



FRPA ADMINISTRATION BULLETIN

Number 10

March 14, 2007

Interpretative Guidance Respecting Forest Stewardship Plan Questions

The information contained in this bulletin does not constitute legal advice. Practitioners within government should seek legal advice from the Ministry of Attorney General, while practitioners outside government should seek independent legal advice.

Introduction

This bulletin is designed to provide further guidance to Administrative Bulletin number 3 regarding answers to Forest Stewardship Plan (FSP) questions and interpretation of relevant legislative provisions. This guidance relies on the fundamental principle that an FSP be prepared and adjudicated on the basis of legislated content and approval test.

QUESTION 1: Must an FSP include a R/S requiring the licensee to refer all CP's to FN 60 days before the application is made? And does it make a difference if government has committed to CP referrals in a FRA/FRO agreement?

Excerpt from Administrative Bulletin #3 which partially deals with the question

“No, Provided that a result or strategy meets the approval tests, the person who prepares a FSP otherwise has complete flexibility in the design of the result or strategy.

While the approval tests do not preclude the inclusion of a communication commitment in a strategy, such a commitment is not required to meet the approval tests. The minister will have to determine if the proposed result to strategy is consistent with the objectives in respect of the cultural heritage resource to the extent practicable.”

In addition, it is important to keep consultation requirements separate from the FSP requirements. That being said a licensee can voluntarily send the CP to the FN to assist with the MoFR consultation process and facilitate the CP issuance, but there should be no requirement to include this in a FSP as a result or strategy, even if a FRA/FRO agreement is in place.

QUESTION 2: What constitutes reasonable efforts?

Reasonable efforts” to meet with affected First Nations to review the plan and solicit First Nations comments prior to plan finalization is about communication between the parties. Document efforts made to meet. There is no formula (i.e. how many letters or phone calls) to determine what constitutes a reasonable effort. Reasonable is generally considered to be fair, proper, just and suitable under the circumstances.

Note: Be aware that formal agreements, such as Forest and Range Agreements (FRAs) or the Forest and Range Opportunity (FROs) agreements, provide consultation approaches that stipulate plan provision and time frame requirements. These Agreements are between the Provincial Crown and a First Nation. They cannot bind the licensee or modify their obligations under FRPA.

FPPR s. 21(1)(d) was intended to formalize common practice under the FPC where, if the affected First Nation wished, licensees usually met individually with them to discuss proposed plans. It does not require an actual meeting if the First Nation is unwilling to meet. If the licensee believes a meeting would involve more than reasonable efforts they should verify this with the DDM before concluding their obligation under s. 21(1)(d) has been met. As well, to “meet” shouldn’t necessarily require face to face interaction provided the parties are agreeable and the meeting format permits discussion and an opportunity that leads to a full understanding on the part of the First Nation of the plan in order that the FN can make reasoned comment for the licensee and DDM to consider.

Finally, it should be noted that this provision does not require the licensee to provide a copy or relevant parts of the FSP to an affected First Nation. A copy can be brought by the licensee to the meeting and presented / discussed during the meeting. In this case, comments may take longer to receive, as there is no opportunity for the First Nation to review the plans and consider its impact. It is recommended that a copy of the plan be provided, unless the First Nation declines, in order to provide for a full and productive discussion of the plan with the First Nation.

The key obligations in FPPR s. 21(1)(d) are:

- “efforts to meet”, and
- “discuss the plan”

Proponents should consider the following in relation these requirements:

Efforts to Meet:

- a. Send a letter to the affected First Nation explaining the FSP review and comment process. Items worth communicating to the First Nation in the letter include:
 - i. The time frame for the review & comment period
 - ii. Suggested times and locations to meet and to discuss the Plan
 - iii. Offering to provide advance copies of the Plan or specified parts based on requests from the First Nation.
 - iv. Recommending to the First Nation that they submit their comments on the FSP in writing, as the FSP proponent must consider all written comments.
- b. Focus efforts proportional to the nature and scope of the First Nation interests being affected by the plan and the degree to which these interests may be impacted by the FSP.
- c. Allow an appropriate time for response from the First Nations
- d. Have a system to confirm that communication was received by the First Nations

or

- a. Discuss process with the First Nation and whatever is agreeable should be fine. MoFR should be kept in the loop to facilitate the overall consultation process.
- b. Discuss the plan: :
 - i. Explain the content of the FSP, particularly aspects of the FSP that may be important to the First Nations such as results or strategies for cultural heritage resources (ideally developed with the First Nation's input, as per the previous section).

Additional information can also be found in Administrative Bulletin #1 on the Provincial FRPA Implementation web site.

