



FRPA GENERAL BULLETIN

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Managing and Tracking Wildlife Tree Retention Areas 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 delegated decision makers and resource professionals some clarity on how wildlife tree retention areas (WTRAs) are managed and tracked under the provisions of the *Forest and Range Practices Act* (FRPA).

A brief review, of the FRPA legislation, is provided below to give some context to the discussion questions. There is a significant amount of complexity to this issue; some elements are defined in legislation while others are left open for freedom of management and innovation.

From the Forest Planning and Practices Regulations (FPPR), Section 9.1: The objective set by government for wildlife and biodiversity at the stand level is, without unduly reducing the supply of timber from British Columbia's forests, to retain wildlife trees.

Licensees/BCTS have the flexibility to adopt practice requirements or to propose their own result and/or strategy. The adoptable practice requirements are FPPR, Sections 66 and 67, which are as follows:

Section 66 – Wildlife Tree Retention

- (1) If an agreement holder completes harvesting in one or more cut blocks during any 12 month period beginning on April 1 of any calendar year, the holder must ensure that, at the end of that 12 month period, the total area covered by wildlife tree retention areas that relate to the cut blocks is a minimum of 7 percent of the total area of the cut blocks.

- (2) An agreement holder who harvests timber in a cut block must ensure that, at the completion of harvesting, the total amount of wildlife tree retention areas that relates to the cut block is a minimum of 3.5 percent of the cut block.
- 3) For the purposes of Subsection (1) and (2), a wildlife tree retention area may relate to more than one cut block if all of the cut blocks that relate to the wildlife tree retention area collectively meet the applicable requirements of this section.

Section 67 – Restriction on Harvesting

An agreement holder must not harvest timber from a wildlife tree retention area unless the trees on the net area to be reforested of the cut block to which the wildlife tree retention area relates have developed attributes that are consistent with a mature seral condition.

DISCUSSION QUESTION #1:

How do wildlife tree patches (WTPs), established under the *Forest Practices Code Act of BC* (FPC), translate to FRPA?

FRPA has replaced the term wildlife tree patch with wildlife tree retention area (WTRA). A WTRA is either a patch or an area with dispersed retention. The act and regulations all use the new term which leads to the question; do these requirements apply to WTPs?

RESPONSE:

WTPs that meet the definition of a WTRA should be considered as WTRAs. The FRPA definition of a WTRA is “an area occupied by wildlife trees that is located:

- in a cut block;
- in an area that is contiguous to a cut block; or
- in an area that is sufficiently close to the cut block that the wildlife trees could directly impact on, or be directly impacted by, a forest practice carried out in the cut block.”

The general interpretation of “sufficiently close to the cut block that the wildlife trees could directly impact on or be directly impacted by, a forest practice” is about one tree length, but this may vary based on terrain, and other variables.

Therefore, for FPC wildlife tree retention (patch or dispersed retention) which meets the FRPA WTRA definitions, the FRPA sections pertaining to WTRAs (FPPR S. 67, S 91(2)) will apply.

WTPs that do not meet the definition (e.g. external WTPs located too far away to have a direct impact on the cut block) are not considered WTRAs.

DISCUSSION QUESTION #2:

When does a WTRA become a WTRA?

RESPONSE:

A WTRA is created by a forest professional during cut block development. However, there are three distinct time periods to consider for WTRA management:

1. Prior to inclusion in a cutting permit (CP).
2. After CP issuance, but prior to annual reporting.
3. Post annual reporting.

The time periods are a way of describing the “firmness” of the WTRA spatial location. As the WTRA moves through the three time periods, there is an increased dependency on the exact spatial location for other linkages (revenue, cumulative biodiversity targets). Prior to inclusion in a cutting permit, a WTRA has been designated in the field and is identified in the Site Plan (Note: Section 10 of FRPA states that site plans required before harvesting commences not before issuance of a CP). In this stage, the spatial location is identified, but there are few linkages to outside processes. Once a CP has been issued and a WTRA has been located within the cutblock on the appraisal map and in the site plan, there is a link between the location of the WTRA and revenue to the Crown. Internal WTRAs have a direct impact on the appraisal process.

The third time period, is after the WTRA has been included in the annual report. FRPA, Section 86(3) of the FPPR requires that licensees/BCTS submit an annual report to the district manager, before June 1 of each year. The annual WTRA report includes any areas in which timber harvesting was completed during the previous reporting period (year) and gives the location and approximate size of the associated WTRAs. This is the information that may be used to assess compliance with R/S or practice requirements.

DISCUSSION QUESTION #3:

How can a WTRA be moved and who can move it?

These two questions are tied together because they are related to the overlapping FDU/cumulative impact issue. Also, from the discussion question above, when can a WTRA be moved? Can licensee/BCTS professionals move only their own WTRAs or can they move any designated WTRA?

Part of the answer to these questions depends on what was included in the FSP. Were the practice requirements adopted or were innovative results and/or strategies proposed?

RESPONSE:

Time Period 1 (Prior to a CP being issued)

Licensees/BCTS have flexibility to move their own WTRAs at this stage. There are few linkages to other processes. Any appropriate professional can move a WTRA. WTRAs created by other licensees should be avoided. If they cannot be avoided then it is recommended that conversations with that licensee/BCTS occur to ask if it is appropriate to harvest the WTRA and relocate it to another location to allow for compliance with

their FSP. It is important to remember that within the FSP, there may be target retention based on individual block, CPs or across the landscape unit and the targets will be individual to each licensee/BCTS FSP. The individual result and/or strategy will affect the range to which the WTRA may be moved. This will require upfront conversations (before CP issuance or before too much investment has happened) between licensees who are working in overlapping FDUs. This conversation can happen through informal or formal referral processes, TSA steering committee meeting, data sharing networks, etc. An amendment to the site plan will also be required to show the new location of the WTRA.

