



Due to ongoing regulatory changes as part of the FRPA improvement initiative, this document is outdated, and may not accurately reflect current legal requirements. As soon as the new legal provisions have been finalized, the required changes will be incorporated into an updated version. Readers are advised to refer to the wording of applicable legislation and regulations themselves and obtain their own legal advice. August 2022.

FRPA ADMINISTRATION BULLETIN

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Considerations for Making Orders under Section 9 of *FRPA* and Section 19 of the FPPR: Cumulative Effect of Multiple Forest Stewardship Plans (Proportional Targets)

Background:

Section 9 of the *Forest and Range Practices Act* (FRPA) provides District Managers, as the Minister's Delegated Decision Maker (DDM), the authority to establish targets in specified proportions between or among the holders of forest stewardship plans (FSPs), for sharing the responsibility to obtain results consistent with objectives set by government.

Section 19 of the Forest Planning and Practices Regulation (FPPR) prescribes how this authority is triggered and the kind of order that can be made.

Discussion/Policy Advice:

This document is intended to provide advice to DDMs on considerations for setting proportional targets when requested to do so. Note that Section 9 of FRPA provides authority to the DDM to establish targets between "the holders of forest stewardship plans" which includes BCTS, but Section 19 of FPPR only allows the authority to be triggered by the actions of "agreement holders", which do not include BCTS. BCTS is working on an amendment that would resolve that issue. Where BCTS has or may have an FSP within the area, DDMs will have to take into account potential impacts on BCTS of any proportional target setting.

Where there is likely to be multiple Forest Stewardship Plans within an area, all four of the following conditions must be met before proportional targets can be set:

1. One or more agreement holders may be unduly constrained in specifying results or strategies unless targets are established.

2. The agreement holders within the area are unable to reach an agreement that would remove the constraint.
3. An agreement holder subject to the constraint has requested the DDM to act under Section 9 of FRPA.
4. The District Manager is satisfied that a fair and effective order can be made under this section.

If one or more agreement holders believe that they may be unduly constrained in their ability to specify a result or strategy, the agreement holder(s) will need to describe the nature and extent of the constraint, the efforts made to reach agreement with other holders to remove the constraint, and how proportional targets would result in a fair and effective order that will obtain results consistent with objectives set by government. For the DDM, this process is mainly a reactive one in that Conditions 1 to 3 must be met before the DDM need become involved.

In the FRPA regime there are a number of aspatial legal objectives for which FSP developers must write proposed results or strategies. In many cases, these aspatial objectives will have to be considered by more than one FSP where multiple tenure agreements cover the same geographic area. As an example, aspatial old-growth orders or other aspatial land use objectives (e.g. mature or early seral targets) will require a specified amount of forest in a specific condition to be retained across a land base that will often encompass multiple forest stewardship plans. Similarly, Section 7 of the FPPR concerning wildlife habitat notices that trigger wildlife habitat objective for species at risk, regionally important wildlife, and specified ungulate species, are aspatial orders for objectives that may be subject to the establishment of a proportional target.

Note: As aspatial objectives get replaced by spatial objectives and general wildlife measures, it is expected that the need to set proportional targets will decline over time.

Considerations for FSP preparers/DDMs for proportional target requests/setting.

TEST 1: One or more agreement holders may be unduly constrained in specifying results or strategies unless targets are established.

This part of the test requires that an agreement holder show that, without targets, the agreement holder's ability to specify results or strategies that meet the FRPA approval tests may be unreasonably affected as a result of the activities or FSPs of other agreement holders. Some questions that should be answered before proceeding include:

Can a result or strategy be written within the legislated tests?

The licensee should consider whether or not the issue can be addressed by proposing a result or strategy that is consistent with the legal objective “to the extent practicable” (FPPR, Section 25.1). It may be that the circumstances or conditions applicable to the plan provide an opportunity to propose a result or strategy that is not fully consistent with the legal objective, which, in turn might remove the need to develop proportional targets.

Will the result or strategy necessary to address an aspatial objective be inconsistent with other objectives covering the plan area?

Under the FRPA regime, a proposed result or strategy must be consistent not only with the objective it relates to, but also consistent with all other objectives covering the plan area.

Is the value under consideration tightly constrained upon the land base?

