

Previous Story

Next Story

Article rank ■■■■ | 7 Jun 2014 | The Vancouver Sun | LARRY PYNN lpynn@vancouversun.com
VANCOUVER SUN

Minding the farm

Farming practices are clashing with the protection of streams and fish habitats. Now weaker laws and enforcement are increasing the likelihood violators won't get caught

It's hard for me to go out for a day and not see something outrageous. MIKE PEARSON CONSULTING BIOLOGIST

The federal and B. C. governments are investigating damage or alteration to three Fraser Valley streams discovered during the course of research by The Vancouver Sun. The Sun was examining the impact of farming on fish habitat when it made the discoveries, working in cooperation with a consulting biologist. Habitat for salmon, steelhead and endangered species such as the Salish sucker was impacted by the damage. In one case, an Aldergrove nursery removed streamside vegetation and used an important creek as a dumping ground. In another, the headwaters of a river in Abbotsford were channelized as part of a land-clearing operation. In the third, a tributary of critical aquatic habitat in Agassiz was put through a culvert, covered over and converted to blueberries.





Biologist Mike Pearson, left, with Vancouver Sun environment reporter Larry Pynn, right, paddled in a canoe on Bertrand Creek in Aldergrove recently. The creek is one of the most productive fish streams in the Fraser Valley, but it is also threatened by development and agriculture, says Pearson.

The cases are being investigated either under the federal Fisheries Act or provincial water legislation.

The Sun also discovered a mysterious case, initially reported in 2013, where an unknown pollutant killed 50 fish, some of them on the endangered species list.

Far from isolated incidents, these cases hint at much broader issues involving the impact of farming on fish-bearing streams, and concerns about altering of fish habitat, and the deposit of manure and other pollutants into fish streams.

Critics say weak provincial laws fail to compel farmers to protect streams. That combined with lax enforcement, exacerbated by cuts to the federal Fisheries department, and revisions to the Fisheries Act are making prosecutions more difficult than ever before, they argue.

"It's hard for me to go out for a day and not see something outrageous," said consulting biologist Mike Pearson, a Fraser Valley fish specialist who assisted The Sun in its lengthy investigation.

Freedom of information documents show the B. C. government is concerned about the changes to federal legislation, including a clause that restricts violations to cases involving permanent alteration of fish habitat.

"Long term impact may not be measurable," B. C. Environment warned Ottawa. "The temporary nature of an impact is often subjective and challenging to define in practice."

"The level of disturbance has clearly increased in recent years," said Detmar Schwichtenberg, chair of the Fraser Valley Watersheds Coalition and co-owner of a family dairy farm in Agassiz. "My sense having lived here many years is that people got the memo that now is the time, no one is watching, the rules are vague, your chances of being prosecuted are virtually none."

That needn't be the case, insists Schwichtenberg, who is working on a program to compensate farmers for maintaining streamside vegetation for fish. "We can farm all this land and protect fish habitat. This idea that we have to choose between fish and farming is a fallacy."

The Sun's investigations also found streams carrying extremely high levels of fecal coliform bacteria are flowing south from the Fraser Valley into Whatcom County, raising concerns in Washington state about the effect on public health and aboriginal shellfish beds on the Nooksack River. The B. C. Environment ministry says a new dedicated regional team responsible for "monitoring, compliance and stewardship" is investigating a mushroom farm on Zero Avenue in south Aldergrove.

Washington is way ahead of B. C. when it comes to cracking down on farm polluters. More than 15 years ago, the state passed laws requiring dairies to develop nutrient management plans.

Capacity ` gutted`

By contrast, Canada has cut fisheries resources and relaxed fish protection legislation.

Canada's Fisheries department cut its budget in the Pacific region 11.5 per cent to \$ 231 million from \$ 261 million two years ago while the workforce declined by 85 full- time equivalent positions to 1,347 from 1,432, or six per cent, according to department figures. Habitat staff — those who best know the effect of humans actions on fish — bore much of the brunt of the staff cuts and a new policy of centralization.

"What's been lost is that people worked in the same areas for years," said Pearson, who developed federal recovery plans for Salish suckers and Nooksack dace. "They got to know the stewardship groups, the landowners, and the streams and the actual habitat. DFO no longer has that. The capacity has been gutted."

The Conservative government announced major policy changes in 2012 affecting Ottawa's role in the protection of fish and fish habitat. Four former federal fisheries ministers from B. C. — Conservatives John Fraser and Tom Siddon, and Liberals David Anderson and Herb Dhaliwal — joined the wide- ranging chorus of opposition.

The changes took effect Nov. 25, 2013. They prohibit activities resulting in serious harm to fish habitat and fish — but only if they are part of a commercial, recreational or aboriginal fishery. And the definition of harm was narrowed to the death of fish or any permanent alteration or destruction of fish habitat. Prey fish that support these three categories of fish are also protected. There are provisions for ensuring sufficient water and unimpeded passage of fish.

Freedom of information documents show that on Dec. 10, 2013, B. C. Environment Minister Mary Polak wrote federal Fisheries Minister Gail Shea to say that the province has been "providing written responses in great detail" on the Fisheries Act changes over the past 16 months and is still waiting for responses from Ottawa.

