



General Bulletin

Number 37

April 12, 2001

Legislation Governing Harvesting and Bark Beetle Control

Introduction

The purpose of this bulletin is to clarify the Ministry of Forests' legislation and administrative policy relating to timber harvesting to control bark beetle infestations. The natural cycle of bark beetles, particularly the timing of tree attack, creates inherent difficulties in applying the legislation and supporting administrative processes. Increasing bark beetle infestations test the ability of the Ministry to balance the need to protect the forest from damage with the need to maintain a dependable framework of forest development planning.

Co-operation between the Ministries of Forests and Environment, Lands and Parks and all forest licensees is the cornerstone in using timber harvesting as an effective treatment to respond in a timely manner to growing bark beetle infestations

Occasionally there is a need to have specific stands of timber harvested as soon as possible in order to control bark beetles infestations. Much of this harvesting will normally involve existing licensees, including the Small Business Forest Enterprise Program (SBFEP) and the Small Scale Salvage Program (SSSP), in which case the best option is to plan and encourage co-operation with the licensees to change their areas of operation in order to facilitate rapid harvesting.

The issues and recommendations provided in this bulletin apply only where, in the opinion of the district manager, constructive planning with the licensees is not adequate to achieve control of bark beetles. The recommendations generally apply to volume based Forest Licence (FL) tenures and discusses related TSL's issued as tools under sections 20, 23, 72 and 73 of the Forest Act. The holders of area based tenures, such as Tree Farm Licences and Woodlot Licences are responsible for all treatments related to timber damage on their respective land bases.

1. Redirecting forest license holders

The FL document generally allows licensees to propose harvesting of any timber within the Timber Supply Area (TSA) timber harvesting land base, subject to cut control restrictions. If their forest development plan (FDP) meets the requirements of the *Forest Practices Code Act (FPCA)* Section 41, the district manager must approve it. Exceptions to this are where the current TSA allowable annual cut (AAC) determination involves a partition (that may affect the volume of harvest from the partitioned area by the

licensees); or where the regional or district manager (depending on the forest region) has previously advised the licensee of a limitation to harvesting through Part 6 of the FL document (see Appendix 1).

FL document Part 6.00, particularly paragraphs 6.01 and 6.02 (Appendix 1), can be used by a regional or district manager (depending on the forest region) to give notice to the tenure holder to focus future harvesting proposals on specific areas, terrain or timber type within a TSA. This reduces the time required to harvest timber that is at high risk to beetle attack. All district managers, through their regional managers, are encouraged to ensure that the Part 6.00 clauses are available in FL documents. This would require inclusion of the appropriate clauses when licenses are replaced or inclusion in the interim by mutual agreement.

Since Part 6.00 of the FL document is tied to application for cutting permits, licensees should be advised of the application of this clause as early as possible before the required harvesting is needed. This is needed since the licensees could have many approved cutting permits available to them that would not be limited by the Part 6.00 advisement. Licensees could be reminded annually of this provision. In this regard, it will be necessary, particularly in periods of bark beetle outbreaks, to predict beetle spread and severity as far into the future as is reasonable. Forest health staff should be able to offer a reasonable prediction of beetle population dynamics for the purposes of the timing and direction of the Part 6.00 advisement.

With the exception of authority through the FL document, Part 6.00, the FL holders cannot be required to focus harvesting on beetle infestations in the TSA (that are not already identified as under agreement to the licence). However, once the FDP proposal is approved, the tenure holder can normally be compelled to focus harvesting, or treatments, on beetle infestations within the area under the plan.

A commitment to undertake specified small scale salvaging can also be secured from FL tenure holders using Part 6 (Appendix 1). This clause is currently included only in the Cariboo Forest Region FL documents.

2. Timber Sale Licences

Where harvesting is needed to control a bark beetle infestation in the coming months on lands not occupied by a major licensee and, as noted above, the major licensees are not involved, or after they have waived first right of refusal, it is essential that a tenure be issued quickly. To this end, timber can be sold direct or through an accelerated competitive process. Within these two sale methods there are different tenure options - each with features, such as stumpage rates and responsibility for the silviculture obligation, that can affect their effectiveness for controlling beetles.

