



Forest
Practices
Board

Woodlot Management and Practices in the Kootenay Lake Timber Supply Area

SPECIAL INVESTIGATION

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BOARD COMMENTARY



While the investigation was focussed on the Kootenay Lake TSA, the findings are applicable elsewhere in the province.

This special investigation was initiated because previous Board audits have found a pattern of higher levels of non-compliance with woodlots than most forms of tenure, and because of specific findings of an audit of several woodlots in the Kootenay Lake Timber Supply Area (TSA) in 2015. The investigation set out to assess the woodlot program in the Kootenay Lake TSA, and to see if legislation, policies and guidance provide adequate support to woodlot licensees. While the investigation was focussed on the Kootenay Lake TSA, the findings are applicable elsewhere in the province.

On the whole, the Board is pleased to confirm that the management framework for woodlots is adequate. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the ministry) and the Federation of Woodlots have an ongoing system in place to improve that framework and to provide woodlot licensees the tools necessary for good forest management.

However, while most woodlot licensees are meeting most on-the-ground (practice) requirements of the *Forest and Range Practices Act* and the *Wildfire Act*, the majority are not complying with some of the administrative legal requirements. This is consistent with Board findings over the past several years, showing that 28 of 46 (61 percent) woodlot licences had non-compliance findings, with most of the areas of non-compliance involving administrative requirements.

The Board is concerned that some woodlot licensees may believe these administrative requirements are discretionary, or are not significant; that needs to change. All of the administrative requirements are in place for legitimate reasons and all woodlot licensees need to meet those requirements in the same manner as any other tenure holder on public land.

Government has made significant allowances to relieve woodlot licensees from unnecessary regulation over the years. The existing requirements are not onerous to implement—as evidenced by the fact that many woodlot licensees do meet them. The board believes that a shift is required so that *all* woodlot licensees consistently meet *all* regulatory requirements, including administrative ones. This may require some woodlot licensees to place additional effort on undertaking assessments and plans, including hiring appropriate qualified professionals. It may also require the ministry to place greater emphasis on holding woodlot licensees accountable for compliance with the legal requirements.

Woodlots are often located close to communities and in areas with multiple non-timber forest values and significant public use. Public confidence in the management of these tenures—granted on public land for the benefit of woodlot licensees—rests on meeting or exceeding the regulatory requirements that come with the rights to a tenure. Woodlot licensees that have not met all regulatory requirements need to take action to ensure they do so in future.

EXECUTIVE SUMMARY

The objective of this investigation was to examine whether the roles and responsibilities of woodlot licensees, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the ministry), the provincial woodlot federation and local woodlot associations, and forest professionals in the Kootenay Lake Timber Supply Area (TSA) are clearly defined and understood, and are being carried out in a manner that ensures the woodlot licensees are complying with forest practices legislation.

Investigators assessed the activities of 15 woodlot licensees in the Kootenay Lake TSA portion of the Selkirk Natural Resource District for compliance with FRPA and the *Wildfire Act*. The activities investigated included planning, licence administration, and annual reporting for all 15 licensees; and harvesting, road construction, road maintenance, silviculture and fire protection obligations for the 11 woodlot licensees that were not previously audited by the Board.

The investigation found that 12 of the 15 licensees did not comply with certain aspects of the legislation, specifically requirements for silviculture obligations, fire hazard assessments, cutting permits, cut control, and administrative requirements for annual reporting.

Investigators also assessed whether woodlot legislation and ministry policies and guidance clearly define requirements, roles and responsibilities and provide adequate support and guidance to woodlot licensees in the district.

Overall, the woodlot management framework supports the Kootenay Lake TSA woodlot licensees' ability to meet FRPA and *Wildfire Act* requirements, but there are challenges and room for improvement. The investigation found that licensees are sometimes uncertain what their legal obligations are and what they should be committing to in their woodlot licence plans. It also found that there is clear guidance and support available to woodlot licensees, except for two areas that could use some clarification. Some licensees said the capacity of ministry staff to provide support to woodlot licensees is lower than they would like to see. At the same time, investigators found not all licensees are taking advantage of all the resources and support available to them.

Licensees, ministry staff and the woodlot association have recognized the non-compliance findings and challenges identified in this investigation and all three parties are engaged in initiatives to address the issues.

THE INVESTIGATION

INTRODUCTION

As part of its annual audit program, the Board regularly looks at forestry activities on woodlots. Between 2011 and 2015, the Board audited 24 woodlot licensees, including 4 licensees in the Kootenay Lake Timber Supply Area (TSA) in 2015. Of the 24 licensees audited in those 5 years, the Board reported that 10 had non-compliances with legislation, including the 4 from the Kootenay Lake TSA. This level of non-compliance concerned the Board and, as a result, it decided to take a broader look at all of the woodlots in the Kootenay Lake TSA.

The objective of this investigation was to examine whether the roles and responsibilities of woodlot licensees, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the ministry), woodlot federation/association, and forest professionals in the Kootenay Lake TSA are clearly defined and understood, and are being carried out in a manner that ensures the woodlot licensees are complying with forest practices legislation.

