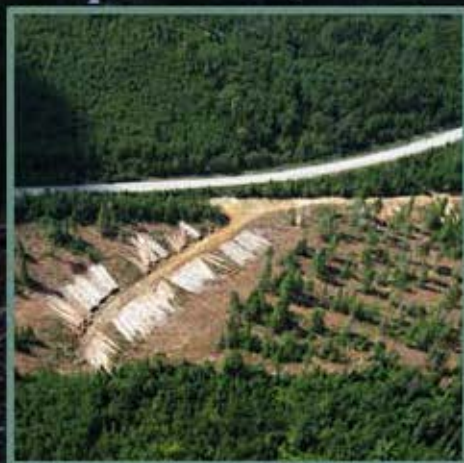


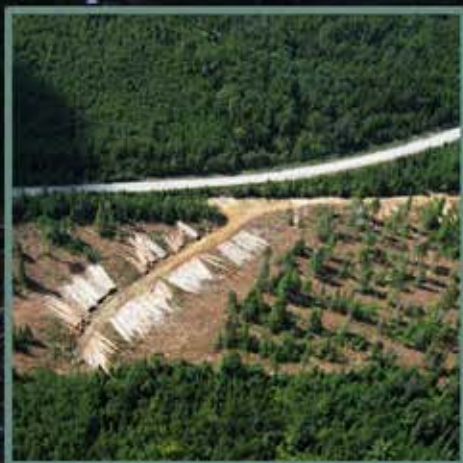
Natural. Valued. Protected.

Forest Compliance Handbook 2014



Naturel. Apprécié. Protégé.

Guide sur l'observation des politiques en matière de forêts 2014



GUIDE SUR L'OBSERVATION DES LOIS ET DES POLITIQUES EN MATIÈRE DE FORÊTS

Table des matières

Page titre

But et autorisation

Stratégie de conformité des opérations forestières

Politique provinciale

TITRE

N° D et P

Partie I – Philosophie relative à l'observation des lois et des politiques en matière de forêts

- Aperçu – Programme d'observation des lois et des politiques en matière de forêt de l'Ontario FOR 07 01 01
- Contexte historique et poursuite sur notre lancée FOR 07 01 02
- Traitement des infractions non opérationnelles à la LDFO FOR 07 01 03

Partie II – Planification et renseignements forestiers

- Information (inventaire, sondages, tests, études) FOR 07 02 01
- Dossiers concernant l'observation et l'application FOR 07 02 02
- Planification de l'observation des lois et des politiques en matière de forêts FOR 07 02 03
- Directive concernant la planification de l'observation des lois et des politiques par l'industrie forestière FOR 07 02 04
- Responsabilités accrues en matière de conformité pour les titulaires de permis transzone qualifiés. FOR 07 02 05
- Incapacité de dresser un plan de gestion forestière et incapacité d'exploiter conformément à un plan de gestion forestière ou à un calendrier annuel des travaux FOR 07 02 06

Partie III – Surveillance de l'observation des lois et des politiques en matière de forêts

- Inspecteur de l'observation des lois et des politiques en matière de forêts – Homologation et maintenance FOR 07 03 01
- Inspecteur de l'observation des lois et des politiques en matière de forêts – Normes sur les compétences FOR 07 03 02
- Inspecteur de l'observation des lois et des politiques en matière de forêts – Code de déontologie FOR 07 03 03
- Directives concernant les inspections et la reddition de compte (PIOF) FOR 07 03 04
- Procédures d'inspection et de reddition de compte (PIOF) FOR 07 03 05
- Documentation des infractions suspectées FOR 07 03 06
- Entrée sur un terrain privé et recherche FOR 07 03 07
- Entrave au travail du personnel FOR 07 03 08
- Fausses déclarations FOR 07 03 09
- Mandats de perquisition FOR 07 03 10
- Accès public et procédures de rétention et de rangement de rapport FOR 07 03 11

GUIDE SUR L'OBSERVATION DES LOIS ET DES POLITIQUES EN MATIÈRE DE FORÊTS

Table des matières

Partie IV – Directives et procédures concernant les programmes forestiers

- Guide d'opérations forestières et de sylviculture FOR 07 04 01
- Permis forestier – Exigences FOR 07 04 02
- Exploitation forestière sans être titulaire d'un permis forestier FOR 07 04 03
- Permis d'aménagement forestier durable et permis d'exploitation qui se chevauchent FOR 07 04 04
- Amalgamations des permis d'aménagement forestier durable et des protocoles d'entente FOR 07 04 05
- Ressources des forêts de la Couronne dans des secteurs faisant l'objet de baux miniers FOR 07 04 06
- Ressources des forêts de la Couronne en situées sur des terrains privés FOR 07 04 07
- Cubage des bois ronds – Mesures, méthodes et dossiers FOR 07 04 08
- Pratiques sources de gaspillage FOR 07 04 09
- Saisie, retenue et confiscation des ressources forestières FOR 07 04 10
- Installations de traitement des ressources forestières FOR 07 04 11

Partie V – Autres directives et procédures concernant le programme de gestion des ressources naturelles touchant aux opérations forestières

- Puits agrégats forestiers FOR 07 05 10
- Code criminel du Canada FOR 07 05 20
- Loi sur la prévention des incendies de forêt FOR 07 05 30
- Loi sur les pêches (loi fédérale) FOR 07 05 40
- Loi sur la protection du poisson et de la faune FOR 07 05 50
- Loi sur les espèces en voie de disparition (S.O. 2007) FOR 07 05 51
- Loi sur l'aménagement des lacs et des rivières FOR 07 05 60
- Loi sur les terres publiques FOR 07 05 70
- Loi sur la protection des eaux navigables FOR 07 05 71
- Loi sur la protection de l'environnement FOR 07 05 80

Partie VI – Mesures correctives

- Aperçu des mesures correctives et de leur application FOR 07 06 01
- Guide visant à déterminer quelles lois s'appliquent FOR 07 06 02
- Détermination des mesures correctives FOR 07 06 03
- Avertissements écrits FOR 07 06 04
- Ordres en vertu de la Loi de 1994 sur la durabilité des forêts de la Couronne FOR 07 06 05
- Sanctions administratives – Détermination des montants et application FOR 07 06 06

GUIDE SUR L'OBSERVATION DES LOIS ET DES POLITIQUES EN MATIÈRE DE FORÊTS

Table des matières

- Infractions FOR 07 06 07
- Suspensions et annulations de permis FOR 07 06 08
- Représentations concernant les avis d'intention d'imposer une pénalité administrative FOR 07 06 09

Annexes

- Glossaire
- Acronymes
- Délégations des pouvoirs - Loi sur la durabilité des forêts de la Couronne

GUIDE SUR L'OBSERVATION DES LOIS ET DES POLITIQUES EN MATIÈRE DE FORÊTS**AUTORITÉ, BUT, ET RÔLES et RESPONSABILITÉS**

Contact : Section de l'évaluation et des normes relatives aux forêts, Direction des forêts, Division des politiques

AUTORITÉ

La Loi sur la durabilité des forêts de la Couronne (LDFC) de 1994 régit toutes les opérations forestières sur des terres de la Couronne en Ontario. Elle a succédé à la Loi sur le bois de la Couronne (LBC) en vertu de laquelle la vérification de l'observation des lois et des politiques en matière de forêts était effectuée au moyen d'inspections des coupes et des régions par le ministère des Richesses naturelles (MRN). Les inspections de détermination de la conformité pour les autres disciplines de programme (par exemple, les incendies, les terres, les agrégats, le bois...) n'étaient pas intégrées dans une approche commune.

Aux termes des modalités et conditions de l'évaluation de classe pour la gestion du bois en Ontario (1994), le Ministère est tenu de :

1. préparer un « guide » pour fournir à ses bureaux locaux des lignes directrices sur les enquêtes sur les infractions et leur poursuite en vertu de la LBC, de la Loi sur les terres publiques, de la Loi sur l'aménagement des lacs et des rivières, de la Loi sur les espèces en voie de disparition et des autres textes de loi se rapportant aux activités de gestion du bois. En particulier, le Ministère doit faire en sorte que les textes de loi et les règlements relatifs au bois sont interprétés de façon cohérente, que leur respect fait l'objet d'une supervision adéquate et qu'ils sont appliqués de façon juste mais ferme dans tous les cas de non-conformité; et
2. surveiller la conformité des activités de gestion du bois (récolte, accès, renouvellement et entretien) aux plans de gestion forestière, aux lois et aux politiques.

Ces exigences ont mené à l'élaboration du Programme d'observation des lois et des politiques en matière de forêts (le programme), qui a été pleinement mis en œuvre en avril 1998. Le programme a été guidé par la Stratégie visant l'observation des lois et des politiques en matière de forêts de 1997 (la Stratégie), qui a fourni le but, les principes et les objectifs du programme. Bien que l'orientation stratégique demeure valable, la stratégie a été mise à jour (2007) pour refléter les documents à l'appui actuels comme la LDFC.

Le programme repose sur un partenariat de surveillance comportant une distinction claire des rôles et des responsabilités du MRN et de l'industrie forestière. Dans son plan ministériel pour la gestion forestière de 1994, le MRN a adopté un système d'« auto-surveillance » de l'industrie forestière dans lequel l'industrie entreprend directement la planification, les inspections, la production de rapports et l'adoption de mesures correctives en matière d'observation des lois et des politiques ainsi que l'éducation et la formation de ses travailleurs. En tant qu'organisme de réglementation, le MRN a conservé l'entière responsabilité de l'administration et de la mise en œuvre de la LDFC, qui comprenaient la surveillance, la vérification, la détermination de l'état d'observation des lois et des politiques, ainsi que la prise de mesures d'observation appropriées et l'application des recours.

Un arrêté relatif à une évaluation environnementale, MRN 71, tel que modifié par MRN 71/2 (juin 2003 et mai 2007 respectivement), a fourni au programme d'observation des lois et des politiques en matière de forêts du MRN ses orientations les plus récentes, qui sont les suivantes :

1. confirmation du programme de surveillance de l'observation des lois et des politiques;
2. maintien du Guide sur l'observation des lois et des politiques en matière de forêts et description des détails du programme d'inspection;
3. conservation des rapports d'inspection à la disposition du public;
4. fourniture des rapports d'inspection annuels des unités de gestion sur le site Web du MRN;
5. distinction des inspections du MRN de celles de l'industrie forestière et détermination des inspections des non-conformités signalées par l'industrie forestière effectuées par le MRN;
6. maintien d'un programme pour la formation obligatoire et la certification de tous les inspecteurs des opérations forestières.

Le MRN a toujours fonctionné selon une approche d'« amélioration permanente ». Les révisions internes du programme au cours de cette période ont entraîné des améliorations des politiques, des procédures et de l'administration. Les recommandations récentes du rapport des *ministres* du Conseil de la compétitivité du secteur forestier (mai 2005) et du *Forest Process Streamlining Task Force Report* subséquent (mai 2006) ont conduit à une révision et à une mise à jour complètes du programme d'observation des lois et des politiques en matière de forêts et du Guide sur l'observation des lois et des politiques en matière de forêts qui l'accompagne.

Le programme d'observation des lois et des politiques et les orientations fournies dans le Guide sont guidés par une approche d'ensemble à la conformité des opérations forestières. Un aperçu ainsi que les révisions de la doctrine et de l'approche à la conformité des opérations forestières se trouvent dans la directive FOR 07 01 01.

BUT

Guide sur l'observation des lois et des politiques en matière de forêts

Ce Guide a été préparé pour aider le personnel du MRN et l'industrie forestière à comprendre et à appliquer les considérations et les exigences en matière d'observation des lois et des politiques aux opérations forestières, en particulier au niveau des opérations de district. C'est une référence pour le personnel du MRN et de l'industrie sur le programme d'observation des lois et des politiques en matière de forêts du MRN qui comprend les directives et les procédures pour divers textes de loi liés aux opérations forestières. Le Guide est un recueil de documents du programme qui vont de la stratégie aux directives et procédures d'appui en passant par la planification et la mise en œuvre.

Les orientations et les directives pour l'industrie forestière sont fournies pour une approche intégrée et d'ensemble à la planification de l'observation des lois et des politiques en matière de forêts et aux inspections des opérations forestières et aux activités de production de rapports. Elles portent sur des éléments clés dont il faut tenir compte dans la planification et les programmes d'inspection et établissent des exigences pour l'élaboration de plans d'observation des lois et des politiques de l'industrie.

Le Guide aidera le personnel du MRN à réaliser l'intégration des programmes d'observation des lois et des politiques de district du MRN aux autres plans de gestion des ressources et à faire en sorte que les textes de loi et les règlements liés aux opérations forestières (administrés par le MRN) sont interprétés uniformément, que la conformité à ceux-ci est supervisée adéquatement et qu'ils sont appliqués avec équité mais fermement dans les cas de non-conformité.

Application

Ce Guide ne porte que sur les principaux textes de loi liés aux opérations forestières qui se présentent le plus souvent. D'autres textes de loi (provinciaux et fédéraux) pourraient être applicables de temps à autre (Réf. : partie VI et FOR 07 06 02). Le MRN participe fréquemment à l'examen de propositions procédant sous le régime ou l'influence de ces textes de loi. Ceux qui participent aux opérations forestières ont la responsabilité de s'assurer de connaître leurs obligations juridiques en vertu de toutes les lois.

Conformément à l'approche de la directive FOR 07 01 01, les lois les plus appropriées seront utilisées pour déterminer et appliquer des recours à une violation donnée et une décision initiale doit être prise sur l'utilisation de la LDFC ou de quelque autre loi.

Bien que plusieurs des diverses directives puissent être lues et appliquées indépendamment, elles devraient être lues collectivement en accordant une attention particulière aux renvois. Ceci permettra de comprendre la progression de la pensée, le but et l'intention de la LDFC et les interrelations de ses composantes (par exemple, le passage de l'approche et des principes aux pénalités administratives et aux autres recours).

RÔLES ET RESPONSABILITÉS

Rôle de l'industrie forestière (détenteur de permis d'aménagement forestier durable (PAFD))

Avant 1998-1999, le MRN était chargé d'effectuer directement toutes les inspections des opérations forestières dans l'ensemble de l'Ontario. À partir du 1^{er} avril 1998, les détenteurs de PAFD ont assumé la mise en œuvre d'un programme détaillé d'observation des lois et des politiques des opérations forestières qui était une condition du maintien de leurs permis d'aménagement forestier durable. Le programme comprenait la planification, la surveillance, l'inspection, la production de rapports, la prise de mesures correctives, la formation et l'éducation.

Aux fins de la gestion des forêts, les forêts de la Couronne de l'Ontario sont divisées en unités de gestion (UG). Ces unités de gestion sont gérées par des entreprises individuelles de l'industrie forestière, des groupes coopératifs et d'autres arrangements en vertu des permis d'aménagement forestier durable. Le détenteur d'un PAFD est chargé de réaliser un certain nombre d'activités, y compris la planification de la gestion des forêts, la récolte, la construction des chemins d'accès, le renouvellement des forêts, le maintien (entretien et protection contre les insectes/les maladies) et la surveillance et les rapports sur la conformité. La réalisation de ces activités est soumise au cadre réglementaire et aux approbations du MRN.

Le détenteur d'un PAFD est tenu par la loi de signaler au MRN tous les incidents de non-conformité réelle ou soupçonnée qui surviennent dans son unité de gestion, quelle que soit la partie responsable, et dans les délais impartis. Ces non-conformités comprennent les infractions encourues par le détenteur de PAFD, ses actionnaires, les détenteurs de permis chevauchants, les entrepreneurs et tout particulier qui contrevient à la Loi sur la durabilité des forêts de la Couronne. Les incidents liés à ce dernier cas ne sont pas retenus contre le détenteur de PAFD et sont considérés comme « non liés au PAFD ». Le détenteur de PAFD n'est tenu de signaler que l'incident qui est ou pourrait être une non-conformité et non le degré de la non-conformité. La détermination finale et toute implication associée sont strictement du ressort du MRN.

Tous les rapports d'inspection doivent être préparés et transmis à la base de données centrale conformément aux instructions contenues dans le Guide (Réf. : FOR 07 03 04 et 05).

Rôle du MRN

Le MRN est l'organisme de réglementation chargé d'assurer l'observation des lois et des politiques en matière de forêts. Son rôle, qui était de mettre en œuvre un programme détaillé d'inspection opérationnel, est devenu un rôle de surveillance, de vérification et de réalisation d'inspections ponctuelles des activités de l'industrie et d'enquêtes, d'activités d'observation et d'application des recours nécessaires.

Le MRN vérifie et évalue toutes les non-conformités signalées par l'industrie forestière, détermine si des mesures d'application sont nécessaires et applique des recours appropriés au besoin. Le MRN surveille activement tout incident de non-conformité jusqu'à ce qu'il soit résolu.

Les vérifications ponctuelles planifiées ou non et les vérifications des opérations forestières peuvent entraîner la production par le MRN d'un rapport sur une non-conformité qui pourrait ne pas avoir été signalée par une entreprise.

Dans les quelques unités de gestion de la Couronne où il n'existe pas de PAFD, le MRN réalise quand même des opérations forestières et demeure directement responsable de la mise en œuvre de tous les aspects du programme de conformité des opérations forestières, des inspections à la production de rapports.

Contact et référence

Le Guide ne sera publié qu'en format électronique. Il sera mis à la disposition du personnel du MRN et du public par l'entremise du site Web du MRN.

Le Guide se trouve actuellement à l'adresse de site Web suivante : <http://> .

Cette version, telle qu'affichée sur le site Web du MRN, est le document officiel. Les directives contenues dans ce Guide seront périodiquement révisées et modifiées au besoin. Les avis de modification seront affichés électroniquement. Nous accueillerons volontiers en tout temps les commentaires sur l'utilisation et l'interprétation du contenu et toute suggestion d'amélioration.

Toute question concernant l'utilisation et/ou l'interprétation du présent Guide doit être adressée à la Section de l'évaluation et des normes relatives aux forêts, Direction de la gestion forestière – Division des forêts du Ministère des Richesses naturelles à Sault Ste. Marie, en Ontario.

Naturel. Apprécié. Protégé.

Stratégie visant l'observation des lois et des politiques en matière de forêts 2007



Préface

Le but concernant les forêts ontariennes est d'« assurer la santé à long terme des écosystèmes forestiers en favorisant l'environnement local et global, tout en répondant aux besoins matériels et sociaux des générations actuelles et futures ».¹

Les orientations émanant de la Loi sur la durabilité des forêts de la Couronne, de l'arrêté MRN 71 relatif à l'évaluation environnementale des forêts (25 juin 2003), de Notre avenir durable, et de la Déclaration sur les valeurs environnementales du MRN exigent la mise sur pied d'un programme détaillé portant sur l'observation des lois et des politiques en matière de forêts. Au cours des dix dernières années, le ministère des Richesses naturelles a réagi à ces orientations et a été guidé par celles qui les ont précédées.

La réponse du Ministère au rapport du Conseil sur la compétitivité dans le secteur forestier a pour but l'amélioration permanente du programme d'observation des lois et des politiques en matière d'activités forestières pour assurer son efficacité et son efficience. De nos jours, le programme d'observation des lois et des politiques en matière de forêts est guidé par :

- i) Une stratégie visant l'observation des lois et des politiques en matière de forêts (révisée en 2007)
- ii) Un guide sur l'observation des lois et des politiques en matière de forêts
- iii) Un Programme d'information sur les opérations forestières (PIOF), et
- iv) Un Programme de certification des inspecteurs de l'observation des lois et des politiques en matière de forêts (obligatoire pour les inspecteurs de l'industrie et du MRN)

STRATÉGIE VISANT L'OBSERVATION DES LOIS ET DES POLITIQUES EN MATIÈRE DE FORÊTS

Aperçu

Avec la publication de son document intitulé Direction 90, le ministère des Richesses naturelles a adopté une démarche de gestion des ressources axée sur les écosystèmes, réalisé de nombreuses consultations, conclu de nouveaux partenariats, commencé plusieurs nouvelles initiatives de gestion de l'information, et élaboré des politiques et programmes qui mettent en œuvre le but, les objectifs et les principes directeurs énoncés dans le document. L'un des principes clés concerne la Loi sur la durabilité des forêts de la Couronne. Le ministère reste fidèle à cette démarche, avec des révisions et une publication subséquente, et est maintenant gouverné par les orientations stratégiques actuelles de « Notre avenir durable (2005) ».

La stratégie visant l'observation des lois et des politiques en matière de forêts tient compte de toutes les lois et les politiques qui portent sur les activités dans les forêts de la Couronne. Même si on met surtout l'accent sur les utilisateurs des ressources forestières sur les terres de la Couronne en Ontario, certaines stratégies et mesures s'adressent également aux activités forestières sur les terres privées.

NOTA : On a apporté de légères modifications au texte et aux titres des documents pour faire en sorte que les références soient à jour.

Ce document a trois fonctions clés : il guide l'élaboration des politiques, explique ce qu'est l'observation des lois et des politiques en matière de forêts, et décrit comment réaliser cet objectif.

L'observation des lois et des politiques en matière de forêts se traduit par le respect des règles et des exigences. Le programme portant sur l'observation des lois et des politiques sera mis en œuvre dans le cadre d'une vaste gamme d'initiatives d'éducation, d'encouragement, de surveillance et de mise en application qui permettront de s'assurer que les utilisateurs des ressources adoptent des mesures appropriées.

Le but de la stratégie visant l'observation des lois et des politiques en matière de forêts est d'adopter une approche pour encourager et assurer la conformité par rapport aux exigences législatives et réglementaires qui contribuent à la gestion durable des forêts de la Couronne de l'Ontario.

Principes

Les principes directeurs utilisés pour élaborer le but, les objectifs et les stratégies énoncés dans ce document sont les suivants :

1. La durabilité des écosystèmes forestiers est primordiale.
2. Les mesures d'observation des lois et des politiques sont surtout utilisées pour assurer la durabilité des écosystèmes forestiers.
3. L'observation des lois et des politiques exige que les activités forestières soient réalisées de manière responsable du point de vue social, mais également de façon rentable, écologique et durable.
4. Les droits et les privilèges de l'utilisation des ressources forestières sous-entendent une responsabilité et une obligation de rendre compte en matière de gestion partagée.
5. Les partenariats conclus avec des utilisateurs des ressources en matière d'observation des lois et des politiques ainsi que des ententes coopératives avec des gouvernements, l'industrie et des organismes contribueront au succès de la stratégie.
6. L'éventail complet des mesures favorisant l'observation des lois et des politiques (éducation, formation, encouragement, surveillance et mise en application) seront utilisées pour atteindre les objectifs visés.
7. Les mesures d'observation des lois et des politiques seront mises en œuvre de façon juste, uniforme et efficace et en reconnaissant l'amélioration du rendement et l'excellence.
8. Les mesures d'observation des lois et des politiques seront planifiées et intégrées en respectant les priorités énoncées dans les plans de district à cet effet, de concert avec des stratégies d'observation des lois et des politiques plus globales.
9. Les mesures d'observation des lois et des politiques seront fondées sur les meilleures connaissances scientifiques et technologiques disponibles.

NOTA : On a apporté de légères modifications au texte et aux titres des documents pour faire en sorte que les références soient à jour.

10. La surveillance de la gestion et de l'utilisation des ressources forestières est une composante essentielle d'un programme efficace portant sur l'observation des lois et des politiques.
11. Bien que le gouvernement soit, en dernier lieu, responsable et obligé de rendre compte de l'observation des lois et des politiques en matière de forêts de la Couronne de l'Ontario, des ententes coopératives conclues avec les gouvernements, l'industrie et d'autres parties faciliteront la mise en oeuvre d'un programme efficace et efficient portant sur l'observation des lois et des politiques.

Objectif

L'objectif de la stratégie visant l'observation des lois et des politiques en matière de forêts est d'assurer le respect des règles, des normes et exigences conçues pour protéger les écosystèmes forestiers tout en permettant des utilisations qui ne compromettent pas la santé à long terme de ces écosystèmes.

Stratégies

Ceci sera réalisé grâce à trois stratégies reliées :

- I S'assurer que le programme d'observation des lois et des politiques reflète la complexité des écosystèmes forestiers ainsi que l'orientation fournie par les plans, les manuels, les directives, les procédés et les lignes directrices.
- II S'assurer que les activités d'observation des lois et des politiques sont mises en oeuvre de façon efficiente et efficace et en temps opportun.
- III S'assurer que A - les droits appropriés sont perçus, B – le bon rendement est reconnu, et C – des recours appropriés sont appliqués.

Ces stratégies seront réalisées grâce à des mesures d'appui.

PREMIÈRE STRATÉGIE

S'assurer que le programme d'observation des lois et des politiques reflète la complexité des écosystèmes forestiers ainsi que l'orientation fournie par les plans, les manuels, les directives, les procédés et les lignes directrices.

MESURES

1.1 S'assurer que l'observation des lois et des politiques fasse partie intégrante de la planification et de la mise en œuvre des activités de gestion forestière. Il faudra donc : s'assurer que les mesures d'observation des lois et des politiques soient intégrées lors de l'élaboration des politiques, manuels et plans.

1.2 Déterminer les priorités en matière d'observation des lois et des politiques et s'assurer qu'on en tienne compte lors de la planification des plans de district à cet effet.

DEUXIÈME STRATÉGIE

S'assurer que les activités d'observation des lois et des politiques soient mises en oeuvre de façon efficiente et efficace et en temps opportun.

NOTA : On a apporté de légères modifications au texte et aux titres des documents pour faire en sorte que les références soient à jour.

MESURES

2.1 Chercher à améliorer continuellement l'efficacité de la prestation du programme d'observation des lois et des politiques en matière de forêts. Il faudra donc :

- élaborer et appliquer une approche fondée sur les risques à la planification de l'inspection des activités forestières, et
- que le MRN et ses partenaires surveillent en permanence la mesure dans laquelle ils ont déployé leurs ressources pour mettre en œuvre le programme d'observation des lois et des politiques en matière de forêts.

2.2 Mesurer l'efficacité du programme d'observation des lois et des politiques en matière de forêts et modifier le programme au besoin. Il faudra donc :

- établir et mettre en œuvre une approche pour l'évaluation et la production de rapports sur l'efficacité du programme d'observation des lois et des politiques en matière de forêts.

2.3 Promouvoir l'ouverture et la communication. Il faudra donc :

- maintenir les communications et les partenariats entre les utilisateurs des forêts et encourager le public à offrir des commentaires pertinents concernant les activités forestières, et
- communiquer les plans, les mesures, les réussites et les échecs qui reflètent l'importance de l'observation des lois et des politiques en matière de forêts dans la planification et la production de rapports.

2.4 Maintenir un plan intégré d'éducation et de sensibilisation pour tous les gestionnaires de ressources, les utilisateurs et le public. Il faudra donc :

- maintenir les programmes d'éducation/de sensibilisation concernant l'observation des lois et des politiques en matière de forêts qui sont intégrés dans tous les secteurs de programme du MRN, et
- promouvoir des possibilités de partenariat en réalisant les objectifs.

2.5 Poursuivre la formation et la certification conjointes du personnel de l'industrie forestière et du MRN en tant qu'inspecteurs de l'observation des lois et des politiques en matière des forêts. Ceci permettra d'assurer :

- un haut niveau de sensibilisation du personnel et de l'industrie à la politique sur l'observation des lois et aux exigences législatives, et
- une compréhension commune des exigences de l'observation des lois et des politiques par le personnel et l'industrie.

2.6 Maintenir le programme d'observation des lois et des politiques en matière de forêts. Il faudra donc :

- appuyer le réseau complet de surveillance des forêts qui permet de s'assurer que les lois, les politiques et les manuels sont respectés en recueillant et en analysant des données sur l'observation des lois et des politiques en matière de forêts
- poursuivre la vérification et la révision du programme d'observation des lois et des politiques en matière de forêts pour refléter l'obligation de rendre des comptes et la responsabilité des partenaires, et
- soutenir des partenariats pour l'observation des lois et des politiques en matière de forêts en reconnaissance de la capacité, de la disposition et des états de rendement d'un partenaire.

NOTA : On a apporté de légères modifications au texte et aux titres des documents pour faire en sorte que les références soient à jour.

2.7 Assurer avec équité, fermeté et uniformité la conformité aux lois existantes. Il faudra donc :

- assurer l'uniformité des directives et procédures en ce qui concerne les recours appropriés, et
- assurer une mise en œuvre efficace de l'orientation et des plans de mise en œuvre du programme.

TROISIÈME STRATÉGIE

S'assurer que :

- A - les droits appropriés sont perçus;
- B - le bon rendement est reconnu;
- C - des recours appropriés sont appliqués.

ACTIONS

A - Les droits appropriés sont perçus :

3.1 S'assurer que tous les droits (redevances, droits de coupe, droits pour le reboisement, sanctions pécuniaires, etc.) se rapportant à l'utilisation des forêts et aux opérations forestières sont perçus par la Couronne ou versés dans le fonds en fiducie approprié,

3.2 Maintenir des systèmes judiciaires de contrôle des finances, et

3.3 Maintenir des systèmes judiciaires de contrôle de cubage du bois.

B - Le bon rendement est reconnu :

3.4 Surveiller et évaluer le rendement de ceux qui s'adonnent à des activités forestières dans les forêts de la Couronne,

3.5 Reconnaître et soutenir ceux qui fournissent un bon rendement en reconnaissant l'amélioration et l'excellence et en réservant les processus supplémentaires à ceux qui ne respectent pas les normes.

C - Des recours appropriés sont appliqués :

3.6 S'assurer que les amendes imposées reflètent la gravité et l'importance des écarts par rapport au cadre réglementaire, qui comprend les plans, les politiques et les manuels approuvés ainsi que les répercussions sur la durabilité des écosystèmes forestiers.

Résumé

La mise en application de la stratégie visant l'observation des lois et des politiques en matière de forêts permettra de faire en sorte que les forêts ontariennes soient gérées de façon durable, conformément à l'orientation générale du MRN et à la Loi sur la durabilité des forêts de la Couronne. En appliquant cette stratégie de façon équitable et uniforme, on amène les gens à la respecter, à être plus confiants et à collaborer. Cette stratégie va de pair avec les nouveaux rapports commerciaux établis avec l'industrie forestière, ce qui favorise un esprit commercial positif qui encourage les partenariats et qui met l'accent sur

NOTA : On a apporté de légères modifications au texte et aux titres des documents pour faire en sorte que les références soient à jour.

la responsabilité et l'obligation de rendre compte en matière de gestion partagée des forêts.

Glossaire

Conformité - Observation d'un ensemble de règles ou d'exigences.

Forêt de la Couronne ² - Écosystème forestier ou partie d'un écosystème forestier que l'on retrouve sur une terre cédée à Sa Majesté du chef de l'Ontario;

Écosystème - Réseau de choses vivantes et d'éléments non vivants qui interagissent entre eux et avec d'autres écosystèmes;

Guide sur l'observation des lois et des politiques en matière de forêts – Recueil de toutes les directives se rapportant à l'observation des lois et des politiques en matière de forêts, conformément à la condition n° 27 de l'arrêté MRN 71 concernant l'approbation de l'évaluation de classe du MRN pour la gestion des forêts sur les terres de la Couronne en Ontario.

Vérification de conformité - Ensemble d'activités conçues pour s'assurer que les activités de gestion forestière sont réalisées conformément au cadre réglementaire qui comprend les plans de gestion forestière et les normes opérationnelles. De plus, la surveillance est la récolte et l'analyse de données dans le temps. Cette surveillance fournit des renseignements sur les anciennes et nouvelles tendances et permet d'envisager les conditions futures.

Écosystème forestier ¹ - Écosystème dans lequel les arbres sont ou peuvent être un élément biologique important;

Santé des forêts ¹ - État d'un écosystème forestier qui préserve la complexité de l'écosystème tout en répondant aux besoins des gens de l'Ontario;

Industrie forestière - Comprend les particuliers, les entreprises et toute autre partie administrant des opérations forestières (accès, récolte, reboisement, entretien et l'acquisition et le mouvement de ressources forestières) ou y participant;

Lois (toutes) – Se rapporte à de nombreux textes de loi administrés par le MRN dont chacun est susceptible de se répercuter sur la gestion des forêts. Parmi les exemples typiques, mentionnons la Loi sur les espèces en voie de disparition, la Loi sur l'aménagement des lacs et des rivières, la Loi sur la durabilité des forêts de la Couronne, la Loi sur les terres publiques, la Loi sur la prévention des incendies de forêt, la Loi sur les pêches (fédérale), et la Loi sur les ressources en agrégats. Celles-ci sont décrites dans le Guide sur l'observation des lois et des politiques en matière de forêts (mars 2007);

Protection - Action de prescrire et de mettre en application des directives, conditions, normes et lois afin de prévenir la perturbation ou la destruction d'un écosystème forestier, en tout ou en partie;

Gestion partagée - Gestion responsable des écosystèmes forestiers fondée sur une évaluation équitable des ressources environnementales, sociales et économiques, pour le bien-être des générations actuelles et futures;

Durabilité ² - Santé à long terme des forêts de la Couronne.

NOTA : On a apporté de légères modifications au texte et aux titres des documents pour faire en sorte que les références soient à jour.

¹Source : Plan d'action pour la durabilité des forêts

²Source : Loi sur la durabilité des forêts de la Couronne, 1994.

Directives et procédures de gestion forestière

07 Suivi et évaluation**01 Aperçu de la conformité des opérations forestières****Directive**
FOR 07 01 01**APERÇU - PROGRAMME ONTARIEN DE CONFORMITÉ DES OPÉRATIONS FORESTIÈRES****Date d'approbation :** 1^{er} avril 2010**Date de révision :** avril 2015**Contact :** Section de l'évaluation et des normes relatives aux forêts, Direction des forêts – Division des politiques

On demande au personnel au MRN et au personnel du programme de conformité des opérations forestières de garder les idées et les concepts suivants à l'esprit et de les appliquer à la mise en œuvre de ses programmes de surveillance de la conformité des opérations forestières. Ces idées et ces concepts fourniront également une information de contexte pertinente pour les autres personnes qui consultent ce Guide et qui cherchent à mieux connaître le programme de conformité des opérations forestières.

APPROCHE CONCERNANT LA CONFORMITÉ DES OPÉRATIONS FORESTIÈRES**Durabilité**

La Loi sur la durabilité des forêts de la Couronne (LDFC) a pour objectif la préservation de la durabilité des forêts de la Couronne et, conformément à cet objectif, une gestion des forêts de la Couronne propre à satisfaire aux besoins sociaux, économiques et environnementaux des générations actuelles et futuresⁱ. La LDFC définit la « durabilité » comme étant la santé à long terme des forêts de la Couronneⁱⁱ. Par ailleurs, elle précise que la durabilité d'une forêt de la Couronne doit être déterminée conformément au Manuel de planification de la gestion forestière (MPGF) et fournit subséquemment quelques principes permettant de guider cette déterminationⁱⁱⁱ.

Les plans de gestion forestière (PGF) et leurs opérations annuelles (OA) sont rédigés pour des régions géographiques bien déterminées (unités de gestion – UG). Les PGF déterminent la « réalisation de la durabilité » en établissant des objectifs (sociaux, économiques et environnementaux) pour tirer profit (bois, habitat, loisirs, etc.) de la zone forestière (UG) pour laquelle ils sont préparés. Ces documents imposent alors aux opérations forestières certaines normes et règles permettant d'atteindre ces objectifs. Les normes et les règles utilisées dérivent des lignes directrices et sont le plus souvent décrites dans les prescriptions des opérations forestières (POF). Les autres sources de normes et de règles sont les prescriptions des secteurs préoccupants ou des valeurs d'intérêt particulier, et les normes et les règles de construction et d'entretien des voies d'accès. Par conséquent, les PGF sont une combinaison de la meilleure expression des intérêts de ceux qui veulent tirer profit des forêts avec les meilleures connaissances scientifiques et opérationnelles sur la façon de profiter des forêts tout en conservant le type de forêt souhaitable, et dont on disposait au moment de la rédaction du plan.

Conformité des opérations forestières

La stratégie provinciale de conformité des opérations forestières souligne qu'il existe une raison pour laquelle la conformité est axée sur des règles, des normes et des exigences. L'objectif consiste à permettre de tirer avantage des forêts tout en protégeant l'écosystème forestier et en assurant sa santé à long terme. Le programme de conformité des opérations forestières est mis en œuvre afin que les décisions et les actions contribuent à ces objectifs.

Le programme de conformité des opérations forestières vise à ce que les activités des opérations forestières sur des terres de la Couronne se conforment aux normes et aux règles mises en place par l'entremise du

cadre réglementaire (LDFC → PGF → OA → POF), et ce, afin que ces activités produisent les avantages escomptés tout en assurant la santé à long terme de l'écosystème forestier. La conformité des activités forestières y parvient en mettant l'accent sur la prévention des pertes forestières et la réparation des dommages infligés aux forêts de la Couronne et à l'écosystème forestier, au moyen d'une vaste gamme de mesures d'éducation, de formation, d'encouragement, de surveillance, de mise en application et de mesures correctives.

Il est essentiel pour l'intégrité du programme de conformité des opérations forestières que :

- les inspections des opérations forestières, effectuées pour évaluer la conformité et réagir aux résultats négatifs de cette évaluation, soient uniformes dans toute la province et néanmoins adaptables aux circonstances des opérations inspectées; et
- ceux qui effectuent les inspections, qui en font rapport et qui évaluent les opérations forestières soient crédibles quant à leurs capacités et à la diligence avec laquelle ils s'acquittent de leur rôle.

C'est dans ce contexte que le MRN envisage les déterminations de conformité.

Caractère raisonnable – Variabilité opérationnelle

La géographie et le climat de l'Ontario favorisent l'existence d'un domaine forestier vaste et complexe. Par conséquent, les opérations forestières sont adaptées aux conditions de chaque unité de gestion de manière à refléter les variations dans les écosystèmes et l'environnement d'exploitation du site. Les plans de gestion forestière décrivent les opérations forestières jugées les plus applicables à la gamme des sites proposés pour les activités, mais ne peuvent prévoir toutes les circonstances possibles. C'est pourquoi il est difficile de toujours appliquer tel quel tout cadre opérationnel. Il est donc nécessaire de pouvoir adapter ce dernier aux circonstances. Par conséquent, l'évaluation de la conformité des opérations aux plans, aux exigences et aux normes doit également tenir compte de la complexité et de la variabilité géographiques, climatiques et d'exploitation, car autrement, elle pourrait ne pas refléter les circonstances réelles de situations opérationnelles particulières. Les méthodes de gestion forestière en Ontario ont eu du succès en raison de la persévérance dont ont fait preuve les praticiens des domaines professionnels et techniques dans l'évaluation de chaque événement sur le terrain et la définition de l'ensemble approprié d'outils et de traitements pour réagir à chaque situation en particulier.

La conformité des activités forestières doit être envisagée de plusieurs points de vue quand vient le temps d'évaluer les résultats des inspections sur le terrain. Au premier abord, l'inspection porte sur la conformité des activités inspectées aux normes et aux règles. La question sous-jacente est jusqu'à quel point les variations dans les activités inspectées se répercutent sur la réalisation des objectifs du PGF et sur l'état du type de forêt souhaitable. De plus, la conformité des activités forestières doit tenir compte de la conformité à l'ensemble du cadre réglementaire (par exemple, vérifier si l'opération respecte la loi) et de la conformité de l'opération aux obligations, procédures et autorisations administratives imposées au détenteur du permis. La procédure d'inspection des opérations forestières permet d'observer et d'évaluer tous ces aspects.

Réagir à la non-conformité

On réagit à la non-conformité au moyen d'un recours approprié. Une fois qu'il a évalué les inspections des opérations forestières et qu'il a déclaré ces opérations non conformes, le personnel du MRN doit déterminer et appliquer un recours approprié tel que défini dans les présentes (voir le glossaire).

Bien qu'une application juste, équitable et uniforme des recours soit un des buts du programme de conformité des opérations forestières, il ne s'agit pas d'appliquer à chaque contrevenant le même recours pour des incidents de non-conformité comparables. Idéalement, les recours appliqués en cas de non-conformité devraient être proportionnels à la nature de l'infraction et aux caractéristiques du contrevenant. Les recours ne doivent pas être trop sévères, ni si minimes qu'ils pourraient être perçus comme la « rançon des affaires ».

Le ministère des Richesses naturelles a la responsabilité de déterminer la non-conformité, de l'évaluer et d'appliquer des mesures d'application, au besoin, et de définir le recours à appliquer. La législation offre au

MRN une grande souplesse dans le choix du recours approprié. Il est inévitable que les décisions prises à différents moments ou à différents endroits de la province varient. La variation dans l'application des recours est acceptable s'il est possible d'appuyer la décision sur les faits de l'infraction.

ⁱ Loi sur la durabilité des forêts de la Couronne, S.O. 1994, Chapitre 25

ⁱⁱ Ibid

ⁱⁱⁱ Ibid

^{iv} Forest Compliance Handbook (guide sur l'observation des lois et des politiques en matière de forêts)

CONTEXTE HISTORIQUE ET POURSUITE SUR NOTRE LANCÉE**Date d'approbation :** 1^{er} avril 2010**Date de révision :** Avril 2015**Renseignements :** Section de l'évaluation et des normes relatives aux forêts, Direction des forêts — Division politiques

La présente directive nous propose un bref retour en arrière qui nous éclaire sur les origines du programme provincial de surveillance de la conformité des opérations forestières et nous dévoile ce que sa mise en œuvre nous a appris. Elle résume ensuite les orientations qui nous permettront de poursuivre notre lancée sur l'application du programme de surveillance de la conformité des opérations forestières, afin de cibler et rationaliser ce programme encore davantage au profit du public et de la forêt.

CONTEXTE — POINT DE VUE HISTORIQUE

La signature des PAFD, commencée en 1998, a donné lieu au transfert de responsabilité de la surveillance de la conformité des opérations forestières du ministère des Richesses naturelles à l'industrie forestière. La surveillance de la conformité portait alors surtout sur l'inspection d'un échantillon d'exploitants en vue de vérifier si ces derniers respectaient les normes d'utilisation, les limites d'exploitation et les exigences en matière de franchissement des cours d'eau. Le transfert de responsabilité reposait sur le fait que la plupart des exploitants forestiers disposaient déjà du personnel sur place qui s'occupait de surveiller leurs activités d'exploitation. Il semblait alors aisé et rentable de franchir l'étape d'adopter une méthode de surveillance de la conformité des opérations forestière qui consistait à faire remplir par ces employés une version simplifiée d'un rapport sur leurs observations en matière de conformité. En cas de non-conformité, leur rapport indiquait la nature de la non-conformité, les mesures correctrices prévues et les délais de leur mise en application. On pensait que ce changement n'entraînerait pas d'augmentation importante des coûts, que ce soit en temps ou en argent, pour les exploitants forestiers.

Depuis que cette responsabilité relève de l'industrie forestière, les exigences en matière de planification et d'inspection de la conformité, et de rédaction de rapports, ont augmenté. Même si les exploitants forestiers conservaient leur responsabilité de se conformer dans toutes leurs activités d'exploitation, les attentes ont augmenté du fait qu'ils devaient, par exemple, inspecter la totalité de leurs activités d'exploitation et en faire rapport. Les coûts associés à la surveillance de la conformité ont augmenté en conséquence. L'augmentation de la complexité de la surveillance, ainsi que des efforts et des coûts associés, a mené à la recommandation de réviser et rationaliser le programme de conformité de manière à simplifier les exigences de planification et de surveillance de la conformité, comme le reflète le Forest Process Streamlining Task Force Report and Implementation Plan (rapport du groupe d'étude sur la simplification des procédures du secteur forestier et plan de mise en œuvre) de 2006. L'objectif était une présentation plus ciblée, efficace et rentable des aspects planification et surveillance de la conformité.

En novembre 2008, des représentants de l'industrie forestière et du MRN se sont rencontrés pour discuter des possibilités de simplifier le programme de conformité et de faire en sorte que l'industrie et le ministère puissent tous deux économiser temps et argent. Bon nombre des recommandations formulées à cette réunion sont cohérentes avec l'idée initiale et les principes associés au transfert de la surveillance de la conformité à l'industrie forestière. En outre, elles prennent appui sur les recommandations du rapport du groupe d'étude sur la simplification des procédures du secteur forestier.

l'industrie forestière. En outre, elles prennent appui sur les recommandations du rapport du groupe d'étude sur la simplification des procédures du secteur forestier.

En avril 2004, le ministre des Richesses naturelles annonçait l'intention du gouvernement d'exiger que les détenteurs d'un permis d'aménagement forestier durable en Ontario soient certifiés conformes à une norme de rendement acceptable. Les normes de l'Association canadienne de normalisation (CSA), du Forest Stewardship Council (FSC) et du Sustainable Forestry Initiative (SFI) ont ensuite été déclarées acceptables. On considère également de plus en plus les normes de gestion environnementale de l'Organisation internationale de normalisation (ISO) comme un outil valable d'aménagement forestier durable.

De nombreux détenteurs d'un permis d'aménagement forestier durable et un bon nombre d'entreprises d'exploitation forestière ont investi d'importantes ressources en vue d'être des tiers certifiés conformes à un Système d'aménagement forestier durable reconnu sur le plan international (p. ex. ISO, CSA, SFI et FSC). Les exploitants forestiers et les détenteurs d'un PAFD ont pu mettre en œuvre, dans leur système de certification, des systèmes de conformité efficaces qui ont de plus permis à l'industrie de respecter les exigences du programme provincial de conformité. Des systèmes de ce type exigent des activités d'exploitation forestière qui nécessitent la conformité aux normes et exigences de la structure réglementaire applicable. Ceci a influencé favorablement le rendement des PAFD en matière de conformité ainsi que l'aménagement forestier en général.

L'industrie forestière a témoigné de son engagement à remplir son devoir de surveillance de la conformité des opérations forestières en formant ses employés, en obtenant la certification des inspecteurs et en procédant à la planification et à l'inspection de même qu'à la rédaction des rapports requis. Les rapports annuels de l'application et de l'évolution du programme ontarien de surveillance de la conformité des opérations forestières ont confirmé la constance du degré élevé d'excellence en matière de conformité dans la province. Bien qu'on ait accepté et compris le rôle de l'industrie forestière et celui du Ministère dans l'application du programme de conformité des opérations forestières, les exigences relatives au rapport de planification de la conformité se sont accrues au cours des années qui ont suivi.

ORIENTATION — POURSUITE SUR NOTRE LANCÉE

Pour parvenir à simplifier le programme, il faut surtout : inclure la gestion du risque; intégrer la conformité aux activités de planification de l'aménagement forestier; adapter les programmes de surveillance à la forêt, aux caractéristiques d'exploitation et au rendement antérieur; réduire le chevauchement des exigences; et intégrer le plus possible les normes de tiers de l'extérieur. Ces éléments ont orienté les plus récentes révisions de ce guide.

En 2008, l'industrie et le MRN ont lancé un projet conjoint visant à déterminer l'efficacité des procédures de planification et de surveillance de la conformité (inspection et rapports). Tout en admettant que le MRN et l'industrie forestière avaient tous deux considérablement progressé dans la mise en œuvre du programme de surveillance de la conformité, cette étude a révélé qu'il existait une marge de manœuvre pour réduire le temps requis et les coûts des procédures associés à tous les éléments du programme. Tout ceci est cohérent avec les principes et recommandations du groupe d'étude sur la simplification des procédures du secteur forestier qui ont donné une nouvelle orientation au programme de surveillance de la conformité des opérations forestières.

Le MRN comme l'industrie forestière ont pour principal objectif de réduire le chevauchement des systèmes actuels et de permettre à ces systèmes de s'échanger des renseignements. Voici quelques exemples d'autres sources de renseignements relatifs à l'inspection : le rapport sommaire du ministère de l'Environnement sur l'application non aérienne et l'application aérienne d'herbicides; les rapports sommaires sur les agrégats des carrières de catégorie 14; les inspections des marquages; les dossiers et les rapports d'inspection des ponts; les inventaires et la surveillance des routes et des ouvrages de franchissement de cours d'eau qui font partie des exigences du MRNO. Pour plus d'efficacité et pour éliminer le chevauchement, il faut reconnaître la contribution d'autres systèmes de certification de la conformité, et y avoir recours.

Un autre cheminement important découlant de cette procédure est de s'assurer que l'aménagement forestier, la planification, les activités d'exploitation et les systèmes de planification de la conformité soient pleinement intégrés au plan d'aménagement forestier, de façon efficace (c.-à-d. aucun document complet en soi).

Un principe du modèle d'auto-surveillance par l'industrie est l'application volontaire de mesures correctrices à l'endroit et au moment nécessaires et pertinents. Dans le cas des sociétés certifiées par l'ISO, la CSA, le SFI ou le FSC, ou qui y sont inscrites, la divulgation complète à une autorité au sein de l'entreprise et la présentation d'un rapport de tout incident environnemental et de tout incident ne donnant pas lieu à une plainte sont habituellement requis. En outre, ces renseignements doivent être à la disposition de l'organisme de certification ou du registraire dans le cadre des procédures de maintien de la certification. Ces systèmes appuient aussi le recours volontaire à des mesures correctrices et à la détermination de mesures préventives.

La procédure de rationalisation du programme de conformité entrepris en 2008 et 2009 a mené à la révision des directives et procédures de ce guide qui intègre ces nouvelles directives dans les fonctions de planification, d'inspection et de rédaction de rapports du programme de conformité. Le personnel de l'industrie forestière et du MRN doit tenir compte de ces directives en poursuivant ses efforts de veiller à ce que les activités d'exploitation forestière respectent les exigences et les normes de la structure réglementaire, au moyen d'un programme clair, ciblé et efficace.

FOREST COMPLIANCE HANDBOOK

TABLE OF CONTENTS

Title Page

Purpose and Authority

Forest Compliance Strategy (2007)

Provincial Policy Statement

TITLE

D & P NO.