For example, in areas with high operability and a long harvest history, there is often only a small amount of old-growth above the minimum requirement to meet the objective, so any substantial harvest of old-growth would make it difficult to specify results or strategies consistent with the objective. For wildlife, the amount of habitat available that meet the criteria set out in the notice may be very limited.

Is the value highly concentrated in one agreement holders’ area of operations?

Is the bulk of the area required to meet the objective concentrated in one spot rather than being spread out across the landscape? This is more likely with wildlife habitat than with a more generic value such as old-growth.

If the answer to both of the last two questions is “yes” then there is substantial potential for every agreement holder to use the same area to meet the objective; however, the one in whose area the value is concentrated may be forced to consider harvest of some of the areas upon which others are relying to meet the objective if it is concentrated in an area in which they already have investment in infrastructure and planning.

If the layout of the values across the land base makes it feasible to split up the pie in a relatively equitable manner then the DM should point any licensee back to the test in the regulation that requires agreement holders to try and come to an agreement first.

TEST 2: The agreement holders within the area are unable to reach an agreement that would remove the constraint.

An agreement-holder has to make efforts to resolve problems with other agreement-holders before requesting an order. Requesting a DDM to set proportional targets will trigger substantial analysis and process workload for both government and industry staff. Therefore, every effort should be made between agreement holders (and BCTS) to reach an agreement that would remove the constraint before turning to the DDM for resolution. Requests to the DDM to set proportional targets should only be made when all reasonable efforts to reach agreement have failed.

Prior to making a request for proportional targets, the plan proponent will need to identify efforts made to reach an agreement with other licensees. Some examples of efforts would be attempts to coordinate development of FSPs, attempts to develop joint FSPs by a number of agreement-holders, or attempts to develop an agreement to set voluntary targets among licensees. These kinds of efforts will likely have the added benefit of resulting in potential resource savings to both the industry and government.

TEST 3: An agreement holder subject to the constraint has requested the DM to act under Section 9 of the Act.

It is the responsibility of an agreement holder to request the DDM to make a determination under Section 9 of FRPA. In doing so, the agreement holder should clearly articulate the nature of the constraint on specifying a result or strategy, the implication of the constraint, what efforts have been made to resolve the constraint prior to making the application and proposed targets and associated rationale. It would be useful to provide supporting information with the application where available. Applications should be made well in advance of the associated FSP application. It is recommended that licensee and district staff meet to discuss the application to ensure the issue is clearly understood by all and look for other means of resolving the issue prior to making a determination.

TEST 4: The District Manager is satisfied that a fair and effective order can be made under this section.

The order must be both fair and effective. The DDM may need to strike a balance between what is fair to each FSP holder and what he or she considers to be an effective order, without compromising either to the extent that fairness or effectiveness is lost. DDMs must also keep in mind that under Section 9 of FRPA, the results obtained through the order need to be consistent with objectives set by government.

In the example of old-growth, in order to be fair between agreement holders where there the old-growth is concentrated unequally among plan holders, some consideration of operational and economic feasibility may need to be considered in setting targets. The Integrated Land management Bureau (ILMB) can sometimes assist DDMs in these situations by prioritizing the old-growth across tenures, as in many areas at least initial drafts of OGMAAs have been completed.

For wildlife habitat, this decision is much more difficult. If there is limited habitat, reduction of that habitat could significantly impair the Ministry of Environment's ability to set WHAs in the future. In these situations, DDMs should involve both MOE and the agreement holders to assess options that do not create unacceptable risk to future WHA designations, but may provide some fairer distribution of impact across agreement holders in meeting the targets set out in the order.

DDM Determination

It is important that prior to making a determination, that MOFR staff get comment on the proposal from agency(s) responsible for the associated legal objective. This is particularly important in the early stages of FRPA implementation where there is considerable amount of work being done by various government agencies to replace aspatial objectives with spatial objectives. The MOFR should provide other licensees with an opportunity to comment on the proposal based on the potential impact on their operational plans and practices. Principles of administrative fairness likely require that plan holders be consulted in a manner commensurate with the potential impact of the order on them before the DDM sets targets and makes an order.

Once a determination has been made, a written copy of the determination should be provided to all licensees affected by the decision. In some cases, this may lead to a requirement for a licensee to amend his/her FSP based on the order.

Further Information:

Additional information regarding FRPA and implementation may be found in the Administrative Guide to Forest Stewardship Plans (AGFSP) in the FRPA Implementation website at: <http://www.gov.bc.ca/rco/pfit/index.htm>

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