Time Period 2 (Post CP issuance but prior to annual reporting)

Licensees/BCTS may still move WTRAs outside of the cutting authority. WTRAs found within the cutting authority area may be more problematic. For example moving internal WTRAs within the CP boundary without a change to the appraisal map could result in standing waste applying to the new location. If the move will not cause changes to the appraisal submission and revenue numbers then the WTRA can be moved or adjusted. This is consistent for both internal WTRA and WTRA contiguous with harvest edge. However, if the contiguous WTRA is not found within the CP boundary it may leave them unprotected (prior to reporting) during the clearance process of adjacent blocks. If there is a potential revenue implication to the move then the CP may need to be re-appraised according to the applicable Appraisal Manual. There will also be a requirement to amend the site plan to show the new location of the WTRA as well as indicate rationale for the move.

Time Period 3 (Post annual report)

Licensees/BCTS may still move WTRAs, but the process will depend on what is in their FSP. There are two scenarios, the FSP adopted the practice requirements or the FSP has an alternate result and/or strategy approved.

If a Licensee adopted the practice requirements:

Once a WTRA has been reported into RESULTS, a move of a WTRA will require an exemption from the minister using FPPR, Section 91(2). The minister may exempt an agreement holder from Section 67 if the minister is satisfied that the holder has specified one or more wildlife tree retention areas that provide an area, number of trees or habitat that is equivalent to the portion of the wildlife tree retention area from which the timber is being harvested. Regardless of who originally designated the WTRA, it can be moved by anyone using FPPR, Section 91(2).

If a licensee proposed innovative results and/or strategies:

WTRAs must be moved according to the results and/or strategies in the individual FSP. Unless FPPR, Section 67 of the practice requirements is adopted, FPPR, Section 91(2) does not apply. The flexibility to move WTRAs needs to be built into the result and/or strategy while still meeting the objective if WTRAs are to be moved. All WTRAs can be moved, regardless of who originally designated them, provided the move is consistent with the results and strategies and is done by a professional. An amendment to the site plan will also be required to show the new location of the WTRA.

DISCUSSION QUESTION #4:

How are WTRAs tracked under FRPA and who is responsible?

Licensees/BCTS submit an annual report containing WTRA information to the district manager. The annual WTRA information is submitted to the RESULTS application and stored spatially in the Land and Resource Data Warehouse (LRDW). This information then also comes up on the adjudication report for licensees and district staff to see.

RESPONSE:

District personnel, who are adjudicating CPs and other permits (e.g. RP applications, FLTCs, OLTC, etc.) may use the information in the LRDW to check for any overlaps with WTRAs. If overlaps have occurred, government would inform the CP applicant and recommend contacting the party responsible for the WTRA. Issuance of a CP cannot be refused based on an overlap with a WTRA. In this scenario, district staff should advise the CP applicant of any WTRA conflicts prior to issuing the cutting authority. The CP applicant can then decide how they wish to proceed with the application, with consideration to their legal and professional obligations. It is the CP applicant's responsibility to ensure that their practices are consistent with the legal obligations in their FSP.

DISCUSSION QUESTION #5:

How are new WTRAs managed between yearly reports?

Though S. 86(3) of the *Forest Planning and Practices Regulation* gives an annual date (before June 1) for report submission, licensees submit the post-harvest information continually. The consolidated WTRA information on the LRDW is updated nightly as information is submitted on harvested cutblocks.

RESPONSE:

Licensees/BCTS should communicate with each other to ensure that all parties are aware of WTRAs not currently captured by the LRDW. TSA steering committee meetings and other cross-licensee/BCTS meetings can be useful vehicles for ensuring the latest information is shared and any issues with WTR areas are addressed. Some licensee/BCTS groups have also developed data share agreements, where new development is shared on a monthly basis. Other licenses may adopt formal information sharing protocols to ensure WTRAs are not being harvested. Regardless of the method of communication, it is up to licensees to share this information to ensure WTRAs are not accidentally harvested.

DISCUSSION QUESTION #6:

If a wildlife tree patch from a free-growing block harvested under the *Forest Practices Code* (FPC) must be harvested, how is the approval and reporting handled?

RESPONSE:

A WTP from a cutblock harvested under the *FPC* will generally meet the definition of a WTRA under *FRPA* (see question 1). Section 67 of the *FPPR* therefore applies and sets the timeframe for future harvest of the WTP. If specific circumstances such as safety or forest health require early harvest of the WTP, then section 91(2) of the *FPPR* applies to section 67 or any result or strategy that replaces section 67.

A single licensee involved:

If the WTP in question is associated with a free-growing cutblock harvested by the same licensee applying for the exemption then:

- The licensee applies to the district manager for exemption under s. 91(2) providing information inclusive of:
 - Location of WTRA proposed for harvest
 - Reason why exemption is required
 - Location of replacement WTP and how it meets the requirement to be equivalent
- If the exemption is approved, the licensee is responsible for updating the forest cover on the original free-growing cutblock. This is done by updating the forest cover to remove the WTP to be harvested and, finding suitable replacement within the same opening and providing spatial and attributes updates.

Two licensees involved:

If the WTP in question is associated with a free-growing cutblock harvested by a different licensee than the one applying for the exemption then:

- Prior to application to the district manager for exemption under s. 91(2) the licensee needs to check in with original licensee. The original licensee will need to agree to the necessary updating of the forest cover information for the free-growing cutblock and re-instating a replacement WTP associated with the free-growing opening.
- If this agreement is in place, then proceed with exemption request as above with addition of confirmation of agreement.

CONTACTS:

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