

Review of Bulkley Results-Based Forest Practices Code Pilot Project

January 31, 2001

The following review of the Bulkley Results-Based Forest Practices Code Pilot Project (the "Pilot Project") was prepared on behalf of the Forest Caucus of the BC Environmental Network by Andrew Gage, Barrister & Solicitor. The review focuses primarily on Draft 4 of the Bulkley Pilot Project Regulation (the "Regulation") for compliance with Part 10.1 of the Forest Practices Code (the "Code") and for consistency with the Project Proposal.

I am informed by Barry Smith, District Manager for the Bulkley/Cassiar Forest District, that Draft 4 of the Regulation is the current draft. However, he confirmed that a further draft will be developed before the Pilot Project proceeds to the public input stage. I note that the current draft was often difficult to follow and contained a number of errors and omissions. I have noted a few suggestions regarding drafting in the last section of this review, but in general have tried to restrict my review to the content of the Pilot Project. In some instances, however, the drafting of the regulation raised issues which may or may not have been intended by the proponents of the Pilot Project.

In my opinion at the Regulation, as drafted, does not meet the requirements of Part 10.1 of the Code and fails to enact some key measures described in the proposal. Moreover, I note that parts of the Regulation were poorly edited or drafted to the point of being quite unclear, and suggest that the proponents might wish to prepare a further draft before proceeding to public comment.

Scope of Part 10.1

Before proceeding to evaluate the content of the Regulation from a legal and environmental perspective, I would like to raise a question as to the appropriate use of Part 10.1 of the Code. Section 221.1(2), which creates the power to disallow sections of legislation and regulations in the case of a pilot project, appears to contemplate that a pilot project will be authorised in relation to a single "holder of an agreement", or to the district manager or the government, in the case of the small business enterprise program. While it is often appropriate to interpret the singular in an enactment as including the plural, the proper interpretation must be derived from the Act being interpreted. In this case the purpose of the Part is not to disapply the Code in respect of large areas or multiple parties, but to allow for experimentation in a few locations, and the section should be interpreted in that light. Indeed, the inclusion of multiple parties and a geographically large area strains the use of the word "pilot project."

As the Project Proposal points out, the Pilot Project itself represents "approximately 10% of the allowable annual cut (AAC) of the Prince Rupert Forest Region." In light of

the statutory requirements, I would prefer a more precise figure. However, clearly a large area is affected, and the pilot project would preclude the establishment of any other pilot projects in the area for the duration of the Bulkley Pilot Project. The Code does not prohibit the allocation of the full 10% to a single pilot project, but the Lieutenant Governor in Council may wish to consider the policy implications of such an extensive pilot project.

Recommendation:

1. That the Proponents amend the Regulation to reflect the proper scope of a pilot project under the Code.

Public Consultation

Under the Regulation the level of active consultation with members of the public is significantly reduced. The only requirement for a formal public consultation process occurs in the context of approval of a Forest Stewardship Plan (FSP), at which point review requirements follow those set out in the Operational Planning Regulation, with a 60 day public review and comment period.

An FSP is for a term of 5 years, and covers a planning period of 10 years. A Forest Development Plan approved under the Code, by contrast, is for one or sometimes two years, and covers a five year planning period. This represents a significant loss in the opportunity for public comment. Not only are members of the public invited to participate far less frequently, but the materials supporting the FSP will presumably be more voluminous than a standard FDP, covering, as it does, a longer period.

While we approve, in principle, extending planning periods, this cannot be used to effectively prevent public comment on the related documents. The Regulation should include a more frequent re-approval process involving a further opportunity for public comment. Moreover, the public comment period should be extended beyond 60 days.

The Regulation does include a requirement that the participants receive and reply to comments related to the FSP even when received outside public review periods. In some circumstances the receipt of such materials may lead to an amendment to the FSP. While we certainly encourage the participants to give unsolicited public comment the attention it deserves, this requirement should not replace active public consultation.

