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Experience Developing a Results-Based Forest Practices Code for British Columbia, Canada

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Abstract

The Province of British Columbia (BC) is one of the few jurisdictions in the world to move to results-based forest practices legislation. Under a results-based approach, government clearly defines outcomes and forest companies licensed to operate on provincially owned land decide how to achieve them. This gives licensees and the resource professionals they hire more freedom to manage, with government holding them accountable for achieving the defined results.

The results-based approach replaces the *Forest Practices Code of BC Act* (the “code”), which BC introduced in 1995 to increase environmental protection and provide a consistent set of rules for forest licensees. While the code achieved its intent, its highly prescriptive nature led to higher-than-expected costs for industry and government, and it hampered innovation.

BC has made a number of revisions to the code since 1995, moving from prescriptive rules to more results-based requirements. In the late 1990s, the province was able to consider a full results-based regime because of improved land use certainty, the doubling of protected areas, high code compliance rates, increased trends toward forest certification, detailed reviews of available timber supply, and experience gained from several progressive forestry pilot projects.

Government prepared a results-based code discussion paper in spring 2002 and, following extensive public review and consultation, introduced the *Forest and Range Practices Act* in November 2002. This results-based regime is expected to reduce government and industry costs, and increase opportunities for flexibility and innovation without reducing the province’s high environmental standards.

Under the Act, licensees prepare one plan that sets out measurable and enforceable results or strategies consistent with objectives set by government for resource values. The Act increases reliance on resource professionals, is supported by features that provide for

continuous improvement, substantially increases penalties for non-compliance, and retains the important role of independent audits under the Forest Practices Board.

Despite these measures, organizations such as environmental groups and some First Nations are concerned about the ability of the new regime to regulate industry adequately and to protect non-timber forest values. While government is confident the stated economic and environmental objectives will be met, it has structured the legislation in a way that will allow adjustments to address future challenges if necessary.

Introduction

British Columbia (BC) is Canada's westernmost province covering an area of 95 million hectares with about 95 percent in provincial government ownership. Government's goal is to manage public forests so they are sustainable and balance the needs and interests of its diverse residents.

BC is Canada's most ecologically diverse province, with seven of the country's 12 forest regions – from temperate rainforests to dry interior pine forests to the northern boreal forest. This highly varied topography creates an array of forest site conditions, resulting in complex forest management that demands a good understanding of local ecological conditions. BC is also a relatively new forest economy; most harvesting in the province has occurred in the last 30 to 40 years.

BC has about 60 million hectares of forest land, and 35 million hectares are either protected, inaccessible to harvesting or uneconomic to harvest. Less than one percent of the 25 million ha land area available for timber production – about 200 000 ha – is harvested on average each year, yielding about 70 million cubic metres.

The forest sector is considered BC's leading industry. Industry sales totalled \$15.7 billion Canadian in 2001 and forest product exports totalled \$14.5 billion. About 14 percent of total employment is directly or indirectly attributable to the forest sector. Tourism is also a key resource-based sector in the province with visitors attracted to BC's "super, natural" character.

British Columbians are both informed and interested in issues related to management of forests and other land values. The province attracts residents who want resource industry jobs and pristine wilderness experiences. It is also home to more than 100,000 First Nation people with specific aboriginal rights under the Constitution.

During the 1970s and 1980s, environmental and economic pressures led to difficult land use conflicts, and concerns were raised about forest practices, where harvesting should take place and whether regulated harvest levels were sustainable. In some cases, longstanding, unresolved land use issues were frustrating to industry, local communities and interest groups. Environmental organizations advocated significant increases to BC's protected area system to protect the province's diverse ecosystems.

The conflict heightened public involvement in forest issues and threatened to damage BC's international reputation as a responsible forest manager at a time when the Brundtland Commission was introducing the concept of sustainable development.

The BC government acted decisively and quickly. In a 10-year period, beginning in the early 1990s, it:

- more than doubled the amount of land in parks and protected areas – from six to 13 percent of the total provincial land base;
- provided greater land use certainty by establishing regional land use plans and subregional Land and Resource Management Plans for 70 percent of the provincial land base;
- completed two full reviews of BC's timber supply that have led to timely allowable annual cut determinations for each of the province's 71 forest management units; and,
- introduced the *Forest Practices Code of BC Act* (the "code"), which resulted in more stringent environmental standards.

Forest Practices Code

The tense atmosphere at the time the code was introduced in 1995 demanded an extremely prescriptive response. The code called for six forest operational plans requiring government approval, along with 19 regulations and about 40 guidebooks, some of them tied to legal requirements under the legislation.

It met the demands for more stringent environmental standards (e.g. riparian rule that prohibits harvesting along large fish-bearing streams) and a common set of rules for industry throughout the province. But in doing this, it added significant new costs to both industry and government at a time when BC was facing increased global competition in the marketplace. A 1997 study suggested the code was responsible for about 60 percent of forest industry cost increases from 1992 to 1996.

