



## FRPA General Bulletin

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### The Role of Information and Considerations Influencing SDM Determinations in the Plan Approval Process

#### **1. Background:**

If you are a statutory decision-maker (SDM), you should be aware of a principle of administrative law that requires an SDM to communicate to the person who is subject to the determination any concerns the SDM has that may lead to a decision against the person, before the determination is made. The principle is rooted in procedural fairness. A person whose rights or interests are directly affected by a determination needs to be aware of any factors or considerations that may cause the SDM to rule against them, so that they have an opportunity to respond, with a view to influencing the SDM's decision. This requires that you not only share your concerns with the person, but also that you keep an open mind about them until you have heard and fully considered the person's response to them. Normally, this exchange of information will occur at an opportunity to be heard. Occasionally, it will require a follow-up meeting.

This principle of law does *not* require you to share information with plan preparers until you are actually in the adjudication phase of your determination. That is, it does not require you, during the plan preparation phase, to make plan preparers aware of the kinds of information sources that may influence your determination.

Nevertheless, from an administrative standpoint, it may make sense to make any information that you feel may play a role in your decision-making available to plan preparers early on in the FSP preparation process. This will allow licensees to develop plan content such as results, strategies, measures, and stocking standards with an awareness of the information sources and considerations that may shape your understanding of the government's objectives and the legislative tests. It will also give licensees a fair chance to persuade you to change your view, should they wish to.

It is important to recognize that FRPA is intended to encourage innovation. Accordingly, the sharing of information should not be used, or appear to be used, to tell plan preparers what they can or cannot put in their plans. It should be viewed as a way of improving the efficiency of the plan approval process by starting the discussion on plan content early on with plan preparers.

You should also keep in mind that your determination has to be based on the proper application of the legislative tests to the submitted FSP. You must not fetter yourself by constraining your decision-making with pre-conceived ideas or by blindly following information from any source.

## **2. Possible Information Sources for SDMs to Consider:**

Information or considerations that may influence your thinking about objectives and how to adjudicate the legislative tests can originate from a number of sources. Here are some of them:

1. FPPR Schedule 1 Factors
2. Pre existing commitments or understandings to conduct harvesting operations in accordance with procedures in old FPC DM policies, commonly used practices in the applicable area, etc.
3. Understandings regarding the roles and opinions of professionals in supporting plans, the shift to professional reliance and how this may factor into decisions.
4. Land & Resource Management Plans (LRMPs). In the case of Land Use Objectives established by the Integrated Land Management Bureau (ILMB) from approved LRMPs, the LRMP itself may serve as a starting point for identifying information. A further analysis of the plan may identify specific information that may become a consideration that influences the approval decision. Further, approved LRMPs which have no established Land Use Objectives in place at this time, may also provide valuable information or considerations supporting other objectives. LRMPs reflect the social choices by the government of the day with respect to balancing across a wide range of values.
5. First Nations land use plan input may be considered in concert with government consultation efforts. Similarly, outcomes from any consultation MOU's or government to government discussions may produce considerations.
6. Delegated Decision Maker (DDM) policies. Any relevant district administrative policies, guidelines, planning products.
7. Any specific consideration required to be adjudicated for consistency within/between objectives. This becomes critical where the information is not self explanatory and/or there are multiple information sources (as discussed above). Ideally this will have been reflected and resolved in the objectives matrix.
8. Relevant Inter Agency Management Committee (IAMC) or Regional I Team guidance documents.
9. Public comment. To the extent comment is based on informative information, which would generally be scientific or academic in origin and not simply individual opinion.

Once you have identified information or considerations for licensees that you believe may influence your approval determinations, the FSP developer can evaluate this information with respect to their intended plan content and the requirements of the approval tests. A simplified diagram showing the role information sources and considerations influencing decisions within the FSP approval process is attached.

Through appropriate process, both the plan preparer and the SDM (and their staff) can develop a common understanding of the risk to each value and the specific requirements for the approval test. Identifying information and considerations that you may consider during your

adjudication of the plan does not, in itself, fetter your discretion, as long as you do not treat it as binding, nor does it necessarily provide the only legislatively permissible practice or stewardship for an area. Professional reliance and licensee choices will still determine what is included in a proposed FSP.

### **Contacts**

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