- a) Direct TSL's may be awarded by the district manager using *Forest Act (FA)* Section 73, to harvest up to 2000 m³ of timber, or *FA* Section 23(3), to harvest up to 500 m³ of timber. No advertising is required. A comparative cruise of the timber may be

required. The responsibility for silviculture under a Section 73 TSL would, unless a major licensee had already established a silviculture liability on the area, become the district manager's and may be funded through ministry funding sources.

- b) Competitive TSL's may be awarded under *FA* Section 20. The time to prepare, advertise and award these TSLs can be as short as three weeks. The competitive process provides the benefits of offering all interested parties an opportunity to bid for the timber and ensures fair value for the public's timber. However, a direct sale under Section 23(3) or 73 may be the preferred option where the ministry cannot afford to wait the additional time required to process a competitive timber sale, or it is likely that a competitive sale would require significant additional enforcement that would outweigh the benefits of competition.

If larger volumes of timber are involved and there is imminent risk of further damage or loss in value, the district manager could award a TSL using *FA* Section 23(1)(c). However, if the volume of timber sold under *FA* Sec 23(3), 23(1)(c), or Section 73 significantly increases the total harvest under TSLs, it would also increase the silviculture liability and the associated costs to ministry funding sources, such as ministry base funding, forest stand management account, SBFE account and could negatively impact a district's SBFEP funding available for planning and development.

Where the intention is to salvage previously infested wood that is not at imminent risk of further damage or loss in value, various alternative tenures are acceptable as there is no serious time constraint. These tenures include TSLs under *FA* Section 20 and 21 and non-replaceable Forest Licences (NRFLs) under Section 13 and 13(1.1). The time required to prepare and award a TSL under Section 21 or a NRFL tend to make them ill-suited for issuing harvesting authority in the limited time available to control beetles.

3. Other Code Options

a) Where a licensee has submitted a Forest Development Plan (FDP) indicating that the objective of the proposed harvesting in a particular area is to control bark beetles, a district manager, using the authority of the *Operational Planning Regulation (OPR)* Section 9 and Section 18(1)(t), could request redirection of proposed harvesting within the area under the plan to control beetle infestations. Additionally, a district manager could use the authority of *OPR* Section 6 to require the person preparing the plan to include adequate detail on the most effective means of treating the infestations.

b) Where there are agents causing damage to a forest, the district manager, using the authority of *FPCA* Section 106, may, in a notice given to the land owner or forest license tenure holder, order measures to be undertaken within a specified time to control or dispose of the damage agent and the person must comply.

The designated forest official, identified in the Section 106, must determine that the damage agent that poses the risk is present and would normally advise the district manager of this situation. Information on the designation of forestry officials is available

in the Ministry of Forests Policy Manual, Chapter 16, Enforcement, Policy 16.1
Designation of Forestry Officials¹

The following conditions are important to the administration of an order under Section 106:

- The district manager must act reasonably in the order to control the damage agent given to a licensee or private landowner;
- The order must convey that all affected licensees are being treated in the same manner;
- The order to control a damage agent must relate to a resource under agreement that is at risk;
- The order can be for anywhere in the TSA, though the relationship of the damage agent infestation and responsibility of a licensee to control it is strengthened where the infestation is within an FDP area under the plan;
- More than one licensee could be ordered to control an infestation where this best suits the situation and associated responsibilities;
- The order must be in reasonable proportion to the value of the licence to the licensee when the order is given; and
- The order is subject to review and appeal under *FPCA* Section 127(1).

Where appropriate, the regional manager, using *FA* Sec 65(3), could offer the licensee some exemption to licensee tenure cut control requirements.

Administration of Forest License Forest Development Plan Proposals

The following policy recommendations are offered to facilitate the administration of FL FDP proposals that involve timber at high risk to bark beetle infestations. Where alternative arrangements with a licensee are not available, these policies should contribute to a balanced approach to effective beetle control and resource planning.

