

Logging in the Blackwater Pine Mushroom Management Area

Complaint Investigation 070773



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Table of Contents

Board Commentary..... 1

The Investigation2

 Background2

 Discussion3

Conclusions9

Board Commentary

In this complaint, logging in pine mushroom habitat was approved by government, with some conditions attached to the forest development plan that addressed balancing timber and non-timber values. Since then, legislation has changed, the approved plan has expired, and future logging in the area is now governed by a forest stewardship plan (FSP) under the *Forest and Range Practices Act* (FRPA).

The FRPA FSP does not include results or strategies for managing pine mushroom, nor does it carry forward the conditions imposed by government on logging in the pine mushroom management area. BCTS is acting responsibly by saying it will adhere to those conditions, however its commitments are not binding or enforceable because they are not included in the FSP.

Because the public was unhappy with the previously approved logging—despite the district manager’s conditions—the Board is concerned that the lack of legal commitments to protect pine mushroom habitat will further diminish public confidence in how logging and pine mushroom habitat will be balanced in future. Currently there is nothing to preclude another licensee from proposing cutblocks in the pine mushroom management area that are not consistent with the previous government direction or BCTS’ commitments.

The Board recognizes that circumstances change for technical or scientific reasons (such as forest health conditions), that competing values can impact stewardship goals, or that newly emerging land use pressures can affect planning. It also recognizes that under the FRPA planning regime, forest stewardship is heavily dependent on licensees and their professionals, rather than requiring all commitments to be included in legal FSPs. In cases such as this one, part of the problem is that while the FRPA regime that allocates timber is well established, there is no similarly established regime for allocating non-timber forest products.

Government originally established a management plan for the pine mushroom area in 1999, and in 2005 the district manager imposed conditions on logging in this area to protect pine mushroom. Government clearly recognizes the value of the pine mushroom resource in the Blackwater Valley. However, under FRPA, the only way for government to ensure the pine mushroom resource is addressed is to establish an objective for pine mushroom, which would then require licensees to propose results or strategies in their FSPs to meet that objective.

The Investigation

In June 2007, the Blackwater stewardship group complained to the Board about a timber sale in the Blackwater Creek Valley, near D'Arcy, British Columbia.

The complainant is a group of local residents concerned that logging will harm pine mushroom habitat, spotted owl habitat, and water values. The complainant says that earlier public consultation was ineffective and that cutblock planning documents contain significant errors.

This report deals with the complainant's concerns about public consultation, pine mushroom, water, and planning errors. The Board will report separately about management for spotted owl habitat.

Background

In the early 1990s, the Ministry of Forests'¹ Small Business Forest Enterprise Program proposed a number of cutblocks near Blackwater Creek in the Squamish Forest District. Many people opposed that proposal because the area is prized for abundant high-quality pine mushrooms, which are collected as food, medicine, and for commercial sale and export. About eight tonnes of pine mushroom are picked in the Blackwater Creek Valley each year.

The valley is also a source of other medicinal plants and traditional products used by local residents. The First Nations community carries out an ongoing "traditional cultural use project" in all seasons in the area, which includes hunting trips, youth gatherings, school field trips, herbal study walks, and the gathering of foods, cedar barks, and various roots. In addition, at least five residents of the Blackwater Creek Valley take drinking or irrigation water from the creek.

Pine mushroom are common in British Columbia. However, they require root contact with a host tree and can, therefore, be impacted by forest harvesting. In 1993, the forest district identified about 900 hectares in the Blackwater Creek Valley as the Blackwater Pine Mushroom Management Area (the BPMMA). The district did not prohibit logging in that area, but agreed to defer logging until a management plan integrating mushroom and timber production could be developed.

Such a plan was completed in 1999. It proposed selective cutting of timber to maintain mushroom production.² In 2003, BC Timber Sales (BCTS)³ received approval from the Ministry of Forests and Range (MFR) to log four cutblocks in the BPMMA, consistent with the

¹ Now the Ministry of Forests and Range.

² Olivotto Timber Forest Modelling Consultants, *Timber Harvesting Plan for the Blackwater Pine Mushroom Management Area*, 1999. Available at: <http://www.for.gov.bc.ca/hfp/silstrat/pdf/files/prov-blackwater-pinemush.pdf> (accessed December 17, 2007).

³ BC Timber Sales replaced the former Small Business Forest Enterprise Program.

management plan. Those cutblocks were never harvested because BCTS ultimately considered them unprofitable.