The Kootenay Lake TSA, located in southeastern British Columbia, covers about 1.2 million hectares. It is bounded by parks to the north, the United States border to the south, and the Purcell and Selkirk Mountains to the east and west. The major population centres in the TSA are Creston, Nelson, Kaslo and Meadow Creek (see map on page 6). The TSA is administered by the Selkirk Natural Resource District (the district) and is within the Kootenay-Boundary Natural Resource Region (the region).

There are 15 woodlots in the area encompassed by the Kootenay Lake TSA. Woodlot administration is divided between the ministry's district and regional offices, with district staff administering matters related to *the Forest and Range Practices Act (FRPA)* and the *Wildfire Act*, and regional staff administering matters related to the *Forest Act*.

BACKGROUND

A woodlot licence is an area-based tenure awarded by the ministry, granting the licence holder exclusive rights to manage and harvest Crown timber within the woodlot licence area. There are approximately 865 active woodlots in British Columbia, covering an area of 610 000 hectares, with an allowable annual cut of over 1.5 million cubic metres.ⁱ

The woodlot licence system allows individuals or organizations to manage up to 1200 hectares of Crown land in each woodlot, sometimes in

combination with their own private land. Many woodlots in the Kootenay Lake TSA are located in areas where the natural forests interface with urban development, providing unique opportunities for the public to recreate in the woodlots and to see industrial forestry practices. Woodlot licensees are a diverse group of individuals and organizations with a wide range of backgrounds, including ranchers and farmers, forestry workers, guide-outfitters, engineers, educational institutions, and others with an interest in managing forest land. As a result, they also have a wide range of knowledge, capacity, and management styles.

In 2004, FRPA and the *Woodlot Planning and Practices Regulation* (WLPPR) were introduced. This legislation placed responsibility on woodlot licensees to ensure their activities complied with legislation. This was a change from the past when woodlot licensees relied on ministry staff for information, direction, guidance, and extension services.

In 2012, the Kootenay Lake District dramatically reduced the role and capacity of ministry staff in the woodlot program and the number of woodlots the district administered increased significantly to cover both the Kootenay Lake and Arrow-Boundary TSAs. As a result, the role of ministry staff shifted from being very involved with licensees' operations to primarily approving plans and permits. To accommodate the increased workload, staff are now likely to do fewer reviews of woodlot management and to rely on the Compliance and Enforcement Branch (CEB) staff for enforcement.

Woodlot Management Framework

The current woodlot management framework is summarized as follows:

Legislation

There are four main pieces of legislation governing forest practices in a woodlot licence: the *Forest Act*, FRPA, the *Wildfire Act*, and the *Foresters Act*, plus related regulations and orders.

1. The *Forest Act* requires licensees to prepare management plans, propose allowable annual cuts, and apply for cutting permits and road permits prior to timber harvesting and road building. It also requires the ministry to approve these items once they meet specific criteria.
2. FRPA and the WLPPR establish planning and practice requirements to which a woodlot licensee must comply with respect to their woodlot licence area.

FRPA requires a licensee to prepare a woodlot licence plan (WLP) prior to forest activities and specifies content, term, and amendment requirements for the WLP. It also requires the ministry to approve the plan, providing it meets the required criteria.

The WLPPR specifies WLP exemption criteria, the term of a WLP, additional WLP content criteria, and review and comment criteria. It sets default practice requirements and criteria for alternative performance requirements. The WLPPR also establishes what a licensee must do if they know or ought to reasonably know that their operations will not achieve the results specified in their WLP or the requirements of the WLPPR.

3. The *Wildfire Act* and *Wildfire Regulation* require a licensee to carry out operations in ways that prevent fires from starting or spreading during activities, assess fire hazards during and after activities, and abate identified hazards.
4. The *Foresters Act* requires licensees to engage professional foresters to complete activities that are considered the practice of professional forestry. There are similar acts for other resource professionals. FRPA and the professional legislation combine to form the professional reliance model, where FRPA establishes legal requirements for a woodlot licence and the licensee engages professionals to plan, conduct, endorse or direct professional forestry activities in order to meet legal requirements. Professional associations monitor the conduct of natural resource professionals.

Roles and Responsibilities

The woodlot management framework consists of the following roles and responsibilities:

- **Ministry** - District staff review and approve permit applications and woodlot licence plans. Regional staff review and approve tenure applications and renewals, review additions or deletions from a woodlot, and approve management plans, including determining allowable annual cut levels. CEB officials are responsible for enforcement of legislation. The ministry issues interpretive bulletins and provides a wide variety of reference material for guidance or interpretation for various legal requirements.
- **Professional** - There are certain requirements in FRPA and the *Wildfire Act* that require a professional. If the woodlot licensee is not a qualified professional themselves, they have a responsibility to hire a professional(s) at various stages of their operations. The activities that require a professional include certain aspects of licence applications and renewals, management plans, woodlot licence plans, appraisal data submissions, fire hazard assessments and abatement, silviculture surveys, silviculture milestone declarations, and potential resource assessments that may be required on woodlot licences.

