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Ministry of Forests  
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MINISTRY EXECUTIVE

MEMORANDUM

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**VIA EMAIL**

To: Regional Executive Directors  
District Managers  
Branch Directors

From: T.R. (Tim) Sheldan  
Assistant Deputy Minister  
Operations Division

Re: **FRPA General Bulletin (Number 14)**  
**Management of Lakeshore Management Zones under the**  
***Forest and Range Practices Act***



A new *Forest and Range Practices Act*, General Bulletin (Number 14), titled "Management of Lakeshore Management Zones under the *Forest and Range Practices Act*" has just been completed. This bulletin provides guidance to designated decision makers (DDMs) and resource professionals regarding the management of lakeshore management zones (LMZs) under the *Forest and Range Practices Act*. It also provides guidance with respect to linkages with the Forest Practices Code lakeshore management guidebook and grandfathering provisions of the *Forest and Range Practices Act*.

Electronic copies will be available soon from the Provincial FRPA Implementation Team's website at the following address:

**[http://www.for.gov.bc.ca/hth/FRPA\\_Implementation/index.htm](http://www.for.gov.bc.ca/hth/FRPA_Implementation/index.htm)**

Regional Executive Directors  
District Managers  
Branch Directors

If you have any questions about this bulletin, please contact David Maloney, Technical Advisor, Watershed Sciences, Forest Practices Branch at (250) 565-4413, or by email at [david.maloney@gov.bc.ca](mailto:david.maloney@gov.bc.ca), or Charlie Western, Provincial Implementation Team Chair, Operations Division at (250) 387-8306, or by email at [charlie.western@gov.bc.ca](mailto:charlie.western@gov.bc.ca).



Tim Sheldon  
Assistant Deputy Minister  
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Association of Professional Engineers and Geoscientists of BC  
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Bruce Fraser, Board Chair, Forest Practices Board  
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## **FRPA GENERAL BULLETIN**

**Number 14**

**May 30, 2007**

### **Management of Lakeshore Management Zones under the *Forest and Range Practices Act***

**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:**

The purpose of this bulletin is to provide designated decision makers (DDMs) and resource professionals with guidance on how to manage Lakeshore Management Zones (LMZs) under the provisions of the *Forest and Range Practices Act* (FRPA).

Section 63 of the Operational and Site Planning Regulation (OSPR) of the Forest Practices Code (FPC) provided riparian classes for different sizes of lakes in different ecosystems. Although Section 64 of the OSPR identified minimum widths for the various lake riparian classes, it also provided the district manager the authority to require, specify and vary the width of a management zone around any lake.

The FPC Lakeshore Management Guidebook outlined the objectives, classification process and management practices associated with establishing LMZs. In select areas of the province, government invested considerable initiative in the lake classification process, often with considerable public and stakeholder participation. In some regions, lakes classification was undertaken as part of sub-regional land use planning exercises.

Interpretations of pertinent sections of the FRPA statute indicate that forest practice standards established for a LMZ under the FPC lake classification process were not grand-parented for the purposes of FRPA. It is clear that a LMZ with a width specified under FPC provisions can be continued into FRPA. However, there are no provisions in FRPA to continue the forest practices specified for each class of lake (typically Class A through E). The consequence of these interpretations is that there are currently no provisions within the FRPA legal construct that would require a person carrying out forest practices to comply with forest practices specifications established as a result of FPC lake classification and lakeshore management planning initiatives.

## **DISCUSSION:**

Government's intentions regarding LMZs have been consistent and transparent since the forest practices legislation was first initiated, recognizing the need to balance environmental, social and economic interests in lakeshore areas. The initiative to manage lakeshore areas began with the Forest Practices Code in the mid 1990's.

The FPC lake classification process was undertaken to identify appropriate forest management activities within the lakeshore management zones around lakes. Lakes and lakeshore areas contain many values and features that provide opportunities for several interests. Those interests include:

- social – allowing for various public concerns, wilderness and recreational experiences, as well as First Nations spiritual and cultural activities;
- economic – forest management, hunting and fishing lodges; and
- ecological – maintenance of water quality, fisheries and wildlife habitat, biodiversity requirements.

When government introduced the new results-based forest and range practices regime, it stated that the new Act would be based on eight objectives, they were:

1. reducing the transactional and operational costs to industry;
2. reducing the Code's complexity;
3. providing the forest industry "freedom to manage" in delivery of defined results;
4. maintaining the Code's high environmental standards;
5. continuing to balance social, environmental and economic interests;
6. maintaining and enhancing the level of public acceptance of forest management;
7. consistency with the resource capacity of government; and
8. strengthening the compliance and enforcement regime.