A major purpose of frequent public consultation processes is clearly to allow a forest company to work with the community to identify and accommodate community interests other than timber values. Under s. 44(3) of the Regulation a participant is required to amend an FSP in response to public comment where the information provided "materially affects the strategies and targets in the forest stewardship plan." Clearly this section is limited to situations in which new technical information comes to light, and does not lend itself to a situation where a member of the public wishes a non-timber value to be addressed differently or more specifically.

Moreover, unlike the requirements of a public review under the OPR, the participants are not required to forward copies of letters received in this manner to the District Manager.

The Regulation also creates a new level of planning in the form of the Bulkley Forest Management Criteria. This document includes much information which would ordinarily be kept by a company as a part of its FDP, and as such would be subject to a public review process. Under the Regulation, however, the document is maintained by the District Manager. While the District Manager does have an obligation to amend the Criteria where new information comes to his/her attention, the failure of the Regulation to provide for a more proactive public review of this document is disturbing given its clear importance to the entire Pilot Project.

The Regulation, thus, reduces or eliminates solicited public comment for much of the planning process. While the commitment of the Participants to addressing unsolicited public comment is encouraging, this is not equivalent. The Regulation clearly significantly reduces the opportunity given to the public for consultation.

One mechanism for public involvement proposed in the Proposal, but which was not formalized in the Regulation, was an active role for the Community Resources Board. This mechanism is discussed at pages 17-18 of the Proposal.

Recommendations:

1. More frequent opportunities for public input in respect of a FSP;
2. An extended review and comment period in respect of a FSP;
3. Correspondence received from the public should be forwarded to the District Manager;
4. A review and comment procedure for the Bulkley Forest Management Criteria should be developed; and
5. The planning and monitoring role of the Community Resources Board should be formalized.

SBFEP

The Small Business Forest Enterprise Program (SBFEP) is included as a participant under the Regulation, but the Regulation does not, in my opinion, adequately provide a structure for its participation.

The SBFEP, unlike the other participants, is a government programme; it is not a legally incorporated company. As such, it is not appropriate to require, in the Regulation, that the SBFEP do a particular thing. Instead a particular government official must be identified to do that act on behalf of the SBFEP.

This distinction is used throughout the Code and its regulations, which provide for separate procedures to develop operational plans for the SBFEP. Such sections generally

designate the District Manager, or his/her delegate, with the task of developing such operational plans. Indeed, the distinction is recognised in Part 10.1 itself.

The Regulation for the most part treats the SBFEP as an equal Participant in the Pilot Project, with the same duties and responsibilities. The Regulation requires each participant, including the SBFEP, to develop and maintain its own Field Plans, Annual Plans, Road Layout and Design plans, and ensure that assessments are done. The Regulation does not indicate in any of these cases which government official is responsible for undertaking these tasks on behalf of the SBFEP. The Regulation also requires the SBFEP to prepare FSPs, but this problem may be addressed by the fact that section 18 of the Code clearly requires the district manager to prepare any FDPs needed for the SBFEP.

The Regulation should be redrafted to specify when and how decisions are to be made on behalf of the SBFEP and to indicate who will carry out its responsibilities. This should take the form of the addition of a number of new sections throughout the Regulation. As it currently stands the role of the SBFEP, and of the District Manager in relation to the SBFEP, is unclear.

Recommendation:

1. In relation to the SBFEP, the Regulation should clearly indicate throughout the Regulation the government officials responsible for fulfilling the participant's obligations under the Regulation and for making decisions on behalf of the SBFEP.

Content of Criteria, FSPs & FPs

A considerable portion of the Regulation is concerned with redistributing the information ordinarily required by the OPR into the new documents created by the Regulation. Thus broad level maps and information which is likely to be similar for more than one Participant are included in the Bulkley Forest Management Criteria (the "Criteria"). Information and strategies which are likely to vary between the Participants are included in the Forest Stewardship Plan and information which may vary on a site specific basis are included in the Field Plan. This redistribution of planning requirements, and in particular the creation of a document containing content held in common (the Criteria), is not unattractive.