- **Woodlot Federation/Association** - The government collects a levy from woodlot licensees, which is provided to the Woodlot Product Development Council. Through an annual work plan, the council distributes a portion of this levy to the Federation of BC Woodlot Associations to provide support to woodlot licensees through meetings, field trips, extension services, and conferences. The federation works with all levels of government to advocate for public forest policy that is appropriate to small-scale forest management. The woodlot federation is an umbrella organization that provides support to local woodlot associations and offers a point of contact for licensee extension and education services. The president of each woodlot association (there are 23 in the province) is a volunteer who represents the members of the association by sitting on the federation board of directors. Membership in the federation or any local association is voluntary and informal.

Guidance and Support

Guidance and support for licensees is available from the ministry, the woodlot federation and associations, and forest professionals.

In 2011, recognizing the challenges faced by many woodlot licensees, the federation initiated a collaboration involving the ministry and the Association of BC Forest Professionals to develop guidanceⁱⁱ for woodlot licensees to clarify their roles and responsibilities under FRPA, and when, and for what activities, they should engage qualified professionals or qualified contractors.

The ministry's [woodlot website](#) also provides a wide variety of reference material including links to woodlot legislation, guidance bulletins, documents, forms, ministry policy and other publications.

SCOPE AND APPROACH

Investigators assessed the planning, licence administration, and annual reporting activities of 15 woodlot licensees, and harvesting, road construction, road maintenance, silviculture and fire protection obligations for the 11 woodlot licensees that were not previously audited by the Board, for compliance with FRPA and the *Wildfire Act*. The investigation included planning and practices that occurred between September 1, 2013, and September 30, 2015, for the 4 woodlots audited in 2015, and between September 1, 2014, and September 30, 2016, for the 11 woodlots examined in 2016. The woodlots are located in the Kootenay Lake TSA portion of the district.

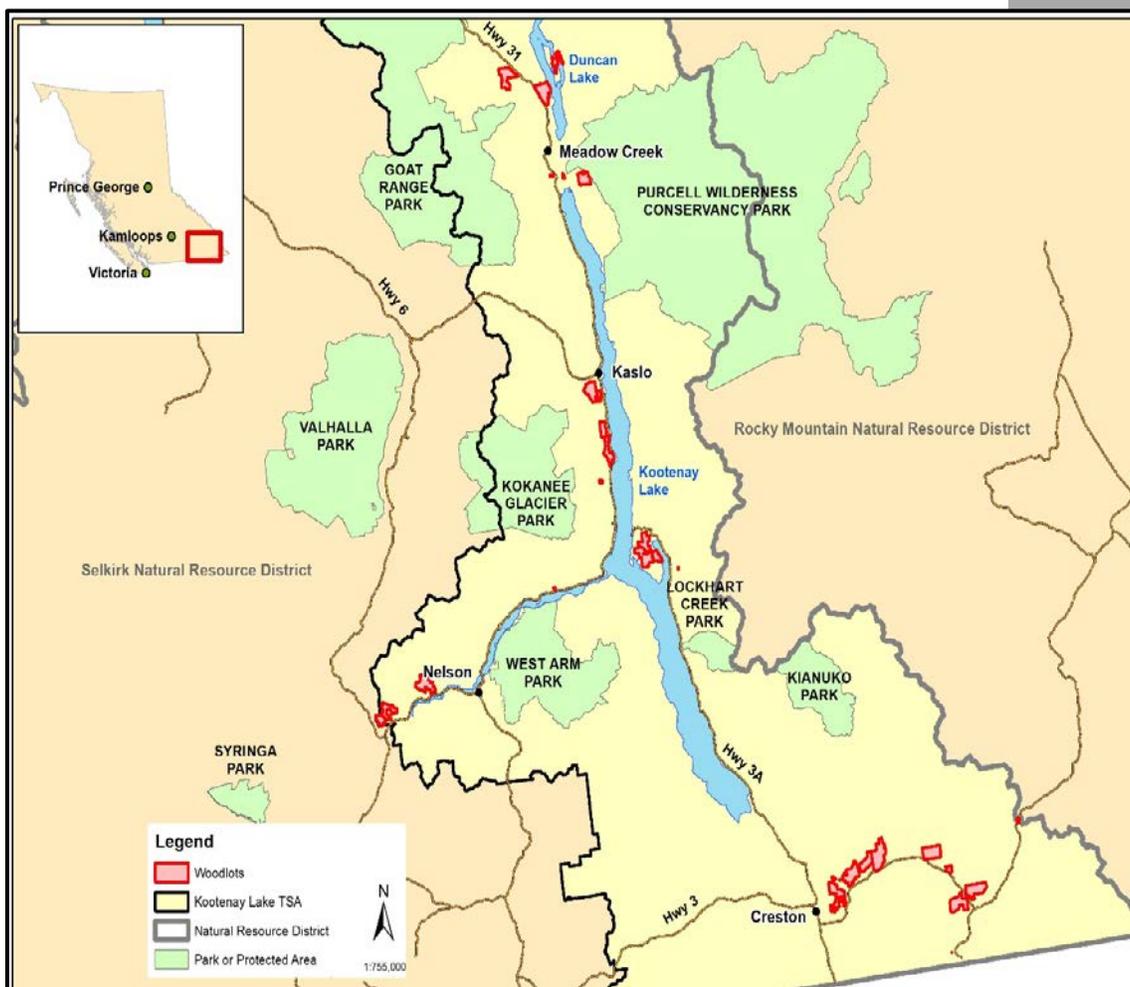
Investigators examined plans and assessed activities on the ground for all 15 woodlots. Field reviews took place in September 2015 for 4 licensees and in September 2016 for the remaining 11 licensees.

