

## Forest and Range Practices Act



Due to ongoing regulatory changes as part of the FRPA improvement initiative, this document is outdated, and may not accurately reflect current legal requirements.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 GENERAL BULLETIN

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## An Overview of FSP Extensions

*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.*

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### Purpose

This bulletin provides an overview of the legislation and approval tests surrounding the extension of a Forest Stewardship Plan (FSP). It outlines principles to encourage an efficient process for the extension of FSP's.

### Extension Requests

An FSP extension is an extension of the term of an approved FSP. If little has changed within the FDU, or the change is within the extent of change authorized by the Forest Planning and Practices Regulation (FPPR), and the licensee/BCTS is satisfied with the commitments made within their FSP, an extension may be a simple way to continue operating under the plan.

The authority to extend an FSP is the *Forest and Range Practices Act* (FRPA), Section 6(2). For the purposes of an FSP extension decision, the Delegated Decision-Maker (DDM) is the district manager. An extension request may be initiated before or after the expiry of an FSP. The request should specify the desired extension period to a maximum of 5 years. The effective date of an extension decision is the initial expiry date. This means that the clock starts for the extended term from the date of expiry, with no gaps between the original FSP and the extended FSP. The entire FSP is extended; including any declared areas, Section 196 blocks, or any other content that was a part of the approved FSP on the extension effective date.

If an FSP expires, the DDM cannot issue a cutting permit to an agreement holder until an approved FSP is in effect. The timber sales manager cannot invite application for or enter into any TSL or road permit until an approved FSP is in effect. However, licensees and agreement holders can continue to operate under previously approved Cutting Permits (CPs) and Road Permits (RPs) (i.e. CPs/RPs approved before the FSP expiry and while the FSP was in effect). If an extension is approved after FSP expiry, the FSP as it was on the date of expiry is the plan that is extended.

## **Approval Tests**

The DDM has discretionary authority to extend an FSP. The approval tests for an FSP extension decision include prescribed and discretionary tests. The prescribed tests are the requirements identified in the FPPR S.28 that must be met for the FDU, results and strategies (licensee must request an extension and DDM is satisfied that the FDUs, Results and Strategies continue to be consistent with established objectives or will be amended as to be consistent). The discretionary tests include a consideration of the other content elements of an FSP that is being extended, including the stocking standards and measures.

As a best practice, licensees/BC Timber Sales (BCTS) and FLNRO staff should engage in up-front communication to identify what, if any changes have occurred, the implications of these changes and how they may affect results and or strategies. The term of the extension should be considered and be part of the discussion. It is recommended that the extension determination focus on those elements that have changed and not to re-adjudicated every element within a FSP. Ultimately, the DDM must be satisfied that the FSP meets the tests and has discretion with regards to the approval of the extension request.

## **Prescribed Tests**

In order for an FSP to be extended, the DDM must be satisfied that the FDU, results and strategies in the plan either continue to be consistent with established objectives, or will be amended so as to be consistent with established objectives.

In determining whether the approval tests have been met, one should turn their mind to the consistency of the FDU, results and strategies with established objectives. Considerations may include:

- Is the FDU subject to an established, varied, or cancelled objective i.e. have there been any changes in the established objectives (a defined term in FPPR) since the plan was first approved?
- Did a result or strategy link the commitment to the term of the plan? Will an extension of the term change or affect the nature of such a commitment. If so, is this change significant?
- Was a result or strategy previously approved where the current relevant knowledge and/or understanding of FRPA may lead to a different determination, e.g. improper commitments to default Practice Requirements resulting in unenforceable FSP elements?
- Have any of the commitments in the FSP proven to be not implementable for the licensee/BCTS or unenforceable by FLNRO, Compliance & Enforcement, e.g. evidence that a result or strategy may not meet the approval tests of i) Consistency with the objective and ii) Statutory definition of result or strategy?
- Is there any new, significant information in relation to the area or a forest resource value that undermines the FDU, result, or strategy, e.g. new science, new inventory information, change in harvesting rights, monitoring results?

The FPPR, Section 28 states that if the DDM is satisfied that the FDU and the results and strategies will be amended so as to be consistent with the established objectives, the DDM may approve the extension. This provision addresses both mandatory amendments for which the legally established applicable period has not ended as well as other amendments that may be required as part of the extension process.

## **Discretionary Tests**

### *Stocking Standards*

When an FSP is extended, the DDM may consider whether the stocking standards in the plan continue to meet the approval tests outlined in the FPPR, Section 26. The stocking standards test revolves around ecological suitability, the consideration of short and long-term forest health issues, the maintenance or enhancement of an economically valuable supply of commercial timber, and consistency with the timber supply analysis that applies to the area. More details on the tests are discussed in: [An Overview Reference for The Evaluation of Stocking Standards Under FRPA](#).

Considerations that may influence or demonstrate the continued ability of a standard to meet the approval tests include:

- Was the stocking standard approved as a trial standard for a limited time frame? If so, it may be prudent to ensure an extension request specifies the intent of extending or not that particular standard and include as part of a rationale a summary of the monitoring results from the trial.
- Is there any significant information available that demonstrates a standard, as currently approved, does not continue to meet approval tests, e.g. new science, operational trends, major Biogeoclimatic Ecosystem Classification system updates, silviculture strategies, regional forest health issues, recent TSR assumptions?

