

File: 18045-02

June 10, 2010

To: District Managers

From: Dave Peterson
Assistant Deputy Minister
Field Operations Division

Re: Delegation of Old Growth Management Area Amendments to District Managers

The Minister of Agriculture and Lands has recently delegated the authority under the *Land Act* to amend Old Growth Management Area (OGMA) Orders to district managers within the Ministry of Forests and Range. Many OGMA amendments are currently performed to support forest management operations and/or improve OGMA locations and this delegation is consistent with our ongoing efforts to support inter-agency collaboration. OGMA amendments are currently approved by ILMB REDs in consultation with other agency staff.



Please note this delegation contains "binding direction" that must be followed. A copy of the delegation letter and a supporting guidance document are attached to this memo and will also be provided to Sub-Regional Manager's Committees. ILMB will continue to be responsible for draft, policy and non-spatial OGMA's, including those designated under section 8 of the Provincial Old Growth Order.

If you have any questions about this delegation, please contact Dave McBeth, Senior Forester, Divisional Initiatives Branch at 250-828-4594.



Dave Peterson
Assistant Deputy Minister
Field Operations Division

Attachments

pc: Regional Executive Directors
Branch Directors

Appendix 1: Delegation Letter



Ministry of Agriculture and
Lands

Minister's Office

MEMORANDUM

File: 0280-30
Ref: 169677

District Managers
Ministry of Forests and Range

**Re: Delegation of Minister's Authority for Old Growth Management Area
Amendments to MFR District Managers**

Delegation:

Pursuant to section 93.7 (1) (a) of the *Land Act*, I hereby delegate the power of the Minister under sections 93.4 to 93.6 of the *Land Act* to the District Manager, Ministry of Forests and Range. The delegated authority is limited to amending old growth management areas (OGMAs) in an order made under section 93.4. Amending OGMA orders includes:

- additions or deletions to the boundaries of one or more OGMA polygons;
- deleting existing OGMA polygons; and,
- establishing replacement OGMA polygons.

Amending OGMA orders does not include the authority to make OGMA amendments that will have substantial social economic and environmental implications.

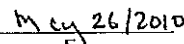
Nothing in this delegation precludes me, or my successors, from exercising the functions of the Minister under sections 93.4 to 93.6 of the *Land Act* or making other delegations regarding those powers.

Direction:

Pursuant to Section 93.7(1)(b) of the *Land Act*, I hereby provide the following direction to the District Manager, Ministry of Forests and Range.

