

## Fisheries and Oceans Canada – Pacific Region

### Comments with regard to *A Water Sustainability Act for B.C.: Legislative Proposal*

Page Number/Section	Comment
<b>General comments</b>	<ul style="list-style-type: none"><li>• Overall, BC’s WSA legislative proposal captures many of the general themes of interest to DFO. It is a significant improvement over the current <i>Water Act</i>.</li><li>• Previous comments from DFO related to maintenance of environmental flows; revisions to the position of "first in right, first in time" with respect to future water licences etc., do not seem to have been incorporated.</li><li>• Some of DFO’s previous recommendations regarding areas of concern have not been addressed in the current iteration:<ul style="list-style-type: none"><li>○ While there is some description of new enforcement tools, the issue of establishing enforceable environmental flow standards has not been realized.</li><li>○ DFO had supported the concept of including Water Allocation Plans (WAP’s) to ensure that environmental objectives were met. It appears that Area-Based Regulations now replaces WAP’s to protect Critical Environmental Flows (CEF’s) with potential regulation of existing licences during drought or water scarce conditions. Storage seems to be a key mitigation option under Area-Based Regulations, but there is little linkage as to how much storage is too much storage to ensure a natural range of flow variability.</li><li>○ The Policy to Improve Security, Water Use Efficiency and Conservation speaks to the establishment of an Agricultural Water Reserve to help secure water on ALR lands. In some of B.C.’s most flow sensitive systems, this could impact the recovery of many streams through conservation efforts. There is no discussion of an “Environmental Base Flow Reserve” in areas with important fisheries interests. This could be proposed as an alternative.</li><li>○ The section Review of Licence Terms and Conditions, deals with water conservation efforts and reviews of beneficial use. It should be noted that the beneficial use clause in the current <i>Water Act</i> has rarely been managed. Where beneficial use is not realized, or conservation efforts have reduced actual water use relative to a license, then the unused portion of that water should be reallocated back into the stream if that stream has been classified as not meeting an IFN threshold(s). This was DFO’s position under the WAM process. It is not clear in this proposal what happens to the unused portion of water under an existing water licence. There is a significant risk of the IFN’s scenario becoming worse in existing flow sensitive streams (e.g. Nicola, Salmon R, Kettle/Granby) if non-beneficial use of water is re-licensed for off-stream use.</li></ul></li></ul>

	<ul style="list-style-type: none"> <li>○ DFO’s WAM response suggested the need to clarify operational definitions of what constitutes “stream health” or “ecosystem health”, and identify expected outcomes, indicators and reference points for monitoring and evaluation purposes. We emphasize this suggestion again.</li> <li>○ The policy of First in Time, First in Right (FITFIR) system of water allocation has been retained. The management of water for in-stream purposes during droughts and/or in times of water scarcity is further complicated with this system in place. The incentive to voluntarily conserve water is diminished and will likely make Area-based regulation more difficult.</li> <li>● Situations have been encountered where ranchers were willing to move to off-stream watering systems but they were prevented from doing this because then they would need to get a water licence (which they previously did not have when their livestock drank directly from a water body). However, in some cases they could not get a water licence because they were told that the water was fully allocated (or “recorded” in their terminology) already. The volumes of water we are talking about are relatively small – about 50 – 70 litres/day per cow. This has been raised during WAM sessions in the past and Valerie Cameron, at FLNRO, recently indicated that the existing Act actually did allow for “grandfathering” or exemption in this situation but that it was a bit of grey area and not clear to all the WSD staff. This should be clarified so that the issue is not subject to interpretation by local WSD staff.</li> <li>● It is noted that the province is looking at removing the Section 42 exemptions and what the implications for this may be (i.e. whether or not the exemption that Valerie spoke about was a S.42 exemption or something else).</li> <li>● Should include a dispute resolution process.</li> </ul>
<b>xi/Table 1</b>	<ul style="list-style-type: none"> <li>● Unclear who would be included in advisory groups or what level of commitment would be. Suggest using existing advisory processes where possible given capacity issues.</li> </ul>
<b>2/Fig. 3</b>	<ul style="list-style-type: none"> <li>● Recommend inclusion of the Species at Risk Act.</li> </ul>
<b>6/Last paragraph</b>	<ul style="list-style-type: none"> <li>● Reference is made to continued, meaningful engagement with First Nations. Recommend clarification of when consultations will be concluded and what further engagement/consultation will occur.</li> </ul>
<b>13-15</b>	<ul style="list-style-type: none"> <li>● Assume limited impact of WSA on RRU activities as our activities largely non-consumptive; however, little mention of these types of licenses so suggest clarification.</li> <li>● There are a lot of existing water licenses that change ownership when properties or companies change hands. The new owners are often not aware of the requirements of the license and use water for reasons not in compliance with the license.</li> <li>● Under the new WSA is DFO required to report on water use for all its older licenses or will that only be a requirement for newly issued ones? Suggest that this should be clarified.</li> </ul>