### *Measures*

When an FSP is extended, the DDM may consider whether the measures in the plan continue to meet the approval tests outlined in the FPPR, Sections 17 and 18. The invasive plant measures must specify how the FSP holder will prevent the introduction or spread of species of plants that are invasive plants under the Invasive Plant Regulation, if the introduction or spread is likely to be the result of the person's forest practices. The natural range barriers measures must specify how the FSP holder will mitigate the effect of removing or rendering ineffective natural range barriers.

Considerations that may influence or demonstrate the continued ability of a measure to meet the approval tests include:

- Have any new species been added to the Invasive Plant Regulation? This may be relevant if these species may be found within the area of the plan.
- Is there any new significant information that demonstrates that the measures, as approved, have not successfully resulted in mitigation?

## **Public Review and Comment**

There is no legal requirement in FRPA for an FSP extension to go through the public review and comment process. However, this does not stop a licensee from voluntarily conducting their own review with stakeholders and the public allowing them to bring any specific issue to the attention of the licensee.

## **First Nations Consultation**

First Nations consultation is required for FSP extension decisions to ensure that any aboriginal interests and potential impacts of the decision on those interests are considered and, if necessary, accommodated. Consultation should be conducted in accordance with relevant existing ministry and/or provincial policy. Licensees/BCTS and government should discuss the consultation plan prior to an extension request.

The appropriate depth or level of consultation on an FSP extension decision will be based upon a consideration of the aboriginal interests and the potential impact the decision may have on these aboriginal interests. Consideration must be given to existing aboriginal interest information, aboriginal interest information and concerns raised during the FSP consultation process, as well as aboriginal interest information provided during consultation processes after FSP approval.

Once the FLNRO has reviewed the available information regarding aboriginal interests, and assessed the potential impact an extension may have, a decision should be made on the suggested level of consultation. The existing aboriginal interest information, the potential impact the proposed decision may have on these interests, and the suggested level of consultation should be discussed with the First Nation as part of the consultation process. New information provided by the First Nation during the consultation process regarding the proposed FSP extension decision may require further consideration and an adjustment to the level of consultation may be appropriate.

In many cases, government has made commitments within agreements with First Nations on consultation frameworks, including consultation timelines [e.g. Forest and Range Agreements (FRA) or Interim Agreements on Forest and Range Opportunities (FRO)]. Consultation on FSP extension decisions may be subject to timelines based upon these commitments where such decisions are captured by the agreement. Early engagement with the FLNRO district staff can help in assessing the minimum timelines to be expected in carrying out the consultation process. Any engagement and information sharing conducted by the licensee/BCTS with First Nations leading up to an extension request may be important and relevant information which may help in ensuring an efficient consultation process.

## **Amendments**

If the DDM is not satisfied the FSP meets the extension approval tests, an amendment will be required in order to extend the FSP. Such amendments should be received by the DDM prior to an extension determination (e.g. a copy could be provided as part of the extension request). These amendments may be minor in nature or be an amendment requiring approval. Minor amendments do not require DDM approval and are completed when the FSP holder believes the proposed amendment conforms to FRPA s.5 and “does not materially change” the results or strategies in the FSP (FRPA s.20 (1)). Minor amendments are not subject to review and comment provisions of FRPA and may be

a useful option where minimal changes are required to update the FSP prior to the FSP extension request.

Because there are no clear provisions in FRPA to amend expired FSPs (other than for stocking standards) and because amendments may be needed in order to meet the extension test, a catch 22 situation could arise if an FSP has expired. If that is the case, the extension request should be submitted first and then the amendment(s) or they should all be submitted together. This will allow the DDM to make sure the amendment(s) submitted are complete and approvable (but not yet approve), satisfy the public review and comment and First Nations consultation requirements and then be in a position to turn his/her mind to the extension request first. Having the amendment submissions in hand, the DDM should be in a position to declare him/herself satisfied that the FDU and the results and strategies will be amended so as to be consistent with the established objectives, should the extension be granted. Once the FSP is extended, the submitted amendments can then be approved.

### **Principles to Guide FSP Extensions**

The following principles are designed to provide for an efficient and effective FSP extension process:

- Encourage up-front dialogue between licensee/BCTS and FLNRO review staff well in advance of initiating an FSP extension. This will provide opportunity for all parties to discuss the significance of any considerations that may affect the ability of an FSP to meet the extension approval tests, First Nations consultation plans, and expected timelines.
- Identify and share information relating to forest resource values and associated FSP elements that will be significant to the extension determination. This may include monitoring results, licensee/BCTS and Compliance & Enforcement feedback from FSP implementation, new science, new inventory data, updated strategies, new GAR Orders, etc.
- Concentrate limited FSP development, review, and approval resources on elements of the FSP that have changed, where innovative strategies or operational trials were implemented, on objectives where new, significant information relating to the forest resource value is likely to invalidate the FSP element, on high risks areas/issues or where significant implementation challenges have occurred.
- Embrace professional reliance (PR) during the extension process. The ABCFP report, [\*Applying Professional Reliance Under FRPA\*](#) is a good reference in implementing this principle. Other ABCFP documents on PR include [“Professional Reliance principles for FRPA operational plans and declarations”](#) and [“Applying professional reliance under FRPA”](#).
- Strive for consistency across districts in the review process and determination results where there is consistency in the FSP being extended and the surrounding circumstances. This requires adequate communication of intentions by the FSP holder as well as communication between reviewing districts.

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