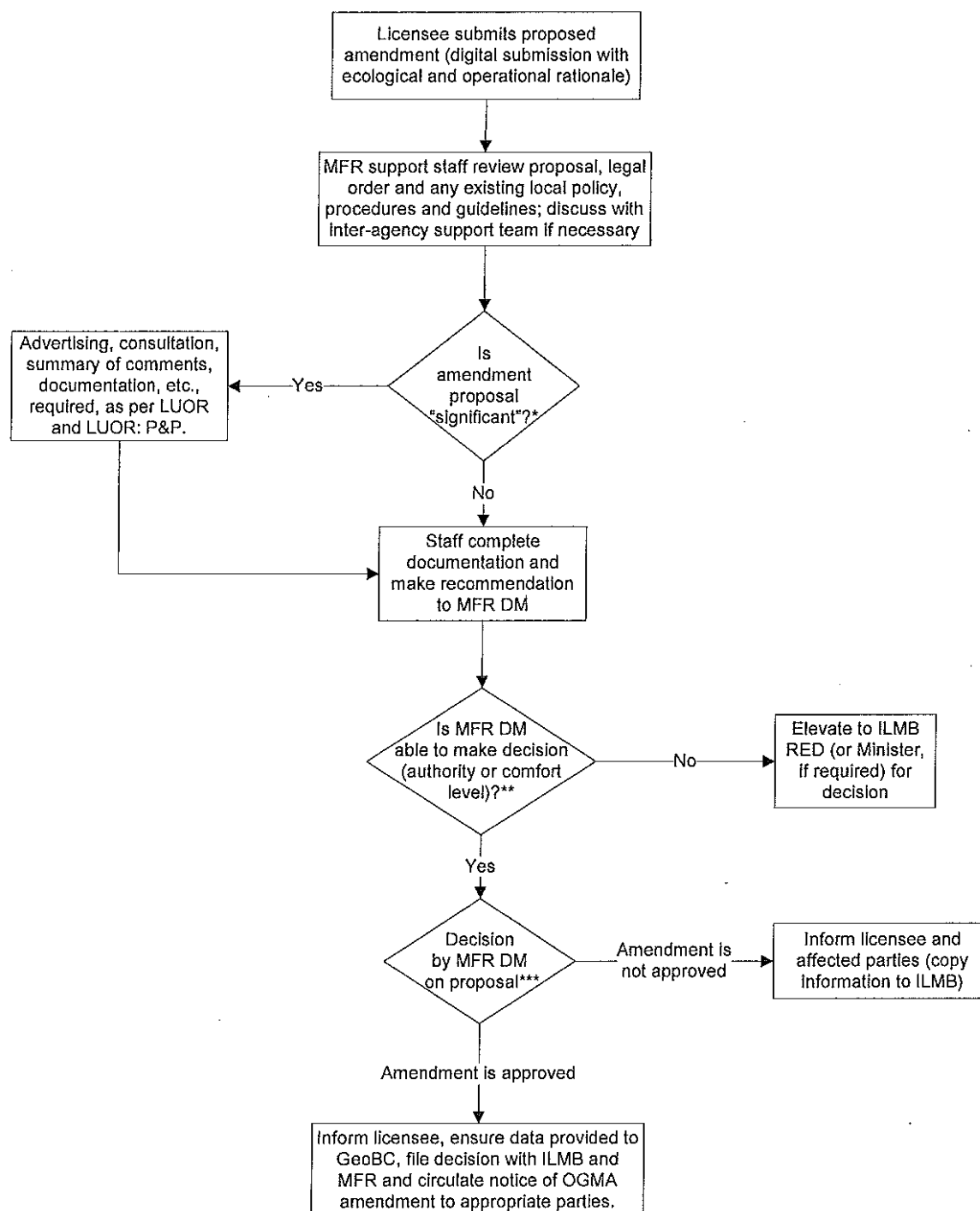
- This District Manager must consider the Land Use Objectives Regulation: Policy and Procedures document, and, where they exist, regional and sub-regional policies, procedures or similar direction for processing OGMA amendments in making a decision on an OGMA amendment.


Hon. Steve Thomson
Minister of Agriculture and Lands


Date

pc: Regional Executive Directors, Integrated Land Management Bureau
Regional Executive Directors, Ministry of Forests and Range
Regional Managers, Environmental Stewardship, Ministry of Environment

Appendix 2: Example Steps for MFR DM in Processing an OGMA Amendment



* See Land Use Objectives Regulation: Policy and Procedures for details.

** May require discussions with ILMB RED to ensure it is within scope of MFR authority.

*** Apply any applicable tests, provide rationale for decision, etc.

Amendments to Legal Spatial Old Growth Management Areas Guidance for Ministry of Forests and Range District Managers May 27, 2010

Purpose

The purpose of this guidance document is to provide some general information to Ministry and Forests and Range District Managers with regards to amendments to legally established, spatially defined, old growth management areas (OGMAs). This is being provided to support their new role as a delegated authority under the *Land Act* to approve amendments to OGMAs.¹

Background

Section 93.4 of the *Land Act* and the Land Use Objectives Regulation (LUOR) provides authority and a framework to the Minister responsible for the *Land Act* to make orders to establish and amend objectives for the purpose of the *Forest and Range Practices Act* (FRPA). This provides the mechanism for establishing land use objectives for OGMAs.