Investigators also assessed whether woodlot legislation and ministry policies and guidance clearly define requirements, roles and responsibilities and provide adequate support and guidance to woodlot licensees in the district. Investigators reviewed woodlot legislation, ministry policies and guidance, and conducted interviews with:

- Ministry staff responsible for woodlot licence administration and compliance and enforcement, including staff from district, region, and Forest Tenures Branch,
- woodlot licensees during field reviews, and
- representatives from the woodlot federation and the West Kootenay Woodlot Association.

In addition, draft findings were reviewed and discussed with licensees, ministry staff, and representatives of the woodlot association and the Federation of BC Woodlot Associations.

Woodlot Licences Reviewed in the Kootenay Lake TSA



FINDINGS

Woodlot Licensees' Compliance

Are licensees in the Kootenay Lake TSA complying with FRPA and the *Wildfire Act*?

Investigators assessed forest planning and practices for compliance with legislation. The following table shows what activities were carried out by the woodlot licensees and the number of woodlots examined by investigators.

Table 2. Activities Audited and Results

ACTIVITY	WL WITH ACTIVITY	WL SAMPLED	# WL WITH FINDINGS
Licence Administration	15	15	3
Planning	14	14	0
Harvest	12	8	0
Roads	14	10	0
Silviculture Obligations	12	7	3
Annual Reporting	15	15	9
Fire Protection	12	9	6
Overall			12

No non-compliance issues were found during the investigation of planning, harvesting, and road construction/maintenance activities. Licensees met resource objectives, including those for visuals, wildlife, water and soils. However, 12 of the licensees did not meet all legal requirements for silviculture obligations, fire hazard assessments, cutting permits, cut control, and annual reporting. Investigators also found licence administration issues for three of the licensees and identified two areas where licensees had difficulty interpreting legal requirements pertaining to WLP approvals and extensions.

Both the woodlot licensees and the woodlot association told the Board that understanding legislation was one of the main challenges faced by licensees. Most licensees felt that legislation provides a good foundation for sound forest management and adequately defines roles and responsibilities. However, some licensees identified legislation complexity, unclear ministry guidance, and a lack of support and monitoring as factors that affected their ability to understand and meet legal obligations.

Silviculture

Investigators found three licensees did not meet some of their silviculture obligations. All three licensees had not met stocking standards within the required timeframes. One licensee had recently assumed responsibility for its woodlot and engaged a professional who found the previous licensee had not met silviculture obligations on two cutblocks. Another licensee did not meet regeneration obligations on three cutblocks, nor free-growing requirements on another four cutblocks. The licensee could not provide any surveys to demonstrate the requirements had been met. The third licensee harvested a cutblock over a period of five years, the regeneration delay period commencing when harvesting started. The regeneration delay period expired before the licensee completed harvesting and therefore the licensee did not meet regeneration requirements within the required period.

When a licensee becomes aware that it is not going to meet an obligation, it must notify the ministry and submit a proposal to achieve a free-growing stand. None of the licensees who did not meet silviculture obligations had done this.

The licensees stated they recently acquired the licences or were new to forestry operations and were not fully aware of their obligations, as reasons that affected compliance. Since the investigation, the licensees have discussed the findings with ministry staff to develop strategies to address unfulfilled silviculture obligations.

Fire Protection

Investigators found six licensees did not comply with fire hazard assessment requirements. Some licensees were found to have completed assessments but did not include all the required elements, some had not completed them on time and some were uncertain how to complete them. However, all of the licensees had adequately abated fire hazards.

As reasons that affected their ability to comply with hazard assessment requirements, licensees cited uncertainty regarding who is qualified to complete fire hazard assessments and how to complete the assessments. The licensees were also uncertain whether to engage a qualified professional to assist with fire hazard assessments.

Cutting Permits

A woodlot licensee must have an approved cutting permit to harvest timber from specified areas within its woodlot. Two licensees hauled timber to scale sites after the expiry of their cutting permits, and therefore, were not compliant with section 52(1) of FRPA.

The ministry discovered the infractions and took enforcement action to ensure the licensee paid the required stumpage fees. The licensees have

since made restitution for the outstanding fees and the ministry has issued new cutting permits.

Both licensees claimed administrative oversight as the cause and stated that they did not realize their permits had expired.

