Ministry of Forests

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Residual Fibre Guidance for BCTS Clients

Purpose

This bulletin is intended to assist BCTS clients in understanding voluntary options as well as mandatory requirements that are focused on improving the use of residual/lower quality timber on timber sale licences (TSL) in areas where there is a demand for the residual fibre by secondary users. Where there is a discrepancy found between content in this bulletin and the legislation, the legislation supersedes this bulletin.

Definitions for the Purposes of this Bulletin

Residual fibre – Crown timber in an area that is cut but not removed from the area. (section 79.1 *Forest Act*)

Business-to-business relationships (B2B) – Business relationships between two or more individuals or corporations that are independent of government.

Primary harvester – In the case of BCTS, this is a TSL holder. The terms primary harvester and TSL holder are used interchangeably in this document.

Secondary users – Individuals or corporations, other than the TSL holder, that have a facility that processes residual fibre. Examples include: pulp mills, pellet plants, bioenergy facilities, and other users of low quality logs.

Industrial activity – as defined in section 1(3) of the Wildfire Regulation

Prescribed activity – as defined in section 11 of the Wildfire Regulation

Business-to-Business Relationships

The most efficient method of harvesting residual fibre is through business-to-business relationships between primary harvesters and secondary users during the term of the TSL. This leads to cost-effective removal of residual fibre through integrated methods where residual fibre is removed concurrently with primary harvesting under the TSL timber mark. Primary harvesters and secondary users are encouraged to share information on harvesting opportunities and negotiate fibre supply agreements.

The Timber Sales Manager (TSM) may assist in initiating B2B arrangements by initiating contact with secondary users to better understand their needs and the locations within a BCTS operating area where they consider it an economical haul distance to their processing facilities. The TSM can then ensure the secondary users are aware of TSLs planned in these areas as well as ensuring that primary harvesters are aware of the demand for their residual fibre. Communication between the TSM and BCTS clients that are primary harvesters may occur either prior to auction or after TSL issuance. Communication between the TSM and secondary users is most effectively initiated when new harvesting areas are being planned but can occur at any time.

It is through effective communication channels that integrated methods may be promoted. The Concurrent Residual Harvest System[1] (CRHS) is not available to BCTS TSL holders due to unresolvable significant issues it may create in the

[1] For information regarding the Concurrent Residual Harvest System, please go to the following weblink: Timber Measurement - Ministry of Forests (gov.bc.ca)

If this weblink does not work for some reason, please do a web search with the key words “concurrent residual harvest system” and either “coast” or “interior”

bidding process. If the TSM is aware of potential secondary users interested in residual fibre in a particular area, the TSM is encouraged to offer these TSLs as cruise-based sales since there are no waste assessment requirements with cruise-based sales. This will facilitate the removal of residual fibre from the TSL concurrent with primary harvesting operations on the TSL. Note that TSLs in fibre recovery zones must be scale-based in accordance with the limitations and exceptions in section 2.2.3 of the Coast Appraisal Manual.

With scale-based TSLs, after the primary harvester has declared Primary Logging complete, a waste assessment must be completed prior to the removal of residual fibre from the TSL. Primary Logging complete declarations may be made at the block level and the clock will then start ticking for waste assessments on a block by block basis. Table 1 below compares differences in responsibility for waste and scaling requirements between a B2B relationship and a Fibre Forestry Licence to Cut (FFLTC).

TSLs may contain a clause that states that the Licensee may manufacture special forest products on the cutting authority area provided that the manufacturing of those products does not commence until after the quantity and quality of the waste on the cutting authority area has been determined through a waste assessment. The TSL clause with a restriction on the manufacture of special forest products does not apply for cruise-based sales because there is no requirement for a waste assessment for these licences.

