



FRPA ADMINISTRATION BULLETIN

Number 9

January 8, 2007

INTERPRETIVE GUIDANCE RESPECTING WOODLOT LICENCE PLANS

Introduction:

The *Forest and Range Practices Act* (FRPA) and the Woodlot Licence Planning and Practices Regulation (WLPPR) address Woodlot Licence Plan (WLP) content, certain performance requirements, review and comment, and approval. As can be expected with any new legislative scheme, questions have arisen related to these matters. This administration bulletin identifies some of these questions and provides guidance on the interpretation of relevant legislative provisions. This guidance is premised on the fundamental principle that a WLP be prepared and assessed on the basis of legislated content, review and comment requirements and approval tests. If these requirements and approval tests are met, and the decision maker determines that there has been appropriate First Nation consultation, the WLP must be approved.

Reference is made to the WLP template which provides guidance to those preparing, reviewing and approving WLPs. The WLP template is available at the Ministry of Forests and Range, Woodlot Licence Program website at: www.for.gov.bc.ca/hth/woodlots/woodlot.htm. Once you open the Ministry of Forests and Range, Woodlot Licence Program website, click on Provincial Woodlot Program, then click on Operational Plans and select the WLP.

Discussion:

QUESTION 1: What are the fundamental differences between a WLP and a forest stewardship plan?

A WLP does not require results or strategies to be written for virtually all of the objectives set by government. A WLP only requires the preparation of one result or strategy to conserve and protect cultural heritage resources that are important to First Nations. Results or strategies are not required for all other government objectives because the WLPPR contains a series of practice requirements to ensure that the plan is consistent with the other government objectives. Unlike FSPs, all WLPs must contain a wildlife tree retention strategy, which describes the characteristics of wildlife tree retention over the area of the plan.

QUESTION 2: How does a wildlife tree retention strategy differ from a result or strategy that is written to be consistent with an established objective?

A strategy that is written to be consistent with an established objective must describe measurable or verifiable steps or practices that will be carried out in respect of a particular established objective and the situations or circumstances that determine where the steps or practices will be applied. The wildlife tree retention strategy is clearly different in that it only needs to describe the specific information required by WLPPR, Section 11.

WLPPR, Section 11 requires the wildlife tree retention strategy to describe:

- in general terms, the species and characteristics of individual wildlife trees;
- in general terms, the forest cover attributes of wildlife tree retention areas;
- the conditions under which individual wildlife trees or trees within a wildlife tree retention area may be removed; and
- how trees that are removed will be replaced.

The characteristics of individual wildlife trees and wildlife tree retention areas should provide suitable wildlife tree habitat and contribute to stand level biodiversity. (See Schedule 1, Factor 2 [Factors relating to biodiversity] for more information).

Section 52 of the WLPPR requires that, under normal circumstances, eight percent of the woodlot licence area must be occupied by wildlife tree retention areas.

While the WLP does not require wildlife tree retention areas to be mapped, the woodlot licence holder must be able to demonstrate that the approved proportion of the woodlot licence area is occupied by wildlife tree retention areas that are consistent with what is described in the wildlife tree retention strategy. The holder may also be asked to demonstrate that any wildlife trees that have been removed have been replaced in accordance with the wildlife tree retention strategy.

QUESTION 3: What are the approval tests for a WLP?

Approval tests are conducted by the delegate of the Minister of Forests and Range to ensure that a WLP meets all the applicable requirements of FRPA and the WLPPR. This document refers to the person approving a WLP as the delegated decision maker (DDM). The district manager is currently the delegated decision maker for decisions associated with WLPs.

The key tests for approval are that the WLP:

- Identifies or describes all the required information.
- Contains the required result or strategy that is measurable or verifiable and written measures that are reasonable in the circumstances.
- Includes a map of an appropriate scale and format identifying prescribed information.
- Is consistent with all applicable established objectives.

- If alternative performance requirements are proposed, they must be consistent with any applicable objectives, be clearly written and conform with prescribed requirements.¹
- Contains the signature of the woodlot licence holder or person authorized by the woodlot licence holder.

Supplemental information must be provided with the WLP that is submitted for approval, to demonstrate that review and comment requirements have been satisfied and rationales have been included for any proposed alternative performance requirements. The woodlot licence holder does not need to make supplemental information available for public review and comment.

QUESTION 4: Can a provision in a WLP provide for an alteration of a commitment based on a contemplated future event?

