



FRPA GENERAL BULLETIN

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Wildlife Habitat Objectives: Considerations Respecting the Content of Forest Stewardship Plans

Introduction:

This bulletin sets out the primary considerations for the preparation and adjudication of results and strategies addressing the objective for wildlife in the Forest Planning and Practices Regulation, Section 7(1), and other wildlife objectives set by government that are applicable for the purposes of the *Forest and Range Practices Act*.

Discussion/Policy Advice:

1.0 The Role of FPPR Section 7(2) Notices

When a Notice is given by the Minister of Environment (or delegate) under Section 7(2) of the Forest Planning and Practices Regulation, results or strategies in proposed forest stewardship plans (FSP) must be consistent with the FPPR 7(1) objective. The Notice acts as a “trigger” for the FPPR 7(1) objective. The effect of the Notice under FPPR 7(2) is to specify the habitat indicators that form part of the objective. The Notice is, by way of the regulation, required to be comprised of indicators that add specific detail to the objective stated in the regulation.

The FPPR 7(2) notices have been set up to cover forest districts (for Species at Risk) or TSA/TFL (for Ungulate Winter Range) due to the source of the "account" for Species at Risk (SAR) and Ungulate Winter Range (UWR) as per government's timber impact policy for these categories of species. For SAR, up to 1 percent of the THLB in a forest district is available to invest in government actions for the purposes of conserving habitat of SAR. For UWR, government actions to conserve the habitat of wintering ungulates must be consistent with the amount of THLB managed for these purposes as reflected in TSR II.

In addition to providing the procedural “trigger” for the Section 7(1) objective, the Notice sets out key elements of the objective, and therefore, provides legal influence on the content of results or strategies proposed by a *Forest Act* agreement holder in an areas of land to which the objective pertains:

Specifically, FPPR Subsection 7(2) specifies that the Notice provides:

- “*the applicable* ... species referred to in subsection (1) [i.e. *in the objective*], and
- “*the applicable* ... indicators of the amounts, distribution and attributes of ... habitat described in subsection (1) [i.e., *in the objective*]

The species and habitat that apply under the objective are only those as set out in the notice. Put another way, when Subsections (1) and (2) are read together, the objective essentially becomes the following:

....conserve sufficient wildlife habitat in terms of amount of area, distribution of areas and attributes of those areas [*the applicable indicators for which are provided in the Section 7(2) notice*] for:

- (a) the survival of species at risk,
- (b) the survival of regionally important wildlife, and
- (c) the winter survival of specified ungulate species,

[*which species are provided in the Section 7(2) notice*]

As a result, this can only mean that the results and strategies for this objective must be consistent with the objective *as it applies to the species and habitat indicators in the Notice*. Thus, the contents of the notice have legal significance that directly influences the preparation and adjudication of results and strategies.

To clearly illustrate, consider a Notice that addresses mountain caribou and sets out indicators of amount, distribution and attributes of habitat that focus on feeding needs in winter. Would a result or strategy that spoke to parakeets and committed to provide for cages and food for all parakeets in the FDU be consistent with the Section 7 objective as it pertained to the caribou? The answer must be “no”. The reason we know that is because of the *content* of the notice, not merely because the notice triggered the objective.

Before a Notice is given, both government and industry should be confident that results/strategies can be written for the FPPR Section 7(1) objective as legally activated regarding the species and indicators in the Notice. In other words, a critical check must be done on the contents of all Notices to ensure that a result/strategy can be written for the objective in light of Notice content. This critical check was carried out on all Notices, in consultation with forest sector representatives, prior to the Notices having been given by the minister’s delegate.

1.1 Content of Notices Applies within Forest Development Units (FDU)

Every FSP to which the FPPR 7(1) objective applies, as activated by a particular FPPR 7(2) Notice, must be consistent with the objective. A single FSP cannot be expected to address all of the information comprising the Notice, *unless* it encompasses the whole management unit to which the Notice pertains, *and* there is habitat of the species listed in the Notices in the FDU of that FSP. All the forest stewardship plans for a management unit cannot be expected to address any more area of habitat than what the Notice sets forth as the scope of the 7(1) objective for a species.