Part I - Forest Compliance Overview

- Overview – Ontario Forest Compliance Program FOR 07 01 01
- Historic Perspective and Moving Forward FOR 07 01 02
- Processing Non-Operational CFSA Infractions FOR 07 01 03

Part II - Forest Compliance Information and Planning

- Information, Inventories, Surveys, Tests, Studies And Records FOR 07 02 01
- Compliance And Enforcement Records FOR 07 02 02
- Forest Compliance Planning FOR 07 02 03
- Forest Compliance Planning FOR 07 02 04
- Enhanced Compliance Arrangements for Qualified Overlapping Licensees FOR 07 02 05
- Failure To Prepare Or Operate In Accordance With Forest Management Plan Or Annual Work Schedule. FOR 07 02 06

Part III - Forest Compliance Monitoring

- Forest Compliance Inspectors – Certification and Maintenance FOR 07 03 01
- Forest Compliance Inspectors – Competency Standards FOR 07 03 02
- Forest Compliance Inspectors – Code of Ethics FOR 07 03 03
- Forest Operations Inspection and Reporting FOR 07 03 04
- Forest Operations Inspection and Reporting Procedures FOR 07 03 05
- Documenting Suspected Infractions FOR 07 03 06
- Entry Onto Private Land Dwellings FOR 07 03 07
- Obstruction of Employees FOR 07 03 08
- False Statements FOR 07 03 09
- Search Warrants FOR 07 03 10
- Public Access and Report Retention and Storage Procedures FOR 07 03 11

Part IV - Forest Management Program Support

- Forest Operations and Silviculture Manual FOR 07 04 01
- Forest Resource Licence - Requirements FOR 07 04 02
- Harvesting Without a Forest Resource Licence FOR 07 04 03
- Sustainable Forest Licences and Overlapping Licences FOR 07 04 04
- Amalgamations of SFLs and MUs FOR 07 04 05
- Crown Forest Resources on Mining Leases FOR 07 04 06
- Crown Forest Resources on Private Lands FOR 07 04 07
- Scaling – Measurement, Methods and Records FOR 07 04 08
- Wasteful Practices FOR 07 04 09
- Seizure, Detaining and Forfeiture of Forest Resources FOR 07 04 10
- Forest Resource Processing Facility Licence FOR 07 04 11

FOREST COMPLIANCE HANDBOOK

TABLE OF CONTENTS

TITLE	D & P NO.
Part V - Other Natural Resource Management Program Support	
• Forestry Aggregate Pits	FOR 07 05 10
• Criminal Code of Canada	FOR 07 05 20
• Forest Fires Prevention Act	FOR 07 05 30
• Fisheries Act (Federal)	FOR 07 05 40
• Fish & Wildlife Conservation Act	FOR 07 05 50
• Endangered Species Act (S.O. 2007)	FOR 07 05 51
• Lakes and Rivers Improvement Act	FOR 07 05 60
• Public Lands Act	FOR 07 05 70
• Navigable Waters Protection Act (Federal)	FOR 07 05 71
• Environmental Protection Act	FOR 07 05 80
Part VI – Remedies and Enforcement	
• Remedy and Enforcement Overview and Direction	FOR 07 06 01
• Determining Which Legislation Applies	FOR 07 06 02
• Determining Remedy	FOR 07 06 03
• Written Warnings	FOR 07 06 04
• Orders Under the Crown Forest Sustainability Act	FOR 07 06 05
• Administrative Penalties – Determining Amounts and Application	FOR 07 06 06
• Offence Provisions	FOR 07 06 07
• Licence Suspensions and Cancellations	FOR 07 06 08
• Representations Regarding Notice of Intent to Apply an Administrative Penalty	FOR 07 06 09
Appendices	
• Glossary	
• Acronyms	
• Delegation of Authority – Crown Forest Sustainability Act	

FOREST COMPLIANCE HANDBOOK**AUTHORITY, PURPOSE, AND ROLES and RESPONSIBILITIES**

Contact: Forest Evaluation and Standards Section, Forests Branch – Policy Division

AUTHORITY

The Crown Forest Sustainability Act 1994 (CFSA) governs all forest operations on Crown land in Ontario. It has succeeded the Crown Timber Act (CTA) under which forest compliance was conducted through cut and area inspections by the Ministry of Natural Resources (MNR). Inspections for compliance for other program disciplines (e.g. fire, Lands, Aggregates, Timber...) were not integrated under one common approach or philosophy.

The Terms and Conditions of the Class Environmental Assessment for Timber Management in Ontario (1994) required the Ministry to:

1. Prepare a “handbook” to provide guidance to its field offices for the investigation and prosecution of offences under the CTA, Public Lands Act, Lakes and Rivers Improvement Act, Endangered Species Act and other statutes relevant to timber management activities. In particular, the Ministry shall ensure that timber-related statutes and regulations are interpreted consistently, supervised adequately and enforced fairly but firmly in all cases of non-compliance, and
2. Monitor the timber management activities of harvest, access, renewal and maintenance for compliance with Forest Management Plans, legislation and policy.

These requirements led to the development of Ontario's Forest Compliance Program (program) which was fully implemented in April 1998. The program was guided by the Forest Compliance Strategy, 1997 (Strategy) which provided the program goal, principles and objectives. While the strategic direction remains sound, the strategy has been updated (2007) to reflect current supporting documents such as the CFSA.

The program is based on a monitoring partnership with a clear separation of roles and responsibilities between the MNR and forest industry. In its 1994 Business Plan for Forest Management, MNR adopted a system of “self-monitoring” by the forest industry wherein the industry directly undertook compliance planning, inspection, reporting, corrective action, and education and training of its workers. As the regulatory agency, the MNR retained full responsibility for administration and implementation of the CFSA which included monitoring, auditing, determining compliance status, and taking appropriate enforcement action and remedy application.

An Environmental Assessment Declaration Order, MNR 71, as amended by MNR 71/2 (June 2003 and May 2007 respectively), has provided the MNR forest compliance program with its most current directions, namely:

1. reconfirmation of the compliance monitoring program;
2. maintaining the Forest Compliance Handbook and describing the details of the inspection program;
3. retaining inspection reports for public availability;
4. providing management unit annual reports of inspections on the MNR internet website;
5. distinguishing between MNR and forest industry inspections and identifying MNR inspections of non-compliance reported by the forest industry; and
6. maintaining a program for the mandatory training and certification of all forest operations inspectors.

The MNR has always operated under a philosophy of “continuous improvement”. Internal program reviews during this period resulted in policy, procedural and administrative improvements. Recent recommendations of

the *Ministers Council on Forest Sector Competitiveness Report*, (May 2005), and the subsequent *Forest Process Streamlining Task Force Report* (May 2006), has led to a review and update of the forest compliance program and accompanying Forest Compliance Handbook.

The compliance program and directions provided in the Handbook are guided by an overall philosophy for forest operations compliance. An overview and the approach to forest operations compliance are in directive FOR 07 01 01.

PURPOSE

Forest Compliance Handbook

This Handbook has been prepared to assist staff of MNR and the forest industry in understanding and applying compliance considerations and requirements in forest operations, particularly at the field operations level. It is a reference for MNR and industry staff to MNR's Forest Compliance Program including directives and procedures for various statutes related to forest operations. The Handbook is a compendium of program documents from the strategy through planning and implementation to the supporting directives and procedures.

Direction and guidance for the forest industry is provided for an integrated and comprehensive approach to forest compliance planning and forest operations inspections and reporting activities. It addresses key elements for consideration in planning and inspection programs and sets requirements for the development of industry compliance plans.

The Handbook will assist MNR staff with the integration of MNR District compliance programs with other resource management plans and in ensuring that statutes and regulations related to forest operations (administered by MNR), are interpreted consistently, supervised adequately, and enforced fairly but firmly in cases of non-compliance.

Application

This Handbook only addresses the main and most frequently encountered statutes related to forest operations. There are other (Provincial and Federal) statutes which may be applicable from time to time (Ref: Part VI and FOR 07 06 02). The MNR is frequently involved in the review of proposals proceeding under or affected by these statutes. It is the responsibility of those involved in forest operations to be aware of their legal obligations under all legislation.

In accordance with the approach in directive FOR 07 01 01, the most appropriate legislation will be used in determining and applying remedies to a particular violation, an initial decision must be made whether or not to use the CFSA and/or some other legislation.

While many of the various directives may be read and applied independently, they should be read collectively and with special regard to cross-references. This will ensure an understanding of the progression of thought, purpose and intent of the CFSA and the inter-relatedness of its components (i.e. moving from philosophy and principles to administrative penalties and other remedies).

ROLES AND RESPONSIBILITIES

Forest Industry Role (Sustainable Forest Licence (SFL) holder)

Prior to 1998/99, MNR had the direct responsibility to conduct all forest operations inspections throughout Ontario. Effective April 1, 1998, SFL holders assumed the role of conducting a comprehensive forest operations compliance program as a condition of their Sustainable Forest Licences. The program included planning, monitoring, inspection, reporting, taking corrective action, training and education.

For forest management purposes, the Crown forest in Ontario is divided into Management Units (MUs). These management units are managed by individual forest industry companies, cooperative groups and other arrangements under Sustainable Forest Licences. The SFL holder is responsible for carrying a number of activities including forest management planning, harvesting, access road construction, forest renewal, maintenance (tending and insect/disease protection), and monitoring and reporting compliance. The conduct of these activities is subject to the regulatory framework and MNR approvals.

The SFL holder is legally required to report all incidents of real or suspected non-compliance on their management unit, regardless of who the responsible party is, to MNR within specified timelines. This includes infractions incurred by the SFL, its shareholders, overlapping licensees, contractors and any private individual who contravenes the Crown Forest Sustainability Act. Incidents related to the latter are not recorded against the SFL and are considered as "non SFL related". The SFL only has responsibility for reporting the incident that is or could be a non-compliance, not the degree of non-compliance. The final determination and any associated implications are strictly the responsibility of MNR.

All inspection reports must be prepared and submitted to the central database according to the directions contained in the Handbook (Ref: FOR 07 03 04 & 05).

MNR Role

MNR is the regulatory agency with respect to forest compliance. Its role has changed from carrying out a comprehensive, operational inspection program to one of monitoring, auditing, and conducting spot-checks of industry activities, and carrying out investigations, enforcement activities and applying required remedies.

MNR verifies and evaluates all non-compliance reported by the forest industry, and determines if enforcement action is necessary and applies appropriate remedies as required. The MNR actively monitors an incident of non-compliance until it is resolved.

Planned and unplanned spot-checks and audits of forest operations may result in an MNR generated report of non-compliance, which may not have been reported by a company.

On the few Crown management units where no SFL exists, MNR still conducts forest operations, and remains directly responsible for delivering all aspects of the forest operations compliance program from inspections to reporting.

Contact and Reference

This version as posted on the MNR website is the official document. The directives contained in this Handbook will be periodically reviewed and amended as required. Notices of change will be electronically posted. Comments on the use and interpretation of the contents and any suggestions for change are welcome at anytime.

Any questions regarding the use and/or interpretation of this Handbook should be directed to the Forest Evaluation and Standards Section, Forests Branch, Policy Division, Ministry of Natural Resources, Sault Ste. Marie, Ontario.

Natural. Valued. Protected.

Forest Compliance Strategy 2007



Preface

The goal for Ontario's forests is to ensure the long term health of our forest ecosystems for the benefit of the local and global environments, while enabling present and future generations to meet their material and social needs.¹

Directions emanating from the Crown Forest Sustainability Act, the Forest Environmental Assessment Declaration Order MNR 71 (June 25, 2003), Our Sustainable Future, and the MNR Statement of Environmental Values require the existence of a comprehensive compliance program. Over the past ten years, the Ministry of Natural Resources has responded to these and their predecessor directions have guided the Ministry of Natural Resources over the past ten years.

The Minister's response to the Forest Sector Competitiveness Council report seeks continual improvement of the forest operations compliance program to ensure its effectiveness and efficiency. Today's forest compliance program is guided by:

- i) A Forest Compliance Strategy (Revised 2007)
- ii) A Forest Compliance Handbook
- iii) Forest Operations Information Program (FOIP), and
- iv) Forest Compliance Inspection Certification Program (mandatory for both industry and MNR inspectors)

FOREST COMPLIANCE STRATEGY

Overview

With the publication of MNR Direction '90s, the Ministry of Natural Resources adopted an ecosystem-based approach to resource management, engaged in numerous consultation exercises, pursued new partnerships, began several new information management initiatives, and developed policies and programs that translated the goal, objectives and guiding principles contained in that document into action. Prominent among these is the Crown Forest Sustainability Act. The Ministry has continued this approach with revisions and subsequent publication and it is now led by the current strategic directions, 'Our Sustainable Future (2005)'.

The Forest Compliance Strategy encompasses all legislation and policy that pertains to forest operations in Crown forests. This strategy focuses on the users of forest resources on Crown land in Ontario, however some of the strategies and actions may also be useful to practitioners to guide private land forestry activities.

This document serves three key functions. It guides policy development, provides direction for forest compliance and describes how forest compliance will be achieved.

Compliance is adherence (conformance) to a set of rules, standards or requirements. The compliance program will be delivered through a broad range of education, encouragement, monitoring, and enforcement efforts that ensure resource users take appropriate action.

The Goal for the Forest Compliance Strategy is to establish an approach that ensures compliance with legislative and regulatory requirements, which contribute to the sustainable management of Ontario's Crown forests.

Principles

The guiding principles used in developing the goal, objective and strategies of this document are:

1. Sustainability of the forest ecosystem is paramount.
2. Forest compliance actions are ultimately used to assist in the achievement of the sustainability of forest ecosystems.
3. Forest compliance requires that activities in a forest be conducted in a socially responsible, economically efficient, environmentally sensitive and sustainable manner.
4. The rights and privileges to use forest resources carry responsibilities and accountabilities for good stewardship.
5. Forest compliance partnerships with resource users and cooperative arrangements amongst governments, industry and other agencies will contribute to successful compliance.
6. The full range of compliance actions (education, training, encouragement, monitoring and enforcement) will be available to be used to achieve forest compliance objectives.
7. Compliance actions will be conducted in a fair, consistent and effective manner and will acknowledge performance improvement and excellence.
8. Forest Compliance delivery will be carried out in an integrated, planned fashion with priorities set in field level plans in concert with broader natural resource compliance strategies.
9. Compliance actions will be based upon the best available science and technology.
10. Monitoring the management and use of forest resources is a critical component of an effective forest compliance program.
11. While the ultimate responsibility and accountability for compliance in Ontario's Crown forests lies with government, cooperative arrangements amongst government, industry and others will facilitate an effective and efficient forest compliance program.

Objective

The objective of the Forest Compliance Strategy is to ensure compliance with rules, standards and requirements that are designed to protect the forest ecosystem while allowing for the realization of benefits which do not compromise the long-term health of the forest ecosystem.

Strategies

This objective will be accomplished through three inter-connected strategies:

- I Ensuring that the forest compliance program reflects the complexity of forest ecosystems and framework provided by plans, manuals, directives, procedures and guidelines.
- II Ensuring that forest compliance activities are conducted efficiently, effectively and in a timely manner.
- III Ensuring that A - Appropriate fees are collected, B - Good performance is recognized, and C - Appropriate remedies are applied.

These strategies will be achieved through supporting actions.

STRATEGY ONE

Ensuring that forest compliance program reflects the complexity of forest ecosystems and framework provided by plans, manuals, directives, procedures and guidelines.

ACTIONS

1.1 make forest compliance an integral part of forest management planning and delivery. This will entail: ensuring that forest compliance considerations are integral to the development of policies, manuals and plans.

1.2 identify forest compliance priorities and ensure they are reflected in field forest compliance planning.

STRATEGY TWO

Ensuring that forest compliance activities are conducted efficiently, effectively and in a timely manner.

ACTIONS

2.1 seek continual improvements in the efficiency of the delivery of the forest compliance program. This will entail:

- development and application of risk based approach to forest operations inspection planning, and
- continual monitoring by MNR and its partners of how well they have deployed their resources to implement the forest compliance program.

2.2 measure the effectiveness of the forest compliance program and modify the program as appropriate. This will entail:

- establishing and implementing an approach for evaluating and reporting on compliance effectiveness.

2.3 promote openness and communication. This will entail:

- maintaining communications and partnerships amongst forest users and encouraging informed public feedback on forest operations , and
- communicating plans, actions, successes and failures reflecting the importance of forest compliance in planning and reporting.

2.4 maintain an integrated education/awareness plan for all resource managers, users and the public. This will entail:

- continuing forest compliance education/awareness programs that are integrated across all MNR program areas, and
- continuing partnership opportunities in achieving objectives.

2.5 continue joint training and certification of forest industry and MNR staff as forest compliance inspectors. This will ensure:

- a high level of staff and industry awareness of forest compliance policy and legislative requirements, and
- a common understanding by staff and industry of compliance requirements.

2.6 maintain the forest compliance monitoring program. This will entail:

- supporting the comprehensive forest monitoring network that ensures that the legislation, policies and manuals are being complied with by collecting and analyzing forest compliance related data,
- continuing to audit and review the forest compliance program to reflect the accountability and responsibility of partners, and
- sustaining forest compliance partnerships in recognition of a partner's capability, willingness and performance record.

2.7 fairly, firmly and consistently ensure compliance with existing legislation. This will entail:

- providing consistency through directives/procedures as to appropriate remedies, and
- providing effective implementation of program direction and plans.

STRATEGY THREE

Ensuring that:

- A - Appropriate fees are collected:
- B - Good performance is recognized: and
- C - Appropriate remedies are applied.

ACTIONS

A - Appropriate fees are collected:

3.1 ensure that all fees (e.g. Royalties, stumpage, renewal charges, monetary penalties, etc...) related to forest utilization and operations are collected by the Crown or paid into the appropriate trust fund,

3.2 maintain sound financial control systems, and

3.3 maintain sound wood measurement control systems.

B - Good performance is recognized:

3.4 track and evaluate performance of those conducting forest operations in the Crown forest,

3.5 recognize and support good performers through acknowledging improvement and excellence, and reserving additional process for those that do not meet standards.

C - Appropriate remedies are applied:

3.6 ensure that remedies applied reflect the severity and degree of variance from regulatory framework including approved plans, policies and manuals, and the impact on the sustainability of the forest ecosystem.

Summary

Implementation of the Forest Compliance Strategy will ensure that Ontario's forests are being managed in a sustainable fashion consistent with the ministry's corporate directions and the CFSA. Through fair and consistent interpretation, the strategy builds and maintains credibility, trust and cooperation. It complements existing business relationships with the forest industry, creating a positive business climate conducive to partnerships and emphasizes shared responsibility and accountability for forest stewardship.

Glossary of Terms

compliance - adherence to a set of rules or requirements.

Crown forest² - a forest ecosystem or part of a forest ecosystem that is on land vested in Her Majesty in right of Ontario;

ecosystem - a network of living things and non-living components interacting with each other and with other ecosystems;

Forest Compliance Handbook – a compendium of all directives and procedures related to forest compliance as per Condition #27 of Declaration Order MNR 71 regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown lands in Ontario.

forest compliance monitoring - a set of activities designed to ensure that forest management operations are carried out in conformity with the regulatory framework including forest management plans and operational standards. Further, monitoring is the collection and analysis of data over time. Monitoring provides information on past and present trends and allows projections of future conditions.

forest ecosystem¹ - an ecosystem in which trees are or are capable of being a major biological component;

forest health¹ - the condition of a forest ecosystem that sustains the ecosystem's complexity while providing for the needs of the people of Ontario;

forest industry - individuals, companies or any others that engage in or administer forest operations (access, harvest, renewal, maintenance and the acquiring and movement of forest resources);

legislation (all) - refers to numerous statutes which the MNR administers, each having a potential impact on forest management. Typical examples include but are not limited to the Endangered Species Act; Lakes and Rivers Improvement Act; Crown Forest Sustainability Act; Public Lands Act, Forest Fires Prevention Act, Fisheries Act (Federal), and the Aggregate Resources Act. These are elaborated on in the Forest Compliance Handbook (March 2007);

protect - the act of prescribing and enforcing laws, guidelines, standards, and conditions for the purpose of preventing the harmful alteration, damage, or destruction of any or all parts of a forest ecosystem;

stewardship - the responsible management of the forest ecosystem based on a fair assessment of environmental, social and economic values for the benefit of present and future generations;

sustainability² - means long term Crown forest health.

¹Source: Policy Framework for Ontario Forests

²Source: Crown Forest Sustainability Act, 1994.

Forest Management Directives and Procedures

FOR 07 01 01

Approval date: April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

MNR and forest industry compliance program staff are directed to keep the following concepts and ideas in mind and apply them to the implementation of their forest operations compliance monitoring programs. They will also provide an appropriate context for others reading this Handbook and seeking to understand the provincial forest compliance program.

FOREST COMPLIANCE PHILOSOPHY**Sustainability**

The purpose of the Crown Forest Sustainability Act (CFSA) is to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic, and environmental needs of present and future generationsⁱ. The CFSA defines “sustainability” as meaning long term Crown forest healthⁱⁱ. Further, it goes on to say that sustainability of a Crown forest shall be determined in accordance with the Forest Management Planning Manual (FMPM) and subsequently provides some principles to guide that determinationⁱⁱⁱ.

Forest Management Plans (FMP) and their Annual Work Schedules (AWS) are written for defined areas of geography (Management Units – MUs). FMPs determine the “achievement of sustainability” by setting objectives (social, economic and environmental) to realize benefits (timber, habitat, recreation, etc.) from the forest area (MU) for which they are prepared. These documents then prescribe forest operations to certain standards and rules to accomplish those objectives. The standards and rules used are derived from Guidelines and are most commonly described in Forest Operations Prescriptions (FOP). Other sources of standards and rules are prescriptions for Areas of Concern or values of special interest, and standards and rules for the construction and maintenance of access. Therefore, FMPs are a combination of the best expression of the interests of those wanting to realize benefits from the forest, and the best scientific and operational knowledge for achieving those benefits while providing for a desired future forest, at the time the plan was written.

Forest Compliance

The provincial Forest Compliance Strategy notes that while compliance focuses on rules, standards and requirements, it does so for a reason. It is to allow the realization of benefits while protecting the forest ecosystem through ensuring its long term health. The forest compliance program is carried out so decisions and actions contribute to these objectives.

The purpose of the Forest Operations Compliance program is to ensure that activities, in forest operations conducted on Crown land, conform to the standards and rules put in place through the regulatory framework (CFSA → FMP → AWS → FOP). This is done so that those operations will result in the benefits planned and simultaneously ensure the long term health of the forest ecosystem. Forest compliance does this by focusing on prevention of loss of, and repair of damage to, Crown forests and the forest ecosystem using a broad range of education, training, encouragement, monitoring, enforcement and corrective actions.

It is imperative for the Forest Operations Compliance program's integrity that:

- forest operations inspections, conducted to assess, evaluate and respond to compliance determinations, are consistent across the province yet responsive to the circumstances of the operations being inspected; and
- those conducting inspections, reporting on them, and evaluating forest operations are credible in their abilities and the quality of execution of their role.

It is within this context that MNR considers determinations of compliance.

Reasonableness – Operational Variability

Ontario's geography and climate support a vast and complex forest estate. Forest operations are therefore tailored to conditions on each management unit to reflect the variations in the ecosystems and the site operating environment. Forest Management Plans describe the forest operations deemed to be most applicable to the range of sites proposed for operations but cannot respond to every circumstance likely to be encountered. This makes the consistent application of any operational framework difficult and requires that it be adaptable to the circumstances encountered. Therefore evaluating compliance of operations to plans, requirements and standards must take into account the intricacies and variability of the geographic, climatic, and operating conditions, otherwise it may not reflect the realities that apply to specific operational situations. The practice of forest management in Ontario has been successful because of the persistence of professional and technical practitioners in evaluating each on the ground event and determining the right set of tools and treatments to respond to that unique situation.

Forest compliance must be considered from several perspectives when evaluating the results of inspections on the ground. On the surface, the inspection concerns itself with the conformance of the specific inspected activities to the standards and rules. Underlying this is the degree to which variations in the inspected activities affect the achievement of FMP objectives and the attainment of the desired future forest condition. Also, forest compliance must look at conformance with the broader regulatory framework (e.g. is the operation within the law) and does the operation conform to the administrative obligations, processes and approvals required of the licensee. All of these are observed and assessed by the forest operations inspection process.

Responding to Non-Compliance

Non-compliance will be responded to with an appropriate remedy. Once forest operations inspections have been evaluated and a determination of non-compliance has been made, MNR staff must determine and apply an appropriate remedy as defined herein (Ref: Glossary).

While fair, equitable and consistent application of remedies is a goal of the forest compliance program, it does not mean that every offender receives an identical remedy for a comparable incident of non-compliance. Ideally, remedies applied to non-compliances should be commensurate with the nature of the non-compliance and the characteristics of the offender. Remedies will not be unduly harsh, nor will they be so weak that they could be seen as a "cost of doing business".

It is the responsibility of the Ministry of Natural Resources to determine non-compliance, to assess and apply enforcement action when required, and to determine what remedy is to be applied. The legislation provides MNR with broad flexibility in choosing the appropriate remedy. It is inevitable that decisions made at different times or in different locations in the Province will be variable. Variability in the application of remedies is acceptable so long as the decision can be rationalized based on the facts of the infraction.

ⁱ Crown Forest Sustainability Act, S.O. 1994, Chapter 25

ⁱⁱ Ibid

ⁱⁱⁱ Ibid

^{iv} Forest Compliance Handbook

Forest Management Directives and Procedures

**07 Monitoring and Assessment
03 Forest Compliance Monitoring Directive**

FOR 07 01 02

HISTORIC PERSPECTIVE AND MOVING FORWARD**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

This directive provides a very brief look back to assist in understanding where the provincial forest operations compliance program has come from and what has been learned from its implementation. It then outlines the directions being embraced to move the forest compliance program forward as a more focused and streamlined program that serves both the forest and the public.

BACKGROUND - HISTORIC PERSPECTIVE

The responsibility for compliance monitoring was transferred from the Ministry of Natural Resources (MNR) to the forest industry with the signing of the SFLs commencing in 1998. At that time compliance monitoring was focused on the inspection of a sample of operations to ensure compliance with utilization standards, harvest boundaries and water crossing requirements. The transfer of responsibility was premised on the fact that most of the industry already had staff in the field monitoring their operations. It was felt that it would be an easy and cost effective step to move from there to a compliance monitoring system by having those staff complete a simplified report that identified compliance status. In the case of non-compliances, the report would indicate what it was, what was going to be done about it, and by when. It was believed that this could be accomplished with a minimal increase in time or cost to the forest industry.

Since responsibility was transferred to industry, requirements relating to compliance planning, inspecting and reporting have escalated. While industry retained responsibility for the compliance of all their operations, expectations grew, such as industry inspecting and reporting on 100% of their operational activities. Costs associated with compliance monitoring increased accordingly. The increases in monitoring complexity, effort and cost led to the recommendation to review and rationalize the compliance program with a view to simplifying compliance planning and monitoring requirements, as reflected in the Process Streamlining Task Force Report (2006). The intended outcome would be a more focused, effective and cost efficient delivery of the planning and monitoring aspects of compliance.

In November 2008, representatives from the forest industry and the MNR met to discuss opportunities to streamline the compliance program and realize time and cost savings for both the forest industry and the MNR. Many of the recommendations resulting from that meeting were consistent with the original concept and the principles associated with passing compliance monitoring to the forest industry and they are built on the recommendations of the Process Streamlining Task Force Report.

In April 2004, the Minister of Natural Resources announced the government's intent to require sustainable forest licence holders in Ontario to be certified to an accepted performance standard. The Canadian Standards Association (CSA), Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI) were subsequently recognized as accepted standards. The International Standards Organization (ISO) environmental management standards have also become increasingly recognized as a valuable tool in sustainable forest management.

Many Sustainable Forest Licence holders and forest companies have invested significant resources to become third party certified to an internationally recognized Sustainable Forest Management System (e.g. ISO, CSA,

SFI and FSC). Industry/SFL holders have been able to implement effective compliance systems within their certification system that function effectively and have supported industry's ability to meet the provincial compliance program requirements. Such systems require that forest operations are in compliance with the applicable regulatory framework. This has had a positive influence on SFL compliance performance and overall management of the forest.

The forest industry has demonstrated a commitment to their responsibility for forest operations compliance by training their workforce, undertaking inspector certification, and by undertaking the necessary planning, inspection and reporting. Annual reports of Ontario's forest operations compliance program delivery and progress have confirmed a consistently high level of compliance performance provincially. While there has been acceptance and understanding of the roles of the forest industry and the Ministry for delivery of the forest compliance program, requirements relating to compliance planning reporting have escalated in intervening years.

DIRECTION - MOVING FORWARD

Embracing risk management, integrating compliance into forest management planning activities, tailoring monitoring programs to the forest, operational characteristics and past performance, reducing duplication with other requirements and maximizing the integration of external third-party standards are keys to successful streamlining. These elements directed the most recent revisions to this Handbook.

In 2008, a joint Industry/MNR initiative to find efficiencies in the compliance planning and monitoring (inspection and reporting) processes was initiated. Although recognizing that MNR and forest industry have both made considerable progress in implementing the compliance program, the review identified that opportunities existed to reduce "process" time and cost associated with all elements of the program. This is consistent with the principles and recommendations of the Process Streamlining Task Team which have given new direction to the forest operations compliance program.

A key objective, for both the MNR and the forest industry, has been to reduce duplication among existing systems and allowing those systems to draw information from one and another. Examples of alternative inspection information sources include, but are not limited to: Ministry of Environment summary reports for ground and aerial herbicide applications, aggregate summary reports for Forestry Aggregate Pits, tree marking inspections, bridge inspection reports and files, road and water crossing inventories and monitoring established as part of the FMPM requirements. The contribution of third-party certification systems to compliance need to be recognized and utilized to realize efficiencies and eliminate duplication.

Another important part of this process has been the move to ensure that forest management, planning, operations and compliance planning systems are fully integrated into the forest management plan in an efficient manner (i.e. there will be no stand alone documents).

A principle of the industry self-monitoring model is voluntarily taking remedial action when and where necessary and appropriate. For those companies registered or certified to ISO, CSA, SFI or FSC, full disclosure and reporting of all environmental and non-complaint incidents to a corporate authority is usually required. Additionally, this information is available to the certifying body or registrar as part of certification maintenance. Voluntarily taking remedial action and identifying preventative measures is reinforced by these systems.

The compliance program rationalization process undertaken in 2008 and 2009 has resulted in revised directives and procedures in this Handbook that embed these new directions in the planning, inspecting and reporting functions of the compliance program. Forest industry and MNR staff are asked to keep these directions in mind as they will continue to ensure forest operations are meeting the requirements and standards of the regulatory framework through a clear, focused and effective program.

Forest Management Directives and Procedures

07 Monitoring and Assessment

03 Forest Compliance Monitoring

FOR 07 01 03

Procedure

PROCESSING NON-OPERATIONAL CFSA INFRACTIONS

Approval date: April 1, 2014

Review date: April 2019

Contact: Forest Evaluation and Standards Section, Forests Branch – Policy Division

BACKGROUND

The purpose of this procedure is to provide a process and an administrative procedure for MNR staff to respond to an alleged non-operational infraction of the Crown Forest Sustainability Act. The procedure describes the sections of the Act to which the process applies and sets out a methodology. Since the infractions addressed by this procedure are non-operational, a Forest Operations Information Program report is not required and is not to be completed and submitted. The following table presents a list of the potential infractions not associated with the conduct of forest operations, and potential remedies for each presently available under the CFSA:

Section of CFSA	Requirement	Authority
	Sample Remedy Section(s) of CFSA	
Section 10(1) FOR 07 02 06	FRL holder required to prepare a forest management plan.	
	Section 18 - Person liable for costs of preparation Section 58(1)(b) if condition of licence, or Section 59(1)(c)	District Manager
Section 17(1) FOR 07 02 06	FRL holder required to prepare an annual work schedule.	
	Section 58(1)(b) if condition of licence, or Section 59(1)(c)	District Manager
Section 19 (FOR 07 02 01)	Failure by FRL holder to keep prescribed records.	
	Section 58(1)(b) if condition of licence, or 64(1)(g) if not licence condition.	District Manager
Section 20 (FOR 07 02 01)	Failure of FRL holder to conduct inventories, surveys, tests or studies.	
	Section 58(1)(g)	District Manager
Section 21 (FOR 07 02 01)	Failure of FRL holder to provide the Minister with planning or compliance information.	
	Section 58(1)(h)	District Manager

Section 25(3)	Failure to comply with Supply Agreement terms and conditions. Section 64(1)(h)	Courts (Enf. Br & Legal)
Section 28 (FOR 07 04 02)	Failure of FRL holder to comply with licence terms and conditions. Section 58(1)(b)	District Manager
Section 32 (FOR 07 04 02)	Failure of FRL holder to pay Area Charges unless exempted. Section 58(1)(b) where specified, or Criminal Code theft under CFSA Section 33.	District Manager or the Courts
Sections 33(1) & (2) (FOR 07 04 02)	Claiming ownership of Crown forest resources where not all the Crown charges have been paid in respect of those forest resources. Section 58(1)(b) where specified in the licence terms and conditions, or Criminal Code theft under CFSA Section 33..	District Manager
Section 41 (FOR 07 04 02) & (FOR 05 03 22)	Failure of FRL holder to pay Crown Charges. (See also Sections 49(1) & (2) and 51(5)) Section 41 – withhold licence or any approval. Section 44(2) – withhold approval to harvest. Section 58(1)(b)	District Manager
Section 49(1) & (2) (FOR 07 04 02)	Failure of FRL holder to pay forest renewal charges (Crown charges). (See also Sections 40(1) and 51(5)) Section 41 – withhold licence or any approval. Section 44(2) – withhold approval to harvest. Section 58(1)(b)	District Manager
Section 51(5) (FOR 07 04 02)	Failure of FRL holder to pay forestry futures charges (Crown charges). (See also Sections 40(1) and 49(1) & (2)) Section 41 – withhold licence or any approval. Section 44(2) – withhold approval to harvest. Section 58(1)(b)	District Manager
Section 53 (FOR 07 04 11)	Operation, construction, capacity increase or conversion of a facility without a licence, unless exempted. Section 58 (1)(e)	Director, Operations Branch

	O.Reg. 167/95 Sections 23 & 24 types A, C, D, E, F, H, and K types B, G, I or J	Minister Regional Director
Section 54,	Failure to follow terms and conditions of a facility licence.	
O.Reg. 167/95 Sections 20(1) & 26	Section 64(1)(h)	Courts (Enf. Br & Legal)
	O.Reg. 167/95 Sections 23 & 24 types A, C, D, E, F, H, and K types B, G, I or J	Minister Regional Director
Section 60 (FOR 07 03 08)	Obstructing the lawful seizure of forest resources. Section 64(1)(e)	Courts (Enf. Br & Legal)
Section 61 (FOR 07 03 08)	Obstructing the lawful entry on to or crossing of private land. Section 64(1)(e)	Courts (Enf. Br & Legal)
Section 62 (FOR 07 03 08)	Obstructing the lawful inspection of records required to be kept. Section 64(1)(e)	Courts (Enf. Br & Legal)

This procedure addresses:

- Determination and documentation of the infraction and MNR's actions,
- MNR's response(s),
- Notification and treatment of the suspected offender, and
- Determination and application of an appropriate remedy.

DETERMINATION

If it is believed that a non-operational infraction of the CFSA has occurred, it is critical to specify which requirement of the Act has been violated. This will be done by comparing the action taken or not taken, as the case may be, to the requirements under the Act (reference list above).

FORMAL STATEMENT OF INFRACTION

The first step is to develop a formal statement of the infraction that clearly indicates what the legislative requirement is and how that requirement was contravened. The statement should describe when and how frequently the contravention occurred and identify the alleged offender. This statement of infraction should also indicate what section of the Act was contravened, or identify other applicable legislation, that enables the Crown to respond.

DOCUMENTATION OF INFRACTION

The following information should be documented where possible:

- A detailed description of the alleged infraction including the nature, scale and scope of the activities involved;
- Date(s), time(s), and location (if applicable) of the alleged infraction (action taken or not taken in violation of the requirements);
- Dates and times of when first documentation was established (time/dates should be recorded throughout the documentation process);
- Persons (includes individuals or corporations) responsible for the action or non-action, leading to the infraction;
- Witness information, including names, phone numbers, addresses, and their connection to the infraction, if any;
- Files, documents, correspondence (including e-mail) and documented voice communications, invoices, approvals, licences, etc.;
- Applicable reports;
- Any other information pertinent to the infraction (this may include records of timelines, delivery or submission of information, visual and/or audio representations in any media).

PROCEDURE

Upon determination that a non-operational infraction may have occurred, and that MNR wishes to pursue a response under the CFSA, MNR staff should:

1. Develop the formal statement of infraction.
2. Initiate documentation and collection of all supporting and relevant materials;
3. Determine and document as background information what has been done to date with respect to the alleged infraction (e.g. negotiations to achieve compliance, temporary agreements for time or payment delays, etc.) and ensure it is accurately recorded;
4. Determine if there is adequate evidence for MNR to verify that an infraction has occurred and successfully pursue an appropriate remedy;
5. Where a decision to respond is taken, determine the appropriate remedy as per the Forest Compliance Handbook, Part VI with particular consideration of procedures FOR 07 06 01, 02, and 03;
6. Once a decision has been taken to respond, the suspected offender should be informed of the infraction and the Crown's intention to pursue applicable remedies.
7. Where a remedy is determined as per procedure FOR 07 06 03, proceed to apply as per the applicable direction in Part VI Forest Compliance Handbook procedures for that remedy and the appropriate delegated authorities for its application.

Forest Management Directives and Procedures**07 Monitoring and Assessment****02 Forest Compliance Information and Planning****FOR 07 02 01**

Procedure

INFORMATION, INVENTORIES, SURVEYS, TESTS, STUDIES AND RECORDS**Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Minister may require the holder of a forest resource licence to conduct inventories, surveys, tests or studies in accordance with the Forest Information Manual for the purpose of forest management planning or ensuring compliance with the Crown Forest Sustainability Act (CFSA) and the regulations. Licensees and former licensees must also provide information and records as may be required by the Minister.

If the licensee fails to conduct the inventories, surveys, tests or studies as required, the Minister may cause them to be conducted, and the licensee is liable to the Minister for all costs associated with the conduct of the inventories, surveys, tests or studies or if they fail to provide information required of them.

INVENTORIES, SURVEYS AND TESTS***PROCEDURE***

This procedure applies when the holder of a Forest Resource Licence refuses or fails to conduct the required inventories, surveys, tests or studies in accordance with the Forest Information Manual as directed by the Minister or fails to provide information as required under the Act.

When it becomes apparent to the District Manager* that the person responsible for conducting inventories, surveys, tests or studies will not meet the time frames as specified in accordance with the Forest Information Manual, the District Manager will:

1. Contact the person responsible (normally licensee) and agree on what course of action is to be followed. This agreement is followed by a letter confirming the course of action and specific progress dates.
2. If no agreement or progress has been made, the District Manager contacts the person responsible and advises them of the Minister's authority (Ref: Section 20(2) CFSA) and that the Ministry will commence the process on a date no later than 2 weeks from this contact. The person will also be advised that they will be responsible for the full cost of the process. This communication is confirmed with a registered letter signed by the Regional Director.

* Delegated Authority

INFRACTION

Holder of a Forest Resource Licence fails to conduct inventories, surveys, tests or studies in accordance with the Forest Information Manual.

REMEDIES

Section 20(2) CFSA - Minister conducts such requirements and costs are responsibility of licence holder.

Section 59(1) (b) CFSA – Suspend or cancel Forest Resource Licence

REFERENCE

After the holder of a Forest Resource Licence refuses or fails to conduct or fulfill the requirements in accordance with the Forest Information Manual, the Minister will direct them to be done and the licensee is responsible for the associated costs.

Fails to comply with Forest Information Manual. Senior Management level decision is required.

INFORMATION

The Minister may require the holder or former holder of a Forest Resource Licence to provide the Minister with information in accordance with the Forest Information Manual for the purpose of forest management planning or ensuring compliance with this Act and the Regulations (Ref: Section 21(1) CFSA). The provision of Forest Operations Information Program reports of compliance inspections is considered “information” under this section of the CFSA.

PROCEDURE

Where a licence holder fails to provide the required information (Ref: Section 21(1) CFSA), the District office is to contact the licensee by registered mail outlining the information requirements and the licensee's intentions thereto. The letter is to contain the date on or before which compliance is expected.

INFRACTION

A licensee or former licensee fails to provide information in accordance with Forest Information Manual.

REMEDIES

Section 58(1) (g) CFSA - Administrative penalty, maximum \$2,000.

Section 64(1) (g) CFSA - Court action
Maximum \$10,000.

REFERENCE

Where information is required for forest management planning, ensuring compliance with CFSA, for auditing or for reporting purposes:
- written notification by registered mail requesting intention to comply and date for compliance;
- refuses to comply; monetary penalty (Ref: Part VI – Remedies)

Utilized where information is necessary for Minister to meet legal obligations under the Act or terms and conditions of the Forest Environmental Assessment Declaration Order MNR-71.

RECORDS

The licensee or former licensee shall keep such records as are prescribed by the regulations. (Ref: Section 19 CFSA).

PROCEDURE

Where it is determined that a licensee is in non-compliance for failing to keep the required records, the District Manager will determine and apply the appropriate remedy as per Part VI of this Handbook.

INFRACTION

The licensee or former licensee fails to keep prescribed records.

REMEDIES	REFERENCE
Section 58(1) (h) CFSA - Administrative penalty maximum \$5,000.	Where records are required for auditing, monitoring, and/or reporting purposes. Monetary penalty. (Ref: FOR 07 06 06)

INSPECTION OF RECORDS

An employee or agent of the Ministry or a person appointed by the Minister may, at all reasonable times and on producing proper identification, inspect any records required to be kept under this Act. (Ref: Section 62 CFSA).

PROCEDURE

Where it is determined that a licensee is in non-compliance for failing to keep the required records, the District Manager will determine and apply the appropriate remedy as per Part VI of this Handbook.

INFRACTION

A person interferes with an employee or agent of the Ministry acting under section 62 (CFSA) when inspecting records required to be kept under the Act.

REMEDIES	REFERENCE
Section 58(1) (h) CFSA - Administrative penalty maximum \$5,000.	Where records are required for auditing monitoring, and/or reporting purposes. Monetary penalty. (Ref: FOR 07 06 06)

RECORDS

A person who removes forest resources from a Crown forest shall keep such records as are prescribed by the regulations. Reference: Section 46 CFSA

PROCEDURE

Where it is determined that a licensee is in non-compliance for failing to keep the required records, the District Manager will determine and apply the appropriate remedy as per Part VI of this Handbook.

INFRACTION

A person removes forest resources and fails to keep records prescribed by the Regulations.

REMEDIES

Section 58(1) (h) CFSA - Administrative penalty maximum \$5,000

REFERENCE

Where records are required for auditing and monitoring purposes.

Monetary penalty. (Ref: FOR 07 06 06)

Forest Management Directives and Procedures

07 Monitoring and Assessment
02 Forest Compliance Information and Planning

FOR 07 02 02
Procedure

COMPLIANCE AND ENFORCEMENT RECORDS

Approval date: April 1, 2010

Review date: April 2015

Contact: Forest Evaluation and Standards Section, Forests Branch – Policy Division

BACKGROUND

The retention of records pertaining to compliance and enforcement action for a person(s) or licensee, is important for:

- Public reporting and accountability through annual reporting of compliance by management unit.
- Maintaining compliance history of licensees to assist in determining future remedies
- Tracking compliance with Orders and other remedies
- To evaluate application of remedy and enforcement action for consistency and fairness
- To meet legal requirements of the Environmental Assessment Declaration Order MNR-71

The Forest Operations Information Program (FOIP) reports (Ref: FOR 07 03 04 & 05) require:

- An assessment of compliance status for all forest operations; and
- The inclusion of any remedy and enforcement action taken as a result of a non-compliance assessment.

All remedies applied in response to a non-compliance, which includes written warnings and the prescribed remedies under the Crown Forest Sustainability Act (CFSA) (penalties, Orders, offences, licence suspension/cancellation) and enforcement actions must be recorded and tracked using the FOIP system.

PROCEDURE

The Forest Evaluation and Standards Section in concert with Enforcement Branch will periodically review remedies applied under the CFSA to strive for fair and consistent application among licenses and across administrative boundaries within the Ministry.

Where the apparent application of direction and procedures is inconsistent, the appropriate District Manager(s) and Regional Director(s) will be notified to determine if the cause is ministry application or if the cause relates to repetitive occurrences on more than one management unit by a licensee.

Where unfair or inconsistent application is identified, the Manager, Forest Evaluation and Standards Section will determine the appropriate course of action in concert with the affected Managers in Regional Operations Division and Enforcement Branch.

Forest Management Directives and Procedures

**07 Monitoring and Assessment
03 Forest Compliance Monitoring****FOR 07 02 03
Directive****FOREST COMPLIANCE PLANNING****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**INTRODUCTION**

MNR regards a comprehensive compliance monitoring program (i.e. education, communication, planning, inspecting and reporting) as a key means of contributing to the sustainability of the forest resource. The forest compliance program seeks to encourage and ensure adherence to the standards and requirements that contribute to the sustainable management of Ontario's Crown forests by preventing loss or damage and ensuring appropriate remedial action.

Forest compliance planning is a component of Forest Management Plans (FMP) and Annual Work Schedules (AWS). It is required by the Forest Management Planning Manual and the Forest Information Manual, both of which direct users to the Forest Compliance Handbook and in particular this directive and procedure FOR 07 02 04 for that component of planning.

For the purposes of this directive, the reference to Licensee(s) includes the holder of a licence issued under Section 26 (1) or Section 27 (1) of the Crown Forest Sustainability Act and the Algonquin Forest Authority, where the licence or another contractual document imposes Compliance Monitoring (Ref: Glossary) responsibilities. This directive also provides guidance to Ministry of Natural Resources (MNR) staff responsible for compliance planning on Management Units where those responsibilities are not transferred to the licensee (Management Units managed by the Crown), and internally for MNR's forest compliance program delivery.

The forest compliance planning directive and procedure will assist Licensees whose licences require compliance planning for forest operations, and those having responsibility for compliance planning for forest operations (i.e. for MNR managed operations). They provide planning direction and the minimum standards with respect to content for compliance planning within FMPs and AWSs and the provision of related compliance information.

Inspecting is an integral part of the compliance monitoring program and can take many forms. Forest operations are required to be monitored for regulatory compliance through forest operations Compliance Inspections (Ref: Glossary). Operations are however also inspected through other processes such as operational supervision, forest certification system inspections and various audits. The combination of these monitoring activities contributes to a robust forest Compliance Monitoring program. While the program of Compliance Inspections will continue to be the required means for monitoring forest compliance, plans should identify all the means being used to monitor operations for compliance describing the interrelationship and contribution of all Compliance Monitoring components within the context of their risk management strategy.

The objective is continued maximization of compliance of forest operations activities to the regulatory framework.

This Directive is to be read in concert with procedure FOR 07 02 04 Forest Compliance Planning.

DIRECTION

INDUSTRY COMPLIANCE PLANNING

The Ten Year Compliance Strategy forms part of the text of Forest Management Plans for plans prepared for approval and implementation as described in the Forest Management Planning Manual. The Ten Year Compliance Strategy is approved as part of the FMP. Similarly, the applicable annual component of compliance planning is integrated into the text of the AWS and the annual compliance component will be approved when the AWS is approved. This constitutes the Licensee's forest compliance plan obligations.

Compliance planning describes the goals, objectives and scope of monitoring activities undertaken to oversee forest operations and the use of forest resources. It also addresses the analysis and management of risk in the design and planning of compliance monitoring programs associated with forest operations. Through compliance planning, Licensees will bring these elements together as part of their responsibility and accountability for their actions in the Crown forest.

MNR, as the regulatory agency, will ensure industry compliance through:

- assessment and approval of FMPs and AWSs;
- spot checking and auditing of field operations; and
- auditing of implementation of approved compliance plans and industry inspections.

Based on these elements, MNR will apply remedies and enforcement actions when and where appropriate.

MNR COMPLIANCE PLANNING

MNR district managers are responsible for compliance across all program areas within their districts, excluding enforcement planning. Forest Industry compliance planning by Licensees in the FMP and AWS provides input to meeting this responsibility for the forest program by identifying the industry's operations during the planning period, their strategic compliance goals and actions, their risk management strategies, and the activities to achieve them.

From analysis, evaluation and approval of the industry's compliance components and operational activities, and from review of past operations, districts will be able to plan for the allocation of staff and resources to ensure compliance obligations are met. An integral part of district compliance planning will be the application of MNR's risk analysis and management strategies related to its compliance monitoring of forest operations. Districts will be guided by and are to follow the compliance planning procedures for MNR as described in procedure FOR 07 02 04.

NOTE: MNR may be unable to share some or all of its compliance program with the industry, particularly if MNR is dealing with operations that pose compliance problems, is conducting investigations, or is planning special surveillance.

RISK MANAGEMENT IN COMPLIANCE PLANNING

As noted above, the introduction of a risk based approach to compliance planning provides for the consideration of other monitoring systems and inspection activities to supplement the required approach of Compliance Inspections and inspection reports. This may lead to a reduction in the number of required Compliance Inspections while retaining the full integrity of the Compliance Monitoring program.

Principles for the application of a risk management approach to compliance monitoring include:

- The approach to risk management must be clearly articulated, documented, and transparent.
- A risk based compliance planning approach may alter the level of formalized Compliance Inspection but will not affect the level of Compliance Monitoring.

- Inclusion of direction on risk management is a means to improve consistency of risk assessment and application. It is intended to be enabling and not prescriptive. It seeks consistent, defensible process(es) with outcomes appropriate to the planning area and operations.
- Risk management is a necessary tool for more efficient and effective Compliance Monitoring programs to ensure the wise use of limited human and financial resources.
- This direction and the associated procedures must take maximum advantage of existing processes and minimize the duplication, expansion or addition of process where appropriate.
- Tolerance of risk must be accepted and instilled into the planning and execution of Compliance Monitoring programs.

Risk is the degree of certainty of an outcome that results from a given decision or action. Also, risk is the potential for loss or damage resulting from a particular decision or action.

Risk Assessment is the process of determining the likelihood and magnitude of loss or damage, the efficacy of control mechanisms established to prevent loss or damage, and the feasibility of mitigation when loss or damage occurs.

Risk Tolerance describes the decision point where the amount of risk that can be endured is exceeded by the acceptability of the consequences of that event.

Risk Management is the balancing of assessed risks against expected benefits so the best decisions are made for a given resource allocation (people, equipment, money) and degree of tolerance.

The focus for forest compliance planning is achieving the best risk management decision in the planning and allocation of forest compliance monitoring resources given all the other mitigating measures that may have been put in place so that an appropriate balance is struck among:

- minimizing of the likelihood of non-compliant occurrences;
- minimizing the probability of the failure of monitoring systems to detect a non-compliance; and
- minimizing the amount of or adequately mitigating any loss or damage resulting from a non-compliance.

The application of risk management strategies and actions does not alleviate Licensees of the responsibility to ensure that all operations are compliant nor the accountability when they become non-compliant.

Forest Management Directives and Procedures

07 Forest Monitoring and Assessment**FOR 07 02 04**

02 Forest Compliance Information and Planning

Procedure

FOREST COMPLIANCE PLANNING**Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

This Procedure is to be read in concert with directive FOR 07 02 03 Forest Compliance Planning.

INTRODUCTION

The forest compliance planning procedure provides the minimum standards with respect to content for compliance planning within Forest Management Plans (FMP) and Annual Work Schedules (AWS).

For the purposes of this procedure, the reference to licensee(s) includes the holder of a licence issued under Section 26 (1) or Section 27 (1) of the Crown Forest Sustainability Act and the Algonquin Forestry Authority, where the licence or another contractual document imposes compliance monitoring (Ref: Glossary) responsibilities. This directive also provides guidance to Ministry of Natural Resources (MNR) staff responsible for compliance planning on management units where those responsibilities are not transferred to the licensee (management units managed by the Crown), and internally for MNR's forest compliance program delivery.

The procedure is consistent with and further describes the requirements of the Forest Management Planning Manual (FMPM) and the Forest Information Manual (FIM). The Ten Year Compliance Strategy described in section 4.7 of Forest Management Plans is to be prepared for approval and implementation in 2015 and beyond as described below. These directions become effective for Phase II planned operations in 2015.

For those who wish to take advantage of the revised risk based compliance planning requirements prior to the proposed implementation dates, they may amend their current plans to incorporate them consistent with amending requirements in the FMPM.

Where provided for by the approved FMP, the annual component of compliance planning will be integrated into the text of the Annual Work Schedule (AWS) for approval and implementation in 2014 and beyond as described below.

PROCEDURE

The numbering used in this procedure is consistent with the numbering used in the Forest Management Planning Manual, 2009, to describe planning requirements. This numbering is subject to alteration to ensure consistency with future editions of the Forest Management Planning Manual.

