

To: Honourable Michael de Jong
Minister of Forests

January 20, 2004

Re: Report of the Practices Advisory Council

The Forest and Range Practices Advisory Council (PAC) is pleased to provide you with its report. The report includes key recommendations on ways to improve the regulations and implementation of the *Forest and Range Practices Act*. The recommendations concerning the regulations were based on PAC's review of July 2003 draft regulations.

The recommendations are intended to assist you and inter-agency staff involved in finalizing the regulations and in the delivery of the new legislation. During its deliberations, PAC has been working closely with agency staff, and we understand that earlier draft PAC recommendations, which were the basis for this report, were considered as the regulations were being revised. In the interests of continued inter-agency cooperation, we are sharing our report to you with the Ministers of other resource agencies who are involved with forest and range practices. PAC would appreciate receiving a response from you regarding our recommendations. In keeping with our terms of reference, we request that our report, and your response, be posted on the PAC public website.

PAC consists of individuals with diverse perspectives who have collectively sought to provide broadly supported recommendations. PAC members accepted that providing a collectively supported report meant that not all individual views would prevail. PAC however believes that this report represents a balanced document which we hope the Minister will use to improve the *Forest and Range Practices Act* regulations, and their delivery.

Members of the Practices Advisory Council (PAC):

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cc. Hon. Joyce Murray, Minister of Water, Land and Air Protection
Hon. Stan Hagel, Minister of Sustainable Resource Management
Hon. John van Dongen, Minister of Agriculture, Food and Fisheries

**Report to the
Hon Michael de Jong
Minister of Forests**

**Minister's Forest and Range
PRACTICES ADVISORY
COUNCIL (PAC)
December, 2003**

Purpose:

To present the results of PAC's deliberations regarding the July 2003 draft of regulations supporting the *Forest Planning and Practices Act (FRPA)* and issues concerning FRPA implementation.

Outline of Report:

Preamble

Introduction

- A. Key recommendations regarding the FRPA regulations
- B. Key recommendations regarding FRPA implementation

Appendix I Table of concerns / issues

Appendix II Issues and Analysis – One pagers

Preamble

The focus of the Public Advisory Council's (PAC) work to date has been on the July 2003 drafts of the four (4) Forest and Range Practices Act (FRPA) regulations – Forest Planning and Practices, Range Planning and Practices, Woodlot Licence Planning and Practice, and Invasive Plants. Revisions to the regulations were being prepared while PAC was completing its review of the July 2003 draft. Although PAC did not review any drafts subsequent to the July version, PAC understands the issues it raised were considered as revisions to the regulations were being prepared.

The challenge for PAC was to review a large and complex volume of material with a tight timeline. PAC held three 2-day workshops in one month. In addition, members dedicated additional hours reading, reviewing and understanding the material. Despite all of these efforts, the general feeling of the Council was that it was unable to undertake as comprehensive or thorough a review as it would have liked. Consequently, it is possible that some concerns and issues may have inadvertently been overlooked.

The recommendations presented in this report represent a summary of “overarching” concerns raised by PAC. All of the issues summarized here were discussed, and the key concerns summarized; however no attempt was made to reach full consensus regarding each issue. Since PAC represents a broad range of interests it is important that issues of major concern to any PAC member are brought forward, even though they may not be of equal interest to all other PAC members. Also, given the large number of PAC workshops held in a short time frame, some PAC members found it difficult to attend all workshop sessions and this limited PAC's full consideration of all points of view.

PAC's review of the regulations was premised on the assumption that PAC has an ongoing role to play as the FRPA regime is implemented, including further review, advice and recommendations to the Minister.

Introduction

The main body of this report contains recommendations that reflect “high level” concerns on two aspects of FRPA. The first contains recommendations specific to FRPA regulations, while the second addresses issues and recommendations specific to the implementation of FRPA and the regulations.