In 2005, BCTS proposed an amendment to its forest development plan (FDP)⁴ that would add another five cutblocks in the BPMMA. These “clearcut-with-reserve” cutblocks were not consistent with the 1999 management plan. Following public and agency review and comment, BCTS dropped one cutblock from its proposal. MFR approved the remaining four cutblocks in January 2006. Under that approval, no more than six percent of the BPMMA’s high-value mushroom habitat could be logged.

In March 2007, BCTS sold the standing timber in one of the cutblocks and plans to sell another two cutblocks before April 2008. Community concern about the planned logging led to protest and to this complaint. The Board arranged a participant meeting in October 2007 to help BCTS and the complainant work together. Information and opinions were shared and, although the complaint issues were not resolved, a relationship has developed that should aid future communication among the participants.

Discussion

The complainant’s concerns relate mostly to forest planning and practices under the *Forest Practices Code of British Columbia Act* and regulations (the Code). In January 2004, the *Forest and Range Practices Act* (FRPA) replaced the Code as British Columbia’s forest practices legislation. However, FRPA states that the Code continues to apply to forest practices carried out under a FDP. In the circumstances of this complaint, the forest planning and practices concern both the Code and FRPA.

The Board considered these questions:

1. Was the public review process adequate?
2. Were risks to pine mushroom appropriately addressed?
3. Were risks to water resources appropriately addressed?
4. Were planning documents accurate?

1. Was the public review process adequate?

The complainant believes that the local community did not have adequate opportunity for public review and comment before the latest cutblocks were approved and that community concerns were not meaningfully considered. The complainant is also concerned that downstream water-users were not directly contacted by BCTS.

The Code required BCTS to advertise its proposal in a local newspaper, make the plan available to the public, and provide at least a 60-day public review and comment period. BCTS was

⁴ Amendment 66 to the BCTS 2000-2004 FDP (government extended the original expiry date of the BCTS FDP several times to March 2007).

obligated to consider all written comments and to make changes to its plan that it considered appropriate. BCTS met these Code requirements.

Although the BCTS proposal was advertised in local newspapers and included a 60-day review and comment period, BCTS received no written comments from the public about the Blackwater cutblocks. However, the public was aware of the proposal. On April 2, 2005, BCTS met with about 30 people from the surrounding community. Most were concerned about protection of pine mushroom. These people unanimously opposed logging the Blackwater cutblocks.

BCTS subsequently hired a consultant to assess and map pine mushroom capability in and surrounding the BPMMA. The study resulted in BCTS dropping one of the five cutblocks it originally proposed because of particularly high mushroom value in that cutblock. The mushroom habitat study and the modification of logging plans indicate that BCTS considered public concerns, though not to the extent some people might have preferred.

The complainant noted that MFR approved the cutblocks despite strong community opposition and written objection from the local First Nation. MFR explained that the plan approval considered both available information and new information brought forward through review and comment and First Nation consultation. However, ultimately, the decision to approve was based on whether the plan would adequately manage and conserve the forest resources of the area. Under the Code, the district manager had to approve the BCTS proposal if it met Code requirements and, in the district manager's opinion, would adequately manage and conserve forest resources. Given the circumstances, the district manager approved the BCTS proposal, but did so with a condition:

The cumulative harvested area of blocks approved in the Blackwater Pine Mushroom Management Area is not to exceed what has been approved in this amendment. In addition, unless a field inspection by a qualified professional indicates an area does not have high mushroom production capabilities, no more than six percent of the high mushroom production areas as identified in the August 12, 2005, Blackwater Pine Mushroom Management Area report completed by Madrone Environmental Services may be included in the blocks approved in this plan.

The district manager recognized that BCTS could propose cutblocks that were inconsistent with the management plan for the area, provided that the newly proposed cutblocks would still adequately manage and conserve forest resources, including pine mushroom. To provide additional assurance, the district manager placed a limit on how much high-value mushroom habitat could be impacted now and in the future. This indicates that community concerns, though not accepted outright, were meaningfully considered.

With regard to whether BCTS should have directly contacted downstream water-users, such contact was legally required only within a community watershed. Blackwater Creek is not in a community watershed. Therefore, BCTS was not obligated to directly contact the water-users. Nevertheless, section 59 of FRPA's *Forest Planning and Practices Regulation* does require a forest licensee to protect licensed waterworks from damage and introduction of materials harmful to human health. The nearest licensed water-intake is about 450 metres down-slope from one of

the cutblocks. BCTS has a system in place for managing environmental risks and does not anticipate any impact to that or other downstream water intakes.

