



MINISTRY OF FORESTS, LANDS AND
NATURAL RESOURCE OPERATIONS

Cut Control Administration Guide

July 15, 2020

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Table of Contents

| | | |
|----------|---|-----------|
| 1 | Introduction | 5 |
| 1.1 | About This Guide | 5 |
| 1.2 | Overview of Cut Control | 5 |
| 1.3 | Key Concepts of Cut Control | 6 |
| 2 | Cut Control Administration..... | 10 |
| 2.1 | Cut Control Periods..... | 10 |
| 2.2 | Limits and Exemptions..... | 12 |
| 2.2.1 | Cut Control Limits by Form of Agreement..... | 12 |
| 2.2.2 | Increased Harvesting due to Catastrophic Event | 13 |
| 2.3 | Volume of Timber Harvested and Adjustments | 13 |
| 2.3.1 | Timber Volumes..... | 13 |
| 2.3.2 | Downward Adjustments | 14 |
| 2.3.3 | Grade 4 Credits and Credit Limits..... | 14 |
| 2.3.4 | Species Adjustment Factors..... | 15 |
| 2.3.5 | Deemed Harvest and Volume Attribution | 15 |
| 2.3.6 | No Attribution to the Preceding Cut Control Period | 17 |
| 2.3.7 | Licence Replacement, Subdivision or Consolidation | 17 |
| 2.3.8 | Adapting Cut Control if Licence Surrendered for FNWL..... | 17 |
| 2.4 | Reconcile Cut versus AAC When Period Ends..... | 18 |
| 2.4.1 | Early Termination of a Cut Control Period..... | 18 |
| 2.4.2 | Volume of Timber Harvested for the Period | 18 |
| 2.4.3 | Sum of AACs for the Period | 18 |
| 2.5 | Cut Control Statements | 19 |
| 2.5.1 | Consequences of Unharvested Timber..... | 20 |
| 2.5.2 | Consequences for Exceeding Harvest Limits | 20 |
| 2.6 | Responsibilities | 22 |
| 3 | Cut Control Rules by Agreement..... | 23 |
| 3.1 | Timber Sale Licence with AAC | 23 |

| | | |
|------------|---|-----------|
| 3.2 | Community Forest Agreement or First Nations Woodland Licence..... | 23 |
| 3.3 | Forestry Licence to Cut or Community Salvage Licence | 24 |
| 3.3.1 | Forestry Licence to Cut or Community Salvage Licence | 24 |
| 3.4 | Forest Licence..... | 25 |
| 3.4.1 | Forest Licence - term of 5 years or less | 25 |
| 3.4.2 | Forest Licence - AAC 10,000 m ³ or less, term 5+ years | 26 |
| 3.4.3 | Forest Licence - AAC more than 10,000 m ³ , term 5+ years..... | 28 |
| 3.5 | Woodlot Licence..... | 30 |
| 3.5.1 | Woodlot Licence - term 5 years or less | 30 |
| 3.5.2 | Woodlot Licence - term 5+ years..... | 31 |
| 3.6 | Tree Farm Licence..... | 33 |
| 3.6.1 | Tree Farm Licence - term 5 years or less | 33 |
| 3.6.2 | Tree Farm Licence - term 5+ years..... | 33 |
| 3.6.3 | TFL with Area-Based AAC..... | 36 |
| 4 | Appendices..... | 37 |
| 4.1 | Glossary of Terms Used in this Guide | 37 |
| 4.2 | Legislation | 39 |
| 4.2.1 | Legislation Directly Relevant to Cut Control..... | 39 |
| 4.2.2 | Designations and Delegations..... | 39 |
| 4.2.3 | Historical Context..... | 39 |
| 4.3 | Cut Control Examples | 41 |
| 4.3.1 | Example 1a- Full Five-Year Cut Control Period | 41 |
| 4.3.2 | Example 1b Extended over Second 5 -year CCP | 42 |
| 4.3.3 | Example 2a- Early Termination of First CCP | 43 |
| 4.3.4 | Example 2b Extended over Subsequent CCPs | 44 |

1 Introduction

1.1 About This Guide

This **Cut Control Administration Guide** describes and references cut control business processes and rules for administering *allowable annual cut in agreements* under the *Forest Act*. The guide is designed as a reference source for government staff, *agreement* holders and the public.

The guide often paraphrases or isolates elements of the legislation. By doing so, nuances may be lost that are important to some situations. Therefore, the legislation itself should always be studied before making any decision regarding cut control. In complex situations, advice from legal counsel may be warranted.

Guide structure

Part 1 is an introduction to the guide and the cut control framework.

Part 2 describes the general administrative steps in the cut control process and the associated cut control rules.

Part 3 presents the cut control rules for each form of agreement. The description of each rule includes a reference to the source legislation.

Part 4 contains reference material, including a glossary, legislation and some examples.

Italics indicate a term with a definition specified in legislation and/or this guide's glossary. The name of a statute (*Forest Act*) is also italicized.

Bold text and underlines are used for emphasis or to draw attention to key details.

In this guide, a reference to the *Forest Act* within a sentence occurs like this: "...section 75.1 ...". A reference at the end of a sentence is abbreviated [FA s75.1]. For simplicity, "section" or "s" is used regardless whether it is a reference to a section, subsection, paragraph or subparagraph.

1.2 Overview of Cut Control

Agreements under the *Forest Act* can provide rights to harvest Crown timber as a specified cutting area, a maximum volume within an area or an *allowable annual cut* (AAC). Timber harvesting agreements that specify or provide for an AAC are regulated by cut control rules and actions set out in the *Forest Act*. The cut control process described in this guide is how government ensures that the

Agreement means an agreement under the *Forest Act*. In this guide, the term usually refers to agreements that specify an AAC (e.g. forest licence) or provide for an AAC, (e.g. tree farm licence, or a woodlot licence).

volume of timber harvested under such an agreement is consistent with the agreement's harvesting rights.

The cut control process provides flexibility to agreement holders when exercising their rights but sets strict parameters. For example, although an agreement with AAC provides harvesting rights on an annual basis, cut control rules allows the holder of the agreement to harvest future rights this year or to carry rights from this year into the future provided the harvest volumes stay within time and volume limits specific to the agreement.

Cut control rules and actions are established by Part 4 Division 3.1 of the *Forest Act* and the Cut Control Regulation.

Timber volumes harvested under each agreement are tracked and reported annually. Periodically (typically 5 years), government will compare the timber volume harvested over the period with the agreement's harvest rights and, subject to cut control adjustments, flexibility and limits in the *Forest Act* will issue a cut control statement on the status of harvest volumes and compliance with cut control rules.

A monetary penalty will be charged for exceeding cut control limits. Any unharvested volume (timber harvesting rights that were not exercised) at the end of the period becomes unavailable to the holder of the agreement and that "undercut" may be disposed of in accordance with the *Forest Act*.

Refer to Appendix 4.2.3, Historical Context for a brief description of the origin of cut control in British Columbia and the policy changes that led to the current legislation.

The next section of this guide introduces key concepts that should be understood before using the guidance in Part 2 and the tenure-specific details in Part 3.

1.3 Key Concepts of Cut Control

AAC - Option to Harvest

Holders of *agreements* can view their AAC rights as an "option to harvest". The agreement holder is free to exercise that option (by applying for and using cutting permits) or allow the option to lapse without penalty. There is no administrative penalty for undercutting but there may be an economic cost associated with the forgone opportunity. In this "option to harvest" model, market forces are the primary factor in the timing and level harvest of the agreement's timber harvesting rights.

Allowable annual cut (AAC) is defined in the *Forest Act* section 1(1).

AACs are determined periodically for tree farm licences, community forest agreements, first nations woodland licences, woodlot licences and timber supply areas. Certain agreements (e.g. forest licence) specify an AAC in the agreement.

Applicability

Cut control limits and penalties are applicable to all AAC-bearing *agreements*. Cut control requirements vary somewhat based on differences in:

- form of agreement
- term (5 years or less versus greater than 5 years), and

- size of AAC (“10,000 m³/yr or less” versus “greater than 10,000 m³/yr”)

Contractual Cut Control in CFA or FNWL

The Cut Control provisions in Division 3.1 of Part 4 of the *Forest Act* are not applicable to a Community Forest Agreement (CFA) or a First Nations Woodland Licence (FNWL). However, a CFA or FNWL may include one or more provisions of Division 3.1 of Part 4 with any variations necessary or desirable to adapt the provision or provisions for the purposes of the agreement or licence. [FA s43.3(f.1) & s43.55(g)]. A FNWL may also include provisions found under sections 16.1 to 16.6 of the Cut Control Regulation. (See section 2.3.8 in this guide: Adapting Cut Control if Licence Surrendered for FNWL)

Since the contractual cut control provisions of a CFA or FNWL are often the same as or at least based on the Forest Act cut control provisions, cut control administration should be guided by relevant processes described in this administration guide.

Cut Control Period

A foundation of cut control is the period of time over which the volume of timber harvested is reconciled with the AAC available under the agreement. Any *agreement* with a term of 5 years or less is reconciled over the term of the *agreement*. *Agreements* with terms greater than 5 years have a *cut control period* (CCP) defined by the legislation and is normally 5 years. However, depending on the form of *agreement* and size, an *agreement* holder may terminate their CCP sooner than 5 years. (See 2.1 in this guide for more)

Cut Control Period (CCP) is defined by section 75.1 of the *Forest Act*.

CCPs are only established for licences with terms greater than 5 years.

See Glossary 4.1 for the following variations:

- First CCP
- Original CCP
- Final CCP

Flexibility in Exercising Harvesting Rights

AAC from any and all years in a CCP can be harvested at any time during that CCP. For example, a licence holder could, without penalty, harvest the sum of 5 years of AAC in the first year, or the last year, of a 5-year cut control period as long as they do not exceed the cut control limit for their *agreement*). Early harvesting of AAC does, however, carry a risk of overharvest and penalty if there is an unforeseen AAC reduction or the agreement is suspended or cancelled before the end of the cut control period.

Early Termination of CCP

Section 75.4(4) of the Forest Act allows holders of:

- a forest licence (FL) with AAC greater than 10,000 m³ and a term more than 5 years, and
- a tree farm licence (TFL) with a term more than 5 years

to terminate a cut control period early by written notice, delivered after January 1st and before June 30th of the calendar year of delivery, to a person designated by the minister. (See 2.4.1 in this guide for more. Refer to section 75.4 of the *Forest Act* for precise wording.)

Section 75.4(4.1) of the Forest Act allows holders of:

- a woodlot licence (WL) with a term more than 5 years

to terminate a cut control period early by written notice to a person designated by the minister, delivered between the last anniversary date of the beginning of the cut control period for the licence and 6 months after that date.

