



MINISTRY OF FORESTS LANDS, NATURAL
RESOURCE OPERATIONS AND
RURAL DEVELOPMENT

Volume Attribution Policy

October 26, 2021

Forest Tenures Branch

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Introduction:

The cut control provisions under Part 4, Division 3.1 of the *Forest Act* (Act) and the Cut Control Regulation (Regulation) provide forest tenure holders with a degree of flexibility in exercising their timber harvesting rights, while at the same time maintaining the integrity of both the licence cut control limits and the management unit allowable annual cuts (AAC) over the longer term.

Although a licence holder is provided an annual AAC, cut control rules allow the licence holder the option to harvest the full five years of AAC at any time over a typical five-year licence cut control period. An exception to this is the cut control provisions under the *Great Bear Forest Management Act*, which provide a one-time ten-year cut control period in the GBR North Timber Supply Area (TSA) for eligible licences.

The Act and the Regulation also provide for volume attributions as a potential tenure management tool, at the minister's discretion, that may be available to the forest tenure holder to increase operational and administrative licence level cut control calculation flexibility, subject to meeting specified requirements. The authority to attribute volume between licences is found under Sections 18 to 24 of the Regulation.

Volume Attributions:

A volume attribution is a discretionary (i.e., a “may”) decision by the minister. The approval of a volume attribution request cannot be predetermined, is neither guaranteed nor automatic and may not be approved if it would be contrary to the public interest or otherwise not meet the specified requirements.

A volume attribution is the act of transferring harvested volumes between eligible licences within the limitations defined in the Regulation. If approved, a volume attribution can provide licence holders with increased harvest flexibility, foster business-to-business relationships, potentially reduce transactional costs to both industry and government provided that the licence holder abides by the harvest limits specified in their licence and the applicable cut control provisions of the Act and Regulation.

General Licence/Management Unit Requirements for Volume Attributions:

Section 19 of the Regulation provides the authority to the minister to attribute volume between eligible licences and outlines the general licence/management unit specific requirements that must be met before an attribution request may proceed:

(Section 19 – Cut Control Regulation) – the minister may attribute a portion of the volume of timber harvested under a licence to another licence if,

- (a) subject to Section 20, the harvesting licence, and the receiving licence each grant rights to harvest timber within the same timber supply area,
 - (a.1) subject to Section 21,
 - (i) the harvesting licence is a woodlot licence, and

- (ii) the receiving licence is a restricted forest licence, other than a supplemental forest licence,
- (b) subject to Section 22, the harvesting licence, and the receiving licence each grant rights to harvest timber within the same tree farm licence area, or
- (c) subject to Section 23, the harvesting licence, and the receiving licence each grant rights to harvest timber within the same woodlot licence area.

Sections 20 through 23 of the Regulation specify further requirements for the attribution scenarios provided under Section 19.

Note: A “Timber Sale Licence that specify an AAC” as referenced under Sections 20 and 22 of the Regulation no longer exists as a form of agreement under the Act.

Approval of Attributions:

Section 20 (1) (c) of the Regulation applies to all volume attribution requests and requires that 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 [Section 20 (1) (c) (i)].
2. A final cut control statement (i.e., at end of cut control period) has not been issued for the relevant cut control period for either of the harvesting licence or the receiving licence [Section 20 (1) (c) (ii)].
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 [Section 20 (1) (c) (iii)].
4. Neither the holder of harvesting licence nor the holder of the receiving licence is in contravention of the cut control provisions of the Act [Section 20 (1) (c) (iv)].
5. The volume attribution is not contrary to the public interest [Section 20 (1) (c) (v)]. (See further descriptions below.)

If the answer is “no” to any of these specified requirements, then the minister cannot approve the volume attribution request. (See further description below.)

Note: Once an attribution is granted, the volume under the receiving licence is deemed to be harvested under the receiving licence. If the attribution(s) results in an overharvest situation for the receiving licence (at the end of the cut control period) this excess volume will be carried into the next cut control period and if it exceeds the cut control limits specified for that licence type will result in an overharvest penalty.

Contravention of Cut Control Provisions [Section 20 (1)(c) (iv)]:

Section 20 (1) (c) (iv) of the Regulation requires that neither the holder of harvesting licence nor the holder of the receiving licence is in contravention of the cut control provisions of the Act.

A licence cannot be in an overharvest position at the time of the volume attribution request. Licence holders will, therefore, need to closely manage licence harvest levels to ensure that their licences are not in an overharvest position at the time of a volume attribution request.

Overharvest penalties and loss of access to future harvesting rights (i.e., less harvest room in next cut control period pursuant to the operation of Section 75.7 of the Act) apply to any overharvest volumes.

Cut Control Statements:

Cut control statements are provided to licensees annually with a final cut control statement issued at the end of the cut control period. However, the ministry may issue a cut control statement at any point in time. For the purposes of ensuring compliance with Section 20 (1) (c) (iv) of the Regulation, the cut control positions for each licence will be determined at the time the application for the volume attribution is received.