TEN YEAR FOREST COMPLIANCE STRATEGY

FMPM, PART B SECTION 4.7 MONITORING

SECTION 4.7.1 FOREST OPERATIONS COMPLIANCE MONITORING (INSPECTIONS AND REPORTING)

FOREST MANAGEMENT PLAN CONTENT

The ten year compliance strategy is to be developed for the same planning period as the Forest Management Plan (FMP) for the forest and will be a component of the FMP. Where items have been addressed elsewhere in the FMP, the plan author should reference those statements and not repeat the information.

Readers are referred to the section below on MNR Forest Compliance Planning for the requirements of MNR's contribution to the forest compliance component content of forest management plans.

4.7.1.1 COMPLIANCE GOAL

Forest companies are to identify in the forest management plan, *their* goal for compliance that is consistent with the provincial Goal for forest compliance, as stated in A Forest Compliance Strategy, 2007, which is,

"To encourage and ensure adherence to rules and requirements which contribute to the sustainable management of Ontario's forests."

4.7.1.2 BACKGROUND

There is a close relationship between forest management planning and compliance planning; therefore, both activities are to be undertaken concurrently. The background necessary to support compliance planning is to be addressed in the text of the FMP and should describe among other things:

- The purpose of the compliance strategy within the FMP and the overall context of the Compliance Monitoring program as it applies to the licence area /management unit;
 - e.g. The compliance strategy will assist in improving operating practices. It will guide and direct all company, overlapping licensees, shareholders, and contracted activities to ensure compliance with the regulatory framework.
- Past, present and anticipated compliance problem areas and issues, both in the 10 year strategic component of the FMP and in the annual compliance component of the AWS, including a review of compliance history for trends;
For example:
 - i. During the previous plan period, the company experienced difficulty in establishing acceptable water crossings. A series of joint site compliance inspections (Ref: Glossary) with the MNR and a training course on the installation of water crossings with installation personnel resulted in significant improvement.
 - ii. The use of mechanized logging equipment on steep slopes and rocky outcrops will present operating problems for the next few years that could result in utilization issues (e.g. leaving merchantable timber standing, high stumps).
 - iii. As wood flow from the unit becomes more complex, involving more species and destinations, the potential for wood measurement infractions increases. Company staff will be trained and updated to meet these new challenges.

- iv. The licensee has operated in the past with high standards. Overlapping licensees and contractors will be monitored to ensure operating standards are maintained.
- v. Trespass problems during night operations have been eliminated by incorporating an operating policy whereby perimeter cuts must be done first and only in daylight hours.
- vi. A summary and assessment of Forest Operations Information Program (FOIP) Compliance Inspection reports from previous year's operations indicates the following trends and areas requiring improvement.

4.7.1.3 COMPLIANCE OBJECTIVES

Licensees are to set compliance objectives that focus on attaining their stated compliance goal(s). Compliance objectives are to have achievable ends or results expected over the course of the 10-year strategy.

Compliance objectives are to be set on the basis of problem/issue identification, legislative requirements, Forest Management Plan direction and provincial/local compliance priorities. Compliance objectives should be developed for such things as:

Resource protection

- To make the wellbeing of the forest ecosystem a priority in compliance planning and implementation.
- To ensure that forest operations (access, harvest, renewal and maintenance activities) will not impair or negatively affect forest sustainability.
- To continuously evaluate the impact of forest operations on the natural environment and take all necessary corrective action to mitigate impacts and avoid future impacts.
- To contribute to the protection of the forest against fire, disease and insects through prevention and remedial action.

Overcoming historical compliance problems

- To actively monitor forest operations and undertake analysis and evaluation of results and take corrective action as required.
- To proactively overcome compliance problems.

Continuous improvement

- To develop operating benchmarks (calibration) in forest operations to measure continuous improvement and performance.
- To develop and implement an action plan to remedy recurring problems.
- To develop and contribute to a compliance database with the MNR to assist in performance evaluation.

Communications

- To maintain and develop new methods that ensures continued open and productive communications between the licensee(s) and the MNR regarding compliance of forest operations.
- To ensure compliance reporting reflects the nature and complexity of forest operations in a thorough and timely manner.
- To develop and implement methods that ensure MNR is continually apprised of the current status of operations.

4.7.1.4 RISK ANALYSIS AND MANAGEMENT

Compliance plans are to describe the overall risk management strategy that is being adopted and the evaluation of the analyzed risks, along with the associated accepted risk tolerance levels (as risk is described in FOR 07 02 03). This will include:

- An assessment of the inherent risks (environmental and operational) associated with the forest operations proposed during the plan period.
- The operational control system(s) (e.g. supervision, standard operating procedures, forest certification systems) that will be used to minimize the inherent risks.

- The likelihood and magnitude of loss or damage if control system(s) fail and mitigation strategies to be used in response.

Risk management strategies should be consistent with historical operational performance, the nature of inherent risk characteristics of proposed operations, and the systems designed to detect, control and mitigate risks. Acceptable risk management strategies will also identify reasonable complementary risk tolerance levels.

The processes described in the FMP to carry out analysis, establish and maintain control systems, ascertain tolerance levels, and ultimately define risk management strategies will be determined locally consistent with the business and environment of the company or MNR writing the plan. During plan approval, MNR will assess the plan author's risk management strategies.

Existing management systems and inspection activities in place such as forest certification, quality control, and operational and supervisory procedures, and their associated inspection processes should be considered to complement Compliance Inspections (for which reports are submitted to the Forest Operations Information Program (FOIP)). Where the risk management strategies propose employing such systems in addition to the Compliance Inspections and FOIP to monitor and track compliance of operations, compliance plans must clearly describe the nature of these systems, and the extent and rationale for their use demonstrating how they contribute to the risk management system and deliver on forest operations compliance.

The following are some documents that present examples of risk analysis, evaluation and management strategy approaches:

- Integrating Risk in MNR – Risk Management How To Guide;
- Risk Management Framework for the Government of Ontario, Ministry of Finance;
- Risk management in the OPS (complements the above framework), Office of the Provincial Controller;
- Best Practices Module Risk Management, British Columbia Museums Association; and
- Lessons Learned on Planning and Scoping for Environmental Risk Assessments, U.S. Environmental Protection Agency.

4.7.1.5 STRATEGIES AND ACTIONS

Compliance strategies and actions, to deliver on compliance objectives, are to be developed for the ten-year period of the FMP. They are to be reviewed annually and updated/refined as required in the AWS to ensure on-going relevancy and continuity with stated objectives. Forest compliance strategies and actions will generally address such things as:

- risk management;
- prevention measures e.g. education, training, operating procedures, communication and information dissemination;
- approaches to compliance monitoring (how it is to be done), analysis, reporting (how it is reported through the company hierarchy) and documentation (use of notifications and FOIP);
- Compliance Inspection and other monitoring techniques for various conditions (e.g. site inspection for high values, use of aerial inspection for boundaries, use of SAP photography, use of existing systems (certification, bridge assessment, etc.));
- corrective action practices involving environmental values; e.g. when, under what circumstances, and who will undertake corrective or mitigation measures (contingency plan);
- requirements for follow-up (e.g. how non-compliance is dealt with internally); and
- changes in provincial policy direction.

Strategies are stated expressions of direction or commitment to action for specific objectives. Actions are the means by which the strategy is achieved and should generally be measurable and time limited. They may be designed to meet a number of objectives and/or may be repeated under multiple objectives. The following is one example of a strategy and supporting action designed to implement a specific objective for “effective and efficient delivery of a compliance program”:

STRATEGY

“Ensuring that compliance activities are delivered efficiently, effectively and in a timely manner” by,

ACTIONS

conducting a risk analysis of forest operations to guide the assignment of compliance monitoring resources by:

- assessing the environmental and operational characteristics of sites and operational systems for those sites to establish a level of non-compliance risk
- evaluating standard operating procedures as risk control mechanisms
- evaluating the contribution of monitoring conducted for environmental management and forest certification systems to assess regulatory compliance
- evaluating staff education and training programs for non-compliance risk awareness

promoting open communication among company staff, licensees, shareholders, contractors, Ministry staff and others by:

- increasing communications and partnership among forest users
- encouraging informed feedback on forest operations
- communicating plans, actions, successes and failures
- reflecting the importance of compliance in all communications
- ensuring a common understanding of compliance requirements by all forest workers and partners

ensuring the best use of company, contractor and ministry staff by:

- applying risk management decisions to the allocation of contractors and company staff
- confirming respective roles and responsibilities
- combining resources where appropriate
- making compliance monitoring a daily routine of employees/workers having that responsibility
- closely following the monitoring schedule of this plan

providing a succession plan and opportunities for staff to advance into the compliance monitoring program to ensure continuity in program delivery by:

- proactively identifying staff who require compliance Inspection training and certification
- promoting opportunities with technical workers
- promoting job sharing and mentoring opportunities

This approach would be repeated for each compliance objective supporting the compliance goal(s) in the plan.

4.7.1.6 ROLES AND RESPONSIBILITIES

The ten year compliance strategy is to identify, organizationally, who (position) will be responsible for various forest operations compliance activities on the licence area such as:

- compliance plan preparation and updates (*e.g. company staff, chief forester, consultant*);
- identification of certified compliance inspector(s) positions for compliance monitoring for all activities on the entire management unit (to be updated annually) and who (a licensee position) will “review and approve” inspection reports for submission to the MNR database (*e.g. management forester, operations forester or manager*);
- who has responsibility for prevention, monitoring and reporting (*e.g. responsibility for these compliance functions will be with the supervisor in charge of each operation or activity*);
- who is responsible for ensuring prevention/mitigation action and follow-up (*e.g. manager of operations/operations supervisor for overall preventative/mitigation action and each certified inspector has the authority to direct immediate preventative action where warranted*);

- who is the company representative for compliance matters (e.g. *manager of forest operations/forest management superintendent*); and
- who has training responsibilities and which functions are to be trained (e.g. *technicians, cutters, road maintenance*).

Since the organizational distribution is likely to change over the term of the FMP, it will be important to revisit this element during the five year plan assessment. Any changes occurring on a year over year basis are to be documented in the AWS.

On management units where there are no licence delegating planning responsibilities or where the compliance planning obligation is not otherwise delegated, the Crown retains any and all undelegated planning responsibilities. The compliance roles and responsibilities for compliance monitoring (Ref: Glossary) including compliance inspection (Ref: Glossary) are to be identified in the MNR District Compliance Plan using this document as guidance.

4.7.1.7 NOTIFICATION OF THE STATUS OF AN OPERATION

The forest industry is required to notify the MNR as to the status of forest operations (Operational Status Notification) as described in the FOR 07 03 05 under Industry Notification of Operational Status. At a minimum the forest industry will notify the MNR when operations are about to commence (Start-up Notice), when operations are to be temporarily stopped but are not yet finished (Suspended Notice) and when areas of a Harvest operation are completed sufficiently to be released to MNR for inspection prior to the commencement of a renewal operation such as site preparation (Release Notice).

Notification that an operation for a compliance reporting area (block) is complete is normally accomplished by filing a "completed" compliance inspection report in FOIP. In circumstances where the compliance monitoring risk management strategy identifies that no compliance inspection is planned to be conducted and FOIP report filed, then a written completed notice must be filed.

All Notices are to be to the minimum standards described in FOR 07 03 05 and are to be in writing. The method is to be described in the FMP (e.g. may be done using e-mail or by such other means as the licensee and the MNR may agree on). The methods selected must be compatible with the applicable MNR office's capacity to receive and utilize them. Timelines for notices are prescribed in FOR 07 03 05.

Plan authors will describe the licensees' commitment to provide these notifications within the strategies and actions of the ten year compliance strategy. Any additional details or procedural changes to notifications will be described in the compliance component of the AWS as required. Plans, approved under the FMPM 2004 and still in force when this procedure is approved, that make no commitment to provide these notifications, may describe and implement these requirements through their AWS if it is consistent with the approved FMP or the FMP is amended in accordance with the FMPM (as noted above).

The local MNR and the licensee will have to agree on the means so that MNR can develop and maintain an adequate tracking system to follow suspended, released and completed operations. Tracking is also required to ensure suspended operations meet the requirements of the suspended notice. This is to ensure FOIP reports or completed notices are filed for all harvested areas upon completion of the compliance reporting area where portion(s) may have been previously released to facilitate renewal activities.

4.7.1.8 PREVENTION, AVOIDANCE, AND MITIGATION

It is the responsibility of forest managers to take action to prevent and avoid potential operational issues in a decisive, timely and appropriate manner, thereby mitigating any loss or damage, or correcting the situation and ensuring a compliant status.

The 10 year strategic level of compliance planning in the FMP is to provide direction to company officials on what processes/notifications are to be undertaken for various scenarios that might lead to non-compliance. The plan will also contain a description of actions that will be taken to prevent recurrence of the non-compliance.

The following are typical examples:

- Emphasis will be on prevention of undesirable activities or occurrences and mitigation of any loss or damage. The root cause of an undesirable activity or event will be determined and appropriate action prescribed. Action will be consistent with the potential for non-conformance to legislation and the ability to adapt so that non-compliance does not become a recurring problem. This positive action will be delivered by forestry industry staff and will focus on learning and adapting to ensure that it does not occur again.
- Ensuring that action occurs will be the responsibility of the Licensee. In areas with high values, such as waterways and wildlife habitat, the MNR will verify the identified operational issue. MNR may then determine and assign corrective action as appropriate. In instances where the Industry inspector determines a situation to be clearly non-compliant, the direction will be that work will stop on that part of the operation and the inspector will submit a report of an operational issue.
- Where any Industry operating personnel, during ongoing monitoring of operations, identify a situation they believe could be an operational issue(s), they will undertake the following actions:
 1. If they believe it is a violation of the approved plan or a threat to the environment, they will immediately stop the operation and take the necessary steps to stop further possible non-compliance/harm; and
 2. They will report the situation to the company's (identify the company position responsible) certified inspector who will conduct a formal compliance inspection. The certified inspector will determine if the situation is a violation of an approved plan or a threat to the environment and what further action to take; and
 3. If the situation cannot be immediately corrected, the company's certified inspector will submit a report in FOIP that documents their findings and an operational issue. They will also identify the issue to the MNR and other regulatory agencies as appropriate.

4.7.1.9 COMPLIANCE REPORTING AREA(S)

The Compliance Strategy in the FMP must describe the direction on how forest operations will be grouped into Compliance reporting area(s) (CRA) for each operation type (access, harvest, renewal and maintenance), based on the characteristics of the operations and complexities of each forest. In simple terms it describes the basis on which operations, often termed blocks, will be either aggregated, subdivided or equated to CRAs. It should also indicate how CRAs will be identified (named, numbered or a combination). Below is an excerpt of the definition of a compliance reporting area, (see the Glossary for the full definition).

A compliance reporting area is the area of land described for the purposes of planning and implementing forest compliance inspections. It also forms the geographic basis for which a forest operations compliance inspection report will be submitted to the Forest Operations Information Program or a written Completion Notice will be filed with the Ministry of Natural Resources. How forest operations are aggregated or subdivided and how they are identified (e.g. named or numbered) for the purposes of compliance reporting areas must be described in the forest management plan and/or the Annual Work Schedule.

The following are examples of wording used in an FMP to describe compliance reporting areas:

- Grouping of renewal activities for the purpose of reporting on silviculture activities. All sites scheduled for tree plant during an AWS period will be a compliance reporting area and be inspected as operations progress. A final inspection report for the entire tree planting program will be entered into FOIP within 20 working days of the completion of the last tree planting site.

- Grouping of harvest blocks in close proximity that will be harvested by the same contractor. (In the AWS, sample wording such as, “The following harvest blocks (listed by name or number) located within basemap 42556 will be inspected and reported on as Compliance reporting area #1” would be included).
- In all areas where proposed harvest blocks exceed 500 hectares, these blocks will be broken down into compliance reporting areas of less than 500 hectares. Each compliance reporting area will be reported or notified on separately within the timelines described in FOR 07 03 05.
- Multiple crossings on a forest access road may be grouped within an Access Report. Where multiple water crossings are aggregated under one access report, a start-up notice will be provided for each crossing and a compliance inspection report will be filed in FOIP for this type of CRA. Where water crossings are not aggregated, a completed notification may be used consistent with the compliance monitoring risk management strategy and its application in the approved forest management plan.

NOTES:

For harvest operations, a compliance reporting area cannot exceed 500 hectares in size and may exclude unallocated interconnecting area between blocks, as per the definition in the Glossary.

For compliance reporting areas that incorporate multiple water crossings in an Access report, a Compliance Inspection must be done and a report submitted in FOIP within 10 days of the completion of the final water crossing. Multiple water crossings will only be aggregated where they are part of a single Access operation. Where multiple crossings are aggregated, a Start-up notice must be submitted for each crossing. Licensees or MNR can impose additional conditions and limitations where reasonably required. It is a requirement that for any water crossing installation where an operational issue arises, a Compliance Inspection be completed for that crossing, and a report filed in FOIP, as prescribed in FOR 07 03 05.

4.7.1.10 MONITORING COMPLIANCE OF FOREST OPERATIONS

The timing and frequency of monitoring activities conducted during actual forest operations will be described within the Strategies and Actions to support the achievement of compliance objectives developed from the Forest Management Plan. Reference should also be made to the directive and procedure on compliance inspecting and reporting (FOR 07 03 04 and FOR 07 03 05).

Plans will acknowledge that any time an operational issue is identified, a compliance inspection will be carried out and a report of the inspection filed in FOIP as per FOR 07 03 05.

Unusual or unique operational situations and their associated Compliance Monitoring approach must be described within the FMP, so that inspection and reporting requirements are clear. Further details will be laid out in the AWS so that they are clear to both the MNR and industry inspectors.

Each licensee, based on their individual reporting requirements and the complexities of their FMP, **may** opt for additional reporting requirements. The following are examples of what might be included:

- For harvest blocks classed as high productivity upland mixed wood, a Licensee may choose to reduce their compliance reporting area size to 100 hectares so those blocks can be inspected and approved for renewal operations to minimize potential competition through prompt start-up of site preparation immediately after notification by MNR.
- Licensees that utilize the two pass harvest method and elect to release a portion of the harvest block before the next stage harvest operation begins.

Licensees will describe their organizational compliance inspecting and reporting process(es). Detail concerning the identification of inspectors and approvers is left to the AWS and updated annually (see 3.2.7.7 below). Any other special considerations related to monitoring compliance of forest operations should be indicated here.

ANNUAL COMPONENT

FMPM, PART D SECTION 3 MONITORING AND ASSESSMENT

ANNUAL WORK SCHEDULE CONTENT

The Forest Management Planning Manual, under Part D requires that the annual component of the compliance strategy for monitoring of forest operations (inspecting and reporting) is to be described in the Annual Work Schedule as laid out here.

The annual compliance component of the AWS is to be prepared in conjunction with, and be part of the text of the AWS and is approved when the District Manager approves the AWS.

The annual compliance component of the AWS will describe any changes or fine tuning to the Compliance Monitoring program identified in the Strategies and Actions and supporting details not laid out in the FMP. It will also describe additions or adjustments proposed based on operational complexities for the operating year.

Since many of the compliance components of the AWS remain unchanged from year to year, much effort can be saved by drawing from the previous year's AWS. Where components have changed, they must be documented in the current AWS.

3.2.7.1 ANNUAL COMPLIANCE COMPONENT

The Licensee is responsible for establishing Compliance Monitoring program and the level of their Compliance Inspection effort on the forest in accordance with the approved FMP. The Compliance Monitoring program comprises all means by which operations are inspected for compliance and, includes inspections conducted as part of operational supervisory and forest certification monitoring activities in addition to Compliance Inspections. This will be consistent with any risk management strategy adopted in the approved Forest Management Plan. They will be responsible for establishing the level of Compliance Monitoring required on each particular compliance reporting area and the reporting of its compliance status, whether by submission of a FOIP report or a Completion Notice. Licensees continue to be responsible for the compliance of all operations regardless of the level of inspection effort.

The primary purpose of the annual compliance component of the AWS is to note the Compliance Monitoring program for the current year's operational portion of the FMP. It is also where any changes and additional details specific to that year's operations are described to provide clear understanding for both MNR and the Industry. These changes and details may be necessitated by operational complexities, recent compliance history, and implementation experience. The following will assist in determining the annual Compliance Monitoring program.

3.2.7.2 TIMING AND FREQUENCY

The timing and frequency of compliance monitoring activities conducted during forest operations will be directed by the strategies, including the risk management strategy, in the approved Forest Management Plan. The annual compliance component of the AWS is to address situations unique to this year's operations not covered in the approved FMP. Reporting will be adjusted accordingly and described within the compliance component of the AWS.

3.2.7.3 SAMPLING INTENSITY

MNR and Industry inspectors will inspect operations as described by their risk management strategy, to confirm and report on the compliance status with the FMP, AWS and legislation applicable to the forest operations. Sampling intensities for the various monitoring methods used (e.g. operational supervisions, forest certification assessments), including compliance inspections, will be determined from risk assessments and based on the monitoring processes involved (e.g. aerial, ground).

3.2.7.4 COMPLIANCE PERFORMANCE REVIEW

The licensee is to review the past year's compliance performance and identify and document any resultant revisions to the compliance priorities.

3.2.7.5 NOTIFICATION OF THE STATUS OF AN OPERATION

Where the method and frequency of notifications has not already been identified and agreed to in the approved FMP, and amendment of the FMP is not required to allow for it, the detail may be laid out in the annual compliance component of the AWS (e.g. E-mail, excel spread sheets, GIS updates, web postings, etc.). The methods selected must be compatible with the applicable MNR's capacity to receive and utilize it. Notification requirements and timelines must be clear for both the industry and MNR.

Where the FMP has been amended to account for revised risk based compliance planning requirements, the use of Completed Notices should be addressed in the AWS consistent with the Compliance Monitoring program and its risk management strategies.

3.2.7.6 ROLES AND RESPONSIBILITIES

The compliance component of the AWS is to identify any changes to the organizational distribution of responsibilities for forest operations compliance activities on the licence documented in the FMP as described under 4.7.1.6 above. If there have been no changes, this component does not need to be addressed.

If during implementation of the Annual Work Schedule a compliance position changes the licensee will notify the MNR.

3.2.7.7 COMPLIANCE REPORTING AREAS

Where necessary supporting detail/clarification has not been outlined in the approved FMP, it is to be included here in the AWS. For example the names/numbers and the geographic area for each CRA not known at the time of FMP planning would be identified. It could also include identification of operations that carry over from one approval year to the next.

Planners must ensure that notifications and forest operations inspection reporting for CRAs meet the minimum standards as described in FOR 07 03 05.

NOTE: On management units where no licence or other contractual document has been granted that imposes Compliance Monitoring responsibilities and the Crown retains all planning responsibilities, the compliance roles and responsibilities for Compliance Monitoring are to be identified in the MNR compliance component of the AWS using this document as guidance.

MNR FOREST COMPLIANCE PLANNING

FOREST MANAGEMENT PLAN COMPLIANCE RESPONSIBILITIES

The Forest Management Planning Manual (Part B, Section 4.7.1) requires that MNR provide text to the plan author describing MNR's district program for auditing forest operations and conducting forest operations inspections (Compliance Inspections – Ref: Glossary)). This represents MNR's FMP Compliance Monitoring (Ref: Glossary) planning obligations. For the risk based planning approach, MNR districts should, consistent with FMP renewal and amendment scheduling, incorporate their risk management strategies along with their proposed Compliance Monitoring program into the FMP.

ANNUAL DISTRICT FOREST COMPLIANCE PLAN

MNR districts are responsible for establishing the level of their Compliance Monitoring (including Compliance Inspection) effort for active operations on the forest. Ultimately MNR, through the Districts, continues to have responsibility for compliance monitoring regardless of the level of compliance inspection effort.

The primary purpose of the annual district forest compliance plans is to outline the Compliance Monitoring plan for the applicable year of the FMP implementation. It is where the district will rationalize the distribution and work effort of its staff and resources using a risk based approach. It is also where additional details specific to that year's operations are described to provide clear understanding for MNR staff. These details describe the operational complexities, recent compliance history, and implementation experience.

It is recommended that MNR staff use the compliance planning developmental direction to licensees described above and in FOR 07 02 03 to support their planning efforts.

Since the district's Compliance Monitoring program is predicated on the licensee's forest operational activities and their proposed operations, the Licensee's Compliance Monitoring program as laid out in the AWS will be an essential input to the District's compliance plans for that year. The forest Compliance Monitoring plan, regardless of form, is however expected to address elements similar to those noted above for Licensees. This can include but is not necessarily limited to:

- Compliance performance review
- Risk management strategies and decisions
- Timing and frequency of monitoring activities
- Sampling intensities
- Roles and responsibilities of District Staff
- Management of operational status notifications
- Integration with other compliance monitoring activities

District forest compliance plans can be independent documents or they can be part of an integrated district compliance monitoring plan and program that covers other natural resource program areas.

MNR may be unable to share some or all of its compliance program with the industry, particularly if MNR is dealing with operations that pose compliance problems, is conducting investigations or is planning surveillance.

07 Monitoring and Assessment

02 Forest Compliance Information and Planning

FOR 07 02 05

Procedure

ENHANCED COMPLIANCE ARRANGEMENT FOR QUALIFIED OVERLAPPING LICENSEES**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**NOTE TO ALL USERS:**

The Guideline for Forest Industry Compliance Planning and the direction and procedures required under it, including those that were also incorporated into the Forest Compliance Handbook, have been amended and re-formed into the following procedures:

- *FOR 07 02 03, Forest Compliance Planning, the Directive;*
- *FOR 07 02 04, Forest Compliance Planning, the Procedure;*
- *FOR 07 02 05, Enhanced Compliance Arrangements;*
- *FOR 07 03 04, Forests Operations Inspection and Reporting, the Directive; and*
- *FOR 07 03 05, Forests Operations Inspection and Reporting Procedures.*

All requirements made by and enforced through the Guideline for Forest Industry Compliance Planning, including those that were incorporated into the Forest Compliance Handbook, are continued and now made by and enforced through these directives and procedures. In other words, these directives and procedures now constitute the Guideline and the applicable portions of the Handbook.

All references, notations and citations in the Forest Information Manual, Forest Management Planning Manual, the Forest Operations and Silviculture Manual, and any other documents that refer to the Guideline for Forest Industry Compliance Planning now refer to these directives and procedures.

Further, the Guideline has been incorporated into the Forest Compliance Handbook by means of these procedures.

BACKGROUND

A Sustainable Forest Licence (SFL) requires the licensee agrees to deliver a comprehensive forest operations compliance program on the forest management unit. This responsibility includes: compliance planning, monitoring, inspecting and reporting operational compliance; prevention, education and training of its workers and of any overlapping licensee (OL).

The Ministry has developed a process to put in place a joint responsibility model known as an Enhanced Compliance Arrangement to address local issues and to provide increased autonomy to certain **qualified** overlapping licensees, while still maintaining oversight responsibilities by the SFL. To qualify, an OL must demonstrate to the satisfaction of the Ministry of Natural Resources (MNR), by the process below, that they are suitably capable of monitoring and supervising their own operations and employ certified inspectors.

APPLICATION:

- 1) This model and process applies only to SFL holders with qualified OLs as per this procedure and its conditions.
- 2) Where an eligible SFL holder and an OL wish to enter into an Enhanced Compliance Arrangement, a written application must be made to the Director, Forests Branch, Ministry of Natural Resources.
- 3) The application must outline the changes proposed and signify both parties' acceptance of the changes in responsibility.
- 4) Only two situations exist where the Enhanced Compliance Arrangement will be considered:
 - 1st. Where an OL holds an SFL themselves in the same company name but on another management unit demonstrating they have the resources and capability to undertake additional and direct compliance responsibilities, including self-monitoring and reporting.
 - 2nd. Where a large OL does not hold an SFL, but has demonstrated an ability and have the resources to effectively assume additional responsibilities. Characteristics of qualified OLs include, but are not limited to:
 - a. holding one large or many Forest Resource Licences on one or more forest management units
 - b. having professional planning, forestry and technical staff
 - c. having certified Forest Operations Compliance Inspectors or the means to have and acquire certified inspectors
 - d. having the financial resources to hold a SFL themselves
 - e. a proven ability to undertake various forest management operations directly and/or through the use of contractors

PROCEDURE:

1. Upon receipt of the joint written request, the Director, Forests Branch (FB) will consider the application based on:
 - Facts and information provided in the letter of request from the SFL/OL (e.g. information indicating that the OL is also the holder of an SFL on another unit or demonstrating the capability and resources to assume increased compliance responsibilities),
 - A copy of the revised/updated SFL compliance planning component(s) of the FMP outlining changes in responsibility and monitoring schedules for the entire SFL,
 - A copy of all revisions necessary to reflect the new arrangement to the SFL/OL Business Agreement where appropriate,
 - A complete description of the OL capability (resources) and number of certified Compliance Inspectors of the OL. The candidate OL **must** have certified compliance inspectors, either on staff or under contract,
 - A description of the size, location and complexity of OL area and its operations,
 - A summary of OL compliance history for the preceding five years (at least three of which must have been operating years),
 - A summary of the results of Independent Forest Audits as it pertains to compliance by the SFL and the OL, and,
 - Any other relevant information in support of the application.

The lead District for the SFL will also provide its assessment and evaluation of the proposed Enhanced Compliance Arrangement and of the SFL holder and OL in this regard.

Note: The Independent Forest Audit process includes the requirement for a review and analysis of the performance, efficiency and effectiveness of companies eligible for these changes in responsibility.

No Enhanced Compliance Arrangement responsibilities will come into effect until approved by the Director, Forests Branch, and the applicable Annual Compliance Plan has been approved by the MNR District Manager.

DECISION:

After assessing this and any other information deemed relevant, the Director, Forests Branch, may approve the change in SFL/OL compliance responsibilities (See Table 1). Licensees (SFL and OL) and affected Ministry district offices will be advised in writing of the director's decision. On the basis of receiving any future reviews, assessments or audit reports on the Enhanced Compliance Arrangement, the director may amend or rescind the approval.

TERMS AND CONDITIONS:

1. Where the director approves an Enhanced Compliance Arrangement, it will be in effect for a period of 1 year at which time the MNR District and the Coordinator, Forest Operations Compliance, will reassess the arrangement and formally recommend continuation or changes to the status which will be confirmed by the director.
2. MNR districts will monitor and assess the Arrangement on an ongoing basis, including:
 - That both SFL and OL compliance responsibilities are clearly described in the SFL compliance plan prior to its approval;
 - Annual review the SFL/OL conditions and implementation of those conditions;
 - Actively monitor (audit and spot-check) the quality of OL inspection reports
3. Districts may make recommendations to the Director, Forests Branch, for continuation of the Arrangement with or without modification, or for cancellation of the Arrangement. Any such recommendations will be made prior to approving the annual compliance component of the SFL AWS.
4. SFLs will continue to maintain overall forest management responsibility for the unit, the development and maintenance of the compliance planning components, including:
 - an oversight role for the monitoring of the compliance planning and its implementation,
 - ensuring all aspects of sustainability on the unit in accordance with the approved forest management plan, and
 - providing for the education and training of its workers and those of all OLs on their unit.
5. Where Overlapping Licensees have been granted responsibility for inspecting and reporting on their operations, the SFL will not have responsibility nor be held liable for non-compliances related to forest operations of the Overlapping Licensee.
6. The qualified overlapping licensee will not be responsible for any non-compliance arising from any miscommunication between the SFL and the MNR.
7. Qualified OLs **must**, at all times, have and maintain, or maintain under contract, certified compliance inspectors.
8. The SFL will include a provision in their ten year compliance strategy (in the FMP) whereby the performance of the qualified OL will be assessed annually by the SFL. This is to include an analysis and evaluation of compliance in terms of:
 - main activities where issues occurred (e.g. AOC infractions, water-crossings, trespass, utilization, etc.)
 - remedies applied to non-compliances
 - actions taken by the OL (e.g. repair, training, meetings with operators)The SFL is to include this assessment in the compliance planning component of the AWS and to describe any changes in oversight by the SFL, adjustments to monitoring frequency and intensity, and any other changes necessary to improve operational compliance.

9. Where a qualified OL is not performing to an acceptable standard, the SFL holder must require the OL to develop, implement and document a process of training and other remedial/corrective measures to improve performance to an acceptable level including addressing and preventing non-compliance events.
10. If any party (the SFL, the OL or the MNR) is dissatisfied with the implementation of the Enhanced Compliance Arrangement, that party can make representations to the Director, Forests Branch. The Director will review the situation and may facilitate the parties in seeking resolution and/or make a final decision.
11. The Director, Forests Branch, may cancel or modify these terms and conditions or an approval related to the Enhanced Compliance Arrangement for an OL and SFL. Where an existing approval is modified, the modifications will be incorporated into the terms of the approval of the Enhanced Compliance Arrangement and reflected in the annual compliance plan by the SFL holder, and will be subject to review and approval by the applicable MNR District.
12. The cancellation of any approval based on the director's decision will result in full compliance responsibilities reverting to the SFL holder. Where the Director dissolves the arrangement, all documents (Compliance Plan, SFL conditions) must be amended accordingly by the SFL to 'pre-arrangement' requirements.

Table 1: Functions and Responsibilities		
SFL Prime Licensee	Qualified Overlapping Licensee	Other Overlapping Licensee
FMP/AWS Preparation	Subject to FMP/AWS	Subject to FMP/AWS
Prepares 10-Year Compliance Planning component of FMP for self and all OLs. Incorporates and approves Annual Compliance Planning component in AWS (monitoring schedule) for Qualified OL(s).	Provides input into the 10-Year Compliance Planning component of FMP. Prepares Annual Compliance Planning portion for AWS (monitoring schedule) for its OL licence(s) area(s) only; annually submits to SFL for incorporation into the AWS. Subject to all provisions of SFL Compliance Planning in FMP & AWS.	Subject to SFL Compliance Planning in FMP & AWS (strategic and annual planning).
Submits its inspection reports and those reports of Other OLs to MNR system (FOIP).	Submits its inspection reports on its OL area directly to the MNR system, (FOIP).	Where approved for inspections by the SFL in FMP, submits inspections directly to SFL.
Is responsible for the thoroughness, accuracy, timeliness and quality of its inspections and those of Non-Qualified OLs.	Is responsible for the thoroughness, accuracy, timeliness and quality of its inspections.	n/a
Is responsible to ensure all OLs have practical and timely access to all necessary information required by them to fulfill their roles and meet their obligations. This includes access to all pertinent FOIP reports (including silviculture) created by the SFL and MNR for that block, even after the licence or approval expires.	Responsible to access and receive from the MNR and SFL holder, information necessary to discharge Enhanced Compliance Arrangement duties and obligations.	n/a
Has overall responsibility for forest management on the SFL, including compliance oversight of Non-Qualified OLs operating on the unit.	Is responsible to comply with the FMP/AWS.	Has responsibility to comply with the FMP/AWS.
Establishes and delivers internal prevention-education program and provides for training for own staff/workers, Other OLs and possibly Qualified OLs.	May establish and deliver internal prevention-education staff training program for self & workers OR, may do jointly with SFL (to be described in FMP).	n/a
Undertakes annual compliance assessment and analysis for the entire SFL, including area under Qualified OL and Other OL.	Undertakes annual compliance assessment and analysis for the area of its Overlapping Licence(s).	n/a
Has certified compliance operations inspection staff.	Has certified compliance operations inspection staff at time of accepting new functions. Must have sufficient capacity to fulfill compliance planning (AWS), inspection and reporting functions.	n/a or has certified compliance operations inspection staff if submitting reports to SFL.
Holder of the Sustainable Forest Licence	Must hold own SFL on another unit or meet other eligibility criteria as per Enhanced Compliance Arrangement.	n/a
Prepares Annual Report information for compliance per FMPM for entire unit, including all OLs	n/a	n/a

Forest Management Directives and Procedures

07 Monitoring and Assessment

02 Forest Compliance Information and Planning

FOR 07 02 06

Procedure

FAILURE TO PREPARE OR OPERATE IN ACCORDANCE WITH FOREST MANAGEMENT PLAN OR ANNUAL WORK SCHEDULE**Approval date:** April 1, 2010**Sunset date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch - Policy Division**BACKGROUND**

The Minister may require the holder of a forest resource licence to prepare a forest management plan (FMP) for a management unit and an annual work schedule (AWS) for the licensee's forest operations in a management unit. If a person fails to prepare a forest management plan or work schedule that the Minister has required the person to prepare, the Minister may cause it to be prepared, and the person is liable to the Minister for all costs associated with the preparation of the plan or work schedule. All forest operations conducted in a Crown forest must be in accordance with an applicable Forest Management Plan and Work Schedule approved by the Minister.

References: S. 10(1); 17(1); 18 and 42(1) Crown Forest Sustainability Act (CFSA).

PROCEDURE**Forest Management Plans or Annual Work Schedules**

This procedure applies when the party responsible fails to complete an FMP or AWS. The Minister, through the District Manager, will ensure that the preparation of the FMP or AWS is completed according to the time frames as set out in the Forest Management Planning Manual, June 2004, as amended.

When it becomes apparent to the District Manager that the person responsible for the preparation of the FMP or AWS will not meet the time frames as specified in the Forest Management Planning Manual the District Manager will:

1. Contact the person responsible (normally licensee) and agree on what course of action is to be followed. This agreement is followed up with a letter confirming the course of action and specific progress and completion date.
2. If no agreement or progress has been made, the District Manager contacts the person responsible and advises them of the Minister's authority as per Section 18 of the Crown Forest Sustainability Act and that the Ministry will commence the process of plan preparation on a date no later than 2 weeks from this contact. The person will also be advised that they will be responsible for the full cost of the process. This communication is confirmed with a registered letter signed by the Regional Director.

INFRACTION

1) Fail to Prepare a Forest Management Plan

REMEDIES	REFERENCE
Section 18 CFSA - Minister has plan prepared and costs are responsibility of licence holder.	Preferred course of action after discussions with licence holder. Only necessary where licence holder refuses or does not have ability to prepare.
Section 59(1) (c) CFSA - Suspend or cancel Forest Resource Licence.	Senior Management level decision/recommendation required as to the suspension or cancellation of a licence in whole or in part.

2) Fail to Prepare Annual Work Schedule

REMEDIES	REFERENCE
Section 18 CFSA - Minister has schedule prepared and costs are responsibility of licence holder.	Preferred course of action after discussion with licence holder. Only necessary where licence holder refuses or does not have ability to prepare.
Section 59(1)(c) CFSA - Suspend or cancel licence.	Senior Management level decision/recommendation required as to the suspension or cancellation of a licence in whole or in part.

CONDUCT OF FOREST OPERATIONS

Section 42(1) of the CFSA states:

A person shall not conduct forest operations in a Crown forest except in accordance with,

- (a) an applicable forest management plan;
- (a.1) any forest operations prescriptions that apply to the forest operations; and
- (b) an applicable work schedule approved by the Minister.

EXCEPTIONS

S. 42(2) of the CFSA states:

The Minister may in writing direct that subsection (1) does not apply to forest operations conducted by or on behalf of the Minister if, in the opinion of the Minister, the forest operations are necessary to provide for the sustainability of a Crown forest.

S. 47 of the CFSA states:

The minister may direct that Part IV of the Act does not apply to forest operations conducted under a licence issued whose term does not exceed one year and whose total area does not exceed 25 ha.

INFRACTION

Conduct forest operations not in accordance with an applicable Forest Management Plan, an applicable forest operations prescription, or an applicable Annual Work Schedule. NOTE: does not apply under an exception issued under subsection 42(2) or a direction under Section 47.

REMEDIES	REFERENCE
Section 55 CFSA - Stop Work Order	Where applicable, the Stop Work Order is utilized. (Ref: FOR 07 06 04)
Section 56 CFSA - Repair Order	Where applicable the Repair Order is utilized. (Ref: FOR 07 06 04)
Section 58(1) (d) CFSA - Administrative penalty maximum \$15,000 or 5X value of resource harvested in contravention of 42(1).	May be used alone or in conjunction with orders. (Ref: FOR 07 06 05 and FOR 07 06 06)

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 01**
Procedure**FOREST COMPLIANCE INSPECTORS – CERTIFICATION AND MAINTENANCE****Approval date:** April 1, 2012**Review date:** April 2017**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Condition 27(e) of the Environmental Assessment Declaration Order MNR 71/2 states that, “MNR shall maintain a program for the mandatory training and certification of forest operations inspectors”. The requirement permitting only certified forest operations compliance inspectors to undertake and complete inspections and reports came into effect on June 25, 2004.

The Forest Compliance Certification Committee (FCCC), a joint committee between MNR and the Ontario forest industry, developed the Forest Operations Compliance Competency Certification Program Design which describes how the competency standards were determined for inspectors, the material and techniques required to develop the necessary skills, and the certification process. The Program Design document served as a basis for this directive which focuses only on the processes related to certification. The Competency Standards are in procedure FOR 07 03 02 and the Code of Ethics is in FOR 07 03 03.

SETTING COMPETENCY STANDARDS

Competency is defined here as the ability to perform a task, or a range of tasks, to the standards demanded by the employer. Competency for compliance monitoring focuses primarily, though not exclusively, on the technical competencies required for compliance monitoring. The skills and knowledge needed include the ability to:

- Demonstrate an understanding of the relevant legislation, regulations, policy, guidelines, and standards, and apply them in consideration of environmental conditions and forest operations
- Demonstrate professional conduct
- Monitor, inspect and assess compliance of forest operations against operating standards
- Identify and prepare quality reports on operational issues associated with forest operations

Reference can be made to FOR 07 03 02 for a detailed listing of the standards.

PROCEDURE**CERTIFICATION**

To qualify for certification, an individual must attend a forest operations compliance certification session and be able to demonstrate their competency (competency standards FOR 07 03 02), through theory and field testing. The forest operations compliance certification session consists of field calibration sessions and field examinations. In order to attend the field session, applicants must pass an online theory exam. All examinations are established by MNR with input from FCCC. Successful completion results in certification.

Applicants are expected to have developed a sound knowledge and the practical skills required to undertake forest compliance monitoring prior to attending the certification session. These skills, which are delineated in a self-study package, are developed through on-the-job training delivered by their employer, and through a series of on-line modules. These modules will be routinely reviewed and updated with input from FCCC to reflect any changes to policy and practices, and will also be a means of maintaining the competency of inspectors.

Certification candidates are required to complete the three (3) exams (1 theory and 2 field tests) to become certified. The passing standard is a mark of 75% or better on each exam.

1. The theory examination (online) tests the candidates' understanding of the material presented in the online modules and discussed in the self directed learning package. The modules and exam must be completed successfully before attending the certification session.
2. The two (2) field tests of either harvest, access, renewal, or maintenance activities will be completed at a location established by the FCCC.
3. If a candidate fails 1 of 2 field exams, they may retake that specific exam. Opportunities for rewriting field exams will only be available at formally planned opportunities. Retaking of failed field tests must be passed within one calendar year of the initial session attended or at the next scheduled session where there is not a scheduled session within the year.
4. If a participant fails both field exams, they must retake the certification session and pass all three examinations in order to become certified.

Certification is valid for a period of five years from the date of certification to December 31st of the fifth year.

Commencing April 1, 2007, for inspectors whose certification has not already expired, certification is valid for five (5) years with an expiry date on the 31st of December on the fifth year. Inspectors must renew their certification before this expiry date. It is the Inspector's responsibility to keep their contact information (e-mail address) updated in the relevant compliance database and to be aware of their expiry date.

MAINTENANCE AND RENEWAL OF CERTIFICATION

The objectives of the maintenance and renewal phase of certification are to ensure:

- A level of high quality work
- Currency and relevancy of competency
- Integrity of the forest operations compliance inspection program and credibility of forest operations compliance inspectors is maintained

To maintain an **Active** status, inspectors who are currently certified will be required to stay informed and current with respect to forest operations and take necessary steps to maintain competency. These steps will include:

1. Engaging in various means of *Continuing Education activities* such as;
 - Participating in existing training sessions within their organizations that relate to forest operations (e.g. relevant training associated with Forest Certification systems)
 - Participating in locally delivered sessions (e.g. joint MNR/Forest Industry field calibration visits)
 - Participating in prepared modules (e.g. Crown Land Bridge Training, etc.)

While this procedure does not specify minimum requirements for continuing education, the following principles shall apply:

- i. Each inspector, in consultation with their employer, will need to determine the appropriateness of each course in consideration of the types of inspections that are being carried out and the operating conditions that are being encountered (e.g. Boreal vs. Great Lakes St. Lawrence Forest)
 - ii. Each inspector will keep a current written record of their continuing education activities to maintain their competency
 - iii. Each inspector will make these records available for review by the FCCC on request for the purpose of demonstrating and verifying competency maintenance.
2. Successfully completing the on-line theory exam following review of the current online certification modules prior to their certification expiry date.
- Inspectors will have three (3) chances to obtain a 75% passing score on the test. Three unsuccessful attempts will result in the inspector's status be classified as suspended immediately following the completion of the third failed attempt. This is not subject to Appeal.
 - Failure to complete recertification process by the expiry date will result in the inspector's status being classified as suspended. This date is not flexible and may not be appealed.
 - An inspector's Certification will be renewed for a new five (5) year term, expiring on December 31st of the 5th year following successful completion of this exam.

CERTIFICATION STATUS

An inspector's status may be classified as:

Active – *Inspector is in good standing and able to file reports in FOIP.*

Suspended – *Inspector is unable to file reports in FOIP.*

An inspector may be classified as suspended either as the result of a complaint resolution process or for failure to renew their certification prior to their expiry date. The inspector's certification status will remain Suspended until they have:

- i. Successfully retaken another Certification session and examinations; or
 - ii. Passed the online examination and successfully challenged both the field exams at a scheduled certification session within five (5) years of their renewal date (In order to challenge the certification examinations, the inspector must contact the chair of the FCCC); or
 - iii. Completed the required conditions imposed upon the inspector through the complaint resolution process.
- Where an inspector's certification status changes to Suspended, they will be notified using the most current e-mail address provided by the inspector.
 - Where the above conditions are not met certification will be revoked.

Revoked – *Inspector's certification is rescinded for the period of the revocation.*

An inspector's certification may be revoked as the result of a complaint resolution process.

CODE OF ETHICS

Inspectors are obligated to follow the Forest Compliance Inspector's Code of Ethics as described in procedure FOR 07 03 03 which sets the standards of professional conduct. A copy of the Code of Ethics is provided in the self study package.

BREACH OF THE CODE OF ETHICS COMPLAINTS

Complaints about how an inspector has carried out their duties with respect to the Code of Ethics may originate from a member of the public, a licensee, the Ministry of Natural Resources, a company contracting the compliance services, another inspector, the Provincial Auditor or others.

It is expected that most issues, which may result in a complaint, will be resolved at the local level and will not require the intervention of the FCCC.

In order for a complaint to be accepted for investigation by FCCC, the complainant must submit their signed written request to FCCC with the particulars **specific to the ethic(s) that is alleged to have been contravened**. The FCCC will notify the affected inspector of the complaint and assign three (3) or more committee members to consider the complaint. The FCCC may without limitation, choose to field audit a sampling of inspections, and/or audit the inspector's continuing education as a component of the complaint resolution process. The investigation should be completed and a recommendation made to MNR within sixty (60) working days of the complaint being accepted for investigation. The decision by MNR will be communicated to the inspector within thirty (30) days.

The results of this investigation will be either:

Complaint not valid, -therefore no further action required:

The investigation report will be maintained on file for a period of 5 years. The FCCC will notify MNR and MNR will provide the decision and rationale for the decision to the complainant, the inspector and the inspector's manager.

Complaint valid, -

The FCCC recommends the type of disciplinary action to be taken in consideration of the severity of the violation of the Code of Ethics. MNR will communicate its decision and required disciplinary actions to the inspector and the inspector's manager. The complainant will be notified of the committee's findings. The inspector may be warned or have their certification classified as suspended or have their certification revoked. Where the decision is for suspension, the terms and conditions for re-instatement will be defined (e.g. length of suspension, completion of necessary training and a competency assessment). The inspector's status will be classified as suspended until all recommended actions have been satisfactorily completed. Where the decision is to revoke an inspector's certification, the duration of the revocation will be defined in the decision.

If a warning, suspension or revocation is issued, the inspector may request an appeal in writing on the grounds of incorrect, misinterpreted, missing or new evidence that warrants said appeal. The FCCC will review the appeal, conduct further investigations as required, and issue a recommendation to MNR who will make a final ruling.

APPEAL PROCESS

Only Inspectors who have been Warned or whose status has been changed to Suspended or Revoked as a result of the complaint process may file an appeal. The appeal is limited to a challenge of the complaint process outcome and their changed status. The appeal must be in writing.

A change in status resulting from an applicant failing to recertify on time or failing to obtain a passing grade on the recertification exam may not be appealed. A failing grade on the certification online exam or a failing grade on the certification field exams may not be appealed.

The Committee Chair and at least one other Committee member will review a request for appeal. Each request for an appeal will be reviewed on its individual circumstances and merits and a decision rendered. The Committee will respond within 30 days of receiving a written appeal. The Committee's decision is final.

NOTE: Any actions under this complaint resolution process are solely in respect of the certification of an inspector and are separate from any employee/employer relationship, investigations, actions or remedies. It is not the intent of this process to interfere with the legal rights of any party, nor to interfere with, circumvent or substitute for an employer's investigations and discipline processes nor any legal or union investigation or remedial activities applicable to the individual and/or the circumstances related to the situation.

07 Monitoring and Assessment

03 Forest Compliance Monitoring

FOR 07 03 02

Directive

FOREST COMPLIANCE INSPECTORS - COMPETENCY STANDARDS
Approval date: April 1, 2010

Review date: April 2015

Contact: Forest Evaluation and Standards Section, Forests Branch – Policy Division

DIRECTION

The following competency standards reflect the competency expectations of certified forest compliance inspectors and will be used to guide determining competency during certification.