The use of the word "Criteria" in respect of the highest planning document is potentially misleading, as the Criteria seem to be more an amalgam of technical information and planning documents, which is not in keeping with the ordinary use of that word. The Project Proposal presents two different explanations of the Criteria. It is not clear from the Regulation whether the intention is for the Criteria to include and make legally binding "all currently accepted or approved plans, policies and guidelines within the Bulkley TSA" (p. 7 of the Project Proposal), or whether they are merely "a series of

information documents” which are made available by the Ministry of Forests as one component of the FSP (see p. 8 of the Project Proposal).

Provisions elsewhere in the Regulation which require the FSP to be consistent with the Criteria could imply that the Criteria are intended to be actual threshold requirements related to matters listed in section 29. To the extent that the Criteria could include newly developed requirements related to meeting the tests in Part 10.1 (e.g. specifics related to adequate management and conservation of the forest resources listed), these requirements should be included in the Regulation itself, rather than being delegated to the District Manager.

Section 29 sets out the components of the Criteria, listing various documents which must be either included or "referred to". The phrase "referred to" is extremely vague and raises the fear that the District Manager would have the discretion to exclude requirements from higher level plans, or planning information which would be required under the OPR.

Between them, the requirements for the Criteria, FSPs and FPs include most of the requirements specified in the OPR. They also include several requirements which do not appear anywhere in the OPR or other regulations, in most cases designed to create a context in which planning which is not government approved may operate. However, it is apparent that some requirements have been modified from the original OPR version, or eliminated altogether. Some of the omissions appear to be oversights; s. 34 (1)(m)(i) presumes that objectives for coarse woody debris will be contained in a FSP, while s. 31 does not require such information. Where the requirements have been modified they are generally (although not always) weaker or narrower. There is nothing in the Pilot Project Proposal to indicate the value of watering down some of the requirements in this way, and in my view the requirements should parallel the OPR as nearly as possible.

Recommendation:

1. Include a clearer description of the function of the Criteria;
2. Eliminate the phrase "referred to" from s. 29; and
3. Review all OPR informational requirements to ensure that they are included -- in a form which meets or exceeds the OPR requirements -- in one or more of the planning documents required under the Regulation.

Forest Stewardship Plans

A Forest Development Plan, under the Regulation, would take the form of a Forest Stewardship Plan. Since all of the Code provisions related to FDPs, and most of the provisions under regulations, remain in force, the FSPs are not a major departure, in themselves, from the requirements of the Code and Regulations.

Section 11(2) requires the Participant, on learning that the targets set under an FSP may not be met by the forest practices set out in that FSP, to either amend the FSP

accordingly or to seek a variance from the District Manager. The Regulation provides no direction as to how or why a variance should be granted, and, if submitted, represents a substantial weakening of the ordinary rules surrounding FDPs.

Moreover, since "forest practices" are generally set out in greater detail at the Field Plan/Silvicultural Prescription level, it is uncertain what the practical effect of section 11 will even be. Section 35 of the Code uses substantially similar language to this section, but in relation to Silvicultural Prescriptions and other site specific planning documents. The Regulation does not provide a similar prohibition at the Field Plan or Road Layout and Design levels. More effective would be a new section requiring that the Participant not engage in operations should it become aware that the practices carried out in any plan will jeopardise the targets or objectives set out in either the FSP or Criteria.

The Regulation appears to be unclear about the relationship between the Criteria and the FSP. On the one hand the FSP is to be consistent with the Criteria (s. 10); on the other, the Regulation frequently refers to "the Bulkley Forest Management Criteria with which the forest stewardship plan ... is consistent." It may be that this is intended to refer to FSPs which have been granted a "variance" under s. 11, in which case this should be clarified.