<http://www.for.gov.bc.ca/rco/pfit/Bulletins.htm>

QUESTION 3: Can a forest stewardship plan be approved as of a date in the future to allow the holder of the plan an opportunity to facilitate orderly transition?

Yes, an approval of a forest stewardship plan can be specified to be given as of, or effective, a date in the future.

Section 197(1) provides that forest development plans in effect for an area under a forest stewardship plan (FSP) are replaced “on the date the FSP was approved”.

This has raised a question as to what is or can be the “date the FSP was approved” and, specifically, whether this approval can be as of a date in the future (a “forward looking approval”) or can occur only on the date the minister, or delegate, reaches the decision of approval.

The wording of section 197(1) does not preclude a forward looking effective date of approval. There is nothing in the section that specifies that the date of approval is the day the minister or delegate decides the plan is or must be approved; nor does it suggest it is the date of the letter reflecting the approval, or the date the letter is received by the licensee. The section merely refers to the date the FSP is approved.

To allow for a more efficient and effective transition to a new FSP, a licensee, or BCTimber Sales Manager (holder) may prefer the approval be given effective as of a future date. A forward looking approval is clearly contemplated under FRPA section 6(1)(b), which provides that the term of a FSP “begins on the date specified in writing by the minister in approving the plan.”

In the current transition from forest development plans to forest stewardship plans, it is important that a forward looking approval does not immediately or “prematurely” trigger replacement of the forest development plans. Giving the FSP a future effective date provides an opportunity for work anticipated to be driven by code rules to be completed under those rules as well as leaving the forest development plan in effect to ensure cutting permits and road permits could still be issued.

This approach should permit the minister, or delegate, to reach a decision respecting approval of the FSP, then if approving the FSP, to specify, within reason, a later date upon which the approval is given. Also, for FSP's where the FSP holder intends that the

FSP have a future commencement date, the holder may wish to consider synchronizing a later date of commencement of the term of the forest stewardship plan. Please refer the advice provided in General Bulletin #2 which outlines options and strategies for consideration of these dates. It is very important that it is clear which legislative regime the harvest authority application is applied for and processed.

Once the approval determination is made, the DDM can not revisit the determination even though the effective date is some time in the future. If a change in the effective date needs to be made, the FSP holder will need to prepare an amendment.

It is anticipated that the DDM will confer with the holder(s) of the forest stewardship to select appropriate dates for approval and commencement of the term. These two dates should be the same.

For example, the approval letter could say,

“I have determined that the proposed forest stewardship plan conforms to FRPA section 5 and am therefore approving the forest stewardship plan as of [forward looking date]. This will be the date that, for the purposes of FRPA section 6(1)(b), the term of the forest stewardship plan commences and, for the purposes of FRPA section 197(1), the date the forest development plans referred to in that section are replaced.”

QUESTION 4. Must a result and/or strategy for Wildlife Trees or Section 7 Notices commit to identifying and managing a certain quality of habitat, and in particular, “the best quality habitat available” to be approved?

I. Background

Section 7(1) of the Forest Planning and Practices Regulation establishes government’s objective for wildlife which is “without unduly reducing the supply of timber from BC’s forests, to conserve sufficient wildlife habitat in terms of amount of area, distribution of areas and attributes of those areas, for:

- i. the survival of species at risk;
- ii. the survival of regionally important wildlife, and
- iii. the winter survival of specified ungulate species.”

A person required to prepare a FSP is only has to specify a result or strategy for the objective in FPPR 7(1) if the minister responsible for the Wildlife Act gives notice to the person of the applicable species and provides indicators of the amount, distribution and attributes of the wildlife habitat to be conserved.

The legal provisions pertaining to the content of an FSP for the purposes of habitat conservation are:

- Requirements of statute and regulation pertaining to FSP content;
- FPPR 7(1) objective; and
- Specifics of the FPPR 7(2) Notice which specify the species and set out the amount, distribution and attributes of habitat for each species.

Important references with respect to FSP content requirements for the FPPR 7(1) objective are:

- FPPR 7(2) Notices for Species at Risk (by forest district), and ungulate winter ranges (by forest management unit)
<http://www.env.gov.bc.ca/wld/frpa/species.html>
- FRPA General Bulletin #6 – “Wildlife Habitat Objectives: Considerations Respecting the Content of Forest Stewardship Plans.”
<http://www.for.gov.bc.ca/rco/pfit/Bulletins.htm>
- The background information supplied by government that accompanies FPPR 7(2) notices, but is not part of the notice specifications.

II. Guidance

Section 7 Notices were developed as an interim step for habitat conservation within the forest practices regime. They were intended to be in effect until such time as government could establish land designations and measures for provincial Species at Risk (SAR) and wintering ungulates consistent with government’s timber supply impact policy. Notices were only prepared where government determined there was sufficient information available to support the development of FSP content up to the amount of area set out in the Notices for the provincially listed species.