Persons preparing or adjudicating a plan should consider the circumstances in the area of the plan, and how the objective might apply, considering available information. They must determine whether there is suitable habitat in that area that requires attention with respect to the location of an FDU. If there are occurrences and habitat, they must then craft results or strategies that pertain to that FDU. Persons must consider how much of the “indicator of amount” from the Notice should be addressed in the results or strategies that pertain to an FDU, given the location of the FDU, and how the habitat is distributed considering available information, including the “indicators of distribution” and timber supply implications.

Results or strategies in a proposed FSP must be consistent with the FPPR 7(1) objective, *only in as much as the FPPR 7(1) objective and information in the Notice is relevant to an FDU in a proposed FSP*. It may be that an FDU in a proposed FSP does not encompass an occurrence of species named in the Notice, or does not encompass suitable habitat for such species. In these circumstances, and considering the definition of “result” and “strategy”, it serves no purpose under the statute or regulation to specify results and strategies for a species or its habitat that is not within a FDU.

If a person is preparing an FSP for a portion of the area to which a Notice pertains, it is appropriate within the legal framework to address *only* that portion of the Notice that applies in the Forest Development Units (FDU) for which planning is being done, considering information that indicates the relevance of the Notice in the area of planning.

Where a person finds that the information in the Notice, and information available from other sources, shows that a species does not occur in the portion of the [district, TSA, TFL] in which they are planning, it is legally acceptable to choose not to prepare plan content for that species. It would be appropriate under the FRPA framework to simply state in material supporting a proposed FSP that the species does not occur within FDU in the plan area, or that there is no suitable habitat in any FDU in the plan that would be subject to consideration of the objective. A person preparing a FSP may be able to make this assertion and support it during plan adjudication by relying on information on the occurrence and distribution of suitable habitat obtained from agencies or otherwise acquired by an initiative of the *Forest Act* agreement holder.

2.0 Background Information Documents and other Information Available from Government

Statements or other information that:

- is described as “material supporting the notice but not part of the notice” or as “background information and support to the legal framework of the [Section 7(2)] Notice”; or
- is not related to the amount, distribution or attributes of habitat, or an identification of the species under Section 7(2)(a),

is not binding on a person preparing or adjudicating an FSP, nor does it have legal standing.

Information is supplied by MOE as a service to persons preparing and adjudicating plan content. This information may be considered by a person preparing a plan, and may be considered relevant and significant information in the mind of a person adjudicating plan content against the requirements of the statute and regulation. For example, a decision maker may examine the information provided by MOE to ensure that all aspects of the Notice that are relevant to FDU in a proposed FSP have been addressed in the content of a proposed plan.

A person preparing results or strategies for the FPPR 7(1) wildlife objective should purposefully consider information from government’s land use policy (Cabinet approved LRMPs) where it exists in the area of proposed planning. Some LRMPs are not a source of objectives set by government, and as such, may only be considered as Cabinet approved land use policy. However, these Cabinet approved documents are a rich source of information on government’s land use policy for wildlife in an area, and should be considered by a person preparing or adjudicating results and strategies for the FPPR 7(1) wildlife objective.

3.0 Voluntary Content for Species that are Not Listed in a Notice, or not Specified in an Established Objective

To address the concerns of non-government organizations and First Nations, persons preparing a FSP may consider voluntary content to address habitat requirements of species for which there is no established objective. Persons considering this course of action are cautioned to carefully consider the plan content requirements set out in statute and regulation, and consider the extent to which content that does not pertain to an established objective for wildlife could create administrative complexities in FSP adjudication, and could unreasonably increase public and First Nations expectations about habitat conservation.

If a person preparing a FSP is convinced of a requirement to add plan content for a wildlife species for which there is no established objective, and wishes such content to be legally binding, it would be best that such content be set against one or more of the established objectives in the area of the plan. For example, there may be no established objective for pine martin. Plan content for this species could be set up to

pertain to the FPPR 8 objective for riparian management areas, and the FPPR 9.1 objective for biodiversity at the stand level. Once approved, such content would be subject to Section 21 of the statute.

FRPA does not expressly prevent a person who is preparing an FSP from including results and strategies that do not pertain to established objectives for wildlife. The DDM may examine all plan content, and may request removal of voluntary plan content that is not determined to pertain to an established objective for wildlife. The DDM cannot apply the statutory tests to voluntary results and strategies that do not pertain to established objectives. This voluntary content should not remain in a FSP, as once the plan is approved, the content could be (wrongly) perceived by certain interests as binding legal commitments. Such confusion could create needless public disputes for government and the *Forest Act* agreement holder.

