



Coast Region FRPA Implementation Team (CRIT)

Exemption from Obligation to Establish a Free Growing Stand Due to Damage by Roosevelt Elk Guidance

1) Introduction

The intent of this document is to provide information and guidance for consideration when preparing or reviewing a request for exemption under *Forest Planning and Practices Regulation* (FPPR) section 91(1) from the obligation to establish a free growing stand as specified under *Forest and Range Practices Act* (FRPA) section 29 and 29.1 as one means of addressing significant Roosevelt Elk damage.

2) Background

One of the challenges facing the coastal forest sector regarding the legislated obligation to establish a free growing stand is dealing with the damage to regenerating stands caused by Roosevelt Elk prior to a free growing stand declaration. Under the “Quick Win” process¹, the joint agency/industry Coast Operational Issue Forum (OIF) identified and sought resolution to various forest industry and government issues. One of the Quick Win issues outlined a concern that expanding Roosevelt Elk herds were increasing the cost of meeting free growing stand obligations². To address this issue, Coast Region FRPA Implementation Team’s (CRIT) Silviculture Working Group produced an options paper³ to help understand the factors when managing for timber in areas of high elk use and the policy and/or legislative options available to mitigate elk damage. The options paper included a number of recommendations to address gaps in knowledge, policy and legislation.

Once endorsed by the OIF, CRIT developed a work plan and set out to implement the option paper recommendations. During the course of this work, CRIT identified an additional gap in knowledge related to an administrative option not identified in the options paper. Forest tenure holders showed interest in pursuing an exemption from the requirement to establish a free growing stand, as provided for under section 91(1) of the FPPR, as a possible administrative option. This option potentially eliminates the necessity of funding treatments that have a very low probability of success or achieving a stocking standard to fulfill an obligation when not deemed practicable by a forest professional, i.e. where extra funding and resources will not change the outcome. Similarly, Ministry of Forest, Land and Natural Resource Operations (FLNRO) district staff showed interest in guidance as it relates to understanding how to review and provide determination recommendations for these types of exemption proposals.

In order to ensure forest professionals have a complete understanding of all possible administrative options, CRIT agreed to develop an information and guidance consideration document for the use of FPPR s. 91(1) as it relates to Roosevelt Elk regeneration failure and implications to subsequent free growing stand obligations under FRPA s. 29 and 29.1.

¹ Coastal Clarion, Volume 5, Issue 2, June 2009 “Coast Region Operations Issue Forum”

http://www.coastforest.org/wp-content/themes/coastforest/images/newsletter/pdf/clarion_v5_i2.pdf

² Coast Forest Region “Quick Win Idea” – Elk and FRPA S. 108 6.1, 5.1

³ *Roosevelt Elk Impacts on Reforestation: Mitigation Options*, Silviculture Working Group, Coast Forest Region FRPA Implementation Team, June 29, 2011.

[http://www.for.gov.bc.ca/rco/stewardship/CRIT/docs/Elk%20Working%20Paper%20Final%20June%2029%202011%20\(2\).pdf](http://www.for.gov.bc.ca/rco/stewardship/CRIT/docs/Elk%20Working%20Paper%20Final%20June%2029%202011%20(2).pdf)

Exemption from Obligation to Establish a Free Growing Stand Due to Damage by Roosevelt Elk Guidance

3) Legislation Requirements

Under section 29 of the *Forest and Range Practices Act* (FRPA)⁴, a holder of a major licence or community forest agreement, a timber sales manager and a holder of a woodlot licence who harvests or authorizes the harvesting of timber has an obligation to establish a free growing stand on the harvested area. Similarly, under FRPA section 29.1, a person whom an obligation has been transferred to must establish a free growing stand on the area. FPPR s 91(1) provides the authority for the minister or delegate to exempt a person from the requirements of FRPA s. 29 or 29.1 if satisfied that it is not practicable to establish a free growing stand. This authority is also extended to pre-FRPA obligations identified under Part 11 of FRPA.

4) FPPR s. 91(1) Proposal Considerations

The following considerations may be factored into a decision to propose a FPPR s. 91(1) free growing stand exemption to address Roosevelt elk regeneration damage.

a) Operational and Administrative Options

As identified in the *Roosevelt Elk Impacts on Reforestation: Mitigation Options* paper, there are options (operational and administrative) available to a person having an obligation to establish a free growing stand to deal with reforestation damage caused by Roosevelt Elk during the regeneration period, e.g.

- Operational practices can be modified to enhance probability of achieving free growing stand obligation, e.g. seedling protection
- Stocking standards can be modified/ amended to address Roosevelt elk influences
- Administration flexibility can be utilized, e.g. FPPR s., 46.11 46.2 and/or s. 97.1

Although the end product of these different options may result in establishment of a stand below target stocking, they do maintain a focus on free growing stand establishment and silviculture.