For each species that has been set out in a Notice, government has determined that information is currently available on species occurrence and habitat suitability to support land designations and measures under GAR. Notices have been developed on the basis that information available on occurrences and/or habitat suitability would allow the development of results and/or strategies consistent with the stated objective. The intent is not to require preparers of FSPs to undertake species or habitat inventory activities to support the drafting of results and/or strategies for any species set out in the Notices.

In response to the question above, the results and/or strategies must be consistent with the amount of area, distribution of area and attributes of those areas identified in the Notice. The statutory test requires plan content to be “consistent” with the established objective. There is no requirement, qualifier or reference that the area be “the best” in terms of habitat quality. Where the results and/or strategies are consistent with the FPPR 7(1) objective, they must be approved.

Since Notices under 7(2) are based on suitable habitat (an area of land that is currently in a condition that can be used by the species in question). It is important that this habitat be considered when developing applicable results and strategies. Where there is more suitable habitat in FDU’s than what is set out in the Notice, it is prudent to place priority on areas of suitable habitat that also have species occurrences up to the amount of the habitat set out in the Notice. There is no obligation to plan for more area than what is set out in the Notice. A plan that considers capable habitat (land that is currently not in a condition that could be used by the species and is very likely not exhibiting the required habitat attributes) is at high risk of being inconsistent with the FPPR 7(1) objective since

these areas are unlikely to be consistent with the amount, distribution or attributes specified in the Notice. If this is the case they are likely not approvable. Finally, it is important to note that the consistency test in FPPR section 25.1 evaluates all results and strategies against all established objectives. Some or all of the necessary consistency with s.7 Notice could be provided by results or strategies developed in respect of other Notices or other objectives. This should be factored into the development and review of FSP content for each Notice.

Background information that accompanies a FPPR 7(2) Notice, or any other information on a species and its habitat within the area of a FDU, should be considered relevant for the purposes of supporting FSP content. There is no requirement however, that the FSP content be consistent with such background information. Typically this information is a compilation of what is currently known of the habitat for the species in the area that the Notice applies to. This information is a reflection of priority areas that government has identified as important for conservation initiatives.

The District Manager, in considering a FSP submitted for approval, may ask for information as to the extent that certain background information was considered in the development of plan content for wildlife habitat conservation. It is recommended that the professional engaged in the preparation of a FSP, consult with MOE staff regarding the habitat for listed species, and sustain an open dialogue with the District Manager regarding relevant information of the plan content.

Additional information can also be found in General Bulletin #6 on the Provincial FRPA Implementation web site.

<http://www.for.gov.bc.ca/rco/pfit/Bulletins.htm>

QUESTION 5: How can a licensee limit their free growing obligations under an FSP for forest health/salvage areas similar to previous FPC provisions?

In some instances, licensees are appearing to limit their free growing requirements in salvage areas. This may be trying to capture the intent from the FPC found in sections 21.1 of the FPC Act and sections 36.3 (1) and (2) of the Operational Site & Planning regulation. This allowed the district manager to exempt a person from a site plan and hence, free growing obligations, if the removal of timber is because it's damaged or it's value decreased when the volume is less than 500m³ **and**, if the area is being clearcut, the contiguous area does not exceed 1 ha in size.

In order to achieve a similar opportunity under FRPA, the options within the new legislation are:

1. Request an exemption from the minister or district manager under section 91 of the FPPR from section 29 of FRPA. Items that the DDM could consider are the circumstances the licensee is proposing to have this invoked. Similar to FPC, key areas of concern would include in what circumstances, the applicable volume and the maximum size that would be desired. This exemption could be requested by

the licensee to apply across a TSA. A DDM or licensee may also want to consider proximity to other openings.

2. In the FSP, under the requirements for stocking standards (sec. 16, FPPR), the licensee could identify the circumstance where stocking would and/or would not apply. Although not a consistency test to the timber objective, the circumstances identified would need to be specific enough for the DDM to be comfortable that what's being proposed is consistent with the TSR. Similar to Option 1, the key areas of concern would include in what circumstances, the applicable volume and the maximum size that would be desired. A DDM or licensee may also want to consider proximity to other openings.

In both options, the DDM is able to attach conditions to this approval.

Contacts

If there are any questions about this bulletin, please contact:

Charlie Western	250-387-8306	Charlie.Western@gov.bc.ca
Dawna Harden	250-356-2016	Dawna.Harden@gov.bc.ca
Diane Goode	250-356-7902	Diane.Goode@gov.bc.ca