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Administration of Sections 12(3) and 52 of the FPPR: Considerations regarding content requirements for Forest Stewardship Plans

Introduction:

There have been challenges with the interpretation of Sections 12(3) and Section 52 of the Forest Planning and Practices Regulation as they pertain to the content requirements of a Forest Stewardship Plan. Persons preparing and adjudicating forest stewardship plans are cautioned to carefully consider the wording of the two sections when preparing a plan to meet the requirements of the statute and regulation that pertain to plan content for riparian management zones.

Background:

FPPR 12(3)

Despite Section 12.1 (2), a person who prepares a forest stewardship plan must specify in it, for the objective set out in Section 8, a result or strategy that addresses retention of trees in a riparian management zone.

For reference, FPPR 12.1(2)

A person required to prepare a forest stewardship plan is exempt from that plan from the requirement under Section 5 of the Act that the plan specify intended results or strategies in relation to the objective for water, fish, wildlife and biodiversity set out in Section 8 of this regulation if the person:

- (a) prepares the plan, including in it an undertaking that the person will comply with Sections 47 to 51, 52 (2) and 53 of this regulation, during the term of the plan, and*
- (b) receives the minister's approval to the plan.*

Section 12(3) provides that no matter what Section 12.1(2) states, there is a requirement for a FSP to include results or strategies that address the retention of trees in a riparian management zone. This section requires plan content that is specific to any riparian management zone proposed for a class of stream, wetland or lake.

FPPR 52

(1) A holder of a minor tenure who fells trees in a cut block within a riparian management zone of a class described in Column 1 must ensure that

(a) the percentage of the total basal area within the riparian management zone specified in Column 2 is left as standing trees, and

(b) the standing trees are reasonably representative of the physical structure of the riparian management zone, as it was before harvesting: [A retention table is provided in the regulation]

(2) An authorized person who cuts, modifies or removes trees in a riparian management zone for an S4, S5 or S6 stream that has trees that contribute significantly to the maintenance of stream bank or channel stability must retain enough trees adjacent to the stream to maintain the stream bank or channel stability, if the stream

(a) is a direct tributary to an S1, S2 or S3 stream,

(b) flows directly into the ocean, at a point near to or where one or more of the following is located: (i) a herring spawning area; (ii) a shellfish bed; (iii) a saltwater marsh area; (iv) an aquaculture site; (v) a juvenile salmonid rearing area or an adult salmon holding area, or

(c) flows directly into the ocean at a point near to the location of an area referred to in paragraph (b) and failure to maintain stream bank or channel stability will have a material adverse impact on that area.

Discussion/Policy Advice:

If care is not taken, the requirements of Section 12(3) can be improperly integrated with the provisions of Section 52. Persons preparing and adjudicating Forest Stewardship Plans must carefully consider the requirement for plan content to specifically meet the requirements of FPPR 12(3).

The regulation requires that the content of a FSP address the retention of trees in a riparian management zone for all classes of streams, wetlands and lakes with riparian management zones. When preparing content to meet the requirements of Section 12(3), persons will need to consider Section 12.1(2), and prepare the requisite plan content if they are not prepared to provide an undertaking to comply with Section 52(2). Attention must be given to the manner in which the plan content for Section 12(3) meets both parts of the definition of “result” or “strategy”.

The basal area retention specifications set out in Section 52(1) are deemed by government to only be appropriate for minor tenures due to the limited extent of primary forest activities typically carried out by holders of minor tenures. Section 52(1) is not a “default” for the purposes of acquiring a Section 12.1(2) exemption from the requirement to specify plan content for the objective set out in Section 8.

Even though it is not a “default”, the retention parameters set out in Section 52(1) may be selected as plan content for the purposes of Section 12(3). A person considering this approach will need to determine whether the basal area retention specifications provided in Section 52(1) are appropriate for the areas covered by proposed forest development units. Where the Section 52(1) retention specifications are proposed as plan content, the plan should be accompanied by an explanation as to how such specifications are consistent with the objective set out in the regulation for fish, wildlife, water and biodiversity in a riparian management area. This rationale does not have to be part of proposed plan content.

Section 52(2) requires retention of trees along S4, S5 and S6 streams for purposes related to prevention of material adverse impacts on specified values. These practice requirements are applicable to all authorised persons unless the holder of an agreement under the *Forest Act*, who is required to prepare an FSP, acquires an exemption as authorised by Section 12.3(6). It is important to note that Section 52(2) *does not* fulfill the plan content requirements for retention of trees in riparian management zones as set out in Section 12(3) because:

- Section 12(3) specifically requires results or strategies for retention in riparian management zones despite what Section 12.1(2) states about Section 52(2), and
- Section 52(2) does not set any requirements for retention of trees in the riparian management zones of S1, S2 or S3 streams, and those wetlands and lakes with riparian management zones.

Further Information

Additional information regarding FRPA and the relationships with Sections 12(3) and 52(1) of the FPPR may be found in the Administrative Guide to Forest Stewardship Plans (AGFSP) on the FRPA Implementation Team website at:

<http://www.for.gov.bc.ca/hth/timten/AGFSP/index.htm>

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