Section 93.7 of the *Land Act* allows the Minister to delegate powers or duties under sections 93.4 – 93.6 to persons in the Minister's ministry or another agency. In September 2006, the Minister delegated his authority (with direction) to the Integrated Land Management Bureau (ILMB) Regional Executive Directors (REDs).²

In May 2010, Ministry of Forests and Range (MFR) District Managers (DMs) were delegated authority to amend orders for legal spatial OGMAs established under sections 93.4 – 93.6. (A copy of the delegation letter is attached as Appendix 1.) The expectation is that DMs will exercise their delegated authority and become the primary official responsible for adjudicating amendments to OGMAs established under the *Land Act*.³ However, DMs have the option of "elevating" a decision on a proposed OGMA amendment to the ILMB RED.⁴

¹ This delegation does not include amendments to provincial or regional legal, non-spatial OGMA orders or non-legal "draft" or "policy" spatially defined OGMAs. ILMB continues to be responsible for these areas.

² No changes are proposed to the current authority delegated to ILMB REDs.

³ A possible exception to this may be OGMAs designated under the *Oil and Gas Activities Act* (OGAA). Policy direction with respect to the Designated Decision Maker (DDM) for OGMAs designated under this legislation is still under development.

⁴ A MFR DM may choose to elevate a decision to the ILMB RED if it involves a proposed amendment to an OGMA that overlaps other identified significant resource values, such as wildlife habitat for red or blue listed species, First Nations values, etc. Given the scope of the authority delegated to DMs, it is possible that there will be situations where the amendment proposal must be adjudicated by the ILMB RED or Minister responsible for the *Land Act* because the scale of the amendment is outside the scope of authority that has been delegated to the DM.

Provincially, there are approximately 50 orders establishing roughly 7,700 legal spatial OGMA's that cover nearly 675,000 hectares.⁵ The majority of these orders are in the ILMB Coast Region. In the Northern Interior Region, orders establishing OGMA's can be found in the Skeena sub-region and the Dawson Creek Timber Supply Area (TSA). There are no legal spatial OGMA's within the Southern Interior Region. It is anticipated that new legal spatial OGMA's will be established in the Peace, Cariboo and Thompson-Okanagan sub-regions in the near future.

Purpose of OGMA's

Old growth management areas are the most important component of the effort to manage for the conservation of biological diversity. These areas are intended to provide representative examples of old growth and serve as a "coarse filter" for managing for biodiversity.

In addition to providing representative old growth values, OGMA's can also support the conservation of other important values, such as wildlife habitat, rare ecosystems, cultural and heritage and recreation. Well dispersed OGMA's can also support wildlife habitat connectivity across the landscape.

Reasons for OGMA Amendments

Generally, an amendment to an OGMA is where a portion of a legally established OGMA is deleted and an approximately equivalent replacement area is added. This retains the approximate balance of OGMA area within the Landscape Unit.

OGMA amendments can be proposed to address forest health or access (road) issues, as well as to improve access to non-forest resources (e.g. independent power projects, oil and gas, minerals, commercial tourism).

First Nations may also request amendments to protect cultural values by including these sites in OGMA's. Occasionally, amendments are requested that affect multiple OGMA's due to new inventories (e.g. Terrestrial Ecosystem Mapping, Timber Harvest Land Base changes).

The majority of current OGMA amendment proposals are the result of forestry-related activities (e.g. to facilitate an access road, to improve the OGMA boundary relative to features on the ground or in response to requests for flexibility to make logical cutblock boundaries).

A rough estimate for the entire province is that approximately 50-75 amendment proposals are received annually. The number of amendment proposals is expected to increase in the future as more legal spatial OGMA's are established and the number of non-forestry tenures increases.

⁵ There is also an additional 47,000 OGMA's covering another 2.1 million hectares that have been identified spatially but have not been legally established. ILMB retains responsibility for revisions to these non-legal OGMA's. (Data taken from draft Crown Land: Indicators and Statistics Report, v. 1.9, March 4, 2010.)

Types of OGMA Amendments

The "Land Use Objectives Regulation: Policies and Procedures" identifies three types of situations that may require an amendment to an order establishing OGMA: correcting a minor error in the order; a minor amendment to the order; and, a significant amendment to the order. The focus of this guidance document is on the latter two types.⁶

Minor Amendment to the Order

Minor amendments to orders may be needed to refine the intent of the original order. For example, improved information may suggest a shift in the boundary area to which the objective applies or the wording of the objective may be improved without significantly affecting the intent of the original order.