The last day of the terminated CCP will be the day before (always December 31 for FL or TFL) the start of the cut control period, or the anniversary date (for WLs either December 31st or sometimes the last day of another month for select Interior WLs). Volumes harvested after that day will be tracked in the new 5-year CCP which begins the day after the last day of the terminated CCP.

Notice of early termination

from a licence holder must be served on the following designated persons:

- FL or TFL – Regional Executive Director
- WL – District Manager

Volume of Timber Harvested

Volume of timber harvested is defined by the *Forest Act* and affected by numerous provisions in the *Forest Act* and the Cut Control Regulation. Section 2.3 of this guide describes how **volume of timber harvested** is determined, including scale versus cruise-based timber volumes. Part 3 provides details for each applicable form of *agreement*.

Volume of timber

harvested can be defined by either section 75.1(1) of the *Forest Act* or by a licence-specific provision enabled by section 75.11 of the Act or imposed by the Minister under the authority of section 75.95 of the Act.

Carry Forward of Excess Harvest Volume

If the *volume of timber harvested* under an *agreement* during a cut control period exceeds the sum of AACs for the period, the excess volume of timber must be treated as being timber harvested during the next cut control period. [FA s 75.7]

No Carry Forward of Unharvested Volume from One Period to the Next

At the end of a **cut control period**, unharvested volume cannot be carried forward into the next period. (See 2.5.1 for more)

Unharvested Volume ca

At the end of the cut control period, if the Volume of Timber Harvested for the period is less than the Sum of AACs available, the volume that is left over is considered unharvested volume and, in some circumstances can be resold by government.

Cut Control limits

As detailed in section 2.2 and Part 3 of this guide, cut control limits vary based on the type, size and term of the *agreement*. Broadly, the limits are:

- the maximum harvestable volume specified in a forestry licence to cut or community salvage agreement;

- 100% of the sum of AACs in licences with a term that is 5 years or less;
- 100% of the sum of AACs in the *final cut control period* of licences with a term that is more than five years;
- 110% of the sum of AACs in a CCP for major licences;
- 120% of the sum of AACs in a CCP for a woodlot licence or a FL with AAC of 10,000 m³ or less.

Example 1 – Volume limit for CCP:

A woodlot licence with an AAC of 1,000 m³/yr and a term greater than 5 years. The holder of the WL can harvest up to 6,000 m³ of timber over a 5 year CCP without penalty ($5 \times 1,000 \times 120\% = 6,000$). However, 1,000 m³ would be carried forward to the next CCP so only 5,000 m³ could be harvested in that CCP without penalty ($5 \times 1,000 \times 120\% - 1,000 = 5,000$).

Example 2 – Maximum volume specified in a licence:

A non-replaceable forest licence (NRFL) with a 10-year term, an AAC of 50,000m³/yr and a maximum harvestable volume specified in the licence of 500,000 m³. The holder of the NRFL can harvest up to 275,000 m³ in the first 5 year CCP ($5 \times 50,000 \times 110\% = 275,000$) but would then have only 225,000 m³ available in the second CCP because the maximum harvestable volume specified in an agreement prevails over the CCP limit. ($500,000 - 275,000 = 225,000$)

Consequences for exceeding harvest limits

If the holder of an *agreement* exceeds the applicable cut control limit:

- stumpage must be paid for all timber harvested under the agreement regardless whether the total volume is within or exceeding cut control limits;
- the volume exceeding the cut control limit is subject to an automatic monetary penalty at the rate prescribed in Division 1 of the Cut Control Regulation;
- the volume exceeding 100% of the sum of AACs in the current CCP will be treated as timber harvested in the next CCP (i.e. the volume will be carried forward); and
- if the circumstances indicated unauthorized harvesting or non-compliance with licence provisions, other penalties could apply and the licence could be subject to suspension and cancellation
- (see 2.5.2 for more)

2 Cut Control Administration

Cut control administration steps are described in following sections:

- 1) Establish the *cut control period*
- 2) Identify the applicable limits and exemptions
- 3) Annually determine the volume of timber harvested and applicable adjustments
- 4) Annually issue a cut control statement
- 5) If the *cut control period* expires or is terminated, reconcile the cut for the cut control period

Licence-specific administration is presented in Part 3 of this guide.

2.1 Cut Control Periods

Length

The length of cut control periods depends on a number of factors including the form and term of the agreement. AAC of the agreement can also play a factor. Cut Control requirements for a CFA or FNWL are contractually defined (see Contractual Cut Control in CFA or FNWL in section 1.3 of this guide).

In general, a cut control period of 5 years is specified for AAC-bearing *agreements* with a term greater than 5 years. *Agreements* with an original term of 5 years or less are reconciled over the term of the *agreement*. [FA s75.2]

The following table lists cut control periods for common forms of agreement. Note that the cut control period applies whether the agreement is replaceable or non-replaceable. Also, note that some licences that have a 5-year cut control period can elect to terminate that cut control period early and start a new 5-year cut control period. (see Early Termination in 1.3 Key Concepts of Cut Control)

| Form of Agreement | Term of Agreement | Length of Cut Control Period |
|---|---------------------------------------|------------------------------|
| Forestry Licence to Cut or Community Salvage Licence | any term (within limits found in Act) | Licence term |
| Forest Licence, Tree Farm Licence, or Woodlot Licence | 5 years or less | Licence term |

| Form of Agreement | Term of Agreement | Length of Cut Control Period |
|---|-------------------|--|
| Forest Licence with AAC ≤10,000 m ³ | More than 5 years | CCP of 5 years Licence term if licence is non-replaceable |
| Forest Licence with AAC >10,000 m ³ , Tree Farm Licence, or Woodlot Licence | More than 5 years | 5 year cut control period unless licensee terminates sooner. |

First cut control period for new agreements

A new *agreement* with a term of more than 5 years has a CCP defined by section 75.4 or 75.5. The CCP will begin on January 1 of the calendar year in which the term of the *agreement* begins. Woodlot licences can be an exception to this rule depending on the licence document. Some woodlot licences will specify a CCP which begins January 1st, while others may start on the first day of a month designated under section 75.4(2.1).

First cut control period for replacement licences

An agreement with a term greater than 5 years, that is a replacement under section 15 (FL), section 36 (TFL) or section 46 (WL), will have a *first cut control period* with the same beginning date as the CCP for the replaced licence immediately before its replacement. [FA s75.4(3) and FA s75.5(3.1)]

End of cut control period and subsequent cut control period

If the agreement expires, is surrendered or terminates, the CCP will end on that date [FA s75.4(7) and FA s75.5(5)] and that CCP will be considered the *final cut control period* for the purposes of the limits specified in sections 75.41 and 75.51.

If the 5-year CCP expires while the agreement continues, a new CCP of 5 years immediately begins the day after the previous CCP ended. [FA s75.4(6), FA s75.5(4)] If the holder of a FL >10,000 m³ AAC or TFL gives notice to terminate a CCP under section 75.4(4), then the *cut control period* ends on December 31 of the year preceding the year the notice was delivered and a new CCP of 5 years begins on January 1 of the calendar year of the notice. [FA s75.4(5)]

If the holder of a WL gives notice to terminate a CCP under section 75.4(4.1), then the CCP ends on the day preceding the last anniversary of the start of the CCP and a new CCP of 5 years begins on the last anniversary date. [FA s75.4(5.1)]

If a FL or TFL with a term greater than 5 years is consolidated with 1 or more FLs or TFLs respectively under section 19 (FL) or 39 (TFL), then the *agreements* are deemed to have ended on December 31 of the calendar year immediately preceding the calendar year of

consolidation and the *first cut control period* of the resulting consolidated *agreement* begins on January 1 of the calendar year of replacement. [FA s75.6(4)]

If two WLs are consolidated under section 46.2 of the *Forest Act*, refer to section 75.61 to determine the date that the replaced agreements are deemed to have ended and the beginning date of the cut control period for the resulting consolidated agreement. The wording in section 75.61 addresses the complexity of WLs having potentially different cut control period start dates.

2.2 Limits and Exemptions

2.2.1 Cut Control Limits by Form of Agreement

| Form of Agreement | Cut Control Period | Cut Control Limit |
|---|--|--|
| Community Forest Agreement or First Nations Woodland Licence | Contractual | Contractual |
| Forestry Licence to Cut or Community Salvage Licence (any term) | Licence term | Maximum harvestable volume specified in the licence [FA s75.21] |
| Term 5 years or less: Forest Licence, Tree Farm Licence, or Woodlot Licence | Licence term | 100% of sum of AACs during the original term of the licence. Maximum harvestable volume specified in the licence (prevails over sum of AACs) [FA s75.2] |
| Term more than 5 years: Forest Licence with AAC ≤10,000 m ³ | CCP of 5 years | 120% of sum of AACs in the CCP 100% of sum of AACs in the final CCP [FA s75.51] |
| | Licence term if licence is non-replaceable | In addition to CCP limit, the maximum harvestable volume specified in the licence cannot be exceeded (prevails over CCP limit if any inconsistency) [FA s75.1] |
| Term more than 5 years: Forest Licence with AAC >10,000 m ³ , Tree Farm Licence, or Woodlot Licence | 5 year cut control period unless licensee ends sooner. | 110% of sum of AACs in the CCP (WL limit is 120%) 100% of sum of AACs in the final CCP [FA s75.41] |

2.2.2 Increased Harvesting due to Catastrophic Event

Section 75.9 of the *Forest Act* allows the Minister to exempt a WL, FL or TFL with a term more than 5 years from the cut control limits under section 75.41 or 75.51, and specify a different limit, if the area is at risk because of wind, fire, insect or disease.

Procedures regarding exemptions for woodlot licences are provided in the September 22, 2009 memo “Guidance When Dealing with a Catastrophic Event Necessitating Increased Harvesting on Woodlot Licences” available at:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/cut-control/cut_control_woodlot_memo_catastrophic_event.pdf

2.3 Volume of Timber Harvested and Adjustments

Volume of timber harvested can be defined by: (1) section 75.1(1) of the Act, (2) by a licence-specific provision enabled by section 75.11 of the Act. or (3) imposed by the Minister under the authority of section 75.95 of the Act.