If a primary harvester is interested in entering into a B2B relationship with a secondary user that will involve the manufacture of special forest products, there are a number of considerations the primary harvester needs to be aware of:

- The manufacture of special forest products must comply with the requirements in the Scaling Regulation and Scaling Manual,
    - Section 12.2.1 of the Scaling Manual requires authorization by the District Manager to process timber into a special forest product.
- Discussions and agreement with the secondary user should be initiated as soon as possible after issuance of the TSL,
- The time required for completion, submission and approval of waste assessments prior to the secondary user beginning to manufacture special forest products.
- Activities associated with the manufacturing of special forest products must be completed prior to the expiry of the TSL.
- Requirements under the Wildfire Act and Regulation, regarding fire hazard assessment and abatement, must be complied with.
- Guidance and tools to assist in understanding fire hazard assessment and abatement requirements are available through weblinks on the BCTS website.
- Please refer to Advisory Bulletin No. 2024/05/24 – "Timber Sale License – Fire Hazard Assessment and Abatement" on the BCTS website under BC Timber Sales – Policy, legislation and Information updates – Advisory Bulletins.

If a secondary user is interested in a specific licence for residual fiber, it is recommended that they supply relevant information of their needs and requirements to the primary harvester. The type of information they should share includes: plant locations, fibre supply needs, and operational and economic constraints, approximate timing of delivery of residual fiber, and any operational requirements (e.g. access, turn arounds for chip/bin trucks, switch backs etc.). The TSM may assist in this information exchange by creating a registry of secondary users within the BCTS Operating Area to provide a link between primary harvesters and secondary users. Both primary harvesters and secondary users are encouraged to share planning and operational information with each other in a timely manner.

It must be recognized that primary harvesters have full legal rights to the residual fibre and will have full discretion as to which secondary users they choose to do business with. The TSM is not part of the negotiations between primary harvesters and secondary users in establishing their B2B relationships.

In a B2B relationship, the primary harvester remains responsible for all obligations on the TSL (please see Table 1 below).

Access to Residual Fibre when B2B relationships have not developed

There may be cases where a secondary user has expressed a demand for residual fibre on specific TSLs through direct communication with primary harvesters, but a B2B relationship has not materialized.

When this circumstance arises, the TSM may initiate a more formal process to ensure access to the residual fibre outlined in the steps below. These steps move through the sequence of orders available to the TSM under section 79.1 of the *Forest Act* and culminate in the issuance of a FFLTC within 60 days of the Licensee giving notice to the Minister (TSM) that they are abandoning the holder's rights to the identified residual fibre.

Prior to initiating the steps leading to a FFLTC, the TSM will need to consider the following:

- What the primary harvester's intentions are for the residual fibre and whether they may yet dispose of the residual fibre in a B2B arrangement,
- Any road deactivation concerns,
- The fact that a waste assessment must be completed prior to the issuance of a FFLTC (scale-based TSLs only),
- The steps leading to a FFLTC can only be initiated on a TSL that has not yet expired.

Steps Leading to FFLTC Issuance (section 79.1 *Forest Act*)

These steps can only be initiated after the Licensee has commenced harvesting operations and must all be completed in sequence before a Fibre Forestry Licence to Cut can be issued.

1) Mandatory Residual Fibre Reporting
   The TSM may order a TSL holder to submit residual fibre reports and the order may specify the timelines for the TSL holder to report and what format the reports must take. Residual fibre reports must include:
   - The TSL holder's timing of operations on the TSL
   - TSL holder utilization levels (i.e. sawlog, pulp log, minimum log diameter, minimum log length)
   - Estimates of the volume of residual fibre,
   - Estimates of how much of the residual fibre the TSL holder is willing to abandon, and
   - Provide a map with the location of the residual fibre the TSL holder is not going to utilize.

