing debris into stream**

**40.1** (1) Unless authorized by or under this or another enactment or excepted under subsection (2), a person must not

(a) introduce debris into a stream, stream channel or area adjacent to a stream, or

(b) cause or allow debris to be introduced into a stream, stream channel or area adjacent to a stream, if, as a result, harm or damage is caused to

(c) the stream or stream channel,

(d) use, diversion, storage or works authorized under this Act,

(e) the property of riparian owners, or

(f) fish or fish habitat.

(2) Subsection (1) does not apply in relation to

- (a) a forest practice to which section 45 of the *Forest Practices Code of British Columbia Act* applies, or
- (b) an activity prescribed under section 46 (2) (l) of this Act.

**Remediation orders in relation to debris**

**40.2** (1) In this section, "**responsible person**" means a person who

- (a) introduces debris into a stream, stream channel or the area adjacent to a stream, or
- (b) causes or allows debris to be introduced into a stream, stream channel or the area adjacent to a stream,

except as authorized by this or another enactment.

(2) If debris is introduced into a stream, stream channel or the area adjacent to a stream, an engineer may order the responsible person to undertake measures, as directed by the engineer, to remediate or mitigate the effects of the introduction.

(3) If

- (a) a person subject to an order under subsection (2) fails to comply with the order,
- (b) the responsible person cannot be identified or located after reasonable effort, or
- (c) the comptroller or regional water manager considers that failure to remediate or mitigate the introduction of debris immediately may result in harm or damage to anything referred to in section 40.1 (1) (c) to (f),

the comptroller or regional water manager may authorize remediation or mitigation to be undertaken by the government or another person at the expense of the responsible person.

(4) If work is carried out under subsection (3), the costs to the government are a debt due to the government by the responsible person.

(5) This section does not limit the authority under section 37 or 39.

**22 Section 41 is amended**

**(a) by repealing subsection (1) (k) and substituting the following:**

(k) puts into a stream any debris, sawdust, timber, tailings, refuse, carcass or other thing or substance after having been ordered by an engineer or officer not to do so; ,

**(b) in subsection (1) by adding the following paragraphs:**

- (w) contravenes section 40.1 (1);
- (x) contravenes section 4 (3) of the *Fish Protection Act*;
- (y) contravenes an order under section 8 (2) of the *Fish Protection Act*;

(z) contravenes an order under section 41.1 or 41.2. ,

***(c) by repealing subsection (2) and substituting the following:***

(2) Subject to subsections (2.1) to (2.3), a person who commits an offence under this section is liable on conviction to a fine of not more than \$200 000 or to imprisonment for not longer than 6 months, or to both a fine and imprisonment.

(2.1) A person who contravenes

(a) subsection (1) (t) in relation to a condition established under section 5 or 6 of the *Fish Protection Act*,

(b) subsection (1) (w),

(c) subsection (1) (x), or

(d) subsection (1) (y)

commits an offence and is liable on conviction to a fine of not more than \$1 000 000 or to imprisonment for not longer than 6 months, or to both a fine and imprisonment.

(2.2) A person who contravenes subsection (1) (z) is liable on conviction to the penalties provided for the offence in relation to which the order under section 41.1 or 41.2 was made.

(2.3) If an offence under this section continues for more than one day, separate fines, each not exceeding the maximum fine for that offence, may be imposed for each day the offence continues. ,  
***and***

***(d) by repealing subsection (4) and substituting the following:***

(4) The time limit for laying an information respecting an offence under this Act or the regulations is 2 years after the facts on which the information is based first came to the knowledge of the minister.

(5) A document purporting to have been issued by the minister, certifying the day on which he or she became aware of the facts on which an information is based, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.

(6) A proceeding, conviction or penalty for an offence under this Act or the regulations does not relieve a person from any other liability.

***23 The following sections are added:***

**Creative sentencing**

**41.1** (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;

(c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;

(d) directing the person to perform community service;

(e) directing the person to pay Fisheries Renewal BC or the Habitat Conservation Trust Fund an amount of money the court considers appropriate;

(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

(g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;

(h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

(2) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.

(3) If

(a) an order under this section or section 41.2 directs a person to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (2) of this section,

the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

### **Variation of section 41.1 orders**

**41.2** (1) An application for variation of an order under section 41.1 may be made to the court that made the order by

(a) the Attorney General, or

(b) the person against whom the order under section 41.1 was made.

(2) Before hearing an application under subsection (1), the court may order the person against whom the order under section 41.1 was made to give notice of the application in accordance with the directions of the court.