2.3.1 Timber Volumes

Volume of timber harvested is attributed to an *agreement* by way of yearly *cut control statements* and includes timber volumes as follows:

- For scale-based cutting permits:
 - the volume of timber that is reported by scale, and
 - the volume of timber estimated to be wasted or damaged in accordance with the Provincial Logging Residue and Waste Measurements Procedure Manual
- For cruise-based cutting permits:
 - the volume of timber periodically calculated to have been cut from the cutting permit using information from a cruise before the timber was cut
 - Note that cruise-based permits do not have waste assessments because the total net volume of a cruise-based permit is used for the purposes of determining cut control for the licence
- The volume of timber harvested under road permits associated with the licence
- The volume of timber cut, damaged or destroyed by the holder of the *agreement* without authorization
- The volume of timber carried forward from excess harvesting in the preceding cut control period (see Carry Forward of Excess Harvest Volume in section 1.3)

- Timber volume attributed from another licence (see 2.3.5 for more)
- Timber volume adjustments, if applicable, for certain grades and circumstances (see the following sections)

2.3.2 Downward Adjustments

Section 17(6) of the Cut Control Regulation requires ***volume of timber harvested*** in cut control statements to be adjusted downward:

- by 100% for coast grades Z and interior grades 6 or Z;
- by the percentage specified for each timber species in Schedules A & B of the Cut Control Regulation for interior grades 1, 2 or 4 (See Appendix 2.3.4 - Species Adjustment Factors); NOTE: Species Adjustment Factors have all been eliminated effective January 1, 2020, and
- by 100% for interior grade 4 sold or delivered to a mill that produces pulp, paper or newsprint, a chipping plant, or another facility that produces products from timber other than lumber or veneer. Not all licences are eligible. See additional discussion below under *Grade 4 Credits and Credit Limits*.

Historic: Section 17 of the Cut Control Regulation includes provisions for interior log grades 3 and 5 that were only applicable during a 2006-2007 transitional period.

2.3.3 Grade 4 Credits and Credit Limits

Grade 4 credits are downward adjustments which warrant additional discussion.

All grade 4 timber volume (including dry grade 4) counts towards cut control if it is scaled or measured as waste in a scale-based permit or included in a cruise-based cutting permit. Historically, dry grade 4 that was left on site in a scale-based permit was not measured in a waste assessment and did not count towards cut control. This was eliminated in April 2019.

Section 17(6) of the Cut Control Regulation allows for a 100% downward adjustment to the volume of timber harvested attributable to a licence in cut control statements for grade 4 timber, if the timber goes to a facility that produces pulp or paper, wood chips or other products other than lumber or veneer.

As specified under section 17(7) of the Cut Control Regulation, this downward adjustment is not available to:

- a restricted forest licence (a non-replaceable forest licence in respect of a licence under section 13 (2.1) of the *Forest Act*);
- a supplemental forest licence (a form of restricted forest licence under section 14.2 of the *Forest Act*);

- a bioenergy forest licence (a non-replaceable forest licence entered into under section 13.1 (5) of the *Forest Act*);
- a forestry licence to cut; and
- non-replaceable forest licences that were issued for the purpose of harvesting primarily deciduous (Grade 4) timber as specified in Schedule "D" of the Cut Control Regulation.

Credit Limits on downward adjustments

Section 17.1 of the Cut Control Regulation provides the Minister with the authority to set a Limit Order on grade 4 downward adjustments. The Minister's Order can be lump sum (an aggregate volume limit available to all eligible licence holders in the management unit on a first come, first served basis) or specific to individual licences or a type of licence.

Additional guidance can be found in the "Sustainable Volume Grade 4 Credit Limit Guidebook".

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/cut-control/sustainable_vol_grade4_credit_limit_guidebook.pdf

2.3.4 Species Adjustment Factors

Species adjustment factors have all been eliminated effective January 1, 2019.

Species adjustment factors were established in Schedules A and B of the Cut Control Regulation to account for changes to interior log grades to address an increase in dead timber due to the bark beetle epidemic. Prior to April 1, 2006, endemic dead and dry timber (endemic Grade 3 and Grade 5) did not count towards cut control. This provided licence holders with an opportunity to transition their operations to the new log grades.

2.3.5 Deemed Harvest and Volume Attribution

BCTS Disposition Agreement

If timber harvesting rights under a non-BCTS licence are released to the government under a BCTS disposition agreement, the timber removed under the resulting BCTS licence is deemed to be harvested under the non-BCTS licence. [FA s22.3]

Recovery of Residual Fibre

If a forestry licence to cut is issued under FA section 47.6(2.11) or a fibre recovery permit is issued in accordance with FA section 47.72(2), the timber harvested under that forestry licence to cut or fibre recovery permit is deemed to be harvested under the agreement of the holder who abandoned their rights to the timber. [FA s 47.73]

Attribution of Timber Volume Between Licences

Division 5 of the Cut Control Regulation authorizes the Minister to attribute a portion of the volume of timber harvested under a licence to another licence if:

- both licences grant harvesting rights within the same timber supply area, and the provisions of section 20 of the Cut Control Regulation are met (including the restriction that neither licence can be a WL, a TFL or a supplemental FL);
- the harvesting licence is a woodlot licence, and the receiving licence is a restricted forest licence other than a supplemental forest licence, and the provisions of section 21 of the Cut Control Regulation are met (including the requirement that the WL be within or adjacent to the TSA specified in the restricted FL);
- both licences grant harvesting rights within the same tree farm licence area and the provisions of section 22 of the Cut Control Regulation are met; or
- both licences grant harvesting rights within the same woodlot licence area and the provisions of section 23 of the Cut Control Regulation are met.

Requests for attributions between licences are not automatically approved as attributions are subject to a public interest test requirement at the discretion of the Minister or delegate.

A restricted forest licence can be eligible for cut control volume attributions if it is not a supplemental forest licence and it meets other criteria in sections 18 to 23 of the Cut Control Regulation.

The Minister must be satisfied that:

1. Both the holder of the harvesting licence and the holder of the receiving licence consent to the volume attribution.
2. A final cut control statement (i.e. end of cut control period) has not been issued for the relevant cut control period for either of the harvesting licence and receiving licence.
3. The timber harvested (reported via scale, calculated through a cruise, or cut without authorization) under the harvesting licence and the volume being attributed to the receiving licence must be for the same calendar year.
4. Neither the holder of harvesting licence nor the holder of the receiving licence is in contravention of the cut control provisions of the *Forest Act*.
5. The volume attribution is not contrary to the public interest – section 20(1)(c)(v).

Bonus bid equalization payment

Section 75.12(1) of the *Forest Act* and section 24 of the Cut Control Regulation set out provisions where a licence that has a bonus bid associated with it must ensure that the full bonus bid is paid for any timber that is attributed to that licence.

For example, if a licence that had a bonus bid of \$2.00/m³ received (was attributed to) timber from a licence that had a bonus bid of \$0.50/m³, the holder of the licence receiving the volume would be required to pay to the government \$1.50/m³ of volume attributed. If the licence that was attributing the volume had no bonus bid, the holder of

the licence receiving the volume would be required to pay the full \$2.00/m³ of volume attributed.

2.3.6 No Attribution to the Preceding Cut Control Period

Section 75.11(2)(b) of the *Forest Act* provides authority to create regulations regarding the attribution of a portion of the volume of timber harvested under the licence in a CCP to the immediately preceding cut control period. As of July 2020, there is no enabling regulation, so attributing volume to a preceding CCP is not permitted.

2.3.7 Licence Replacement, Subdivision or Consolidation

The cut control legislation has provisions to address cut control during licence replacement [FA s75.4(3)] and licence subdivision or consolidation [FA s75.3, FA s75.6, FA s75.61]. Part 3 of this guide provides details on how these special circumstances affect cut control for each form of agreement.

2.3.8 Adapting Cut Control if Licence Surrendered for FNWL

Division 3.1 of the Cut Control Regulation (sections 16.1 – 16.6) has transitional cut control provisions for a licence surrendered for a First Nations Woodland Licence. General features:

- The ***volume of timber harvested*** that was charged to the pre-existing licence in the calendar year in which the pre-existing licence is surrendered must be charged to the FNWL.
- If the ***volume of timber harvested*** during the final cut control period of a pre-existing licence exceeds the sum of the AACs for that period, the excess volume must be charged to the FNWL.
- If the ***volume of timber harvested*** under the pre-existing licence is greater than 120% of the sum of the pre-existing licence's AAC (assumes the pre-existing licence had a 5-year cut control period) then penalties will be applied. This excess volume will also be carried forward into the FNWL and counted against the FNWL's first cut control period.

Example:

A forest licence was surrendered for a FNWL and had harvested 128% of the sum of the forest licence AACs for the cut control period in question. In this case, 28% of the volume would be carried forward into the FNWL's first cut control period and there would be a cut control penalty charged on the final 8% (volume above 120%).

2.4 Reconcile Cut versus AAC When Period Ends

2.4.1 Early Termination of a Cut Control Period

Some licences that have a 5-year cut control period can elect to terminate their cut control period early and start a new 5-year cut control period. [See Early Termination in section 1.3 Key Concepts of Cut Control] The cut made over the period and sum of AACs over the period are evaluated in the same way as for a 5-year cut control period. For example, if a licence holder had harvested volumes equivalent to 3 years of AAC during the first 3 years of their cut control period they might elect to terminate that cut control period and start a new one. No penalties would result because their harvest matched the available AAC over that time. However, if a licence holder had harvested a volume equivalent to 3 years of AAC during the first year of their cut control period and then terminated the cut control period after the first year, a penalty would result because the harvest exceeds the AAC over that the period.

2.4.2 Volume of Timber Harvested for the Period

The *volume of timber harvested* during the CCP (or during the licence term for *agreements* without a cut control period), will include volumes and adjustments identified in the *Forest Act* section 75.1 and Cut Control Regulation definition of volume of timber harvested and any applicable adjustments. Section 2.3 of this guide describes the timber volumes to include and the potential adjustments.

2.4.3 Sum of AACs for the Period

For an *agreement* with a term of 5 years or less, the sum of AACs is obtained by adding together the AACs that were in effect for each year of the *agreement's* original term.

For an *agreement* with a term greater than 5 years, the sum of AACs is based on the AACs that were in effect during each of the years of the CCP that just ended.

When determining the sum of AACs and providing cut control statements, it is important to understand the following rules about the annual aspect of AACs:

1. The AAC for an *agreement* is expressed as a volume of timber that may be harvested each year. For cut control purposes, the year that the AAC pertains to is determined by context:
 - An *agreement's* AAC is based on calendar years for *agreements* with CCPs based on calendar years.
 - A woodlot licence CCP can begin on January 1 or the first day of another month designated under section 75.4(2.1). Therefore, in the absence of a licence clause stating otherwise, the AAC should apply to the series of 12-month periods starting at the beginning of the first CCP.