A DDM may determine that voluntary results/strategies for wildlife pertain to one or more of the established objectives. It may not have been the intent of the person preparing the plan that such voluntary content become subject to the statutory approval tests. If approved, such content may become subject to Section 21 of the Act, and the holder of the approved plan will be required to comply with the requirements of the statute. It would be prudent for persons submitting FSPs to clearly indicate to the DDM what portions of the plan do not pertain to established objectives. DDM may choose to check such intent with the person who prepared the plan before proceeding with a determination. If there is no intent for voluntary content to become part of the plan approval considerations, then it should be removed from the plan, or be specially denoted in the plan or in the DDM approval rationale as not part of the approved FSP.

Plan content that does not pertain to an established objective cannot be considered in any balancing exercise requested of a delegated decision maker under Section 27 of the Forest Planning and Practices Regulation.

4.0 When Considering Proposed Plan content for wildlife objectives

The following are key points to consider when adjudicating plan content for established wildlife objectives:

- Is there evidence that the person who prepared the plan considered the FPPR 7(2) notices, or established objectives for wildlife from land use plans?
- Is there plan content that addresses the FPPR 7(1) objective, as it reads considering the information provided in the Notices?
- Is there plan content for all other established objectives for wildlife?
- Do the statements comprising plan content meet both components of the definition of “result” or “strategy” as set out in the FPPR, including a description of the situations or circumstances that would determine where in the plan’s FDU the outcomes, steps or practices comprising the results or strategies will be applied?
- Considering FPPR 7(2) Notices, does the plan content address a reasonable amount of the required area of habitat for each listed species, given consideration of the distribution of each species relative to the area covered by proposed FDU in the proposed FSP? Note that background information provided to support consideration of the Notices could form the basis for this aspect of plan review.
- Is it evident that the results/strategies address the distribution of habitat and attributes of habitat as set out in the Notices in a reasonable manner?

The mapping and information government has made available as background information to support the Notices is the information base that MOE would use to establish UWR or WHA for each listed species. Where MOE has supplied shape files for winter habitat or habitat for SAR, such mapping represents government’s best approximation of the future location of UWR and WHA for the listed species.

- Where the plan content varies from information that is available for a wildlife species, has the person who prepared the plan provided a reasonable explanation for the variation?

- Where there is information on draft WHA or UWR, is there a reasonable explanation for the variation from what government has provided as an indication of management intent?
- If the FSP includes mapped habitat polygons to meet the definition of “result” or “strategy” are these polygons mapped differently than information available from government? Is there a plausible explanation?

A DDM should ask for the information and rationale that has been used by the professional forester in preparation of the FSP. The preparing professional forester, or the professional biologist working with them, should have this rationale on file consistent with professional standards of practice.

- Is the area of land encompassed in the mapped polygons actually suitable habitat for the target species?
- How does the professional who prepared the plan know the area is suitable habitat when government information or other professional assessments might suggest differently?

Again, a DDM should ask for information about habitat suitability from the professionals who prepared the plan.

It may be that no suitable habitat exists within the area of proposed FDU. In such cases, plan content cannot be required. The planner should explain this set of circumstances in information provided to support the proposed FSP. In other circumstances, it may be that a FDU fully covers the habitat for a species - in which case the planner had must show how they have accounted for the full amount of habitat as set out in the Notices, considering the initiatives of other *Forest Act* agreement holders operating in or about the area of their FSP.

4.1 Multiple forest stewardship plans over a common area, addressing the same wildlife objectives.

There will be cases in the province where a person preparing a FSP will know of other plans for the same area of land, possibly with overlapping FDU. These other plans may be submitted for approval, or may have already been approved. These circumstances will pose a substantive challenge when preparing and adjudicating plan content pertinent to FPPR 7(1) - a challenge that may only be fully solved when the minister responsible for the *Wildlife Act* acts under FPPR 7(3), concurrent with establishing WHA and UWR in the area of the plans. There will be cases where the a-spatial nature of an established land use objective for wildlife could create similar challenges.