Section 30 of the Regulation provides that management strategies and measurable targets contained in an FSP must "ensure at least the equivalent level of protection ..." for forest resources as is established in the Code and regulations. The Regulation should provide more detailed criteria for developing such strategies and targets. A regulation under Part 10.1 of the Code is only supposed to be enacted if the Lieutenant Governor in Council is satisfied that the regulation will provide equivalent protection. It is not appropriate to delegate this determination to the District Manager and the participants. Instead, the Regulation should provide sufficient detail that the Lieutenant Governor in Council can make such a determination.

Recommendation:

1. Variances under s. 11(2) should not be allowed;
2. Section 11 should be reworded to prohibit any operations which jeopardise the targets or objectives set in the FSP or Criteria;
3. The Regulation should be redrafted to confirm that FSPs must be consistent with the Criteria; and
4. The Regulation should provide clear criteria as to the strategies and targets to be developed as part of a FSP.

Field Plans

The Regulation would significantly restructure what planning documents require government approval under the Code. Most notable, of course, is the absence of government approved Silviculture Prescriptions, which are replaced with internally approved Field Plans.

Under the Code the Silviculture Prescription approval requires not only compliance with the Act, the regulations and standards, but also a finding that the prescription will "adequately manage and conserve the forest resources of the area to which it applies." In addition, the standards set out criteria and strategies which the District Manager may use to judge whether the prescription meets that criteria. By contrast, the criteria given for development and adoption (internally) of a Field Plan is only required to not materially conflict with the Forest Stewardship Plan and the Forest Management Criteria (developed by the District Manager under the Regulation). While the FSP will include some general criteria, the consideration of the health of the forest resource is far less direct and there is no guarantee that it will be as comprehensive. The absence of any meaningful criteria against which to judge whether to adopt a Field Plan is visible in s. 22(2), which allows amendment "from time to time, as considered appropriate by the participant."

In order for the practice of internally held planning documents to achieve the goals of the Forest Practices Code I would suggest that clear criteria be attached to the adoption or amendment of such documents. Indeed, since a Field Plan can apparently include a "site variation from the strategies contained in the ... criteria or the forest stewardship plan" (s. 34(2)(e)) it appears that a participant may have largely unlimited discretion to amend a Field Plan. In my submissions, a Participant should not be allowed to exempt itself from one of the few planning documents which require government approval under the Pilot Project.

Also of concern is the statement, in section 35(1), that some key planning documents apparently do not have to be available to the Participant until the date on which timber harvesting is to begin. By contrast, some of the assessments referenced in s. 35(1) (specifically those referred to in section 37 of the OPR) are required under the OPR before submitting a Silviculture Prescription for approval. The absence of such a requirement in the Regulation appears to contradict s. 34(2)(d) which requires a Field Plan to contain a statement that it is consistent with such assessments. For those documents which the OPR ties to a Silviculture Prescription the type of language used in section 23(1) of the Regulation is more appropriate.

Finally, Section 19(3) provides for the exemption of the requirement of a field plan under certain "circumstances." This section incorporates by reference sections of the Code which the Regulation disapplies (indirectly) elsewhere, which is not, in my view, a preferable drafting practice. The sub-section does not specify who has the authority to grant such an exemption. Moreover, in the case of exemptions which might otherwise be authorized by section 30 of the Code, the Code and Regulations provides stronger criteria and additional powers in relation to allowing such exemptions (see section 33 of the Code and s. 40 of the OPR). Both of these omissions should be corrected.

Recommendation:

1. The Regulation should include or reference clear criteria with which to approve or amend a FP;
2. Site variations from higher level planning documents should not be permitted;

3. Key assessments should be completed prior to completing FPs; and
4. Section 19(3) should be redrafted for clarity and to bring it into line with the Code and Regulations.