It also soon became clear that a one-size-fits-all regulatory regime would not work well in BC, and that the province's diverse forest ecosystems required a management approach that would allow flexibility to address local conditions.

Government and the Association of BC Professional Foresters sought ways to increase professional accountability and encourage innovation, which were both limited by a system where resource professionals hired by industry had their work checked by their peers in government rather than being held directly responsible for their decisions.

In addition, BC's forest industry responded to new public and market interests and focused more of its attention on meeting or exceeding environmental standards. In 2000, the independent Forest Practices Board was reporting an overall trend toward improved forest practices.

Government began to streamline the code in 1998, reducing the number of plans needing approval to three (from six), removing some of the rules and specifying more results in

legislation. In spite of these changes, the code still remained highly complex when compared with other jurisdictions and government, facing budget constraints, was finding it difficult to provide adequate support.

Significant changes occurred in BC in the 1990s, which collectively provided an opportunity to move toward a results-based approach. These included:

- improved land use certainty with completed strategic land use plans covering most of the province, and the doubling of protected areas;
- improved environmental standards for many values became standard operating procedures within industry (e.g. wildlife tree retention);
- improved compliance by industry as observed by independent audits conducted by the Forest Practices Board, and by Ministry of Forests compliance and enforcement inspections (e.g. 98 percent compliance for large companies based on more than 45,000 inspections annually);
- detailed examinations of timber supply and current management practices to support allowable annual cut decisions assisted by public review and comment; and,
- increased awareness of the important role of professional reliance and accountability.

The forest industry was also aggressively seeking forest certification (at the end of 2002, more than 70 percent of BC's annual harvest came from operations that have third-party certification or meet ISO environmental management requirements). In addition, both industry and government were learning from progressive forest management projects that included result-based code pilot projects, innovative forest practices agreements and enhanced forest management pilot projects.

Developing a Results-Based Code

In 2001, BC's government committed to making major changes to forest policy including introducing a results-based regulatory regime that would:

- reduce transactional and operating costs to industry;
- reduce the code's complexity;
- provide forest industry "freedom to manage" in delivery of defined results;
- maintain the code's high environmental standards;
- continue to balance social, environmental and economic interests;
- maintain and enhance the level of public acceptance of forest management;
- be consistent with the reduced resource capacity of government; and,
- strengthen the compliance and enforcement regime.

Government recognized that the move to a results-based regime could increase uncertainty and reduce public confidence if there were a view that fewer rules would lead to less protection for non-timber values.

To address this and other concerns, government prepared a discussion paper in May 2002 that proposed a results-based approach. It distributed the discussion paper widely through an open and independent consultation process, inviting comments over a two-month period and posting background information and feedback received on a

consultation website, www.resultsbasedcode.ca. Dr. George Hoberg from the University of British Columbia led the consultation process, which also included a panel of elected officials that held open public meetings throughout the province.

The level of public interest throughout the consultation process underscores how passionate and informed British Columbians are about their forests and forest land management, and how important BC's forests are to the economic, social and environmental well being of the province.

The website shows the wide range of views received – for example, the forest environment was depicted as extremely fragile and as extremely resilient; the proposed regulatory regime was seen as overly prescriptive and overly permissive.

Despite often-contradictory views, there was some common ground, such as the need to:

- ensure that results for resource values be measurable and enforceable;
- recognize that a provincial set of results is difficult and likely impractical given BC's social, economic and environmental diversity;
- ensure that the one plan addresses forest values such as wildlife, fish and biological diversity;
- establish basic standards for public review and comment of the one plan;
- ensure that plan approval tests are consistently applied in different management units;
- require in legislation that site plans be prepared and available to the public even if they are no longer reviewed and approved by government;
- streamline requirements for smaller woodlot owners;
- strengthen the accountability of resource professionals to support delivery assumptions that underlie the new code; and,
- require that cutting permits still be approved to ensure that other legal rights (through clearances) and First Nations consultation requirements have been appropriately addressed.

Results-Based Forest Practices Code

The new results-based regime, called the *Forest and Range Practices Act* (the “new Act”), was introduced in the provincial legislature in November 2002 (see www.for.gov.bc.ca/code/). The new Act and supporting regulations address many of the public concerns raised through the discussion paper consultation.

In the new Act, the one plan approved by government is called the Forest Stewardship Plan (FSP). As proposed in the discussion paper, the FSP is to include a map showing the outer boundary of proposed forest developments. It will also:

- address key resource values (soils, visual quality, timber, forage, water, fish, wildlife, biodiversity, resource features and cultural heritage resources);
- provide measurable and enforceable results or strategies that are consistent with government's objectives for these values (the objectives are in the legislation and also provided in land use plans); and,

- demonstrate that requirements for public review have been met and that comments received have been addressed.

An example of a government objective is requirement that forest development provide for the safe passage of fish. Default results or strategies will be in effect for a number of values such as for riparian areas, soil conservation and biodiversity (e.g. old forest retention at landscape-level and wildlife tree retention at the stand-level). Licensees can adopt a default result or strategy or propose an alternative or innovative one. The use of qualified registered professionals, and the rationale or justification they provide, will be a key consideration in determining whether the proposed results or strategies in a FSP meet government's objectives.

