

**Board Bulletin, Volume 11
Meeting the Requirements and Objectives of the
Forest and Range Practices Act (FRPA)**

This bulletin is the eleventh in a series of Forest Practices Board bulletins describing aspects of forest legislation, practices and trends, and their implications for forest stewardship. These bulletins are intended to foster discussion and to improve understanding of forest practices.

This bulletin describes the framework for assuring that forest and range practices on Crown land in British Columbia meet the requirements and objectives of the province's forest and range practices legislation. We hope this publication provides a useful overview of the framework for ensuring compliance, the quality assurance framework, and the roles and responsibilities of various parties under FRPA.

There has been considerable public comment recently about changes in how the province is managing forest and range resources, including comments about the reorganization of BC's natural resource ministries and related changes in government enforcement. The Forest Practices Board does not support any particular viewpoint about these changes, but, through this bulletin, strives to provide factual information that may be useful in informing debate. An awareness of the province's forest and range management framework as a whole makes it easier to understand the effect of a change in one aspect. The Board has a mandate to audit and investigate the appropriateness of government enforcement and has published a number of enforcement audits over the years. Though our work has not yet evaluated government enforcement since the most recent changes took effect, over time we will also report on this.

To fully understand BC's framework, it is important to look at what the legislated requirements are, including the roles of licensees, professionals, government's compliance and enforcement program and the Board in helping to ensure compliance. As well, it is important to evaluate effectiveness; in this case, by looking at whether or not there is a high rate of compliance with legislated requirements, and whether or not the framework is achieving stewardship of the 11 resources identified in FRPA.ⁱ

FOREST AND RANGE PRACTICES ACT (FRPA) REQUIREMENTS

a) FRPA Objectives

Forest and range practices on Crown land are regulated by the *Forest and Range Practices Act* (FRPA). Under FRPA, desired outcomes of forest or range practices are referred to as 'objectives.' Objectives are established either by regulation (a Cabinet Order); by order of a government minister or ministers under FRPA or the *Land Act*; or by the Haida Gwaii Management Council for Haida Gwaii (applies only to forestry on Haida Gwaii). There are 10 general objectives set out in the *Forest Planning and Practices Regulation* (under FRPA) for the management of: soils; timber; wildlife; riparian areas; fisheries-sensitive watersheds; community watersheds; wildlife and biodiversity at the landscape level; wildlife and biodiversity at the stand level; visual quality; and cultural heritage resources.

The objective for soils is, "without unduly reducing the supply of timber from British Columbia's forests, to conserve the productivity and the hydrologic function of soils."

The objectives for timber are to:

- (a) "maintain or enhance an economically valuable supply of commercial timber,"
- (b) "ensure that delivered wood costs...are competitive in relation to...other jurisdictions," and
- (c) not unduly constrain the exercise of rights under *Forest Act* licences.

In addition to these general objectives, there are many localized objectives for wildlife habitat, visual quality, lakeshore management zones, water quality and other values. Many of these objectives were originally set out in land use plans that were developed in the last 10 to 15 years; others were established more recently by order of government under FRPA and the *Land Act*.

In the case of rangeland, objectives for soils, forage, water, fish, wildlife and biodiversity are established in the *Range Practices Regulation*.

The link between these objectives and actual forest and range practices on the ground is created through various types of planning. Under FRPA, forest stewardship plans (prepared by most forest licenseesⁱⁱ) and woodlot licence plans must include results or strategies consistent with government objectives for forests. These results and strategies create legal obligations which supplement or replace some practice requirements (practice requirements are discussed below). Range use plans and range stewardship plans must be consistent with the objectives for range.

These plans all require government approval, which must be granted if FRPA requirements have been met. These plans also provide a legislated opportunity for public comment.

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b) Practice Requirements

In addition to establishing objectives and planning requirements, FRPA also includes practice requirements that must be followed by licensees. These include regulations:

- to prevent significant landslides, damage to the environment and damage to fish habitat;
- to require licensees to leave wildlife trees on cutblocks and to ensure reforestation; and
- to deal with soil disturbance, drainage, construction and maintenance of roads and bridges, riparian areas, drinking water, biodiversity and resource features.

Section 57 of the *Forest Planning and Practices Act* states that forest licensees must conduct timber harvesting, silviculture, road construction and road maintenance “at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat.”