Annual Operating Schedule

The Annual Operating Schedule is apparently intended to keep the public and government officials informed of a Participant's immediate plans. This role is undermined to a considerable degree by the fact that the Participant can amend the Operating Schedule at any time and without notice. The function of the Schedule might be better served by a) requiring the Annual Operating Schedule to be made publicly available sufficiently in advance of commencing operations for government and the public to raise site specific concerns (60 days may be an appropriate lead time), and b) requiring the same notice wherever possible for amendments, and in no cases less than two weeks. I note that the Regulation does not give effect to the statement in the Pilot Project Proposal that officials responsible for Compliance and Enforcement would be notified of any changes to the Annual Operating Plan (see page 10 of the Proposal). Similarly, a promise that the District Manager would provide First Nations groups with a copy of the Annual Operating Plan was not included. (Page 18 of the Proposal).

One option which would greatly increase the availability of the Annual Operating Schedule to the public would be to make the document available on the internet.

For clarity, section 32 should specify that a map detailing the information outlined section 33 is required.

Recommendations:

1. The Annual Operating Schedule and any amendments to it should be made publicly available sufficiently in advance of commencing operations for government and the public to raise site specific concerns;
2. The District Manager and the designated Ministry of Environment official should be notified of amendments to the Operating Schedule prior to the commencement of operations;
3. The District Manager should be required to provide affected First Nations with a copy of the Operating Plan annual, and to keep them informed of amendments;
4. The Operating Plan should be available on-line; and
5. Section 32 should be amended for clarity.

Forest Practices

The Regulation significantly reduces the requirements contained in a number of regulations by leaving such matters to the discretion of the District Manager and/or a designated Environment official (through an FSP or through written approval). Sections of regulations related to riparian setbacks, retention of streamside trees, the requirement of a fire hazard assessment, and green up requirements are all disappplied.

In my submission, a pilot project which provides for self-monitoring and self-regulation of Participants on a large scale should provide more stringent standards and direction to the Participants, rather than making those requirements which currently exist discretionary.

Recommendation:

1. The Regulation should be amended so as to not disallow mandatory sections of the regulations concerning forest practices.

Monitoring and Evaluation

The Pilot Project bills itself as a "results based" project, meaning that results of timber harvesting will be used to re-evaluate and adjust future practices. Moreover, Part 10.1 of the Code requires a monitoring and reporting of the results of pilot projects to the government. Therefore, Part 7 purports to set out monitoring and evaluation procedures to evaluate the performance of the Pilot Project.

No true results based project can succeed without base-line data against which to evaluate future results. To this end, the Regulation should require each Participant, or the government, to make an extensive inventory of the forest resources in the Bulkley TSA prior to the start of the pilot project.

Beyond this basic requirement, it is difficult to comment on the efficacy of the Regulation's monitoring procedures, as they consist primarily of statements that the Bulkley Pilot Project Committee will create "a mechanism" (s. 51, 55) to do such monitoring. Details of, or at least criteria for, such a mechanism should be included in the Regulation. This is then coupled with a requirement that the Committee "evaluate" the performance of the Pilot Project on various issues.

The Pilot Project does provide that an audit of the forest practices of participants will likely be completed approximately every three years. Such audits will be carried out by the Canadian Standards Association, the Forest Practices Board or as required by the District Manager. In light of the self-directed and experimental nature of this Pilot Project, one audit every three years is not sufficient; Ideally an audit should be conducted annually.

The Pilot Proposal notes that most of the Participants are seeking or will seek CSA certification, and this appears to form the basis of anticipating audits by CSA. From the perspective of the Forest Caucus and our member groups the Forest Stewardship Council (FSC) certification is the only credible and independent certification system.

Section 56 requires that a summary of audits be provided to the District Manager. In the Proposal, at page 19, it was indicated that such a summary would be provided to all "reviewing agencies." In my submission, however, a complete copy of any audit should be available to both the reviewing agencies and the public. In any event a complete copy

will clearly be required if the District Manager wishes to exercise his/her power under section 57 of the Regulation to perform an audit of such an audit.