- Any *agreement* with a term of 5 years or less will have cut control based on the term of the *agreement* rather than a defined CCP, so the AAC applies to the series of 12 month periods starting at the beginning of the *agreement's* term (i.e. the issue date) and each subsequent anniversary prior to the end of the original term.
2. AAC is an annual entitlement that is fully available at the beginning of each cut control year. AAC can only be pro-rated for partial years if specifically provided for by legislation and even then, there is still only one AAC applicable to the year. (e.g. section 63.2(3) of the *Forest Act* pro-rates certain AAC reductions that take effect on a date other than January 1 and then applies that pro-rated AAC throughout the full calendar year.)
 3. Non-replaceable agreements: The entitlement to a full AAC each cut control year extends to non-replaceable *agreements* that have a CCP based on calendar years but an issue date other than January 1. Since this rule could result in more years of AAC entitlement than years in the *agreement's* term, the legislation provides a mechanism to ensure that non-replaceable forest licences receive only the harvest rights originally intended. Section 14 of the *Forest Act* requires NRFLs to specify the maximum volume that may be harvested under the *agreement*. Sections 75.51(3) and 75.2(2.1) make that limit subject to cut control penalties and sections 75.51(4) and 75.2(2.2) ensures that the maximum volume limit prevails over a CCP limit.

2.5 Cut Control Statements

Cut control statements are issued to the holder of the *agreement*; usually after the end of each calendar year (or WL CCP anniversary). The cut control statement typically contains:

- the applicable CCP
- timber volumes attributed to the licence for every completed calendar year in the agreement's current CCP, identified by source as discussed in section 2.3 of this guide and as listed in sections 75.1(2) and 75.1(3) of the *Forest Act* or according to any licence-specific definition of *volume of timber harvested*.
- the *volume of timber harvested* so far during the CCP, being the total of the timber volumes attributed to the *agreement* and any applicable adjustments or as required by any licence-specific definition of *volume of timber harvested* or contractual cut control provisions.
- the AAC for each completed calendar year in the agreement's current CCP and the *sum of allowable annual cuts* to date in the period.

In addition to content of the annual cut control statement, a final cut control statement for the end of the CCP is issued to the holder of the agreement. This statement contains:

- any overcut volume that will be carried forward into the next CCP
- the applicable cut control limit and any section 75.9 exemption that is in effect (see section 2.2)
- the volume, if any, exceeding the cut control limit that may be subject to penalty.

A cut control statement is not a penalty determination but does contain information which could indicate that a penalty may be warranted. If staff verify that a licence has exceeded cut control limits, a separate penalty bill will be issued.

2.5.1 Consequences of Unharvested Timber

If the *volume of timber harvested is less than* the sum of AACs during the applicable period (term of the licence or CCP as appropriate), then the holder of the *agreement* has no right to the unharvested volume in any subsequent period. [FA s75.8] If it is the final cut control period or no CCP (term of licence less than 5 years), then harvest rights expire when the licence ends.

Section 75.8 of the *Forest Act* prohibits the carry forward of unharvested volume from one cut control period to a subsequent cut control period. Section 75.8 also enables the Minister to dispose of unharvested volume in a TFL or WL area to a person other than the licence holder.

2.5.2 Consequences for Exceeding Harvest Limits

If the holder of an *agreement* exceeds the applicable cut control limit in a CCP:

- stumpage must be paid for all timber harvested under the agreement regardless whether the total volume is within or exceeding the AAC or cut control limit;
- the volume exceeding the cut control limit is subject to monetary penalty at the rate prescribed in the Cut Control Regulation [FA s75.91];
- the volume exceeding 100% of the sum of AACs in the current CCP will be treated as timber harvested in the next CCP (i.e. the volume will be carried forward) [FA s75.7]; and
- if the circumstances indicated unauthorized harvesting or non-compliance with licence provisions, other penalties could apply and the licence could be subject to suspension and cancellation

If the applicable period was the term of the licence or the **final cut control period**, the cut control limit is 100% of the sum of AACs. A penalty must be paid for any harvest exceeding that limit. [FA s75.2(3) or FA s75.91]

Penalties and Penalty Relief

Prior to the issuance of a penalty bill, ministry staff should provide the holder of the *agreement* with an opportunity to review the cut control statement for the end of period.

The *Forest Act* does not provide an opportunity for review or appeal of a cut control penalty made under section 75.2 or 75.91.

Relief from cut control penalties may be granted under section 75.92 of the *Forest Act* if the agreement's AAC was reduced under any of these sections of the *Forest Act* [FA s8]:

- Section 8 – an AAC determination
- Section 9 – TFL failure to comply with requirements regarding plans, studies, analyses and information
- Section 61 – temporary reduction of AAC
- Section 63 – proportionate reduction
- Section 173 – order regarding a designated

2.6 Responsibilities

The following are the offices of primary responsibility for the various aspects of cut control administration.

Forest Tenures Branch

- develop and maintain policies and procedures,
- provide support and advice to Ministry staff and to holders of *agreements*,
- works with data management and operations staff to annually provide Areas with billing and residue data for cut control purposes.
- monitor the cut control process and develop improvements to policy and procedures as needed

Timber Pricing Branch

- Stumpage billing
- Waste billing
- Penalty billing after any penalty determination

Areas and/or Regions and Districts

- Monitor cut control status of licensees.
- Associate road permit volumes to appropriate *agreement*
- Issue cut control statements (typically on an annual basis) or make data available on *volume of timber harvested*
- When a period ends, reconcile harvest volumes with sum of AACs
- Determine penalty if harvest exceeds limit.
- Where appropriate, suggest appropriate changes to policy and procedures.

Licensees

Holders of *agreements* covered by Division 3.1 of Part 4 of the *Forest Act* are required by legislation to ensure that harvesting does not exceed the limits set out for their *agreement*.

If the holder of an *agreement* intends to terminate a *cut control period* early and is eligible to do so, it is the holder's responsibility to serve notice to the Regional Executive Director for a FL or a TFL or to the District Manager for a WL within the legislation's time limit.

3 Cut Control Rules by Agreement

3.1 Timber Sale Licence with AAC

The *Forest Act* section 75.5 refers to Timber Sale Licences with an AAC; however, all licences in this category have been converted to other forms of tenure. Therefore the applicable cut control provisions are no longer relevant.

3.2 Community Forest Agreement or First Nations Woodland Licence

The Cut Control provisions in Division 3.1 of Part 4 of the *Forest Act* are not applicable to a Community Forest Agreement (CFA) or a First Nations Woodland Licence (FNWL). However, a CFA or FNWL may include one or more provisions of Division 3.1 of Part 4 with any variations necessary or desirable to adapt the provision or provisions for the purposes of the agreement or licence. [FA s43.3(f.1) & s43.55(g)]. A FNWL may also include provisions found under sections 16.1 to 16.6 of the Cut Control Regulation. (See section 2.3.8 in this guide: Adapting Cut Control if Licence Surrendered for FNWL)

Since the contractual cut control provisions of a CFA or FNWL are often the same as or at least based on the *Forest Act* cut control provisions, cut control administration should be guided by the relevant processes described in this administration guide.

3.3 Forestry Licence to Cut or Community Salvage Licence

3.3.1 Forestry Licence to Cut or Community Salvage Licence

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| Cut Control Period | Cut control is reconciled over the term of licence. (The <i>Forest Act</i> does not define a CCP for forestry licence to cut or community salvage licence.) |
| Cut control limit | <i>Volume of timber harvested</i> under the licence must not exceed the maximum harvestable volume specified in the licence. [FA sec 75.21(2)] |
| Exemption | No exemption from limit. |
| Penalty | If the limit is exceeded, the holder must pay a penalty that is the product of the volume that exceeds the limit and the <i>prescribed rate</i> . [FA sec 75.21(3) & (4)], in addition to stumpage or another penalty [FA s75.21(5)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest. |
| Relief | No provisions for relief from penalty. |
| Unharvested volume at end of licence term | The holder of a licence has no right to unharvested volume upon licence termination nor does the licensor have any ability to grant the volume to them. Unharvested volume can only be disposed of in accordance with the <i>Forest Act</i> . |

3.4 Forest Licence

3.4.1 Forest Licence - term of 5 years or less

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| Cut Control Period | Cut control is reconciled over the term of licence. (The <i>Forest Act</i> does not define a CCP for licences with term of 5 years or less.) |
| Start of period | beginning of licence |
| End of period | expiry or termination of licence |
| Cut control limit | <p><i>Volume of timber harvested</i> during the full term of the licence must not exceed the <i>sum of the AACs</i> that, during the original term of the licence, are authorized for the licence [FA sec75.2 (2)]</p> <p><i>Volume of timber harvested</i> during the licence must not exceed the maximum harvestable volume specified in the licence. [FA SEC 75.2(2.1)] This limit prevails over sum of AACs if any inconsistency [FA s75.2(3)]</p> |
| Exemption | No exemption from limit. |
| Penalty | If the limit is exceeded, the holder must pay a penalty that is the product of the volume that exceeds the limit and the <i>prescribed rate</i> . [FA s75.2(3) & (4)], in addition to stumpage or another penalty [FA s75.2(5)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest. |
| Relief | Full or partial relief from penalty may be granted if licence AAC was reduced under certain sections of the <i>Forest Act</i> . [FA s75.92] |
| Unharvested volume at end of licence term | The holder of a licence has no right to unharvested volume upon licence termination nor does the licensor have any ability to grant the volume to them. Unharvested volume can only be disposed of in accordance with the <i>Forest Act</i> . |
| If licence is subdivided | <p>For the purposes of FA s75.2, the term of each of the resulting licences is deemed to have begun on the first day of the term of the licence that was subdivided. [FA s75.3(2)(a)]</p> <p>The <i>volume of timber harvested</i> charged to the licence before replacement is allocated to each of the resulting licences proportionate to the "split" of AAC. [FA s75.3 (2)(b) & FA s75.3 (3)]</p> |
| If 2 or more licences are replaced with a consolidated licence | <p>For cut control purposes, the term of resulting consolidated licence is deemed to have begun on the first day of the term of the replaced licences if the terms began on the same day; otherwise the term of the consolidated licence begins on the "earliest" start date of the replaced licences [FA s75.3 (4)(a)]</p> <p>Volumes that before replacement were charged to the replaced licences are charged to the resulting consolidated licence [FA s75.3(4)(b)]</p> |