In summary, the local community (including downstream water-users) had adequate opportunity for review and comment as set out by the Code. Community concerns were mostly about protection of pine mushroom. Though not resolved, community concerns were meaningfully considered by BCTS as demonstrated by its subsequent assessment of pine mushroom habitat and consequent deletion of one cutblock. In addition, MFR limited the potential impact on mushroom habitat to a level the district manager considered adequate for managing and conserving mushroom values.

Finding: *The public review process was adequate.*

2. Were risks to pine mushroom appropriately addressed?

The complainant is concerned that timber harvesting will harm pine mushroom production, which is important because the complainant favours the BPMMA for its high-quality mushrooms and easy access.

Over the years, many people in the community had assumed that MFR designation of the BPMMA meant the area was protected from timber harvesting. This was not correct; such designation by MFR had no legal meaning or bearing on forest activities that could occur there. Identification of the BPMMA on a forest district map simply indicated that the area was of some management interest.

Furthermore, there is no higher-level plan that provides mandatory direction for management of pine mushroom in the Blackwater Creek Valley. The 1999 management plan gave guidance on how to integrate both timber and mushroom production by selective cutting of timber through time, but the plan was never binding on forest managers.⁵ BCTS was not obligated to follow the 1999 management plan when it chose to propose an additional five clearcut-with-reserve cutblocks in 2005.

BCTS' 2005 harvesting proposal provided no management objective for protection or management of the mushroom resource. However, after the review and comment process, BCTS sought to balance mushroom production and timber harvesting by limiting the impact of its clearcut-with-reserve cutblocks on pine mushroom. BCTS first assessed the value of mushroom habitat within the BPMMA, then dropped one cutblock of particular mushroom value and committed to retain some additional patches of high-value mushroom habitat within the remaining four cutblocks. BCTS also chose to maintain some large trees, and thus their fungal associations, to help speed mushroom recovery in the logged areas. BCTS calculated that less than six percent of the mapped high-value mushroom habitat and 13 percent of moderate habitat would be impacted by its revised logging proposal.

⁵ Under the Code, the method the plan proposed was binding on BCTS' four previously approved (but still unlogged) cutblocks. The approval of those cutblocks was contingent on the plan's recommendations being followed as a measure of "adequately manage and conserve forest resources" under Section 41 of the former Code Act.

Notwithstanding BCTS' balancing, the only legal protection offered to pine mushroom in the Blackwater Creek Valley was a Code requirement that the district manager be satisfied, prior to approving BCTS' FDP amendment, that forest resources would be adequately managed and conserved. In deciding to approve the revised BCTS proposal, the district manager considered that:

- The Blackwater Creek area contains high-value mushroom habitat.
- Under the BCTS clearcut-with-reserve proposal, most of the BPMMA would remain undisturbed.
- Under the 1999 selective-cut approach, mushroom values would be maintained as harvesting proceeds over the entire BPMMA.
- The BCTS approach, by protecting some high-value mushroom habitat from disturbance, may present a lower risk to the mushroom resource than would selective harvesting over a larger area.
- BCTS regards the 1999 approach as uneconomic.
- The 1999 approach might conflict with habitat requirements for spotted owl (an earlier district manager decision was that management for spotted owl habitat should take precedence over mushroom management).
- BCTS had dropped one of five proposed cutblocks because of high mushroom value.
- BCTS had no plan beyond its current proposal to log within the BPMMA.
- Despite BCTS' stated intention, future demand for timber may warrant MFR establishing a threshold for mushroom habitat protection.

The district manager conditionally approved BCTS' FDP amendment in January 2006. That approval stipulated that cutblocks under the plan could include no more than six percent of the BPMMA's mapped high-value mushroom habitat. The district manager also restricted the amount of timber harvesting within the BPMMA to no more than the total area of the most-recently approved cutblocks (about 75 hectares).

After getting approval from MFR, BCTS continued to consider mushroom values as it did more detailed cutblock-level planning. It:

- Changed a cutblock boundary to retain additional high-value mushroom habitat.
- Increased the size of cutblock retention patches, and add additional retention in higher productivity mushroom sites.
- Moved a planned road to avoid a high-value mushroom area (and to improve a stream crossing).