Cut Control

Investigators found that one licensee exceeded its cut control limits¹ by more than 300 percent to address mountain pine beetle in its woodlot. Due to the uncertainty of how much harvest would be required to address mountain pine beetle, the ministry advised the licensee to apply for a post-harvest cut control exemption. When doing so, the ministry and licensee did not conform to the ministry's cut control exemption guidance,ⁱⁱⁱ nor the *Kootenay Lake District Forest Health Strategy*.^{iv} The guidance states that exemptions for harvesting timber in imminent danger of being destroyed be granted at the onset of the event. The licensee did not conform to the survey data collection and principles to guide harvesting criteria in the forest health strategy and did not develop a forest health plan that clearly rationalized whether the timber harvesting adequately addressed the beetle and its potential effects on forest resources. Without a clear rationale, the ministry did not have a reasonable basis to evaluate the timber harvest levels in the application and, by approving the application, did not ensure the licensee had adequately addressed the beetle infestation.

Ministry staff administered the exemption in a manner that was not consistent with ministry recommendations and did not clearly explain why they took a different approach in this situation.

In its exemption approval, the ministry recommended the licensee submit a new management plan, proposing a revised allowable annual cut based on a re-inventory of the woodlot, to address the remainder of the forest health issues within the woodlot. The licensee has engaged a forest professional for advice on this matter.

Annual Reporting

Investigators found nine licensees did not comply with annual reporting requirements, including seven instances where licensees did not report activities, reported them late and/or did not submit information to the standard required by the chief forester. In one instance, the forest cover information reported did not match site conditions and in another the survey information did not match field conditions.

¹ The volume of timber harvested during the cut control period of a woodlot licence must not exceed 120 percent of the final sum of allowable annual cuts.

Licensees were aware of their reporting requirements, but cited a variety of reasons—cost, technological capacity, and a limited working knowledge of the RESULTS² reporting system—affecting their ability to meet annual reporting requirements.

Woodlot Management Framework Support

Does the woodlot management framework support the Kootenay Lake TSA licensees' ability to meet the requirements of FRPA and the *Wildfire Act*?

The legal and non-legal components of the woodlot management framework consist of a combination of legislation, government administration, and licence management, plus guidance and support from forest professionals, the ministry, and the woodlot federation/association so licensees understand their legal requirements and meet their obligations.

Both ministry staff and woodlot licensees stated that the woodlot management framework is reasonable but, while it provides adequate structure for most licensees and most situations, it does not work for everyone. They believe FRPA, including the WLPPR, sets a reasonably sound foundation and defines roles and requirements with reasonable clarity. However, some licensees found the legal framework overly complex, were experiencing high costs to meet legal requirements, and/or were not utilizing all of the support and tools available to them—potentially affecting their ability to meet legal requirements.

Licensees and the federation stated that guidance and support may come in forms that do not clearly differentiate between legal requirements and guidelines, including comments on proposed plans and amendments, memos, and training documents and packages. They said that, as a result, licensees are sometimes uncertain what their legal obligations are and what they should be committing to in their plans.

Investigators found the legislation and ministry guidance adequately defined requirements and roles and, for the most part, licensees managed their woodlots to the standards set in FRPA and the *Wildfire Act*. Some licensees said the capacity of ministry staff to provide support to woodlot licensees is lower than they would like to see. At the same time, investigators found not all licensees are taking advantage of all the resources

² The RESULTS (Reporting Silviculture Updates and Land status Tracking System) application tracks silviculture information by managing the submission of openings, disturbances, silviculture activities and obligation declarations as required by the *Forest and Range Practices Act* legislation.

and support available to them. Investigators focussed their assessment on the support and guidance available for those areas where the licensees had problems meeting or understanding the legal requirements.

Silviculture

Sections 34, 35 and 35.1 of the WLPPR define regeneration and free-growing obligation requirements. A licensee is required to meet the requirements within the period specified in its WLP. The ministry explains this in its guidance documents, including survey and milestone requirements.

In addition to ministry guidance documents, the woodlot federation offers support to licensees through its cutting permit checklist and the ministry's "one cutting permit" approach, serving as reminders to ensure licensees meet obligations before the ministry approves a new cutting permit.

Fire Protection

Section 7 of the *Wildfire Act* and sections 11 and 12.1 of the *Wildfire Regulation* require the licensee to assess and abate fire hazards, describing the timing and content of an assessment and requiring that the licensee ensure a qualified person completes the assessment.

Conducting a fire hazard assessment falls under the scope of practice of a professional as part of fuel management work, but is not limited to professionals. A professional can prepare, review, amend, and create hazard abatement strategies. Licensees may retain a forest professional to develop an assessment strategy or operating procedure for assessment of fire hazard on its woodlot or they may use the 2012 [Guide to Fuel Hazard Assessment and Abatement](#), which describes procedures for both professional and non-professional assessments.

The federation offers additional support to licensees through a cutting permit checklist that includes a reminder for licensees to complete hazard assessments before their permit expires.

In early 2017, the federation met with the ministry to discuss fuel mitigation in high-risk areas and hazard assessments, resulting in the formation of a joint committee to address, in part, hazard assessment requirements. The federation is part of the committee and plans to advise the local woodlot associations on developments.