Yes, provided that:

- *the description of the future event is consistent with the legislative framework; and*
- *the alteration of the commitment meets the applicable approval criteria.*

Specifying circumstances that will result in different commitments in the WLP being triggered is a useful way of reducing the number of potential amendments.

Examples:

Future events that may trigger an alternative commitment and which are consistent with the legislative framework include:

- ***Action of government:*** Government taking a particular type of action that applies to the area (e.g. a general wildlife measure (GWM) is established for an ungulate winter range (UWR) on a woodlot licence area where previously no GWM existed. If a WL holder is aware that a GWM may be established in the near future, the WLP may state how harvesting will be modified in the UWR “until such time as GWMs apply to the area”.
- ***Environmental event:*** An environmental event occurring that applies to the area (e.g. if more than 60 percent of the mature timber in the riparian management zone blows down, then the retention of trees in that riparian management zone will....).

The description of the future event must be clear and objective; in other words not stated to rely on a person’s opinion but rather stated as factual events. For example, describing the event as the holder’s professional forester simply “determining that it would be appropriate”, is not acceptable.

The new commitment (i.e. result, strategy, measure or stocking standard), that is to apply due to the occurrence of the future event must be able to meet the approval criteria that are applicable to that commitment.

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QUESTION 5: Can a WLP specify circumstances that limit the application of stocking standards?

Yes, provided that the stocking standards specified meet the requirements of the WLPPR, and the provision does not try to eliminate the requirement to comply with Section 29 of the FRPA.

Section 29(3) of the FRPA imposes the obligation to establish a free growing stand within harvested cut blocks in accordance with the default performance requirements from the WLPPR, Section 35 or alternative performance requirements specified in the approved WLP. If an alternative performance requirement for free growing is proposed, WLPPR, Section 13(2) requires the WLP must specify the location where the alternative performance requirement will apply. Although the WLP cannot specify additional exemptions to the requirement to establish a free growing stand, the WLPPR does provide flexibility for an alternative performance requirement in the WLP to propose free growing attributes and timelines for establishing the free growing stand.

Example:

Lower densities than might otherwise be required could be proposed to provide habitat or forage for a particular wildlife species (i.e. grizzly bear or a species at risk).

Section 18 (3) of the WLPPR requires that alternative stocking standards must be approved if they are consistent with both the objectives set by government for timber (maintaining or enhancing an economically valuable supply of commercial timber) and the timber supply projections and forest management assumptions that are found in the woodlot licence management plan that was used to determine the AAC.

QUESTION 6: Must the WLPPR “default performance requirements” be included in a WLP?

No, the default performance requirements in the WLPPR do not have to be specified in the WLP, but they are legal requirements that must be met unless they are replaced by an alternative performance requirement that is approved in the WLP.

Section 13(1) of the WLPPR lists a number of practice requirements in the regulation for which it is possible to propose an alternative performance requirement in a WLP. The regulation practice requirements for which it is possible to propose an alternative performance requirement are referred to as “default performance requirements”.

The WLP template provides check boxes to indicate whether the holder is choosing the default performance requirement or proposing an alternative performance requirement. The check boxes in the WLP template are provided as a convenient record of which default and alternative performance requirements apply. The template instructions indicate that both the default and alternative check boxes should be checked if the default is to apply over most of the woodlot licence area and an alternative performance requirement is proposed for a specified location.

The WLPPR is written so that each default performance requirement applies unless it is replaced by an alternative performance requirement in an approved WLP. If a woodlot licence holder fails to check either the default or alternative box in the WLP template and does not provide an alternative performance requirement, the holder would still be required to comply with the default performance requirement.

QUESTION 7: Must a result or strategy that is written to achieve an established objective specify “how” the result will be achieved or “how” the strategy will be carried out?

No, provided that the specified result or strategy meets the approval tests without this content.

The approval tests for results or strategies include concepts of comprehensiveness and specificity.

“**Result**” is defined, in part, to mean “a description of ...outcomes”. A result must be approved if it articulates *sufficient* outcomes for the DDM to conclude that the result meets the other aspects of the approval test (i.e. is measurable or verifiable, describes the situations or circumstances where the outcomes will be achieved and is consistent with the applicable objective). In no circumstances is a result ever required to include the steps for how the result will be achieved.

“**Strategy**” is defined, in part, to mean “a description of steps or practices...” A strategy must be approved if it articulates *sufficient* steps or practices for the DDM to conclude that the strategy meets the other aspects of the approval test (it is measurable or verifiable, describes the situations or circumstances where the steps or practices will be applied and is consistent with the applicable objective). If sufficient steps have been articulated, a strategy need not go further to articulate all steps that may be inherent in the strategy.