It is significant to note that the conditions imposed by the district manager when he approved BCTS' 2005 FDP amendment no longer apply because BCTS' FDP automatically expired on March 31, 2007. Since then, most timber harvesting must be done under a forest stewardship plan. This means, with the exception of the cutblock sold in March 2007, all logging in the BPMMA has to comply with FRPA and not the Code.⁶ Therefore, the district manager's attempt

⁶ The Code continues to apply to cutblock BL002, sold in March 2007, because it was described in a timber sale licence in effect on the date the forest stewardship plan was approved (see section 197(7)(a.1) of FRPA).

to limit impact on the BPMMA has no effect under FRPA — unless a similar commitment was made in a forest stewardship plan. Currently, BCTS' forest stewardship plan does not mention pine mushroom or the BPMMA. Nevertheless, BCTS has said that it will continue to meet the district manager's conditions as it plans its cutblocks under FRPA.

In summary, there was no legal requirement or established management objective for pine mushroom. Nevertheless, BCTS altered its plans to reduce the impact on pine mushroom and MFR took steps to maintain most of the high-value mushroom habitat.

Finding: *Risks to pine mushroom were appropriately addressed.*

3. Were risks to water resources appropriately addressed?

The complainant is concerned that logging will harm water quality, water supply and fish habitat values in and downstream of Blackwater Creek. The complainant notes that several licensed water-users take their drinking and irrigation water from the creek and other downstream watercourses.

Forest managers sometimes use a watershed assessment to assess the risk of logging to water supply. The Code formerly required a watershed assessment if harvesting was proposed within a community watershed, or a watershed with significant water resources (as determined by government officials). Neither condition applied in this case. No watershed assessment was required or done.

Nevertheless, the Code did require BCTS to include measures in its FDP to protect water. BCTS committed to:

- maintain natural watercourses;
- prevent erosion and contamination of water;
- ensure that vegetation changes within drainages are within acceptable limits;
- comply with Code requirements for stream crossings;
- identify and classify all affected streams, wetlands, and lakes; and
- apply appropriate practices to minimize or prevent impacts.

BCTS has completed detailed planning for one of its four approved cutblocks. When BCTS designed the cutblock, it did consider the risk to water-related resources. BCTS traversed, mapped and classified streams within and adjacent to the cutblock, and identified which were fish streams. BCTS then planned its harvest areas so that most of the streams were outside the cutblock or within retention patches.

As required by the Code, BCTS' cutblock site plan shows a 20-metre wide riparian reserve zone along the only "S3" fish stream in the cutblock. This zone is to remain unharvested. BCTS considers the risk of windthrow in the reserve zone to be low. Another smaller fish stream, one not within a retention patch, could legally be harvested with no streamside protection but BCTS plans to leave non-merchantable trees and other vegetation within ten metres of its edge.

BCTS met Code requirements for streamside protection and planned its roads, retention patches, and harvest areas in a manner intended to protect water values. In addition, the cutblock site plan recommends that logging equipment avoid or minimize disturbance to the forest floor, wet sites and seasonal drainages. The site plan also states that there is no sign of terrain instability in the harvest area.

Another water-related concern is the potential use of herbicides to control brush (particularly because some plants in the area are collected for medicinal use). BCTS predicts that brush will not be a problem in the one completely-planned cutblock. However, if brushing is required, the cutblock site plan specifies that it be done manually (i.e., without herbicides).

Finding: *Risks to water resources were appropriately addressed.*

4. Were planning documents accurate?

The complainant is concerned about errors in BCTS' planning documents. The complainant said that, for one cutblock, the mapped cutblock boundaries did not match the boundaries flagged in the field. In addition, the cutblock site plan map had not been signed by a forest professional.

The Board's initial investigation revealed that several of the complainant's documents and maps were out-of-date. The complainant did not have current maps with more recent changes made by BCTS to the cutblock boundaries.

There were no significant errors in the current planning documents. The cutblock location on the ground appeared to agree with its map, but the Board could not determine whether the cutblock boundaries were flagged correctly in the field because someone had earlier removed much of the flagging tape from the cutblock.

A site plan map must be included in the site plan, but there is no requirement for the map to be signed by a forest professional. The site plan had been signed and sealed by a forest professional, signifying that the forest professional considered the document complete and accurate.

At the October 2007 participant meeting, the participants identified their information needs and agreed to share up-to-date information, documents and maps.

Finding: *There were no significant errors in the planning documents.*

Conclusions

1. Was the public review process adequate?

The public review process was adequate.

2. Were risks to pine mushroom appropriately addressed?

Risks to pine mushroom were appropriately addressed.

3. Were risks to water resources appropriately addressed?

Risks to water resources were appropriately addressed.

4. Were planning documents accurate?

There were no significant errors in the planning documents.