- The district manager using the authority of *OPR* Section 3 should not approve an FDP in an area of high risk to beetle infestations for a term longer than one year. The district manager may recommend to the licensee that the area under the plan be subdivided to distinguish high-risk areas to beetles from other areas, and that two separate FDPs be submitted related to the different areas. This allows the district manager the opportunity to consider the status and location of the infestation again in the following year and to direct the licensee to focus on appropriate infestation locations using appropriate control treatments consistent with any strategic beetle management plan in place (see the section on redirecting licensees).
- Where a forest health assessment has been requested through *OPR* Section 13(b), the district manager should not approve the FDP until the results of the assessment are available for consideration as part of the licensee's proposal as required through *OPR* Sec 18(1)(t). The results of the assessment and treatment proposals identify the locations of current infestations, and allow the district manager to evaluate the

¹ Refer to the following website: <http://www.for.gov.bc.ca/tasb/manuals/policy/resmngmt/rm16-1.htm>

treatment that is most appropriate for sites within the area under the plan. It ensures that the district manager retains authority to direct the licensee to treat infestations in a timely manner rather than relying on the licensee to bring forward voluntary amendments. Finally, it may eliminate the need for completing ad hoc “beetle management” plans from licensees in addition to and separate from the FDP’s.

- The district manager, using the authority of *FPCA* Section 41(1)(a), could refuse to approve the FDP submitted by the licensee if it does not include measures to reduce risk to forest resources, as identified in the forest health assessment (*OPR* Section 18(1)(t)). This is supported by the requirement, under *FPCA* Sec 10(1)(c)(ii), that the FDP include measures to protect forest resources. Measures to reduce risks cited in an FDP by the licensee, based on *OPR* Sec 18(1)(t), must be provided where a district manager has requested the information through *OPR* Sec 13(b). A district manager could also refuse to approve an FDP proposal, under *OPR* Sec 21(1)(d), where the proposal includes a cut block previously approved in an FDP, not subject to *OPR* Sec. 22, and where more recently an infestation had developed in the vicinity of the cut block and to proceed with the harvesting would no longer manage and conserve forest resources.
- Where approval of an FDP proposal cannot be given until the fall of the year when the forest health assessment results may be available, the district manager should encourage the licensee to provide available information concerning the FDP to stakeholders as early as is practical for informal review. The informal review of available information should assist in FDP planning and public consideration of information. The informal review of available information may be the best opportunity for public/stakeholder review if decisions are ultimately made to conduct expedited major salvage (10 day formal review period) or address an emergency (a minimum 5 day notification period and no formal review period). This addresses the dilemma that exists to provide planning opportunities for FDPs expected to be implemented as expedited major salvage or emergency operations where formal planning opportunities are limited or waived.

Exemptions to Harvesting Restrictions

Two *FPCA* regulatory provisions limit the size and timing of cut blocks that could be considered important to the control of bark beetles. The two legislative sections, *OPR* Section 11(3)(b)(i)(A) related to block size, and *Timber Harvesting Practices Regulation* Section 9(2)(g), related to green-up, identify that damaged timber may be harvested allowing an exemption to harvesting restrictions related to the cut block size, or the green-up requirement. The definition of timber is not clear in this legislation, and in terms of applying these exemptions, the following guidance is offered:

- Timber is defined in the *FA* as trees, whether standing, fallen, living, dead, limbed, bucked or peeled. As noted, “timber” can refer to more than one tree.
- It is up the district manager, and in some cases the designated environment official, to accept or reject the harvesting restriction exemption related to the amount of healthy timber proposed by the licensee for harvest that is incremental to the infestation.

- The extent of healthy timber harvesting required to provide access to the damaged timber should be reasonable and would depend on the facts of the particular situation. For purposes of these exemptions to harvesting restrictions, the healthy and infested trees in a stand cannot be collectively considered timber and harvested as a unit. Rather, the infested trees may be harvested and an appropriate portion of the healthy trees may be harvested to provide access to the infested trees.