Significant Amendment to the Order

Significant amendments result in consequential or important variations to the order; for example changes that could have a material effect on forest or range tenure holders. This may include major change to the boundary of the area covered by the land use objective(s) (LUO) or changes in wording that substantially changes the management direction of an LUO.⁷

The determination of whether a proposed amendment is "minor" or "significant" is made on a case by case basis. It is possible that a proposal for small changes to one or more OGMA may be deemed to be "significant"; whereas, in another situation larger changes may be considered to be "minor".⁸

Guidance for OGMA Amendments

There are several sources of information that guide OGMA amendments, the primary ones being the Land Use Objectives Regulation, the "Land Use Objectives Regulation: Policies and Procedures" and the order establishing the affected OGMA. Copies of these materials can be obtained from the contacts identified elsewhere in this document or accessed through ILMB website.

Land Use Objectives Regulation: Policies and Procedures

The "Land Use Objectives Regulation: Policies and Procedures" provides the following general direction with respect to the "minor" and "significant" amendments to orders.

Minor Amendment to the Order

Minor (or "non-significant") amendments are not governed by regulatory provisions.

Where the minister or delegate is satisfied that a minor amendment does not materially change the original order or its affect on forest and range tenure holders, a short rationale to this effect should be

⁶ More information on correcting a minor error in the order can be found in section 7.1 of the "Land Use Objectives Regulation: Policies and Procedures".

⁷ Specific examples could include proposed changes to multiple OGMA as a result of changes to constrained areas resulting from a strategic land use decision (wildlife habitat, land use zones, etc.) or proposed amendments to one or more OGMA which contain overlapping wildlife habitat values for red or blue listed species, such as spotted owl or marbled murrelet.

⁸ See the "Land Use Objectives Regulation: Policies and Procedures" for more information.

prepared. The rationale can describe the nature of the minor amendment, why it is needed and why no material adverse impacts are expected.

Significant Amendment to the Order

The LUOR treats "significant" amendments similar to establishing a new land use objectives with respect to criteria to be considered (s.2 of the LUOR), review and comment (s. 3 and 4 of the LUOR) and notice of an order (s. 7 of the LUOR).

For significant amendments, it will be necessary to undertake public review and comment, First Nations consultation, and demonstrated achievement of the criteria laid out in regulation.

Legal Orders

Specific direction regarding amendments may also be found in the order establishing the OGMA for a given Landscape Unit(s). The wording of the order can vary, depending upon what part of the province the OGMA is located in, when the OGMA was established, the process used to identify their location, etc. Consequently, the direction with respect to allowable reasons for amendments, how much operational flexibility is allowed before triggering the need for an amendment, etc., can differ as well.

For example, in some orders harvesting in OGMA is only allowed under certain conditions, such as forest health purposes, whereas in other orders the wording is more flexible. Another example would be a situation where the OGMA targets were exceeded for one or more biogeoclimatic ecosystem classification (BEC) variants and an allowance was established for harvesting in OGMA in the affected BEC variants without the need to identify replacement areas up to a specified cumulative amount of area being deleted from the existing OGMA.

Regional or Sub-regional Policy and Procedures

In some parts of the province, regional or sub-regional policies or procedures have been developed that outline the responsibilities and process for addressing OGMA amendment proposals. These policies and procedures may also provide further clarification with respect to responding to these proposals.

As of March 2010, this type of direction has been developed in the following areas where legal, spatially defined OGMA have been established: Skeena sub-region, Dawson Creek Timber Supply Area, West Coast sub-region (Vancouver Island/Central Coast) and South Coast sub-region (Lower Mainland).^{9,10}

Other Considerations

The LUOR specifies that the Minister must be satisfied that land use objectives will provide for an appropriate balance of social, economic and environmental benefits. This confers that delegated decision makers have a "balancing" responsibility when it comes to resource use decisions. It is possible that a decision maker may choose to not approve a proposed amendment that, in the decision maker's

⁹ Similar direction has been or is currently being developed for the Cariboo-Chilcotin sub-region, Kamloops TSA, Lillooet TSA, Merritt TSA and Okanagan TSA. It is anticipated that once legal spatial OGMA are identified that this direction may, if applicable, need to be considered when adjudicating OGMA amendments.