Dimension	Task	Competency Standard
Legislation and Policy	Know and understand applicable forest legislation, policies, procedures, guidelines and documents	<ul style="list-style-type: none"> Aware of the general content of these documents and where to look in them to ensure operations are following applicable direction Demonstrate ability to determine, locate, and to apply to field conditions applicable forest compliance policies, procedures, and guidelines, Able to locate and extract appropriate and relevant information from FMPs AWSs(including amendments), licences, and maps
	Know and understand the forest	<ul style="list-style-type: none"> Able to identify trees, plants, wildlife (ecosystem characteristics) as they relate to and are affected by forest operations Able to identify effects of forest operations on the environment Demonstrated knowledge of terrain, soils, topography, dendrology, drainage (physical) patterns, vegetation patterns and age class distribution Understand site indicators and succession related to SGRs and FOPs Understand landscape disturbance patterns and the role of forest operations in meeting those requirements
	Know and understand forest management practices	<ul style="list-style-type: none"> Able to identify the equipment limitations, effective practices, and effects of forest operations on the environment, Able to recognize good Harvest, Renewal, Maintenance, and Access practices Demonstrated field knowledge and understanding of Harvest, Maintenance, Renewal and Access activities

Dimension	Task	Competency Standard
	Know and understand forest operations and equipment	<ul style="list-style-type: none"> • Able to utilize proper forestry/forest terminology • Know and understand the local operating limitations and opportunities imposed by the nature of the management unit • Know and understand the physical and economic constraints of the equipment • Know and understand the limitations that season and terrain impose on the equipment • Know and understand the safe operating limits of the equipment
	Apply analytical skills	<ul style="list-style-type: none"> • Able to identify relevant pieces of information and review all aspects of the issues to identify a course of action • Able to compare and identify differences between what is observed and what has been expected
	Apply research skills as applied to FOPs	<ul style="list-style-type: none"> • Able to access and retrieve pertinent information
	Apply synthesis skills	<ul style="list-style-type: none"> • Able to identify objectives and strategies relevant to the particular task • Able to identify trends in the information that are relevant to the particular task
Professional Conduct	Act in a professional manner displaying professional conduct and attitude	<ul style="list-style-type: none"> • Subscribe to the Forest Compliance Code of Ethics • Able to take a proactive, non-confrontational approach to resolving conflicts or issues • Display honesty and openness
	Maintain forest competency skills	<ul style="list-style-type: none"> • Stay informed and current with respect to technological, biological and practical information on forest operations and practices • Participate in continuing education opportunities to maintain competencies. • Keep an up to date record of training activities
	Demonstrate a collaborative/cooperative attitude	<ul style="list-style-type: none"> • Able to work in a team environment
	Apply effective communication skills	<ul style="list-style-type: none"> • Able to effectively exchange information by verbal, written or electronic means • Able to effectively communicate with all personnel encountered in the field
	Communicate operational issues with operator or supervisor	<ul style="list-style-type: none"> • Able to put operational issues into words and convey the compliance implications clearly to the forest operator or the operator's supervisor
	Use tact and diplomacy in communication	<ul style="list-style-type: none"> • Able to consider the other party's feelings and recognize the perspectives of others • Able to maintain a positive and clear professional message
	Apply interviewing skills	<ul style="list-style-type: none"> • Able to distinguish between the "right" and "wrong" questions to ask and separate truth

Dimension	Task	Competency Standard
		from fiction <ul style="list-style-type: none"> • Able to consistently ask pertinent questions to obtain factual information • Able to maintain chronological order of collection of information from all sources
	Determine accuracy of submitted reports	<ul style="list-style-type: none"> • Able to compare submitted reports to the conditions actually observed and determine if the reports reasonably and accurately (i.e. within a normally accepted ranges) describe the situation on the ground.
	Identify and use new options or approaches	<ul style="list-style-type: none"> • Able to utilize new processes to meet objectives • Able to formulate a variety of solutions to resolve problems and determine courses of action (for example: questions conventional thinking, willing to take risks)
	Display consistency	<ul style="list-style-type: none"> • Able to come to the same conclusion when confronted with similar facts and circumstances
	Act in a proactive manner	<ul style="list-style-type: none"> • Able to recognize operational issues and take tactful, timely and positive approaches on site
Monitor/ Inspect /Audit	Apply time management and organization skills	<ul style="list-style-type: none"> • Able to complete required work to prescribed standards and timelines • Able to organize files/records in a format that allows for easy retrieval
	Determine priority area for inspection	<ul style="list-style-type: none"> • Able to identify and prioritize areas to be inspected
	Apply map and air photo interpretation skills	<ul style="list-style-type: none"> • Able to identify physical features on aerial photos and maps • Able to identify and use various mapped information layers relevant to forest operations • Able to correlate features on maps with varying scales
	Apply orienteering skills	<ul style="list-style-type: none"> • Utilize an aerial photo and/or map with a predetermined area/information marked on it • Able to locate the marked area on the ground to a reasonable level of accuracy and within a reasonable time frame based on field conditions
	Apply forest mensuration skills appropriate to compliance inspections	<ul style="list-style-type: none"> • Able to utilize measuring devices within their limits and obtain accurate measurements of forest operations parameters
	Apply audit and analytical skills	<ul style="list-style-type: none"> • Able to identify important pieces of information and review all aspects of the issues to identify a course of action • Able to identify trends and anomalies • Able to compare and identify differences between what is observed and what has been expected
Identification of	Interpret monitoring results	<ul style="list-style-type: none"> • Able to compare and identify differences

Dimension	Task	Competency Standard
Operational Issues		<p>between what is observed and what is required by legislation, plans, licences, etc. to determine operational issues</p> <ul style="list-style-type: none"> • Able to determine if further follow-up is warranted
	Identify risks and conduct impact assessment	<ul style="list-style-type: none"> • Able to identify circumstances that could lead to non-conformance • Able to determine potential detrimental effects to the environment
	Evaluate the 'single event' in the big picture	<ul style="list-style-type: none"> • Able to place an event and its affects in context of overall operations and probable future effects on the physical site
	Apply sound decision making skills	<ul style="list-style-type: none"> • Able to assess and evaluate risk on forest operations • Able to identify actions that can resolve issues in a timely manner and consider all relevant information and take into account the consequences and risks associated with these actions
Report	Apply technical writing skills	<ul style="list-style-type: none"> • Able to clearly and accurately express ideas in a concise written format
	Accurately record results of inspections	<ul style="list-style-type: none"> • Able to use the appropriate technology for recording and reporting inspections results (e.g. FOIP) • Able to utilize a variety of media (photos, sketches, maps, digital information, etc.) to accurately portray field conditions • Able to prepare and present observations objectively and keep timely and accurate records
	Apply notation skills	<ul style="list-style-type: none"> • Able to take accurate complete and pertinent notes, present relevant data and take appropriate photos in the field
	Maintain a positive and clear professional message	<ul style="list-style-type: none"> • Report on observations of forest operations using tact and diplomacy
	Submit report on time	<ul style="list-style-type: none"> • Complete and submit reports within prescribed time frames
Management of Operational Issue (MNR Only)	Evaluate past performance	<ul style="list-style-type: none"> • Able to assess and evaluate previous compliance reports, operational issues, conversations with involved parties, to establish performance context
	Determine if an operational issue was intentional or a result of non-understanding or negligence	<ul style="list-style-type: none"> • Able to determine cause of an operational issue (i.e. not taking action to prevent an occurrence which could reasonably have been forecast) based on observations, conversations with involved parties, history, etc.
	Evaluate operational issues (consult with experts – i.e. forester, biologist, supervisor, etc.)	<ul style="list-style-type: none"> • Able to recognize “when” and “what” expertise is required and where to find it.
	Know and understand the differences between corrective	<ul style="list-style-type: none"> • Able to consider relevant factors (e.g. good forest practices, equipment limitations,

Dimension	Task	Competency Standard
	action and mitigative measures, and know how and when to apply to apply them.	<p>economic factors, etc.), identify a course of corrective action, and forecast the effects of such action</p> <ul style="list-style-type: none"> • Able to determine when and where situations are correctable versus those in which loss or damage can be mitigated, when it is appropriate to take corrective action or apply mitigative measures and when it is not, and what actions to implement • Able to evaluate potential corrective actions/ mitigative measures in the context of the organization's resources (staff, equipment, etc.)
	Know and understand due process, operational issue verification, and the application of remedies and enforcement actions	<ul style="list-style-type: none"> • Able to interpret acts and guidelines in order to ensure legal procedures and established time frames are followed • Able to evaluate potential for enforcement action
	Apply accurate information collection techniques	<ul style="list-style-type: none"> • Able to gather and record detailed precise and accurate observations in a timely and unambiguous manner capable of being used in an evidentiary setting (court case).
	Recommend a course of action suited to a particular situation	<ul style="list-style-type: none"> • Able to gather data, analyze and determine the appropriate course of action for the circumstances • Able to determine and recommend corrective action when appropriate • Able to complete the necessary records and reports

Forest Management Directives and Procedures

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 03**
Directive**FOREST COMPLIANCE INSPECTORS – CODE OF ETHICS****Approval date:** April 1, 2010**Review date:** 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**DIRECTION**

All certified forest operations compliance inspectors will subscribe to the following code of ethics as a condition of their certification and registration as a certified forest operations compliance inspector.

CODE OF ETHICS

Each Forest Operations Compliance Inspector or Field Auditor shall endeavour to:

- be honest and candid and perform monitoring services with integrity and due care
- be competent, having the required skills, knowledge, and experience to perform the duties undertaken
- continually seek to maintain and improve knowledge and skills
- serve the employer in a conscientious, diligent, and efficient manner
- hold in strict confidence all information concerning the business and affairs of the employer acquired in the course of employment, except as required by law or unless released of this obligation by the employer
- not use information acquired in the course of employment for personal gain
- remain free of any influence, interest, or relationship that impairs judgment, independence, or objectivity, while carrying out forest operations compliance monitoring duties
- commit to honest, thorough, and straightforward communication in the performance of forest operations compliance monitoring duties
- not be associated with any report, statement, or representation known to be false or misleading
- conduct him- or herself toward other compliance inspectors and field auditors with courtesy and good faith
- endeavour at all times to enhance public awareness and the public regard for the Forest Compliance Monitoring Program

I, _____, have read and understand this Code of Ethics (Code).
I will faithfully discharge my duties as an inspector/field auditor and will act in a professional manner and conduct inspections/audits in accordance with this Code and rules for completing and submitting inspection reports.

Signature_____
Date

Forest Management Directives and Procedures

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 04**
Directive**FOREST OPERATIONS INSPECTING AND REPORTING****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

Notes: This directive is written generically for establishing overall direction regarding the undertaking of Compliance Inspections (inspecting and reporting) (Ref: Glossary) whether by Forest Industry or MNR inspectors. Differences based on differing roles and responsibilities are noted.

In this directive, the reference to Licensee(s) includes the holder of a licence issued under Section 26 (1) or Section 27 (1) of the Crown Forest Sustainability Act and the Algonquin Forestry Authority, where the licence or another contractual document imposes Compliance Monitoring (Ref: Glossary) responsibilities. This directive also provides requirements and guidance to Ministry of Natural Resources (MNR) staff responsible for compliance on Management Units managed by Crown.

DIRECTION

The Environmental Assessment Declaration Order MNR 71/2 condition (27(a)) states that, “MNR shall ensure that monitoring of the forest management activities of access, harvest, renewal and maintenance shall take place through a forest operations inspection program. Monitoring shall consist of examining compliance with approved Forest Management Plans and any other requirements and conditions imposed on operations by legislation.”

Compliance Monitoring (Ref: Glossary) programs use many forms of monitoring and inspection. Forest operations are continually monitored through operational supervision. Forest certification systems all contain monitoring for regulatory compliance as a component. The most common form of formal monitoring has been the Compliance Inspection which includes the formal inspection and its report submitted to MNR’s Forest Operations Information Program (FOIP) (Ref: Glossary). All of these, and even general observations by forest industry and MNR staff while on the management unit, contribute to a robust forest compliance monitoring program.

The annual program of forest operations Compliance Monitoring is to be based on the priorities and direction found in the compliance portions of the Forest Management Plan and Annual Work Schedule, and, for MNR staff, in the results of their compliance planning activities (Ref: FOR 07 02 03 and FOR 07 02 04).

Where no licensee exists on a Management Unit (MU), MNR will be responsible for forest Compliance Monitoring (inspecting and reporting). For MUs with a licensee, the licensee will be responsible for forest compliance monitoring activities. MNR will conduct its own compliance inspections of forest operations and will verify licensee identified Operational Issues for determination of compliance status.

Licensees must provide the MNR district a notification of the status of operations or activities (Ref: FOR 07 02 04, 4.7.1.5 Notification of Status of an Operation and FOR 07 03 05, Industry Notification of Operational Status, and Reporting Requirements).

Condition 27(d) of the Environmental Assessment Declaration Order MNR 71, requires MNR to have a program for the mandatory training and certification of forest operations inspectors (Ref: FOR 07 03 01). Compliance Inspection reports can only be completed and submitted to FOIP by certified forest operations inspectors. The integrity and competency of these inspectors is a key contributor to the credibility of the provincial forest compliance program.

MNR and licensees are responsible to ensure that:

- Forest Compliance Monitoring is delivered in an effective and efficient manner;
- Their respective forest operations compliance inspectors maintain their certification;
- Compliance inspections and inspection reports are completed, recorded and submitted to FOIP in a timely manner in accordance with procedure FOR 07 03 05;
- Compliance Inspection reports accurately reflect compliance inspections conducted and meet the quality standards of completeness, appropriateness of assessment, rationale and recommendations; and
- Reports are approved by their employer's designated approver.

In addition, the MNR must ensure that verified "Operational Issues" are closed to confirm the resolution of compliance status and/or the application of a remedy where appropriate.

Licensees and MNR district compliance staff are to consider the following in the delivery of the forest compliance program:

- As a general principle, the Process Streamlining Test (PST) should be considered when planning and implementing the Compliance Monitoring program. The PST is contained within the Process Streamlining Task Force Report which can be found at:
http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_179259.html
- MNR and Forest Industry need to recognize each other as knowledgeable partners who understand their roles and responsibilities and have the capacity to deliver on the Compliance Monitoring program.
- The licensee is primarily responsible for completing the compliance inspections. Licensees must establish their own systems of quality control to ensure compliance monitoring meets the required standards. Each licensee is obligated to use certified inspectors to carry out compliance inspections. To be successful, a Compliance Monitoring program must be credible, consistently applied, and implemented practically.
- MNR must report to the public on the compliance of operations in the Crown forest. MNR's monitoring intensity will reflect the performance of the Industry Compliance Monitoring program. Where compliance performance is good and the monitoring process is working well, MNR will be able to reduce, redirect, or refocus its compliance inspection efforts.
- Joint MNR/licensee compliance inspections are primarily a communications tool. They are encouraged from time to time as good business practice to promote the partnership aspect of the forest Compliance Monitoring program. It is an opportunity for an MNR inspector and a licensee inspector to undertake an inspection together to resolve on-ground differences of interpretation, calibrate operational standards applying to a specific operation, for learning, and for clarification of issues. Local development and delivery of joint training sessions for licensees and operators with the assistance and participation of MNR district staff, is also encouraged.

Forest Management Directives and Procedures

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 05**
Procedure**FOREST OPERATIONS INSPECTING AND REPORTING PROCEDURES****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

Notes: This procedure is written generically for undertaking forest operations compliance monitoring (inspecting and reporting) whether by Forest Industry or MNR inspectors. Differences based on differing roles and responsibilities are noted.

In this procedure, the reference to Licensee(s) includes the holder of a licence issued under Section 26 (1) or Section 27 (1) of the Crown Forest Sustainability Act and the Algonquin Forestry Authority, where the licence or another contractual document imposes Compliance Monitoring (Ref: Glossary) responsibilities. This procedure also provides requirements and guidance to Ministry of Natural Resources (MNR) staff responsible for compliance on Management Units managed by Crown.

PURPOSE

1. Describes the requirements, standards and process for conducting Compliance Inspections (Ref: Glossary) and submitting reports to the Forest Operations Information Program (FOIP) for both Ministry and Forest Industry inspectors. This includes; scope of inspections, monitoring approach, direction for completing reports, and the use of checklist items.
2. Identifies the respective roles and responsibilities of MNR and the Forest Industry when assessing and evaluating compliance of forest operations, carrying out Compliance Inspections, and managing operational issues (Ref: Glossary).
3. Describe the requirements, standards and process to notify the MNR of the status of forest operations including types of notices and timelines for notification.

SCOPE OF PROCEDURE

This procedure encompasses forest operations Compliance Inspections (and reports), and the management of Operational Issues. It also pertains to the status of operations and the requirements for notification to MNR of that status. It is to be read in conjunction with Directive FOR 07 03 04. Forest operations Compliance Inspections and reports are related to the four forest operations and their corresponding activities identified below. Activities have been associated with the operation to which they are most closely related or are most likely to occur. As well, there will be Activities that are associated with all four operations (i.e. Fire Prevention and General Activities). Details for these Activities and associated “checklist items” are found in Appendix A to this procedure.

1. Access Operation*Activities:*

- *Aggregates*

- *Area of Concern*
- *Fire Prevention*
- *Road Construction (includes new and maintenance)*
- *Water Crossing (includes new and maintenance)*
- *General*

2. Harvest Operation

Activities:

- *Area of Concern*
- *Cutting*
- *Fire Prevention*
- *Wood Measurement/Movement*
- *Utilization*
- *Road Construction*
- *General*

3. Renewal Operation

Activities:

- *Fire Prevention*
- *Pesticide Application*
- *Renewal*
- *General*

4. Maintenance Operation

Activities:

- *Fire Prevention*
- *Pesticide Application*
- *Tending*
- *General*

INDUSTRY NOTIFICATION OF OPERATIONAL STATUS

For the proper assessment and evaluation of operational compliance, MNR must be made aware of operational status of each Compliance Reporting Area. Except for Completed Notices, notification of operational status is an information item only to advise MNR of operational progress. Completed Notices additionally indicate that the operation was not scheduled for a Compliance Inspection during the risk based planning process and is finished. Completed Notices are also a statement by the licensee that operations are complete, are free of known, unreported Operational Issues, and available to MNR for compliance audit. Method(s) of operational notification will be described in the Licensee's planning documents (FMP, AWS), refer to FOR 07 02 04 for additional details.

The following minimums must be achieved:

- **Start-Up:** The Licensee must provide written notification to the MNR prior to or within 5 working days of the beginning of a new operation and identify the timing and its location.
- **Suspended:** The Licensee must provide written notification (as per their compliance plan) to the MNR prior to or within 20 working days of suspending an operation or activity. A suspended operation is one where the operational activities must be delayed and are not complete and therefore cannot be assessed for some aspects of compliance. The Suspended Notice must clearly describe the operation being suspended, its location, and specify why the operation is being suspended and when it is proposed to be restarted. Operations may not be suspended for more than the balance of the period of the current AWS and one further AWS period.

- **Release:** A Release is where a Licensee wishes to provide MNR a “Release to MNR for compliance audit” for any part of an operation’s CRA. This release must be in writing. A Release Notice is required no less than 10 working days prior to the commencement of any new operation within the CRA. A Release Notification must be clear and specific about the location, what is being released, the area being released and why the release is being provided. This may be done where the Licensee wishes to:
 - commence a new operation on that area such as Renewal (e.g. mechanical site preparation or slash pile burning); and
 - to acknowledge harvest is finished but the wood has yet to be hauled; and/or
 - to allow compliance to be assessed for that portion of the operation that is finished.

In this context, a “release” is a confirmation by the Licensee that the activity(ies) being released are finished on that portion of the area identified for release, the area is without Operational Issues, and is available to MNR for audit.

It is possible to suspend a Harvest operation because it cannot be considered complete pending the haul of the wood and at the same time provide MNR a Release Notice for the harvesting activities so that site preparation can be undertaken.

Completed: A Completed Notice must be filed for those CRAs (blocks) where a Compliance Inspection is not proposed as part of the proponent’s risk management strategy in the approved Forest Management Plan or the approved Annual Work Schedule. The Completed notice must identify the CRA, its location, and must be filed in writing within 20 working days of the operation being completed. Where the operations on a CRA span more than one AWS period and a proper Completed Notice was not filed within two years of the Start-up Notice or the date of approval of the AWS, the CRA will now require that a Compliance Inspection be done and a report submitted to FOIP.

A Completed notice is a statement by the licensee that operations are completed, free of known, unreported operational issues, and is available for full MNR audit as if a completed FOIP report had been filed. Such operations will be assumed to be compliant unless found to be otherwise by another process such as MNR audit inspection.

A Completed Notice may not be filed for an Access operation CRA that contains multiple water crossings. These must be reported by means of a Compliance Inspection and a report filed in FOIP.

As noted in FOR 07 02 04, the Licensee and MNR must agree on the method and mechanics of notification.

INSPECTING

Both MNR and Industry forest operations compliance inspectors are responsible for being familiar with all necessary background information needed to conduct an inspection. That information includes but is not limited to any directions from the 10 year and annual compliance planning direction incorporated into the FMP and AWS respectively. It also includes the forest compliance inspector’s competency standards referenced in directive FOR 07 03 02. This information should be available to the inspector prior to undertaking any compliance monitoring activity. The purpose of the Compliance Inspection and the status of operations will largely determine if additional work or materials may be required when preparing for an inspection.

PURPOSE OF INSPECTIONS

A. MNR

MNR inspections are for the purposes of monitoring completed and ongoing forest operations for compliance to the regulatory framework and the standards and requirements imposed on operations by that framework. They are also used to monitor the Licensee's implementation of its compliance monitoring program. Local compliance planning will guide the distribution and timing of inspections (Ref: FOR 07 02 03).

Note: Provincial scaling audits are not included in the forest operations compliance program nor reported in FOIP, however Compliance Inspections related to the Authority to Haul Unscaled Timber are included.

B. FOREST INDUSTRY

Licensees are responsible to monitor their own operations and those that are conducted by licensees or others that are authorized to conduct forest operations in accordance with the FMP. The Industry inspector will inspect to assess the compliance of operations to the regulatory framework and the standards and requirements imposed on operations by that framework, including the identification and reporting of operational issues, as directed by the compliance components of the FMP and the AWS.

C. NON-LICENSEE RELATED

Non-Licensee Related describes a Compliance Inspection (and report) of an activity conducted on Crown land that is under the management of a Licensee, but where the activity was not planned, licensed, authorized or sanctioned by either the MNR or the Licensee under a permit, licence or FMP (e.g. a trespass by a non-licensee). Most commonly, it is activity conducted by a person who is not a licensee nor in the employ of a licensee. Both MNR and Industry inspectors will watch for these types of activities. Industry will notify MNR of any Non-Licensee Related incidents it identifies and MNR will file all reports on these incidents.

These reports may also be used by the Crown to record a Compliance Inspection on private land by MNR, where forest resources are reserved to the Crown. MNR is responsible for reporting on these Non-Licensee activities.

DETERMINING THE INSPECTION APPROACH

Licensee managers are responsible to establish the level of inspection on their forest to determine and report, in writing, on the compliance status for all operations. MNR District managers will establish the level of inspection and reporting by MNR staff.

- For MNR, the inspection program should take into account the proposed program of the Licensee and reflect the values present in the proposed areas of operations and the priorities of MNR's resource programs. It should be determined on a risk based assessment process that targets and prioritizes work.
- Licensees must ensure that their inspections obtain and record sufficient information to accurately determine the compliance status of the activities. The Licensee will determine the source(s) of this information and the format in which it will be recorded. The Licensee will ensure that the compliance status for all operations is communicated to MNR in the agreed to format and in a timely manner as described in the approved FMP and AWS. The Licensee will maintain these records and, in the event of a disagreement on the state of compliance of forest operations, the Licensee must be prepared to make available any documentation supporting their completed notifications, and Compliance Inspections and associated FOIP reports to MNR. Information included as part of the submitted FOIP report will be available for public viewing.
- It is expected that companies will utilize existing checks within the forest certification or internal quality control and supervisory processes as part of their monitoring of operations.

Within the context of the Compliance Monitoring risk management strategy in the approved FMP and AWS, inspectors will determine their approach to conducting Compliance Inspections. A number of factors will determine the approach most suitable to a particular operation or situation.

1. METHODS OF INSPECTION

A variety of inspection methods may be used to inspect forest operations. As a general rule, the most efficient acceptable method of survey designed to best measure the activity being inspected should be employed. The method chosen depends on the nature of the activity being inspected, and may include on the ground inspections, aerial inspections, remote sensing and aerial photography interpretation, among other techniques. Inspection method will also be influenced by operational complexity (e.g. major water crossing versus a small crossing or a shelterwood versus a clearcut prescription) requiring some situations to use a combination of methods (e.g. ground plus aerial).

Joint inspections between MNR and Industry from time to time are encouraged as a good way of doing business with the understanding that for the majority of their inspections, both parties must maintain the independence and objectivity of their Compliance Monitoring programs. These inspections are practical for the purposes of resolving on the ground differences of interpretation, for calibrating standards for specific activities, to clarify or resolve issues and to promote ongoing learning and communication between the two parties. For instance, an on-site meeting with personnel could be conducted on a specific harvest block to identify and discuss items of potential concerns such as unidentified stream crossings, raptor nests, or silviculture prescriptions. Normally reports filed as a result of a joint inspection will be by submitted to FOIP by the Licensee's inspector.

2. TIMING AND FREQUENCY OF INSPECTIONS

Direction for industry inspectors on the timing and frequency of inspection activities conducted during actual forest operations will be found in the Forest Management Plan and the Annual Work Schedule. Industry inspection programs may also be guided by the type and availability of inspection information from other monitoring programs (e.g. forest certification schemes) and sources.

For Ministry staff, direction will be found in the district's compliance planning document(s) (Ref: FOR 07 02 03 and FOR 07 02 04). MNR inspectors will have to consider their forest operations inspections in light of the forest industry's proposed operations for that year and their other program area duties.

Unique situations are common during operations and Compliance Inspections must be adjusted accordingly.

3. INSPECTION AND SAMPLING INTENSITY

Inspection intensity is generally described in the risk based approach to Compliance Monitoring programs. MNR and Industry inspectors must inspect operations to confirm and report on the compliance status with the FMP, AWS and associated legislation. This will include such things as utilization standards, harvest boundaries, areas of concern and water crossing requirements. Inspection intensity will also relate directly to the complexity of the operation under inspection (e.g. a large harvest block with a complex prescription and multiple areas of concern for a variety of values) and some situations may require a combination of methods (e.g. ground plus aerial). To assist in determining the priority and frequency of these inspections the following factors and examples should be considered prior to performing the inspection:

a) Operational Complexity

- i. Harvest rate and volume (e.g. number of harvesting crews in an area)
- ii. Timing and method of operation
- iii. Degree of difficulty in marking boundaries e.g. physical constraints
- iv. Special or unique silvicultural prescriptions
- v. Harvesting technique being applied
- vi. Wood flow/directives
- vii. Wood measurement practices and method

b) Operator Performance

- i. Compliance history

- ii. Operational capability (equipment, manpower, licensing)
- iii. Recent operational performance
- iv. Experience of the operator

c) Sensitivity, Significance and Economic Value of Resource Affected

- i. Water crossings (e.g. culvert, bridge, ford, drainage etc.)
- ii. Areas of Concern
- iii. Special Operating Agreements (e.g. cottagers, tourist outfitters, etc.)
- iv. Economic return to the Crown
- v. Potential for environmental damage (e.g., stream bank erosion, major rutting, soil compaction or damage by machinery in spring break-up)

A more detailed sampling intensity may need to be applied for situations that require statistically sound quantitative data results. For instance, a utilization survey that identifies pieces/hectare through a plot system may need to be used in determining utilization standards in a given area.

TYPES OF OPERATIONS

Inspections are conducted on the four primary forest operations of Access, Harvest, Renewal and Maintenance and their associated activities. The following describes the scope of the four types of operations applicable to Compliance Inspections (and reports).

1. Access: Compliance Inspection reports of activities related to primary or branch road construction and maintenance as per the FMP. Where a water crossing is involved on a primary, branch or operational road, it is to be recorded under **Access Report – Water Crossing Activity**. In situations where an assessed water crossing is identified as having an Operational Issue, inspectors may wish to submit a separate Access report for that crossing.

2. Harvest: Compliance Inspection reports of activities included in harvesting operations within a defined geographic unit as per the company operating plan or AWS. Operational roads are generally included as part of the harvest inspection as are any matters related to cross drainage on these roads. Removal of forest products for biofibre purposes is to be documented under a Harvest inspection.

3. Renewal: Compliance Inspection reports of specific silvicultural activities (does not include free to grow assessments or effects/effectiveness monitoring) e.g. chemical and mechanical site preparation, slash pile burning, seeding, planting, artificial regeneration.

4. Maintenance (tending/protection): Compliance Inspection reports of specific activities related to forest maintenance e.g. tending, thinning, aerial spray (pesticide application)

REPORTING

Any operation on which an operational issue is identified requires that a forest Compliance Inspection be conducted by a certified compliance inspector and a report of that inspection to be filed in the Forest Operations Information Program (FOIP).

REPORTING ON OPERATIONS WHERE NO FOIP REPORT IS PLANNED TO BE FILED

In circumstances where the Compliance Monitoring risk management strategy in the approved FMP identifies that no Compliance Inspection is planned to be done or FOIP report filed, and the operation is determined to be compliant, then a written Completed Notice must be filed as noted above.

Where a CRA was not scheduled for a Compliance Inspection and a proper Completed Notice was not filed within two years of start-up or the date of approval of the AWS, the CRA will now require that a Compliance Inspection be done and a report submitted to FOIP.

For Compliance Reporting Areas that incorporate multiple water crossings in an Access report, a Compliance Inspection must be done and a report submitted in FOIP within 10 days of the completion of the final water crossing. Multiple water crossings will only be aggregated where they are part of a single Access operation. Where multiple crossings are aggregated, a Start-up notice must be submitted for each crossing. Licensees or MNR can impose additional conditions and limitations to reflect their operating conditions where reasonably required. It is a requirement that for any water crossing installation where an operational issue arises, a Compliance Inspection be completed for that crossing, and a report filed in FOIP, as prescribed by this procedure.

REPORTING ON INSPECTIONS- FOREST OPERATIONS INFORMATION PROGRAM (FOIP)

An inspection report is a record of an inspection that was conducted at a point in time on a defined area and creates a history. It can only be authored by the certified inspector who conducted the inspection.

For all those CRAs identified for a forest operations Compliance Inspection and for any inspection where an operational issue is identified, it is mandatory that all certified forest compliance inspectors use the Forest Operations Information Program (FOIP) to submit reports on those inspections to the Ministry. **An inspection report is not considered to have been “submitted” to FOIP until it has been completed by the inspector, entered into FOIP, and approved within FOIP by the designated approver.**

FOIP is an internet application developed to meet the data standards/requirements. Standards for inspection/reporting by inspectors are prescribed in the Forest Information Manual, Part D, Section 3.0. These data standards apply to all users of the FOIP. The items listed below form the basis on which mandatory data requirements for all FOIP reports have been established. All inspectors are required to report mandatory data. This requirement is also referenced in Procedure FOR 07 02 04, the Forest Information Manual, and the Forest Management Planning Manual (FMPM).

A) IDENTIFICATION DATA

- Inspector name
- MU
- Applicable Licence number and name
- Overlapping Licence number (mandatory on Harvest report as applicable)
- Approval number (mandatory on Harvest report as applicable)
- Compliance Reporting Area (name or number as per FMP or AWS)
- Location - Township/Base Map number, Lot and Concession, UTM location
- Operation Type - Access, Harvest, Renewal and Maintenance
- Fiscal year of Operation
- Inspection Date
- Inspection Method

B) INSPECTION INFORMATION AND DATA

The amount of detail/information will vary depending on the complexities involved. Where there are no Operational Issues (see below item D) Operational Assessment), no detail is required beyond an assessment of No Operational Issues. However, inspectors are reminded that they are responsible to ensure such an assessment is supported by a competent inspection and that they will be held accountable to justify the assessment should it be challenged. Inspectors may choose to record supporting information for a No Operational Issues assessment in their FOIP report in addition to information in their field notes or from other sources on which they rely. A detailed description and explanation is mandatory to describe any Operational Issues found during an inspection on all applicable reports.

C) ATTACHMENTS:

FOIP provides the opportunity for the inspector to attach maps, pictures, word documents or other electronic information that helps to clarify and explain the observations noted.

D) OPERATIONAL ASSESSMENT

An inspector must determine whether or not an Operational Issue(s) (definition in the Glossary) exists for each of the applicable checklist items under each of the applicable activities for that type of Operation. Where there are no Operational Issues, and once the report is submitted and approved, FOIP will automatically assign an In Compliance status to the report. Where an Operational Issue(s) has been identified, FOIP will assign Pending compliance status for the report, once submitted and approved. The process for dealing with Operational Issues is described below in the section titled Assessment of Operations and the section titled Management of Operational Issues. MNR is required to verify all Operational Issues. Normally, an MNR inspector will complete the verification.

There are three basic elements when reporting an Operational Issue. These elements follow the logical and analytical process of:

- Clearly stating what was measured and observed;
- Analyzing, assessing, and evaluating those measurements and observations; and
- Identifying conclusions and any additional information supporting those conclusions. (See the Compliance Monitoring Process flow chart).

These three elements are illustrated in the following table:

Observations	Assessment	Conclusions
<i>"What did you see?"</i>	<i>"What does it tell you?"</i>	<i>"What does it mean?"</i>
<u>Qualify:</u> <ul style="list-style-type: none">• succinct but thorough• related factors (weather, terrain, forest complexity) <u>Quantify:</u> (provide) <ul style="list-style-type: none">• measurements of size, amount• location details	<u>Provide:</u> <ul style="list-style-type: none">• scale, scope,• context• rationalization• analysis & evaluation of observations	<u>Provide:</u> <ul style="list-style-type: none">• conclusions• general comments• attachments/<ul style="list-style-type: none">• maps• photos• scanned documents• description of any preventative or mitigating actions
Specific & Accurate	Thorough & Concise	Clear & Unbiased

E) REPORTING TIMELINES

Reporting timelines for Operational Status Notifications are as specified above.

Compliance Inspections are to be recorded as follows:

Reports without Operational Issues

Reports with no operational issues are to be submitted to FOIP no more than 20 working days after completion of the operation for Access, Harvest, Renewal and Maintenance operations. .

Industry – reporting timeline begins from the time an operation or activity is completed.

MNR- reporting timeline begins from the completion of the inspection.

Reports with Operational Issues

Time is of the essence when reporting operational issues. All incidents should be submitted on a FOIP report and communicated to the other party as soon as possible. The following maximum timelines apply:

- Where an Operational Issue has resulted in loss or damage that is not a discrete event (e.g. continues to occur such as siltation in fish habitat [HADD]) or where immediate mitigation action is required to prevent further loss or damage, **the Licensee must notify MNR within 24 hours**. This notification can be verbal and must be followed up with written notification within 5 working days.
- The Industry and MNR **must** provide written (e.g. e-mail) notification to the other party within 5 working days of the discovery of all Operational Issues.
- Other than as noted above, the Inspector is to submit an inspection report that contains an Operational Issue(s) to FOIP within 10 working days of discovery of the Operational Issue.

There is no difference in timelines for submitting reports for MNR and Industry inspectors.

NOTES: *The timelines above are maximums and every effort should be made to complete and submit reports as soon as possible.*

*A report is not considered submitted until it has been submitted in FOIP **and approved**.*

REPORT APPROVAL

Report approval serves the purpose of allowing the inspector's organization to ensure that a quality inspection report is being submitted to the Forest Operations Inspection Program. A quality inspection report, as described above, is one which reflects the inspection completed and provides necessary information to support any determinations related to Operational Issues in a thorough, clear, and unbiased manner. Report approval is also acknowledgement by the organization for whom the inspector works, that the report reflects a quality inspection and an appropriate compliance assessment as described in their compliance planning documents.

Reports should not be approved that do not meet the required reporting standards and the inspector should reconsider any determinations made and the adequacy of the information supporting those determinations. Where the inspection is thorough and the information supports the determinations made, report approval may not be withheld based on the results of the inspection nor the implications of the outcome of the inspection.

- **MNR** - Completed FOIP reports will normally be approved by the Area Supervisor or may be approved by a District Manager's designate assigned this function in writing. MNR reports will be approved after the inspector has submitted the report in FOIP.
- **Industry** - Each Licensee will determine their individual report approval process (even if that is to be the inspector who completed the report), which will be described within the compliance planning component of either the FMP or the AWS. Industry reports will be approved after the inspector has submitted the report in FOIP.

FOREST OPERATIONS COMPLIANCE MONITORING AND OPERATIONAL ISSUE MANAGEMENT PROCESS

(Use In conjunction with [Monitoring and Operational Issue Management Process Chart](#) below)

For those operations identified for forest Compliance Inspection, through the application of risk management in compliance planning (Ref: FOR 07 02 04), and therefore reporting to the Forest Operations Information Program (FOIP);

or

For any forest operation where an operational issue is identified thereby requiring a forest Compliance Inspection and FOIP report;
the process laid out below applies.

FLOW CHART BOX 1 INSPECT AND REPORT ON OPERATIONS

a) Industry

The Compliance Inspection process is initiated by the Licensee as soon as forest operations commence. The frequency of Compliance Inspections will, as a minimum, be based on those requirements specified in the Licensee's Ten Year Compliance Strategy within the FMP (Refer to FOR 07 02 04 for additional details). Compliance Inspections will be conducted as described above (Inspecting).

Compliance Inspections may also be conducted in addition to those specified in the FMP at the discretion of the Licensee. An inspector may conduct an inspection to release a portion of a Compliance Reporting Area for the purposes of progressive reporting and/or to facilitate MNR inspections. This should enable MNR inspections to occur while Industry is in a position to address Operational Issues in a timely and cost effective manner.

As a minimum, Industry FOIP reports will be completed and submitted under the following situations:

- When operations are completed in a **Compliance Reporting Area** (see Glossary definition) which has been scheduled for a Compliance Inspection through the risk based analysis. These reports are the Licensee's confirmation that the operation and its work are complete, and available for MNR audit inspection. A compliance inspection report must be submitted to the FOIP database at the completion of the operation on a CRA.
- **Any time an Operational Issue has been identified.**
- No later than two years after the date of the start-up notice or, failing a properly filed start-up notice, two years after the date of the approval of the AWS under which the operation was authorized, and in both cases, every two years thereafter where a CRA has been scheduled for a Compliance Inspection through the risk based analysis. As noted above, where a CRA was not scheduled for a Compliance Inspection and a proper Completed Notice was not filed within two years of start-up or the date of approval of the AWS, the CRA will then require that a Compliance Inspection be done and a report submitted to FOIP.

b) MNR

Normally, MNR inspectors will submit a FOIP report after every inspection and any time an Operational Issue has been identified. Where Industry has defined Compliance Reporting Areas (Ref: Glossary), MNR inspectors may report at this level as well.

FLOW CHART BOX 2 OPERATIONAL ISSUE IDENTIFICATION

The first objective in managing the compliance of forest operations is to achieve compliant operations. Compliance actions should avoid or prevent non-compliant situations and where appropriate correct potentially non-compliant situations. Where an operator would normally respond to the situation as part of routine work responsibilities, this should be encouraged to prevent an Operational Issue from arising. It is a form of

corrective action and part of the compliance continuum. No Operational Issue arises nor is recorded in these situations.

During the course of operations, potential Operational Issues may be revealed as part of the inspection process or as brought to the attention of an industry inspector by forest operator(s).

- In those cases where Industry is conducting an inspection and sees a potential or a correctable situation, they should take immediate corrective action. This will result in those situations being avoided or prevented and the operation remaining fully compliant. For example, an inspector identifies improper sloping of the road base which could lead to erosion, but gets the operator to take immediate action to re-slope the road thereby stabilizing it. The Industry inspector may note this as an observation in the inspection report and the action taken but no Operational Issue would be created.
- Similarly, where MNR is conducting an inspection on an active operation and identifies the potential for an Operational Issue to arise, they should immediately advise the Industry representative and seek to resolve the situation while operations are actively in progress so that the operation remains compliant. The MNR inspector may note this as an observation in the inspection report but no Operational Issue would be created.

Where an Industry or an MNR inspector identifies a situation that cannot be responded to as noted above (e.g. a trespass, stream siltation, unapproved mill destinations), an Operational Issue is created and a report submitted to FOIP which will assign a compliance status of Pending.

FLOW CHART BOX 3 NO OPERATIONAL ISSUE - REPORT IS APPROVED AND SUBMITTED TO FOIP

Operations for which a Completed Notice has been submitted have the same compliance status as a Compliance Inspection report with no operational issues however, there is no record of this in FOIP since no inspection report has been filed. This assumes no subsequent inspection alters the situation. See Completed Notices above.

When the Inspector has determined that no operational issue exists the report is submitted to FOIP and approved.

These Inspections are characterized by:

- Each activity inspected is identified as in compliance.
- Reports submitted to FOIP are not required to provide text descriptions; however, inspectors may provide additional detail/information at their discretion to document events or conditions in operations.
- Inspectors may select the “No Operational Issues” button for each activity. By doing this, the Inspector acknowledges their accountability for the report and is confirming that an appropriate inspection process was conducted, the operational activity is in compliance, and they can provide documentation to support the No Operational Issues declaration made in the report.
- Approvers in these circumstances may rely on the certified inspector to have conducted a thorough and competent inspection to the required standards and in accordance with the Code of Ethics.
- FOIP assigns the approved report a compliance status of **In Compliance**. (see Flow Chart Box 15)

FLOW CHART BOX 4 OPERATIONAL ISSUE IDENTIFIED

The Inspector determines whether an Operational Issue exists. An Operational Issue is identified during a forest operations Compliance Inspection when operations vary from normal operating practices or from the standards and requirements in the FMP, AWS, or FOP, or from the terms and conditions of licenses, permits or other approval documents.

An Operational Issue is or has the potential to become a non-compliance.

When an Operational Issue is identified after an activity or operation is completed:

- The industry inspector will notify and discuss the Operational Issue with the MNR inspector, then record the Operational Issue in a FOIP report.
- The MNR inspector will notify and discuss the Operational Issue the industry inspector, then record the Operational Issue in a FOIP report. Where MNR is conducting an inspection of an area that is the subject of a Release or Completed notice and identifies an Operational Issue the same process for creating the issue will be used.

Both parties will communicate and share all information to ensure the relevant facts have been gathered to describe the Operational Issue.

FLOW CHART BOX 5 OPERATIONAL ISSUE CREATED- REPORT IS APPROVED AND SUBMITTED TO FOIP

When a FOIP report is created which records an operational issue, the report is first Approved in order to be formally logged in FOIP. FOIP then assigns a compliance status of **Pending**.

Operational Issues are identified as a variation from the requirement or standard at the Checklist Item level and reported at the Activity level. Inspectors should report the Operational Issue under the most appropriate checklist item and there may be cases where Operational Issues arise in more than one checklist item. In all cases, Operational Issues identified at the Check List item level will be aggregated into one Operational Issue for each activity even though each Operational Issue at the Check List item level will be managed as a separate issue.

The following examples demonstrate this concept:

- **Example 1:** An MNR inspector identifies an undersized culvert and erosion at an approved water crossing location which was not identified as part of the completed Access report for the road. **One Operational Issue is created.**
Even though there are Operational Issues identified for two check list items, only one Operational Issue will be created at the Activity level. The information summarizing the Operational Issue is to be recorded at that the Activity level under the *Water Crossing* activity. The details of the operational issue will be identified in the “AWS crossing details” and the “Erosion protection measures” checklist items under the *Water Crossing* activity on the Access Report.
- **Example 2:** The inspector identifies an undersized culvert and that the road corridor is built outside of the approved corridor. **Two Operational Issues are created.**
One Operational Issue will be created under the *Water Crossing* Activity and the details of the operational issue will be identified in the “AWS crossing details” checklist item.
A second Operational Issue will be created under the *Road Construction* activity with the details of the operational issue identified in the “Road located inside designated corridor” checklist item.

Many scenarios will be encountered by inspectors but the following principles are to be considered in dealing with these occurrences:

- An Operational Issue is to be created where the inspector believes the situation is clearly a contravention of a standard/requirement. The details are to be recorded in a report submitted to FOIP, and the other party notified in writing (see Reporting Timelines above).
- If the inspector is unsure if a contravention of a standard/requirement has occurred, they will be diligent in establishing the circumstances related to the situation. Normally, the inspector will attempt to secure all the details prior to submitting a report to FOIP. In many cases, there are other details (e.g. revisions, prior communication of intent, etc.) that may affect the outcome.
- Communication is key to the process and can facilitate the situation if both parties are aware and working towards resolving the problem.

- An Inspector may seek additional resources (plan author, biologist, scalers etc.) when assessing and evaluating a situation to determine if it is an Operational Issue.
- Inspectors will provide a detailed description that documents the Operational Issue and meets the elements of a quality report, as noted in the Reporting on Inspections section above.
- Finally, where an inspector is uncertain and unable to definitively conclude there is an Operational Issue, he/she should record the event as an Operational Issue in their FOIP report and allow the verification process to make a determination.

6. FLOWCHART BOX 6 OPERATIONAL ISSUE VERIFICATION

MNR inspectors will verify all Industry generated Operational Issues. MNR generated Operational Issues are verified by the inspector filing the report. Thereafter, the same process will be followed and all Operational Issues will be managed and recorded on the original inspection report in FOIP.

In verifying an Operational Issue, the MNR inspector will confirm or reject the Operational Issue. The following must be considered as part of the verification process:

- Although verification remains the responsibility of the MNR, every attempt should be made to communicate with the Industry inspector to ensure complete and accurate information.
- Verification can be achieved by a number of methods. This may include verbal communication to discuss the issue, office review of documentation, and/or on-site verification or any combination of these. The verification method(s) used must be defensible and should be consistent with the type of Operational Issue being verified.
- The verification decision must include a rationale (brief and to the point) for the decision.
- MNR has final decision on confirmation or rejection of Operational Issues.

Verification Timelines

Timelines for verification of an Operational Issue will reflect the nature of the Operational Issue as follows:

- For situations where a Stop Work order (Section 55(1)(a)) has been issued, **OR** Where notification to MNR was required within 24 hours under the reporting timelines indicated above; the Operational Issue will be verified within 24 hours of issuance of the Stop Work order or the notification;
- All other situations will normally be verified within 10 working days of notification to MNR by the inspector.

FLOW CHART BOX 7 OPERATIONAL ISSUE IS REJECTED

Verification of an Operational Issue by MNR may result in the issue being **Rejected**. This will happen where:

- The evidence does not support the issue; or
- The deviation of the forest operation is determined to be within normal operational variability consistent with FOR 07 01 01. That is, it is a variation which has occurred in response to the complexities and variability of the environmental, climatic, and operating conditions, (usually caused by terrain, weather or similar factors) and the variation has not compromised the achievement of the FMP objective(s) nor the attainment of the desired future forest condition. Finally, it reflects the conclusion by MNR that it is consistent with the intent of the standards and requirements and therefore does not constitute a contravention of the regulatory framework.

When the issue is Rejected, FOIP will record it as **Confirmed Non Issue**. The decision and the reasons for it must be documented in the FOIP report Issue management section and the Operational Issue closed by the verifying MNR inspector.

For example: The harvest prescription is to leave residual forest equivalent of 5% of the total area of the harvest block. The harvest block is 500 ha so the residual to be left is 25 ha. Upon measurement, the industry inspector determines that patches add up to only 23 ha for this block so he recorded this as an Operational Issue. Through the verification process, the MNR inspector determines that in the two adjacent 500 ha blocks, the residual forest equivalents are 26.5 and 27 hectares. The MNR inspector concludes that these differences are within normal operational variability and therefore rejects the Operational Issue. The decision rationale recorded on the report, and the MNR inspector will select Confirmed Non Issue.

FLOW CHART BOX 8 OPERATIONAL ISSUE IS CONFIRMED

In situations where a forest operation does not meet the tests for rejection, and is or has the potential to be non-compliant to the legislation, licence, approved Forest Management Plan (FMP) or Annual Work Schedule (AWS), the Operational Issue will be Confirmed by the MNR inspector. The decision and the reasons for it must be documented in the FOIP report Issue Management section. FOIP will record the confirmation and maintain the compliance status as Pending.

FLOW CHART BOX 9 CORRECTIVE ACTION DECISION

Once an Operational Issue has been confirmed, the MNR inspector must make a decision as to whether or not the Operational Issue can be resolved through assigning a Correction Action. It is critical that the MNR inspector distinguish between what can and cannot be corrected to ensure the operation remains compliant. A Corrective Action must be able to respond to physical event of the Operational Issue so that the operation maintains compliance. It also must address the behaviour that caused the Operational Issue. Where loss and/or damage has already occurred, it cannot generally be “taken back” but it can be mitigated to limit loss and/or damage – this is not corrective action, it is mitigation. Occasionally damage can be repaired but incurred loss cannot be restored.

Where the MNR inspector determines that Corrective Action will not resolve the Operational Issue, it will be recorded in the Issues Management section of the FOIP report along with the rationale for the decision. The issue will then be updated and closed as per Flow Chart box 13 (below) when FOIP will change the report status from Pending to Not In Compliance.

Where the MNR inspector determines that the Operational Issue can be resolved through assigning a Corrective Action, the report status will remain Pending.

Corrective action exists in two forms, the first of which was identified under Flow Chart Box 2 above. This section of the procedure describes and discusses the second of those forms.

This second form of corrective action occurs when MNR assigns a Corrective Action to resolve an Operational Issue. A Corrective Action to resolve an Operational Issue is an action that will respond to a deviation in a forest operation so that the operation will be in a state of compliance within normal operational variability and without incurring loss or damage being, consistent with FOR 07 01 01. This reflects the conclusion by MNR that the operation remains consistent with the standards and requirements.

A Corrective Action may be assigned by MNR regardless of who reported the Operational Issue. When deciding to assign a Corrective Action, MNR will assess if corrective action is an appropriate response to resolve an Operational Issue in terms of the likely success of the Corrective Action in keeping the forest operation compliant. This will consider the action both as a response to the immediate operational situation, and its ability to change the future behaviour of the person(s) that caused the Operational Issue. Where an Operational Issue continues to occur after previous assignment(s) of corrective action, it is unlikely further assignment of corrective action will be effective in resolving that type of Operational Issue. It may be concluded that the Operational Issue will not be resolved by corrective action leading to a determination of not in compliance as per Flow Chart box 13.

Prior to assigning a Corrective Action, MNR will normally discuss what is required and the timelines with the Licensee to utilize the available operational expertise from field staff and to ensure the action is feasible (i.e. effectiveness/cost/timeframes). Where advice from the licensee makes it clear that a Corrective Action will not be effective, or is not feasible to carry out, or would be too costly to carry out, then it can be concluded that in fact the Operational Issue is not correctable.

FLOW CHART BOX 10 A CORRECTIVE ACTION DETERMINED AND ASSIGNED

Once a Corrective Action is determined and approved by the authorized FOIP Approver, MNR assigns the Corrective Action within the FOIP issue.

Corrective Action(s) must include clear information about:

1. What is to be done;
2. Who is to do it; and
3. When it is to be completed.

It must leave the decisions of how it is to be done to the Licensee.

Assignment of a Corrective Action, when and where appropriate, provides an opportunity for the Licensee to resolve an Operational Issue and keep their operations compliant. However, the Licensee retains the choice of completing an assigned Corrective Action.

It must be remembered that:

- Corrective Action(s) may be required to correct both a physical problem and the root cause of the Operational Issue.
- Details describing what the Corrective Action is to accomplish and by when must be clear as the Operational Issue may result in a not in compliance finding and a remedy.
- The Corrective Action should describe what needs to be done but not the method for achieving it. It is up to the Licensee to ensure that final conditions satisfy the Corrective Action requirements.
For example, an Operational Issue is created which identifies old culverts and industrial garbage in an unused gravel pit with the appropriate response as follows:
 - i. *MNR Identifies the Corrective Action* - Culverts to be removed and garbage to be cleaned up by the Licensee within 30 days.
 - ii. *Industry Implements Corrective Action* - The Licensee removes the culverts to a proper storage site and cleans up the garbage within the 30 day timeframe.

Note: MNR will not assign a Corrective Action unless it resolves an Operational Issue. There are circumstances where action may be required or undertaken to correct or mitigate a situation that does not resolve an Operational Issue. In these instances, the situation will have been determined to be Not in Compliance and a remedy will be applied. Where MNR wishes to require an action(s) to be taken in response to a non-compliant situation, this will be done as part of the remedy using an Order (sections 55, 56 or 57 of the CFSA, as appropriate) which resulted from the Determination of Remedy process (Ref: FOR 07 06 03).

11. FLOW CHART BOX 11 CORRECTIVE ACTION COMPLETED AS ASSIGNED

Where a Corrective Action is completed as assigned (what and by when), MNR will update the Operational Issue as Resolved by Corrective Action, and close the Operational Issue).

The MNR inspector must confirm that the Corrective Action has been completed as assigned. Examples of how confirmation might be done include completing a follow-up inspection at the site of the former Operational Issue or by receiving adequate proof that the Corrective Action has been completed from the industry; e.g., photographs of the site showing Corrective Action taken.

