

Guidance on the Replacement of Forest Stewardship Plans

March 2016

Introduction

Purpose

This guidance is intended to inform decisions regarding forest stewardship plans (FSP) by the Minister's delegated decision-makers (DDMs) under the *Forest and Range Practices Act* (FRPA).

The purpose of this guidance is to help:

1. Address the issues identified by government and the Forest Practices Board regarding FSP quality and effectiveness, and
2. Bring provincial consistency and fairness to the management of FSP expiries.

Context

The majority of British Columbia's FSPs will reach the expiry of their term within the next two years. Practitioners under FRPA are looking ahead to what they must address as they prepare the FSPs that will guide forest management practices in the coming years.

In the decade since most FSPs were first approved, British Columbia's bio-physical landscape has changed and we have gained experience and feedback to apply in our planning and practices.

Specifically, government has learned the following:

- The approval tests for FSP content require more rigor with respect to content that is measurable and/or verifiable.
- Results and strategies in FSPs need to contain consideration of new information such as forest health strategies and monitoring information.
- The public seeks better opportunities to review the content of a FSP and understand the forest management intent contained therein.
- Periodic review opportunities should be predictable and invite a sustained level of engagement.
- Improvements in planning and site-level information sharing are needed with all interested and affected parties, including reaching a common understanding of how the FSP can/cannot support these improvements.

The Replacement Process for Forest Stewardship Plans

In constructing this guidance, the following has been considered:

- Government's strategic stewardship goals, as set out in the Service Plan for the Ministry of Forests, Lands and Natural Resource Operations (FLNR);
- Consistency with the *Forest and Range Practices Act* and its framework;
- That there should be no unjustified financial or operational hardship upon forest licensees or natural resource districts;
- The duty of government for the consultation and accommodation of First Nations asserted or proven rights and title and treaty rights (Aboriginal interests); and,
- Principles of Administrative Law and Natural Justice.

Guidance for replacing an FSP whose term has expired

- FSPs whose terms are expiring should be replaced with a new plan (a 'replacement' plan). The majority of FSPs in the province are approximately 10 years old and should now incorporate new information and new forest management considerations in their results, strategies, measures and stocking standards.
- Extensions to the term of an expiring, or recently expired, FSP should be temporary and provide additional time for comprehensive planning of a new replacement FSP when more time is required.
- The licence holder has the right to request an extension to the term of their FSP. If the licence holder exercises this right, the DDM should, in turn, exercise his/her obligation to review all content in the existing FSP, and may use his/her discretion under section 28 of the Forest Planning and Practices Regulation to deny, or approve, an extension.
- The decision to approve or deny an extension should be conveyed in a letter of determination to the licence holder(s) and should be accompanied by a rationale signed by the DDM that identifies the term of the extension and the reason(s) for it (e.g., time to prepare a replacement FSP). For most licence holders, up to eight months is a reasonable timeframe within which to prepare a new plan.
- If a licence holder proposes major amendment(s) to an FSP and requests an extension to the term of the FSP at the same time, these requests should be submitted as a single request to approve a new replacement FSP.
- It is reasonable to propose that previously approved content within an existing FSP will carry forward into a replacement FSP; however, plans should be reviewed to identify and rectify all provisions that have been problematic to understanding, measuring and/or verifying the commitments in the plan.
- Default practices should not be modified or they are no longer defaults. Default practices listed in the Forest Planning and Practices Regulation must be either followed as-written, or alternate results and/or strategies that better meet local conditions should be proposed.
- Where a result or strategy is proposed in an FSP, the plan should clearly indicate which option (result or strategy) has been selected and how it will be measured or verified. Adhering to the

guidance set out in C&E Bulletin 12 (see 'Resources' below) will improve the measurability of results and the verifiability of strategies in FSPs.