<b>15/Box 4</b>	<ul style="list-style-type: none"> <li>• Suggest consideration of First Nations water use generally, use of water for commercial, recreational, and First Nations fisheries, and use of water for aquaculture.</li> <li>• The Resource Restoration Unit has constructed projects to store water for conservation purposes. This stored water is released during low flow periods to improve habitat conditions for fish. Under the present <i>Water Act</i>, this stored water could be used by other downstream licence holders when released, reducing increased flows for fish. Will the new Water Sustainability Act limit water withdrawals by downstream licence holders during low flow periods when water stored for conservation purposes is released?</li> </ul>
<b>15-17</b>	<ul style="list-style-type: none"> <li>• Conservation purpose is presently defined as “the use and storage of water or the construction of works in and about streams for the purpose of conserving fish or wildlife.” In Section 15, in the “Precedence of licenses on same stream” the main factor is the date of the licence, with the oldest licence having precedence (i.e. FITFIR). If two licences have the same date, then the precedence is according to a list in the existing Act. Conservation, however, is near the bottom of the list, below hydraulicking and storage. This doesn’t seem to put much value on conservation. We suggest that conservation be given a higher place on this list or to allow conservation licences to have priority over most things regardless of date.</li> </ul>
<b>17/Box 5</b>	<ul style="list-style-type: none"> <li>• Recommend clarification of how household use is assessed and the decision-making criteria for household use allowances. Specifically, will the cumulative effect of many households be considered? What if domestic and ecosystem needs are in conflict?</li> </ul>
<b>18</b>	<ul style="list-style-type: none"> <li>• Document mentions protecting critical environmental flow needs, regulating water use during scarcity, setting water conservation targets, and audits but no mention of maintaining minimum base flows for fish, which should be considered.</li> </ul>
<b>19/Box 6</b>	<ul style="list-style-type: none"> <li>• Recommend that EFN and EFNA explicitly consider SARA species and salmon/salmon fisheries (recreational, commercial, and First Nations).</li> </ul>
<b>23/Last paragraph</b>	<ul style="list-style-type: none"> <li>• Any decisions regarding environmental offsets should account for salmon/salmon fisheries and SARA-listed species.</li> </ul>
<b>26/Paragraphs 2 and 3</b>	<ul style="list-style-type: none"> <li>• Recommend clarifying that this refers to provincial and municipal decision-makers.</li> </ul>
<b>28-29</b>	<ul style="list-style-type: none"> <li>• Water sustainability plans should consider SARA species and salmon/salmon fisheries (commercial, recreational, and First Nations)</li> </ul>
<b>48-49</b>	<ul style="list-style-type: none"> <li>• Suggest DFO be part of consultation process if decisions are being made regarding a body of water containing salmon or SARA species.</li> </ul>
<b>58</b>	<ul style="list-style-type: none"> <li>• Recommend that BC apply overarching standards related to environmental protection and public consultation to area-based regulations to ensure there is some level of cross-province consistency</li> </ul>

**67**

- Section 9 requires additional clarification.

**71/Water Fees  
and Rentals**

- There is no recommendation regarding metering. If the fee is based on water use, there needs to be accountability and a way of measuring, recording and reporting on actual water use. Otherwise how is it confirmed that the user is within the limits of their license? Will there be compliance monitoring?
- Recommend that BC consider ecosystem values (consider SARA species and salmon/salmon fisheries) when determining pricing policy