3.4.2 Forest Licence - AAC 10,000 m³ or less, term 5+ years

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|--|--|
| Cut Control Period | <i>Cut control period</i> (CCP) has a 5-year term. [FA s75.5] The holder of the licence cannot terminate the period early. |
| Start | First CCP for a licence <u>that is not a replacement</u> for another licence, begins on January 1 of the calendar year in which the term of the licence begins [FA s75.5(2)] If the forest licence is a section 15 replacement, the first CCP is the same as the CCP for the replaced licence [FA s75.5(3.1)(a)] |
| End | CCP ends after expiry of first CCP or any subsequent CCP or upon licence expiry, surrender or termination. [FA s75.5(5)] |
| Start of next | A new CCP with a 5 yr term begins immediately after expiry of the first CCP or any subsequent CCP. [FA s75.5(4)] |
| Cut control limit | <i>Volume of timber harvested</i> during the CCP must not exceed 120% of the <i>sum of the AACs</i> that during the CCP are authorized for the licence [FA s75.51(1)] <i>Volume of timber harvested</i> during the <i>final CCP</i> must not exceed 100% of the <i>sum of the AACs</i> for the period [FA s75.51(2)] <i>Volume of timber harvested</i> under a non-replaceable licence must not exceed the maximum harvestable volume specified in the licence. [FA s75.51(3)] This limit prevails over other limits if any inconsistency [FA s75.51(4)] |
| Exemption | The Minister or delegated person may grant an exemption from limits in FA s75.51 due to wind, fire, insect or disease. The exemption must specify a different limit and may attach conditions. [FA s75.9(1)]. The holder must comply with conditions. [FA s75.9(2)] |
| Penalty | If a limit is exceeded, the holder must pay a penalty. [FA s75.91(1)] The penalty is the product of the volume exceeding the limit and the <i>prescribed rate</i> . [FA s75.91 (2)] Penalty is in addition to stumpage or another penalty [FA s75.91(3)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest. |
| Relief | Full or partial relief from penalty may be granted if licence AAC was reduced under certain sections of the <i>Forest Act</i> . [FA s75.92] |
| Volume of Timber Harvested (VoTH) | In addition to timber volumes listed in the definition of <i>volume of timber harvested</i> , include the following volumes and applicable adjustments: |
| Adjustments | Refer to section 2.3 of this guide and referenced legislation for information on downward adjustments, grade 4 credits and attributions from one licence to another. |

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| Replaced licence | If the forest licence was replaced under section 15 during the current CCP, include the volume of timber that was charged to the replaced licence during the current CCP. [FA s75.5(3.1)(b)] |
| Excess carried forward | Any <i>volume of timber harvested</i> during a CCP that exceeds the sum of the AACs for the CCP, will be treated as being timber harvested during next CCP [FA s75.7 & FA s75.1(e)] |
| Undercut | If the <i>volume of timber harvested</i> is less than the <i>sum of the AACs</i> for the CCP, the holder must not harvest that unharvested volume during a subsequent CCP [FA s75.8(1)(a)]. The licensor has no authority to direct the undercut to the licensee. Unharvested volume can only be disposed of in accordance with the <i>Forest Act</i> . |
| If licence is subdivided | CCP The first CCP of each the resulting licences is deemed to have the beginning date as the most recent CCP for the licence being subdivided. [FA s75.6 (2)(a)] |
| | VoTH The <i>volume of timber harvested</i> charged before the subdivision is allocated to each of the resulting licences proportionate to the "split" in AAC. [FA s75.6 (2)(b) & FA s75.6 (3)] |
| If licences are replaced by one consolidated licence | The CCP of the replaced licences are deemed to have ended on December 31 of the calendar year immediately preceding the calendar year of the replacement. [FA s75.6 (4)(a)] |
| | CCP The first CCP of the resulting consolidated licence begins January 1 of the calendar year of the replacement. [FA s75.6 (4)(b)] |
| | VoTH The volume that was charged to replaced licences during the calendar year of the replacement must be charged to the consolidated licence [FA s75.6(4)(c)(i)], and any excess harvest from immediately preceding CCPs of the replaced licences must be charged to the first CCP of the consolidated licence. [FA s75.6(4)(c)(ii)] |

3.4.3 Forest Licence - AAC more than 10,000 m³, term 5+ years

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|---------------------------|---|
| Cut Control Period | <i>Cut control period</i> (CCP) is 5 years in length. [FA s75.4(2)&3] The holder of the licence may terminate the period early by written notice delivered after January 1 but before June 30 [FA s75.4 (4)] |
| Start | First CCP for a licence <u>that is not a replacement</u> for another licence, begins on January 1 of the calendar year in which the term of the licence begins [FA s75.4(2)] If the forest licence is a section 15 replacement, the first CCP is the same as the CCP for the replaced licence [FA s75.4(3)(a)] |
| End | Termination of CCP takes effect December 31 of the year immediately preceding the calendar year in which the licence holder gave notice of termination [FA s75.4 (5)(a)]. Otherwise, CCP ends upon expiry of the CCP [FA s75.4(6)] or upon the date the licence expires, is surrendered or terminated [FA s75.4(7)] |
| Start of next | A new CCP with a 5-year term starts January 1 of the calendar year in which notice of termination was delivered [FA s75.4 (5)(b)] or, if the holder did not terminate the CCP, immediately after expiry of previous CCP, [FA s75.4(6)] |
| Cut control limit | <i>Volume of timber harvested</i> during the CCP must not exceed 110% of the <i>sum of the AACs</i> that, during the CCP, are authorized for the licence [FA s75.41 (1)] <i>Volume of timber harvested</i> during the <i>final CCP</i> must not exceed 100% of the <i>sum of the AACs</i> for the period [FA s75.41(2)] <i>Volume of timber harvested</i> under a non-replaceable licence must not exceed the maximum harvestable volume specified in the licence. [FA s75.41(3)] This limit prevails over other limits if any inconsistency [FA s75.41(4)] |
| Exemption | The Minister or delegated person may grant an exemption from limits in FA s75.41 due to wind, fire, insect or disease. The exemption must specify a different limit and may attach conditions. [FA s75.9 (1)]. The holder must comply with conditions. [FA s75.9 (2)] |
| Penalty | If the limit is exceeded, the holder must pay a penalty [FA s75.91(1)] that is the product of the volume that exceeds the limit and the <i>prescribed rate</i> [FA s75.91 (2)], in addition to stumpage or another penalty [FA s75.91(3)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest. |
| Relief | Full or partial relief from penalty may be granted if licence AAC was reduced under certain sections of the <i>Forest Act</i> . [FA s75.92] |

| | |
|---|---|
| Volume of Timber Harvested (VoTH) | In addition to timber volumes listed in the definition of <i>volume of timber harvested</i> , include the following volumes and applicable adjustments: |
| Adjustments | Refer to section 2.3 of this guide and referenced legislation for information on downward adjustments, grade 4 credits and attributions from one licence to another. |
| Replaced licence | If the forest licence was replaced under section 15 during the current CCP, include the volume of timber harvested that was charged to the replaced licence during the current CCP. [FA s75.4(3)(b)] |
| Excess carried forward | Any <i>volume of timber harvested</i> during a CCP that exceeds the sum of the AACs for the CCP, will be treated as being timber harvested during next CCP [FA s75.7 & FA s75.1(1)(e)] |
| Undercut | If the <i>volume of timber harvested</i> is less than the <i>sum of the AACs</i> for the CCP, the holder must not harvest that unharvested volume during a subsequent CCP [FA s75.8(1)(a)]. The licensor has no authority to direct the undercut to the licensee. Unharvested volume can only be disposed of in accordance with the <i>Forest Act</i> . |
| If licence is subdivided | The first CCP of each the resulting licences is deemed to have the beginning date as the most recent CCP for the licence being subdivided. [FA s75.6 (2)(a)] |
| CCP | |
| VoTH | The <i>volume of timber harvested</i> charged before the subdivision is allocated to each of the resulting licences proportionate to the "split" in AAC. [FA s75.6 (2)(b) & FA s75.6 (3)] |
| If licences are replaced by one consolidated licence | The CCP of the replaced licences are deemed to have ended on December 31 of the calendar year immediately preceding the calendar year of the replacement. [FA s75.6 (4)(a)] |
| CCP | The first CCP of the resulting consolidated licence begins January 1 of the calendar year of the replacement. [FA s75.6 (4)(b)] |
| VoTH | The volume that was charged to replaced licences during the calendar year of the replacement must be charged to the consolidated licence [FA s75.6(4)(c)(i)], and any excess harvest from immediately preceding CCPs of the replaced licences must be charged to the first CCP of the consolidated licence. [FA s75.6(4)(c)(ii)] |

3.5 Woodlot Licence

3.5.1 Woodlot Licence - term 5 years or less

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|--|---|
| Cut Control Period | No <i>cut control period</i> – Grouped with section 75.2 licences which reconcile cut over the term of licence. |
| Start of period | beginning of licence |
| End of period | expiry or termination of licence |
| Cut control limit | <i>Volume of timber harvested</i> during the full term of the licence must not exceed the <i>sum of the AACs</i> that, during the original term of the licence, are authorized for the licence [FA s75.2 (2)] <i>Volume of timber harvested</i> during the licence must not exceed the maximum harvestable volume specified in the licence. [FA s75.2(2.1)] This limit prevails over sum of AACs if any inconsistency [FA s75.2(2.1)] |
| Exemption | No exemption from limit. |
| Penalty | If the limit is exceeded, the holder must pay a penalty that is the product of the volume that exceeds the limit and the <i>prescribed rate</i> . [FA s75.2(3) & (4)], in addition to stumpage or another penalty [FA s75.2(5)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest. |
| Relief | Full or partial relief from penalty may be granted if licence AAC was reduced under certain sections of the <i>Forest Act</i> . [FA s75.92] |
| Unharvested volume at end of licence term | The holder of a licence has no right to unharvested volume upon licence termination nor does the licensor have any ability to direct the volume to the licensee. Unharvested volume can only be disposed of in accordance with the <i>Forest Act</i> . |