¹⁰ Copies of these materials can be obtained from the contacts provided elsewhere in this document.

view, clearly compromises social or environmental values associated with an OGMA (e.g. the OGMA contains rare habitat values or a rare forest type or to shift the OGMA from the non-THLB to the THLB).

Many processes to identify OGMAs have been driven out of public land use and resource use planning processes and have had significant biological and operational input. Consistent with the Landscape Unit Planning Guidebook, many processes have also attempted to overlap other values (e.g. wildlife, fisheries, visuals, sensitive areas, etc.), as well as address timber harvesting impacts and/or, in the case of the northeast portion of the province, oil and gas interests. Some more recent processes to identify and establish OGMAs have incorporated First Nation's values and interests. These factors need to be considered when adjudicating OGMA amendment proposals. The overlap of values and the varied expertise/history of individual staff with OGMAs underscore the need for local inter-agency collaboration when reviewing and adjudicating amendment proposals.

Amendments to orders establishing OGMAs are legal changes and consequently must be handled with appropriate levels of professional administrative diligence.

Under FRPA, OGMA amendments (no matter how minor) are considered amendments to a land use objective and therefore trigger FRPA s. 7(1.1)(ii), which specifies that objectives set by government (OSBGs) that are varied will require forest stewardship plan amendments that need to be approved within two years.

For OGMA amendments that may be required as a result of non-forestry-related activities, direction with regards to an occupant licence to cut (OLTC) is provided in FRPA General Bulletin 16, i.e. there are provisions to include conditions in an OLTC to address concerns related to biodiversity and old growth (management area) values. ILMB also has a related "guidance bulletin" dealing with how FRPA and land use objectives can affect occupiers of land.¹¹

For illustrative purposes, a general overview of the steps involved in processing an OGMA amendment is provided in Appendix 2. Please note that where inconsistencies may exist with what is provided here and sub-regional level policies or procedures the matter should be discussed among the inter-agency team that provides support for adjudicating OGMA amendments and/or, if required, consider obtaining legal advice in order to determine the appropriate course of action.

Managing and Updating OGMA Data in the GeoBC Geographic Warehouse

Although MFR DMs have been delegated authority to adjudicate proposed amendments to spatially defined, legally established OGMAs, all OGMA data remains under the custodial authority of the Ministry of Agriculture and Lands (MAL) and ILMB. MAL and ILMB have recently introduced new data management procedures that MFR will be expected to follow when updating and maintaining OGMA data in the provincial Geographic Warehouse. MFR staff conducting revisions to OGMAs will need to work with the ILMB Data Resource Manager to access the source data in order to make edits. The new data management process includes formal OGMA data check-in/check-out procedures and new data

¹¹ Copies of these materials can be obtained from the contacts provided in this document or, in the case of the FRPA bulletin, accessed through MFR website.

model attributes and standards that will need to be adhered to when MFR is conducting any OGMA data amendments.

MAL and ILMB have done considerable work to document these new data management procedures. Detailed data management procedures can be found here: [LINK TO COME]. A list of data management contacts at ILMB and MAL can be found here: [LINK TO COME.]

Contacts

Sub-region	Contact	Phone	E-mail
West Coast	Ron Cotton	(250) 751-7258	Ron.Cotton@gov.bc.ca
South Coast	Ross Kreye	(604) 586-4414	Ross.Kreye@gov.bc.ca
Thompson Okanagan	Doug Krogel	(250) 828-4251	Doug.Krogel@gov.bc.ca
Cariboo	Robin Hoffos	(250) 398-4712	Robin.Hoffos@gov.bc.ca
Kootenay Boundary	Harry Mitchell	(250) 426-1718	Harry.Mitchell@gov.bc.ca
Omineca	Shannon Carson	(250) 565-4463	Shannon.Carson@gov.bc.ca
Peace	Jason Lawson	(250) 787-3413	Jason.Lawson@gov.bc.ca
Skeena	Roxy Edey	(250) 847-7505	Roxy.Edey@gov.bc.ca