Cutting Permits

The *Forest Act* requires licensees to apply for cutting permits prior to timber harvesting. It also requires the ministry to approve these once they meet specific criteria.

In addition to ministry guidance documents, the woodlot federation offers support to licensees in its cutting permit checklist and the ministry's one cutting permit approach, serving as reminders to ensure licensees meet obligations before the ministry approves a new cutting permit.

Cut control

The *Forest Act* requires licensees to propose allowable annual cuts and requires the ministry to approve them once they meet specific criteria. Support is provided for extraordinary circumstances in the 2009 memo, *Guidance When Dealing with a Catastrophic Event Necessitating Increased Harvest on Woodlot Licences*.

Annual Reporting

Legislation assigns the role of annual reporting to the licensees through section 76 of the WLPPR, and gives the chief forester the authority to establish the timing and activities to be reported and to specify the information and format reporting requirements.

The 2011 interim guidance document issued by the ministry and the Association of BC Forest Professionals, and submission specifications prescribed in the Results Information Submission Specifications (RISS)^v for woodlot licensees assign annual reporting as the licensees' responsibility.

Prior to this investigation, the ministry and licensees recognized that annual reporting was problematic and undertook several initiatives to help ensure licensees met reporting requirements. Some licensees hired qualified contractors for their annual reporting services, eliminating some of the reporting errors. The ministry monitored annual reporting, informed licensees when they did not meet reporting requirements and sometimes notified CEB staff, who would follow up with the licensee. In addition, the one cutting permit approach afforded the ministry additional control since a licensee must report disturbances in RESULTS so that blocks are closed in the Forest Tenure Administration System before the ministry can issue a new cutting permit.

The ministry also provided the licensees with other reporting guidance documents and training manuals, including the *Woodlot Licensee Guide to the Submission of Silviculture Reporting Requirements to RESULTS* (2007), *RESULTS Training for Woodlot Licensees* (2008) and *RESULTS Information Submission Specifications* (updated 2016).

One Cutting Permit

The "one cutting permit" is a new, more efficient approach to approving harvesting. The basic concept is that, since all the timber on a woodlot licence is pre-priced via the tabular pricing scheme, the need for appraisal information by cutting permit is eliminated. Therefore, there would only be one cutting permit issued for the entire woodlot licence, eliminating multiple cutting permit submissions by the licensee and processing by government. In keeping with a results-based approach, the licensee would report on its activities after they were completed. This has the added advantage that the licensee would submit final block boundaries once rather than the current practice where proposed block boundaries are submitted at the outset and subsequent amendments submitted before a final block boundary is realized, resulting in lower administration and data storage costs. In order to be issued a second "one CP", all blocks and openings under the first must be reported. For more information: <https://www.for.gov.bc.ca/hth/timber-tenures/woodlots/forms.htm>

The federation provided licensees and their contractors with free RESULTS reporting software to prepare RESULTS reports with spatial data components, free technical support, and a detailed manual on reporting requirements and procedures. For additional guidance, the woodlot federation implemented the “Getting RESULTS” program. This program is meant to address high priority reporting issues as identified by the ministry. The program is intended to help licensees improve reporting by providing guidance and a better understanding of the annual reporting requirements, as well as document the procedures that must be followed. The federation’s cutting permit checklist reminds the licensees that they must meet annual reporting requirements before the ministry will issue a new cutting permit.

WLP Extensions, Approvals and Information Sharing

Extensions and Approvals

Licensees stated they were unclear on what ministry guidance and legal requirements were for certain results, strategies, measures or alternative performance requirements.³ Before a WLP can be approved it must contain results, strategies, measures or alternative performance requirements that are measureable or verifiable and consistent with established resource objectives, including those for cultural heritage resources, wildlife tree retention, and measures for invasive plants and natural range barriers. For guidance, district staff suggested wording regarding measurable or verifiable practice requirements for licensees to consider including in their plans. Some licensees stated that they are uncertain whether they were required to accept the district’s wording, uncomfortable with some of the practices they may be committing to, uncertain how to implement them, and uncertain whether they can achieve what will become a legal obligation once the WLP is approved. However, licensees are not required to accept the district’s proposed wording and may develop their own set of practice requirements, providing they meet the required criteria.

Some licensees believe the district is taking too long approving WLP extensions because district staff are asking for more information than required. The licensees contend that when extending a WLP that has been signed by a person with prescribed qualifications, the plan has already been approved and it conforms to prescribed requirements.

³ Alternative performance requirements, described in section 13 (1) of the WLPPR, may be included in a woodlot licence plan. Under FRPA, a WLP plan must include measures to deal with natural range barriers and invasive plants. The measures are documented actions a forest licensee commits to carrying-out if their forestry operations are likely to impact natural range barriers or result in the introduction or spread of invasive plants.

However, before extending the plan, the ministry must review the plan with sufficient rigor to be satisfied that it conforms to current standards or establish on a legal basis why it does not. This process takes time and can increase the time it takes to extend or approve plans.

