

# **Consideration of Harvesting Impacts on Rare Species near Elk Creek**

**Complaint Investigation 030521**



**FPB/IRC/107**

**May 2005**

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# The Investigation

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In November 2003, the Chilliwack Field Naturalists (the complainant) asked the Forest Practices Board to investigate the approval of an amendment to a forest development plan (FDP). The Cattermole Timber Company (the licensee) proposed two cutblocks on Elk-Thurston Mountain, a few kilometres east of Chilliwack. The complainant was concerned that public comments about the impact of harvesting on old growth forests and significant rare species were not adequately considered, and information about helicopter drop areas was missing from the amendment.

The Board investigated whether the amendment met the requirements of the *Forest Practices Code of British Columbia Act* and its regulations (the Code) for helicopter yarding/drop areas, and whether the district manager's approval was reasonable considering the concern about old-growth ecosystems and rare species.

## Background

On January 4, 2002, four amendments to the licensee's 2001 - 2005 FDP were advertised for public review and comment. Amendment #3 proposed one six-hectare cutblock consisting of small (0.6 to 2 hectare) dispersed openings, and a second cutblock 103 hectares in size, where harvesting would remove 40 percent of the trees. The amendment did not propose roads because helicopters would be used for harvesting.

A public information session was held on January 19, 2002, in Chilliwack. At the request of the Federation of BC Naturalists, the licensee conducted a field trip on February 16, 2002, which the complainant attended.

On March 7, 2002, the complainant submitted comments to the Ministry of Forests (MOF) about the proposed harvesting. The complainant was concerned with potential impacts of harvesting on an old-growth ecosystem, and impacts to several rare species. The complainant asked that further research be conducted to determine what species were in the area, and that an ecosystem plan be completed prior to harvesting.

On July 7, 2003, the MOF district manager approved the amendment.

The licensee encountered problems in acquiring municipal permits to allow the use of private land for the location of helicopter drop areas. As a result, the licensee submitted another FDP amendment in September 2003, proposing construction of a road. The new amendment was approved on February 23, 2004. However, the licensee did not build the road, as the municipal permits were later obtained, and the licensee made use of private land for its log drops. The complainant asserted that proposal of the road so soon after the July amendment approval demonstrated inadequate planning and inappropriate approval of forest practices.

## Issues

The Board examined the following questions:

1. Did the amendment meet Code requirements for helicopter yarding/drop areas?
2. Did the district manager adequately consider old-growth ecosystems and rare species in his approval of the amendment?

## Discussion

In January 2004, the *Forest and Range Practices Act* (FRPA) replaced the Forest Practices Code as British Columbia's forest practices legislation. FRPA will be phased in over a transition period ending on December 31, 2006 (with government authorized to extend the period until December 31, 2007). The transitional provisions of FRPA state the Code continues to apply to forest practices carried out under a forest development plan. This continues until there is an approved forest stewardship plan, at which point the FRPA requirements apply.

This complaint involves a forest development plan, so the Code requirements apply.

### **1.0 Did the amendment meet Code requirements for helicopter yarding/drop areas?**

The complainant asserts the helicopter drop areas were not identified in the FDP amendment that it reviewed.

The *Operational and Site Planning Regulation* (OSPR) specified FDP content. It said a licensee must identify any area of water that is to be used as a helicopter log drop area for any approved cutblocks. In this case, the log drop areas were not in water. Furthermore, the log drops areas were on private land and the OSPR did not apply. The Code only applies to Crown land, or to private land that is part of a forest tenure.

**Given that the log drop areas were not located in water, the licensee did not have to identify them in the amendment.**

### **2.0 Did the district manager adequately consider old-growth ecosystems and rare species in his approval of the amendment?**

The complainant maintained that the district manager did not adequately consider the need to conserve old-growth ecosystems and rare species.

A district manager must be satisfied that approval of an FDP will adequately manage and conserve all forest resources. The district manager decides whether the risk to forest resources is acceptable. Such discretionary decisions should be reasonable, based on an adequate assessment of relevant available information. The district manager's caution and

deliberation should match the importance of each forest resource, and the potential risk created by the proposed forest practices.

## 2.1 Did the approval of the amendment adequately consider old-growth ecosystems?

The complainant asserted that the proposed harvesting would remove 100- and 200-year-old trees, altering the multi-age character of the old-growth ecosystem. This would result in the loss of younger trees that could have been managed to exhibit old-growth characteristics in future decades.