By contrast, a FPPR s. 91(1) free growing stand exemption eliminates the obligation. An exemption submission/determination should consider how other operational and administrative options could be used to address the issue and the cost/benefit of using these other options, e.g. will further efforts amount to a wasteful diversion of resources away from worthwhile silviculture efforts?

b) Damage severity and frequency

Understanding severity and frequency of Roosevelt Elk damage will help determine if regeneration damage can be reasonably avoided or mitigated. Damage caused by Roosevelt Elk covers a continuum from endemic to catastrophic. Endemic damage is commonly prevalent to a known locality and fairly predictable. In these cases, the expectation is that the obligation holder has assessed the risk of damage, has a strategy to address the risk and incorporates this strategy into the treatment regime. Catastrophic damage is difficult to anticipate and build a treatment regime for. The exemption submission/determination should consider what kind of damage could be reasonably predicted, what operational mitigation options were applied to address endemic elk damage and severity and frequency of catastrophic damage expected or experienced.

c) Resource management objective(s)

The application of FPPR s 91(1) may result in implications for future stand structure potentially affecting timber attributes, e.g. stand volume, stem quality, species composition, spacing and

⁴ <http://www.for.gov.bc.ca/code/legislation.htm>

Exemption from Obligation to Establish a Free Growing Stand Due to Damage by Roosevelt Elk Guidance

distribution, etc. In addition, the resultant stand structure may have implication for other resource values, e.g. wildlife habitat, cultural heritage resource features, etc. As with other operational and administrative options, FPPR s. 91(1) should be applied with a clear understanding of what and how it may affect all resource values dependant on the resultant stand structure.

d) Scale

FPPR s. 91(1) should be applied to scalable units that provides for administrative expediency and operational certainty. Note that FPPR s. 46.11 provides an ability to address small scale damage areas within approved stocking standards so exemption may not be warranted for polygons amounting to less than the threshold defined in legislation or an associated Forest Stewardship Plan. Normally, FPPR 91(1) should be applied to areas that can be reasonably stratified into map able units and that cannot be addressed by the administrative flexibility provided by under FPPR s. 46.11.

e) Time

A request for FPPR s. 91(1) exemption may occur at any point during the typical 20-year free growing stand obligation period (see Figure 1 below). The regeneration delay (RD) date is an important consideration within this period. If it becomes apparent that it is not practicable to achieve the obligation to establish a free growing stand, there is an opportunity to request a FPPR s 91(1) free to grow exemption prior to the RD date. When the regeneration delay requirement has been met and subsequent Roosevelt elk damage occurs, e.g. knock down of advanced regeneration, there may be an opportunity to use FPPR s. 91(1) as well. However, as the regenerating stand progresses towards the stocking standard free to grow date, the use of FPPR s. 91(1) free growing stand exemption will likely become less relevant, i.e. the obligation holder will be able to make a free growing stand declaration or make a declaration regarding free growing stand obligations met to the extent practicable, i.e. FPPR s 97.1.

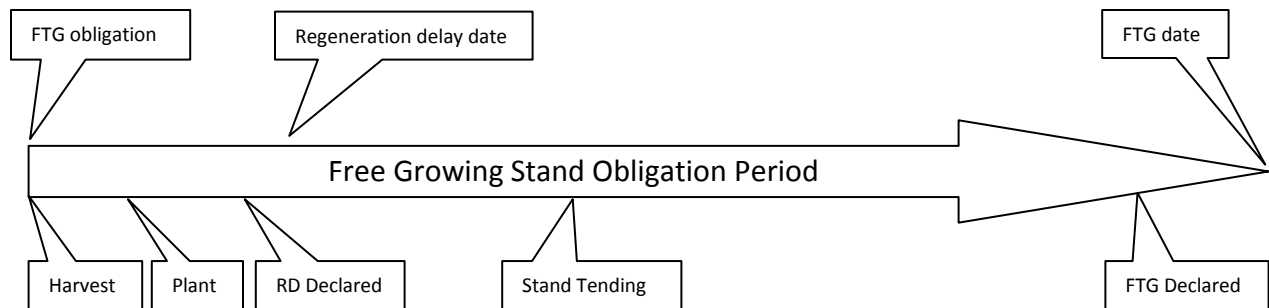


Figure 1. Free Growing Stand Obligation Period

5) Communication

Despite the considerations listed in section 4 above, there may be other factors relevant to the submission not identified in that section. When contemplating use of FPPR s. 91(1), proponents are encouraged to enter into discussion with the agency decision maker as early as possible to 1) ensure all relevant factors are considered and 2) understand information needs and decision maker expectations, e.g. what kinds of social, economic and environmental interest the decision maker will take into consideration in making the determination.

Exemption from Obligation to Establish a Free Growing Stand Due to Damage by Roosevelt Elk Guidance

6) FPPR s. 91(1) Application Considerations

The request for exemption must identify which free growing stand requirements (FRPA s 29, 29.1 or Part 11) it is applicable to and be signed by the holder of the obligation or person authorized by the holder of the obligation.