2) Issuing Orders Not to Damage Timber
   If the TSL holder has verified that residual fibre is not going to be utilized, the TSM orders the TSL holder not to damage some or all of the residual fibre for a period of time specified by the TSM in an area specified by the TSM. The area specified:
   - Is along roads and on landings,
   - Must not include any timber that has not been felled,
   - Must be identified on a map to accompany the TSM's letter containing the order not to damage,
   - The TSM's letter containing the order must include a request for the TSL holder to notify the TSM that the TSL holder is willing to abandon their rights to the identified residual fibre (i.e. notice of abandonment) and specify its location.

3) Abandoning and Cancelling TSL Holder Rights to Residual Fibre
   If the TSL holder gives the above notice of abandonment to the TSM, for a period of 60 days starting on the day the notice is received by the TSM:
   - The holder of the TSL may not deal with the residual fibre identified in the notice without the consent of the TSM;
   - The TSM then:

i. By order specifies some or all of the residual fibre identified in the notice and deem, as abandoned, the rights of the holder of the TSL to the residual fibre specified in the order,
ii. On the date the TSM makes the order deeming the rights of the TSL holder to be abandoned, all rights of the TSL holder to that residual fibre are cancelled.

- As soon as practicable after the date the TSM makes the order specifying rights to some or all of the residual fibre deemed abandoned, the TSM must give the TSL holder:
  i. A copy of the order, and
  ii. A written notice stating that the rights of the TSL holder respecting the residual fibre specified in the order are cancelled.

4) Issuing a Fibre Forestry Licence to Cut

Once the TSL holder's rights to the residual fibre have been deemed abandoned and a waste survey has been completed by the TSL holder and accepted by the District, the TSM may issue to a person, other than the holder of the TSL, a Fibre Forestry Licence to Cut (FFLTC) specified in section 47.6(2.11) of the *Forest Act* that includes the area that is subject to the order. The FFLTC must be issued within 60 days after the notice of abandonment is received by the TSM (section 79.1(6) of the *Forest Act*).

A FFLTC for residual fibre contains the following legal aspects:

- Issuance of a FFLTC permanently transfers hazard abatement obligations to the holder of the FFLTC under section 12.2 of the Wildfire Regulation, but just for the area under the FFLTC,
- The authority to use and maintain roads within the FFLTC area may be included as a standard clause in the FFLTC similar to onblock authority in a TSL,
- The TSM must request an appropriate security deposit, in accordance with the Advertising, Deposits, Disposition and Extension Regulation, to cover the potential risks for completing any FFLTC obligations that the FFLTC holder does not comply with (e.g. abating the wildfire hazard and deactivating roads).
- The TSM issues the FFLTC, and any associated Road Permit, on behalf of the District Manager and it is the District Manager that is responsible for administration and compliance with the requirements of the FFLTC and Road Permit. If a FFLTC, and associated Road Permit, has been issued and the FFLTC holder has not completed all the obligations under the FFLTC and Road Permit, the TSM cannot fund/pay for completing these obligations under section 109 of the Forest Act. Ensuring compliance with the obligations is the responsibility of the District Manager. However, the TSM may realize funds from the deposit to complete an obligation on behalf of the FFLTC holder.

Expired TSLs

All rights to the residual fibre on a TSL revert to the Crown upon the expiry of the TSL regardless of the fact that the TSL holder may have paid for a waste assessment for the TSL. The payment of waste is a "penalty" for the failure to remove merchantable fibre and does not provide any rights to that fibre.

The primary purpose behind the issuance of orders under section 79.1 of the *Forest Act* that lead to the issuance of a FFLTC is to give the TSM or the District Manager the authority to intervene in circumstances where there is a demand for residual fibre that is known to be present on a TSL with a term still in effect, and prevent that residual fibre from being destroyed by the person who holds the rights to it. Once the TSL has expired, the TSL holder no longer has rights to the residual fibre and therefore a FFLTC and its associated orders cannot be issued. If a FFLTC has not been issued prior to the expiry of the TSL, the only licence option that remains is:

- An FLTC issued by the District Manager under the *Forest Act* section 47.6(2).