Government's commitment to continue the management of lakeshore areas is inferred in Objectives 4, 5 and 6. Lakeshore management was an integral component of FPC forest practice standards, and there is an expectation among the public and recreation tenure holders (resorts, angling guides) that such standards will continue under FRPA. There are areas of the province where still-water fishing and lake-based recreation values are high. Government's clients, including those holding lakeshore land tenure or with economic initiatives linked to lakes and lakeshores, are indicating to government that they expect continuance of lakeshore management zones and forest practices that respect the non-timber public interests in these lakeshore areas.

There are numerous and conflicting interests associated with lakeshore areas in many parts of the province. It is government's responsibility to balance social, environmental and economic interests within such important areas, and to establish standards necessary to ensure proper attention to such areas under prevailing forest practices legislation. Consequently, the lakeshore classification process initiated under Code provisions was a collaborative effort involving agencies (provincial and federal) industry, tenure holders, and the public to classify lakes and to establish the future condition of lakeshore areas. It is important to note that the public's participation and input in the classification process was not only to identify their concerns about lakeshore development, but also to voice their expectations. These concerns and expectations are manifest in the lakeshore management zones and forest practices standards that have been established for many lakes. The public's concerns and expectations regarding lakeshore management areas expressed under the FPC did not disappear with the introduction of FRPA. Management of lakeshores is important to the maintenance of a social licence between a licensee and their obligations in managing a public forest resource asset. However, in order that the public interest in lakeshore areas is recognized within the FRPA legal construct, government must show leadership in establishing the objectives that would pertain to grand-parented LMZs.

While there is some ability for lakeshore management to occur by way of the voluntary initiative of *Forest Act* agreement holders, such initiative cannot be required by government, nor subject to any enforcement actions. If government is to expect consistent attention to management of lakeshore management zones, respecting the broad interests in such areas, lakeshore management zone objectives will need to be set for the purposes of FRPA. This is the only means under forest practices legislation to effect forthright consideration of the full range of concerns and issues raised by the public with respect to lakeshore management zones.

#### **POLICY ADVICE:**

Although the FPC did provide for a lakeshore management zone, it did not provide for the establishment of an objective within a lakeshore management zone. Consequently, there is nothing that can accurately be referred to as a lakeshore management zone objective for the purposes of Section 181 of the FRPA statute. Therefore:

- Within forest districts where a lake classification initiative established a LMZ, those zones exist as grand-parented for the purposes of FRPA.
- The forest practices specified for each LMZ and previously "made known" to *Forest Act* agreement holders can only remain available as voluntary measures.
- Unless a lakeshore management zone objective is established, government cannot legally compel a person to prepare or amend an FSP to be consistent with expectations pertaining to applied forest practices adjacent to a lake that was classified and assigned an LMZ under the FPC.

At this time, it is noted that Section 23(3) of the Forest Planning and Practices Regulation acts to prevent the legal effect of any lakeshore management zone objective that may be established by government. As the effect of this provision is not appropriate in light of the current situations and circumstances, and considering the public interest in lakeshore management zones, this section of the regulation is being reviewed for revision to rectify the gap.

Until such time as FPPR, Section 23(3) is revised, it is recommended that within districts where a lake classification process was completed, and where,

- a) Objectives were identified for LMZs, persons required to prepare results and strategies are to do so consistent with such objectives.
- b) Objectives were not identified; *Forest Act* agreement holders and professionals involved in preparing and implementing FSP's be encouraged to voluntarily engage the public and tenure holders to discuss proposed forest management activities around lakes with established LMZ. The agreement holders should be encouraged to document their understandings with the public and tenure holders. These documents may act as a matter of record in the relationship between the agreement holder and those with an interest in a specific lakeshore. Government may not take any action to reinforce compliance with such agreements.

An alternative that is currently available in the absence of a revision to FPPR, Section 23(3) rests with the Ministry of Agriculture and Lands. The Integrated Land Management Bureau (ILMB) has the option of establishing lakeshore objectives through the *Land Act* and Land Use Order Regulation (LUOR). Actions under authority of the *Land Act* are not impacted by the legal effect of FPPR, Section 23(3).

#### **RECOMMENDED ACTION:**

There is need to maintain public confidence regarding continuance of forest practices legislation applicable to lakeshore management zones. The most cost effective option is for DDM's to encourage licensees to engage the public to ensure their lakeshore management concerns are being considered and that forest management practices protect these non-timber values. The GAR option will be considered where the recommended action fails.

There is concern that there may not be sufficient trust in the relationship of *Forest Act* agreement holders with the public and tenure holders to allow reliance on voluntary measures. There is also considerable concern that agreement holders could be held to an unreasonable standard of stewardship, or that land use in the area of lakeshores will become a decision managed by agreement holders – a situation FRPA was crafted to avoid. It is expected that FPPR, Section 23(3) will be revised between the time of the request for voluntary action and evidence of its success or failure.

#### **CONTACTS:**

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

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