- Measures for natural range barriers and invasive plants must specify actions that will effectively achieve their intended result, and must be enforceable. Therefore, measures should be reviewed to ensure they can be measured and/or verified.
- Wherever possible, the overlap of forest development units (FDUs) should be minimized and/or a single multi-signatory FSP should be proposed that covers the management unit to which it applies. This will help reduce management complexity, streamline approval and amendment procedures, and help facilitate public and stakeholder understanding and involvement.
- The timeframe for public review and comment must ensure that all interested and affected parties have ample time to understand and respond to proposed FSPs. DDMs may extend, or shorten, this timeframe. In some cases, such as where several overlapping FSPs are proposed for replacement, a longer review period should be allowed as per FPPR 20 (2) (b) to ensure that affected parties have time to review and understand the implications of the plan to them.
- The period for consultation with affected First Nations should remain at a minimum of 60 days unless a government-to-government agreement is in effect that provides otherwise. In some cases, additional time will be necessary to properly fulfill the Crown's legal obligation and to ensure adequate consultation has occurred.
- DDMs should produce written expectations for licence holders pursuant to this guidance. These expectations should be reasonable and substantiated, and if so, may effectively form criteria against which new FSP content will be evaluated. Expectations must be made known to licensees sufficiently in advance of the related decision that they can be discussed and addressed with all affected parties. Expectations should be communicated to all licence holders and affected parties in the district.
- DDMs should produce a written rationale documenting their considerations for approval of the FSP, including their reasoning for how legal approval tests have been met, the adequacy of First Nation consultation and any conditions of approval that they specify under FRPA s. 112 (1). A set of standard criteria will be developed to aid DDMs in developing provincially consistent written rationales. FRPA s. 16 (3) requires a rationale for refusing to approve an FSP or an amendment to one.
- DDMs must follow the principles of administrative law including a consistent process, maintaining decision-maker independence, and fairness. DDMs should consider all relevant information and the strategic goals and objectives of FLNR.

New Information for FSPs: Changes to Provincial Forest Lands and Societal Values

In the decade since the majority of British Columbia's FSPs were first approved, numerous factors have shaped the state of forest resources and the expectations of the public for how government ensures those resources are managed. The following factors, taken together or in combination, warrant the development of new FSP content:

- The mountain pine beetle epidemic of the past decade has significantly altered the forest composition of interior forests and the ecosystems they support.

- New information regarding the impact of climate change upon British Columbia's forested ecosystems is continually becoming available and refined. This information directly supports the development of FSP content (e.g., stocking standards).
- Most of British Columbia's management units are now covered by a formal forest health strategy. Where these exist, they contain information that should inform the development of new FSP content, such as stocking standards.
- There are a wider range of natural resource-dependent industries now operating throughout British Columbia and in many places, a greater number of rights-holders now operate upon the same land base as forestry operations. All rights-holders are entitled to fully exercise the rights they've been given and must be able to fulfil their legal obligations.
- Our collective understanding of First Nations Aboriginal interests, the requirement to consider adverse impacts, appropriate accommodation options and ensuring adequate consultation before making decisions, continues to evolve within the context of the government objective of reconciliation.
- There is new monitoring information regarding changes to the values listed under FRPA such as water supply, water quality, forage supply, backcountry recreation, fishing, guiding, trapping, and wildlife viewing. As well, there is information from cumulative effects assessments in some areas.
- New integrated monitoring information, such as the Multi-Resource Value Assessment reports, is becoming widely available that depicts important trends and risks to forest resources that may require coordinated planning among licensees to address, or different results and strategies.
- The requirements of Species at Risk in British Columbia identified in either federal recovery strategies or provincial implementation plans.
- Where Type 2, 3, or 4 Silviculture strategies are complete, as well as any new Integrated Silviculture Strategies, the information should be used and reflected in the FSP where appropriate.
- A Provincial Timber Management Goals and Objectives policy was launched in May 2014, that sets out the government's expectations for how timber is managed.
- The mounting case for collaborative planning across watersheds or within timber supply areas and the potential gains of a single FSP per watershed or timber supply area.
- FSP results and strategies should reflect, project forward, and be based upon the factors used in the Timber Supply Review of the Timber Supply Area to ensure the projected timber supply is not disconnected from actual results and strategy outcomes.

Not all of the considerations above will apply everywhere, but practitioners should be aware of, and able to demonstrate, how such factors affect or do not affect, forest resources within the operating area under their FSP. The responsibility of setting clear expectations which reflect the above considerations and are appropriate for local conditions is that of the DDM for each FSP on a case-by-case basis.

Applying This Guidance

The essence of my guidance is to encourage and assist DDMs in obtaining replacement FSPs because the British Columbia context requires an operational forest management plan be revisited on a five-year basis.