Where MNR closes an Operational Issue as a result of Corrective Action that was completed as assigned, an Advisory Note will be generated by FOIP and sent to the Licensee. This written notice is provided to Industry identifying the FOIP inspection report and the Operational Issue, indicating that failure to prevent Operational Issues in the future may result in operations being not-in-compliance and subject to the application of Remedies.

An Advisory Note does not form part of the compliance history because it is only generated where actions have kept operations compliant. Multiple Advisory Notes resulting from a repetitive Operational Issue can signal that the Operational Issue is not being resolved through Corrective Action and a Not-In-Compliance determination is appropriate.

FLOW CHART BOX 12 CORRECTIVE ACTION NOT COMPLETED AS ASSIGNED.

Where Corrective Action is not completed as assigned (what or by when), MNR will assess the operation to be Not-In-Compliance and will update the Operational Issue accordingly.

The MNR inspector will need to ensure they track the Corrective Action assigned in order to be aware of assignments that pass the deadline, and then carefully document how the Corrective Action was not completed as assigned in the comments section of the issue.

FLOW CHART BOX 13 ISSUE UPDATED AND REPORT ASSIGNED NOT IN COMPLIANCE STATUS

When an Operational Issue cannot be or is not resolved by Corrective Action (flowing from Flow Chart Box 9 or 12 above), the issue is updated by MNR and FOIP will change the compliance status from Pending to Not- In - Compliance.

FLOW CHART BOX 14 DETERMINE AND APPLY REMEDY

Once a FOIP report is assigned a Not-In-Compliance status, it is no longer considered part of the forest operations compliance monitoring and operational issue management process. The Operational Issue is closed but the report remains open and the matter is referred to the Remedy Process (Ref: Handbook Part VI). Once the appropriate Remedy is determined (Ref: FOR 07 06 03) it is entered in the FOIP report and the report is closed.

FLOW CHART BOX 15 FOIP ASSIGNS IN COMPLIANCE STATUS TO REPORT

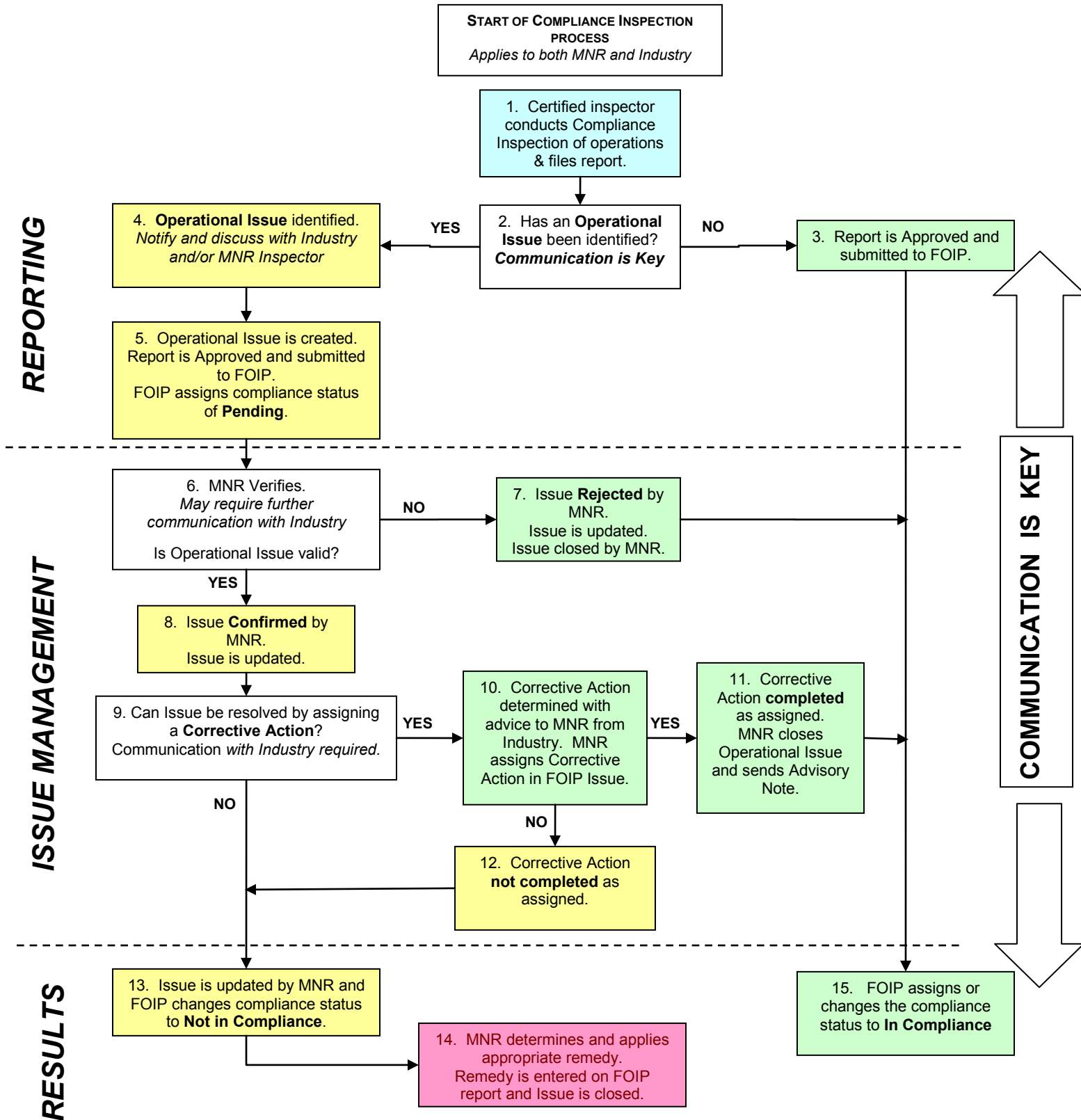
FOIP assigns the status of In Compliance to reports coming from Flow Chart Boxes 3, 7, and 11 above.

REPORT DISTRIBUTION

Once submitted to FOIP and approved, an inspection report is immediately available through FOIP to anyone with “viewing privileges” and can be requested by the public.

The following Flow Chart lays out the Compliance Inspection (and report) and Operational Issue management processes described above. It should be used as a guide to assist in interpreting the text above.

FOREST OPERATIONS COMPLIANCE INSPECTION AND OPERATIONAL ISSUE MANAGEMENT PROCESS



APPENDIX A

CHECKLIST ITEM DESCRIPTION

Notes:

1. *The following checklists of items are those that an inspector needs to consider and report on when conducting a forest operation inspection. It is a general listing of items by activity and should not be considered as the only items that can be inspected. Particular situations may require that additional items be inspected and reported on. Although worded as questions, the response required on an actual inspection report would be In Compliance or Not In Compliance.*
2. *Some Activities and their corresponding Checklists are repeated under one or more Operations. For example "Fire Prevention" is an Activity in all four operation types.*
3. *Always refer to the applicable legislation, guides or plans for exact wording of terminology, standards and requirements, e.g. Forest Fire Prevention Act, Public Lands Act, Lakes and Rivers Improvement Act, Fisheries Act (federal), Annual Work Schedule, Forest Management Plan, etc.*

A. HARVEST AND ACCESS OPERATIONS

Checklist - Road Construction

1. Is road located inside designated road corridor?
2. Is road built to the FMP requirements?
3. Is road properly drained?
4. Has road use strategy been followed in accordance to the FMP?
5. Is road clearing in accordance with CFSA requirements (re: wood utilization)?
6. Has traffic safety been considered (signage, sight lines, etc.)?
7. Other

Checklist - Aggregates

1. Has the Forestry Aggregate Pit been established in accordance with the AWS or FMP?
2. Has operator followed Operational Standards for Forestry Aggregate Pits?
3. Has annual Forestry Aggregate Pit report been filed as required by the FMPPM?
4. Other

Checklist - Water Crossing

1. Has operator followed AWS crossing details?
2. Have applicable timing restrictions been met?
3. Are erosion protection measures in place at the crossing?
4. Are road approaches stable and erosion mitigated?
5. Is fish passage addressed?
6. Is traffic safety addressed (i.e., signage, guard rails)?
7. Has debris been left in a water body or watercourse?
8. Has road use strategy been implemented for this crossing?
9. Other

Checklist - Area of Concern

1. Have prescriptions in the AWS or FMP been followed?
2. Have timing restrictions been met?

3. Other

Checklist - Fire Prevention (same for all Operations)

1. Are there an adequate number of fire trained personnel on site?
2. Are there adequate amounts of serviceable fire suppression equipment readily available?
3. Are appropriate communications capabilities on site?
4. Have operations followed the Modifying Industrial Operations Protocol?
5. Has machinery been checked for flammable material or removed/disposed of safely?
6. Has mechanical equipment been parked in area free of flammable material?
7. Are appropriate spark arrestors/mufflers on all wood burning appliances/equipment?
8. Are there appropriate serviceable fire extinguishers for all equipment/chain saws?
9. Are power saws placed in a fire safe area or not started within a refueling area?
10. Is the worksite free of smoking during walking/working and are materials extinguished in a safe manner?
11. Have burning regulations been followed?
12. Other

Checklist - Cutting

1. Have prescriptions in the AWS or FMP been followed?
2. Have operations been within approved boundary?
3. Has cutting proceeded with authority?
4. Have only authorized species been cut?
5. Has residual stand been protected?
6. Has site disturbance occurred (i.e., rutting)?
7. Is treatment in accordance with the forest operation prescriptions?
8. Other

Checklist - Utilization

1. Are operations in compliance with the utilization standards?
2. Were high stumps noted, and if so were they in compliance with the standard?
3. Has all merchantable timber of any length been utilized?
4. Have all merchantable standing trees been utilized?
5. Are there no lodged trees?
6. Has all wood chip fibre been utilized?
7. Other

Checklist - Wood Measurement / Movement

1. Have conditions of *Authority to Haul Unscaled Crown Forest Resources* been followed?
2. Has Crown timber been scaled?
3. Other

B. RENEWAL and MAINTENANCE OPERATIONS

Checklist - Pesticide Application

1. Have operations been in accordance with the AWS or FMP?
2. Is treatment in accordance with the forest operation prescriptions?
3. Have applicable AOC prescriptions been followed?
4. Are operations inside of approved boundary?
5. Is posting in place or has notification been given?
6. Other

Checklist - Renewal

1. Have operations been in accordance with the AWS or FMP?
2. Is treatment in accordance with the forest operation prescriptions?
3. If applicable, have AOC prescriptions been followed?
4. Has residual stand been protected?
5. Has site disturbance occurred (e.g., rutting)?
6. Other

Checklist - Tending

1. Have operations been in accordance with the AWS or FMP?
2. Is treatment in accordance with the forest operation prescriptions?
3. Have applicable AOC prescriptions been followed?
4. Has residual stand been protected?
5. Other

Checklist – General

1. Has commercial – industrial garbage or waste been removed?
2. Have spills (oil changes, fuel, etc.,) been noted?
3. Other

**07 Monitoring and Assessment
03 Forest Compliance Monitoring****FOR 07 03 06**
Procedure**DOCUMENTING SUSPECTED INFRACTIONS****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

This procedure is directed to all Ministry of Natural Resources (MNR) employees who observe a potential Operational Issue in forest operations that might lead to a non-compliance or a regulatory infraction, particularly staff who carry out forest operations **inspections, auditing and other monitoring activities**, and who may be the first to detect a suspected infraction on a forest operation.

PROCEDURE

If, in the course of one's duties it is suspected that an infraction has occurred or is about to occur, the following action should be taken:

DOCUMENTATION

The following pieces of information should be documented where possible:

- time, date and location of the occurrence;
- persons on the site, operators, witnesses, etc., including names, phone numbers, addresses, reason for being on site;
- description of person(s) (where identification is not possible);
- vehicle descriptions, make, model, colour type, licence plate numbers, company names;
- equipment on site, type, size, colour, trade name, etc.;
- any documents where applicable, e.g. bill of lading, authority to haul (ATH)
- any company or MNR Forest Operations Information Program (FOIP) report if applicable

PARTICULARS OF THE OCCURRENCE

The following information should also be documented where possible:

- time notes were taken (time should be recorded throughout the documentation process);
- weather conditions;
- where the equipment is located, the relationship between one piece of equipment and another;
- measure or estimate (pace) distances;
- describe in your own words what you are observing and what is actually taking place;
- sketch of the scene and include approximate measurements (photographic or digital images are ideal).

NOTE TAKING

“Never Rely on Your Memory - Write It Down and Write It Down Right!”

Notes are intended for refreshing your memory when entering your Forest Operations Inspection Program report, for possible court purposes and/or for relaying events to an investigating officer or others as required. From your notes, you should be able to answer the, who, what, when, where and how of an occurrence.

- preferably you should use a bound notebook;
- ideally use black ink, but anything will do in a pinch;
- notes should be written at the time of the occurrence/observation or as soon as possible thereafter. Only you should write in your own notebook;
- do not delete or add information, erase, whiteout or, in any way, alter your notes after the fact. If you make an error in your notes, stroke a line through the error so that it remains visible.

FIELD ACTION

Look at the whole situation to determine the impacts of the work being done. Ask yourself if there has been or will there be a harmful alteration or destruction to the Crown forest if the work continues. Try to determine the magnitude of the problem. These will help you determine the urgency and the priority of the actions you will take.

Before you begin to gather information, determine the priority of your actions based on the potential damage to the forest or evidence which could be lost or compromised in any way.

Determine the following information:

- Who are the operator or person(s) at the site, and what is their relationship to the licensee?
- Has the work been authorized? i.e. licence, approvals, permits....

If the operator is still on site and there is a possibility that the suspected infraction will continue the Ministry employee should inform the operator of the concern. The Ministry employee should inform the operator, or persons on site, that he/she will be documenting the occurrence and collecting information relating to the occurrence.

Do not make statements, commitments, or provide directions that are not within your authority.

NOTIFICATION

Report your findings to the Area Supervisor as soon as possible. As well, the District Enforcement Supervisor should be advised.

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 07**
Procedure**ENTRY ONTO PRIVATE LAND AND DWELLINGS****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

A Ministry employee, agent or anyone accompanying them, may enter onto private land, other than a dwelling, to inspect to ensure compliance with the Crown Forest Sustainability Act (CFSA). Some examples of where entry to private property is required are; to ensure the operations are properly authorized and being properly conducted, to ensure scaling is being done in accordance with the Scaling Manual, and to ensure that there are no wasteful practices occurring.

Prior to entry onto private land, there must be reason to believe Crown forest resources are stored or processed on the property. For the purposes of this section, reasonable belief is defined as a set of facts, circumstances or observations that would lead a reasonable person to believe there are forest resources on the property.

The power to cross private property can only be utilized where the purpose is to access a Crown forest. This power can be used freely where the private property is forested and has no indications that the owner is limiting access, such as fences, signs, or painted dots. Where the private property has such signs, this power should only be used where access without crossing private property is otherwise very difficult due to terrain or the Crown forest is land locked.

The decision to utilize this authority rests with the Ministry employee or agent.

Application**Section 61 (1) of the CFSA states:**

Subject to subsection (2) below, an employee or agent of the Ministry and any person accompanying him or her and acting under his or her instructions may, at all reasonable times and on producing proper identification,

- (a) enter private land for the purposes of this Act if forest resources or products manufactured from forest resources are, or are reasonably believed to be, located or processed on the private land; or
- (b) cross private land for the purpose of reaching a Crown forest.

Under no circumstances should a forest operations inspector enter a room or a place used as a dwelling except under the authority of a search warrant. (Ref: FOR 07 03 10)

PROCEDURE

For safety considerations, inspections should be restricted to daylight hours. Entry onto private lands such as mill yards or places of business should normally occur during business hours.

If no person(s) is present on the property, proceed to inspect. Do not enter any enclosed buildings or structures.

If you encounter someone, identify yourself using proper Ministry identification and advise them of your intent to inspect for forest resources. It is a good practice to ask if the individual would accompany you on your inspection which may include buildings and structures.

If you encounter an uncooperative individual who orders you off the property: advise them of your authority under Section 61 of the CFSA; why you believe that forest resources are present on the property; and your reasons for wishing to inspect. It is a good practice to show the person the appropriate section in the CFSA.

If the individual still insists that you leave, try to determine if this individual is the property owner, and then leave.

If the uncooperative person is not the property owner, try to get consent from the owner to inspect. If consent cannot be obtained, discuss alternatives with the Enforcement Supervisor.

If any person becomes confrontational, staff should leave and consider returning with assistance qualified to handle the situation.

If you have sufficient grounds you may wish to obtain a search warrant (Ref: FOR 07 03 10).

There is no offence of obstruction with regard to this section unless the entry on private land is for the purpose of fulfilling Section 60, 61 or 62 of the Act.

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 08**
Procedure**OBSTRUCTION OF EMPLOYEES****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

In the course of his/her duties under the Crown Forest Sustainability Act (CFSA), it may be necessary for a Ministry of Natural Resources employee or agent to:

- Seize forest resources or products (Section 60, CFSA) (Ref: FOR 07 04 09),
- Enter onto private land (Section 61, CFSA) (Ref: FOR 07 03 07), or
- Inspect records (Section 62, CFSA) (Ref: FOR 07 03 05)

SECTION 64 (1) (E) OF THE CROWN FOREST SUSTAINABILITY ACT STATES:

A person who obstructs an employee or agent of the Ministry acting under section 60, 61 or 62 is guilty of an offence and is liable on conviction to a fine of not more than \$10,000

Infraction

A person obstructs an employee or agent of the Ministry acting under Section 60, 61 or 62 CFSA.

REMEDIES	REFERENCE
Section 64(1) (e) CFSA - Court action - maximum \$10,000.00.	Court action should be reviewed by prosecutor prior to charge being laid.

PROCEDURE

If an uncooperative individual is encountered who:

- interferes with the seizure of forest resources;
- denies entry to private land; or
- denies access to or refuses to provide records for inspection,

Then they may be obstructing under Section 64. Advise them of your authority under the applicable section (Section 60, 61 or 62) of the CFSA and why you are acting under that section of the Act. It is a good practice to show the person the appropriate section in the CFSA.

If the individual still obstructs or insists that you leave, try to determine if this individual is a person of authority in the matter or the property owner, and then leave.

If the uncooperative person is not a person of authority or the property owner, try to get consent from a person of authority or the owner to inspect. If consent cannot be obtained, discuss alternatives with the Enforcement Supervisor.

If any person becomes confrontational, staff should leave and consider returning with assistance qualified to handle the situation.

Staff should make careful notes of the incident including what was said and done by all people present including you. Recording a physical description of the person will be helpful if the person is not known to you. (Ref: FOR 07 03 06)

If you have sufficient grounds you may wish to obtain a search warrant (Ref: FOR 07 03 10).

07 Monitoring and Assessment**03 Forest Compliance Monitoring****FOR 07 03 09**

Procedure

FALSE STATEMENTS**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

In the forest operations compliance inspection process, the forest industry is required to inspect and report on the compliance status of its operations. The Ministry of Natural Resources (MNR) carries out its own inspection to monitor the industry's operations and compliance monitoring program and also undertakes verifications of operational issues. At times, the observations and recording of inspections and assessment of compliance by the two parties may differ. As the regulating agency, the MNR determines the compliance status, takes enforcement action, and applies remedies as deemed necessary. False or misleading information on inspection reports may be considered as making a false statement. The application of remedies may not be appropriate where the information is merely inaccurate, and has been provided through inadvertence or as a result of reasonable interpretation or assessment of a given situation. Where the application of remedies is contemplated, the matter should be discussed with the District Enforcement Supervisor, Enforcement Branch and Legal Service Branch.

Section 64 (1) (f) of the Crown Forest Sustainability Act (CFSA) states:

A person who makes or takes advantage of a false statement with respect to any matter under this Act or the regulations is guilty of an offence and is liable on conviction to a fine of not more than \$10,000.00.

INFRACTION

Make a false statement or take advantage of a false statement.

REMEDIES	REFERENCE
Section 64(1) (f) CFSA - Court action – maximum \$10,000.00.	Court action should be reviewed by prosecutor prior to a charge being laid. Charges should be commenced by long form information and summons.

PROCEDURE

Where it is believed that a person has made a false statement, staff should contact the Enforcement Supervisor to determine if a charge under Section 64 should be pursued.

Where intent to defraud is evident, criminal charges under the Criminal Code of Canada should be discussed with the Enforcement Supervisor and the Crown Attorney.

Forest Management Directives and Procedures

07 Monitoring and Assessment
03 Forest Compliance Monitoring**FOR 07 03 10**
Procedure**SEARCH WARRANTS****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Section 8 of the Canadian Charter of Rights and Freedoms (Charter) protects citizens from unreasonable search and seizure by the state.

Search warrants are an enforcement tool which may be used when it is necessary to search a room or place used as a dwelling, or other private property, buildings and structures (Ref: Section 61(2) CFSA).

The search of a dwelling is primarily aimed at recovering records, documents, and /or other evidence. For example: use, sale, transportation or possession of forest resources.

A search warrant can be obtained where there are reasonable grounds to believe that the place to be searched contains evidence of an offence, or contains anything “upon or in respect of which an offence has been or is suspected to have been committed”.

For the purposes of the CFSA, warrants will generally be used:

- i) to obtain evidence that an offence was committed, or,
- ii) to enter onto private land to seize Crown timber.

The fact that there must be reasonable grounds to believe an offence was committed does not limit the use of a search warrant to situations where charges under CFSA, s.64 are contemplated. A warrant can be obtained even if the remedy chosen is an administrative penalty, or even where no remedy is imposed.

PROCEDURE

When it is felt that a search warrant may be required to obtain evidentiary information, the Enforcement Supervisor will determine the applicability and supervise any resultant process.

If a warrant is required, the Enforcement Supervisor should consider ENF PO 2.01.01 and ENF PR 2.01.01.01 in supervising the preparation, approval and execution of a warrant.

The warrant is obtained under Section 158 of the Provincial Offences Act. A Conservation Officer or Police Officer must prepare and execute the warrant.

Approval to proceed with a search warrant is required from Enforcement Branch.

Reference Section 61(2) CFSA.

Forest Management Directives and Procedures

07 Monitoring and Assessment**03 Forest Compliance Monitoring****FOR 07 03 11**

Procedure

PUBLIC ACCESS AND REPORT RETENTION AND STORAGE PROCEDURES**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Environmental Assessment Declaration Order, MNR 71/2 requires that individual inspection reports from forest operations inspections shall be available for viewing at the local MNR district office by the Local Citizens Committee and the general public. The most recent five years of individual inspection reports shall be available for viewing, and for use in independent forest audits.

PUBLIC ACCESS

The public may view and is to be provided with a copy of individual inspection reports upon request at a district office. To protect the Forest Operations Information Program database and retain the compliance record system integrity, the public will not be allowed direct access.

Where a copy of an individual inspection report is requested at a ministry district office, it **must** be provided with due consideration for the protection of privacy provisions under the Freedom of Information and Protection of Privacy Act (FIPPA) rules and requirements.

Where a batch or multiple inspection reports are requested, staff are expected to reasonably process such requests with due consideration for volume, capacity, time and expense involved. If responding to the request exceeds the district's capacity to comply, the district Freedom of Information (FOI) co-ordinator should contact Forests Branch to determine if it is more appropriate for the request to be processed locally or through the Branch. Where significant cost is likely to be incurred, the Branch and district will determine if the applicant will be requested to submit a formal request for information under FIPPA.

Viewer access will be provided to Independent Forest Audit firms for the Management Unit (MU) they are auditing and will be valid only for the year of their audit. This access will allow them to query and view all forest compliance inspection reports approved and submitted to the Forest Operations Inspection Program only for the MU being audited. This access will be granted to one audit team member upon request of the audit firm to the Coordinator-Forest Operations Compliance.

RETENTION

In addition to the EA Dec Order retention requirement, MNR must retain each report for six (6) years after the actual inspection. This allows for determining the application of remedy and enforcement action where necessary. Beyond the six-year requirement, long-term retention is in accordance with the Ministry's record archiving policies and/or as may be required to resolve any outstanding compliance issue or remedy including appeals. While the central database (FOIP) is the main repository for inspection reports, it is recommended that MNR districts retain a backup of all inspections by the most appropriate means (e.g. hard drive, compact disc, or paper).

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 01**
Procedure**FOREST OPERATIONS AND SILVICULTURE MANUAL - COMPLIANCE****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Forest Operations and Silviculture Manual (FOSM) is one of four manuals the Crown Forest Sustainability Act (CFSA) requires the Ministry to prepare. The current approved manual (dated 2000) is authorized by regulation under the Act. The manual contains provisions respecting forest operations including:

- Standards for forest operations.
- Standards for silviculture practices.
- Minimum qualifications for persons specified in the manual who are engaged in forest operations.
- Assessment procedures and standards to be used in the evaluation of forest operations and forest management.

The FOSM often directs the setting of standards by reference to other documents (e.g. wasteful practices in the Scaling Manual and certain operational and silvicultural standards in various guides).

PROCEDURE**COMPLIANCE WITH MANUAL****Section 43 of the CFSA states:**

A person who conducts forest operations in a Crown forest shall comply with the Forest Operations and Silviculture Manual.

Exemption

Section 47 states, "The Minister may in writing direct that this Part or a provision of this Part does not apply to forest operations conducted in accordance with a forest resource licence if the term of the licence does not exceed one year and the total area covered by the licence does not exceed 25 hectares".

INFRACTION

Fails to conduct forest operations in compliance with the Forest Operations and Silviculture Manual.

REMEDIES	REFERENCE
Section 55 CFSA - Stop Work Order	Issue Stop Work Order where applicable (Ref: FOR 07 06 04).

REMEDIES	REFERENCE
Section 56 CFSA - Repair Order	Issue Repair Order where applicable (Ref: FOR 07 06 04).
Section 58(1)(e) CFSA - Administrative Penalty Maximum of \$15,000.	Monetary penalty (Ref: FOR 07 06 05 and FOR 07 06 06)
Section 59(1)(b) CFSA - suspend or cancel a licence	Senior Management level decision required as to application of this provision (Ref FOR 07 06 08).
Section 64(1)(c) CFSA - Court action maximum \$100,000.	Court action where there is repetitive significant or very significant impact (Ref: FOR 07 06 07).

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 02**
Procedure**FOREST RESOURCE LICENCE – REQUIREMENTS****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act (CFSA) authorizes the Minister to make available a forest resource licence if the Minister is of the opinion that forest resources in a management unit should be made available to be harvested or to be used for a designated purpose. The Act also stipulates under various sections, the requirements and obligations that must be met by the holder of a forest resource licence. These have been consolidated into this directive. MNR staff will monitor compliance of forest operations to these requirements.

A forest resource licence includes a licence issued under Section 26 (SFL) and a licence issued under Section 27 (FRL) but does not include a licence issued under Section 29 of O.Reg 167/95. Staff should also consult additional directives and procedures regarding licences under sections FOR 05 02 XX (Sustainable Forest Licensing) and FOR 05 03 XX (Forest Resource Licensing).

Requirements of the Act or Regulations may be repeated as terms and conditions of a licence. Accordingly, there may be two or more compliance procedures in this manual which apply. Where the requirements relate to the provision of information, Procedure FOR 07 02 01 should be followed in preference to any others which may be applicable. In all other situations, this procedure should be followed in preference to any others which may be applicable. Staff should refer to the procedure for determining remedy (Ref: FOR 07 06 03) for additional guidance.

PROCEDURE**FOREST RESOURCE LICENCE REQUIREMENTS****TERMS AND CONDITIONS*****Section 28 of the CFSA states:***

A Forest Resource Licence is subject to such terms and conditions as are prescribed by the Regulations and to such other terms and conditions as may be specified in the licence.

Where chronic non-compliance in field operations is occurring, staff should review licence conditions to ensure they clearly state requirements and expectations. This will facilitate applying a Compliance Order if needed.

Infraction

Fail to comply with terms and conditions of a Forest Resource Licence as set in Regulations or in licence.

REMEDIES	REFERENCE
Section 55 CFSA - Stop Work Order	Issued where appropriate and necessary. Ref: (FOR 07 06 04)
Section 57 CFSA - Compliance Order	Issued when <i>compliance with the licence</i> is not achieved. (Ref: FOR 07 06 04)
Section 58(1) (b) CFSA - Administrative penalty maximum of \$15,000 or 5X value of resource harvested in contravention of the licence.	Monetary value. (Ref: FOR 07 06 06)
Section 64(1) (b) CFSA - Maximum \$100,000	Offence Charge and Court action. (Ref: FOR 07 06 07)
Section 59(1) (a) CFSA - Cancel or suspend licence	Senior Management level decision required. (Ref: FOR 07 06 08)

MANUFACTURING IN CANADA

Section 30(1) of the CFSA states:

A forest resource licence that authorizes the harvesting of trees is subject to the condition that all trees harvested shall be manufactured in Canada into lumber, pulp or other products.

Exemption

The Minister may grant an exemption from subsection 30(1). Details regarding such exemptions can be found in FOR 05 01 01.

Infraction

Fail to have trees harvested under a Forest Resource Licence manufactured in Canada.

- (1) export in excess of Minister's exemption;
- (2) shipping without an exemption from Minister.

REMEDIES	REFERENCE
Section 57 CFSA -Compliance Order	Order to comply. (Ref: FOR 07 06 04)
Section 58(1) (c) CFSA -Administrative penalty maximum \$15,000.	Monetary value. (Ref: FOR 07 06 06)
Section 59 (1) (d) CFSA -Suspend or cancel a licence.	Senior Management level decision required. (Ref: FOR 07 06 08)

CROWN CHARGES

Area Charges

Section 32(1) of the CFSA states:

The holder of a forest resource licence shall pay to the Minister of Finance an annual area charge in the amount and within the times required by the Minister of Natural Resources in respect of the land specified under subsection (2).

32 (2) A forest resource licence shall specify the land in the area covered by the licence in respect of which an annual area charge shall be paid and shall state the total area occupied by that land.

32 (3) Subsections (1) and (2) do not apply in respect of a licence that only authorizes the harvesting of killed or damaged forest resources or that belongs to a class of licences prescribed by the regulations.

Infraction

The holder of a Forest Resource Licence fails to pay annual area charge.

REMEDIES	REFERENCE
Section 41 & 44(2) CFSA - Withhold licence or any approval.	If licence is issued approval is withheld until payment is made. If licence is not issued, the licence is withheld.
Section 59(1) (g) CFSA - Suspend or cancel licence.	Senior Management level decision required. (Ref: FOR 07 06 08)

Payments Of Crown Charges

The CFSA provides that:

S. 33 (1) Property in forest resources that may be harvested under a forest resource licence remains in the Crown until all Crown charges have been paid in respect of the resources.

S. 33 (2) Property in forest resources that may be used for a designated purpose under a forest resource licence remains in the Crown.

NOTE:

Once the Crown charges that are due in respect of forest resources have been paid, the property (ownership) in those forest resources passes to the person from whom the Crown required the payment of the Crown charges be made.

Section 40(1) of the CFSA states:

Crown charges in respect of forest resources authorized to be harvested or used for a designated purpose by a forest resource licence shall be paid by the licensee whether the resources are harvested or used by the licensee or by another person with or without the licensee's consent.

Infraction

Forest Resource Licensee fails to pay Crown charges.

REMEDIES	REFERENCE
Section 41 CFSA - Withhold licence or any approval. Section 44(2) – Withhold approval to commence harvest.	When Crown charges are not paid in accordance with the Regulations, licences or approvals shall be withheld Unless other approved arrangements are made with the District Manager. (Ref: FOR 05 03 22)
Section 59(1) (g) CFSA - Suspend or cancel licence.	Senior Management level decision required. (Ref: FOR 07 06 08)

Seizures of forest resources may be done to protect Crown's interest in accordance with the Seizure and Forfeiture FOR 07 04 10.

NOTE:

Administrative penalties (S. 58) do not become a Crown charge under the CFSA until the Regional Director has applied the administrative penalty and either the licensee pays the penalty or the court determines that the licensee is liable to the penalty. Where a licensee has sought representation to the Regional Director respecting the application or the amount of the penalty, licences and approvals shall not be withheld. If the licensee fails to pay the penalty after it has been determined by a court that the licensee is liable to the penalty or if the licensee fails to pay the stumpage and other charges for the resource harvested, the Ministry may withhold a licence, an approval or suspend/cancel a licence.

APPROVAL FOR HARVESTING

Section 44(1) of the CFSA states:

The holder of a forest resource licence that authorizes the harvesting of forest resources shall not begin to harvest forest resources in any year unless the Minister has approved in writing the harvesting in the area in which the harvesting is to occur.

NOTE: Approval for harvesting is deemed to be given upon issuance of an FRL issued for personal use (Ref: FOR 05 03 07).

Section 44 (2) of the CFSA states:

The Minister may withhold approval under subsection (1) if the person is in default of payment of any Crown charges.

NOTE:

The authority to withhold approval under Section 44(2) mirrors the authority provided in section 41 as noted above.

Infraction

- (1) harvesting without approval;
- (2) harvesting outside of an area indicated on harvest approval but within Forest Management Plan and Annual Work Schedule.

REMEDIES	REFERENCE
Section 55 CFSA - Stop Work Order	Issued where appropriate and necessary. (Ref: FOR 07 06 04)

REMEDIES	REFERENCE
Section 57 CFSA - Compliance Order	Issued when compliance with the licence is not achieved. (Ref: FOR 07 06 04)
Section 58(1) (e) CFSA - Administrative penalty maximum \$15,000.	Monetary value. (Ref: FOR 07 06 06)
Section 64(1) (h) CFSA – Offence charge maximum \$100,000	Offence Charge and Court action. (Ref: FOR 07 06 07)
Section 59(1) (g) CFSA - Suspend or cancel licence.	Senior Management level decision required. (Ref: FOR 07 06 08)

FOREST RENEWAL TRUST CHARGES

Section 49(1) of the CFSA states:

The holder of a Forest Resource Licence shall pay forest renewal charges to the Minister of Finance in the amounts and within the times required by the Minister of Natural Resources.

Section 49(2) states:

Despite subsection (1), the Minister of Natural Resources may direct that a licensee who harvests forest resources in an area that is subject to a licence under Section 26 CFSA, shall pay forest renewal charges to the Forest Renewal Trust instead of the Minister of Finance.

Infraction

Holder of a Forest Resource Licence fails to pay forest renewal charges as required.

REMEDIES	REFERENCE
Section 41 CFSA - Withhold licence or any approval. Section 44(2) – Withhold approval to commence harvest.	When forest renewal charges are not paid as required, licences or approvals shall be withheld unless other approval arrangements are made with the District Manager.
Section 59(1) (g) CFSA - Suspend or cancel Forest Resource Licence.	Senior Management level decision required. (Ref: FOR 07 06 08)

Seizures of forest resources may be done to protect the Crown's interest in accordance with the Seizure and Forfeiture *FOR 07 04 09*.

FORESTRY FUTURES TRUST CHARGES

Section 51(5) of the CFSA states:

The holder of a Forest Resource Licence shall pay forestry future charges to the Trust in the amounts and within the times required by the Minister.

Infraction

Holder of Forest Resource Licence fails to pay forestry future charges.

REMEDIES	REFERENCE
Section 41 CFSA - Withhold licence or any approval. Section 44(2) CFSA- Withhold approval annual cutting permit.	When forestry future charges are not paid, approvals shall be withheld unless other approved arrangements are made with the District Manager.
Section 59(1) (g) CFSA - Suspend or cancel Forest Resource Licence.	Senior Management level decision required. (Ref: FOR 07 06 08)

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 03**
Procedure**HARVESTING WITHOUT A FOREST RESOURCE LICENCE****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

No person shall harvest forest resources in a Crown forest or use forest resources in a Crown forest for a designated purpose without the authority of a Forest Resource Licence.

There may also be instances where non-compliance is committed by persons who are not licensees or otherwise related to the licensee and where remedies may have to be applied. As a general rule, licensees have accepted the grant of a licence and thereby agreed to be bound by the provisions of the CFSA including orders and administrative penalties. This is not normally the case for persons who are not licensees and therefore remedies against persons who are not licensees are generally restricted to section 64 offence provisions (Ref: FOR 07 06 03).

PROCEDURE**Infraction**

Harvesting or using forest resources without a licence. S. 58 and S. 64 Crown Forest Sustainability Act (CFSA)

REMEDIES	REFERENCE
Section 55 CFSA - Stop Work Order	Issued where appropriate and necessary. (Ref: FOR 07 06 04)
Section 58(1)(a) CFSA - Liable to a penalty of not more than the greater of \$15,000.00 and* 5X the value of any forest resources harvested without the authority of a Forest Resource License. * and in this context means or.	Monetary value. (Ref: FOR 07 06 05 and FOR 07 06 06)
Section 64(1) (a) CFSA - Guilty of an offence and on conviction is liable to a fine of not more than \$100,000.00.	Offence Charge and Court action. (Ref: FOR 07 06 07)

Also note that where a Section 64 charge is under consideration it is also possible that a charge of theft under the Criminal Code of Canada may also be applicable (Ref: FOR 07 05 20).

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 04**
Directive**SUSTAINABLE FOREST LICENCES AND OVERLAPPING LICENCES****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

With the signing of a Sustainable Forest Licence (SFL), the licence holder agrees to undertake responsibilities for delivering a comprehensive compliance program on the forest management unit. These responsibilities include: compliance planning, monitoring (inspecting and reporting) compliance, prevention, and education and training of its workers and of any Overlapping Licensees (OL).

Several different types of businesses hold SFLs under the Crown Forest Sustainability Act (CFSA), Section 26(1). The responsibilities of the SFL holder are the same regardless of the business structure of the SFL holder. Single company SFLs, shareholder SFLs, and other forms of SFL structure do not affect the licensee's responsibilities for compliance under the CFSA.

To address local issues and to provide increased autonomy to certain (qualified) Overlapping Licensees while still maintaining oversight responsibilities by the SFL, the Ministry has adopted a functional responsibility model and process which must first be approved by the Director, Forests Branch (Ref: FOR 07 02 05). Where such arrangements exist, the application of remedy and enforcement action for CFSA non-compliances and infractions may vary.

The following guide will assist Ministry of Natural Resources staff in applying remedy and enforcement actions appropriately.

PRINCIPLES

The Ministry of Natural Resources will continue to apply the Remedies and Enforcement provisions of the Crown Forest Sustainability Act (CFSA) as required and necessary in a reasonable manner while striving for fairness and consistency. Ministry staff will continue to be guided by the directives and procedures contained in the Forest Compliance Handbook.

Generally, remedies and enforcement actions will normally be taken and applied directly to the licensee who is in contravention of the Act (Ref: FOR 07 06 03).

DIRECTION

All SFL documents are basically the same. The organization of the entity to which the SFL is issued, and the arrangement for operations on the unit are different depending on the type of management unit, and the circumstances that have brought about the SFL. The following scenarios and their attendant directions describe the various possibilities:

1. SFL Without Overlapping Licences

Administrative penalties (Section 58 of the CFSA) and other Remedy and Enforcement provisions of the Act will be applied directly to the SFL holder (licensee) as the responsible party for company or contractor operations. The compliance history applies to the SFL holder as the licensee of record.

2. SFL With Overlapping Licences

Administrative Penalties (Sec. 58(1) of the CFSA) and other Remedy and Enforcement provisions of the Act are applied to the licensee, either SFL or OL depending on which committed the infraction, and are based on that licensee's compliance history.

Where the SFL entity itself has failed or incorrectly carried out its responsibilities for compliance (e.g. failed to develop or follow the compliance plan; directed an overlapping licensee to undertake activities contrary to the Forest Management Plan, Annual Work Schedule or CFSA), it may be appropriate to apply remedy and enforcement provisions from the Act, (e.g., orders, administrative penalties...) against the SFL holder directly. Circumstances may arise where remedy and enforcement provisions may be applied to both the SFL holder and the Overlapping Licensee.

3. SFL With Overlapping Licensee(s) Granted Enhanced Compliance Arrangement(s)

Where an Overlapping Licensee has been granted an enhanced compliance arrangement for inspection and reporting on their operations, the SFL will not have responsibility or be held liable for non-compliance infractions related to forest operations incurred by the Overlapping Licensee. The SFL will retain overall responsibility for sustainability issues related to implementation of forest operations on the unit in accordance with the approved forest management plan.

Where an Overlapping Licensee has enhanced inspection and reporting responsibility as noted above, and fails to carry out those inspection and reporting responsibilities (e.g. provide information (Section 58(1) (g) or makes or takes advantage of a false statement (Section 64, CFSA)), any ensuing penalty or charge will be applied against the Overlapping Licensee.

Where the SFL entity itself has failed or incorrectly carried out its responsibilities for compliance (e.g. failed to develop or follow the compliance plan; directed an overlapping licensee to undertake activities contrary to the Forest Management Plan, Annual Work Schedule or CFSA), it may be appropriate to apply specific remedy and enforcement provisions from the Act, (e.g., orders, administrative penalties...) against the SFL holder directly.

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 05**
Directive**AMALGAMATIONS OF SUSTAINABLE FOREST LICENCES AND MANAGEMENT UNITS****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

As management units and sustainable forest licences (SFL) are amalgamated there will be questions on how to manage compliance from former units and licences to newer amalgamated ones, and compliance performance among licence holders and forest operators involved in the amalgamations. This directive describes how MNR staff can respond to compliance related questions and determine what actions they are to take during and after amalgamations.

Since the amalgamation of SFLs and MUs involves a complex set of negotiations, there will be circumstances where variation from this directive may be desirable. It is recommended that such instances be documented.

PRINCIPLES

During SFL amalgamations, the Ministry of Natural Resources (MNR) will continue to apply the Remedies and Enforcement provisions of the Crown Forest Sustainability Act (CFSA) as required and necessary in a reasonable manner while striving for fairness and consistency. Ministry staff will continue to be guided by the directives and procedures contained in this Forest Compliance Handbook.

Generally, remedies and enforcement actions will be taken and applied directly to the person(s) or licensee(s) who are in contravention of the Act (Ref: FOR 07 06 03).

DIRECTION

All SFL documents are based on a standard MNR template, and as such contain similar terms and conditions. The organization of the entity to which the SFL is issued, and the arrangement for operations on the unit may differ depending on the type of management unit and the circumstances that have brought about the SFL. The following scenarios and their attendant directions describe various possibilities:

AMALGAMATED SUSTAINABLE FOREST LICENCES

When two or more existing SFLs amalgamate, the following will normally apply:

- The compliance history for the SFL holder will be established based on an average of the combined compliance performance record of the amalgamated SFLs.
- This new compliance history for the amalgamated SFL holder will form the basis for determining remedies and compliance history will build based on the new SFL holder's compliance record.
- Where a new corporate entity holds the SFL resulting from amalgamation, consideration may be given to establishing a new compliance history record.
- Each Overlapping Licensee (OL) will carry its compliance history forward.

- Where an OL held licences on more than one of the amalgamating SFLs, they will be treated the same as the amalgamating SFL holders.

When the amalgamation of SFLs results in the surrendering of all overlapping licences and the new amalgamated SFL operates without any Overlapping Licensees (OL), the following will apply:

- The compliance history for the new SFL holder will be established based on an average of the combined compliance histories of all the amalgamating licensees.
- This new compliance history for the holder of the SFL resulting from the amalgamation will form the basis for determining remedies and build based on the new SFL holder's compliance record.
- Where a new corporate entity holds the SFL resulting from amalgamation, consideration may be given to establishing a new compliance history record.
- There will be no compliance history for former OLs since they no longer hold licences.

AMALGAMATED UNITS

When two or more Management Units (MUs) amalgamate, the existing SFLs may or may not be amalgamated.

- Where the SFLs are maintained (resulting in more than one SFL on the MU), the compliance histories of all parties carries forward. However, compliance history built under the new combined management unit applies to all of the licences held by a licensee, regardless of which SFL it is under.
- Where the amalgamation of the MU also results in the amalgamation of the previous SFLs, then compliance history is to be treated as above for amalgamated SFLs.

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 06**
Procedure**CROWN FOREST RESOURCES ON MINING LEASES****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act (CFSA) applies to Crown forest resources on mining leases where only the mineral rights have been granted. Crown forest resources may only be harvested under the authority of a Forest Resource Licence issued under the CFSA.

Prior to any charges or penalties being processed under the CFSA or Criminal Code of Canada, discussion should be held to determine the specific conditions of the particular mining lease.

Remedy/penalty provisions of the CFSA do not apply to Crown-owned trees on mining leases with surface **and** mineral rights however there are forest compliance functions that need to be exercised.

PROCEDURE**MINING LEASES*****Section 92(1) of the Mining Act states:***

Every patent or lease of Crown lands issued under this Act shall contain a reservation to the Crown of all timber and trees standing, being or hereafter found growing upon the lands thereby granted or leased, and the right to enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purposes.

Section 92(2) of the Mining Act states:

The rights reserved in subsection (1) may be exercised by any person holding a licence or permit from the Crown when authorized to do so by the Minister.

There are certain circumstances where a Forest Resource Licence is not necessary for harvesting of Crown forest resources in relation to mining exploration and operations. For direction on licensing and disposition of Crown Forest resources in relation to Mining Leases and Mineral Exploration, staff are referred to FOR 05 03 17 and FOR 05 03 18 respectively.

Infraction

A person who without the authority of a Forest Resource Licence harvests forest resources in a Crown forest for a designated purpose.

Staff are referred to FOR 07 04 03 for the appropriate procedure.

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 07**
Procedure**CROWN FOREST RESOURCES ON PRIVATE LANDS****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Except for Section 64 (1) (h), remedy/penalty provisions of the CFSA do not apply to Crown-owned trees on private lands however forest compliance functions do need to be exercised to protect the Crown's interest in forest resources.

Where Crown forest resources on private land have been licensed by the Minister for harvest, a Licence to Harvest is issued by MNR under Section 29 of O.Reg 167/95. These licences are subject to terms and conditions and licensees should be monitored for compliance to them. Available remedies to respond to non-compliances are limited to directing the licensee to comply, which should be documented, and/or to suspending or cancelling the licence as noted in its terms and conditions, for failing to comply with the licence conditions.

Where the actions of the licensee can be proven to be theft or intent to defraud the Crown and after consultation with the Crown Attorney, the Criminal Code of Canada may be applied. (Ref: FOR 07 05 20)

Where charges are not being pursued under the Criminal Code, a licence for accounting purposes must be issued by MNR to collect the "total calculated stumpage" owing.

INFRACTION

Fail to comply with terms and conditions of a Licence to Harvest.

REMEDIES	REFERENCE
Section 29 (2) of O.Reg 167/95 Licence is subject to terms and conditions.	A licence may be cancelled if stipulated in the terms and conditions
Section 64(1) (h) of the CFSA Maximum offence charge \$100,000	Offence Charge and Court action. (Ref: FOR 07 06 07)

INFRACTION

Theft of Crown-owned trees on private lands.

REMEDIES AND ENFORCEMENT	REFERENCE
Section 334 Criminal Code of Canada,	Consultation with Enforcement Branch and Legal Services. Court Action

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 08**
Procedure**SCALING – MEASUREMENT, METHOD AND RECORDS****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act (CFSA) contains several provisions for the measurement of resources, methods and places of measurement, the retention of records and performance by Scalers. Certified forest compliance inspectors are expected to be familiar with the following.

PROCEDURE

Remedies and enforcement actions under the CFSA are administered and authorized by the Ministry of Natural Resources.

MEASUREMENT OF RESOURCES (UNDER SECTION 45 OF THE CFSA)**Section 45(1) CFSA states:**

A person shall not remove forest resources in a Crown forest from the place of harvesting unless the resources have been measured and counted by a licensed scaler.

Infraction

A person removes forest resources in a Crown forest from place of harvesting without measuring and counting by a licensed scaler.

REMEDIES	REFERENCE
Section 58(1) (e) CFSA - Administrative penalty maximum \$15,000	Monetary penalty (Ref: For 07 06 06).
Section 59(1) (d) Suspension or cancellation of forest resource licence	Senior Management level decision required. (Ref: FOR 07 06 08 and FOR 05 03 29).

METHODS OF MEASUREMENT**Section 45 (2) CFSA states:**

A person who measures, counts or weighs forest resources shall do so in accordance with the Scaling Manual.

Infraction

Fail to measure, count or weigh wood in accordance with the Scaling Manual.

REMEDIES	REFERENCE
Section 66(2) CFSA - Suspend or cancel scaler's licence	<p>Where a scaler through carelessness or lack of ability fails to pass check scales, the MNR Regional Coordinator for wood measurement withdraws approval to scale wood for Crown purposes.</p> <p>Where there is intent to measure, count or weigh wood not in accordance with the Scaling Manual a recommendation to cancel the licence shall be made to the Director, Operations Branch, MNR.</p>

Where the measuring, counting, or weighing of forest resources is not in accordance with the Scaling Manual to the extent that they denote intent to defraud, the Crown Attorney shall be consulted with respect to Criminal Code of Canada charges (Ref: FOR 07 05 20).

PLACES OF MEASUREMENT

Section 45 (3) CFSA states:

Despite subsections (1) and (2), the Minister may direct that forest resources be measured, counted or weighed at a place other than the place of harvesting and in such manner as the Minister may direct.

Infraction

A person hauls without authorization or measures, counts or weighs forest resources at a place other than the place of harvesting and in such manner as the Minister directs (Ref: FOR 05 05 23)

REMEDIES	REFERENCE
Section 45(3) CFSA - Hauling without authorization or not in the manner as directed by the Minister.	Authority may be suspended or revoked depending on circumstances involved. This can only be done by the MNR Regional Coordinator for wood measurement.
Section 58(1) (e) CFSA - Administrative penalty maximum \$15,000	Monetary penalty (Ref: For 07 06 06).

RECORDS

Section 46 CFSA states:

A person who removes forest resources from a Crown forest shall keep such records as are prescribed by the Regulations.

Infraction

A person removes forest resources and fails to keep records prescribed by Regulations.

REMEDIES	REFERENCE
Section 58(1) (h) CFSA - Administrative penalty maximum \$5,000	Monetary penalty (Ref: For 07 06 06).

SUSPENSION OR CANCELLATION OF SCALER'S LICENCE

Section 66 (2) (a) (b) CFSA states:

The Minister may suspend or cancel a scaler's licence if the scaler,

- a) fails to measure, count or weigh forest resources in accordance with the Scaling Manual; or
- b) provides false information to the Minister or fails to provide information to the Minister when requested to do so.

Infraction

1. Scaler fails to measure, count or weigh forest resources according to the scaling manual
2. Scaler provides false information or fails to provide information when requested.

REMEDIES	REFERENCE
Section 66(2) CFSA - Suspend or cancel Scaler's Licence.	The MNR Regional Coordinator for wood measurement may recommend to the Manager, Wood Measurement Section the authority to scale wood for Crown purposes be suspended. The authority to suspend resides with the Director, Operations Branch, MNR. Where there is specific intent to provide false information a recommendation to cancel a Scaler's Licence shall be made to the Director, Operations Branch, MNR.
Section 64(1)(f) CFSA – Makes or takes advantage of a false statement	May be considered where a Scaler provides false information of a serious nature.
Criminal Code of Canada	Where intent to defraud is evident, criminal charges should be discussed with the Crown Attorney.

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 09**
Procedure**WASTEFUL PRACTICES****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Minimum utilization standards have been designed to promote good forest management by ensuring optimum utilization of forest resources on harvesting operations.