Section 16(1.2) of FRPA provides that “a person with prescribed qualifications” may certify that a WLP meets requirements for “prescribed subject matter,” however, the regulation does not address this issue so it is not being implemented.

First Nations Information Sharing

Some licensees stated that it is difficult to distinguish between ministry requirements and actual legal requirements for First Nations information sharing to get their WLPs extended.

They are concerned that the ministry is requiring them to commit to information sharing in their WLP with First Nations for cutting and road permits, which is not a legal requirement under FRPA.

District staff contends this is not what they have communicated. They state that the only licensee requirement for information sharing is defined in section 17 (3.1) of the WLPPR; to make a reasonable effort to meet with First Nations for a certain period after publishing a WLP notice. Government expressed that, as part of consultation, it is in a licensee’s best interest to take a voluntary approach to information sharing, but the ministry will engage in information sharing if the licensee is unable to do so.⁴ A licensee has the option to accept ministry guidance for a cultural heritage strategy, which may include accepting guidance regarding site level consultation, or to develop its own strategy as recommended in ministry guidance.^{vi} If a licensee does include a commitment to information sharing in their WLP, it is considered a form of agreed delegation from the ministry to the licensee.

Currently, the development of a cultural heritage resources strategy or result is the responsibility of the licensee, who may engage a qualified professional for advice.

The ministry and the federation participated in a joint working group,⁵ which recognizes the development of approvable strategies as an issue, but the group is not working on it at this time.

...the ministry, federation, and association have been working to develop guidelines...

⁴ Consultation is a legal requirement based on the common law and section 35 of the *Constitution Act, 1982*. Under the common law, the Province has the authority to delegate procedural aspects of consultation and sometimes does that through information sharing processes that are led by the licensee. However, the ultimate legal responsibility for consultation and accommodation rests with the Crown.

⁵ The ministry and the Woodlot Federation participate in a Joint Working Group (JWG). The goal of the JWG is to identify issues affecting the woodlot program and licensees, to resolve these issues and to streamline processes as warranted with existing resources.

Recognizing the concerns the licensees had with WLP approvals and extensions (see above), the ministry, federation, and association have been working to develop guidelines to advise licensees on how to approach drafting WLPs. In June 2017, the ministry released, *Woodlot Licence Plan and Extensions District Manager's Guidelines, Selkirk Forest District, May 2017*, which provides guidance regarding the prescribed content of a WLP, as well as information sharing with First Nations. The purpose of the guidelines is to provide woodlot licensees with a framework for the submission of a WLP. For example, current WLPs need to be updated to reflect new information—forest policies have evolved since the original WLPs were approved and provincial audit results have highlighted the need to be very clear in the language relative to outcomes. The ministry hopes the guide will create efficiencies for licensees and staff, and support timely WLP extensions and approvals. However, the federation and woodlot association stated that this document does not correctly describe all legal requirements.

Licence Administration (by the Ministry)

The *Forest Act* requires the ministry to approve management plans, allowable annual cuts, cutting permits, and road permits if they meet certain criteria. FRPA and the WLPPR establish planning and practice requirements for woodlot licensees. FRPA requires the ministry to approve a woodlot licence plan, providing it meets the required criteria.

Investigators found that the region and district staff are fulfilling their primary role of tenure administration. With the exception of WLP, cutting permit, and cut control items described above, staff are processing licences, plans, and permits in a timely manner, while operating with fewer staff than in the past. Staff use an authorizations checklist to help ensure licensees meet obligations prior to issuing new licences and permits.

Recognizing that some aspects of woodlot administration were not well suited for the scale of woodlot operations and were potentially prohibitive for meeting legal requirements, the ministry sought to improve administration by implementing various processes, including a WLP template, the one cutting permit approach, and tabular appraisal rates. The investigators found these to be useful tools to reduce the administrative burden for licensees and to help them understand legal requirements. At the time of the investigation, a streamlined road permitting process was also being developed.

Capacity and Ministry Involvement

Some woodlot licensees stated they do not receive enough support from the ministry, especially with respect to day-to-day operations, and they have little interaction with staff in the region and district.

Ministry staff stated they are constrained by resource capacity and therefore, less able to provide the support that could help woodlot licensees meet their obligations. The ministry no longer conducts frequent monitoring because the role, scope, and capacity of district and CEB staff has changed. They no longer have the time to engage with licensees regarding day-to-day activities, yet they receive a substantial number of requests for assistance from licensees. They maintain open communication with licensees to provide guidance when possible, including interpretations of legislation, regulation and policy, and communicate their expectations to the licensees. Ministry staff hold periodic woodlot licensee meetings to share information, issue interpretive bulletins, attend woodlot association meetings, provide limited day-to-day guidance, and provide administrative guides on the ministry website. They also recommend that licensees engage qualified professionals and contractors to advise, conduct, or supervise professional forestry activities, and provide the licensees with the assurance that they are meeting legal requirements.