Authority to grant an exemption is discretionary so the proponent has the obligation to convince the Delegated Decision Maker (DDM) of need for the exemption. Most FPPR s 91(1) applications are going to be unique so it important that the DDM gets a complete and accurate picture. Some or all of the following information may be useful to support the application request.

- What area is the exemption request applicable to? Provide a map that identifies and describes the area of the proposed exemption (e.g. cutblock ID, portion of standard unit, site description, site series etc.) referenced to FSP and Site Plan.
- Description of the regenerating stand damage caused by Roosevelt Elk, e.g. size of damaged area, number/density of trees damaged, type of damage (browsing, rubbing, extraction, trampling, introduction of invasive grasses, and grazing), etc.
- Listing of treatments (stand surveys, site preparation, planting, etc.) and sunk costs carried out and a description of the strategy applied to address anticipated and unanticipated elk damage, i.e. mitigation efforts.
- What operational or administrative mitigation options were considered and reason why they were or are not practicable to implement.
- Rationale explaining why it is not practicable to establish a free growing stand within the identified area given the specific situation or circumstance.
- The operational and resource management implications of approving the exemption, e.g. cost savings, timber supply impacts, other resource value implications, etc.
- Other information available to support a FPPR s. 91(1) request and decision, e.g. management plans, policy, land use planning, etc.
- Photographic evidence

7) FPPR s. 91(1) Determination Review Considerations

The regulation specifies that an exemption to the requirement to establish a free growing stand may be granted "...if the minister is satisfied that it is not practicable, given the circumstances or conditions applicable to a particular area..." to do so. The term "practicable" is not defined in forest legislation; however there is guidance related to this term in the form of FRPA General Bulletins #3⁵.

Using example #2 found in the FRPA General Bulletin #3 as guidance, an exemption request review should attempt to determine if a "practicable" option exists compared to granting a FPPR s. 91(1) free growing stand exemption. To determine if the answer is yes, the exemption request review should identify the issues and concerns brought forward by the proponent and social, economic and environmental interests relevant to the decision. It will then be up to the decision maker to balance this information in relation to the proposal to arrive at the determination decision.

⁵ Use of the Term "Practicable" Under the Forest and Range Practices Act (FRPA) and Regulations

<http://www.for.gov.bc.ca/ftp/hth/external/!publish/Web/frpa-admin/frpa-implementation/bulletins/frpa-general-no-3-defining-practicable-under-frpa-jun-9-2005.pdf>

Exemption from Obligation to Establish a Free Growing Stand Due to Damage by Roosevelt Elk Guidance

Once a FPPR s. 91(1) free growing stand exemption is granted, there is no remaining reporting obligation. If not detailed in the proposal, it may be useful to consider application of a condition (under authority of FRPA s. 112) to the determination order related to reporting the forest cover inventory at the time of the exemption and reporting of the elk damage in RESULTS.

8) Example FPPR s. 91(1) free growing stand exemption scenario

The following example is provided to help the reader recognize and consider the factors that may be relevant to a FPPR s. 91(1) exemption request from the requirement to establish a free to grow stand.

A cutblock site plan is developed and the area prescribed to be harvested is located within a river valley bottom. Most of the cutblock is moderately sloped except for a 2.5 ha flat area located at the toe of the slope between the mainline access road and a riparian area associated with the valley bottom river.

The flat area has a high site index with significant brush hazard. It is planted promptly with large stock to get ahead of brush competition, in a mix of Douglas-fir and cedar appropriate for the previous stand type and expected growing conditions under anticipated climate change. 50% are coned to discourage browsing and assure minimum stocking. Although not present pre-harvest, 10% weevil-resistant Sitka spruce is added to provide further insurance against browsing losses.

Due to mild winter and abundant forage, the local Roosevelt Elk herd expands quickly in size. The herd frequents the 2.5 ha. area of the flat ground below the mainline adjacent to the riparian area and commonly transits the cutblock to get to a rocky knoll located 500 meters above the cutblock.

The area forester notes heavy browse and uprooting damage (75%) and damage to 70% of tree cones within this 2.5 ha. area, and heavy trampling damage within a narrow width of the elk trail leading to the rocky knoll. Due to frequent and continued elk use in the 2.5 ha. flat area, the expectation is that the site will only support ~150 well-spaced conifers and primarily sporadic maple and alder trees of a form not suitable for commercial use. Damage along the elk trail is severe on the trail but it amounts to less than 1 ha. in total size and it is distributed such that it cannot be reasonably stratified.

The regeneration delay date is fast approaching so the area forester must consider his/her operational and administrative options including whether or not a FPPR s 91(1) exemption submission is appropriate.

9) Summary

FPPR s. 91(1) is an administrative tool available where situations and circumstances prevent the practicable fulfilment of FRPA s. 29 or 29.1. The guidance provided in this document is intended to identify relevant factors and provide useful considerations for the purpose of developing, reviewing and making a determination related a free growing stand obligation exemption request authorized under FPPR s. 91(1).

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