The minimum utilization standards, as per the Scaling Manual, must be followed on all forest operations unless otherwise described in an approved Forest Management Plan (FMP). For example, merchantable trees and/or wood fibre may be left at a harvest site in order to satisfy silviculture and habitat requirements or because of market-related issues associated with a certain species or product if that direction is included in an approved FMP.

Leaving merchantable trees at the harvest site because of market-related issues must not jeopardize the silviculture or habitat objectives of that harvest site. Reasons for leaving merchantable trees and/or wood/fibre in specific areas within a forest must be described in the approved FMP.

TYPES OF WASTEFUL PRACTICES

The Scaling Manual defines five types of wasteful practices. When evaluating these types of wasteful practices, the factors that should be considered include but are not limited to:

1. Leaving High Stumps

- Distribution (isolated occurrences or groupings in the harvest block)
- Quantity
- Geography/Topography (hillside versus flat terrain)
- Harvest method (cut and skid versus mechanization)
- Safety (in terms of necessity to leave a high stump)
- Weather and time of year; usually more problems in winter cuts

2. Leaving Merchantable Timber of Any Length

- Distribution (isolated occurrences or groupings in the harvest block)
- Quantity
- Roadside processing (cut to length versus tree length, area serviced by landing)
- Weather, time of year (deep snow covering wood e.g. pile bottoms)

3. Leaving Merchantable Trees

- Distribution (isolated occurrences or groupings in the harvest block)
- Quantity

- Geography/Topography (steep slope inaccessible to harvest)
- Harvest equipment
- Season of operations
- Safety
- Forest Type (damage to regeneration in order to harvest a small volume)
- Impediments to renewal

4. Leaving Lodged Trees

- Distribution (isolated occurrences or groupings in the harvest block)
- Quantity
- Primary consideration is safety
- Natural occurrence versus man made (wind thrown timber is not lodged trees)

5. Not Utilizing Wood-Chip Fibre

- distribution, (isolated occurrences or distribution in the harvest block)
- Quantity

ADDITIONAL FACTORS FOR CONSIDERATION

Timing

- Is the operation still underway (under active licence and/or approval) or completed and 'released for audit' by the company?

Silvicultural Harvesting System

- What kind of system is in use (e.g. clear cut, shelter wood, selection) and what does that imply for wasteful practices analysis?

Forest Management Plan Marketability Issues

- Are there special prescriptions in the approved FMP regarding supply/demand for underutilized species?
- Is there a maximization of utilization to meet high industry demand (beyond standard)?

Utility Sales

When forest resources are harvested on inaccessible lands (i.e. rights of way, hydro lines, mining claim lines, etc.) the licensee may not be liable for wasteful practices. If so, there should be an exemption in place per FOR 05 03 10.

PROCEDURE

Failure to comply with minimum utilization standards unless otherwise described in the FMP is a wasteful practice. No person shall commit wasteful practices in a forest operation.

Wasteful practices are defined in the Scaling Manual, Part V, Section E, as prescribed by the Forest Operations and Silviculture Manual and are infractions under the Crown Forest Sustainability Act (CFSA). These definitions set out the minimum utilization standards that are to be met provincially and define merchantability, rather than product marketability.

A person who conducts forest operations in a Crown forest shall comply with the Forest Operations and Silviculture Manual (Ref: Section 43, CFSA.).

In determining whether an operational issue exists with respect to wasteful practices the following procedures are to be followed:

1. No infraction for committing wasteful practices will be recorded if they occur as a result of following a forest operation that is described in an approved FMP (e.g. leaving merchantable trees and/or wood fibre at a harvest site in order to satisfy silviculture and habitat requirements).
2. Except in the case of leaving high stumps or leaving lodged trees, an infraction for committing wasteful practices should not be recorded while an approved forest operation is in progress (e.g. harvesting), although wasteful practices may appear to be occurring at that time. MNR staff should note the situation and inform the licensee that a wasteful practice is occurring. However, until the MNR is notified that the operation is completed and released to the Crown for audit inspection, the licensee still has an opportunity to take action to correct any wasteful practice.
3. In a case where lodged trees are observed, this is a safety issue and the licensee must be informed as soon as possible and should be reported on a Forest Operations Information Program (FOIP) report (Ref: FOR 07 03 04 and FOR 07 03 05).
4. In a situation where high stumps are being left, the inspector should consider if notation in a FOIP report and associated actions are warranted.
5. All wasteful practices infractions must be reported on the FOIP report.
6. Operations that are released (Ref: FOR 07 03 05), or for which a final FOIP report is filed, must either have reported any wasteful practices or be free of any wasteful practices.

Forest Management Directives and Procedures

07 Monitoring and Assessment
04 Forest Management Program Support**FOR 07 04 10**
Procedure**SEIZURE, DETAINING AND FORFEITURE OF FOREST RESOURCES****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act (CFSA) provides for the seizing, detaining and forfeiture of forest resources or a product manufactured from forest resources under various circumstances. The intent of the seizure provisions of the CFSA, is to reaffirm and secure the Crown's ownership pending (a) evidence to the contrary, (b) a Court decision or (c) payment of Crown charges.

APPLICATION

Forest resources/products may only be seized in situations which meet the circumstances set out in Section 60(1) of the CFSA. Ministry of Natural Resources (MNR) staff may exercise this function where:

1. information is not provided;
2. forest resources/product have not been measured, counted or weighed;
3. Crown charges (any charges that can be levied under the CFSA) are owing in respect of the forest resources, the forest resources from which the product was manufactured, or any other forest resource;
4. forest resources/products were removed from a Crown forest in contravention of CFSA.

Where the forest resources/products liable for seizure are mixed with other forest resources/products and it is difficult to make a distinction, all the items may be seized. Reference Section 60(4) CFSA.

Seizure will only take place when there is a risk of losing control or apparent ownership of the forest resources/products, and when it is authorized by the area supervisor. Since there are situations where seizures need to be made immediately, the area supervisor may identify scenarios and/or specific staff who can issue a seizure notice without having to consult first with the area supervisor, although this should be done at the earliest opportunity.

Prior to seizure, consideration must be given to the appropriate geographical/physical location of the seizure material.

Note: If the forest resources or products are in the possession of a carrier when seized, authorization of the Area Supervisor must be obtained prior to any seizure because MNR is responsible for transportation costs and all other proper charges after seizure is initiated. Reference Section 60(3) CFSA.

The Act's seizure provisions are broad but generally will be limited to logs, tree lengths and bush produced chips, or where appropriate, lumber or other forest products manufactured at a forest resources processing facility.

The seizure of forest resources/products is not to be used as an inconvenience or punishment. Staff must pay close attention to the authorities for seizure as outlined in Section 60(1) CFSA.

The other seizure power provided for is under the authority of a Search Warrant. (Ref: ENF PO 2.01.01 and ENF PR 2.01.01.01). Under this seizure power, the provisions of Provincial Offences Act apply. Seized items become property of the Crown 30 days after initial seizure if unclaimed (Section 60(5) CFSA) or upon a court decision. Reference Section 60(8) CFSA, declaring the applicant not to be the owner.

Note: If Ministry staff are obstructed while carrying out a seizure a charge may be laid under Section 64(1) (e) CFSA. (Ref: FOR 07 03 08)

PROCEDURE

SEIZURE

When making a seizure as directed by an area supervisor, Ministry staff must:

- (1) identify yourself to the person in charge of the forest resources/products and advise what is under seizure and why;
- (2) advise the person in charge that the items are not to be moved, or in appropriate situations, direct the movement of the product to a secure location;

Note: The Ministry of Natural Resources (MNR) may incur costs for this transportation. .

- (3) complete and place a notice or seizure tags on the forest resource/products in highly visible locations. The copy to be placed on the forest resource/products should be protected it against the elements. A copy may be provided to the person in charge. A sample Seizure Notice is appended to this directive.
- (4) ensure detailed notes of the seizure are completed;
- (5) notify the licensee or person of the seizure.

- Notes:**
- i) The payment of an administrative penalty (where applicable) does not give the person committing the infraction any title to the forest resources involved.
 - ii) Payment of normal **calculated stumpage charges** for the forest resources involved in an infraction must be done separately from the determination of an administrative penalty.
- (6) notify the manager, Wood Measurement Section and/or regional wood measurement coordinator.

DISPOSITION AND FORFEITURE

For the disposition of seized forest resources, whether or not they are forfeit to the Crown, staff are referred to procedure FOR 03 05 30, Disposition of Seized forest Resources and Products.

Note: Area supervisor may release seizures at anytime during the process when the initial reasons for seizure have been satisfied.

The person claiming ownership of the seizure may also make application to a court for release of the items. Reference Section 60(6) CFSA.

Page 3 of 3

FOREST RESOURCE PROCESSING FACILITY LICENCE
Approval date: April 1, 2014

Review date: April 2019

Contact: Forest Evaluation and Standards Section, Forests Branch – Policy Division

PROCEDURE
Section 53 of the CFSA states:

A person shall not operate or construct a facility, increase the productive capacity of a facility or convert a facility to another type of facility, except in accordance with a Forest Resource Processing Facility Licence (Facility Licence).

O.Reg 167/95, Section 18 provides 2 exemptions from the licensing requirement, specifically:

- Facility that use <1000m³/yr
- Flow through facilities (i.e. those facilities that alter forest resources solely to facilitate harvesting or transportation, such as bush chippers)

Infraction

Operates or constructs a facility, increases the productive capacity of a facility or converts to another type of facility that is not in accordance with a Forest Resource Processing Facility Licence issued under Section 54 CFSA.

REMEDIES	REFERENCE
Section 58(1) (e) CFSA - Administrative penalty maximum \$15,000.	Monetary value. (Ref: FOR 07 06 06)
Section 64(1) (c) CFSA - Court action maximum \$100,000.	Offence Charge and Court action. (Ref: FOR 07 06 07)

Section 54.1 of the CFSA states:

A person who holds a forest resource processing facility licence shall make returns that contain the information prescribed by regulation, including;

- (a) information on the sources, species, quantities and disposition of forest resources processed; and
- (b) financial information on pricing, purchases, sales and exchanges of forest resources.

and

In accordance with the regulations, a forest processing facility licensee shall, at the Minister's direction, provide the financial information described in clause (1) (b) to a service provider.

O.Reg. 167/95, Section 26 provides that the holder of a forest resource processing facility licence shall make an annual return to the Minister in the form provided by the Minister.

REMEDIES	REFERENCE
Section 58(1) (h) CFSA - Administrative penalty maximum \$5,000.	Monetary value. (Ref: FOR 07 06 06)
Section 64(1) (g) CFSA - Court action maximum \$10,000.	Offence Charge and Court action. (Ref: FOR 07 06 07)

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 10

Procedure

Forestry Aggregate Pits**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Policy Section, Forests Branch – Policy Division**BACKGROUND**

An aggregate permit is required by section 34(1) of the *Aggregate Resources Act* (ARA) to operate an aggregate pit. A person conducting forest operations governed by the *Crown Forest Sustainability Act, 1994* is exempt from the application of subsection 34 (1) of the *Aggregate Resources Act* with respect to a pit if the following requirements are met:

1. The pit satisfies the criteria set out in section 1.3.6.6 of Part A of the Forest Management Planning Manual as defined in section 3 of the *Crown Forest Sustainability Act, 1994*.
2. The pit is operated in accordance with the operational standards set out in Appendix VII of the Forest Management Planning Manual as defined in section 3 of the *Crown Forest Sustainability Act, 1994*.

PROCEDURE

Forest operations compliance inspectors are to assess and evaluate Forestry Aggregate Pit operations to ensure:

- exemption criteria have been met,
- the pit meets the operational standards, and
- reporting requirements are met according to the operational standards as per the approved forest management plan for the applicable management unit and as required by the Forest Management Planning Manual.

CONTACT

Forest Management Planning Specialist
Forest Management Planning Section,
Forests Branch
Policy Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 20

Procedure

CRIMINAL CODE OF CANADA**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Policy, Standards and Training Section, Enforcement Branch – Provincial Services Division**BACKGROUND**

Generally, most Ministry of Natural Resource (MNR) prosecutions for resource violations under the Crown Forest Sustainability Act (CFSA), and other natural resource related legislation, will be under MNR mandated statutes. (Ref: FOR 07 06 02, Guide To Determining Which Legislation Applies).

APPLICATION

In some cases the Criminal Code of Canada R.S., 1985, c. C-46 (CCC) will be the appropriate legislation to use. When this occurs charges should only be laid after consultation with the local Enforcement Supervisor and on the advice/concurrence of the local Crown Attorney.

Some examples where the Criminal Code may be utilized are:

- Theft in relation to:
 - Crown trees from private property,
 - Funds by licence issuers.
- Fraud in relation to:
 - Licence issuing and funds;
 - Falsification of scaling records.

CONTACT

Provincial Enforcement Specialist, Intelligence and Investigations Section, Enforcement Branch, Provincial Services Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 30

Procedure

FIRE MANAGEMENT**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Fire Management Section, Aviation & Forest Fire Management Branch – Provincial Services Division.**BACKGROUND**

The Forest Fires Prevention Act (FFPA), R.S.O., 1990 c. F.24 protects human life, natural resources and physical property from the threat of forest fires. Through its administration of the FFPA, the Ministry of Natural Resources (MNR) contributes to the environmental, social and economic well-being of Ontario.

Notes

1. This Act and its Regulation applies only to fire regions.
2. Some sections of the Act and regulation only apply during the fire season, from the 1st day of April to the 31st day of October in each year.
3. The "Minister" may appoint Officers for carrying out this Act and the regulations. Conservations Officers and Police Officers are fire officers by class appointment.
4. "Officer" includes a fire warden appointed under Section 8 exercising the powers of his or her appointment.

MNR staff will be guided by the following procedures when considering compliance measures under the FFPA relative to forest operation activities in Ontario.

Any questions regarding the interpretation of the FFPA and/or any of the associated directives or procedures should be discussed locally and, if needed, directed through the District Enforcement Supervisor and Fire Management Supervisor to the Regional Fire Compliance Specialist and Provincial Advisor – Fire, Enforcement Branch.

PROCEDURES

Many of the requirements for fire prevention are contained within the **Modifying Industrial Operations Protocol**. This protocol outlines the requirements to modify forest operations in response to increasing fire danger. Licence holders under the Crown Forest Sustainability Act (CFSA) are required through the Forest Management Planning process to develop and comply with a Forest Fire Prevention and Preparedness Plan. The Protocol normally forms part of this plan. Non-compliance with fire preparedness from a training, operations, and equipment perspective will be dealt with as a violation of either a licence condition or of the Annual Work Schedule (AWS), except where the non-compliance is an infraction of the FFPA (e.g. no serviceable fire extinguisher). Where a fire has occurred from industrial operations, the fire program may wish to pursue cost recovery of fire suppression costs regardless of whether other charges or penalties are applied.

Users will refer to the Modifying Industrial Operations Protocol at:

http://www.mnr.gov.on.ca/en/Business/AFFM/Publication/MNR_E000014P.html

The following specific sections of the FFPA and Regulation will be actively monitored for compliance:

SECTION 28: SMOKING

No person shall smoke while walking or working in a forest area during the fire season.

Infraction

Smoke in forest area.

REMEDIES	REFERENCE
Section 35 (1) FFPA Court Action Maximum \$1,000.00 fine or imprisonment up to three months or both. Court order to recover Ministry fire suppression costs.	Where a person smokes while working or walking in a forest area.

SECTION 29: THROW/DROP INCENDIARY MATERIALS

No person shall throw or drop, in or within 300 metres of a forest area,

- (a) a lighted match, cigarette, cigar or other smoking material;
- (b) live coals; or
- (c) hot ashes.

Infraction

Drop incendiary material in or near forest area.

SECTION 33: SPARK ARRESTERS

No person shall use or operate in or within 300 metres of a forest area any burner, chimney, engine, incinerator or other spark-emitting outlet that is not provided with an adequate device for arresting sparks.

Infraction

Operate spark-emitting outlet with inadequate spark arrestor.

REMEDIES	REFERENCE
Section 18(1) FFPA Officer orders owner or person in control thereof of the person who has caused the condition to take such action to remedy any such condition that, in his opinion, causes danger to life and property from fire. In default, officer, with such assistance as he requires, may remedy the condition.	Where a condition endangers life or property from fire.
Section 18(2) FFPA Court Action Ministry may recover any costs incurred in 18(1).	Where Ministry has incurred costs taking action under Section 18(1).

<p>Section 35(1) FFPA Court action.</p> <p>Maximum \$1,000 fine or imprisonment up to three months or both.</p> <p>Court order to recover Ministry fire suppression costs.</p>	<p>Where a person operates a spark-emitting outlet with an inadequate spark arrestor.</p>
--	---

SECTION 9(1): FIRE EXTINGUISHER REQUIREMENT FOR EQUIPMENT/MACHINERY

A person who operates equipment or machinery involved in forest operations or processing forest resources in a forest area during the fire season shall keep a fire extinguisher on the equipment or machinery or within five metres from it.

SECTION 9(2): SERVICEABLE CONDITION

The extinguisher must be in serviceable condition and be rated at least 6A 80BC.

SECTION 9(3): EXCEPTION

Subsections (1) and (2) do not apply to a person operating a motor vehicle as defined in the *Highway Traffic Act* or a power saw.

Infractions

Operate machinery without fire extinguisher.

Improper/non-serviceable fire extinguisher.

REMEDIES	REFERENCE
<p>Section 18(1) FFPA Officer orders owner or person in control thereof or the person who has caused the condition to take such action to remedy any such condition that, in his opinion, causes danger to life and property from fire. In default, officer, with such assistance as he requires, may remedy the condition.</p>	<p>Where a condition endangers life or property from fire.</p>
<p>Section 18(2) FFPA Court action. Ministry may recover any costs incurred in Section 18(1).</p>	<p>Where Ministry has incurred costs taking action under Section 18(1).</p>
<p>Section 35(1) FFPA Court action. Maximum \$1,000 fine or imprisonment up to three months or both. Court order to recover Ministry fire suppression costs.</p>	<p>Where a person fails to have a serviceable 6A 80BC fire extinguisher on, or within five metres of, the equipment or machinery involved in forest operations.</p>

SECTION 10(1): OPERATION OF A POWER SAW

A person who operates a power saw in a forest area during the fire season shall not start it within three metres of the place where it is fuelled.

SECTION 10(2): OPERATION OF A POWER SAW

A person who operates a power saw in a forest area during the fire season shall not place it on any flammable material while its engine is operating or hot enough to cause combustion.

SECTION 10(3): OPERATION OF A POWER SAW

A person who operates a power saw in a forest area during the fire season shall keep a fire extinguisher available during its operation.

SECTION 10(4): SERVICEABLE CONDITION

The fire extinguisher must be in serviceable condition and be rated for ABC type fires and have a minimum of 225 grams of dry capacity.

Infractions

Start a power saw within three metres of fuelling site.

Improper placement of power saw on flammable material.

Operate power saw without fire extinguisher.

Improper/non-serviceable fire extinguisher.

REMEDIES	REFERENCE
Section 18(1) FFPA Officer orders owner or person in control thereof or the person who has caused the condition to take such action to remedy any such condition that, in his opinion, causes danger to life and property from fire. In default, officer, with such assistance as he requires, may remedy the condition.	Where a condition endangers life or property from fire.
Section 18(2) FFPA Court action. Ministry may recover any costs incurred in Section 18(1).	Where Ministry has incurred costs taking action under Section 18(1).
Section 35(1) FFPA Court action. Maximum \$1,000 fine or imprisonment up to three months or both. Court order to recover Ministry fire suppression costs.	Where a person improperly operates a power saw.

SECTION 11(1): ACCUMULATION OF DEBRIS ON EQUIPMENT/MACHINERY

A person who operates equipment or machinery in a forest area during the fire season shall ensure that it is checked daily for any accumulation of flammable material and that any accumulation found is removed.

SECTION 11(2): ACCUMULATION OF DEBRIS ON EQUIPMENT/MACHINERY

A person who is removing an accumulation of flammable material under subsection (1) shall ensure it is disposed of safely.

SECTION 11(3): ACCUMULATION OF DEBRIS ON EQUIPMENT/MACHINERY

A person who leaves equipment or machinery in a forest area during the fire season while it is not being operated shall ensure that it is placed or left in a area free from any flammable material.

SECTION 11(4): EXCEPTION

Subsections (1) and (2) apply to a person operating an off-road vehicle as defined in the *Off-Road Vehicles Act* but do not apply to a person operating any other type of motor vehicle that is licensed under the *Highway Traffic Act*.

Infractions

Fail to remove flammable material.

Fail to dispose of flammable material safely.

Unlawfully leave machinery on flammable material.

REMEDIES	REFERENCE
Section 18(1) FFPA Officer orders owner or person in control thereof or the person who has caused the condition to take such action to remedy any such condition that, in his opinion, causes danger to life and property from fire. In default, officer, with such assistance as he requires, may remedy the condition.	Where a condition endangers life or property from fire.
Section 18(2) FFPA Court action. Ministry may recover any costs incurred in Section 18(1).	Where Ministry has incurred costs taking action under Section 18(1).
Section 35(1) FFPA Court action. Maximum \$1,000 fine or imprisonment up to three months or both. Court order to recover Ministry fire suppression costs.	Where a person improperly removes and disposes of flammable accumulations safely or unlawfully leaves or places machinery on flammable material.

SECTION 12(1): ALTERATION OF SPARK ARRESTING DEVICE

No person shall alter or modify a muffler or other spark arresting device attached to a power saw, an off road vehicle, equipment or machinery operated in a forest area.

Infraction

Unlawfully modify spark arrestor.

REMEDIES	REFERENCE
Section 18(1) FFPA Officer orders owner or person in control thereof or the person who has caused the condition to take such action to remedy any such condition that, in his opinion, causes danger to life and property from fire. In default, officer, with such assistance as he requires, may remedy the condition.	Where a condition endangers life or property from fire.
Section 18(2) FFPA Court action. Ministry may recover any costs incurred in Section 18(1).	Where Ministry has incurred costs taking action under Section 18(1).
Section 35(1) FFPA Court action. Maximum \$1,000 fine or imprisonment up to three months or both. Court order to recover Ministry fire suppression costs.	Where a person modifies a muffler or spark arresting device.

CONTACT

Integrated Services Section
Aviation, Forest Fire and Emergency Services

Provincial Services Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 40

Directive

FISHERIES ACT (FEDERAL)**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Fisheries Act is federal legislation. The Fisheries Act (FA) Chap. F 14, R.S.C. 1985 provides for the management, protection and use of fish as defined in the Act, and protection of fish habitat and the waters used by fish.

DEFINITIONS**Canadian Fisheries Waters**

All waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada.” (Fisheries Act Sec. 2)

Deposit

Means any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping, or placing.

Deleterious Substance

Means:

(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such a quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water.

Also see sections 34(1) (c), (d), (e), 34(2) (a), (b), (c) Fisheries Act

Fish Habitat

Means spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

Water Frequented by Fish

Means Canadian waters where fish spend all or part of their time in order to carry out their life processes. Waters include lakes, rivers, streams (permanent and intermittent) ponds and pools.

DIRECTION

As a result of an agreement signed by the Minister of Natural Resources and the Minister of Fisheries and Oceans, the Ministry of Natural Resources (MNR) has responsibility for certain sections of the Fisheries Act. This role of MNR is described in A Protocol Detailing The Fish Habitat Referral Process In Ontario and Fish Habitat Compliance Protocol: 2004 Interim Measures. MNR staff will be guided by the direction in these protocols when considering compliance measures under the Fisheries Act relative to forest operations activities in Ontario.

Any questions regarding the interpretation of the Fisheries Act and/or any of the associated directives should be discussed locally with DFO and, if needed, directed through your local Enforcement Supervisor to Provincial Enforcement Branch.

HARMFUL ALTERATION, DISRUPTION OR DESTRUCTION OF FISH HABITAT (HADD)

Section 35(1) of the Act states:

No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

MNR staff are guided by Section 3.4 of A Protocol Detailing The Fish Habitat Referral Process In Ontario when determining if a forest management activity will cause a HADD.

The Department of Fisheries and Oceans (DFO) is the primary agency responsible for enforcement of Section 35. MNR Conservation Officers have class appointments as Fisheries Officers under the Fisheries Act but do not enforce and lay charges under Section 35. If Conservation Officers encounter a situation where a forest management activity may have caused or is about to cause a HADD they may proceed with any investigation or prosecution warranted under the CFSA or other legislation and stop the offence as appropriate. Conservation Officers are to follow the "First on the Scene" direction in the Fish Habitat Compliance Protocol: 2004 Interim Measures.

SEDIMENT

Section 36 (3) of the Act states:

Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where such deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

DFO takes the lead for this section of the Act where the pollutant is suspended sediment and not chemical in nature. Staff who encounter washouts or significant erosion due to forest management activities should notify their supervisor **immediately**. In addition, local protocols may be in place for notifying the forest industry on roads that are the responsibility of the forest industry. The deposition of sediment into watercourses may be considered a spill. Staff must report any "spill" into the natural environment that is abnormal in quality or quantity as per s. 92 of the Environmental Protection Act (Spills Hot Line 1-800-268-6060). However, if the quantity is minimal, action may be taken under the CFSA immediately by means of a Stop Work Order and/or Repair Order. Follow up may result in further actions under the CFSA.

Infractions

A person deposits or causes to be deposited a deleterious substance in water frequented by fish.

REMEDIES AND ENFORCEMENT	APPLICATION
<p>Section 40(2) FA - Court Action</p> <p>(a) Summary Conviction 1st Offence</p> <p>- Maximum \$300,000. Subsequent offence, maximum \$300,000. and/or 6 months jail.</p> <p>(b) Indictable Offence 1st Offence</p> <p>- Maximum \$1,000,000., subsequent offence, maximum \$1,000,000 and/or 3 years jail.</p>	<p>Crown Attorney should be consulted prior to charges being processed.</p> <p>Section 30(4) & (5) permit the deposit of certain deleterious substances.</p>

NOTE: The Fisheries Act is Federal legislation. Compliance activities in Ontario can be carried out by the Province and by the Department of Fisheries and Oceans (DFO). DFO is not bound by the policies and procedures contained herein.

CONTACT

Regional Fisheries Specialist
Northwest Region
Regional Operations Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 50

Procedure

FISH AND WILDLIFE CONSERVATION ACT

Approval date: April 1, 2010

Review date: April 2015

Contact: Wildlife Policy Section, Biodiversity Branch – Policy Division

BACKGROUND

The Fish and Wildlife Conservation Act (FWCA) provides for the management, perpetuation and rehabilitation of the wildlife resources in Ontario, and to establish and maintain a sustainable wildlife population consistent with all other proper uses of provincial natural resources.

Ministry staff will be guided by the following procedures when considering remedy measures under the FWCA relative to forest operations activities in Ontario.

Any questions regarding the interpretation of the FWCA and/or any of the associated directives should be discussed locally and, if necessary directed through the local Enforcement Supervisor to Enforcement Branch, Provincial Services Division.

PROCEDURE

SECTION 7: NESTS AND EGGS - THE FISH AND WILDLIFE CONSERVATION ACT STATES:

S.7. (1): A person shall not destroy, take or possess the nest or eggs of a bird that belongs to a species that is wild by nature.

S.7. (2) Subsection (1) does not apply to the nest or eggs of an American crow, brown-headed cowbird, common grackle, house sparrow, red winged blackbird or starling.

Infraction

A person unlawfully destroys takes or possesses the nest or eggs of a bird that belongs to a species that is wild by nature.

Authorization of destruction/possession of nests and eggs may be found in Wildlife Policy/procedure 6.2.5.

REMEDIES	REFERENCE
Sections 97(1), 102(1), 102(3) FWCA - Court Action	
Fine of not more than \$25,000, imprisonment of not more than 1 year, or both if convicted	Utilize where a person has not exercised all due diligence to prevent the commission of the offence or the person honestly and reasonably believed the existence of facts that, if true, would render the person's conduct innocent.
Fine of not more than \$100,000, imprisonment of not more than two years or to both if the offence was committed for commercial purposes.	

SECTION 8: DENS AND BEAVER DAMS - FISH AND WILDLIFE CONSERVATION ACT STATES:

S. 8. 1: A person shall not interfere with a black bear in its den or intentionally damage or destroy a black bear's den.

Infractions

A person unlawfully interferes with a black bear in its den or intentionally damages or destroys a black bear's den.

S. 8.2: A person shall not intentionally damage or destroy the den or habitual dwelling of a furbearing mammal, other than a fox or skunk, unless the person holds a licence to trap furbearing mammals.

A person unlawfully and intentionally damages or destroys the den or habitual dwelling of a furbearing mammal, other than a fox or skunk.

S. 8.3: A person shall not damage or destroy a beaver dam unless the person holds a licence to trap furbearing mammals.

S. 8.4: Subsection (3) does not apply to a person, or the agent of a person, who damages or destroys a beaver dam to protect the person's property.

NOTE: Licensees do not have the authority to act as an agent for the Crown under S. 8.4 unless expressly provided in writing (see authorization information below)

A person unlawfully damages or destroys a beaver dam without authority.

S. 8.5: The Minister may authorize a person to do anything that would otherwise be prohibited by this section.

Authorization of destruction of a beaver dam, black bear or furbearer den may be found in Wildlife Policy/procedure 6.2.4.

REMEDIES AND ENFORCEMENT	REFERENCE
Sections 97(1), 102(1), 102(3) FWCA - Court Action Fine of not more than \$25,000, imprisonment of not more than 1 year, or both if convicted Fine of not more than \$100,000, imprisonment of not more than two years or to both if the offence was committed for commercial purposes.	Utilize where a person has not exercised all due diligence to prevent the commissions of the offence or the person honestly and reasonably believed the existence of facts that, if true, would render the person's conduct innocent.

CONTACT

Program and Policy Biologist
Wildlife Policy Section, Biodiversity Branch
Policy Division

ATTACHMENT #1

SECTION: Hunting/Related Activities.

SUBSECTION: General activity restrictions/authorizations

POLICY/PROCEDURE: Authorization of destruction/possession of nests and eggs

NUMBER: WilPp.6.2.5

ISSUE DATE: Revised May 26, 2008
Issued March 31, 1999

DEFINITIONS

In this policy/procedure,

- “Act” means the Fish and Wildlife Conservation Act (FWCA).

RATIONALE

The Fish and Wildlife Conservation Act, prohibits the destruction, taking or possession of nests or eggs of a species of bird, which is wild by nature. There are three exceptions: if the species of bird are listed in Subsection 7(2) of the Act, if the person who takes, possesses or destroys the nests or eggs is authorized to do so by the Minister, or if the nest or eggs are those of birds that are subject to the Migratory Birds Convention Act, 1994 (Canada). This section provides protection to a great number of birds including raptors and nongame birds.

This policy/procedure provides direction on the types of activities for which an authorization may be issued and the process for authorization.

PROGRAM DIRECTION

Subsection 7(2) of the Act exempts specific species of birds from the prohibition set out in this section. They are American crow, brown-headed cowbird, common grackle, house sparrow, red-winged blackbird and starling. No authorization is required to possess, take and/or destroy the nest or eggs of these birds.

The prohibition in the Act does not apply to migratory birds as defined and protected by the Migratory Birds Convention Act (MBCA). Individuals seeking authorization related to birds protected under the MBCA should be directed to the nearest office of the Canadian Wildlife Service.

The intent of Section 7 is to prevent the destruction of active nests and/or eggs. It is not intended to change our present approach regarding ongoing activities such as forest harvesting, road construction and other similar development activities. Interpret the following direction using this intent.

Forest harvesting operations

On Crown lands cutting guidelines are in place, to protect identified nesting areas for a number of bird species. These guidelines will continue to provide guidance regarding these operations. On private lands, landowners will be encouraged to protect important nest sites. Destroying an active nest (with eggs or young) is illegal under section 7; however, each circumstance will be reviewed on an individual basis and in consideration for the intent of this section. Landowners will be encouraged to protect nests at times when not being used as well as for species that use the same nests for a number of years.

ATTACHMENT #1

Education and research

Education and research projects involving the nests and eggs of species of wild birds should be supported if carried out by individuals from recognized institutions and following accepted scientific design and protocol. These individuals may be authorized to possess nests and/or eggs for scientific or educational purposes.

Protection of property

Landowners may wish to destroy nests or eggs protected under the *Act*, in protection of their property. The *Act* allows landowners to capture or kill **birds** in protection of their property under Section 31 without prior approval, if the birds are damaging or are about to damage the property. Generally, nests and eggs cannot cause damage to property and so they should not be destroyed

Population control

District MNR offices may, from time to time receive requests to destroy eggs or nests to control a bird population. Such requests often will be controversial and will require close scrutiny and review prior to authorization. As a general rule such requests should be denied, or if considered the request must be consistent with the *Act* and other existing policies. Any approved project will normally require a detailed proposal justifying the need for the work, what other options have been considered, public consultation plans, EBR posting and follow up monitoring to evaluate the impacts of the initiative. Approval by the Minister is required to initiate and approve population control projects.

PROCEDURE

Scientific or educational purposes

1. The individual or institution forwards a written proposal with the necessary documentation to the appropriate office depending on the location(s) of the proposal. (see WilPp.6.2.2 for procedure on issuing a wildlife scientific collector's authorization).
2. The designated office reviews the proposal for completeness and forwards to the Ministry Wildlife Animal Care Committee for review and approval.
3. The designated office authorizes the activity in the form of a Wildlife Scientific Collector's Authorization (Form FW2018) signed by the designated position for the office issuing the authorization to take, possess or destroy the nests or eggs (see WilPp.6.2.2 for delegation of authority).

Protection of property

Authority to approve for protection of property is delegated to the Area Supervisor.

1. The landowner submits a written proposal indicating the reason for the request and planned course of action.
2. District staff review the proposal to confirm that property damage is occurring and further damage is imminent and authorization to destroy nests or eggs is the most acceptable alternative for resolution.
3. The Area Supervisor authorizes the proposal (Form FW 2013) with appropriate conditions, issued to the owner of the property.

Population control

1. Authorization for population control is not delegated. The Minister must authorize.
2. The individual or organization wishing to do population control submits a detailed written proposal to the appropriate district office(s) explaining the planned project

ATTACHMENT #1

and reasons for it.

3. District staff contact Fish and Wildlife Branch to assist with review of the proposal and to develop an approach for dealing with the request. This discussion will include review with the ADM, Natural Resource Management, to ensure there is approval in principle to proceed. The proponent will be required to complete some level of public consultation including Environmental Bill of Rights posting, as part of the process.
4. Where ministry staff are convinced that the proposal is biologically sound, that other alternatives have been fully explored, and that an adequate public consultation process has been completed, a copy of the proposal, a Decision Briefing Note and Authorization for signature is forwarded to the Minister's office via the appropriate circulation and approval routing.

REFERENCES

Legal References

- Fish and Wildlife Conservation Act
 - Subsection 7(1) - illegal to possess or destroy nests and eggs
 - Subsection 7(2) - exempted birds
 - Subsection 7(4) - exemption of migratory birds
 - Subsection 7(3) - authorization to exempt
 - Subsection 31(1) - protection of property
- Migratory Birds Convention Act
 - Section 2 - definition of migratory birds.

Related References

- Policies and procedures
 - WilPo.3.1.1 - Protection of property overview
 - WilPp.6.2.2 - Wildlife scientific collector authorization
- Other References
 - Cormorant Review Paper (Dec. 1997)

ATTACHMENT #2

SECTION: Hunting/related activities.

SUBSECTION: General activity restrictions/authorizations

SUBJECT: Authorization of destruction of a beaver dam, black bear or furbearer den.

POLICY/PROCEDURE: WilPp.6.2.4

ISSUE DATE: revised May 20, 2008
Issued March 5, 1999

DEFINITIONS

In this policy / procedure,

- “*Act*” means the Fish and Wildlife Conservation Act (FWCA).
- “*furbearing mammal*” is as identified in schedule 1 of the *Act* and regulations and means a badger, beaver, bobcat, coyote, fisher, fox (Arctic, red, gray), lynx, marten, mink, muskrat, opossum, otter, polar bear, raccoon, red squirrel, striped skunk, weasel, (least, long-tailed, short-tailed or ermine), wolf and wolverine.
- “*den*” is the usual place of habitation of a furbearing mammal or bear but **does not include a man-made structure such as an attic, barn, etc.**

RATIONALE

The Fish and Wildlife Conservation Act provides for the protection of *dens* of black bear and *furbearing mammals* and beaver dams and makes it illegal to intentionally destroy them unless specifically exempted by the *Act* or authorized by the Minister. It also makes it illegal to interfere with a black bear in its *den*.

This policy/procedure explains the authorization process to allow a person to destroy a *den* or beaver dam or to interfere with a bear in a *den*.

PROGRAM DIRECTION

The *Act* specifically exempts the following:

- destruction of a *den* of fox or skunks by any individual;
- destruction of a beaver dam by a landowner or agent in protection of property;
- destruction of a *den* of any *furbearing mammal* or beaver dam by a licensed trapper.

The above exemptions address common situations that arise and do not require authorization. Fox and skunk *dens* are exempted because of their history as nuisances, rabies carriers and/or predators of small farm animals. Licensed trappers are also exempt, recognizing the need to alter or damage a *den* or beaver dam as part of their trapping activities.

Landowners or their agents may destroy a beaver dam in protection of their property **without authorization**. This includes destroying a dam on another individual's property. **They should be cautioned however, that destruction does not exempt them from:**

- a) the need for property owner permission to access another landowner's property
- b) potential civil liability through damages to others, caused by their actions
- c) applicability of sections of the Fisheries Act which prohibits destruction or alteration of fish habitat.

In the case of travel corridors (railways, roadways) and utilities (pipelines, hydro lines, etc.) which cover large areas and in some cases several administrative districts, **no prior approval will be required to go on to Crown land to destroy a beaver dam in protection of property**. This does not exempt the agency from conditions b) and c) above, however.

Districts are encouraged to work cooperatively with companies and agencies to ensure best utilization of the fur resource while addressing their property protection concerns. For example, having local trappers remove problem beaver in identified areas prior to dam alteration or removal may reduce company/agency workload.

Agencies or companies may use licensed trappers as agents (class exempted by regulation) to remove beaver from their properties. On Crown lands, Ministry authorization will be required to remove nuisance beaver.

The *Act* does not create an offence for accidental damage of a *den* where there was **no intent** to cause damage. This would cover such activities as normal logging operations or road construction activities where it is often not possible to know that damage is being done during active operations. Most violations will occur where an individual has taken a planned action to address a specific matter such as cut down a tree to collect young animals or eliminate a nuisance problem.

The *Act* allows authorization of some destruction activities. Individuals wishing to: a) destroy a *den* for any reason b) destroy a beaver dam for other reasons other than protection of property, or c) interfere with a bear in a *den* **require authorization**.

Environmental Assessment Act Considerations

The ministry complies with the EA Act in the management of human-wildlife conflict by following the requirements of the [Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects \(Class EA for RSFD\)](#). Section 2.2.11 (page 9) of the *Class EA for RSFD* defines nuisance species control by the ministry as the site-specific use of various methods to control plants and animals where the Ministry considers that they pose an ecological, physical, social, cultural, or economic threat to the environment. The “*physical control of nuisance animals*” using live capture (trapping or chemical immobilization) and relocation, aversive conditioning methods and the dispatch of animals is identified in Section 3.1 of the *Class EA for RSFD* as a preauthorized Category A activity (page 15).

The Class EA also applies to service providers who carry out these activities on behalf of the Ministry, **but not to persons doing so in the interests of protecting life or personal property**.

Staff should refer to the *Class EA for RSFD* and consult their office EA contact for more specific information.

PROCEDURE

1. A Resource Specialist is delegated authority to authorize an exemption.
2. The applicant contacts the administrative district **in which the den or dam is located** indicating the reasons for their request and the location. Depending on the nature of the request and urgency, the applicant **may** be exempt from a request to apply in writing.
3. Ministry staff review the request and evaluate whether alternate options are reasonably available, the potential effect of approval on the natural resource, **particularly fisheries as per sections 35 and 36 of the Fisheries Act** and the reasons for the request.
4. The field office provides **all** approvals in the form of an authorization (Form FW2007) specifying any conditions as required. Advance verbal approval may be given if necessary, to address an urgent problem. For verbal notices clearly indicate any conditions of approval and a keep a written record of the conversation.

REFERENCES

Legal References

- Fish and Wildlife Conservation Act
 - Subsections 8(1), (2) - protection of a black bear in a den, furbearer den.
 - Subsections 8(3)-trapper exemption to destroy a dam
 - Subsections 8(4) - exemption to destroy a beaver dam in protection of property.
 - Subsection 8(5) - authority to authorize destruction.
 - Subsections 31(1) to (10) - protection of property.
- Fisheries Act
 - Section 35 - harmful alteration, destruction of fisheries habitat.
 - Section 36 - deposit or permit to be deposited a deleterious substance. (e.g. silt)
- Environmental Assessment Act
 - [Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects](#)
 - [\(Class EA for RSFD\)](#)

Related References

- Policy and procedures
 - WilPo.3.1.1 - Protection of property overview.
 - WilPp.3.2.1 - Authorization of individual agents

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 51

Procedure

ENDANGERED SPECIES ACT (S.O. 2007)**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Species at Risk Branch – Policy Division**BACKGROUND**

The *Endangered Species Act, 2007* (ESA) was enacted:

1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.
2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
3. To promote stewardship activities to assist in the protection and recovery of species that are at risk.

Decisions on the implementation of the ESA have been centralized to ensure consistency and to inform further policy development. MNR Staff are encouraged to contact the species at risk hotline (email:

speciesatrisk@ontario.ca or phone: 1-866-755-5257) for general ESA questions and to contact the District office if they have site-specific questions.

There are two key protection provisions in the Endangered Species Act, 2007:

- Subsection 9(1) prohibits the killing, harming, harassment, capture, taking, possession, transport, collection, buying, selling, leasing, trading or offering to buy, sell, lease or trade species listed as extirpated, endangered or threatened on the SARO List.
- Section 10 prohibits the damage or destruction of the habitat of an endangered or threatened species on the SARO list, and may also apply to the habitat of extirpated species through a specific regulation (subject to the transition provisions of the Act).

Effective June 30, 2009, the section 24 transition provision of Ontario Regulation 242/08 for forest operations in Crown forests was revoked

DIRECTION

With the revocation of section 24 of O. Reg. 242/08, the conditional exemptions from clause 9(1)(a) and subsection 10(1) of the ESA no longer apply to forest operations in Crown forests. Forest operations are now subject to the species protection provisions for all species listed as extirpated, endangered or threatened in the SARO List regulation. Further, habitat protection for endangered or threatened species is being phased in over five years, beginning in 2008.

Ministry staff will be guided by the following procedures when assessing compliance of forest operations with regard to the *Endangered Species Act, 2007*.

Any questions about the application of the ESA in relation to forest operations and/or any related directives should be discussed with the local enforcement supervisor and the district and/or regional species at risk biologist.

PROCEDURE

Consistent with procedure FOR 07 03 05 (Inspecting and Reporting), certified forest operations inspectors will inspect forest operations to determine whether or not operations are in compliance with the applicable forest management plan, licences, permits and approvals.

Where it is determined that an operation is not in compliance with the applicable forest management plan, licences, permits and approvals, the inspector will further determine whether or not the deviation from the applicable approvals may have affected any species at risk within the meaning of section 9(1) (see reference below), or the habitat of any species within the meaning of section 10(1) (see reference below)). Where it is determined that the deviation may have affected any species at risk as outlined above, a MNR inspector will consult with the district enforcement supervisor and local/regional species at risk biologist to verify that the operation has or has not affected any species at risk.

If the operation has not affected any species at risk, remedies should be determined as per the direction in Part 6 of the Forest Compliance Handbook.

If the operation has affected any species at risk as determined above, remedies should also be determined as per the direction in Part 6 of the Forest Compliance Handbook. The legislation to be applied is to be assessed as directed in FOR 07 06 02, Determining Which Legislation Applies. Remedies will then be determined as directed in FOR 07 06 03, Determining Remedy. If it is determined that remedies are to be applied according to the provisions of the ESA, the following table outlines the available remedy provisions.

REFERENCE	REMEDIES
<p>Section 9 (1) ESA (2007)</p> <p>No person shall,</p> <p>(a) kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;</p> <p>(b) possess, transport, collect, buy, sell, lease, trade or offer to buy, sell, lease or trade,</p> <p>(i) a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species,</p> <p>(ii) any part of a living or dead member of a species referred to in subclause (i),</p> <p>(iii) anything derived from a living or dead member of a species referred to in subclause (i); or</p> <p>(c) sell lease trade or offer to sell, lease or trade anything that the person represents to be a thing</p>	<p><u>Orders:</u></p> <p>Stop Order (subsection 27(1), ESA (2007))</p> <p><u>Court Action:</u></p> <p>Compliance Order (subsection 41(1), ESA (2007))</p> <p>Offence under clause.9 (1) (a) and penalties under clause 40 (1) (a) or (b)</p>

described in subclause (b)(i), (ii) or (iii)	
<p>Section 10 (1) ESA (2007)</p> <p>No person shall damage or destroy the habitat of, (a) a species that is listed on the Species at Risk in Ontario List as an endangered or threatened species; or</p> <p>(b) a species that is listed on the Species at Risk in Ontario List as an extirpated species, if the species is prescribed by the regulations for the purpose of this clause. 2007, c. 6, s. 10 (1).</p>	<p><u>Orders:</u></p> <p>Stop Order (Subsection 27(1), ESA (2007)) Habitat Protection Order (Subsection 28(1), ESA (2007))</p> <p><u>Court Action:</u></p> <p>Compliance Order (S. 41(1), ESA (2007))</p> <p>Offence under Subsection.10(1) and penalties under clause 40 (1) (a) or (b)</p>

CONTACT

Species at Risk Co-ordinator
Species at Risk Branch
Policy Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 60

Procedure

LAKES AND RIVERS IMPROVEMENT ACT**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Great Lakes and Water Resources Section, Biodiversity Branch – Policy Division**BACKGROUND**

The purpose of the Lakes and Rivers Improvement Act (LRIA) is to provide for:

- (a) the management, protection, preservation and use of the waters of the lakes and rivers of Ontario and the land under them
- (b) the protection and equitable exercise of public rights in or over the waters of the lakes and rivers;
- (c) the protection of the interests of the riparian owners;
- (d) the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers;
- (e) the protection of the natural amenities of the lakes and rivers and their shores and banks ; and
- (f) the protection of persons by ensuring that dams are suitably located, constructed, operated and maintained and are of a nature with regard to the purposes of clauses (a) to (e).

DEFINITIONS:

Under the Lakes and Rivers Improvement Act and Ontario Regulation 454/96, the following are defined as:

Channelize	Means to alter the alignment, width, depth, sinuosity, conveyance or bed or bank material of a river or stream channel;
Dam	Means a structure constructed as a barrier across a river, lake, pond or stream to hold back water in order to raise its level, create a reservoir to control flooding or divert the flow of water;
Lake	Includes a pond and similar body of water;
Mill	Means a plant or works which logs or wood-bolts are processed, and includes a saw mill, pulp mill and pulp and paper mill;
Owner	Means the owner of a dam and includes the person constructing, maintaining or operating a dam;
River	Includes a creek, stream, brook and any other similar watercourse;
Water crossing	Means a bridge, culvert or causeway that is constructed to provide access between two places separated by water but that also holds back, forwards or diverts water; but does not include water crossings that are approved under the Public Lands Act or the Crown Forest Sustainability Act (CFSA).

PROCEDURE

It is the direction of the Ministry that staff will be guided by the following procedures when considering compliance measures under the LRIA relative to forest operations activities in Ontario.

Any questions regarding the interpretation of the LRIA and/or any associated directives should be discussed locally with your appropriate MNR engineer and, if compliance or enforcement action is considered, directed through your local Enforcement Supervisor to the Provincial Enforcement Advisor in Provincial Enforcement Branch.

SECTION 14(1) LRIA STATES:

No person shall construct a dam on any lake or river in circumstances set out in the Regulations;

- (a) until the location of the dam has been approved in writing by the Area Supervisor; and
- (b) until the plan and specifications there of have been approved in writing by an Engineer.

ONTARIO REGULATION 454/96

Sets out the circumstances where approvals are required under section 14 of the Act

Section 2 states "for the purpose of subsection 14 (1) and section 16 of the Act approval is required to:

1. construct or make improvements to a dam;
2. construct a water crossing draining an area greater than five square kilometres, unless construction is undertaken by a Ministry, municipality, or Conservation Authority on lands owned by the Crown, municipality or Conservation Authority undertaking the construction;
3. channelize a river or stream that may harmfully alter fish habitat or impede the movement of fish in a river, stream or lake, except for the installation of a drain, subject to the Drainage Act;
4. enclose or cover a length of river or stream for greater than twenty meters in length;
5. install, if the installation may result in damming, a cable or pipeline ...

NOTE: Section 3 states "no approval is required under section 14 or 16 of the Act for a water crossing to which the Public Lands Act applies or that has been constructed as part of a forest operation to which the Forest Operations and Silvicultural Manual under the CFSA applies".

Infraction

Fail to receive written approval for location of a dam or the plan and specifications for a dam.

REMEDIES	REFERENCE
Section 17.1 LRIA - Orders Stop Work Order Order the furnishing of plans and specifications Order changes or the removal of the dam	Utilized where dam is under construction without necessary approvals. To ensure construction is safe Where the design or location is unsatisfactory based on the purposes of the Act
Section 28(1) LRIA Court Action Maximum fine of \$1,000,000.00 and /or imprisonment for a term of not more than 6 months	Where dam constructed without approval.
Monetary benefit of offence recovered.	Upon conviction and in addition to fine, the court may award an amount equal to the monetary gain realized by the violation.

Probation Order to rehabilitate or repair.	In lieu of jail, the court may order the convicted party to do rehabilitation or repair to achieve compliance with the LRIA.
--	--

The LRIA provides the legislated power for the Minister (or his delegate) to issue Orders to ensure compliance with the Act.

The power to issue Orders exists in the Act as follows:

- Section 17 Where a dam has been constructed without plans and specifications approval and the Ministry of Natural Resources (MNR) considers it necessary for the purposes of the Act, a District Manager;
- may issue Order to provide plans and specifications OR to repair or remove a dam
 - may issue Order to do work required in an Inspector's or Engineer's report
 - may issue Order to construct a fishway
- Section 17.1 Where work started without the required approval an Inspector;
- may issue a Stop Work Order
 - may issue an Order to furnish plans, reports or other information
 - may Order the removal of whatever was constructed
- Section 18 Where water has been impounded for power development or storage, an Area Supervisor;
- may Order the clearing of timber, slash, or debris from the flooded lands
 - may Order the removal of any timber, slash or debris escaped from any flooded area
- Section 22 On the recommendation of an "officer", the Assistant Deputy Minister;
- may Order the regulation of the use of the lake or river
 - may Order the regulation of the use or operation of a dam
- Section 23 Where the Area Supervisor deems necessary for the purposes of the Act may Order the owner of a dam or structure
- to maintain or raise or lower the water levels of lake or river to a certain level
- Section 36 Where refuse, substance or matter is thrown or discharged into a lake or river in circumstances that conflict with the purposes of the Act, a District Manager;
- may Order the removal of such
- Section 38 Where refuse, sawdust, chemical, substance or matter from a mill is thrown, deposited or discharged into a lake or river, the Minister;
- may Order the owner or occupier to remove such

Orders will be exercised in good faith and applied rationally, while striving for fairness and consistency for all dam constructors and owners. It is essential that the reason for the Order is linked to one of the purposes as outlined in Section 2 of the Act.