Where a DDM knows of the potential for cumulative inconsistency with the wildlife objective, and is aware that overlapping plans are being prepared, they may inform persons preparing the plans of the importance of integrating their planning efforts in a manner that does not create conflicts between the content of respective plans. There may be reason for an agreement holder to exercise the provisions of section 9 of the Act and section 19 of the *Forest Planning and Practices Regulation*. Under section 9 of the statute, the DDM as the minister’s delegate, may establish proportional targets for sharing of responsibility for government’s objectives among the holders of forest stewardship plans. Section 19 of the *Forest Planning and Practices Regulation* provides instruction for the exercise of section 9 of the statute, and provides for an order to be given by the DDM that is binding on the involved agreement holders.

Special challenges arise when the content of a *new* plan being prepared for submission is found to conflict with the content of an *approved* FSP. This situation would arise due to the cumulative effect of the proposed plan and the approved plan such that the prospective cumulative outcome is inconsistent with the established objective. It may not be possible to submit the new plan and expect DDM approval where there is knowledge of a cumulative inconsistency with the wildlife objective created by the new plan, in light of the approved plan.

Where this situation occurs, there should be respectful dialogue between the persons who prepared each of the “competing” plans in order to seek a solution to the problem. The persons who prepared the competing plans will be required by professional standards of conduct, and professional ethics, to consider amending their plans to the extent required to integrate plan content, in order to allow for collective consistency with the established objective.

Where dialogue between the persons responsible for the competing plans does not result in a solution that allows the plans to collectively be consistent with the established objective, the DDM may be requested by the agreement holders to use FRPA 9 and FPPR 19. Where the DDM gives an order that sets out the respective responsibilities of each involved agreement holder, each plan whether approved or not, will need to be amended to the extent required to address the targets established by the order.

There is an alternative option whereby the affected *Forest Act* agreement holders consult with the Ministry of Environment, Regional Manager (Environmental Stewardship). This consultation would seek an expedited local initiative that would employ government actions for the purpose of providing the requisite spatial and operational specificity to resolve the planning challenge with respect to wildlife habitat.

5.0 Considering the definitions of “result” and “strategy”.

Note that the following considerations apply to all “results” and “strategies” crafted in respect of an established objective.

It is important that professionals preparing results or strategies, and staff supporting DDM, examine proposed results and strategies in light of *both* parts of the definition of “result” and “strategy” as set out in the *Forest Planning and Practices Regulation*. There is a tendency for proposed results and strategies to miss the second part of the definition, which results in the absence of required content describing the situations and circumstances that determine where in a FDU that measurable or verifiable outcomes, steps or practices will be applied.

It is not sufficient under the law to simply state that a result or strategy applies **to** an FDU. The plan content must *describe the situations and circumstances that determine where in* an FDU the outcomes, steps or practices will be applied. There are a number of ways that this description can be provided, including use of mapping.

With respect to results or strategies to address wildlife objectives, not only should there be attention to the amount of habitat to be conserved, but also the situations and circumstances that determine where in an FDU that the results or strategies will be applied. Where statements proposed as plan content do not address both elements of the two definitions, the proposed plan content for wildlife is inconsistent with the law. As compliance and enforcement for wildlife habitat conservation rely entirely on approved plan content, it is imperative that the definitions of “result” and “strategy” be pointedly addressed by the plan content. An explanation of the manner in which plan content meets the definitions should accompany a proposed FSP.

6.0 COSEWIC, recovery planning and FRPA.

For the purposes of FRPA, the public interest in the conservation of habitat for categories of wildlife is established by government. At the date of publication of this bulletin, government has acted only to establish the public interest in species at risk and in wintering ungulates. No action has yet been undertaken by government to address regionally important wildlife.

There are often questions regarding the planning implications under FRPA for species listed by COSEWIC, or for species that are the subject of recovery planning initiatives. Simply put, while a species at risk may be

listed by COSEWIC, or may be the subject of a recovery plan, there are no obligations under FRPA until such time as either:

- The Minister of Environment, under authority of the *Government Actions Regulation*, includes that species in a category of species at risk, and a Wildlife Habitat Area or Specified Area is established with General Wildlife Measures, or
- the species is named in an objective set by government, or
- government takes other actions as may be deemed necessary to implement components of an action plan recommended by a recovery planning team that would apply for the purposes of forest practices legislation.

There have been instances where information is available from recovery planning or from the scientific community regarding the requirements for habitat conservation to enable species recovery. It is appropriate that professionals preparing FSP content consider such information. However, for the purposes of preparing an FSP, such information has legal standing only to the extent set by government in a Notice under section 7(2) of the *Forest Planning and Practices Regulation*, and as may be reflected in the cumulative area of Wildlife Habitat Areas established by the Minister of Environment in a Forest District, consistent with government's timber supply impact policy.