3.5.2 Woodlot Licence - term 5+ years

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|---------------------------|---|
| Cut Control Period | <p><i>Cut control period</i> (CCP) is 5 years in length. [FA s75.4(4.1)] The holder of the licence may terminate the period early by written notice delivered between the last anniversary date of the beginning of the cut control period for the licence and 6 months after that date [FA s75.4 (4.1)].</p> |
| Start | <p>The first CCP begins January 1 of the calendar year in which the term of the woodlot licence begins; or (in some cases) the first day of a month designated under section 75.4(4.1). If the woodlot licence is a section 46 replacement, the first CCP of the replacement licence is the same as the CCP for the replaced licence [FA s75.4(3)].</p> |
| End | <p>If the holder terminates the CCP early, termination takes effect on the day preceding the last CCP anniversary date. [FA s75.4 (5.1)]. Otherwise, the CCP ends upon expiry of the CCP [FA s75.5(6)] or upon the date the licence expires, is surrendered or terminated [FA s75.5(7)]</p> |
| Start of next | <p>A new CCP with a 5 yr term begins immediately after expiry of the first CCP or any subsequent CCP. [FA s75.4(6)]</p> |
| Cut control limit | <p><i>Volume of timber harvested</i> during the CCP must not exceed 120% of the <i>sum of the AACs</i> that during the CCP are authorized for the licence [FA s75.41(1.1)] <i>Volume of timber harvested</i> during the <i>final CCP</i> must not exceed 100% of the <i>sum of the AACs</i> for the period [FA s75.41(2)] <i>Volume of timber harvested</i> under a non-replaceable licence must not exceed the maximum harvestable volume specified in the licence. [FA s75.41(3)] This limit prevails over other limits if any inconsistency [FA s75.41(4)]</p> |
| Exemption | <p>The Minister or delegated person may grant an exemption from limits in FA s75.41 due to wind, fire, insect or disease. The exemption must specify a different limit and may attach conditions. [FA s75.9(1)]. The holder must comply with conditions. [FA s75.9(2)]</p> |
| Penalty | <p>If a limit is exceeded, the holder must pay a penalty. [FA s75.91(1)]. The penalty is the product of the volume exceeding the limit and the <i>prescribed rate</i>. [FA s75.91 (2)]. Penalty is in addition to stumpage or another penalty [FA s75.91(3)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest.</p> |
| Relief | <p>Full or partial relief from penalty may be granted if licence AAC was reduced under certain sections of the <i>Forest Act</i>. [FA s75.92]</p> |

| | |
|---|--|
| Volume of Timber Harvested (VoTH) | In addition to timber volumes listed in the definition of <i>volume of timber harvested</i> , include the following volumes and applicable adjustments: |
| Adjustments | Refer to section 2.3 of this guide and referenced legislation for information on downward adjustments, grade 4 credits and attributions from one licence to another. |
| Replaced licence | If the woodlot licence was replaced under section 46 during the current CCP, include the volume of timber that was charged to the replaced licence during the current CCP. [FA s75.4(3)] |
| Excess carried forward | Any <i>volume of timber harvested</i> during a CCP that exceeds the sum of the AACs for the CCP, will be treated as being timber harvested during next CCP [FA s75.7 & FA s75.1(e)] |
| Undercut | If the <i>volume of timber harvested</i> is less than the <i>sum of the AACs</i> for the CCP, the holder must not harvest that unharvested volume during a subsequent CCP [FA s75.8(1)(a)]. The licensor has no authority to direct the undercut to the licensee. Unharvested volume may be disposed of to a person other than the holder by means of a forestry licence to cut, a section 20 TSL or a non-replaceable forest licence. [FA s75.8(2)] |
| If 2 licences are replaced by one consolidated licence | The CCP of the replaced licences are deemed to have ended on the day preceding the earlier of last CCP anniversary dates of the replaced licences. [FA s75.61(2)(a)] |
| CCP | The first CCP of the resulting consolidated licence begins on the the earlier of last CCP anniversary dates of the replaced licences. [FA s75.61(2)(b)] |
| VoTH | The volume that was charged to replaced licences from the last CCP anniversary date to the date of the replacement must be charged to the consolidated licence [FA s75.61(2)(c)(i)], and any excess harvest from immediately preceding CCPs of the replaced licences must be charged to the first CCP of the consolidated licence. [FA s75.61(2)(c)(ii)] |

3.6 Tree Farm Licence

3.6.1 Tree Farm Licence - term 5 years or less

The cut control legislation has provisions for Tree Farm Licences (TFLs) with terms of 5 years or less, but currently there are no TFLs with such a term.

3.6.2 Tree Farm Licence - term 5+ years

| | |
|---------------------------|---|
| Cut Control Period | <i>Cut control period</i> (CCP) is 5 years in length. [FA s75.4(2 & 3)] The holder of the licence may terminate the period early by written notice delivered after January 1 but before June 30 [FA s75.4 (4)] |
| Start | The first CCP for a licence <u>that is not a replacement</u> for another licence, begins on January 1 of the calendar year in which the term of the licence begins. [FA s75.4(2)] If the tree farm licence is a section 36 replacement, the first CCP is the same as the CCP for the replaced licence [FA s75.4(3)(a)] |
| End | Termination of CCP takes effect December 31 of the year immediately preceding the calendar year in which the licence holder gave notice of termination [FA s75.4 (5)(a)]. Otherwise, CCP ends upon expiry of the CCP [FA s75.4(6)] or upon the date the licence expires, is surrendered or terminated [FA s75.4(7)] |
| Start of next | A new CCP with a 5-year term starts January 1 of the calendar year in which notice of termination was delivered [FA s75.4 (5)(b)] or, if the holder did not terminate the CCP, immediately after expiry of previous CCP, [FA s75.4(6)] |
| Cut control limit | <i>Volume of timber harvested</i> during the CCP must not exceed 110% of the <i>sum of the AACs</i> that, during the CCP, are available to the holder under the licence [FA s75.41 (1)] <i>Volume of timber harvested</i> during the <i>final CCP</i> must not exceed 100% of the <i>sum of the AACs</i> that, during the CCP, are available to the holder under the licence [FA s75.41(2)] <i>Volume of timber harvested</i> under a non-replaceable licence must not exceed the maximum harvestable volume specified in the licence. [FA s75.41(3)] This limit prevails over other limits if any inconsistency [FA s75.41(4)] |

| | |
|--|--|
| Exemption | The Minister or delegated person may grant an exemption from limits in FA s75.41 due to wind, fire, insect or disease. The exemption must specify a different limit and may attach conditions. [FA s75.9 (1)]. The holder must comply with conditions. [FA s75.9 (2)] |
| Penalty | If the limit is exceeded, the holder must pay a penalty [FA s75.91(1)] that is the product of the volume that exceeds the limit and the <i>prescribed rate</i> [FA s75.91 (2)], in addition to stumpage or another penalty [FA s75.91(3)]. The Cut Control Regulation sets the <i>prescribed rate</i> in Division 1 – Penalty for Excess Harvest. |
| Relief | Full or partial relief from penalty may be granted if licence AAC was reduced under certain sections of the <i>Forest Act</i> . [FA s75.92] |
| Volume of Timber Harvested (VoTH) | In addition to timber volumes listed in the definition of <i>volume of timber harvested</i> , include the following volumes and applicable adjustments: |
| Adjustments | Refer to section 2.3 of this guide and referenced legislation for information on downward adjustments, grade 4 credits and attributions from one licence to another. |
| Replaced licence | If the tree farm licence was replaced under section 36 during the current CCP, include the volume of timber harvested that was charged to the replaced licence during the current CCP. [FA s75.4(3)(b)] |
| Excess carried forward | Any <i>volume of timber harvested</i> during a CCP that exceeds the sum of the AACs for the CCP, will be treated as being timber harvested during next CCP [FA s75.7 & FA s75.1(e)] |
| Undercut | If the <i>volume of timber harvested</i> is less than the <i>sum of the AACs</i> for the CCP, the holder must not harvest that unharvested volume during a subsequent CCP [FA s75.8(1)]. The licensor has no authority to direct the undercut to the licensee. Unharvested volume may be disposed of as a licence to cut, non-replaceable forest licence or s20 TSL to a person other than the holder. [FA s75.8(2)] |
| If licence is subdivided | The first CCP of each of the resulting licences is deemed to have the beginning date as the most recent CCP for the licence being subdivided. [FA s75.6 (2)(a)] |
| CCP | |
| VoTH | The <i>volume of timber harvested</i> charged before the subdivision is allocated to each of the resulting licences proportionate to the "split" in AAC. [FA s75.6 (2)(b) & FA s75.6 (3)] |

| | | |
|---|------|---|
| If licences are replaced by one consolidated licence | | The CCPs of the replaced licences are deemed to have ended on December 31 of the calendar year immediately preceding the calendar year of the replacement. [FA s75.6 (4)(a)] |
| | CCP | The first CCP of the resulting consolidated licence begins January 1 of the calendar year of the replacement. [FA s75.6 (4)(b)] |
| | VoTH | The volume that was charged to replaced licences during the calendar year of the replacement must be charged to the consolidated licence [FA s75.6(4)(c)(i)], and any excess harvest from immediately preceding CCPs of the replaced licences must be charged to the first CCP of the consolidated licence. [FA s75.6 (4)(c)(ii)] |

3.6.3 TFL with Area-Based AAC

The *Tree Farm Licence Area-based Allowable Annual Cut Trial Program Regulation (Area-Based AAC Reg)* went into effect on November 1, 2004 to enable trials that establish AACs on the basis of harvested area (hectares per year) rather than harvested volume (cubic metres per year). As of 2016, TFL 54 and TFL 57 are subject to area based AACs under the regulation.

4 Appendices

4.1 Glossary of Terms Used in this Guide

The following terms occur in italics or as abbreviations in this guide:

Agreement means an agreement entered into under the *Forest Act*. In this guide, agreement usually refers to agreements that specify or provide for an AAC; i.e. a forest licence (**FL**), a tree farm licence (**TFL**) or a woodlot licence (**WL**). In specific sections of this guide, agreement refers to forestry licence to cut and community salvage licence. Note that the legislation uses the term *licence* but the definition can change section by section. This manual will use agreement as a general term and *licence* for specific circumstances.

Allowable annual cut (AAC) is defined by section 1 (1) of the *Forest Act*:

"allowable annual cut" means

(a) in respect of a tree farm licence area, community forest agreement area, first nations woodland licence area, woodlot licence area or timber supply area, the rate of timber harvesting determined for the area under section 8, as increased or reduced under this Act, and

(b) in respect of an agreement entered into under this Act specifying an allowable annual cut, the rate of timber harvesting specified in the agreement, as increased or reduced under this Act.

Cut control period (CCP) as defined by section 75.1 of the *Forest Act*, refers to the *cut control period* determined for a licence under section 75.4 or 75.5. CCPs are only established for licences with terms greater than 5 years.

Several variations of the term *cut control period* occur in the legislation:

A **first cut control period** is established by sections 75.4 and 75.5 to create a statutorily defined starting point for cut control on new licences. Licences that were already in effect when the new legislation came into force (November 4, 2003) require special treatment from transitional section 75.93 provisions to bring them under the new rules.

Section 75.93 references the *5-year cut control period* that was in effect in the period beginning January 1, 2003 and ending on November 3, 2003 and calls it the "**original cut control period**". The *original cut control period* could have been a contractual provision under a non-replaceable forest licence or a statutory cut control period for a replaceable licence. The effect of section 75.93 is the inclusion and continuation of these original cut control periods into the new cut control rules.