Detailed questions and concerns raised by PAC regarding the July 2003 draft of the regulations are summarized in Appendix I. These issues are further analyzed by government staff in the ‘one page summaries’ attached to this report in Appendix II. The discussion and reporting of issues raised by PAC resulted in the following:

- Some items were addressed by the policy teams working on revisions to the regulations;
- Some form the basis for monitoring and follow-up;
- Some questions have been answered by the policy teams; and
- Some issues were best dealt with via discussions amongst PAC members outside of the PAC meeting format, and will be brought back to PAC table for further consideration.

A. Key recommendations regarding the July 2003 draft FRPA regulations

The following recommendations were identified by PAC as key issues arising from the July 2003 draft FRPA recommendations. They are presented in no particular order of priority. Additional issues raised by PAC may be found in Appendix I and II.

A1. Professional reliance

PAC understands that increased professional accountability is one of government's objectives for the new forest management regime. Thus it is important for the regulations to clearly provide for increased reliance on professionals and commensurate accountability. However, PAC is concerned that the July 2003 draft FRPA regulations do not specify that Forest Stewardship Plans and Site Plans need to be signed by a professional. It also is not clear how professionals will be accountable to the public for the increased responsibility being delegated to them. PAC recommends that the Minister ensure that the mechanisms of professional reliance and accountability are sufficient given the reduced level of oversight inherent in a results based regime. PAC expects the public will seek such assurance.

A2. Understanding and interpretation

PAC has expressed concerns throughout its review regarding the confusion that stems from the fact that some requirements are in the Act while other requirements are in a regulation. Consequently, to understand the 'total requirements' for any resource value requires "bouncing" back and forth between the Act and the regulations. Providing clear training material that seamlessly brings together requirements in the Act and regulations will be important to improve clarity and ease of understanding.

A3. Increasing efficiencies and reducing costs

There were a number of key overarching goals for FRPA. These included reduced administration, less paperwork and lower costs, as well as improved efficiencies and functional reporting. Since these factors are cornerstones of FRPA it is important that they be realized, yet there is no mechanism in place that describes their targets. In addition, the notification and reporting section was incomplete in the July 2003 draft regulations so PAC has not had an opportunity to review it and consequently it is not known if efficiencies and costs has been adequately addressed in this context. PAC recommends that the Minister ensure a description of the anticipated cost savings and efficiencies associated with FRPA be prepared, and then the actual results tracked.

A4. Forest Stewardship Plan content requirement

The July 2003 draft Forest Planning and Practices Regulation is not sufficiently specific about the information requirements for Forest Stewardship Plans. These plans are the only approved plans under the FRPA regime under this regulation, so it is very important that they provide adequate information for review and evaluation. PAC recommends that the Minister ensure that the Forest Planning and Practices Regulation require sufficient content and details in Forest Stewardship Plans to provide for meaningful evaluation, public review and comment as well as approval or rejection by a statutory decision-maker.

A5. Maintaining or enhancing environmental standards

Government's stated goal for FPRA is to maintain or enhance the environmental standards present in the Forest Practices Code. PAC recommends that government assess this equivalency to help ensure the Act and regulations maintain or enhance the environmental standards present in the Forest Practices Code, and furthermore makes this assessment publicly available. PAC is concerned that the objectives stated in the July 2003 draft regulations are too general and do not provide the needed detail to evaluate or test equivalency. This is a significant issue for the following reasons:

- i. There is not sufficient detail in the objectives set by government to guide the preparation of measurable (and equivalent) results and strategies, consequently Forest Stewardship Plans may not contain results and strategies to adequately protect the values. In some cases, the 'factors' offer more specific guidance, but they do not have to be considered, and would need to be expressed in terms that lead to an enforceable objective.
- ii. Decision-makers may not be able to meaningfully assess the results and strategies of alternatives to default standards proposed in Forest Stewardship Plans as part of the plan approval test.
- iii. The approval test to be used by decision-makers regarding alternatives to default standards should make it clear whether alternative proposals must "maintain or enhance" the level of protection for non-timber values. If this is not the intent, it will be difficult for government to maintain that the regulations achieve equivalency in terms of environmental standards. Outstanding questions remain regarding the burden of proof in approvals.
- iv. PAC is concerned that the range of possible results and strategies in approved Forest Stewardship Plans may be too broad and consequently not provide for equivalent environmental standards. PAC believes that it is in the interest of forest licensees, government, stakeholders and the public to have clarity on this point. Licensees and government agencies both need to know what alternatives will be approvable; other stakeholders and the public need to know that the opportunity for alternative forest practices regimes is not merely a chance to 'opt out' of the Code.