It is recognized that the legislation does not require an FSP to be replaced with a new plan at any point, and that results and strategies in an FSP are only required to be amended where specified events occur during the term of the FSP (e.g., new enactments or objectives are established) as per FRPA Section 7, or where the DDM determines that the FSP no longer meets approval tests. It is also understood that considerations of liability and risk will influence the inclusion of content that is not legally required, and finally, that the final evaluation of an FSP is the jurisdiction of the province's independent DDMs who cannot be directed, except by the Minister. It is, however, my opinion that sufficient evidence is now available for the province's DDMs to find that many FSPs no longer meet these approval tests and ultimately require a replacement plan.

As a statutory decision-maker, I understand the duty to consider the representations of those who may be affected by a decision; that each decision is adjudicated on a case-by-case basis; and that considering these representations and the unique circumstances of each decision may cause a DDM to diverge from a preferred course of action, such as this one. In such cases, a detailed and comprehensive rationale should be produced and made available. These circumstances are important opportunities to learn about the evolution of interests and pressures upon the legislated regime.

Specific applications of this guidance

Professional conversations

This document outlines considerations that should be discussed in the professional conversations that occur between district staff and licensees well-in advance of the work to develop a new FSP.

Written expectations

DDMs should draw upon this guidance when drafting their letters of expectation to licence holders. DDMs are urged to further interpret this guidance for their respective operating environments – particularly the considerations under 'new information' – and not to reissue these points verbatim without including local context.

Expectations above requirements in law should be presented and interpreted as best available information or voluntary guidance, and should not be prescriptive. As advisors to licence holders, professionals that prepare FSPs have the freedom to apply their professional advice and judgment to the task of preparing plans and prescriptions that assist licence holders in fulfilling their compliance obligations.

Expectation letters should be publicly available in keeping with the principle of fairness, which requires that those persons who may be affected by a decision have the opportunity to make representations to the DDM. All affected parties to the decision need to know about the decision that will be made,

including considerations and decision-aids that influence the DDM, in order to have a fair opportunity to make representations.

Rationale for replacement FSPs

The DDM applies discretion in the decision to approve an extension to the term of an FSP (Forest Planning and Practices Regulation, section 28). In my view, this guidance provides a sufficient rationale for why a replacement of the expiring FSP is likely warranted.

This guidance pertains to all FSPs province-wide until they have successfully progressed through a replacement process that applies the considerations of this document.

Further Information

Ongoing Work

Government is aware of outstanding elements of the FRPA framework, such as a final set of provincial objectives or a shared understanding of the risks and opportunities inherent in innovation that, if defined, would further support practitioners in creating high-quality and effective FSPs. Addressing these elements will require ongoing work in collaboration with licence-holders and professionals. This is not expected to be a hindrance to the achievement of the desired improvements that are outlined above.

The issue of meaningful engagement with the public, communities and stakeholders is one of importance to forest management, and is not presently addressed to the satisfaction of all involved, including many forest licence holders. Until such time as the province can establish an improved model, licence holders are encouraged to reference their engagement activities in their FSPs, or to outline them in detail in supporting documentation to the FSP, as a means of broadly conveying their engagement activities with the public and stakeholders that already occur during operational planning. Similarly, licence holders are encouraged to include information regarding how they will consider the rights and interests of First Nations that pertain to the area under the FDP.

Resources

There are many resources available online to support the development of FSPs including interpretive bulletins, provincial guidance and early training modules. Essential information, including the C&E Program Staff Bulletin #12 (assessment of measurable or verifiable) is available at the following locations:

- FRPA Bulletins:
<https://www.for.gov.bc.ca/hth/frpa-admin/frpa-implementation/bulletins.htm>
- Administrative Guide to Forest Stewardship Plans:
<https://www.for.gov.bc.ca/hth/frpa-admin/agfsp.htm>
- FRPA Training (original training material):
<https://www.for.gov.bc.ca/code/training/frpa/>

- FSP Tracking System:
<https://www.for.gov.bc.ca/his/fsp/training.htm>

A newly developed provincial training course for FSP preparers and approvers is targeted for delivery beginning in spring 2016. More information will be available on this course shortly.

Any further information for practitioners regarding FSP renewals will be distributed via the joint ministry-industry network of the Provincial Forestry Forum. This includes the Resource Stewardship and Tenures Committee and the Operational Issues Forums of the North, South and Coast FLNR Areas. Information regarding the membership of these committees can be accessed through FLNR district offices or industry associations. Challenges and inquiries faced in the FSP renewal process should also be presented to this network of committees for discussion and resolution.