I also note that section 56(2) gives the District Manager the discretion to order that the participant do an independent audit if none has occurred in three years. This stands in contrast to the mandatory requirement described at page 19 of the Pilot Project Proposal.

Recommendations:

1. Base-line monitoring, including an inventory of the forest resources of the Bulkley TSA, should be done;
2. Mechanisms for monitoring should be described in the Regulation;
3. Audits should be conducted annually;
4. Forest Stewardship Council forest management certification should be recognised and included in the list in section 56 of the Regulation;
5. Audits should be available publicly;
6. Audits should be sent to government officials as done; and
7. Section 56(2) should be amended to require mandatory auditing.

Compliance and Enforcement

While the Regulation is clear that the "Ministry" -- presumably the Ministry of Forests -- may conduct its own inspections of forest practices under the Pilot Project, the Regulation gives the Participants an active, and perhaps primary, role in inspecting their own operations. Moreover, the Participant has the ability to find that non-compliance with the Criteria or FSP is merely "minor non-compliance" and therefore that it need not be reported to the District Manager -- a significant watering down of s. 45(4) of the Code. To the extent that this Regulation makes the Participants primarily responsible for their own compliance monitoring, there is a clear conflict of interest. While ongoing monitoring of forest operations is part of good forest practices, it is absurd to pretend that this in is in any way equivalent to government enforcement.

Moreover, it appears that some of the Compliance and Enforcement provisions will restrict the relevant provisions of the Code and regulations. For example, section 66(1) provides that a District Manager may issue a stop work order under s. 123 of the Act after undertaking or reviewing inspections, audits or reports. Section 123 of the Code states that, subject to the regulations, an "official", defined as a designated official of any of the three responsible ministries, may issue a stop work order in relation to non-compliance with the Code, the Forest or Range Acts, the regulations or the standards.

It may be that section 66(1) is merely intended to extend the scope of section 123 of the Code to non-compliance with the Criteria and FSP, although in relation to the FSP the District Manager already has similar powers by virtue of section 45(4) of the Code. As currently drafted, however, it appears to limit the power to being exercised by the District Manager and only for non-compliance with the Criteria and FSP. Moreover, it

may restrict the ability of the District Manager to act in an emergency, as contemplated by s. 3(2) of the Administrative Remedies Regulation, as it requires that the District Manager act only on the basis of inspections, audits or reports.

Section 65 appears to be unnecessary, in that the matters covered are dealt with by sections 107-114 of the Code even without specific reference in the regulations. However, it is misleading in that it suggest that there is a requirement that the District Manager act under such authority in entering the Bulkley TSA to conduct inspections when, in fact, the TSA is primarily or entirely Crown Land and therefore no such authority is required. Similar references in other sections should also be removed.

Sections 67 and 68 provide for a Participant to develop its own remediation plan to address any environmental damage caused by non-compliance with the Criteria or FSP, and for the District Manager to accept such a plan. While there is nothing wrong with the District Manager adopting any plan which a Participant might develop, the sections, as drafted, pose some problems. It appears that the District Manager cannot require remediation of damage arising from non-compliance with the Criteria until after having waited for, received and reviewed a remediation plan from the Participant. This is problematic given that remediation may require immediate attention. No time limits are included and there is no explicit power for the District Manager to act where a Participant has chosen not to submit a remediation plan. The two part process clearly creates problems in terms of the burden of proof (requiring the District Manager to determine that a remediation plan either will or will not adequately manage forest resources -- leaving no room for uncertainty) and leaving no room for unforeseen consequences of a remediation plan.

Since section 68(1) gives the District Manager the authority to do anything listed in section 68(2), this section could be simplified, and some of these problems addressed, by consolidating both subsections into a single unit. Such a section would give the District Manager a broader jurisdiction to do anything from considering and adopting a Participant's remediation plan to issuing his or her own orders.