NOTICE OF INTENT TO ISSUE AN ORDER

Section 11 of the Act requires that prior to issuing an Order, except for Orders issued under s. 17.1, the Minister or his delegate must give the owner notice that he intends to issue the Order and allow the owner 15 days to request an Enquiry.

Attention must be given to associated legislation so that carrying out the Orders does not place the person in non-compliance with any other Act or Regulation.

CONSIDERATIONS WHEN DRAFTING AN ORDER TO PRODUCE DOCUMENTATION

- orders must contain sufficient detail as to leave no doubt as to what information or action is required and when
- Section 17(1) orders are issued in situations where the work has been completed. Only plans and specifications may be ordered produced.
- Section 17.1(1)(b) orders are issued where the work has been started without approval. This section allows an Inspector to require production of a broader range of documentation including diagrams, statements, and other information.
- The date by which the information is to be produced must be clearly set out in the order. Considerations in determining an appropriate timeframe should include, the owners' ability to provide the information, the magnitude of the information required. This should be balanced with the immediacy of the information. For example, the timeframe determined in a situation which poses a hazard to life or personal property would be relatively short.
- The order must be signed by the Minister or the approved delegate.
- The order must be issued to the owner as defined in the Act. Owner of the dam includes the person constructing, maintaining, or operating the dam. However, in most instances the order should be issued to the person responsible for the creation of the dam, not merely the person on site or conducting the activity.
- The owner should be served in person or by registered letter and may be served to those included in the definition. Service should be made on the person responsible for the construction or work on the dam, not merely to a person on site; however this may not always be possible. In the case of a corporation, service can be made to a person authorized to accept it. In most cases this will include the owner, officer of the corporation, or a supervisor.

ORDER	AUTHORITY	REFERENCE
Order to provide plans and specs	Section 17(1)	Owner who has constructed without authority
	Section 17.1 (1) b	Owner in the process of constructing without authority
Order to Repair	Section 17 (1)	Owner who constructs without authority
	Section 17.1 (1)(c)	owner in the process of constructing without authority
Order to Remove	Section 17 (1)	Owner has constructed without approval
	Section 17.1	Owner is constructing without approval
Stop Work Order	Section 17.1 (1)(a)	Owner is constructing without approval
Order to Rectify Problem Identified by Engineer	Section 17 (2)	Owner has constructed without authority
Order to Further Purposes of the Act	Section 17 (3)	Owner has constructed without approval
Order to Construct Fishway	Section 17 (4)	Owner has constructed dam without fishway

ORDER	AUTHORITY	REFERENCE
Order to Clear or Remove timber, Slash or Debris	Section 18 (1)	Owner has impounded area for water storage
Water Level Regulation Order	Section 22 (2)	regulate use of a dam regulate use of a lake or river regulate water levels
Removal Order	Section 36 (2) Section 38 (3)	Any person who throws, deposits or discharges any refuse, substance or material into a lake or river. An owner or occupier of a sawmill who deposits

SECTION 28(2) LRIA STATES:

A person is guilty of an offence if the person fails to comply with an order.

ORDERS

Sections 17, 17.1, 18, 22 and 23 allow for the issuance of Orders to do something relative to a dam.

Sections 36 and 38 allow for the issuance of Orders relative to something being allowed to be placed in a lake or river including on the ice, or on their banks or shores.

Infraction

Fail to comply with Order.

REMEDIES	REFERENCE
Section 28(2.2) LRIA - Court Action Maximum \$1,000,000.00 and if after conviction the failure continues, is liable to a further fine of not more than \$20,000.00 for each day upon which the failure continues.	Utilized where person refuses to comply with Order.
And / or imprisonment not more than 6 months.	More serious or repetitive situations where this action deemed appropriate.
Monetary benefit of offence recovered.	Upon conviction and in addition to fine, the court may award an amount equal to the monetary gain realized by the violation.
Probation Order to rehabilitate or repair.	In lieu of jail, the court may order the convicted party to do rehabilitation or repair to achieve compliance with the LRIA.

SECTION 36 (1) LRIA STATES:

No person shall throw, deposit, discharge or permit the throwing, depositing or discharging of any refuse, substance or matter in a lake or river, whether or not the lake or river is covered by ice, or on the shores or banks of a river under circumstances that conflict with the purposes of the Act.

Infraction

Throw, deposit or discharge matter into a lake or river.

Permit the throwing or discharging of matter into a lake or river.

REMEDIES	REFERENCE
Section 28(2.1) LRIA - Court Action Maximum \$1,000,000.00 and /or imprisonment not more than 6 months. Section 36(2) –Order District Manager may Order the removal of any matter illegally deposited or thrown Failure to comply with Order may lead to charges or District Manager may remove and sue for costs	Where person throws or deposits matter into water or on the shores or banks in conflict with the purposes of the Act Where in addition to the penalty applied above, may want matter removed at convicted person's cost. Utilized where person refuses to comply with Order

SECTION 38 (1) LRIA STATES:

No person shall throw, deposit or discharge, or permit the throwing, depositing or discharging of any refuse, sawdust, chemical, substance or matter from any mill into a lake or river, or on the shore or banks thereof.

Infraction

Throw, deposit or discharge matter from a mill into a lake or river.

Permit the throwing or discharging of a matter from a mill into a lake or river.

REMEDIES	REFERENCE
Section 28(2.1) LRIA - Court Action Maximum \$1,000,000.00 and /or imprisonment not more than 6 months. Section 38(2) -Order District Manager may Order that the activity cease and/or that the owner remove all refuse, matter, etc.,	Utilized where person deposits matter from a mill into water In addition to charges under s. 28 may want to Order the matter removed.

CONTACT

Program Coordinator, Water Resources
Great Lakes and Water Policy Section, Biodiversity Branch
Policy Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 70

Procedure

PUBLIC LANDS ACT**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Lands and Non-Renewable Resources Section, Natural Heritage, Lands and protected Spaces Branch – Policy Division**BACKGROUND**

Section 2 of the Public Lands Act (PLA) grants the Minister of Natural resources the authority for the management, sale, and disposition of public lands in Ontario.

PROCEDURE

Users will refer to the following policies and procedures which apply to forest management and forest compliance activities associated with the Public Lands Act:

PL 3.03.02 – Unauthorized Occupations of Public Lands Policy

http://www.mnr.gov.on.ca/MNR_E005009.pdf

and Procedure

http://www.mnr.gov.on.ca/MNR_E005010.pdf

PL 3.03.04 – Work Permits – Section 14, Public Lands Act Policy

http://www.mnr.gov.on.ca/MNR_E005007.pdf

and Procedure

http://www.mnr.gov.on.ca/MNR_E005008.pdf

PL 9.03.01 – Stop Work Orders Policy

http://www.mnr.gov.on.ca/MNR_E000112.pdf

and Procedure

http://www.mnr.gov.on.ca/MNR_E005016.pdf

Pending completion of the Crown Land Roads Manual, users are to refer to the current policy direction in the Access Roads Manual and to Regional Lands Specialists for advice regarding the signing and closure of access roads on Crown land.

Any questions regarding the interpretation of the PLA and/or any associated directives should be discussed locally with the District Enforcement Supervisor and the Regional Lands Specialist.

CONTACTS

Regional Lands Specialists
Northwest, Northeast and Southern Regional Offices
Regional Operations Division

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 71

Procedure

NAVIGABLE WATERS PROTECTION ACT (FEDERAL)**Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Lands and Non-Renewable Resources Section, Natural Heritage, Lands and Protected Spaces Branch – Policy Division**BACKGROUND**

The Navigable Waters Protection Act (NWPA) is federal legislation and is the responsibility of the Canada Coast Guard and is ultimately under the direction of the Minister of Transport, Canada. MNR does not enforce this legislation.

The Act provides a legislative mechanism for the protection of the public right of navigation on all navigable waterways in Canada. Provisions of the Act require that anyone planning any type of work that will impact on the public's right to navigate a particular waterway must first get approval to do that work.

This legislation impacts the forest industry when they propose water crossings through the construction of bridges, culverts, and causeways. Additionally, the booming and/or storage of logs in navigable waterways, should they be permitted, would be subject to this legislation.

THE NAVIGABLE WATERS PROTECTION ACT (NWPA) STATES:

Construction of works in navigable waters:

5. (1) No work shall be built or placed in, on, over, under, through or across any navigable water unless:
- (a) the work and the site and plans thereof have been approved by the Minister, on such terms and conditions as the Minister deems fit, prior to commencement of construction;
 - (b) the construction of the work is commenced within six months and completed within three years after the approval referred to in paragraph (a) or within such further period as the Minister may fix; and
 - (c) the work is built, placed and maintained in accordance with the plans, the regulations and the terms and conditions set out in the approval referred to in paragraph (a).

For direction on the determination of navigability of a waterway, MNR staff must refer to "Ownership Determinations - Beds of Navigable Waters Act", Lands Policy PL 2.02.02:

http://www.mnr.gov.on.ca/MNR_E000115.pdf

and Procedure PR 2.02.02:

<http://www.mnr.gov.on.ca/243950.pdf>

As a result of concerns over long delays in the approval of construction plans (e.g., bridges) as well as the potential for violators of the Act to use the argument of officially induced error, staff of The Ministry of Natural Resources and the Coast Guard met in 1991 and agreed to a working agreement which is appended to this procedure. The references to work permits may also be taken in the same context to mean Annual Work Schedules under the FMPM.

Questions concerning the interpretation of the NWPA should be directed to the local Coast Guard office. The following is the memorandum and enclosures (copied verbatim) sent to all MNR regions pertaining to circulation of MNR approved projects to Transport Canada.

CONTACTS

Regional Lands Specialists

Northwest, Northeast and Southern Regional Offices

Regional Operations Division

Attachment

July 21, 1991

MEMORANDUM TO:

All Regions

**SUBJECT: CIRCULATION OF MNR APPROVED PROJECTS
TO TRANSPORT CANADA (COAST GUARD)**

We recently came to an agreement with Transport Canada on the Circulation of work permit applications, including Annual Work Schedule applications for approval that involve marine projects on navigable water bodies. This was drafted and agreed upon to ensure that when we approve certain projects we do not create conflicts with their legislation (NWPA) or the Federal Environmental Assessment Review Process (EARP).

Please review and then implement the following guide.

(ORIGINAL SIGNED BY RAE HORST)

Rae E. Horst
Director
Lands and Waters Policy

Enclosure

c.c. Ken Brant, Coast Guard, Prescott
Bernard Leonard, Coast Guard, Parry Sound

THE APPROACH FOR DEALING WITH MARINE ACTIVITIES THAT ARE ALSO SUBJECT TO NAVIGABLE WATERS PROTECTION ACT, (NWPA)

PRIVATE APPLICATIONS

Category I

Projects which will require NWPA approval prior to MNR considering any application for work permit (AWS).

The following activities fall into this category: dams, booms, causeways, bridges. MNR field staff should, whenever possible, consult with (Department of Transport) DOT staff and possibly share information and co-ordinate joint inspections.

Category II

In cases where a work permit application has been received for a project where it is suggested that public right of navigation may be compromised, the applicant should be directed to contact the DOT for approval. (This is already a printed notice on the work permit forms). In addition, MNR will forward to DOT a copy of the application for their information but will not defer approval of the permit while awaiting DOT comments (unless the District Manager decides otherwise on a case by case basis).

Projects under this category include:

- a. Culverts.
- b. All marine works involving commercial, municipal or industrial construction, e.g. marinas, intake and outfall structures, etc.
- c. All dredging proposals involving the development of new public channels and/or maintenance of existing public channels and maintenance of marina basins.
- d. Any marine proposal/construction considered to be economically, socially and environmentally sensitive.
- e. Any marine construction considered to require marking in the interest of navigation safety.
- f. Private shoreline protection construction for erosion control (e.g. rip rap, retaining walls, revetments, gabion baskets constructed on the shoreline) where land reclamation is involved.
- g. Private maintenance dredging where spoil is to be disposed in open-water.
- h. All maintenance and repairs to existing structures where no alterations are proposed.

Category III

This category includes activities which are not likely to have any effect on the public right of navigation. The MNR shall process work permit applications for projects in this category while advising applicants that their projects may require other approvals including DOT, NWPA approval. (This is already a printed notice on the work permit forms).

Projects in this category include:

- a. Private works synonymous with cottage, residential and recreational construction (e.g. boathouse, docks, boatslips, launching ramps, water intake pipes).
 - i) works (e.g. docks, excluding structures that are solid, boathouse, launching ramps, etc.) are located a minimum of 15 feet inside the property line extension.

- ii) works are consistent with other structures in the immediate vicinity.
 - iii) works do not restrict access to adjacent properties. Orientation/configuration is such that access is not in front of adjacent properties.
 - iv) works are located a safe distance away from marked and unmarked navigation channels.
- b. Private shoreline protection construction for erosion control (e.g. rip rap, retaining walls, revetments, gabion baskets constructed on the shoreline) where land reclamation is not involved.
- c. Private maintenance dredging, where spoil is not disposed in open water.
- d. All maintenance and repairs to existing structures where no alterations are proposed.

MNR PROJECTS

Any project undertaken by MNR which may have an impact on navigation must be referred to the DOT for NWPA approval prior to commencing.

Forest Management Directives and Procedures

07 Monitoring and Assessment

05 Other Natural Resource Management Program Support

FOR 07 05 80

Procedure

ENVIRONMENTAL PROTECTION ACT**Approval date:** April 1, 2010**Sunset date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND****THE ENVIRONMENTAL PROTECTION ACT STATES:**

92. (1) Every person having control of a pollutant that is spilled and every person who spills or causes or permits a spill of a pollutant shall forthwith notify the following persons of the spill, of the circumstances thereof, and of the action that the person has taken or intends to take with respect thereto,

- (a) the Ministry (Environment);
- (b) any municipality within the boundaries of which the spill occurred or, if the spill occurred within the boundaries of a regional municipality, the regional municipality;
- (c) where the person is not the owner of the pollutant and knows or is able to ascertain readily the identity of the owner of the pollutant, the owner of the pollutant; and
- (d) where the person is not the person having control of the pollutant and knows or is able to ascertain readily the identity of the person having control of the pollutant, the person having control of the pollutant. R.S.O. 1990, c. E.19, s. 92 (1); 2002, c. 17, Sched. F, Table; 2005, c. 12, s. 1 (15).

When duty effective

(2) The duty imposed by subsection (1) comes into force in respect of each of the persons having control of the pollutant and the person who spills or causes or permits the spill of the pollutant immediately when the person knows or ought to know that the pollutant is spilled. R.S.O. 1990, c. E.19, s. 92 (2); 2005, c. 12, s. 1 (16).

Notice to Ministry by person investigating

(4) A member of a police force or an employee of a municipality or other public authority who is informed of or who investigates the spill of a pollutant shall forthwith notify the Ministry of the spill of the pollutant unless he or she has reasonable grounds for believing that such notice has been given to the Ministry by another person. R.S.O. 1990, c. E.19, s. 92 (4).

Duty to mitigate and restore

93. (1) The owner of a pollutant and the person having control of a pollutant that is spilled and that causes or is likely to cause an adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.

When duty effective

(2) The duty imposed by subsection (1) comes into force in respect of each of the owner of the pollutant and the person having control of the pollutant immediately when the owner or person, as the case may be, knows or ought to know that the pollutant is spilled and is causing or is likely to cause an adverse effect. R.S.O. 1990, c. E.19, s. 93.

Spill,

when used with reference to a pollutant, means a discharge,

- (a) into the natural environment,
- (b) from or out of a structure, vehicle or other container, and
- (c) that is abnormal in quality or quantity in light of all the circumstances of the discharge, and when used as a verb has a corresponding meaning; ("déversement", "déverser")

Substance

means any solid, liquid or gas, or any combination of any of them. ("substance") R.S.O. 1990, c. E.19, s. 91 (1); 2001, c. 9, Sched. G, s. 5 (5, 6); 2002, c. 17, Sched. F, Table.

PROCEDURE

The onus is on all Ministry of Natural Resources personnel to report spills immediately to the Ministry of Environment, Spills Action Centre as noted above and to notify the Ministry of Natural Resources district "Spills" representative.

The Ministry of Environment will take the necessary enforcement actions and apply any appropriate remedies.

CONTACT

Spills Action Centre

Ministry of Environment

Toll Free: 800-268-6060 - Spill & Drinking Water Reports

Fax: 416-325-3011

Address:

Place Nouveau

5th Flr Suite 501

5775 Yonge St

Toronto ON M2M 4J1

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 01**
Directive**REMEDY AND ENFORCEMENT – OVERVIEW AND DIRECTION****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act (CFSA), Part VII, Remedies and Enforcement makes provisions for response to infractions of the Act and contains specific actions which may be brought against a person(s) or licensee(s) to encourage and ensure compliance with the Act.

The CFSA provides a range of remedies and enforcement actions to deal with infractions of the Act and its regulations. They are designed to respond to behaviours that are infractions of the Act by promoting and encouraging correct behaviours.

Enforcement actions under the CFSA include seizure of forest resources, entry on to private land, the inspection of records, and liens for Crown charges. Additional enforcement actions include processes related to investigations including search warrants.

Broadly speaking remedies under the Act can be classed into two categories. In response to infractions, the CFSA provides first for remedies that benefit the Crown forest in the form of orders (directed at prevention, repair and compliance) and administrative penalties. Penalties are paid into the Forest Futures Trust which in turn supports activities in Crown forests. The second group of remedies are those that respond to offences under the Act by using the courts and/or suspending or cancelling licences. In these instances, fines for convictions are imposed by the courts, and/or licences are either temporarily or permanently taken from licensees removing them from the Crown forest and denying them benefits from the forest.

Inspectors will have evaluated forest operations in light of the applicable operational circumstances to determine if there have been any infractions or offences that will require consideration of appropriate remedies.

DIRECTION

Generally, infractions are observed and documented through the Forest Operations Information Program (FOIP) reports during inspection activities. They may also be brought to the attention of a certified employee by other staff, forest industry personnel or the public. Regardless, all infractions are to be documented, in FOIP where practical, prior to the application of a remedy or any enforcement action.

FOIP reports also serve to advise a licensee when non-compliance is detected or confirmed and may include recommendations about how to avoid future non-compliance. Compliance with procedure FOR 07 03 05 will ensure that the licensee is made aware of all non-compliance in a timely fashion.

In addition to the FOIP report advising a licensee when a non-compliance is confirmed, it is strongly recommended that the District Manager hold a Disclosure Meeting with the licensee, prior to reaching a decision on remedy to be applied. The purpose of the Disclosure Meeting is solely to apprise the licensee of the facts, documented in the FOIP report, which led to the decision to proceed with a remedy. The disclosure meeting is to be documented in the Penalty report (Ref: FOR 07 06 06). Such a Disclosure Meeting is **not** a

forum for the licensee to defend its actions and it is **not** a representation to the Regional Director (Ref: FOR 07 06 09).

Certain non-compliances may require the application of a combination of remedy and enforcement provisions available in the Act, subject to s. 64(2). Staff are to use the procedures in Part VI of the Forest Compliance Handbook to determine the appropriate remedy and to determine the proper application of remedies. The following list summarizes the remedies available under the CFSA and their related procedures.

FOR 07 06 02 Determining Which Legislation Applies

This procedure should be used for all verified non-compliances to ensure the proper and most effective legislative tool is being used to respond to the non-compliance.

FOR 07 06 03 Determining Remedy

This procedure describes a clear, concise means to determine which remedy or combination of remedies will be most applicable to a given circumstance of verified non-compliance. It provides a means to document the consideration of factors applicable to the non-compliance and the suspected offender to achieve an objective and effective decision concerning the application of remedies.

FOR 07 06 04 Orders: Sections 55, 56, 57 CFSA

Orders provide a standard way of communicating direction by MNR, to immediately address imminent or incurred damage or to ensure compliance.

Orders may be accompanied by administrative penalties or offence charges, taking into account the circumstances and nature of the infraction and compliance history of the person or licensee.

FOR 07 06 05 Application of Administrative Penalties

Administrative penalty provisions in the Act allow for a range of penalty amounts to be applied. Historically these have been applied in a stepped approach or in graduated ranges. This directive assists staff in applying the stepped approach and graduated ranges in determining what amount is appropriate in most situations. It also describes the circumstances under which staff can consider stepping outside the normal stepped approach and graduated ranges when determining the amount of administrative penalties.

FOR 07 06 06 Administrative Penalties: Section 58 CFSA

Administrative penalties remove any incentive associated with failure to comply with the CFSA, including financial gain.

FOR 07 06 07 Offences: Section 64 CFSA

Offence charges are used where a stronger remedy is required to respond to situations such as chronic infractions, substantial deviation from or flagrant disregard for approved plans and regulatory documents, and/or circumstances where the consequences of non-compliance go beyond forest values (e.g. health and safety considerations).

Decisions to use offence provisions of the Act require that investigative process be followed. Staff will involve and seek the advice of Enforcement Branch and Legal Services Branch.

FOR 07 06 08 Suspension or Cancellation of Forest Resource Licence: Section 59 CFSA

Generally, suspension or cancellation of a forest resource licence is the remedy of last resort where application of other remedies has failed. Suspension or cancellation of a forest resource licence in whole or part may be used in extraordinary circumstances and only after senior management level consideration and direction.

GENERAL PROVISIONS

Staff should be aware of a number of provisions within the CFSA that pertain to the use, application and processing of remedies. They are:

- all penalties are a “Crown Charge”.(Ref: Section 3, CFSA);
- no administrative penalty for an “act or omission, that, in the opinion of the Minister, renders the person liable to a penalty” shall be applied more than two years after the act or omission is discovered and no more than five years after the act or omission was committed or deemed to have been committed. (Ref: 58(3), CFSA)
- all administrative penalties under Section 58 are payable to the Forestry Futures Trust established or as continued under Section 51;
- all administrative penalties imposed under Section 58 are recoverable in a court of competent jurisdiction;
- if an administrative penalty is imposed under Section 58, no person shall be charged for the same infraction under Section 64, CFSA: (Ref: Section 64(2)).
- a prosecution for an offence under Section 64, CFSA shall not be commenced more than two (2) years after the offence was discovered and no more than five years after the offence was committed (Ref: Section 64(3)).

NON CFSA PRESCRIBED REMEDY

Written Warnings

The Act makes no provision for the issuance of Written Warnings as a remedy or enforcement action. However, some instances of non-compliance may warrant the issuance of a formal Written Warning instead of a prescribed remedy. A Written Warning is a formal document outlining an incident of non-compliance and indicating to the licensee that they are in non-compliance and may be subject to other remedy provisions of the Act. It is designed to establish a formal record of the non-compliance and to warn the licensee of their potential future jeopardy if they fail to exercise due diligence to bring their forest operations into full compliance with the requirements.

Written Warnings will be considered a remedy for the purposes of determining compliance history.

OTHER ACTIONS

Action may be voluntarily undertaken by a licensee or operator, subject to normal regulatory requirements, in response to a potential operational issue to prevent or rectify a situation that keeps an operation compliant or to lessen the impact of a potential Operational Issue. The earlier an operational problem is identified and responded to, the more likely that an operation can avoid potential loss or damage and the creation of an operational issue can be avoided. It is not necessary for the licensee or operator to await direction or imposition by the Ministry.

Corrective Action

Corrective Action is assigned by MNR in response to an operational issue that has been determined to be correctable (Ref: (FOR 07 03 05). The completion of a Corrective Action(s) maintains the forest operation in compliance with the regulatory framework and is assigned within FOIP following verification of the operational issue. Corrective Action is voluntary and not a remedy. Completion of Corrective Action as assigned will be deemed to have resolved the Operational Issue in response to which it was assigned. Where MNR **requires** action to be taken, corrective or other wise, it must be done by using an Order.

Mitigation

A licensee may also undertake action to minimize the severity of an operational issue, to minimize the amount of loss or damage, or to limit the scope and scale of an operational issue. These actions mitigate the impact of the operational issue but do not bring the forest operation back into compliance. Such actions do contribute to consideration of the licensee’s performance in determining an appropriate remedy.

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 02**
Procedure**DETERMINING WHICH LEGISLATION APPLIES****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Forest Compliance Handbook provides directives and procedures to assist staff in carrying out the Provincial forest compliance program and in applying the Enforcement and Remedy provisions of Part VII of the Crown Forest Sustainability Act (CFSA). In addition, there are other natural resource statutes which relate to forest operations and may be applicable when evaluating which enforcement actions and/or remedies are most appropriate for the infraction encountered.

While some infractions may be identified as contrary to the CFSA, they may be more appropriately dealt with under other provincial statutes. Due to the comprehensive nature of the CFSA and Forest Management Plans in addressing matters of sustainability, ecosystem integrity and related to forest operations, it may from time to time, be difficult to decide which statute to use.

PROCEDURE

The following are some general criteria to consider when determining appropriate legislation when an infraction is encountered.

1. The purpose identified in the statutes being considered, (the directives contained in Part V of this Handbook identify the purpose for each Act and identify a contact for each).
2. If the remedy and enforcement provision(s) of the statute are specifically designed to deal with the infraction encountered.
3. The results of the process for determining remedy (Ref: FOR 07 06 03) should be considered in determining which statute provides the most appropriate remedy.

Notes:

- i. Assistance can be provided by contacting the local Enforcement Supervisor.
- ii. It is appropriate to pursue enforcement options under more than one statute for the same occurrence.

Examples of infractions and appropriate legislation

- 1) Where garbage (e.g. oil cans, chains, grease tubes, filters etc.) is deposited/left by a forest resource licensee on Crown land under a forest resource licence.

- the Public Lands Act (PLA) is more appropriate than the CFSA for the depositing of a material, substance or thing on Crown land. Consider section 27 of the PLA.
- 2) Where the “unauthorized” occupation of Crown land occurs (e.g. a building left after the authority has expired) in a licence area.
- the Public Lands Act is more appropriate than the CFSA for protecting the title integrity of Crown land. Consider section 24 of the PLA.
- 3) Where a forest operation causes harmful alteration, disruption, or destruction to fish habitat.
- the most appropriate legislation may be the Fisheries Act, however, if the occurrence hasn’t yet harmfully altered, disrupted or destroyed fish habitat then a Stop Work Order would be appropriate under the CFSA depending on the infraction observed. If the latter scenario applies, then follow up may result in further action(s) under the CFSA and/or the Fisheries Act.
- 4) Where a forest operation causes deleterious material (e.g. oil, silt etc.) to enter waters frequented by fish.
- where the deleterious substance is suspended sediment and not chemical in nature, the most appropriate legislation is the Fisheries Act in which case your supervisor should be notified immediately. Where the deleterious substance is chemical in nature, you may have some legislated responsibilities to report this as a spill under s. 92 of the Environmental Protection Act. However, if the quantity is minimal, action may be taken under the CFSA immediately by means of a Stop Work Order. Follow up may result in further action(s) under the CFSA.
- 5) Where a forest operation causes the holding back, forwarding, or diverting of the waters of a lake (including a pond) or river (including a creek) where that work is not part of a water crossing approved under the CFSA.
- the most appropriate legislation may be the Lakes and Rivers Improvement Act, again if the effect on the water course is minor then a Stop Work Order under the CFSA may be the best action.
- 6) Where a forest operation causes the “unauthorized” destruction of a nest or eggs of a species of a bird that is wild by nature, or interferes with, damages or destroys the den of a black bear or furbearing mammal (other than fox or skunk) or dam of a beaver.
- the most appropriate legislation may be the Fish and Wildlife Conservation Act – Reference: FWCA S. 7; 8.
- 7) A person who operates equipment or machinery involved in forest operations or processing forest resources in a forest or woodland during the fire season shall keep a fire extinguisher on the equipment or machinery or within five metres from it.
- the most appropriate legislation may be the Forest Fires Prevention Act.

Refer to Part V of this Handbook for specific provisions of “other statutes”.

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 03**
Procedure**DETERMINING REMEDY****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Recognizing that determining an appropriate remedy in response to an incident of non-compliance will always have elements of judgement and subjectivity, the purpose of this procedure is to provide Ministry of Natural Resources (MNR) staff with a consistent and defensible approach to determining the most appropriate remedy to apply.

Proper consideration of this procedure will:

- a) ensure the rationale for a remedy is clearly articulated;
- b) ensure reasonable application of remedies;
- c) encourage open and honest reporting of non-compliance by industry through rational, and fair and transparent application of remedies by MNR;
- d) ensure all parties learn from mistakes; and
- e) encourage a higher standard of care by persons involved in forest operations.

PROCEDURE***CONSIDERATIONS WHEN DETERMINING AN APPROPRIATE REMEDY***

Staff who believe a non-compliance under the Crown Forest Sustainability Act (CFSA) has occurred, shall compare the prescriptions and requirements contained in the appropriate Forest Management Plans (FMP), Annual Work Schedule (AWS), licence conditions, approvals and any other applicable permits or authorities, against the results of a thorough inspection (Ref: FOR 07 03 04 and FOR 07 03 05). A thorough inspection will have documented any suspected non-compliance as an Operational Issue in the inspection report which will be assigned a number to track the management of the Operational Issue. Where an Operational Issue is verified, and where it is either not correctable or corrective action has not been successful, the subsequent remedy to be applied will be in addition to any corrective action(s) undertaken. Remedies must be applied once an Operational Issue is determined to be Not-In-Compliance.

MNR staff should conduct a thorough review of the incident before recommending a remedy. The frequency, extent and nature of the non-compliance, the circumstances of its occurrence in relation to the characteristics of the operation itself, and the characteristics of the suspected or confirmed offender should provide the basis for determination of the remedy.

The CFSA provides for a range of remedies that can be applied to reflect the nature and circumstances of the non-compliance and of the suspected or confirmed offender. The analysis and evaluation of the attributes of a non-compliance and of the suspected or confirmed offender will be reflected in the decision on the nature and scale of the remedy chosen.

Not all non-compliance is a result of operational activity, although there is usually a link to it. There are incidents of administrative non-compliance that may have negative impacts upon Crown revenue, information

and reporting, or other aspects of forest and natural resource management (e.g. commitments to other users). The extent of deviation from those requirements must also be considered when determining remedy.

Evidence of a clear intent to commit an offence, wilful blindness, wilful negligence, an application after the fact for an amendment, or approval in attempts to justify or obscure an incident of non-compliance, obstruction or disobedience of a valid order are very aggravating factors.

WHO IS THE MOST RESPONSIBLE PARTY

Licensees are not generally able to avoid their responsibility by suggesting that fault lies with the incompetence of their employees or contractors. Remedies will normally be applied against the Licensee on whose licence the non-compliance occurred.

Where there is an Overlapping Forest Resource Licence on a Sustainable Forest Licence (SFL), the remedy would normally be applied against the Overlapping Licensee (OL). There may be cases, however, where a remedy should be applied to the SFL holder despite the existence of an OL. It may even be appropriate, in some instances to apply remedies to both the SFL holder and the OL for the same incident of non-compliance where responsibility can be attributed to both parties.

There may also be instances where non-compliance is committed by persons who are not licensees or otherwise related to the licensee and where remedies may have to be applied. As a general rule, licensees have accepted the grant of a licence and thereby agreed to be bound by the provisions of the CFSA including orders and administrative penalties. This is normally not the case for persons who are not licensees and therefore remedies are generally restricted to section 64 offence provisions. This procedure, with adjustments required for such circumstances, still forms an appropriate basis for determining remedies to apply under section 64 for such non-compliances.

FACTORS AFFECTING REMEDY DETERMINATION

DILIGENCE

Diligence is the effort the licensee makes to avoid a specific incident of non-compliance. It is important to keep separate the related concepts of diligence and prior history of infractions. A licensee may have a poor history with multiple infractions, but it should not be assumed that it was not diligent in every case. To the extent possible a determination should be made about the effort made to avoid this specific incident of non-compliance.

When considering diligence as a factor, it is appropriate to consider the diligence of both the licensee and any contractors involved.

Where proper training is in place, the error is clearly unintentional and is the result of difficult circumstances; the diligence of the licensee may be high. The choice of remedy should recognize that the diligence of the licensee could be a mitigating factor in relation to the non-compliance when determining remedy.

Staff shall consider any effort made to avoid non-compliance or to take immediate corrective action as a reflection of diligence on the part of the licensee. In other cases, non-compliance may be unintentional but clearly avoidable, resulting from carelessness on the part of the licensee. In that circumstance the diligence of the licensee is lower and may be an aggravating factor.

In rare cases, non-compliance may occur through a deliberate decision to contravene the law or planned activities for expediency or profit. This is always unacceptable and is always an aggravating factor.

Operational deviation from the approved FMP and AWS and their prescriptions may be non-compliance as described below under Deviation from Planned. A licensee has the ability and obligation to pursue amending a plan if unforeseen operational challenges are encountered. How a licensee responds to these needs and requirements can be seen as a reflection of their diligence. A licensee may not ignore the plan simply because of unexpected business factors, operational constraints or discoveries in the field. For example, if, during the conduct of operations, it becomes apparent that the risk based approach to Compliance Monitoring (Ref: Glossary) adopted in the FMP may have underestimated the risk associated with a particular operation, a

diligent licensee should re-evaluate the level of risk and make corresponding adjustments to their compliance monitoring approach, such as increasing the number of those CRAs (blocks) scheduled for a compliance inspection in lieu of a completed notice.

Conducting any forest operations prior to receipt of the necessary approvals is prohibited by the Act and is an aggravating factor. The fact that approval might have been granted and/or that there was no appreciable negative impact on the forest resulting from the non-compliance, is not relevant.

REMORSE

Remorse, while not an admission of guilt, implies a sense of responsibility for the non-compliance and the need to respond. It is characterized by the actions of the licensee in clarifying, resolving, and/or mitigating the non-compliance.

MNR staff should consider whether the licensee has demonstrated remorse after committing a non-compliance by immediate reporting, quick mitigative action, and efforts made to ensure the same mistake is not repeated. An example would be where quick action by the licensee prevents more severe damage or significantly reduces the scale of the non-compliance.

Licensees are required to report non-compliance and self-reporting is not in itself a mitigating factor. Any attempt to provide misleading information, hide, or otherwise obstruct the discovery and/or documentation of an incident of non-compliance is an aggravating factor.

ECOLOGICAL HARM

Background

The conformance of persons conducting operations in Crown forests to the rules, standards, licence conditions, approved plans and work schedules collectively contribute to the achievement of sustainability. The CFSA therefore provides that non-compliance to the requirements in these documents is an infraction under the Act and subject to the remedies and enforcement provisions of the Act.

An individual instance non-compliance may not have an obvious impact on the forest as a whole, but may have a negative localized ecological impact (e.g. at the stand level). Multiple non-compliances of a similar nature may have a negative ecological impact on a broader scale (e.g. at the site or the landscape level), despite the individual non-compliance causing apparently minimal local ecological impact.

The forest management planning process identifies Areas of Concern (AOC) that are Crown lands set aside for special management consideration because of values identified, and may include the protection of some values. AOCs may exist to protect both ecological and social values. Harm to ecological values is addressed here, and harm to social values is addressed by the evaluation of deviation from planned as noted below. Licensees are aware of the importance of these areas and have agreed to take extra care when operating near them and follow specific prescriptions when operating in them.

Whether or not the forest will re-grow on a particular site is only one of the factors to consider when determining the ecological impact of non-compliance and its associated remedy. The inherent ability of the forest to recover does not justify non-compliance.

Ecological Harm

Whether or not an ecological value has been specifically identified in the planning process, harm to that value during forestry operations may be considered an aggravating factor when determining remedy.

Protection of ecological values is an important part of the planning process. Where an ecological value is identified and protected as an AOC, a non-compliance in the AOC will be an aggravating factor, whether ecological harm can be proven or not. Ecological impact resulting from a trespass into an AOC is an aggravating factor in addition to the trespass itself. It needs to be considered more seriously than a similarly sized trespass into an unallocated stand that has no additional associated value.

DEVIATION FROM PLANNED

By accepting the grant of a licence and its conditions, licensees have agreed to adhere to the regulatory framework, the approved FMP, and its prescriptions (for forest operations and areas of concern) as part of their role in satisfying the overarching objective of forest sustainability. Operational deviation from the approved FMP, AWS and prescriptions, and the associated plans, approvals and licence conditions constitutes deviation from planned. It undermines the collective system designed to achieve the contribution of those activities to the sustainability of that particular Crown forest area. Potential negative impacts on the forest may increase the further operations deviate from the prescriptions in the approved FMP and AWS. This must be evaluated as part of the determining remedy process and is an aggravating factor.

The extent that the offending activity deviates from the plan has a direct impact upon remedy determination and should assist in evaluating it as an aggravating factor. In some cases the extent of deviation can be measured by area (e.g. mapped). In other cases, the extent of the deviation may be a function of the worth of a value being protected or the costs incurred with its loss which may be measured in dollars or lost business (e.g. for social values). In still other cases the extent of the deviation may be measured in terms of rarity of a value or effort to establish appropriate protection for the value. Similarly, the amount of lost non-fibre value such as tourism opportunities or cultural values and the effort in determining the cost of such losses, may be an aggravating factor.

Non-compliance caused by activities that were not approved in the FMP/AWS and which negatively impact upon the ability to achieve the objectives and strategies of the FMP should be considered as an aggravating factor.

OFFENDER GAIN AND/OR CROWN LOSS

Non-compliances that result in increased profits or gain to the licensee and/or reduced or lost revenue or benefit to the Crown (e.g. high-grading, trespass for increased product volume or quality) is an aggravating factor. Such non-compliances require a remedy response that eliminates profit/gain to a suspected or confirmed offender and/or restores the Crown's losses as a minimum. Additional remedies may be applicable depending on the circumstances of the non-compliance as noted in other factors identified here.

COMPLIANCE HISTORY

A history of non-compliance is an aggravating factor. The weight applied to compliance history as an aggravating factor should be considered in light of whether or not the offender has demonstrated that they continue to commit non-compliance despite the previous application of one or more remedies.

The following principles will be followed when considering non-compliance history:

- a) A history free of infractions may be considered as weighing in favour of the licensee.
- b) A progressive and continuing record of compliance improvement, and the desire to encourage further improvement, may temper the interpretation of historical non-compliances.
- c) A history of the application of prior remedies is an aggravating factor when determining an appropriate remedy;
- d) Repeating the same non-compliance, for which prior remedies have been applied, will weigh more heavily when determining an appropriate remedy;

REMEDIES

Remedies are to be applied to each instance of non-compliance. Striving to be fair, equitable and consistent in the application of remedies does not mean that every confirmed offender has to receive an identical remedy for a comparable incident of non-compliance. It does however mean that remedy responses should be, in so far as possible, properly and objectively documented and analyzed, consistently evaluated, and where comparable offenders, non-compliances, and circumstances exist, comparable remedies applied.

Consistent application of remedies for frequently committed non-compliances may be a valuable means of deterring the commission of high volume or chronic non-compliances.

Seizure of wood pursuant to Section 60 *CFSA* shall not be applied as a punitive tool but solely as a means to assert control or ownership over Crown owned forest resources.

NEGOTIATING WORK "IN LIEU" OF A REMEDY IS NOT PERMITTED.

Corrective action or offers to undertake compensatory activity may be considered as a mitigating factor when assessing expressions of remorse by a non-compliant licensee.

WRITTEN WARNING

A written warning is a disciplinary statement to the licensee that they are not in compliance and that they are at risk of stronger remedies if they do not come into compliance. Its primary purpose is to provide the licensee with the opportunity to modify its behaviour and become compliant. Although the *CFSA* does not provide for a written warning as a legislated remedy, there are circumstances where a formal action is required in response to a non-compliance to inform a licensee of a non-compliant situation but, that does not warrant the application of one of the legislated remedies.

A written warning is to be sent by registered mail and must reference the FOIP report and the non-compliance involved. It may also identify the potential remedies that could be applied to such non-compliance. It can be used as a stand alone remedy addressing the non-compliance issue(s) indicated in the inspection report or it may be issued in addition to another remedy. It must also contain a notification that the written warning will form part of the licensee's compliance history.

ORDERS:

If it is determined that a remedy more substantial than a written warning is appropriate, the first consideration will be given to issuing an Order(s) following the guidance of procedure FOR 07 06 04.

There are three types of Orders available to staff.

Section 55 should be used where it is necessary to stop, limit or change activities at a worksite to prevent or stop loss or damage.

Section 56 should be used where the goal is to repair the damage caused by a non-compliance.

Section 57 should be used where a licensee is not meeting the obligations of their licence.

Orders may be used together with other remedies such as administrative penalties or prosecution where the circumstances warrant it.

Orders may not be issued to require a licensee to undertake compensatory work. There is no authority within the *CFSA* for such an Order.

Where the non-compliance is for disobeying Compliance or Repair Orders, additional orders repeating the original are of questionable value and should not be used unless additional remedies are also applied.

Where the non-compliance is disobeying a Stop Work Order, additional orders repeating the original shall not be issued and other, stronger remedies shall be applied.

ADMINISTRATIVE PENALTIES:

Administrative penalties will be used in a wide variety of circumstances. The amount of the penalty imposed can vary significantly, providing MNR with a great deal of flexibility.

Staff are to refer to FOR 07 06 05 for direction in determining the amounts of an administrative penalty to be applied. If the non-compliance has resulted in financial gain to a confirmed offender, or loss to the Crown, any administrative penalty assessed shall be in an amount which exceeds the estimated profit or recovers the estimated loss.

The application of administrative penalties will follow procedure FOR 07 06 06.

Normally an administrative penalty is not be applied to a person who does not hold a forest resource licence. Legal Services Branch must be consulted before any consideration is given to applying an administrative penalty to a person who does not hold a forest resource licence.

USE OF SECTION 64 FOR NON-COMPLIANCE COMMITTED BY LICENSEES OF THE CROWN:

When considering a financial penalty for non-compliance involving a licensee, Section 58 administrative penalties will generally be applied. Section 64 charges should only be considered where circumstances of the non-compliance warrant a much stronger remedy than is available under Section 58 or there has been a blatant or continuing disregard for Section 58 penalties (does not include Section 58 penalties being legally challenged).

Examples of circumstances where Section 64 charge might be applied against a licensee include, but are not limited to:

- a) non-compliance with a Stop Work Order; or
- b) non-compliance shown to be an extensive deviation from approved plans or other documents; or
- c) impacts or consequences of non-compliance that are related to public safety (e.g. forest fires resulting from non-compliance); or
- d) an offender history that demonstrates that the application of other remedies has not been effective; or
- e) actions and/or attitudes of an offender that demonstrates an intent to, or a disregard for, or an unwillingness to comply with regulatory requirements; or
- f) non-compliance that relates to false information provided by a licensee; or
- g) demonstrated/indicated refusal to pay administrative penalties (that are not under dispute or have been resolved in court); or
- h) any set of circumstances where use of Section 64 rather than Section 58 can be justified.

Where a prosecution under Section 64 is successfully completed, the penalty requested will be decided by the prosecutor, taking into account the appropriate principles of sentencing. The *Factors Affecting Remedy Determination*, reviewed above in this Procedure, should assist in that analysis.

LICENCE SUSPENSIONS AND CANCELLATIONS:

In extraordinary circumstances, licence suspensions or cancellations may be applied after senior management review and direction.

THE DECISION ABOUT WHAT REMEDY TO APPLY RESTS SOLELY WITH THE MNR.

PROCEDURE:

1. With the exception of issuing an Order to stop work under Section 55(1)(a), remedy determination will not begin until the inspection process is completed and ideally the inspection report has been filed in FOIP.
2. The template in Appendix 1, Documentation of Remedy Determination, is provided to guide staff involved in determining what remedy to apply in response to a non-compliance in documenting their findings and ensuring they have as complete a process as possible. It presents a clear and succinct method for compiling factors and submitting advice for consideration by MNR in its determination of remedy. Every attempt should be made to complete all fields and where a field does not apply, staff should not leave it blank but indicate why it does not apply. Also, supporting rationale should be clearly articulated.
3. The District Manager will direct the process for determination of what remedy to apply.
4. The District Manager should not determine which remedy to apply until, as a minimum, they have reviewed the documentation of the points covered by the template in Appendix 1.
5. The processing of administrative penalties will follow the policy and procedures associated with FOR 07 06 06.
6. The Regional Director should not process an administrative penalty until they have reviewed the related template in Appendix 1 and its associated documentation.
7. Where a remedy determination suggests the appropriate remedy is a charge under Section 64, the staff will advise the Area Enforcement Manager. Staff will follow Enforcement Branch direction in the investigation and processing of offence charges (Ref: FOR 07 06 07).
8. Once charges are laid under Section 64, decisions leading to resolution rest with the prosecutor and the court.

APPENDIX 1

Documentation of Remedy Determination

District: _____ Date of discovery of Non-Compliance: _____
Management Unit: _____
Licensee (Responsible Party): _____
SFL #: _____ FRL #: _____
Inspector/Investigator: _____

Non-Compliance: _____
Details (include reference to FOIP report): _____

Diligence
Details: _____

Remorse
Details: _____

Ecological Harm
Details: _____

Deviation from Planned
Details: _____

Offender Gain and/or Crown Loss:
Details: _____

Compliance History:
Details: _____

Other Relevant Circumstances:

Details:

=====

Remedies Applied from Comparable Circumstances:

(if applicable)

Details:

=====

Remedy Recommendation to District Manager:

Comments:

Submitted by District Compliance Review Committee:

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 04**
Procedure**WRITTEN WARNINGS****Approval date:** April 1, 2012**Review date:** April 2017**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act, 1994 does not contemplate written warnings as a remedy under Part VII. This Forest Compliance Handbook requires that all confirmed instances of non-compliance be responded to with the application of a remedy. However, some instances of non-compliance may not warrant the application of an order, administrative penalty, offence charge, or suspension/cancellation of a licence (regulatory remedies). They do nonetheless warrant a response on the part of the Crown to ensure that the licensee is aware of their infraction, the seriousness of non-compliance, the potential to have regulatory remedies applied, and to ensure that there is a formal record of the Crown's response. To acknowledge such situations, the option of a formal Written Warning as a remedy response has been made available to MNR staff. This is in addition to the remedies prescribed by the Act and this procedure provides the direction and process for the issuance of a Written Warning.

A Written Warning is a formal document outlining the particulars of an incident of non-compliance and indicating to the licensee that they are in non-compliance and may be subject to other remedy provisions of the Act. It is designed to establish a formal record of the non-compliance and to warn the licensee of their potential future jeopardy if they fail to exercise due diligence to bring their forest operations into full compliance with the laws, standards and requirements.

Written Warnings are to be considered a remedy for the purposes of determining compliance history.

DIRECTION

Where an incident of non-compliance has been documented in a forest operations inspection report, and where the process of determining the remedy to be applied, as described in FOR 07 06 03, concludes that a Written Warning is the appropriate remedy in response to the infraction and its circumstances, MNR staff will follow the procedure laid out below.

A Written Warning may not require a licensee to take specific action in response to the incident of non-compliance but it may suggest action to prevent similar incidents of non-compliance in the future. Where Crown wishes to require action to be taken, an Order (Ref: FOR 07 06 05) under the appropriate section of the CFSA must be issued.

PROCEDURE

A Written Warning is a written disciplinary statement issued by the District Manager to a person or corporation responsible for a confirmed incident of non-compliance that has been documented in a Forest Operations Inspection Program (FOIP) report.

The Written Warning letter must include, but is not limited to, the FOIP report number, identify the Operational Issue number giving rise to the incident of non-compliance, and briefly describe the infraction in terms of:

- Type of operation, activity and check list item;
- Date of occurrence, and
- Licence and approval numbers, and
- Geographic location of the incident.

The Written Warning will acknowledge that it will form part of the licensee's compliance history record, and will inform the licensee that failure to keep operations compliant in the future will result in further remedies being applied.

This procedure provides enabling direction to assist District Managers with responding the range of compliance issues likely to arise provincially. It prescribes the minimum requirements to be included in a written warning without hindering a District Manager's flexibility to address individual compliance situations. No template is provided to further encourage Written Warnings specifically tailored to each infraction.

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 05**
Procedure**ORDERS UNDER THE CROWN FOREST SUSTAINABILITY ACT****Approval date:** April 1, 2012**Review date:** April 2017**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The Crown Forest Sustainability Act (CFSA) provides for the Minister (delegated to District Manager) to make three distinct types of Orders:

- 1) Section 55 - Damage by Forest Operations (also known as a **Stop, Limit or Amend Work Order**).
- 2) Section 56 - Repairs (commonly referred to as **Repair Order**).
- 3) Section 57 - Compliance with Forest Resource Licence (commonly referred to as **Compliance Order**).

Orders under Sections 56 and 57 of the CFSA contain provisions for the Ministry to carry out the necessary activities, where the person or licensee so ordered fails to do so, and to recover full cost of such activities from the responsible party if they fail to comply with the orders.

Orders may be used separately or in conjunction with each other or with other remedy and enforcement action prescribed by the CFSA. Orders may be used both as a compliance tool and as a management tool. As a compliance tool, it is generally applied in a “found-committing” situation, e.g., washing a skidder in a creek; unauthorized harvesting....etc. As a management tool, Orders may establish limits or require other changes in the forest operations or require the preparation of an amendment to the forest management plan or revision to the annual work schedule.

DIRECTION

Orders will be used by the Ministry of Natural Resources (MNR) to prevent, stop and/or repair loss or damage to the Crown forest and to ensure compliance with the CFSA.

Orders will be exercised in good faith and applied rationally and fairly to all forest users (persons and licensees).

Attention must be given to other associated natural resource legislation so that the carrying out of Orders does not place the person in non-compliance with any other act or regulation.

Each order type has a specific application as a remedy for non-compliance. The description, application and enforcement of orders are as follows:

PROCEDURE

DAMAGE BY FOREST OPERATIONS (STOP WORK ORDER, ORDER TO LIMIT OR CHANGE, ORDER TO AMEND) CROWN FOREST SUSTAINABILITY ACT SECTION 55(1) CROWN FOREST SUSTAINABILITY ACT

DESCRIPTION AND APPLICATION

These Orders are designed to prevent, stop or reduce damage to the Crown forest and to ensure forest operations are being carried out as per the Forest Management Plan (FMP) and the Annual Work Schedule (AWS). The CFSA is very explicit that the offending activity is "likely to cause loss or damage that impairs or is likely to impair the sustainability of the Crown forest or that is contrary to the FMP or AWS." These Orders will be applied to offending activities in the most expeditious manner necessary.

The first action taken should be to identify the problem to the individual involved in order to determine what corrective action they are willing to undertake. If this resolves the issue, then the duly certified Ministry employee documents what occurred and the corrective action taken.

S 55(1)(A): STOP WORK ORDER:

If, in the opinion of a certified employee, it is necessary to stop activities at a worksite to prevent or stop damage, the employee may issue a 24 hour Stop Work Order as per Section 55(1) (a) of the CFSA using the attached form. The Order will be limited to a specific activity and location.

To issue the Order, the certified employee will complete the Stop Work Order form¹ and present it to the person in charge. In the absence of anyone present, the Order is issued to "persons unknown", and posted in the most appropriate locations at the site. The licensee and/or persons responsible for the forest operations are to be notified as soon as possible.

Stop Work Orders must contain sufficient detail as to leave no doubt as to what activity is being stopped and specific locations covered by the Order.

Names and addresses of persons present and the details of the occurrence are to be documented and reported immediately to the Ministry Area Supervisor. The certified employee may revoke the 24 hour Order when the Stop Work Order is no longer required.

Within the 24 hour period, the district manager will review the Order and circumstances and decide if a new (extension) order is necessary. In making this decision, the district manager will consult with appropriate staff including those that have the technical/professional knowledge related to the specific type of infraction.

The same procedure for issuing the new Order is followed by the district manager but is not limited to a 24 hour period.