The woodlot federation and local association conduct periodic licensee meetings, provide guides for licensees, and are available to advise licensees on issues that may arise. The number of licensees participating as woodlot association members is variable due to the volunteer nature of participation. While the ministry still provides some guidance, licensees and the federation expressed concerns and provided examples where district expectations and interpretations did not clearly separate legal requirements from guidance, such as the WLP and First Nations consultation items described above. Improvements to higher level support such as WLPPR/WLP performance standards training, revising and updating checklists and bulletins, and providing information in an accessible format would be of value.

With reduced monitoring and support provided by the ministry, the licensees may seek support from professionals, the woodlot association, and the federation. Woodlot licensees have a diverse range of management styles, skills and qualifications and, as such, require varying degrees of support on a wide range of topics, while funding and staffing can affect the capacity of the organizations that provide support. This creates challenges for determining the type of support that best suits the licensee profile and how to provide it.

Woodlot licensees have a diverse range of management styles, skills and qualifications.

CONCLUSIONS

The investigation examined whether woodlot licensees in the Kootenay Lake TSA are complying with FRPA and the *Wildfire Act*, and whether the woodlot management framework supports the Kootenay Lake TSA licensees' ability to meet the requirements of FRPA and the *Wildfire Act*.

Are licensees in the Kootenay Lake TSA complying with FRPA and the *Wildfire Act*?

Investigators found that not all woodlot licensees within the Kootenay Lake TSA are managing their woodlots to the standards set out in FRPA and the *Wildfire Act*. Investigators found that 12 of the 15 licensees had some non-compliance with requirements for silviculture obligations, fire hazard assessments, cutting permits, cut control, and administrative requirements for annual reporting.

The investigation found that licensees are sometimes uncertain what their legal obligations are and what they should be committing to in their woodlot licence plans. Although some licensees did not fully understand the legal requirements for the non-compliant activities, most licensees had good knowledge of legal requirements for other activities in their woodlots, such as road building and maintenance, timber harvesting, and reforestation, and they met resource objectives including those for visual quality, wildlife, water and soils. The following challenges were identified by the licensees as barriers to compliance:

- unaware of obligations and poor understanding of legislation
- poor understanding fire hazard assessment requirements
- uncertainty regarding when to use qualified professionals
- lack of technological capacity
- unaware of available tools and how to use them
- poor working knowledge of RESULTS
- difficulty with costs of meeting requirements

Does the woodlot management framework support the Kootenay Lake TSA licensees' ability to meet the requirements of FRPA and the *Wildfire Act*?

Investigators found that the legal framework clearly describes roles and requirements.

Staff in the region and district are fulfilling their role of administering licences and permits and providing some guidance to licensees.

To help licensees understand and fulfill their legal requirements, support is available to them from the ministry, the woodlot federation and association, and forest professionals. The ministry's streamlining initiatives, such as the WLP template and the one cutting permit approach, have helped licensees with licence administration and a better understanding of legal requirements. The Federation of BC Woodlot Associations and the West Kootenay Woodlot Association provide support services to the local woodlot licensees, including periodic licensee meetings, guides for licensees and advice. They also advocate for licensees on broader issues such as legislation and professional reliance.

Both ministry staff and woodlot licensees stated that the woodlot management framework is reasonable. It provides adequate structure however, some licensees found the legal framework overly complex, were experiencing higher costs to meet legal requirements, and/or were not utilizing all of the support and tools available to them—potentially affecting their ability to meet legal requirements. Overall, the woodlot management framework supports the Kootenay Lake TSA woodlot licensees' ability to meet FRPA and *Wildfire Act* requirements, but there are challenges with its consistent implementation.

The woodlot management framework supports woodlot licensees' ability to meet FRPA and *Wildfire Act* requirements, but there are challenges.

The following challenges were identified in the support available within the framework:

- lack of clarity between legal requirements and guidelines
- confusion about the prescribed qualifications for a person who may certify WLPs
- inconsistent ministry guidance
- limited ministry resource capacity
- lack of use of available tools, support and guidance by some licensees

Licensees, ministry staff and the woodlot association have recognized the non-compliance findings and challenges identified in this investigation, and all three parties are engaged in initiatives to address the issues.

Endnotes

- ⁱ The Ministry's Woodlot Licence Reports and Publications <<https://www.for.gov.bc.ca/hth/timber-tenures/woodlots/reports-publications.htm>>
- ⁱⁱ Guidance for roles and responsibilities of woodlot licencees under FRPA <https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/woodlots/interim_guidance_roles_responsibilities.pdf>
- ⁱⁱⁱ Guidance When Dealing with a Catastrophic Event Necessitating Increased Harvest on Woodlots <https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/cut-control/cut_control_woodlot_memo_catastrophic_event.pdf>
- ^{iv} Kootenay Lake District Forest Health Strategy <<https://www.for.gov.bc.ca/dkl/foresthealth/fhstrategy2005final.pdf>>
- ^v Results Information Submission Specifications, Form and Manner of Reporting <https://www.for.gov.bc.ca/hfp/publications/00220/RISS_gf_Edition_4a_2014_May.pdf>
- ^{vi} The Woodlot Licence Plan Template and FRPA Administration Bulletins 5, 9 and 16 provide government direction regarding First Nations consultation and results or strategies for cultural heritage resources.



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