A person preparing an FSP may choose to voluntarily develop measures that may conserve more habitat for a species than what is set out by government as appropriate in the public interest for that species. Such initiative would be completely at the prerogative of the *Forest Act* agreement holder and their professionals, and would not be part of their obligations under the *Forest and Range Practices Act*.

7.0 Section 7(3), Forest Planning and Practices Regulation

Section 7(1) of the regulation, working in concert with section 7(2) is meant to act as a legal "placeholder" to effect wildlife habitat conservation for the purposes of FRPA. Government's intent is that these provisions will only have legal effect for as long as it takes to complete establishment of UWR, WHA, Specified Areas and Wildlife Habitat Features within a forest district or forest management unit.

As UWR, WHA or Wildlife Habitat Features (WHF) are established in a forest management unit or forest district, there is a reduction in the area of habitat that must be addressed when preparing plan content consistent with section 7(1) as triggered by 7(2). When the cumulative area of government actions for specific species meets targets consistent with the amount of area set out in the Notices, section 7(1) will cease to have legal effect by way of exemptions under 7(3).

When each Order for a UWR, WHA or Specified Area comes into effect, there is a clause in each Order that states the extent to which the government actions in those Orders have reduced or eliminated the need for results and strategies for section 7(1). When the amount of habitat set out in a notice is completely "converted" to wildlife habitat land designations, the Ministry of Environment will systematically eliminate the section 7(2) Notices that are on record.

Further Information:

The following ftp link provides access to government's section 7(2) Notices and associated background information documents.

FPPR 7(2) Notices:

ftp://ribftp.env.gov.bc.ca/pub/outgoing/cdc_data/Approved_FRPR_sec7_WLPPR_sec9_Notices_and_Supporting_Info/

General information: <http://www.env.gov.bc.ca/wld/>

Wildlife Habitat Areas: http://www.env.gov.bc.ca/wld/identified/wha_areas.htm
Ungulate Winter Ranges: <http://www.env.gov.bc.ca/wld/uwr/index.html>

Further information is available from regional staff of the Ministry of Environment (Environmental Stewardship Division, Ecosystems and Fish/Wildlife sections), and through regional website addresses available from staff contacts in each of the 9 Regions of the Ministry of Environment, Environmental Stewardship Division.

Regional links:

Kootenay: <http://www.kootenayspatial.ca/xsql/ksdpmenu01.xsql>

Peace: ftp://ftpprg.env.gov.bc.ca/pub/outgoing/Peace_Region_Wildlife_Values/

Cariboo Chilcotin Land Use Plan: <http://srmwww.gov.bc.ca/car/planning/cclup/frpa.htm#species>

Omineca: <http://wlapwww.gov.bc.ca/omr/esd/eco/uwr.html>

It is widely recognised and respected that many *Forest Act* agreement holders have taken the initiative to carry out habitat inventories in support of forest stewardship planning. Where this information has been acquired by use of scientifically accepted inventory and resource assessment standards, it will comprise an important addition to government's corporate information.

Resource inventory standards for BC may be viewed at:

http://www.gov.bc.ca/bvprd/bc/program.do?action=keyInitiative&programId=536880962&navId=NAV_ID_province&userTemplate=landInfoBCUser&crumb=B.C.+Home*Land+Information+BC&crumburl=%2Fhome.do*%2FkeyInitiativeHome.do%3Faction%3DlandInfoBCUser

When FSP content is based on inventory and assessment information that is not yet available to government, it will be important that this information be referenced in any rationale accompanying the FSP. For species and habitats that require complex management solutions, it would be helpful for the purposes of FSP administration that this additional information be made available to decision makers. This information should be made available to inform collaboration with ministries working to prepare government actions intended to replace FPPR 7(1).

In some cases, the information that has been acquired by non-government initiative is important to the ongoing consideration of the conservation status of certain species. In cases where information on species and their habitats is withheld from government, considerations of conservation status will not be able to capitalise on the new information, which could result in needless, increased constraint and interference in forestry operations.

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Contacts:

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

Rodger Stewart
Jeff Hoyt

(250) 398 4549
(250) 356 7789

Rodger.Stewart@gov.bc.ca
Jeff.Hoyt@gov.bc.ca