Practice requirements designed to prevent fires on forest land and grasslands, and to make sure wildfires are put out, are found in the *Wildfire Act*. That Act includes a duty to report fires, requirements to take care in preventing fires, requirements for industrial operations to have sufficient fire-fighting capacity on hand, and government powers, such as the authority to requisition equipment or order an evacuation.

There are additional requirements in other provincial and federal legislation. For example, the federal *Fisheries Act* prohibits destruction of fish habitat and the deposit of deleterious substances.

These various provincial and federal practice requirements, together with results and strategies in forest stewardship plans, constitute the legal requirements governing forest practices on Crown land.

COMPLYING WITH THE REQUIREMENTS

a) Licensees

Forest companies and BC Timber Sales (BCTS) often have an environmental management system (EMS) in place to help ensure that FRPA and other legislated requirements are being followed, and that any problems are responded to appropriately. Sometimes the EMS includes provisions for self-reporting, such as a requirement for a company to report non-compliance to the authorities.

Third party certification often requires an EMS to be in place; forest companies voluntarily agree to meet certain standards for forest practices, set by a certifying body such as the Canadian Standards Association (CSA), the Forest Stewardship Council (FSC) or the Sustainable Forestry Initiative (SFI) in order to become certified.

Certified companies are required to commission periodic, independent audits to confirm that they are meeting the certifier’s standards, or to identify any non-conformances with the standards. Being certified allows the company to use the certifier’s label on its products as a marketing tool.

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b) Professionals

Professional foresters, biologists, agrologists, engineers and geoscientists play an important role in forest management in BC. Each of these groups is regulated by professional bodies. Professionals are accountable to their professional bodies and through these bodies, to the public.

One important role for professionals is preparing results and strategies in forest stewardship plans. As mentioned above, results and strategies provide the link between FRPA objectives and practices on the ground.

Another important role professionals play is that of helping licensees achieve compliance with the practice requirements of FRPA. For example, FRPA requires licensees to maintain industrial forestry roads to a standard that ensures the structural integrity of the road is protected, the drainage systems are functional and the road can be safely used by industrial users.ⁱⁱⁱ Professionals can provide advice to licensees on matters such as inspection frequency and maintenance measures necessary to ensure these requirements are met.

FRPA obligations apply to licensees and, in some cases, individuals carrying out forest practices; they don't apply to professionals. The involvement of professionals arises in the legislative framework through the *Foresters Act*, the *College of Applied Biology Act*, the *Agrologists Act* and the *Engineers and Geoscientists Act*. For example, under the *Foresters Act* a person may not engage in the practice of professional forestry unless, with some exceptions, the person is a professional forester.

c) Compliance and Enforcement

The government's compliance and enforcement (C&E) program helps make sure licensees are following legislation.

FRPA and the *Wildfire Act* authorize C&E officials to carry out inspections and take enforcement action, including prosecutions and administrative penalties. While these necessary powers are set out in legislation, the actual effort that goes into C&E depends on government policy, budgets and staffing.

Compliance and enforcement has changed over the last few years. In 2004, when FRPA was introduced – replacing the old *Forest Practices Code of British Columbia Act* – government promised tough enforcement.

However, despite all these legislative changes, over the last decade, there have been reductions in the number of C&E staff and the number of field inspections has also declined.^{iv} There are likely several reasons for this, one being that according to the Ministry of Forests and Range Annual Service Plan Report for 2009/10, efficiencies were gained by focusing on higher risk sites.

Annual number of inspections conducted by C&E:*

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
28,644	34,046	31,109	25,154	21,225	16,540	16,651	16,566	14,995	15,688	14,772

* figures are for the year ending March 31

The shift from the Code to FRPA necessitated changes in enforcement. For example, compliance with plans became much less important but the achievement of results specified in plans became an enforceable legislated requirement.

In 2007, government created the Resource Management Coordination Program (RMCP), a program intended to improve coordination of enforcement of a number of statutes and regulations, across several ministries.