Since section 118 of the Code applies to operational plans, and the Criteria are not defined as an operational plan, it is not clear that the District Manager can, under section 68(2) of the Regulation, issue a remediation order in relation to non-compliance with the Criteria. The Criteria contains information and requirements which the OPR usually allocates to an FDP, so it is clear that there should be an ability to enforce the Criteria in some way.

The Regulation also removes one level of operational plan (the silvicultural prescription) entirely. As such, a whole host of compliance and enforcement mechanisms no longer apply to ground level forest practices, even where the cause of environmental damage lies more directly with the Field Plan level operations than with the FSP planning.

The Participants are given the right, under the Regulation, to appeal determinations arising from compliance and enforcement directly to the Forest Appeals Commission. However, the Regulation does not purport to disapply section 130 of the Code, which

would ordinarily require a determination to be reviewed under section 129 before it is appealed. Other sections of the Code which refer to determinations should be evaluated to see if they require disapplication and replacement in the Regulation to allow the Participants such a right of appeal.

While the removal of a review process does not necessarily reduce any protection given under the Code, there is a perceived unfairness in allowing a Participant to appeal a determination directly to the Commission, while requiring the Forest Practices Board to pursue any challenge to a decision through the ordinary review process first.

Recommendations:

1. Affirm that the primary role in enforcement continues to lie with government officials;
2. Sections which appear to restrict the exercise of compliance and enforcement powers under the Code and regulations should be redrafted accordingly;
3. References to sections 107-114 of the Code should be removed;
4. Sections 67 and 68 should be redrafted to provide for emergency situations, time limits and a more proactive and broader jurisdiction for the District Manager;
5. The Regulation should be redrafted to ensure that provisions related to review/appeal of determinations are workable; and
6. The Forest Practices Board should be given the ability to appeal directly to the Forest Appeals Commission.

Cancellation

I would suggest that the cancellation provisions be broadened to allow for cancellation arising from non-compliance with the Code, the regulations and any aspect of the Regulation (rather than merely the reporting requirements). In order to participate in a pilot project, a participant should demonstrate the highest level of respect for the law and for proper planning techniques.

Recommendations:

1. The cancellation provisions should be broadened to allow for cancellation in the event of non-compliance with the Code, regulations, or the Regulation, in addition to the factors listed in section 74.

Transition Provisions

The Regulation does not provide the statutory language for the "transition provisions". Moreover, I am advised by Barry Smith that these provisions may not be included in the draft circulated for public comment. With respect, I believe that Part 10.1 of the Code requires the Regulation in its entirety to be available for public review prior to its adoption.

Recommendation

1. The Transition Provisions of the Regulation should be drafted and made available to the public during any public comment period.

Drafting/Editing

As noted, Barry Smith has indicated that a fifth draft of the Regulation will be prepared, correcting various clerical errors. As this review indicates, I believe that more than a minor rewrite is required. However, I make the following comments to assist any revision.

I query some of the use of the definitions section of the Regulation. There appears to be an attempt to use the Regulation to redefine terms used in the Code, in respect of the Code. I am doubtful that this can be accomplished in this way. Moreover, the Minister is given leave to amend one definition "Participant"; while I understand the purpose, this could be more neatly accomplished by having an amendable schedule of participants attached to the Regulation.

On a related note, there are definitions in sections 39 and 48 which are used more extensively than indicated in their respective sections. Such definitions should clearly be included in section 1.

There is a general tendency to make reference to the Code and the regulations even when the language used in the Regulation is substantially different from that of the referred section. In other cases the purpose for which the Code or regulation is enacted does not appear to be on all fours with purpose of the section in the Regulation which references it. In either case this leads to some confusing and long-winded sections.

These comments are in addition to those comments made in other sections of this review.

I hope that in future pilot projects which are referred to the Forest Caucus for review will include a more fully developed draft of the pilot project regulation.