Final cut control period is used by sections 75.41 and 75.51 in the context of setting cut control limits for a CCP. The legislation does not provide a definition so the plain

meaning should be used. This guide interprets final CCP as being the last cut control period before a licence expires, is surrendered or otherwise terminates.

Cut control statements are issued on behalf of the government to the holder of a licence that attributes the *volume of timber harvested* in relation to the licence. [FA s75.1(1)]

Licence refers to an *agreement* under the *Forest Act* that specify or provide for an AAC; i.e. a forest licence (**FL**), a tree farm licence (**TFL**) or a woodlot licence (**WL**).

In the cut control legislation, the term “**licence**” has different definitions for different sections. For example, section 75.4 defines *licence* for the purposes of sections 75.4 and 75.41 as being an FL, TSL or TFL with a term of more than 5 years and, if it is a FL or TSL, with an AAC of greater than 10,000 m³. Similarly, the definition of licence in section 75.5 is considered to apply to the limits of section 75.51.

Prescribed rate in sections 75.2(4), 75.21 (4) and 75.91(2) refers to the rates specified in section 2 to section 4 of the Cut Control Regulation.

Restricted forest licence means a non-replaceable forest licence entered into under section 13 (6) for which applications are invited on or after July 1, 2011 from one or more categories of applicants as established under section 13 (2.1). Also see Forest Licence Regulation.

Supplemental forest licence means a restricted forest licence that includes the condition that timber may be harvested under the licence only if the Minister is satisfied that the holder of the licence has taken the steps specified in the licence to obtain from other sources the timber and wood residue needed for processing facilities owned or leased by the holder.

Volume of timber harvested (VOTH) can be defined by section 75.1(1) of the *Forest Act*, a licence-specific provision enabled by section 75.11 of the Act or imposed by the Minister under the authority of section 75.95 of the Act.

4.2 Legislation

4.2.1 Legislation Directly Relevant to Cut Control

- Division 3.1 of Part 4 of the *Forest Act* (sections 75.1 to 75.96) establishes the rules for cut control limits and provides some exemptions and transitional provisions.
- Section 80(3) in Division 4.1 (Miscellaneous) of Part 4 of the *Forest Act* stipulates that no compensation is payable in respect of the effect of section 75.1, 75.11 or 75.95
- Cut Control Regulation has provisions regarding:
 - penalties for excess harvesting,
 - adapting cut control if licence is surrendered for First Nations Woodland Licence
 - downward adjustments (grade 4)
 - attributing volumes between licences

4.2.2 Designations and Delegations

Designations and delegations related to cut control legislation can be found by accessing the following webpage: Transfer of Authority for Natural Resource Management <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/laws-policies-standards-guidance/transfer-of-authority>

4.2.3 Historical Context

The concept of harvest regulation through allowable annual cut was initiated in British Columbia after the Sloan Commission of 1945. Sloan saw harvest regulation as an instrument of a sustained yield policy in which allowable annual cut provisions would prevent the depletion of the timber resource over time and provide some continuity of harvest for community stability.

Cut control rules were initially contractual but later were embedded into the *Forest Act*. Until 2003, cut control requirements specified minimum as well as maximum harvest levels. The Province's Forestry Revitalization policy changes of 2003-2004 sought to expand the role of market forces in the forest sector. Legislation amendments eliminated minimum harvest levels and removed most statutory decisions related to cut control. The Forestry Revitalization related changes also restricted the role of timber sale licences and provided mechanisms for converting any replaceable timber sale licences (with allowable annual cut) to other forms of tenure. Implementing all these changes to cut control required transitional provisions in the *Forest Act* and the Cut Control Regulation. While some of the transitional provisions still exist in legislation, the following provisions are no longer relevant for current cut control administration:

- all cut control provisions for a timber sale licence with allowable annual cut;

- transitional provisions for a forest licence, tree farm licence or timber sale licence that was the subject of an AAC reduction under the *Forestry Revitalization Act*.

4.3 Cut Control Examples

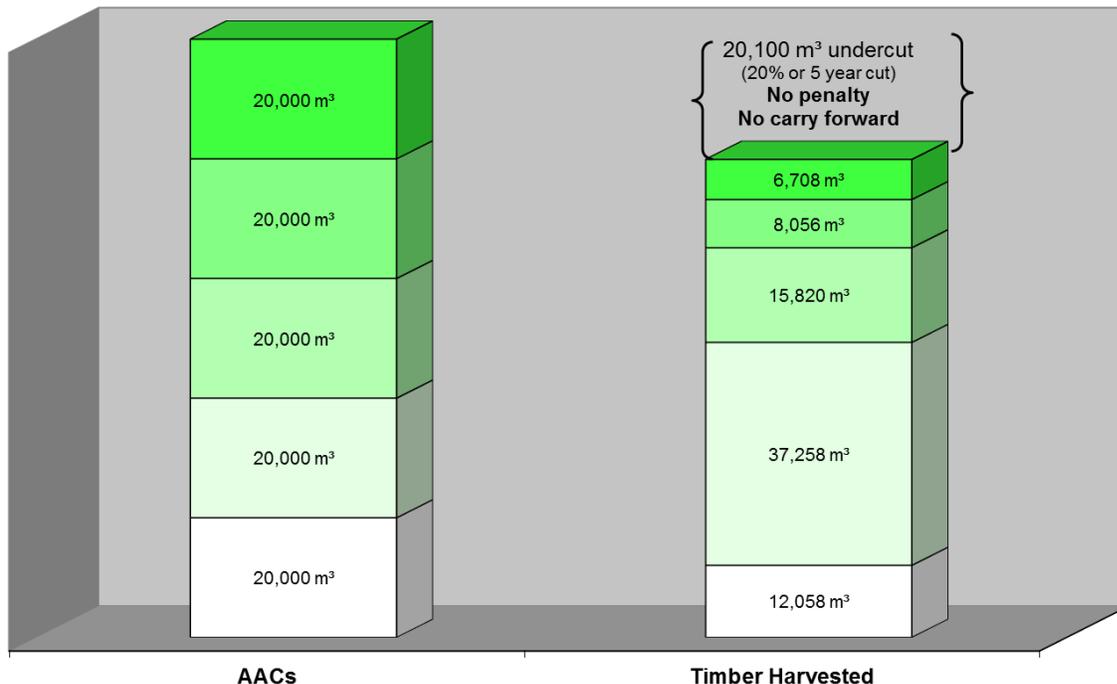
The following two examples describe different approaches that a licence holder might take in the following scenario:

- a replaceable licence with an AAC of 20,000 m³/yr
- the holder of the agreement reduces harvesting in the 4th and 5th years; primarily due to poor market conditions.
- After the fifth year, the holder of the agreement increases harvesting to benefit from a good market conditions.

4.3.1 Example 1a- Full Five-Year Cut Control Period

In this example, the holder of the agreement operates within a 5-year cut control period without considering the option of early termination. For the first three years harvesting was slightly above the sum of the AACs. For the last two years, harvest was under the sum of the AACs. At the end of the first 5-year cut control period, 20% of the available AAC has not been harvested (20,100 m³). Unharvested volume cannot be carried forward into the next cut control period so the 20,100 m³ represents a foregone opportunity.

The following chart compares the available AAC with the Volume of Timber Harvested over the five-year *cut control period*.

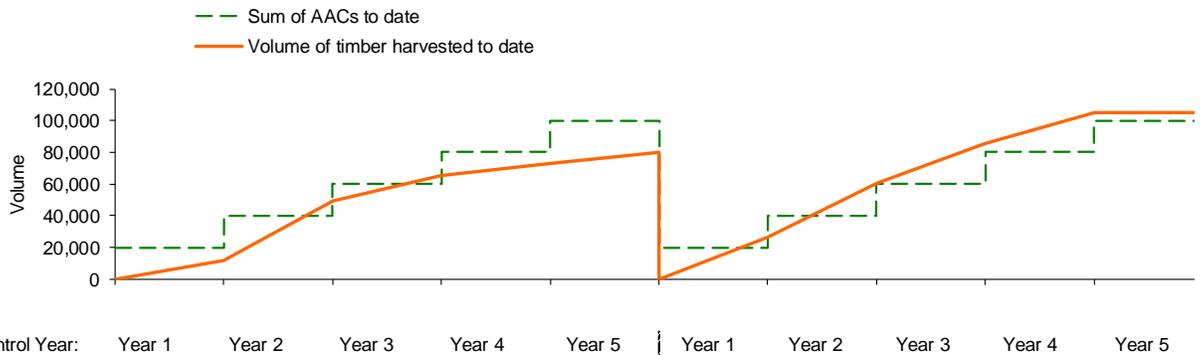


4.3.2 Example 1b Extended over Second 5 -year CCP

In the following table and graph, additional detail is presented for Example 1a and the fictitious harvest volumes are extended into a subsequent 5-year cut control period. In this scenario of improved market conditions after the 5th year, higher harvest rates are desired by the holder of the agreement but the AAC available in the second CCP runs out before the end of the period. Example 2 will show how early termination would have allowed better utilization of the agreement’s AAC.

| Cut Control Period year | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|------------------------------------|--------|--------|--------|--------|---------|--------|--------|--------|---------|---------|
| AAC | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 |
| Sum of AACs to date | 20,000 | 40,000 | 60,000 | 80,000 | 100,000 | 20,000 | 40,000 | 60,000 | 80,000 | 100,000 |
| Current year's harvest | 12,058 | 37,258 | 15,820 | 8,056 | 6,708 | 26,069 | 34,198 | 25,068 | 20,023 | 0 |
| Volume of timber harvested to date | 12,058 | 49,316 | 65,136 | 73,192 | 79,900 | 26,069 | 60,267 | 85,335 | 105,358 | 105,358 |
| VoTH as % of AACs | | | | | 80% | | | | | 105% |
| Undercut (forgone) | | | | | 20,100 | | | | | |

End of cut control period =>



Summary

First CCP: For the first three years, harvesting was slightly above the sum of the AACs. For the last two years, harvesting was under the sum of the AACs.

Result: 20,100 m³ of available AAC from the first CCP was unharvested. i.e. the holder of the agreement had the right to harvest that volume of timber but did not exercise that right. Unused AAC cannot be carried into the next CCP.

Second CCP: Over the first 4 years of the CCP the licence overharvested the sum of the AACs and in the last year there was no harvest.