The *Biodiversity Guidebook* and the *Landscape Unit Planning Guide* (LUPG) recommend practices to maintain biodiversity at both the landscape and stand-level. Old-growth characteristics on the coast are typically associated with stands over 250 years old (age class 9). Maintaining these stands and identifying recruitment areas are necessary for biodiversity. Stands between 121 and 250 years old (age classes 7 and 8) may contain old-growth characteristics similar to age class 9 and can make good recruitment areas.

In this case, the proposed cutblocks did not include an old-growth stand, but rather a mixture of second-growth trees and scattered single older trees that were veterans left from a previous harvest. MOF staff field-verified the stand to consist of mostly 100-year-old trees with scattered Douglas-fir veterans that were over 250 years old.

On May 17, 2002, the Ministry of Sustainable Resource Management (MSRM) provided **draft** old growth management area (OGMA) targets for the district. The Elk Creek area falls within the Fraser Valley South landscape unit. There is a shortage of old growth (age class 9) in the coastal western hemlock, dry maritime subzone (CWHdm) in this landscape unit. The OGMA targets require that another 248 hectares of younger forest be set aside as old-growth recruitment areas. The Fraser Valley South landscape unit has 2023 hectares of mature stands plus 1704 hectares of early mature stands available for recruitment of old-growth.

In his rationale, the district manager noted there are several thousand hectares of 100 to 120-year-old stands, plus over a thousand hectares of old growth, in the forest district and much more in other CWH subzones. The proposed cutblocks would not affect an old-growth stand, only a mixture of second-growth trees and scattered single older veteran trees. The characteristics of these stands made them possible candidates for recruitment areas.

The FDP amendment stated the veteran trees would be retained; as well, the licensee expanded a riparian reserve, including some old-growth trees on the other side of Elk Creek. The amendment proposed only two cutblocks, one of which was six hectares of small (0.6 to 2 hectare) dispersed clearcuts. The other block was large (103 hectares), but would leave 60 percent of the trees. The *Biodiversity Guidebook* recommends that when second-growth stands with scattered veterans are encountered, the silviculture prescription should outline the management strategies for veterans. Both proposed cutblocks are consistent with retaining and managing the veteran trees.

**The district manager's decision to approve the amendment was reasonable, given that the Fraser Valley South landscape unit contained sufficient other areas from which to select old-growth recruitment areas; the proposed cutblocks were not old-growth stands; and both cutblocks would retain the veteran old trees.**

## **2.2 Did the approval of the amendment adequately consider rare species and critical habitat**

The complainant was concerned that there was no baseline inventory of rare species and critical habitat. The complainant asserts that the district manager's conclusion, that rare species were not present in the cutblocks, was based on old studies and studies completed at other locations and, therefore, forest values were not given appropriate consideration. The Board investigated whether it was reasonable for the district manager to conclude the FDP amendment would adequately manage and conserve rare species.

The district manager's rationale<sup>i</sup> considered six specific rare species: northern spotted owl, pacific giant salamander, tailed frog, marbled murrelets, mountain beaver, and tall bugbane. The rationale discussed relevant information about each species, including government policy, studies and surveys, population implications, behaviour impacts, and the relevant management prescriptions provided in the FDP amendment. Other government agencies and the public pointed out that some rare species are known to occur in the area.

Even though rare species were thought to occur in an area, this did not mean that the Code required specific measures to protect them. The design of the Code assumed that most species would be managed through general requirements for riparian areas, and through stand-and landscape-level biodiversity. Species requiring greater management attention could receive additional management only if designated by government as 'identified wildlife.' To manage identified wildlife, government can establish 'wildlife habitat areas' subject to objectives and general wildlife measures. Therefore, if government did **not** designate a rare species as identified wildlife only the general requirements of the Code applied. Furthermore, even if a species was designated as identified wildlife, if government did not establish specific wildlife habitat areas for that species then only the general code provisions applied.

In this case, tailed frog, marbled murrelet, and mountain beaver are identified wildlife that are especially sensitive to harm from forest practices. However, government had not established wildlife habitat areas to protect any of these species or their habitats. That meant that the licensee was not specifically required to provide management prescriptions for these species. Nevertheless, the licensee's amendment did include some measures that reduced the risk of impacts to rare species and their habitat.