A higher level plan can specify another green-up provision than is stated in regulation. The Minister, through the Resource Management Objective to the DM through the Landscape Unit Objective could specify another green-up provision in the higher level plan. For example, the Kootney-Boundary Regional Land Use Plan Order, Draft (Objective #4) has alternative green-up provisions.

Conclusions

With minor exception, licensees cannot be required to rapidly redirect their harvest locations. Only where there is an AAC partition, or where they have responsibility to control an infestation posing a direct risk to timber under agreement could they be directed to rapidly shift their operations.

The district manager has options that would ensure that licensees focus their harvesting on timber at risk to beetle attack. Clauses in FL documents may allow managers to focus licensees' future cut on particular timber types, terrain or areas of TSA. These clauses should be included in all future FL documents. Successful use of this option requires the Ministry (and licensees) to be able to reasonably predict beetle spread and the risk posed to timber particularly during periods of bark beetle outbreak. Licensees should be advised as early as possible before the harvesting is likely required since they could have many approved cutting permits available to them that would not be limited by the advisement related to FL document, Part 6. The forest health program in the Ministry should be able to offer a reasonable estimation of future bark beetle population dynamics and timber risk.

The review and approval of a licensee FDP in areas at risk to beetle infestation requires particular care. The district manager must ensure that infestations within the plan are rapidly addressed, and that planning and consultations associated with the FDP process have value. The district manager should not forfeit authority to make use of survey information or to be able to request annual changes to plans in order to keep up with changes to beetle spread. Planning and consultation should proceed, even in an informal manner, rather than be delayed by the lack of specific required assessment information, where the planning opportunity would ultimately be reduced in an emergency situation.

Control of bark beetle infestations by the Ministry and licensees poses an additional burden on managers to deliver good forest management. The Ministries of Forests and Environment, Lands and Parks, and licensees best share this burden in a spirit of co-operation.

References

BC Ministry of Forests, 1996. Responsibilities for Bark beetle Management, 2p

Contacts

If there are any questions about this bulletin, please contact:

Forest Practices Branch

John Henigman (250) 356 5886

John.Henigman@gems1.gov.bc.ca

Resource Tenures and Engineering Branch

Charlie Western (250) 387 8306

Charlie.Western@gems4.gov.bc.ca

Forest Enterprises Branch

Graham Archdekin (250) 387-8302

Graham.Archdekin@gem2.gov.bc.ca

Appendix 1

Forest License Document, Part 6 Clauses **As Currently Used In The Cariboo Forest Region**

- 6.0 Special Conditions and Requirements
- 6.01 The Regional Manager or District Manager, in a notice given to the Licensee, may advise the Licensee that after the date specified in the notice the Licensee may only submit applications for cutting permits for areas of Crown land meeting the requirements set out in the notice.
- 6.02 The requirements referred to in paragraph 6.01 may restrict the areas of land for which the Licensee may submit applications for cutting permits to any or all of the following:
- (a) a part of the Timber Supply Area;
 - (b) a type of terrain with the Timber Supply Area; and
 - (c) a type of timber within the Timber Supply Area.
- 6.03 Before giving notice under paragraph 6.01, the licensor or district manager will consult with and will consider the comments of the licensees within the TSA or any licensee proposal to address a specific concern of the licensor or district manager
- 6.04 The licensee will submit for the district manager's approval not later than four months after the date specified in paragraph 1.02, a proposed salvage commitment for the term of the licence.
- 6.05 A proposed salvage commitment under 6.04 must be signed by the licensee or the licensee's authorised signatory and must specify the licensee's planning area where the licensee will take on the responsibility for removal of timber, under section 73 of the *Forest Act*, where there is a risk of timber being significantly reduced in value, lost or destroyed or where required to minimise the spread of an insect infestation.
- 6.06 An approved salvage commitment is deemed to be part of this licence.