Example: Assessments

- The legislation does not require that a result or strategy must include a commitment that an assessment will be carried out.
- A person preparing a WLP *may* include a commitment to carry out an archaeological impact assessment or provide notification as part of a strategy for cultural heritage resources.
- If an assessment is included as a strategy, the assessment becomes subject to all of the approval tests for results and strategies.
- An archaeological impact assessment is a well-known type of assessment so the methodology for carrying out this assessment would not need to be described in the strategy.
- If the assessment is not well known, the strategy may require further details on the steps or criteria involved to satisfy approval tests.

QUESTION 8: Must areas associated with notices under Section 9 of the WLPPR be spatially located on a map?

No. A WLP can be consistent with an objective to conserve wildlife habitat contained in a Section 9 notice without the area being spatially identified on a map. However, if not spatially identified, there must be enough detail in the text of the WLP for the DDM to determine that the WLP is consistent with any applicable objectives in the Section 9 notice. Certain Section 9 notices for species at risk require that the location of the wildlife habitat must not be disclosed.

If information associated with a Section 9 notice contains point locations where a species at risk has been detected or a proposed wildlife habitat area (WHA) that overlaps the WL area, the WLP could establish wildlife tree retention areas to conserve these areas until decisions are made about the establishment of a WHA and GWMs. In this situation, the WLP could describe what is planned in order to be consistent with the objective contained in the Section 9 notice.

If information associated with a Section 9 notice contains a proposed UWR that overlaps the woodlot licence area, the WLP could indicate that, until the UWR and GWMs are formally established, harvesting will be avoided or modified in the area of the proposed UWR.

QUESTION 9: Must a result or strategy respecting the established objective for cultural heritage resources include a commitment to communicate with First Nations regarding site level operations?

No. As long as the result or strategy meets the approval tests, the person who prepares a WLP has complete flexibility in the design of the result or strategy.

While the approval tests do not preclude the inclusion of a commitment to communicate with First Nations regarding site level operations, such a commitment is not expressly required by the legislation, and may not be required in order to meet the approval tests. A commitment to communicate with First Nations if new information becomes available on cultural heritage resources may be a more reasonable commitment to include in the strategy if First Nations are not requesting additional detail about site level operations. In situations where a First Nation is seeking further information regarding site level operations, the licensee may wish to consider developing an arrangement with the First Nation whereby site level information is provided to the First Nation for consideration. The DDM will have to determine if the proposed result or strategy is consistent with the objective to protect cultural heritage resources. As well, the DDM must ensure that the Crown has met its legal obligation to adequately consult with potentially affected First Nations prior to making his/her decision on whether or not to approve the WLP.

Also, refer to FRPA Bulletin Number 5 – Woodlot Licence Planning: First Nations Information Sharing, November 2006.

QUESTION 10: Are measures respecting invasive plants required in every instance?

No. The DDM may grant an exemption from the requirement for the WLP to include measures to prevent the introduction or spread of invasive plants.

The WLP template suggests an exemption may be granted if there are no species of invasive plants growing in the woodlot licence area or immediately adjacent to the woodlot licence area. If the person preparing the WLP feels an exemption should be granted, a request should be made to the DDM to acquire the exemption prior to submission of the WLP for approval.

QUESTION 11: Must the measures respecting invasive plants ensure that invasive plants will not be introduced or spread?

No. Section 47 of FRPA in conjunction with Section 14 of the WLPPR requires a woodlot licence holder to carry out measures specified in their WLP to prevent the introduction or spread of invasive plants if the introduction or spread is likely to be the result of the holder's forest practices.

The measures specified in the WLP should be reasonable in the circumstances and need not provide certainty that invasive plants will not be introduced or spread. Reasonableness will be determined on the basis of both efficacy and what is practicable.

Examples: Assessing if measures are “reasonable” include the following:

- In cases where invasive plants are already established in the area, it is not reasonable to expect the plan to include exhaustive measures to eradicate these plants.
- A measure that appears in many WLPs is a commitment to establish grass and legumes on exposed mineral soil surfaces associated with roads, landings, borrow pits and trails by seeding these areas as soon as practicable after construction, with seed of the grade Canada Common #1 Forage Mixture (or better).

QUESTION 12: Are measures respecting natural range barriers required in every instance?