B. C.' s deputy environment minister Wes Shoemaker outlined concerns in a March 2013 letter and attachment to Ottawa's deputy minister of Fisheries, Matthew King. Shoemaker warned that the Fisheries Act changes are at odds with B. C.' s ecosystem management approach and may require new provincial legislation for lakes.

On the issue of permanent alteration, Shoemaker warns that "alterations that may be considered temporary can represent significant loss of economic, cultural, recreational and ecosystem values." Fishing productivity "will be significantly compromised by a definition of ` serious harm' that is based solely on permanent alterations to habitat."

Both Polak and Shea refused to be interviewed by The Sun.

Kevin Stringer, senior assistant deputy minister for federal Fisheries, said in an interview that a federal policy document providing a more detailed explanation of the legislative changes speaks to permanent alteration "of an intensity or duration" that impacts the life process of the fish.

"It is a new initiative ... more complex than what we had before," he said, insisting the feds are in regular contact with the province on the legislation. "We're continuing to work to make sure we all have a good common understanding. "

How the Fisheries Act changes ultimately play out in the field remains to be seen .

The derailment of coal rail cars on Jan. 11 into Silver Creek may provide a hint. Home to chum and chinook salmon, steelhead, trout and endangered western painted turtles, the Burnaby Lake watershed has been the subject of intensive restoration efforts by both government and volunteer groups for the past decade .

While it was the province that oversaw CN Rail's cleanup of the mess, the federal Fisheries department ultimately made the following determination: "As no fish appear to have been killed, and no permanent alteration or destruction of fish habitat appears to have occurred, no immediate violation of the fisheries protection provisions of the Fisheries Act were observed." Environment Canada also concluded that as "coal is generally not considered deleterious, no immediate" pollution violations were observed."

Swept downstream

Pearson finds those answers hard to swallow, and is "pretty confident" that federal staff in the past would have directly investigated the derailment and not left it to the province. The timing of the event

during heavy rains meant that any killed fish were swept downstream, he added. "I know there are coho and rainbow trout in Silver Creek. This is clearly a stream that even under the new definition supports a fishery of economic importance ... and a recreational fishery on the Brunette River itself." But that is not the end to the changes. On Feb. 15, federal Fisheries released new regulations under Section 36 of the Fisheries Act.

The broadly applied ban on depositing deleterious substances (any number of harmful pollutants, including industrial solvents and pesticides) in waters containing fish is changed to allow deposits in three circumstances: to regulate aquaculture, aquatic pests and invasive species; to allow for aquatic research; and where such deposits are already managed by governmental regulators.

Depending on your perspective, the last category could be a game- changer for industry or a setback for environmental oversight. According to a legal opinion by a major law firm, "the proposed regulations will allow the federal government to rely on provincial permitting programs to manage industrial developments. This will reduce regulatory overlap and inefficiencies, and will remove a key source of legal risk for major projects. As a result, we believe that these proposed regulations, if approved, will be very beneficial for resource developers."

Vancouver business lawyer Janice Walton, of Blake, Cassels & Graydon, said consultants hired by companies are still doing environmental assessments to determine the effect of proposed projects and going to federal officials as necessary for authorizations.

One improvement is that the process of dealing with federal fisheries is now more formal, streamlined, and timely, she said. "It's much more understandable when it comes to what information they need from you — getting the question in and getting an answer," she said. "For industry, anything that improves process is good."

Walton also observed that the feds have "more tools in their tool box" under the legislative changes, including stiffer penalties, an easier process to obtain stop- work orders, and requirements for companies to report any serious harm to fish or alteration of habitat.

To environmental lawyers, however, the new legislation is riddled with loopholes.

Anna Johnston, a staff lawyer with West Coast Environmental Law, said that while the Fisheries Act used to be fairly straightforward, the new legislation raises legal confusion over what constitutes serious harm, permanent alteration, and the fish deemed to support a fishery. "Does the definition include fish that are occasionally eaten by a fisheries fish but that do not make up a significant part of its diet?"

Equally alarming, she said, is the Fisheries Department's new policy of not reviewing certain activities or projects in certain waters, instead requiring proponents to "self- assess" whether they will cause serious harm to fish and, if so, suggest mitigation measures to prevent the harm."

Projects do not require a federal fisheries review, but are still required not to cause serious harm to fish in irrigation ponds and channels, agricultural drains and drainage ditches and roadside drainage ditches, private and commercial ponds, quarries and aggregate pits. The list of project activities that won't require a federal review but are still required not to harm fish, ranges from drainage and roadside ditches to bridge and causeway repairs.



The problem, Johnston argues, is that the cumulative effects of non-reviewed projects won't get assessed, and there is an assumption that all projects within a given category will have the same effect.

This article was shared by a user of PressReader - an online source of publications from around the world. PressReader contains copyrighted material, trademarks and other proprietary information. Receipt of this article should not be interpreted as grant of any licenses express or implied, to the intellectual property of PressReader or publishers of publications presented. PressReader - Connecting People Through News PressReader, 200-13111 Vanier Place, Richmond BC V6V 2J1, Canada Phone: +1 604 278 4604 © 2003-2014 NewspaperDirect Inc. dba PressReader. All rights reserved. Terms of Use: http://www.pressdisplay.com/pressdisplay/showlink.aspx?pageid=ins_terms Privacy Policy: http://www.pressdisplay.com/pressdisplay/showlink.aspx?pageid=ins_privacy