A6. Public input

It is important that the regulations ensure that:

- there is an opportunity for meaningful public input to plans;
- industry adequately considers public comments; and
- designated decision makers have the ability to consider public comment, and industries response as part of the approval test.

PAC recommends the Minister improve the regulations to clearly provide decision-makers with the necessary direction and authority to take public comment into account.

A7. Accountability and responsibility

In a results based regime it is important to be clear about accountability and responsibility. The regulations could be clearer with respect to the consideration of actions by others or natural disasters impacting outcomes. There is a need to recognize the potential interaction of users in affecting outcomes.

A8. Landscape level planning

Landscape level planning must adequately set the stage and context for Forest Stewardship Plans, Woodlot Licence Plans, Range Stewardship Plans and Range Use Plans. If landscape level plans are not complete or do not serve the role of balancing (social, environment and economic) uses, then this role will default to operational plan approvals. PAC thinks that operational plan approval is not the proper place to be making higher level, resource management decisions. PAC is concerned that a lack of guidance to the preparation of a Forest Stewardship Plan could jeopardize the management and protection of some resource values (e.g. scenic and wildlife values), and could lead to higher level resource decisions being made by the FSP. For adequate management of these values to occur landscape level planning must be effective and in place, and resource agencies (MSRM, MWLAP and MOF) must invoke their respective mandates, for example, regarding scenic area and wildlife habitat area designation (also see implementation recommendation #2).

A9. Powers of intervention

The powers of intervention in the FRPA regime are of great consequence in both the regulation of “poor operators” and freeing “good operators” to manage. PAC recommends the regulations include a clear description of the powers of intervention in the FRPA regime. PAC is particularly interested in whether there will be adequate response to the occurrence of an undesired result; and yet sufficient boundaries on powers of intervention such that operators have assurance that they can innovate and manage without undue interference. This question can be addressed by prescribing the “events or circumstances” that will result in an intervention.

A10. Balancing resource objectives

PAC has concerns about whether the objectives set by government for timber and other values will lead to the appropriate balancing (social, environment, economic) of values. For example, PAC is concerned that the use of the qualifying phrase “without unduly reducing the supply of timber from British Columbia’s forests” in the objectives for soils, watersheds, riparian, biodiversity, old growth, wildlife and visuals means that timber will “trump” these other values.

Several PAC members support the idea of a timber objective, while some feel that the government’s timber objective is found in contractual tenure rights and AAC determinations. Those wanting to see a timber objective are divided on whether or not this objective should only focus on managing timber or include access to timber. PAC is concerned that the Oct 2003 draft timber objective (that was provided to PAC for review) is not workable since it implies the calculation of timber impacts on an area covered by a Forest Stewardship Plan, which may not be appropriate.

If the Range Planning and Practices Regulation has a timber objective, some members of PAC feel the Forest Planning and Practices Regulation should have a forage objective.

Some PAC members also feel the regulations should be designed to move away from a potentially adversarial approach where one resource value is optimized at the expense of other values to a more cooperative approach where resource interests work together to develop stewardship plans.

A11. Occupational health and safety

It is important that FRPA maintain equivalency to the Forest Practices Code regarding occupational health and safety. Compatibility with the *Workers Compensation Act* and regulation are explicitly referenced in regulations under the Forest Practices Code. PAC recommends the Minister consider including an occupational health and safety objective or provision, such as "Protect and enhance occupational health and safety in the workplace, in an effort to ensure the health and safety of workers and general public". The intent would be to maintain the precedence of the *Workers Compensation Act* over FRPA regulations (as per the current Code), and to provide opportunity for Workers Compensation Board, unions and joint health and safety committees to view operational plans for safety considerations where and when appropriate.