No. The DDM may grant an exemption from the requirement to include measures to mitigate the effect of removing natural range barriers.

Exemptions may be granted if:

- there is no agreement under the *Range Act* authorizing livestock to graze in the woodlot licence area, and no such agreement is advertised and will be awarded before the date the WLP is submitted for approval; or
- The holders of the agreements under the *Range Act* for the woodlot licence area indicates there are no natural range barriers located in the woodlot licence area.

QUESTION 13: Must the measures respecting natural range barriers completely eliminate the impact on the natural range barrier?

No. The legislation requires measures to mitigate, not measures that will completely eliminate the effect of the change to the natural range barrier.

Mitigation means a lessening of the impact, and action that is reasonable in the circumstances. The measures must be sufficiently comprehensive so that the reasonable person would believe that the measures would, if implemented, mitigate the impact of removing the natural range barrier or rendering it ineffective. However, the measures need not be the most comprehensive measures that a person could propose in those circumstances.

QUESTION 14: Does a WLP that has been revised after being through referral and review and comment need to go through review and comment or referral again?

No, provided that a reasonable person would not view the revised WLP as being altered to such an extent that, in essence, it is a different plan.

FRPA and the WLPPR clearly envisage that there may be changes to a WLP following review and comment.

The legislation contains no requirement that the WLP go through review and comment after these changes have been made.

QUESTION 15: Must a woodlot licensee consult with First Nations over a WLP?

No. During the review and comment period a woodlot licensee must make reasonable efforts to meet with First Nation groups affected by the WLP to discuss the plan.

The Ministry of Forests and Range is required to consult with First Nations to ensure that approving the WLP will not unjustifiably infringe on any aboriginal interests or treaty rights. The legal obligation for consultation in respect of aboriginal interests rests with the Crown. However, the Crown has chosen to delegate some of the procedural aspects (i.e. information sharing and gathering) of consultation to woodlot licence holders.

A woodlot licensee is required to make reasonable efforts to meet with potentially affected First Nations groups to discuss the WLP and, where appropriate, to revise the plan to address the interests and concerns raised. This information sharing process is an important step in the overall consultation process and will be considered by the decision maker when determining the adequacy of the consultation process. The more successful the licensee is in obtaining information regarding cultural heritage resources and aboriginal interests from First Nations and in revising the plan to address these interests the greater the ability for the decision maker to complete the consultation process and make a decision regarding the plan in a timely fashion. (NOTE: the appropriate level of consultation is based on the strength of the interests and potential impact and not on how successful the licensee is in information sharing). Matters unrelated to the WLP are beyond the scope of a woodlot licence holder's responsibilities and should be referred to the Ministry of Forests and Range.

In the initial stages of preparing a WLP, it is recommended that licensees meet with the Ministry of Forests and Range First Nations liaison person to obtain:

- contact information for the appropriate First Nations;
- any available information on cultural heritage resources and aboriginal interests; and
- suggestions on how to make the referral process as efficient and effective as possible.

QUESTION 16: Should a licensee include additional information in a WLP beyond what is stated as content requirements in the WLPPR?

No. Any additional information included in a WLP becomes an integral part of the WLP when approved and could result in the woodlot licence holder being held accountable for meeting any additional requirements, standards, results or strategies.

To the extent reasonable for determining if the WLP meets an approval test, a licensee may be asked to provide additional (supplemental), information, outside of the WLP.

QUESTION 17: In what circumstances do WLP amendments need to go through the review and comment or referral process?

WLP amendments which require approval must undergo review and comment unless the DDM grants an exemption on the basis that the amendment will not affect others in a material way.

Minor amendments which do not require approval do not require public review and comment or referral. WLPPR, Section 21(1) indicates these minor amendments include, but are not limited to:

- correcting a map or non-substantive data entry error that will not:
 - decrease the area where harvesting will be avoided or constrained (modified); or
 - increase the adverse impact on forest resources;
- reclassifying a stream, wetland or lake, or
- amending the wildlife tree retention strategy in a manner that does not decrease the quantity or quality of wildlife tree retention.

The wording of WLPPR, Section 17(1) and (2) indicates that the DDM could grant an exemption from the requirement to advertise a WLP amendment that requires approval, and still require the woodlot licence holder to refer a copy of the amendment to a government agency or person. Conversely, the DDM could require an advertisement to be published for a WLP amendment, but may not require any referral.

Contacts

For more information on Woodlot Licence planning, or if you have any questions regarding this bulletin, please contact:

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