Finally, the resource ministries were significantly reorganized in October 2010. This included moving some enforcement resources from the former Ministry of Forests and Range to the Ministry of Environment, with the remainder going to the Ministry of Forests, Lands and Natural Resource Operations.

d) The Forest Practices Board

The Forest Practices Board is an independent watchdog agency created under the Forest Practices Code and continued under FRPA. It is not part of any government ministry. The Board audits forestry operations in the province and investigates compliance with FRPA and the *Wildfire Act*, as well as the appropriateness of government enforcement. It also participates in appeals to the Forest Appeals Commission, involving administrative penalties and other matters and investigates public complaints about activities on Crown land.

The Board consists of a full-time Chair, part-time board members and staff. The Chair and board members are appointed by the provincial cabinet using a merit-based process. The Board is governed by provisions of FRPA and the *Administrative Tribunals Act*.

The Board's legislated mandate includes making recommendations for improvements to legislation and to forestry and range practices. Its general purpose has been described as follows:

The Board's function is to provide an independent review of the forest practices being conducted on the public lands of the province. It is independent of the Ministry of Forests and other government departments...

The Board and its staff have expertise in auditing and forestry. By virtue of their oversight role, they are uniquely positioned to see what is happening on the ground on the province's forestlands.^v

The Board also plays a role in evaluating the effectiveness of the framework in achieving stewardship, because it looks at the soundness of forest practices.

The Forest Practices Board reports publicly on all its work.

EVALUATING EFFECTIVENESS

How effective is the framework described above and how well is it being implemented? The answer depends to a large extent on two things:

- a) whether there is a high rate of compliance with legislated requirements; and
- b) whether the framework is achieving stewardship of the eleven resource values in FRPA.

Each of these is discussed in this section.

a) Is there a high rate of compliance with legislated requirements?

The Board has found generally high rates of compliance in its compliance audits. Because these audits are selected on a random basis, they can be considered a good indicator of practices in general.

Between 2005 and 2009, the Board conducted 37 compliance audits, involving 61 licensees and 12 BCTS business areas. A total of six significant non-compliances were found. In addition, 13 areas of improvement were identified.

The Board published a summary report on the seven compliance audits conducted in 2010, and noted only one significant non-compliance. In addition, there were a few minor issues of concern; where the practices were either compliant or not significant.^{vi}

However, it needs to be kept in mind that audits evaluate past practices, and the practices examined in the audits published in 2010 took place between October 2005 and July 2010. Also, because the Board can only conduct about eight or nine compliance audits each year, it takes time for trends in compliance to emerge. In other words, more complete information on the current level of compliance will emerge in the future. The Board will continue to conduct compliance and enforcement audits and the results will provide information about level of compliance and appropriateness of government enforcement.

In September 2009, the Ministry of Forests and Range reported in its service plan that the percentage of compliance with statutory requirements has averaged more than 90 percent over the previous 10 years, and was 95 percent in 2009/10. 'Rate of compliance' was measured as the "number of inspections completed without any non-compliance that lead to a determined or prosecuted enforcement action against the total number of inspections."

The Ministry of Forests, Lands and Natural Resource Operations *Revised 2011/12 – 2013/14 Service Plan* sets a target of 92 percent compliance by licensees. The regulated community for this new ministry is broader than just forest and range licensees.

Annual C&E reports provide statistics of compliance and enforcement activities, including information on numbers of inspections, enforcement actions taken and contraventions.^{vii}

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b) Is the framework achieving stewardship of the eleven resources identified in FRPA?

Created in 2003, the Forest and Range Evaluation Program (FREP) is a multi-agency program that evaluates whether practices under FRPA are meeting the intent of current FRPA objectives, and determines whether the practices and the legislation itself are meeting government's broader intent for the sustainable use of resources.^{viii} As its website states, FREP is a long-term commitment by government to:

- Assess the effectiveness of the *Forest and Range Practices Act* (FRPA) in achieving stewardship of the eleven resource values identified under FRPA;
- Identify issues regarding the implementation of forest policies, practices and legislation as they affect the resource values identified under FRPA; and
- Implement continuous improvement of forest management.

FREP publishes public reports on its findings. The *Chief Forester's 2010 Annual Report on the Forest and Range Evaluation Program* summarizes the program's findings to 2010, with the intent of encouraging dialogue among resource professionals, supporting continuous improvement of management practices, and ensuring the resource management community gains the maximum value from FREP. Findings for eight resource values are reported. The report is nuanced and should be read in full. It includes key findings and recommendations. The following summarizes the key findings from the report.