B. Key recommendations regarding FRPA Implementation:

The new FRPA regime amounts to a significant cultural shift for those involved in forest management in BC. Successful implementation of this new regime hinges on how well the various parties adapt. In turn, their ability to adapt will be greatly influenced by the adequacy of training, support and resources. Consequently the PAC recommends the Minister:

B1. Training

PAC understands that government is developing a detailed FRPA training plan for delivery this fiscal year to March 31st, 2004. PAC anticipates FRPA implementation training will be an on-going need for a number of years, with the need for training decreasing over time. Therefore, PAC recommends government develop a FRPA implementation training plan that provides for training beyond this fiscal year. The plan should address the training needs of government staff, on-the-ground practitioners, contractors, licensees and resource professionals & technicians. PAC understands that government has funding for FRPA training for fiscal 2003/04 with limited funds expected for fiscal 2004/05. PAC feels it is government's obligation and responsibility to provide training opportunities in 2004/05 as some key clients may not be reached in 2003/04 with intended winter training (e.g. given winter logging activities that are peak in some areas of the province).

B2. Ministries meeting new mandates

PAC recommends that government ensure that agencies are mandated, resourced and organized to meet their responsibilities under the new regime. This is particularly important because under the FRPA regime some values will only be maintained on the land base if certain steps are taken by agencies, such as providing objectives enabled under the regulations for ungulate winter ranges, wildlife habitat areas and scenic areas. Since a number of agencies play key roles in the success of the new forest management regime it is imperative that all of them meet their assigned responsibilities. It is important that the Ministry of Water, Land and Air Protection (MWLAP), the Ministry of Sustainable Resource Management (MSRM) and the Ministry of Forests (MOF) be provided with adequate resources to meet their responsibilities regarding designations under the new regime.

B3. Government core services

Ensure adequate support is provided to implement the FRPA regime, including ministry placement of key people so operational plan approvals are done on a timely basis and "over-the-counter" support is available as needed. This will be particularly critical at the beginning of FRPA implementation.

B4. Supporting innovation

PAC requests the Minister give consideration to establishing a process or mechanism whereby innovation is supported, encouraged and rewarded. This should be done in a collaborative way where close working relationships between various resource interests and users are fostered. A goal of FRPA is to promote innovation, improved working relationships and progress, so there needs to be some way to promote attainment of this goal through positive incentives.

B5. Support mechanisms

Ensure the support mechanisms (or guidelines) needed to guide implementation of the regulations are in place. Support mechanisms or guidelines can include non-legal advice provided by government and non-government including associations, licensees and academia. These may include policy and procedures, best management practices, handbooks, and non-legal objectives and strategies in cabinet approved land use plans.

Support mechanisms are particularly important given that the role of compliance and enforcement under FRPA will require heightened skill levels. For example, a compliance and enforcement (C&E) program being developed by MWLAP for range needs discussion with stakeholders regarding what to measure; how to measure; how to interpret the results; and how these results will be used in C&E action. In sum,

- level of skill will need to increase with C&E given the outcome nature of FRPA,
- there needs to be a increased understanding between those preparing results and strategies in plans and those enforcing the plans, and
- further to B4 above, there needs to be rewards for innovation and collaboration to augment C&E penalties.

B6. Monitoring and managing change

PAC acknowledges that implementation of the FRPA regime must be monitored and that, over time, follow-up will be required as part of a managed change process. It will be important to revise the Act and Regulations as experience is gained. In that regard, PAC recommends that the government reserve space on the legislative agenda for possible FRPA amendments in the Spring 2004 and subsequent sessions. An effective monitoring program should be developed to track both stakeholder interests and the results on the ground. The key aspects to consider are:

- funding and staffing of monitoring,
- development of a monitoring plan,
- use of the original goals of FRPA as a set of key performance measures, and
- whether innovation and collaboration that balances resource values where resource interests work together are being realized..

PAC is interested, in this regard, to review government's intended effectiveness evaluation program.

B7. Communication

PAC recommends the Minister address the need to communicate (explain) the FRPA regime to the public and stakeholders – provincially, nationally and internationally.