The government also introduced legislation that holds resource professionals, including foresters, agrologists and biologists, more accountable for the plans they help prepare. This included a new *College of Applied Biology Act*, making BC the first jurisdiction in Canada, and possibly the world, to register and license biologists.

The FSP is positioned to be a tactical plan that can more effectively translate the strategic direction in land use plans to forestry activities at the field level. This tactical nature should be more conducive to upfront public involvement. The fewer, more comprehensive plans expected should also be easier for the public, including First Nations, to review if they have limited resources.

Since it covers a defined forest area, the FSP should align itself better with most forest certification systems. It can be prepared by more than one forest licensee and for more than one licence area, offering flexibility for licensees to work more closely together. The plan has a five-year term that could be extended another five years, as compared with the one- to two-year terms for plans under the *Forest Practices Code*. Woodlot licence plans that better address the needs of these small operators are required instead of a FSP.

The measurable results or strategies in the FSP, when approved by government, will be subject to compliance and enforcement. Penalties in the new Act have increased substantially (e.g. often doubled or tripled in amount).

The Minister of Forests approves the FSP but can delegate this authority with direction, which allows more consistent approval decisions to be made from one forest district to another.

Site plans are required in the new Act before development activities take place. The plans must indicate how the results or strategies in the FSP apply to the site. Site plans are available to the public and to First Nations but no longer need government review or approval. However, a cutting permit is needed before harvesting can proceed, which helps to ensure the province has met its obligations concerning First Nation consultation.

If there is potential for an unjustifiable infringement of an aboriginal right, including title, the new Act allows the Minister to intervene.

The Forest Practices Board will continue its important role as an independent watchdog for sound forest practices by conducting audits, investigating complaints and undertaking special studies.

The principle of continuous improvement applies to the new Act. In addition to the Board, sources of information to facilitate this include:

- *effectiveness evaluations* and reporting to determine if resource objectives are being delivered;
- *best management practices* developed by the expert community (including professional associations, forest industry, academia, government and others) that suggest results and strategies that are expected to be consistent with resource objectives;
- *pilot projects* that will continue to provide information on innovative ways to undertake planning and practices to achieve government's objectives for resource values, and,
- *forest practices advisory council*, with representation from various interest groups, that can undertake periodic reviews and make recommendations for change to the minister.

Conclusion

The BC government is confident the new Act will maintain or exceed the province's high environmental standards while being far less prescriptive. Jurisdictions with similar ecological conditions may not need a results-based forest management regime but the province believes it is appropriate in BC where there is immense ecological diversity.

The new Act will provide the local flexibility needed to address diverse ecosystems and values. It will encourage innovation by skilled resource professionals, who will be held accountable for their actions. It will welcome the involvement of an informed population who can make a meaningful contribution. It will address or accommodate First Nation interests and rights. And it will be backed by an improved compliance and enforcement program with tougher penalties.

A results-based code is right for BC now where it may not have been possible even five years ago. It is being built on a solid system of land use planning, timber supply review, and compliance and enforcement. It is further strengthened by the fact that an increasing amount of BC's wood products come from certified operations.

One of BC's biggest challenges in developing its results-based regime was the absence of a shared vision among stakeholders. Despite the extensive consultation process that supported the development of the new Act, many groups remain concerned about the changes that have been made.

The BC government has made it clear that the new Act will respect all BC forest values. It has no desire to return to the days of war in the woods, and it has no desire to risk non-timber values – forestry is important, but so are scenic vistas, wildlife habitat, clean water and other countless forest values.

By 2005, BC will have completed its transition to the results-based *Forest and Range Practices Act* and its supporting regulations, something that will be done under the careful eye of government, industry and the public.

While it is too early to say the results-based approach is working in British Columbia, it is not too early to say the province has a results-based regime that should meet the stated economic and environmental objectives.

For more information

Forest practices in BC:

- *Forest and Range Practices Act* www.for.gov.bc.ca/code/
- Results based code consultations www.resultsbasedcode.ca
- Forest Practices Board www.fpb.gov.bc.ca/
- Compliance and Enforcement www.for.gov.bc.ca/enforce/index.htm
- Code pilot projects www.for.gov.bc.ca/hfp/rbpilot/

Other related issues in BC:

- Protected areas strategy www.growingtogether.ca/facts/protected.htm
- Land use planning <http://srmrpdwww.env.gov.bc.ca/>
- Timber supply review www.for.gov.bc.ca/tsb/
- Forest certification www.for.gov.bc.ca/het/certification/
- Enhanced Forest Mgt Pilot Projects www.for.gov.bc.ca/cpp/enhanced/
- Professional foresters www.rpf-bc.org/
- First Nations consultation policy www.gov.bc.ca/srm/
- Ministry of Forests www.gov.bc.ca/for/