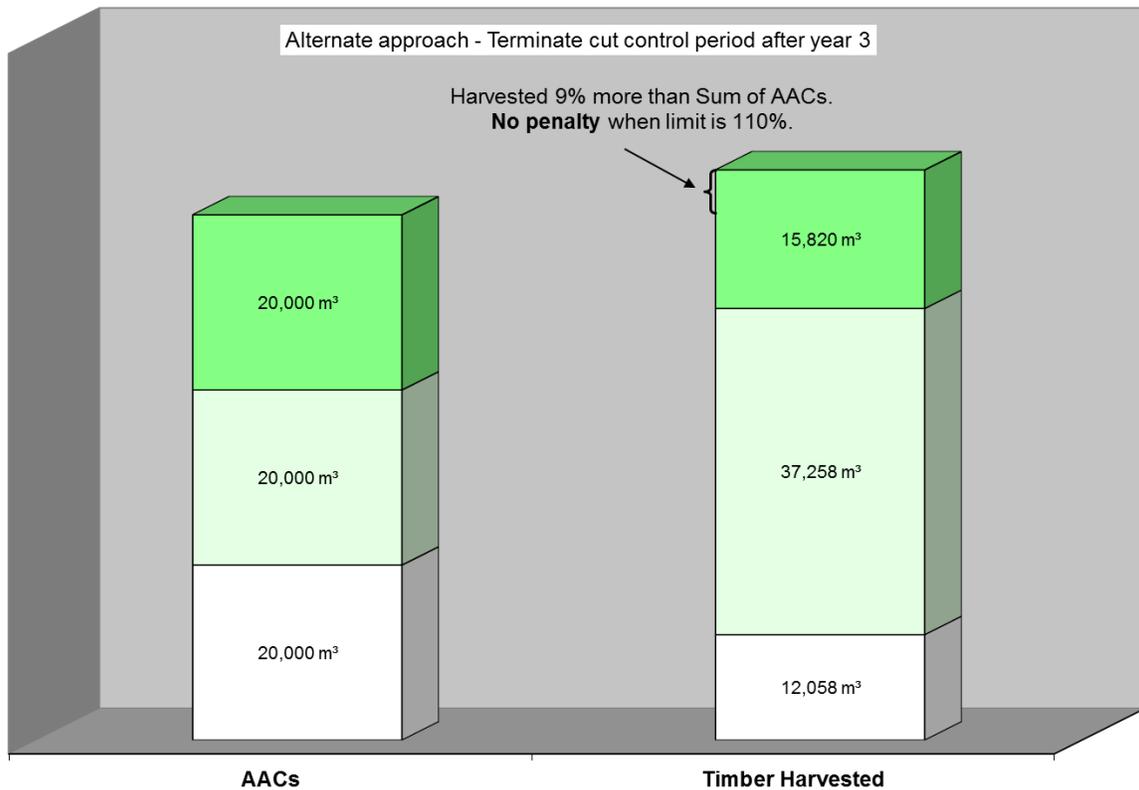
Result: Harvesting a greater amount of timber than the sum of the AACs over the first 4 years of the CCP and no harvest in the 5th year resulted in the licence staying within the CCP limit of 110% of the sum of the AACs. Therefore, there would be no penalty for exceeding the sum of AACs by 5,358 m³, but that volume will be applied as harvest in the next CCP.

4.3.3 Example 2a- Early Termination of First CCP

Holders of certain agreements can terminate their cut control period sooner than five years by serving notice within six months after the desired termination date. (See Early Termination in 1.3 Key Concepts of Cut Control above.)

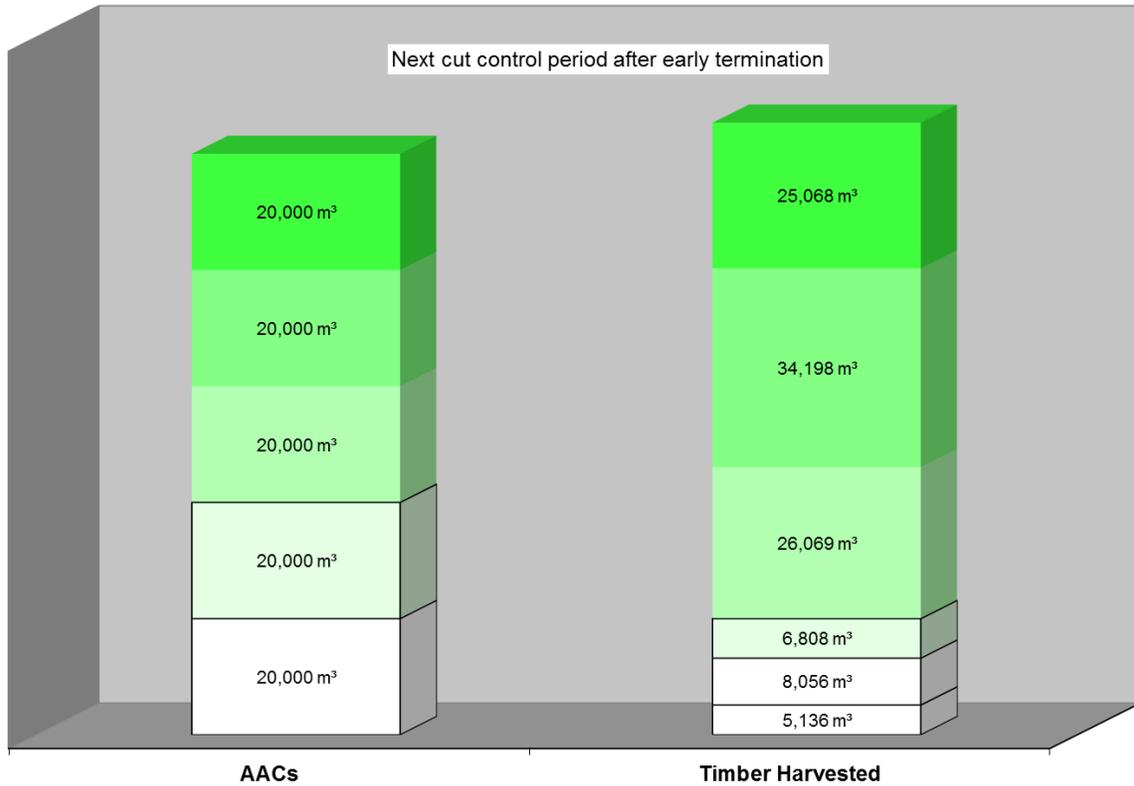
Example 2 has the same market conditions as the scenario used in Example 1. The chart below uses the same harvested volumes as in Example 1 but in this example, the holder of the agreement gives notice of early termination of the CCP in the first six months of the 4th year. The first cut control period therefore terminates at the end of year 3.

The holder of the *agreement* avoided the lost opportunity of unharvested volume by restarting the **cut control period** as soon as the harvest was over 100% but less than the penalty limit.



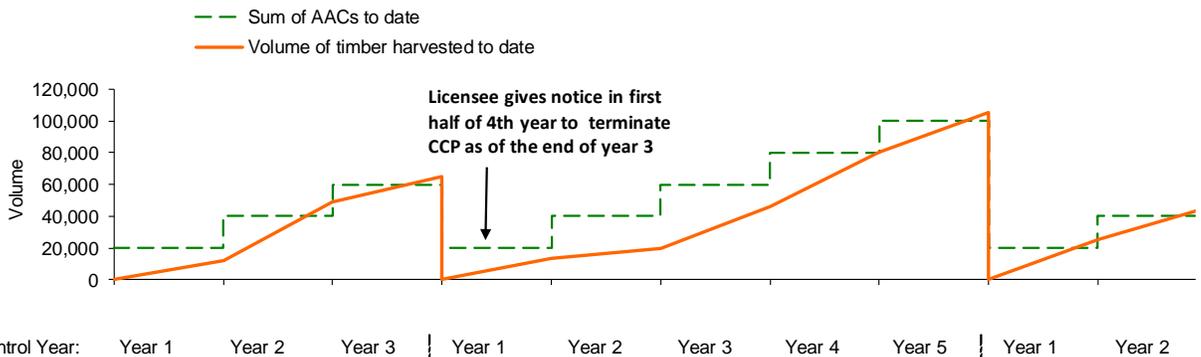
4.3.4 Example 2b Extended over Subsequent CCPs

The next chart illustrates Example 2a’s next CCP using the same harvest volumes as 4th to 8th years of Example 1.



The following table and graph displays information for this example in a different format and extends the time illustrated to ten years. Under the same market conditions used for Example 1, higher harvest rates are desired by the holder of the agreement to benefit from improved market conditions after the 5th year. But in this example, early termination in year 3 avoided lost AAC and allows greater utilization of the agreement’s AAC.

| Cut Control Period year | Year 1 | Year 2 | Year 3 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 1 | Year 2 |
|---|--------|--------|-------------|--------|--------|--------|--------|-------------|--------|--------|
| AAC | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 | 20,000 |
| Sum of AACs to date | 20,000 | 40,000 | 60,000 | 20,000 | 40,000 | 60,000 | 80,000 | 100,000 | 20,000 | 40,000 |
| Current year's harvest | 12,058 | 37,258 | 15,820 | 8,056 | 6,708 | 26,069 | 34,198 | 25,068 | 20,023 | 20,000 |
| Overcut carry forward | | | | 5,136 | | | | | 5,235 | |
| Volume of timber harvested to date | 12,058 | 49,316 | 65,136 | 13,192 | 19,900 | 45,969 | 80,167 | 105,235 | 25,258 | 45,258 |
| VoTH as % of AACs | | | 109% | | | | | 105% | | |



Summary

First CCP: For the first three years, harvesting was above the sum of the AACs. (same as the first 3 years of Example 1).

Result: There is no penalty for exceeding the sum of AACs by 5,136 m³ because that is within the CCP limit of 110% but that volume will be applied as harvest in the next CCP.

Second CCP: For the first two years of second CCP, harvesting was well under the sum of the AACs (same as years 4 and 5 of Example 1). Harvesting rates for the last 3 years of the CCP were well above the AAC but ending up close to the CCP’s sum of AACs.

Result: There is no penalty for exceeding the sum of AACs by 5,235 m³ because that is within the CCP limit of 110% but that volume will be applied as harvest in the next CCP.

Third CCP: Only the first two years are shown in this example but note that in 10 of the Example 2 there is AAC available to harvest but in the 10th year of Example 1, there was no available AAC remaining.

Conclusion: Although the licence holder would not have been able to foresee future market conditions, it would have been reasonable to expect in the early part of the 4th year that terminating the CCP at the end of the 3rd year would be beneficial given the cut control status at the end of year 3 and the short-term prospect for the markets for at least year 4.