(3) On an application under subsection (1), if the court considers variation appropriate because of a change in the circumstances, the court may make an order doing one or more of the following:

(a) changing the original order or any conditions specified in it;

(b) relieving the person absolutely or partially from compliance with all or part of the original order;

(c) reducing the period for which the original order is to remain in effect;

(d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.

(4) If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 41.1 except with leave of the court.

**24 Section 46 (2) is amended by adding the following paragraph:**

(1) prescribing for the purposes of section 40.1 (2) other activities that, in the opinion of the Lieutenant Governor in Council, are regulated under another enactment in relation to the introduction of debris into streams.

### *Wildlife Act*

**25 Section 1 (1) of the Wildlife Act, R.S.B.C. 1996, c. 488, is amended**

**(a) by repealing the definitions of "endangered species", "threatened species" and "wildlife" and substituting the following:**

**"endangered species"** means a species that is designated as an endangered species under section 5;

**"threatened species"** means a species that is designated as a threatened species under section 5;

**"wildlife"** means

(a) game and raptors, and

(b) any other species of vertebrate prescribed by regulation as wildlife,

and includes

(c) for sections 3, 4, 5, 6.1, 7, 8 and 108 (2) (v), fish,

(d) for sections 3, 4, 5, 6.1, 7 and 8, aquatic invertebrates, and

(e) for any other prescribed provisions of this Act, a prescribed endangered species or threatened species of vertebrate or aquatic invertebrate; , **and**

**(b) by adding the following definitions:**

**"aquatic invertebrate"** means a species of invertebrate that normally lives in a lake, stream or wetland area and is prescribed under section 109 (f);

**"aquatic plant"** means a species of plant that normally lives in a lake, stream or wetland area and is prescribed under section 109 (e); .

**26 Section 3 is amended by striking out "the management or protection of wildlife," and substituting "the management or protection of wildlife or aquatic plants,".**

**27 Sections 5 and 6 are repealed and the following substituted:**

### **Endangered and threatened species**

**5 (1)** If the Lieutenant Governor in Council considers that a species of vertebrate, aquatic invertebrate or aquatic plant is threatened with imminent extinction throughout all or a significant portion of its range in British Columbia, the Lieutenant Governor in Council may, by regulation, designate the species as an endangered species.

(2) If the Lieutenant Governor in Council considers that a species of vertebrate, aquatic invertebrate or aquatic plant is likely to become endangered in British Columbia if the factors affecting its vulnerability are not reversed, the Lieutenant Governor in Council may, by regulation, designate the species as a threatened species.

### **Critical wildlife area for endangered or threatened species**

**6 (1)** If the minister considers that land is required as habitat for an endangered species or a threatened species, the minister may, by regulation, designate land in a wildlife management area as a critical wildlife area.

(2) The minister may, by regulation, designate land in a wildlife management area as a wildlife sanctuary or aquatic plant sanctuary.

### **Harm to endangered or threatened species**

**6.1** A person commits an offence if the person

(a) kills, cuts down or destroys,

(b) hunts, takes, traps or wounds,

(c) causes lasting harm to, or

(d) intentionally causes harm to

an animal or plant that is an endangered species or a threatened species.

**28 Section 7 (1) is repealed and the following substituted:**

(1) A person commits an offence if the person

- (a) alters, destroys or damages wildlife habitat or aquatic plant habitat, or
- (b) deposits on land or water a substance or manufactured product or byproduct in a manner that is harmful to
- (c) wildlife or wildlife habitat in a wildlife management area, or
- (d) aquatic plants or aquatic plant habitat in a wildlife management area.

(1.1) As an exception, subsection (1) does not apply in relation to actions authorized under section 4 (4) or by the regulations or a permit.

***29 Section 8 is repealed and the following substituted:***

**Right of action**

**8** (1) The government has a right of action against a person who, without authority, destroys or damages

- (a) wildlife habitat, or
- (b) aquatic plant habitat

in a wildlife management area or an area set apart for wildlife or aquatic plant management.

(2) The government may recover damages from a person referred to in subsection (1) for

- (a) any money that the government expends to restore the habitat and its wildlife or aquatic plants to their original state, or
- (b) the loss of the habitat and its wildlife or aquatic plants if restoration of the habitat is impossible.

***30 Section 21 (1) is repealed and the following substituted:***

(1) Subject to subsection (1.2), a person commits an offence if the person imports into British Columbia

- (a) a live animal that is a wildlife species, an endangered species of vertebrate or a threatened species of vertebrate, or
- (b) the egg of a species referred to in paragraph (a).