S 55(1)(B) OR (C): LIMIT OR AMEND ORDERS

If limits or other changes in forest operations are required as per Section 55(1) (b) or (c) CFSA they will be identified in a written "**Order**" format as indicated on the attached example.

- If the actions required by the Order will result in changes to the approved Forest Management Plan or Annual Work Schedule, they will be prepared and approved in accordance with the Forest Management Planning Manual.

The District Manager/Regional Director will advise the licensee of the changes that are to be made to the Forest Management Plan and Annual Work Schedule.

¹ Only the attached "order format" appended hereto is to be utilized. The form may be mechanically reproduced and adjusted to fit the circumstances.

ENFORCEMENT

Infraction: Fail to Comply with Stop Work Order

Where non-compliance with the Order occurs, the following remedies may be applied except that a remedy may not be applied from both sections 58 and 64 for the same offence:

REMEDIES	APPLICATION
Section 58 (1) (f) CFSA -Administrative Penalty maximum \$15,000.	Fails to comply with an Order except an Order to amend under 55(1)(c). Monetary penalty.
Section 64(1) (d) CFSA -Court action, maximum fine \$1,000,000.	Where a person refuses or intentionally fails to comply with a Stop Work order (S. 55(1)(a))or where failure to comply with a Stop Work order results in a very severe impact or repetitive severe impact.
Section 59(1) (e) CFSA -Suspend or cancel Forest Resource Licence.	Senior management level decision required for application of suspension or cancellation of licence in whole or in part.

"SAMPLE"

ORDER

**Under Authority of Section 55(1) (a) (b) or (c)
of the Crown Forest Sustainability Act**

Person or Company Name
address

As a result of a review of your forest operation practices, we have identified a (number of) situation(s) (see Appendix A), which are causing, or likely to cause, loss or damage that impairs or is likely to impair the sustainability of the Crown forest, or are contrary to the approved Forest Management Plan or approved Annual Work Schedule.

By the authority delegated to me by the Minister of Natural Resources, I, _____

I order you to a) Stop (describe the offending activity) and/or b) carry out the requirements contained in Appendix B.¹ These requirements are to be completed by _____.

Dated this _____ day of _____, 20_____.

Signature

NOTE:

APPENDIX A

Indicates concerns identified in the review of forest operation practices.

APPENDIX B

Indicates the requirements as set out in Sections 55(1) (b) or 55(1) (c) CFSA.

¹ Similar wording is used for establishing limits, or other changes in operations or amending the FMP/AWS

REPAIRS (REPAIR ORDER)

SECTION 56(1) (2) (3) CROWN FOREST SUSTAINABILITY ACT

DESCRIPTION AND APPLICATION

Repair Orders¹ may be issued in the event that a person causes or permits damage to water, soil, plant life, or habitat for animal life in a Crown forest.

The determination of remedial objectives and activities will be made using the best information available and sound professional judgement.

Staff must be careful to ensure that a Repair Order focuses on the objectives to be achieved and not on how that work is to be done (e.g. an action plan to prevent siltation into the stream, repairs to ameliorate the current siltation, repairs to prevent future siltation and not install rip rap here, replace with a culvert of this size, etc.). The onus must be on the licensee to figure out how to do it and to carry it out.

Staff should also ensure that actions required by a repair order can be carried out. Are they physically possible (given current equipment and knowledge of the licensee) and are they financially feasible (can the licensee afford to do the required work or will it bankrupt them before the work can be completed). This may require consultation with the licensee being ordered to ascertain that the order is realistic. If it is determined that the desired repair order objectives are not achievable, alternative actions and remedies may be required.

The district manager will notify the person, by letter sent registered mail or delivered personally, outlining any remedial action(s) required under this section. This decision as to what remedial action(s) are to be undertaken should be made after discussion with the person and they may be required to complete an action plan before work begins. The letter must also advise the person that if they are unable or unwilling to take corrective action by a specified time, the District Manager may direct that the corrective action be done at the expense of the person.

The notification will include the rationale for the Order, time frame for completion of remedial work, and expected results of such remedial measures.

The district manager will ensure that a well documented record of expenditures is kept.

The district manager, in consultation with the Regional Director and Director of Legal Services Branch, may make application to the Ontario Court General Division to direct such remedial actions be taken.

Reference Section 56(1) (b) and (2) of the CFSA.

ENFORCEMENT

If there is failure to comply with the Repair Order, the district manager may consider the assessment of an administrative penalty under Section 58(1) (f) CFSA or a charge under Section 64(1) (a) or (b) CFSA.

¹Only the attached "order format" appended hereto is to be used. The form may be mechanically reproduced and adjusted to fit the circumstances.

Infraction: Fail to Comply with Repair Order

REMEDIES	APPLICATION
Section 58(1)(f) CFSA – Administrative Penalty maximum - \$15,000.00 and costs under Section 56(2)	Fails to comply with Repair Order
Section 64(1)(h) CFSA – Court action maximum fine \$100,000.00	Where a person refuses or intentionally fails to comply or where failure to comply results in a very severe impact or repetitive severe impact.
Section 59(1) (e) CFSA – Suspend or cancel Forest Resource License.	Senior management level decision required for application of suspension or cancellation of licence in whole or in part.

“SAMPLE”

REPAIR ORDER
Under Authority of Section 56(1) (a)
of the Crown Forest Sustainability Act (CFSA)

By the authority delegated to me by the Minister of Natural Resources, I, _____,
District Manager for the _____ Administrative District, hereby order:

to conduct the repair work as laid out in Appendix A.

This work is to be commenced by _____ and
completed no later than _____.

This work is to be completed to correct the damage as described in Appendix B.

The expected results of the repair work are detailed in Appendix C.

If you fail to do the above work within the times specified the Ministry will do the work. Pursuant to Section 56(2), CFSA you will be liable for the cost associated with the work done by the Ministry.

You may also:

- be assessed an administrative penalty to a maximum of \$15,000.00 under Section 58(1) (f) CFSA or,
- be charged under Section 64(1) (h) CFSA and upon conviction liable to a fine of not more than \$100,000.00 and/or
- have your licence suspended in whole or in part under Section 59(1)(e).

Dated this _____ day of _____, 20____.

Signature

COMPLIANCE WITH FOREST RESOURCE LICENCE (COMPLIANCE ORDER)

SECTION 57(1) & (2) CROWN FOREST SUSTAINABILITY ACT

DESCRIPTION AND APPLICATION

Compliance Orders¹ may only be issued to a person who has *failed to comply with a Forest Resource Licence*. In some instances an Order may be issued to a former (but recent) licence holder to order compliance with a condition of the expired licence. When such a situation occurs, the advice of the Provincial Enforcement Advisor (Forests) and Legal Services Branch should be sought prior to issuing the Order.

Section 57(1) CFSA empowers the Minister to direct the licensee to carry out all obligations imposed by the licence (Section 28 CFSA). The district manager shall ensure the licensee has carried out all obligations that are imposed by the licence.

If the licensee is not meeting the obligations of the licence, the district manager will identify the problem and the necessary corrective action to resolve the problem to the licensee involved, either verbally or in writing, and request that they undertake the corrective action within a specified time period.

If the licensee fails to take the action identified within the established time period, the district manager will issue an Order delivered in person or by registered mail directing the licensee to carry out the specified obligations as imposed by the licence, giving rationale, time frames, and consequences of non-compliance.

If, after the expiry of the identified time frame, the licensee is unable or unwilling to carry out activities directed by the Order, the district manager may take action to meet such obligations imposed by the licence and recover the full costs from the licence holder.

The Ministry may also consider assessment of an administrative penalty under Section 58(1) (b) or a charge under Section 64(1) (b) CFSA and/or the suspension or cancellation of the forest resource licence under Section 59(1) (a) for the original violation of failing to comply with the licence. Additionally, an administrative penalty may be assessed under Section 58(1) (f) or a charge under Section 64(1) (h) for failing to comply with the Order.

ENFORCEMENT

Infraction : Fail to comply with Compliance Order

REMEDIES

Section 58(1) (f) CFSA - Administrative Penalty maximum - \$15,000.00 and costs under Section 57(2).

Section 64(1) (b) CFSA - Fail to Comply with Forest Resource License – Court action maximum \$100,000.00.

Section 64(1)(h) CFSA - \$100,000.00

Section 59(1) (a) CFSA – Suspend or cancel Forest Resource License.

APPLICATION

Licensee fails to comply with the order
Monetary penalty

Court Action - where licensee refuses or fails to comply with forest resource licence.

Court action – where licensee fails to comply with the order
Senior management level decision required for application of suspension or cancellation of licence in whole or in part.

¹Only the attached "order format" appended hereto is to be utilized. The form may be mechanically reproduced and adjusted to fit the circumstances.

“SAMPLE”

COMPLIANCE ORDER
Under Authority of Section 57(1) (a)
of the Crown Forest Sustainability Act (CFSA)

By the authority delegated to me by the Minister of Natural Resources, I _____,
District Manager of the _____ Administrative District, hereby order:

to carry out the obligations of the Forest Resource Licence # _____, dated _____ as detailed in Appendix
A, commencing _____ and completed no later than
_____.

These obligations are to be met because of the reasons described in Appendix B.

If you fail to do the above work within the times specified the Ministry may do the work. Pursuant to Section
57(2) CFSA you will be liable for the cost associated with the work done by the Ministry.

If there is failure to comply, you may also be assessed an Administrative Penalty of a maximum of \$15,000.00
under Section 58(1) (f) CFSA or charged with an offence under Section 64(1) (b) CFSA and upon conviction
liable to a fine of no more than \$100,000 and/or charged with an offence under Section 64(1) (h) CFSA and
upon conviction liable to a fine of no more than \$100,000 and/or under Section 59(1) (a) CFSA suspension or
cancellation of the forest resource licence.

Dated this _____ day of _____, 20____.

Signature

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 06**
Procedure**ADMINISTRATIVE PENALTIES – DETERMINING AMOUNTS AND APPLICATION****Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Staff are referred to Remedy and Enforcement Overview (FOR 07 06 01) and to Determining Remedy (FOR 07 06 03) regarding the determination of applicable remedies for infractions. The Crown Forest Sustainability Act (CFSA), Section 58, provides for the application of administrative penalties in monetary form for various contraventions of the Act. This procedure provides processes for the determination of amounts of Administrative Penalties and for their application.

The CFSA administrative penalty structure allows for a penalty to fall anywhere within the stipulated ranges set out in Section 58 for any instance of non-compliance. Historically, the amounts of these penalties have been applied using a stepped approach to reflect the compliance history of the offender and the seriousness of the offence. Compliance history is only one of the factors to be considered in assessing and applying a penalty and “seriousness” can stem from a number of attributes, in addition to environmental impact, as noted in the directive on Determining Remedy.

This procedure describes the Ministry of Natural Resources’ (MNR’s) standard approach to the amount determination, review, assessment and documenting of administrative penalties which **must** be followed by staff.

All decisions to impose an administrative penalty are to be documented. All such decisions will also document the rationale supporting the determination of the amount of the penalty. A clear rationale **must be** detailed in the penalty report. Staff are referred to the procedures below to apply an administrative penalty including completion of the penalty report.

PROCEDURE**GENERAL CONSIDERATIONS FOR DETERMINING AMOUNT**

Choosing an appropriate amount for an administrative penalty is to be based on the circumstances of the infraction and any additional information noted in the assessment done to determine remedy (Ref: For 07 06 03). Even where the non-compliance is of a type that is relatively common, there are circumstances that make each case unique. There is no “perfect” or “ideal” amount that must be applied. The goal of this procedure is to ensure a consistent approach/process is used to determine the amount of an administrative penalty which in turn will lead to consistent application of the process for determining and applying administrative penalties across the province.

Determining the amount of an administrative penalty is essentially another step in determining the appropriate remedy to apply. Consequently, the six factors set out in the Determining Remedy Procedure, FOR 07 06 03, that are considered when determining which remedy to use, are also the factors that are to be used to determine the amount of the penalty. The factors discussed in Procedure FOR 07 06 03 are:

- 1) Diligence
- 2) Remorse
- 3) Ecological harm
- 4) Deviation from planned
- 5) Offender gain or Crown loss
- 6) Compliance history (see definition in Glossary)

The full range for the amount for an administrative penalty is always available for consideration.

A past practice was to use a range of possible penalty amounts divided into three levels. These levels were:

Level I	\$0 to \$5,000	1 to 2 times the value of the forest resources
Level II	\$5,000 to \$10,000	2 to 3 times the value of the forest resources
Level III	\$10,000 to \$15,000	4 to 5 times the value of the forest resources

Determination of where an infraction might fit within these three levels was largely based on environmental impact (seriousness) and the compliance history of the licensee. Now, all six factors must be considered when making that determination. Generally, the amount should rise with the seriousness of the infraction as determined from the aggregation of factors used in determining the remedy as per procedure FOR 07 06 03. There may be additional or extenuating circumstances that may make it desirable in certain instances to use an alternative approach.

For example, where a licensee has a record of diligently working to improve their compliance performance and the offence is an accidental or unintentional infraction, it may be desirable and more productive to reduce or reverse the use of the increasing scale to encourage continuing improvement and better long term performance.

Another example is where factors suggest it may be appropriate to exceed the normal progression of penalty amounts because an infraction is particularly flagrant or the scale and scope of the infraction substantially exceeds normally expected ranges for the type of infraction being evaluated.

Generally, these decisions should be reflected in the results of the Determining Remedy (FOR 07 06 03) process.

Where there is a wasteful practice infraction and the amount of forest resources involved is being determined on the basis of a piece count, Wood Measurement staff in the Forestry Division should be consulted in calculating the penalty amount.

1. A volume based calculation can be used to determine an administrative penalty amount but should only be used where there is a volume of forest resources that can be scaled and where a one to five times the value of the forest resources calculation is permitted by the Act (Section 58(1) (a, b, or d)).
2. The lump sum amount can be used in a variety of circumstances. Typical examples include:
 - Where the infraction involves “non-timber” values such as social, biological, recreational or heritage values; or
 - Where there is little or no fibre value involved in the infraction (as may occur in an AOC); or
 - Wood fibre is not the principle value such as penalties for unauthorized harvest (e.g. where wood volume is not scaled or cannot be scaled but can be estimated), unauthorized hauling, and administrative non-compliance.

APPLICATION

Before proceeding with an administrative penalty, MNR staff are to ensure the appropriate subsection of section 58 CFSA is being used and followed.

Penalty amounts are determined according to the direction provided above.

All Crown charges collected under the Section 58 CFSA, administrative penalties, are revenue and are forwarded to the Forestry Futures Fund for its use in the forests of Ontario.

All penalties **must** be recorded using the following format. Much of the information will originate from the Forest Operations Information Program (FOIP) report. Where possible, duplication of it and other documents should be avoided and attachments or cross references used.

PROCEDURE

PENALTY REPORT FORMAT

A penalty report, as outlined below, must be prepared for all infractions where an administrative penalty is to be applied to a party who has been granted a licence by the Crown. Penalty reports should be completed as soon as possible. Part 1 of the report, together with the Forest Operations Inspection Report (Ref: FOR 07 03 04 and FOR 07 03 05), the Documentation of Remedy Determination (Ref: FOR 07 06 03) and the direction from this procedure, will provide the details to enable District Compliance Committees and district managers to make a decision as to the appropriate amount to be applied. The penalty report format should also be used to support situations where Orders (Ref: FOR 07 06 04) may need to be issued or investigations commenced.

NOTE: It is sufficient to reference or attach the Forest Operations Inspection Report and documentation of Remedy Determination in the Penalty Report rather than repeating the information. Staff must ensure the references are clear. Attaching the appropriate documents is recommended.

The following is a standard format to be used in documenting the assessment of administrative penalties. Some sections are not appropriate when dealing with non-forest product resource values and can be omitted. A penalty report must accompany the copy of an administrative penalty notice which is submitted to the regional director.

PART 1

Part 1 should be completed *as soon as possible* after completion of initial inspection(s) to support remedy determination. In any event, it is to be completed prior to the application of any administrative penalties. Since most of this information comes from the Forest Operations Information Program (FOIP report, appending that report is an efficient means to completing much of Part 1.

Date of Occurrence

From the Forest Operations Information Program report (FOIP inspection), complete the day, month and year on which the infraction occurred (i.e. the act or omission). If the precise date is not known, the most accurate estimate possible (preferably the week, month and year) will be stated. The date of discovery of the infraction is also to be reported.

Information on Parties to the Infraction

The relationship between the responsible person and the licensee, if any, will be stated. In a sample case, the cutters were Joe Doe and Richard Roe, employed by Smith Ltd., the contractor for the Licensee, ACME Ltd.

The **Licensee** is responsible for all activities associated with the operations authorized under the Licence/Harvest Approval. Describe the relationship between the licensee and the person(s) that committed the infraction. This person(s) may be a contractor, subcontractor, jobber, employee, etc. Management Unit name and number; Sustainable Forest Licence name and number; Forest Resource Licence number; and Approval numbers (where applicable) must be included here. Most of this information can be obtained from the Registration and TREES programs. **Note: The legal name of the licensee must be used.**

Location (as per the FOIP report)

The precise location of the infraction must be reported. The location may be described by any combination of lot, concession, township, GPS/UTM coordinates, natural features or man-made features. If any proceedings are taken against the person, the location of the infraction must be as clear as possible. The location should be identified on a copy of the appropriate map included in the Forest Management Plan.

Boundaries

The report should specify whether any boundaries in question were marked, cut-out, known to the person or readily determinable. This information may be considered in determining the scale, scope and/or accidental nature of the infraction. e.g. A boundary line that is clearly marked with flagging and/or paint that is intentionally crossed may be considered more severe than in the case where a boundary is poorly marked and accidentally crossed.

For situations where the boundary in question is a property boundary, reference should also be made to FOR 05 01 04.

Infraction

An accurate description of the infraction must be reported. All details related to the activities resulting in the infraction should be included. Photographs of the infraction are very useful and should be included if at all possible.

Details of Timber and Other Values Affected (as per FOIP report)

The report must set out how the quantity of forest resources involved in the infraction was determined. It must also set out the details of the quantity and value of those forest resources by species and grade. An accurate description of the non-timber values (scale, size, scope, affects etc.) must be provided and quantified to the extent possible.

Measurements of Crown forest resources for all volume based administrative penalties must be done by licensed approved Ministry scalers.

Forest Resources Seized (as per FOIP report)

The details of any timber seized in respect of the infraction will be reported, i.e. its species, quantity and location. In addition, the report should reference actions undertaken regarding the disposition of the seized timber.

Witnesses and Information Provided

The name and title of all witnesses to the infraction should be provided. The information they provide or will be providing, is to be identified here.

Compliance History

The report will set out the compliance history, **as defined in the glossary of this Handbook**, for the person or licensee. The report will also document, from the compliance history, the size and nature of previous infractions and remedies applied over the three years preceding the infraction.

The signature of the employee completing and submitting the report is to be included at the bottom of Part 1 of the report.

Disclosure Meeting

It is strongly recommended that the district manager hold a Disclosure Meeting with the licensee prior to reaching a decision on remedy to be applied. The purpose of the Disclosure Meeting is solely to apprise the licensee of the facts, documented in the FOIP report, which led to the decision to proceed with a remedy.

The Disclosure Meeting held should be documented here.

The Disclosure Meeting is **not** a forum for the licensee to defend its actions and it is **not** a representation to the Regional Director (Ref: FOR 07 06 09).

PART 2

After the District Compliance Committee and District Manager have completed the review of Part 1, Part 2 of the report is to be completed.

Decision of Committee/District Manager on Remedies to be Pursued

Insert or reference the Documentation of Remedy Determination (Ref: FOR 07 06 03). This will indicate the types of remedies that will be pursued to address the infraction. Where administrative penalties will form part of the remedy, the remainder of the report should be completed. Where orders or investigations to pursue charges will be undertaken, no further information should be included in the report.

Determination of the Amount of the Administrative Penalty

Insert or reference the documentation from the determination of the amount of any administrative penalty.

Sign-off and Distribution

The District Manager must sign and date the report.

This report will be submitted to the Regional Director along with the Region's copy of the Notice of Intent to Apply an Administrative Penalty (see Example I below).

NOTE:

Information contained in Penalty Reports is subject to Freedom of Information and Protection of Privacy legislation and should only be released in accordance with that legislation.

PENALTY AND DECISION NOTICE

When a licensee (or a person) has failed to comply with the Crown Forest Sustainability Act (CFSA) and it has been deemed appropriate by the District Manager that they may be liable for an administrative penalty, the district manager will:

Issue a "Notice¹ of Intent to Apply an Administrative Penalty" letter (see Example I following), setting out the facts and circumstances of the non-compliance, specify the proposed amount of penalty, rationale for the penalty and advise the person of the opportunity to make representations to the Regional Director within 30 days after receiving the notice (Ref: FOR 07 06 09). Part 1 of the penalty report is to be sent to the licensee when the district manager issues the Notice of Intent to apply an administrative penalty.

¹ A notice may not be sent after the earlier of two years after the act or omission has come to the attention of a Ministry official and no more than five years after the act or omission was committed or alleged to have been committed. Reference Section 58(3) CFSA.

Send the Notice by registered mail to the licensee. The Act deems the Notice to have been received five days after being sent.

Copy the regional director, the co-ordinator forest operations compliance, regional enforcement operations manager and the regional measurement coordinator with the Notice of Intent and the Administrative Penalty Report.

The Regional Director can confirm, alter, or dismiss the administrative penalty, described in the Notice of Intent from the district manager and must record the decision and the rationale for the decision regardless of whether the licensee has paid the penalty or not. The regional director will consider representations as per Section 58(4) CFSA concerning the imposition of the penalty and the determination of the amount of the penalty (Ref: FOR 07 06 09). The regional director will place on file a report summarizing his review, any representations made, and the determination of the penalty. Where required, the regional director will;

- (1) Decide whether to impose a penalty*, set the amount of penalty, the date by which the penalty shall be paid (as per the invoice), and rationale for the decision;
- (2) Request an invoice from Forest Economics Section, Sault Ste. Marie, for the amount of the penalty and have the invoice mailed to the regional director for inclusion in a registered letter to the person. This letter shall set out the details of the decision per Section 58(6) CFSA - reference Example II below. Where a decision is taken to mail the letter prior to receiving the invoice, the letter shall state that an invoice is being mailed and payment will be due based on the date of that invoice. Regardless of when payment is received, the invoice shall be produced and mailed to the person (licensee) as part of the legal record.
- (3) Copy the regional measurement coordinator, regional enforcement operations manager, district manager, co-ordinator forest operations compliance (Forests Branch), and manager, forest economics section.

* Where an Operational Issue is verified by MNR and determined to be a non-compliance, a remedy is to be applied. Where a regional director believes that the proposed administrative penalty is inappropriate or that it cannot otherwise be supported and intends that it be withdrawn, he/she should be prepared to indicate what remedy they believe is appropriate or provide the rationale seeking reconsideration of the non-compliance determination.

PAYMENT

All cheques should be made payable to the Minister of Finance

It is essential that all money for administrative penalties be forwarded to:

Ministry of Natural Resources, Forest Economics Section
70 Foster Drive, Suite 400
Sault Ste. Marie, Ontario, P6A 6V5

and all cheques **must** indicate on the back the reference ****P²** to ensure the proper account is credited and to ensure no further invoices will be sent. They must be entered into Ontario Government Financial Accounts Receivable (OGFAR) as a penalty payment against the applicable penalty invoice and not as normal Crown charges. Therefore, districts must track all Notices of Intent that are sent out in order to be certain that monies paid are entered appropriately.

If payment is received by the district prior to the generation of the penalty invoice, payment must be forwarded to Forest Economics Section (as noted above) accompanied by a copy of the "Notice of Intent to Apply an Administrative Penalty" and a completed Timber Account Adjustment form.

If the payment is not received within a reasonable period of time, (by the due date indicated on the invoice) the district manager, in consultation with the regional director, provincial enforcement specialist – Forests, Enforcement Branch, and the director of Legal Services Branch, may bring an action in a court of competent

² I.e. NEP, NWP, SP

jurisdiction (Section 58(7), CFSA). The court has the power to determine whether the penalty should be imposed and the amount (Section 58(7), CFSA).

Where payment is not received, civil action should be considered in consultation with the area enforcement manager, Legal Services Branch and provincial enforcement specialist – Forests. A decision about who will carry forward the civil action will be made at that time.

NOTE³: MNR must be represented by a lawyer when proceeding with a suit other than in Small Claims Court. In all cases, the district should consult with Legal Services Branch and will be responsible for all costs in these prosecutions except for Legal Services Branch staff salary.

The corresponding Forest Operations Information Program (FOIP) report which documents the original non compliance, **must be brought up to date** (i.e. Issue has been assigned not in compliance status, the Issue is resolved with a remedy, and the report closed).

Any funds received from administrative penalties will go to the Forestry Futures Trust Fund.

Sample letters for Notice of Intent to Apply an Administrative Penalty and Decision Notice follow.

³ A notice may not be sent after the earlier of two years after the act or omission has come to the attention of a Ministry official and no more than five years after the act or omission was committed or alleged to have been committed. Reference Section 58(3) CFSA.

EXAMPLE "I"

REGISTERED MAIL

EXAMPLE OF A NOTICE OF INTENT TO APPLY AN ADMINISTRATIVE PENALTY FOR A WASTEFUL PRACTICE VIOLATION. PLEASE NOTE THAT THE LAST PARAGRAPH MUST BE INCLUDED IN ALL LETTERS AND THE INITIALS OF THE APPLICABLE REGION ENTERED WITH A "P" IN THE SPACE PROVIDED (EG. NWP).

Return address
Date
Licensee legal name
Smith Lumber

SUBJECT: NOTICE OF INTENT TO APPLY AN ADMINISTRATIVE PENALTY

In accordance with Section 58(2) of the Crown Forest Sustainability Act (CFSA) you are hereby notified that you have contravened subsection 43 of the CFSA. The following information sets out the facts as well as the monetary amount of the administrative penalty recommended for that infraction.

On or about January 7, 2006, in the course of conducting operations under Approval to Commence Harvesting Operations 440000, in the Township of Forlorn, wasteful practices were committed contrary to the CFSA. These wasteful practices consist of 800 high stumps, 31 lodged trees and 69 merchantable trees left on site.

Section 43 CFSA states a person who conducts forest operations in a Crown forest shall comply with the Forest Operations and Silvicultural Manual. Subsection 58(1) (e) CFSA provides for a penalty of not more than \$15,000.00.

The quantity and variety of wasteful practices on this site constitutes sufficient damage to warrant the rendering of a penalty. This, combined with your infraction history on this management unit justifies a penalty of \$_____ for each infraction for a total penalty of \$_____.

Section 58(4) CFSA allows you 30 days to make representation to the Regional Director acting on behalf of the Minister, respecting this infraction including the proposed amount of penalty. The Regional Director will make the final decision on whether a penalty is warranted and the amount of the penalty and you will be notified accordingly.

Should you wish to pay this amount now, you may mail a cheque for the above amount to Ministry of Natural Resources, Forest Economics Section, 70 Foster Drive, Suite 400, Sault Ste. Marie, Ontario, P6A 6V5 or bring your cheque to this office and we will forward it on your behalf to Sault Ste. Marie. All cheques should be made out to the Minister of Finance and **must** indicate on the back of the cheque reference **P¹ to ensure the proper account is credited and to ensure no further invoices will be sent.

Yours truly,

District Manager

c: Regional Director
Co-ordinator Forest Operations Compliance, Forests Branch
Regional Enforcement Operations Manager
Regional Measurement Coordinator

¹ This invoice reference number (NWP, NEP or SCP) is to be assigned by the appropriate Regional Tenure and Measurement Coordinator before the letter is sent.

EXAMPLE "II"

REGISTERED MAIL

EXAMPLE OF A NOTICE OF DECISION FOR THE WASTEFUL PRACTICE VIOLATION DESCRIBED IN EXAMPLE "I". PLEASE ENSURE THAT THE REGION INITIALS ARE ADDED TO THE LETTER "P" IN THE LAST PARAGRAPH.

Return address
Date
Smith Lumber

Dear Sir:

SUBJECT: _____ NOTICE OF DECISION _____

In accordance with subsection 58(5) of the Crown Forest Sustainability Act (CFSA) and after considering your representation made to me concerning penalties imposed for wasteful practices on the above noted site, I am upholding the original proposed penalty contained in correspondence to you dated _____.

The wasteful practices on this site are a contravention of planned and approved activities and significantly depart from acceptable practices. The infractions occur over a large area and result from a variety of operations. In addition, they have been committed by operators with a history of wasteful practices.

As a result, I am fixing the penalties at \$_____ for each infraction for a total penalty of \$_____.

Payment of the penalty can be made by cheque payable to the Minister of Finance, noting Reference **P² and the invoice number on the back of the cheque and must be received at our office in _____, on or before (please see attached invoice). If payment is not received by this date, the Minister may bring an action to recover such payment in a Court of competent jurisdiction.

Yours truly,

Regional Director

c: Director, Legal Services
Manager, Forest Economics Section
Co-ordinator Forest Operations Compliance, Forests Branch
Regional Enforcement Operations Manager
Regional Measurement Coordinator
District Manager

² i.e. NEP, NWP, SP

² i.e. NEP, NWP, SP

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 07**
Directive**OFFENCE PROVISIONS****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The offence remedies under Section 64 of the Crown Forest Sustainability Act are applied through prosecution in, and decisions made by, the courts.

DIRECTION

Prosecution under section 64 will generally be used for more serious situations of non-compliance. Examples of circumstances where a section 64 charge might be applied against a licensee include:

- a) non-compliance with a Stop Work Order; or
- b) non-compliance shown to be an extensive deviation from approved plans or other standards and requirements; or
- c) impacts or consequences of non-compliance that are related to public safety (e.g. forest fires resulting from non-compliance); or
- d) an offender history that demonstrates that the application of other remedies has not been effective; or
- e) action and/or attitude of an offender that demonstrates an intent to, or a disregard for, or an unwillingness to comply with regulatory requirements; or
- f) where false information is provided by the licensee particularly when done to obscure facts or cover up an infraction; or
- g) any other set of circumstances where use of Section 64 rather than Section 58 can be justified.

Forest operations inspectors are to complete their inspections for forest operations compliance in the normal fashion whether or not they suspect a found non-compliance may result in a remedy determination that will lead to the provisions of Section 64, unless directed by an investigator to stop.

Once the decision has been taken that a non-compliance is going to be dealt with under the offence provisions of the act, enforcement branch staff (usually the local enforcement supervisor and/or a conservation officer) will take over the management of the non-compliance and the processing of the offence provisions. Staff will support Enforcement Branch in the conduct of their investigation and legal services in the prosecution of the offence.

When charges are laid under Section 64, decisions leading to resolution rest with the prosecutor and the court.

NOTE: A proceeding for an offence under section 64 may not be commenced after the earlier of two years after the act or omission has come to the attention of a Ministry official and no more than five years after the act or omission was committed or alleged to have been committed. Reference Section 64(3) CFSA.

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 08**
Directive**LICENCE SUSPENSIONS AND CANCELATIONS****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

The decision to suspend or cancel a forest resource licence or a sustainable forest licence under the powers of Section 59 of the Crown Forest Sustainability Act, is one of the most serious remedies that can be applied under the Act. When applied as a remedy to an infraction, it is a remedy of last resort since it removes the licensee in that circumstance from the Crown forest. It is generally only to be considered in the most severe cases and/or where attempts to resolve the problem using all other available remedies have failed.

Licences may be suspended or cancelled only for the reasons specified in Section 59 (CFSA) or in Section 11 (OReg 167/95).

A decision to suspend a licence issued under Section 26 (Sustainable Forest Licence) will be made by the Ministry of Northern Development, Mines and Forestry and a decision to suspend a licence issued under Section 27 (Forest Resource Licence) will be made by the Ministry of Natural Resources.

Licences issued under the authority of Section 29(1) of O.Reg. 167/95 (administered by MNDM&F), can only be suspended or cancelled as per the conditions specified in the licence and Section 59 of the CFSA does not apply (Ref: FOR 05 04 10).

A Forest Resource Processing Facility Licence may be suspended or cancelled as described under Section 24 of O.Reg. 167/95. For the process to suspend or cancel a Forest Resource Processing Facility Licence, staff are referred to the Ministry of Northern Development, Mines and Forestry and procedure FOR 05 04 10 (administered by MNDM&F).

DIRECTION

The Regional Director will provide the documented decision to suspend or cancel a Forest Resource Licence, which will include the rationale, supporting evidence and full compliance history for the decision, to the Director, Industry Relations Branch, Ministry of Northern Development, Mines and Forestry (MNDM&F) .

The Director (Regional [MNR] or Branch [MNDM&F]) recommending to suspend or cancel a Sustainable Forest Licence, will document and provide the rationale, supporting evidence and full compliance history for the decision, to the Minister of Ministry of Northern Development, Mines and Forestry for the approval of the Lieutenant Governor in Council, along with the necessary briefing notes for the decision to be taken. Copies will also be provided to affected Directors (MNR and/or MNDM&F).

PROCEDURE

Once a decision has been approved to suspend or cancel a licence, the following procedure will be executed to suspend or cancel the licence.

For a Forest Resource Licence, legal services must be consulted and the procedures laid out in FOR 05 03 29 (administered by MNDM&F) followed.

For a Sustainable Forest Licence, legal services and Industry Relations Branch (MNDM&F) must be consulted, in preparation for seeking the approval of the Lieutenant Governor in Council.

Forest Management Directives and Procedures

07 Monitoring and Assessment
06 Remedies and Enforcement**FOR 07 06 09**
Directive**REPRESENTATIONS REGARDING NOTICE OF INTENT TO APPLY AN ADMINISTRATIVE PENALTY****Approval date:** April 1, 2010**Review date:** April 2015**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division**BACKGROUND**

Subsection 58(4) CFSA provides a person, who has received a *Notice Of Intent* from the Minister (delegated to district manager) to have an administrative penalty applied pursuant to Section 58(2), the right to make representations to the Minister (delegated to regional director). That person may, within 30 days after receiving the notice, make representations to the regional director on whether the penalty should be imposed and on the amount of any penalty. The licensee can argue the justness of applying an administrative penalty, in addition to the amount of the penalty.

After considering any representations, the regional director may confirm, alter (increase/decrease as appropriate), or dismiss the administrative penalty described in the Notice of Intent from the district manager. . If a penalty is imposed, the regional director will fix the amount of the penalty and set a date by which the penalty is to be paid. The regional director will send notice of these decisions to the person by registered mail with copies to MNR staff as described in FOR 07 06 06.

DIRECTION

Regional directors are responsible to establish the representation process to be applied in their region. Regardless of the process put in place, there are certain principles that must be reflected in any representation process. This is necessary to ensure that the regional director's review of administrative penalties, for which representation has been made, is carried out in a fair, consistent, objective, thorough and timely manner. As each region is different, so it may be that each regional director will develop a process that best meets their region's needs, however it is also expected that those processes will reflect these principles.

These principles were developed by the Provincial Forest Compliance Leadership Team.

PRINCIPLES

1. The regional director must hear the licensee's representation and/or read any written representation submitted by the licensee and respect the licensee's right to make their representation;
2. The regional advisory/review team assists the regional director in administering requests, gathering and assessing information, providing advice and support and while they may attend the licensee's representation they must not represent nor claim to represent the licensee;
3. MNR staff may not act as agent for nor represent the licensee.
4. The regional director has been delegated the responsibility and cannot delegate it further;
5. The regional director must consider the relevant paper work;
6. The regional director must make the decision;
7. The regional director will confirm, alter or dismiss the administrative penalty described in the original Notice of Intent.

8. The regional director's representation process must have specific timelines to ensure timely resolution of administrative penalties.
9. The regional director's representation process must be well documented as this documentation will be required should a subsequent court action arise.
10. The regional director's representation process must be available to licensees so they are aware of their rights and obligations.

NOTE: Where a regional director believes that the proposed administrative penalty is inappropriate or that it cannot otherwise be supported and intends that it be withdrawn or the amount reduced (under #6 above), they should be prepared to indicate what remedy and /or amount they believe is appropriate and provide the supporting rationale or where it is proposed that a remedy is not appropriate, provide the rationale seeking reconsideration of the non-compliance determination.

FOREST COMPLIANCE HANDBOOK

Appendices

GLOSSARY OF TERMS**Approval date:** April 1, 2014**Review date:** April 2019**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

DEFINITIONS AND TERMS

Terms not defined in the Forest Compliance Handbook will have the definitions ascribed to them by the Canadian Oxford Dictionary. The definitions provided here serve to clarify meaning within the context of the Forest Compliance Handbook. The following terms are used throughout the Forest Compliance Handbook:

Administrative Action or Activity

Activities undertaken for the purpose of issuing orders, applying administrative penalties, or seizing wood. Specifically the actions will be directed at inspecting, gathering information, conducting tests etc. under the authority of the inspection provisions of the CFSA.

Administrative Penalty

A monetary penalty processed pursuant to the provisions of section 58 of the Crown Forest Sustainability Act (CFSA).

Advisory Note

A written notice, provided by the MNR to a licensee, advising the licensee that Corrective Action has resolved an MNR verified Operational Issue. The notice will set out the Forest Operations Inspection Program inspection report number and the Operational Issue number and also advise that future instances of this practice(s) runs the risk of the forest operation being subject to the application of a remedy.

Advisory Notes do not contribute to Compliance History.

Cautioned Statement

A statement given by a person suspected of committing an infraction of the Act, following the reading of the right to remain silent and the right to counsel, by a person in authority.

Certified Employee

(As required for MNR staff issuing a 24 hour stop work order under Section 55 (1)(a) of the CFSA.)

A certified employee is an MNR employee who has been trained in the CFSA compliance provisions, has knowledge of the forest management planning process and of forest operations. For the purposes of this definition, a Certified Forest Compliance Inspector is deemed to be a certified employee when appointed by the District Manager. A Conservation Officer is also a certified employee if appointed by the District Manager. The District Manager will provide the employee with written authorization for issuing a 24 hour stop work order under Section 55 (1)(a), CFSA.

Certified Forest Compliance Inspector

An MNR employee or forest industry employee/worker/contractor that has been trained in the CFSA compliance provisions, has knowledge of the forest management planning process as well as forest operations, who has successfully completed an approved program of forest operations compliance inspection training and attended and passed a certification session and meets all requirements for maintaining certification. Such designation provides the authority to submit forest compliance inspection reports to the provincial Forest Operations Inspection Program database and to act as a Certified Employee under Section 55(1)(a) of the CFSA, when so appointed by the District Manager.

Charge (legal)

The processing of an incident of non-compliance using the provisions of section 64 of the CFSA or other legislation that will lead to a prosecution in Court.

Compliance

The state of being in accordance with, or acting according to, the relevant authorities and their requirements (i.e. legislation, plans, licences, approvals, permits, conditions and standards). Forest operations compliance inspection reports compliance status as:

In Compliance (IC)

An assessment assigned to a forest operations inspection report that acknowledges that the operation or activity will not be subject to compliance action under the CFSA or other applicable legislation. All inspected activities are in conformance with standards.

Not-In-Compliance (NIC)

An assessment assigned to a forest operations inspection report that acknowledges that the operation or activity is not fully compliant with the applicable laws, FMP/AWS, regulations, manuals, rules and requirements and will be subject to compliance action under the CFSA or applicable legislation. One or more of the inspected activities are found to be contrary to the standards.

Compliance Monitoring

Compliance Monitoring describes the comprehensive program used to monitor forest operations for compliance to the regulatory framework and any applicable standards and requirements. It includes but is not limited to the education of and communications with those planning and carrying out forest operations, the management and supervisory oversight of ongoing operations, the regulatory monitoring embedded in any current forest certification system, and the conduct and reporting of Compliance Inspections as described in the Forest Compliance Handbook. The Forest Management Planning Manual (FMPM) requires that the approved forest management plan describe the Compliance Monitoring program in the form of a Ten Year Compliance Strategy. The FMPM also requires that annual implementation of the Compliance Monitoring program be described in the Annual Work Schedule (AWS).

Compliance Inspection

A Compliance Inspection is a formal inspection of an ongoing or completed forest operation carried out by a Certified Forest Operations Compliance Inspector as described in the Forest Compliance Handbook. A Compliance Inspection includes the submission of a report, in the prescribed form by the Certified Inspector who conducted the inspection, to the Forest Operations Information Program that documents the inspection and its findings.

Compliance Reporting Area (CRA)

A Compliance Reporting Area is the area of land described for the purposes of planning and implementing a forest Compliance Inspections. It also forms the geographic basis for which a forest operations Compliance Inspection report will be submitted to the Forest Operations Information Program or a written Completion Notice will be filed with the Ministry of Natural Resources. How forest operations are aggregated or subdivided and how they are identified (e.g. named or numbered) for the purposes of Compliance Reporting Areas must be described in the Forest Management Plan and/or the Annual Work Schedule.

When a Compliance Reporting Area is defined for a Harvest operation(s), it may not exceed 500 hectares in size exclusive of interconnecting unallocated land.

For Compliance Reporting Areas that incorporate multiple water crossings in an Access report, a Compliance Inspection must be done and a report submitted in FOIP within 10 days of the completion of the final water crossing. Multiple water crossings will only be aggregated where they are part of a single Access operation. Where multiple crossings are aggregated, a Start-up notice must be submitted for each crossing. Licensees or MNR can impose additional conditions and limitations where reasonably required. It is a requirement that for any water crossing installation where an operational issue arises, a Compliance Inspection be completed for that crossing, and a report filed in FOIP, as prescribed in FOR 07 03 05.

Compliance History

Compliance History is a person's (includes a corporation) record of compliance performance and includes non-compliance in response to which a remedy has been applied under the Crown Forest Sustainability Act (CFSA) and also includes convictions under other natural resource legislation where the non-compliance was directly related to forest operations [e.g. *Public Lands Act (PLA)*, *Fisheries Act (FA)*, *Lakes and Rivers Improvement Act (LRIA)*, *Forest Fires Prevention Act (FFPA)*, *Aggregate Resources Act (ARA)*].

Advisory Notes, District Manager "notice of intent" letters, verbal warnings, administrative penalties not yet paid by the licensee or where the licensee has yet to be determined to be liable to the penalty by a court, pending offence charges, and acquittals **shall not form part of a person's Compliance History**.

District Managers will consider the Compliance History of a person on the affected Management Unit (MU) and within the previous three years of the date of the non-compliance.

Where, in the opinion of the District Manager, the person's compliance history on any other MU and/or in any other district is relevant to the person's compliance performance and/or the incidence of non-compliance being responded to, they may consider that compliance history. Such opinions must be documented.

Corrective Action

Action(s) taken (usually by a licensee) in response to an operational issue to prevent or rectify a situation that keeps an operation compliant or, brings it into compliance.

When Corrective Action is assigned by MNR in response to a confirmed Operational Issue, it will specify: what is to be done, who is to do it and by when it is to be done. If such assigned Corrective Action is completed as assigned, it will be deemed to have resolved the Operational Issue in response to which it was assigned.

Crown charges¹ (financial)

Means all prices, charges, fees, penalties, costs, expenses, interest and fines imposed under the Crown Forest Sustainability Act or under a forest resource licence.

Crown forest¹

A forest ecosystem or part of a forest ecosystem that is on land vested in Her Majesty in right of Ontario;

Forest Compliance Monitoring

A set of activities designed to ensure that forest management operations are carried out in conformity with the regulatory framework including forest management plans, annual work schedules, licences, permits, and

operational standards. Further, monitoring is the collection and analysis of data over time. Monitoring provides information on past and present trends and allows projections of future conditions.

Forest ecosystem¹

An ecosystem in which trees are or are capable of being a major biological component.

Forest health¹

The condition of a forest ecosystem that sustains the ecosystem's complexity while providing for the needs of the people of Ontario.

Forest industry

Individuals, companies or any others that engage in or administer forest operations (Access, Harvest, Renewal, Maintenance and the acquiring and movement of forest resources) as a business or for commercial purposes.

Forest operations¹

Means the harvesting of a forest resource, the use of a forest resource for a designated purpose or the renewal or maintenance of a forest resource, and includes all related activities.

Typically forest operations activities are grouped into the operational types of Access, Harvest, Renewal or Maintenance.

Forest resource¹

Means trees in a forest ecosystem, any other type of plant life prescribed by the regulations that is in a forest ecosystem, and parts of or residue from trees in a forest ecosystem.

Infraction

An incident of non-compliance with the regulatory framework.

Legislation (all) (also known as the Regulatory Framework)

Refers to numerous statutes and the applicable instruments under them, which the MNR administers, each having a potential impact on forest management. Typical examples include but are not limited to the Endangered Species Act; Lakes and Rivers Improvement Act; Crown Forest Sustainability Act; Public Lands Act; Forest Fires Prevention Act; Fisheries Act (Federal), and the Aggregate Resources Act. These are elaborated on in the Forest Compliance Handbook.

Licensee

Any party (person or business) who is granted a licence under the Crown Forest Sustainability Act. Examples include a Sustainable Forest Licensee, a Forest Resource Licensee, an Overlapping Forest Resource Licensee operating under an agreement made with a Sustainable Forest Licensee, and a Forest Resource Licensee whose licence is issued for Personal Use. A licensee is usually authorized under their licence to conduct forest operations in a Crown forest.

Loss or Damage¹

Results of an action(s) that impairs or is likely to impair the sustainability of a Crown forest under Section 55 CFSA means;

"loss or damage in the form of destruction, degradation and/or reduction in the quality of elements, (such as water, soil, plant life, and/or habitat for animal life) of the Crown forests (i.e., forest ecosystem or part of the forest ecosystem that is on Crown land), caused by forest operations which are:

- (a) not authorized by the Forest Management Plan or Annual Work Schedule; or
- (b) if the situation is not contemplated by the Forest Management Plan or Annual Work Schedule,

conducted contrary to the manuals, directives and guidelines described in the Forest Operations and Silvicultural Manual."

Damage to water, soil, plant life, or habitat for animal life under Section 56 CFSA means:

"damage in the form of harm, injury or degradation of water, soil, plant life and/or habitat for animal life which:

- (a) is not authorized by the Forest Management Plan and Annual Work Schedule/applicable permit/approval issued by the Ministry;
- (b) if the situation is not contemplated by the Forest Management Plan, Annual Work Schedule or applicable approval/permit issued by the Ministry, and is the result of activities conducted contrary to the manuals, directives and/or guidelines described in the Forest Operational Silvicultural Manual."

Minister/Ministry¹

Means the Minister of Natural Resources and the Ministry of Natural Resources. (When used in association with specific authorities, refer to the Delegation of Authority Manual.)

Non-licensee

Any party (person or business) who conducts forest operations in a Crown forest without the authority of a licence granted by Crown.

Operational Issue

An Operational Issue describes a situation that arises when operations vary from normal operating practices or from the standards and requirements in the Forest Management Plan, Annual Work Schedule or Forest Operations Prescription, or from the terms and conditions of licenses, permits or other approval documents, as identified during a forest operations compliance inspection. An Operational Issue makes or has the potential to make a forest operation non compliant with the regulatory framework.

An Operational Issue may be correctable thereby preventing non-compliance from occurring or rectifying the activities to maintain the forest operation as compliant with the standards and requirements. An Operational Issue may or may not result in a non-compliance with the legislation, licence, approved Forest Management Plan (FMP) or Annual Work Schedule (AWS) or other permit or approval.

All Operational Issues will be managed by MNR.

Obstruction

Includes anything done by a person to hinder, delay, interfere with, or physically obstruct an employee/agent authorized by the Act, in the carrying out of their duties as specified under Section 60 CFSA of the Act. This can also include providing false statements or information.

Offender

The party that commits or causes an incident of non-compliance.

Order

An administrative order made under sections 55, 56, or 57 of the Crown Forest Sustainability Act.

Penalty

A monetary penalty imposed by the Minister (as delegated to a Regional Director) or a sentence or fine imposed by a Court for an infraction under the CFSA.

Person

An individual or corporation and includes where applicable individuals or corporations who hold a forest resource licence or other type of licence issued under the Act.

Protect

The act of prescribing and enforcing laws, guidelines, standards, rules and conditions for the purpose of preventing the harmful alteration, damage, or destruction of or to any and/or all parts of a forest ecosystem;

Remedy

Includes any action taken by the Crown in response to an incidence of non-compliance to stop, mitigate and/or repair that non-compliance or to penalize the party responsible for the non-compliance. Remedies under the authority of the Crown Forest Sustainability Act include: orders, administrative penalties confirmed by a Regional Director and paid by a licensee or confirmed by a court, convictions under section 64 of the CFSA, and licence suspensions and cancellations.

Although not prescribed by the CFSA, a written warning (see definition below) is also defined as a remedy .

Senior Management

Includes all levels in the Ministry at or above the "Director" level. When used in association with specific authorities refer to the Delegation of Authority Manual.

Stewardship

The responsible management of the forest ecosystem based on a fair assessment of environmental, social and economic values for the benefit of present and future generations;

Sustainability¹

Means long term Crown forest health.

Sustainability of a forest ecosystem shall be determined in accordance with the Forest Management Planning Manual.

Written Warning

A written disciplinary statement issued by the District Manager to a person or corporation responsible for a confirmed incident of non-compliance that has been documented in an Forest Operations Inspection Program inspection report. The Written Warning letter will identify the Forest Operations Inspection Program report number, acknowledge that the letter is part of the licensee's compliance history record, and will inform the licensee that failure to keep operations complaint in the future will result in further remedies being applied.

A Written Warning may not require a licensee to take specific action in response to the incident of non-compliance but it may suggest action to prevent future incidents of non-compliance. Where Crown wishes to specify action to be taken, an Order under the appropriate section of the CFSA must be issued.

Verification

The process conducted by MNR to determine if an Operational Issue, identified in a forest operations inspection report, is rejected or confirmed.

¹ Source: Crown Forest Sustainability Act, 1994

FOREST COMPLIANCE HANDBOOK

Appendices

ACRONYMS**Contact:** Forest Evaluation and Standards Section, Forests Branch – Policy Division

ANSI	Area of Natural and Scientific Interest
AOC	Area of Concern
AWS	Annual Work Schedule
CAVRS	Compliance Activity and Violation Reporting System
CIS	Compliance Information System
CFSA	Crown Forest Sustainability Act
CRA	Compliance Reporting Area
ECA	Enhanced Compliance Arrangement
ENF	Enforcement Section/Branch in reference to former policies and procedures.
FIM	Forest Information Manual
FMP	Forest Management Plan
FMPM	Forest Management Planning Manual
FOCIS	Forest Operations Compliance Information System
FOIP	Forest Operations Information Program
FOSM	Forest Operations and Silviculture Manual
FRL	Forest Resource Licence
OI	Operational Issue
OL	Over Lapping (in reference to an FRL) or Overlapping Licensee as the context requires.
SFL	Sustainable Forest Licence

FOREST COMPLIANCE HANDBOOK

Appendices

DELEGATION OF AUTHORITY – CROWN FOREST SUSTAINABILITY ACT

Authorities which define powers granted to the Minister under the Crown Forest Sustainability Act have been assigned to the Ministry of Natural Resources (MNR) by Order-in-Council (OIC) # 1570/2011.

Authorities are delegated, as allowed by the legislation, to selected positions within the ministry to be exercised on behalf of the Minister. These delegated authorities are documented in the legislative delegation of authority (DOA) maintained by the Ministry.

For questions regarding the delegated authorities under the CFSA granted to the Minister of Natural Resources, please contact the local Ministry of Natural Resources district office.

ISBN 978-1-4435-3479-6