

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

FISHERIES DIVISION  
JOB PROGRESS REPORT

STATE: MONTANA

PROJECT NUMBER: F-46-R-8

JOB NUMBER: VI-A

PROJECT TITLE: STATEWIDE FISHERIES INVESTIGATIONS

STATE TITLE: STATEWIDE SURVEY AND INVENTORIES

JOB TITLE: STREAM PROTECTION COORDINATOR

PERIOD COVERED: JULY 1, 1994 TO JUNE 30, 1995

ABSTRACT

During the report period, 267 Notices of Construction were received and reviewed under the Stream Protection Act program. Measures were requested to reduce or mitigate damage to streams and fish habitat at each project site.

Fish and wildlife information for environmental assessments was provided to the Montana Department of Transportation (MDT) upon request. Environmental impact assessments submitted for all state highway projects were reviewed and commented on as required.

Regional fisheries personnel reviewed nearly 1500 project applications for 310 permits. Team inspections were conducted on approximately 70% of these.

An engineering firm was contracted to assist with hydraulic problems on projects that required special consideration.

OBJECTIVES

1. To coordinate administration of the Stream Protection Act (SPA) and the Natural Streambed and Land Preservation Act (310) to ensure the preservation of Montana streams in their natural, existing state.
2. To provide recommendations pertaining to Sec. 404 of the Clean Water Act to avoid impacts to wetlands contiguous to streams or in project corridors.
3. To coordinate with other state and federal agencies, agricultural, corporate and other private entities in an effort to promote stream habitat management.

Objective 3 was accomplished with state funding.

## PROCEDURES

State, county, municipal and political subdivisions are required to provide SPA notices to Montana Fish, Wildlife and Parks (FWP) at least 60 days prior to construction for projects which may affect stream beds or stream banks. Irrigation district projects and emergencies are exempt from the act.

FWP provides notification forms to applicants which must be completed and returned to the department. Plans are reviewed by Helena and regional staff to determine if adverse impacts to fish or wildlife will occur. Recommendations are made to the applicant to eliminate or reduce adverse impacts. The act provides for an arbitration procedure if a discrepancy arises.

The regions continue to process SPA applications for miscellaneous projects such as those applied for by entities of local government. The Helena office processes all MDT sponsored applications and maintains a central file of all permits and transactions. This past year a private consultant was hired to advise us on SPA projects conducted by MDT.

A Memorandum of Understanding with the Montana Department of Health and Environmental Sciences provides that we screen construction projects for potential exceedence of water quality standards. The MOU gives FWP authority to review erosion control plans for road construction activities, make recommendations, and monitor projects for compliance. Other state agencies cooperate to varying degrees under informal agreements.

Several federal agencies have entered into a Memorandum of Understanding with the Department to facilitate compliance with the Stream Protection Act. The Department periodically evaluates and updates existing MOU's and evaluates compliance.

A private individual, corporation, firm, partnership, association, or other legal entity not covered under the Stream Protection Act must, before altering or modifying the bed or banks of stream, obtain a 310 permit from the local Conservation District. Fisheries personnel are required, as part of the permitting process, to review plans and make recommendations for reducing or eliminating impacts to the streambed or banks. The permitting process normally includes on-site inspections and takes less than 60 days. If a dispute occurs, there is a provision for arbitration or litigation.

Guidelines have been developed to facilitate consistent statewide administration of 310 projects. Division activities are coordinated on all arbitration proceedings dealing with disagreements and violations. Technical assistance is provided to fisheries personnel when unusual, difficult or hard to solve hydrologic problems occur. Training is provided for new fisheries

biologists assigned to stream protection duties.

Engineering consultation is provided through a contract with a private engineering firm.

## FINDINGS

### Stream Protection Act

A total of 267 Notice of Construction applications were reviewed and processed during this report period. Of these, 79 were for state highway projects, and 188 for miscellaneous projects submitted by federal agencies, municipalities, counties, and state agencies other than MDT. Computer files of all notices of construction received are maintained by the Fisheries Division.

The Department is operating under a renewed Memoranda of Understanding (MOU) with several state and federal agencies which establishes operating procedures for identifying, evaluating and mitigating impacts to wetlands from highway construction. This MOU provides for compliance with Federal requirements of Section 404 of the Clean Water Act. A wetland technical subcommittee coordinates the program under direction of an Interagency Wetlands Group.

The Department has also revised our MOU with MDT to initiate procedural changes that are necessary to reduce the number of SPA violations and bring projects into compliance with the SPA requirements and stipulations. We have experienced much better compliance as a result of these changes. Finally, an interagency work group consisting of FWP and MDT personnel has been formed to try to reach agreement on issues that have resulted in previous conflict.

### Natural Streambed and Land Preservation Act (310)

Regional fisheries personnel received notification of approximately 1500 applications for 310 permits from 49 conservation districts throughout the state. Team inspections were held on approximately 70% of the projects. Projects included: stream crossings (bridges, culverts, fords, pipelines and cables); irrigation diversions (headgates, pumps and instream structures); streambank and channel stabilization; mining; miscellaneous (ramps, pond development, debris removal and dredging); and fish habitat enhancement. The majority of 310 projects were located in the western and southwestern part of the state.

## RECOMMENDATIONS

Stream protection activities are among the most important functions performed by the Department. Cooperation with other agencies, conservation districts, and the agricultural community are of critical importance if we are going to be successful at sustaining

fishery habitat. These efforts should be continued.

Prepared by: Glenn Phillips

Date: September 20, 1995