(1.1) Subject to subsection (1.2), a person commits an offence if the person exports out of British Columbia

- (a) all or part of an animal of a species referred to in subsection (1) (a),
- (b) all or part of an aquatic invertebrate that is an endangered species or threatened species,
- (c) the egg of a species referred to in paragraph (a) or (b), or

(d) all or part of an aquatic plant that is an endangered species or threatened species, regardless of whether the animal, plant, part or egg is alive or dead.

(1.2) An action referred to in subsection (1) or (1.1) is not an offence if it is authorized by a permit issued under this Act or under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

***31 Section 24 is amended***

***(a) by repealing subsection (2) (a) and substituting the following:***

(a) this Act, other than sections 6.1 and 22, subsections (6), (7) or (14) of this section and sections 26 (1) (e), (f) and (g), 28, 81 and 82, , **and**

***(b) by repealing subsection (8) (a) and substituting the following:***

(a) an offence under section 6.1, 22, 26 (1) (e), (f) or (g), .

***32 Section 26 (1) (a) is repealed.***

***33 Section 84 (1) (d) is repealed and the following substituted:***

(d) an offence under section 6.1, 7, 22, 24 (6), (7) or (14), 26 (1) (e), (f) or (g), 72, 73, 81 or 82.

***34 Section 103 is repealed and the following substituted:***

**Time limit for bringing charges**

**103** (1) The time limit for laying an information respecting an offence under this Act or the regulations is 2 years after the facts on which the information is based first came to the knowledge of the minister.

(2) A document purporting to have been issued by the minister, certifying the day on which he or she became aware of the facts on which an information is based, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.

***35 Section 109 is amended by adding the following paragraphs:***

(e) prescribing as an aquatic plant a species of plant that, in the opinion of the minister, is capable of being a factor in fish habitat;

(f) prescribing as an aquatic invertebrate a species of invertebrate that, in the opinion of the minister, is capable of being a factor in fish habitat;

(g) prescribing an endangered species or threatened species of vertebrate or aquatic invertebrate as wildlife for the purposes of a provision of the Act specified in the regulation.

**Transitional -- pending Water Act applications**

**36** Section 5 applies to applications under the *Water Act* made after that section comes into force and to applications that have been made but on which the decision by the comptroller or regional water manager has not been made at the time that section comes into force.

### Commencement

**37** (1) Section 4 is deemed to have come into force on the date this Act receives First Reading in the Legislative Assembly and is retroactive to the extent necessary to give it effect on and after that date.

(2) This Act, except section 4, comes into force by regulation of the Lieutenant Governor in Council.

### Explanatory Notes

**[This Bill amends the Revised Statutes of British Columbia, 1996. The Revised Statutes of British Columbia, 1996 came into force on April 21, 1997.]**

The *Fish Protection Act* provides protection to fish and fish habitat by:

- prohibiting stream-blocking dams on major rivers;
- mandating the consideration of fish habitat issues in dealing with applications under the *Water Act*;
- establishing special rules in relation to water licences on streams designated as being particularly sensitive to impact on fish and fish habitat and providing for the development of recovery plans for such streams;
- allowing "water for fish" streamflow protection licences to be issued to community-based organizations;
- allowing temporary reductions in water use rights in circumstances where drought threatens the survival of a fish population;
- providing a process for water management plans to propose means by which additional water is to be preserved for fish and fish habitat;
- allowing the Provincial government to establish directives for local governments in preserving streamside areas.

Related amendments to the *Waste Management Act* provide additional enforcement authority, including allowing courts to use creative sentencing to establish additional penalties (such as remediation, mitigation or community service)<sup>3</sup> that the court considers appropriate to the nature of the offence.

Related amendments to the *Water Act* include:

- establishing a public process for the development of water management plans to guide future government decision making;

- providing additional water use regulation authority to provide greater flexibility in ensuring water in streams at the time it is required for fish;
- prohibiting the harmful deposit of rock and other debris into streams and allowing remediation if such deposit occurs;
- providing additional enforcement authority, including allowing creative sentencing as under the proposed *Waste Management Act* amendments and establishing higher penalties for offences related to fish and fish habit.

Related amendments to the *Wildlife Act* allow endangered or threatened species protection to be provided regardless of whether the cause of the extinction threat is human in origin, and allow this protection to be extended to invertebrates and plants that are factors in fish habitat.

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