The Ministry of Water, Land and Air Protection (MWLAP) recommended assessments and inventories of rare species. In a letter dated February 7, 2002, MWLAP requested that a qualified consultant assess the occurrence of rare species and said:

“...given the close proximity of the cutblocks to documented occurrences of several species noted above, management of habitat values and implementation of protection measures would be required regardless of confirmation of species within the openings [emphasis added].”

The licensee did not confirm the presence of rare species in the cutblocks, but did implement measures aimed at protecting rare species. The licensee proposed larger riparian reserves and management areas than the Code required; partial cutting in small cutblocks; and the use of aerial yarding. Those measures would reduce impacts on rare species compared to conventional harvesting. However, further assessments recommended by MWLAP were not undertaken by the licensee, MWLAP, or MOF. During the investigation, MWLAP staff stated that they requested funding from both MWLAP and from the Forest Investment Account<sup>ii</sup> to undertake further murrelet surveys, but no funding was provided.

The district manager considered existing survey and inventory information for spotted owl, marbled murrelet, and tall bugbane, as well as an analysis of the available habitat. He concluded that none of these rare species occurred in the proposed blocks. Pacific giant salamander, tailed frog, and mountain beaver all use habitat close to water. For those species, the district manager considered the proposed practices and retention levels within the riparian areas. He was satisfied that, even if these rare species were present, the proposed logging would have little impact on their habitat.

Approval of the FDP amendment is the district manager’s discretionary decision, so the Board gives that official some deference. So long as the decision falls within a range of reasonable alternatives, the Board accepts it as valid.

The district manager considered information available to him about rare ecosystems and rare or endangered species. His approval rationale was very detailed and included a large amount of information gathered by MOF staff including: plans, legislation, MOF bulletins, assessments, maps, reports and publications, correspondence, policies, museum archival records, and symposium proceedings. The district manager considered the forest practices proposed in the amendment and the harvesting impacts on forest values in considerable depth. He concluded that partial harvesting would have a relatively light impact on the area. For most of the species, he concluded that there was suitable habitat in nearby areas, or that the preferred habitat was in riparian areas, that would not be significantly impacted.

**The district manager considered available information about rare species, habitat needs of the species, and the possible impacts of the proposed harvesting system. It was**

reasonable for the district manager to conclude the FDP amendment would adequately manage and conserve rare species.

## Conclusions

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1. **Did the amendment meet the Code requirements for helicopter yarding/drop areas?**

Yes. As the log drop areas were not located in water, the Board concludes the licensee did not have to identify them in the amendment.

2. **Did the district manager adequately consider old-growth ecosystems and rare species in his approval of the amendment?**

Yes. The Board concludes that that the district manager made a reasonable decision and did consider both old growth and rare species in his approval. Old growth was not present in the stand; both cutblocks would retain veteran old trees; and there were sufficient other areas from which to select old-growth recruitment areas. Partial harvesting would have a relatively light impact on the area and, for most of the rare species, the district manager concluded that there was suitable habitat in nearby areas, or that the preferred habitat was in riparian areas that would not be significantly impacted.

## Commentary

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The design of the Code assumed that most species would be conserved through guidelines for riparian areas and through stand- and landscape-level biodiversity. Species requiring greater protection could benefit from additional conservation measures if designated by government as identified wildlife. If so designated, habitat that is important for identified wildlife can be managed by the establishment of wildlife habitat areas, subject to operational constraints and general wildlife measures.

In this case, rare species could be, and were, present in the area proposed for harvesting. Some of those rare species were identified wildlife but others, though rare, had not been so identified. There were, and still are, no wildlife habitat areas established in the Elk Creek area.

On March 18, 2005, MWLAP, announced the creation of 130 wildlife habitat areas across the province. In the Chilliwack Forest District, wildlife habitat areas have been designated for just grizzly bears and one was established several years ago for a mountain beaver site. Consequently, there is still no government direction for the Elk Creek area, and limited direction elsewhere in the Chilliwack Forest District, to help licensees deal with, and protect, rare species in their operating areas.



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<sup>i</sup> The rationale is available on the Ministry of Forests/ Chilliwack District website:  
<http://www.for.gov.bc.ca/dck/Elk/index.html>

<sup>ii</sup> The purpose of government's Forest Investment Account (FIA) is to assist government to develop a sustainable managed forest industry. Forest Investment Account programs provide funding to forest sector associations, researchers, tenure holders, manufacturers, and government agencies to: support sustainable forest management practices; improve the public forest asset base; and promote greater returns from the utilisation of public timber.