Determining the Public Interest [Section 20 (1) (c) (v)]:

Subject to the requirements under Section 20 (1) (c) (i) through (iv) of the Regulation having been met, the minister (or delegated decision maker) may approve an attribution if satisfied that the attribution is not be contrary to the public interest [Section 20 (1) (c) (v)].

Public Interest

The term “public interest” is not static and may vary depending on each individual situation being considered. Public interest does not include the private, personal, or partisan interests of a private individual, company, corporation, etc. The public interest may evolve as society’s priorities change over time.

What is “Contrary to the Public Interest”?

The answer to the question what is “contrary to the public interest” will depend on the circumstances and conditions under which the question is posed. A request for a volume attribution will require a decision maker to review relevant government objectives, and the specific circumstances, conditions, and implications applicable as these relate to the harvested volumes under consideration.

The decision maker will, therefore, review all considerations related to a volume attribution request, including considerations that may favour the public interest and those that do not.

Purpose of Volume Attributions:

In consideration of the concept of contrary to the public interest, the purpose or reasons behind volume attributions is relevant. When volume attributions were first brought into effect (2006) government stated the following objectives:

1. Encourage greater forest industry diversification.
2. Encourage an efficient and effective business environment and increase competitiveness.
3. Encourage full utilization of the TSA AAC.
4. Support new entrants to the forest industry.
5. Ensure that volume attributions were not used to avoid non-compliance with cut control requirements as found in the Act and Regulation.

Government objectives are not static and will evolve over time as conditions change. In 2021, government introduced Modernizing Forest Policy in British Columbia, which set intentions for further objectives (among others):

1. Increase the manufacture of logs within British Columbia.
2. Transform forest sector from extracting maximum volume to extracting maximum value.
3. Strengthen partnerships and increase engagement with Indigenous peoples in the management of BC's natural resources.
4. Provide further opportunities for First Nations and forest dependent community involvement in the forest sector.

Public Interest Considerations:

Some general factors that a decision maker may consider in determining whether a volume attribution decision is in the public interest (or not) may include (but are not limited to):

- Are there valid reasons for any harvest delays associated with the receiving licence? For example, was a licence holder prevented from harvesting because of a catastrophic event (e.g. loss of road or bridge access to operating area, large scale wildfire event, etc.)
- Existing business-to-business relationships (and related transactional complexities) that the volume attribution request may support but which are not contrary to requirements of the Act and Regulation or other important objectives or considerations, including the AAC held by each licence holder under their respective licences (i.e., would the attribution on its own or in combination with previous attributions result in a minor licence harvesting as if it were a major licence?).

- Potential impacts to fair return of Crown revenue arising from a volume attribution. For example, transferring harvested volumes from a licence that receives a small volume appraisal allowance to a conventional licence, attributing volumes between licences to avoid or reduce a penalty on overharvest, or any other scenario that would result in a loss of Crown revenue that would otherwise have been due.
- Where an attribution creates a potential competitive advantage for one group of licence holder (those with attribution partners) over others (those without attribution partners).
- First Nations implications. e.g., foreseeable impacts to First Nation's title and/or rights issues, ongoing reconciliations, negative impacts to Revenue Sharing Agreements, etc.
- Any potential impacts to Bill 13 replaceable harvesting contracts and contractors.
- Negative or positive impacts to forest management objectives if attributing licence and receiving licence harvesting rights are specific to different partitions, timber types, licence harvest area geographic restrictions, land use plans, etc.
- Minister's Orders or other harvest limitations in place (e.g. AAC Partition Orders, etc.).
- Implications related to exemptions under Part 10 of the Act.
- Impacts to BC Timber Sales timber pricing mandate. Determine if the BC Timber Sales mandate will be negatively impacted by the volume attribution request. Also, see Section 81.1 – *Forest Act*, Refusal of Cutting Permit and Road Permit Regulation, BCTS Operating Area Maps, etc.
- Restrictions imposed on volumes harvested under the BCTS Disposition Agreement (see BCTS Advisory Bulletin located at: <https://gww.for.gov.bc.ca/bcts/memos/bcts/2016-07-26-Managing-Harvesting-Rights-BCTSDisposition-Agreements.pdf>). (i.e., harvest volume must be consistent with Disposition Agreement, harvest must coincide with cut control period of non-BCTS tenure, etc.).
- Any relevant information from other forest planning activities.
- Other considerations the decision maker considers relevant.

Note: The identification of potential factors for consideration noted above is not intended to fetter a decision maker or limit the scope of any other factors that the decision maker may choose to consider for any individual volume attribution request being reviewed.

Note: It is important for decision makers to adhere to the principle of administrative fairness when reviewing a volume attribution request and examine all relevant considerations.