Stand-level biodiversity – “The amount and quality of both tree and coarse woody debris (CWD) retention on harvested cutblocks varies greatly throughout British Columbia.”

Cultural heritage resources – “Approximately 50 percent of CHR assessments showed no evidence of damage to individual sites or features; 21% of sites evaluated in 2009 showed avoidable damage attributed to harvesting activities, with an additional 8% of sites with damage from activities such as road-building or post-harvest influences such as pile burning. Of all sites evaluated in 2009, 12% had permanent damage and (or) were rendered unsuitable for continued use.”

Fish/riparian – “Provincially, 87% of all stream reaches were in one of the three categories of properly functioning condition. For stream reaches classified as fish-bearing, 93% were assessed as properly functioning.”

Forage – “Of the 439 upland areas sampled for forage condition, 56% were assessed as properly functioning to slightly at risk, 11% were moderately at risk, and 33% were highly at risk to non-functional.”

Soils – “Results show loss of soil productivity due to access structure averages 3.3% of gross cutblock area; the allowable loss is 7%. These results indicate a shift from landing-based operations to roadside work areas. Most cutblocks were below the soil disturbance limits of 5% for sensitive soils and 10% on other soils.”

Timber – “Of the 266 stands examined across five timber supply areas, the majority have undergone a loss of free-growing density in the decade or so since declaration. Changes in total stand density varied by biogeoclimatic ecosystem classification zone across the province...Four of five timber supply areas examined experienced a change in leading inventory species in about 20% of stands with the exception of the lodgepole pine-dominated Lakes Timber Supply Area.”

Visual quality – “Under the Forest Practices Code, Visual Quality Objectives (VQO’s) were achieved on 143 of the 234 (61%) landscapes sampled across the province between 2007 and 2008.”

Water quality – “Of the 2183 sample sites evaluated during the 2008 and 2009 field seasons: approximately 70% of the sites were rated “Very Low” or “Low” for potential sediment generation, indicating water quality is being preserved. 25% of sites were rated as “Moderate” for potential sediment generation, where water quality may be negatively impacted in sensitive watersheds. 5% rated as “High” and “Very High” for potential sediment generation, indicating water quality is negatively impacted on these sites.”

Forest Practices Board reports sometimes comment on the effectiveness of legislation, planning and practices. Examples include:

- *Cumulative Effects: From Assessment Towards Management*, March 2011^{ix}
- *Soil Conservation Planning and Practices in the Quesnel and Vanderhoof Forest Districts*, August 2010^x
- *Managing Forest Fuels in the Wildland Urban Interface*, February 2010^{xi}

Finally, the *State of the Forests report* is a provincial, sustainable forestry report that provides information about the environmental, economic and social aspects of BC’s forests.^{xii} The most recent report, dated December 2010, provides information on 91 indicators of forest sustainability and management.

ⁱ Section 149 of FRPA describes the following resources for the purpose of establishing objectives: soils, visual quality, timber, forage and associated plant communities, water, fish, wildlife, biodiversity, recreation resources, resource features, cultural heritage resources.

ⁱⁱ References to licensees of forest companies generally include the government forestry program known as BC Timber Sales.

ⁱⁱⁱ There are different requirements for wilderness roads. These are roads that are not being used by industrial users.

^{iv} Ministry of Forests and Range, Compliance and Enforcement Program Annual Reports.

<http://www.for.gov.bc.ca/hen/reports/index.htm>

^v *Northwood v. British Columbia (Forest Practices Board)*, 1999 BCSC 1820.

^{vi} http://www.fpb.gov.bc.ca/2010_Audit_Summary_Report.pdf

^{vii} <http://www.for.gov.bc.ca/hen/reports>

^{viii} FREP website. <http://www.for.gov.bc.ca/hfp/frep/about/index.htm>

^{ix} <http://www.fpb.gov.bc.ca/publications.aspx?id=5772>

^x <http://www.fpb.gov.bc.ca/publications.aspx?id=5247>

^{xi} <http://www.fpb.gov.bc.ca/publications.aspx?id=5080>

^{xii} <http://www.for.gov.bc.ca/hfp/sof/#intro>