If the District Manager issues an FLTC, this does not relieve the TSL holder from the obligation of fire hazard assessment and abatement and the TSL holder may be compelled to destroy the residual fibre despite any action underway by the District Manager to issue a FLTC. Section 12.2 of the Wildfire Regulation does not apply in this situation. Therefore, when there is interest in residual fibre on an expired TSL, it is crucial that there is effective communication between all parties followed by the expeditious disposal of the residual fibre by secondary users.

Note that when an FLTC has been issued by the District Manager under section 47.6(2) of the *Forest Act*, the FLTC holder is only transferred responsibility for fire hazard abatement for the FLTC areas that overlap with the TSL if they initiate an industrial activity or prescribed activity on this area. Therefore, if the District Manager issues an FLTC and the FLTC holder has not initiated any activity, the TSL holder remains responsible for fire hazard abatement for the entire area of the TSL.

Transfer of Obligations

Before a FFLTC is issued, there may be some other forest tenures and obligations that may be required to be transferred to the FFLTC holder.

For example, the TSL holder may hold a Road Permit to access the TSL that the secondary user will also need to use to access the FFLTC. The TSL holder and the secondary user may negotiate amongst themselves as to who will deactivate the Road Permit Road and when deactivation will take place, but if this occurs, from the BCTS perspective, the deactivation obligation will remain with the TSL holder. An alternative approach is for the TSL holder to deactivate any portion of the Road Permit that is not needed to access the FFLTC. The entire Road Permit can then be closed, and a new Road Permit can simultaneously be issued to the secondary user for the portions of the original Road Permit that have not been deactivated. The secondary user will then assume the responsibility for deactivating any roads under the new Road Permit.

If the entire Road Permit road is to be used by the secondary user, the Road Permit should be transferred to the secondary user in accordance with the transfer provisions of Part 4 of the *Forest Act*. Contact a BC Timber Sales Office for a copy of the *Disposition of a BC Timber Sales Agreement Overview and Procedures – October 2020* for further information regarding transferring an agreement.

Fire hazard assessments and abatement obligations are automatically transferred to the secondary user (holder of FFLTC) under section 12.2 of the Wildfire Regulation, but only for the area under the FFLTC. The responsibility for fire hazard assessment and abatement for the remainder of the TSL area will continue to be the responsibility of the TSL holder.

Table 1: - Comparison of B2B vs FFLTC

	EMS	Fire Hazard Abatement	Road Deactivation	Waste Assessment	Scaling Requirement	Stumpage
B2B	Responsibility of primary harvester	Responsibility of primary harvester	Responsibility of primary harvester	Responsibility of primary harvester for scale-based TSL	Responsibility of primary harvester.	Responsibility of primary harvester
FFLTC	EMS does not apply to cutting authority area of FFLTC	Responsibility of secondary user just for the area of the FFLTC	Responsibility of secondary user for area of FFLTC if authority to use and maintain was given in FFLTC and for all sections of road where a Road Permit has been issued to the secondary user.	Not required	Responsibility of secondary user	Responsibility of secondary user

Table 2 – TSL Term Expired vs Term in Effect Comparison

	FFLTC may be issued	TSL holder has rights to residual fibre	Fire Hazard assessment & abatement must be completed	Road Deactivation must be completed
Expired TSL	NO	NO	YES (by the TSL holder except DM issued FLTC holder responsible when it has initiated an industrial activity or prescribed activity on FLTC)	YES (by the TSL holder)
TSL Term in Effect	YES	YES	YES (by the TSL holder for the area outside of the FFLTC and by the FFLTC holder for area under the FFLTC)	YES (responsibility will vary).

Other Resources

Ministry of Forests Tenures Branch Residual Fibre Utilization Operational Support

Contacts

For further information regarding this bulletin please contact your local business area.

BC Timber Sales - contact us - Province of British Columbia (gov.bc.ca)