

# Program Guidance – Proposing a Pilot Program to Assess Outcome Based Forestry (OBF)

## Summary of Changes Based on Public Comments

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Thank you to the individuals that provided feedback on the Department of Natural Resources (Department) proposed “Pilot Program to Assess OBF”. Seven comments were submitted to the Department.

Comments both supported and opposed the proposed pilot and did not offer modifications specifically to the pilot as offered, however, the comments detailed the reasoning for support or non-support. One comment offered suggests requiring any landowner chosen for the pilot to sign a statement that they will own the land for a certain number of years. While another thought there needed to be further deliberation.

As a result and after further deliberation and discussion, the Department is making two changes to the proposal and will be proceeding with the pilot.

The changes based on results of this process include;

1. Adding an additional element under the application section that includes a description of how the applicant will work with the department to evaluate the success of the pilot.
2. Changing the pilot sunset date to June 30, 2017.

If you have any questions, please contact James Warren at (608) 264-8990 or [jamesk.warren@wisconsin.gov](mailto:jamesk.warren@wisconsin.gov)

## Actual Comments

### Comment 1

As I'm sure you are aware, \_\_\_\_\_ provides forest management consulting services for several "large" WI timberland owners with acreage enrolled in the MFL and/or FCL. I was personally involved in several meetings with DNR leadership over the last couple of years to discuss options to modify the procedures in place for the approval of management occurring on large timberland ownerships. The topic also came up in discussions that were part of the Council on Forestry's effort to modify the MFL in this past legislative session.

I am in support of the program as generally described in the document posted to the Guidance website, and would like to thank you and the Department for listening and following up on input regarding the need to streamline and be more efficient in the administration of management activities on these large ownerships (under 3rd party certification). In our experience, these ownerships have the systems and people in place to meet all sustainable forestry criteria. I believe there are numerous benefits for the Department, landowner, and forest tax law stake holders ultimately associated with a more efficient partnership.

Thank you for the opportunity to provide this comment in support of the Outcome Based Forestry pilot project. I'd be happy to discuss any questions you might have.

### Comment 2

I am writing to provide comments in support of Outcome Based Forestry as proposed by the DNR Division of Forestry. Large forestland owners today face many challenges and opportunities and a program such as this would encourage thoughtful long-term management while providing the flexibility we need to manage for not just timber but for wildlife habitat, age-class diversity, species diversity, and aesthetics. Currently the MFL law provides very strict standards and while it is a great program that benefits forestland owners and the forest products industry there are times when flexibility to achieve desired outcomes is needed. For example there may be times when completing patch clearcuts while conducting a 3<sup>rd</sup> or 4<sup>th</sup> thinning within a large red pine plantation of up to 10-15% of the stand area would increase habitat and species diversity. The patch cuts could then be used as retention areas, both for wildlife and aesthetics, when the final removal cut of the stand occurs 8-15 years later. However under current MFL rules a thinning cannot reduce stocking below the b-line and these patch cuts would not be allowed.

Once the comment period has ended we would be interesting in applying to participate in the pilot program on our \_\_\_\_\_ forest. Thanks for your efforts on this.

### Comment 3

We are writing as concerned public citizens in regards to the proposed Outcome-Based Forestry pilot project. While \_\_\_\_\_ is a DNR Forester familiar with this project, he is also a WI public tax-paying citizen doing this on his own time and own computer at home. \_\_\_\_\_ is also familiar with the concept and is concerned about the implications of the adoption of this proposal.

Bottom-line, Outcome Based Forestry is a concept that does not mesh with the principles and tenets of the Managed Forest Land program in Wisconsin and should be rejected as an option for large landowners under MFL, and following are the reasons "why":

1. The primary basis of Outcome Based Forestry has its roots couched in the theory of Land Expectation Values which places the most weight on an "outcome" of maximum economic return to the landowner. The Managed Forest Land program has its focus on multiple "outcomes" which benefit both the citizens of WI as well as the forest industry. Adoption of OBF allows those "qualifying" landowners to supplant the statutory goals of "sound forestry" as stated in statute with their own internal goal of maximum economic return.

2. OBF as currently applied through a state program is most fully visible in the state of Maine. The difference in Maine, and it is a major difference, is that Maine had a series of stringent regulations in law regarding silvicultural clearcutting. Their law placed specific limits and specifications on aspects of clearcutting that the industry and large landowners opposed. OBF was adopted as an amendment to the law in order to allow exceptions to the limits on clearcutting. In WI, we have no such law nor are the current guidelines as inflexible as the OBF concept document would lead one to believe. The only statutory requirement within the FCL and MFL laws regarding harvesting is that a landowner must file a cutting notice prior to harvesting, and must report the volumes harvested upon completion so that a severance/yield tax may be assessed for the landowner to honor their responsibility to pay their deferred property taxes through harvesting. It must be emphasized that MFL is a voluntary program. The structure of land valuation and tax assessment in WI may make MFL an operational necessity for large landowners to function and realize a return, but in its barest form, MFL is voluntary. Those aspects of land valuation and tax assessment are fully outside the oversight of the Division of Forestry and should not enter this argument. Because MFL is a voluntary program, a landowner is free to withdraw at any time and practice timber harvesting in any fashion they wish once out of the program. Yes there are deferred tax monies that must be repaid, but landowners enter the program with eye wide-open to the implications and accountabilities involved. The WI taxpayer should not be asked to further allow the subset of large landowners even more freedom to pursue their internal policies of maximum economic return at the long-term expense of the forest health and viability on private lands in the state. The adoption of OBF is in essence, state subsidized forestry and limited to that small subset of landowners who are not based in WI, and who are in their purest form, only owners of the land for a short-time horizon to reap as much economic return as possible through both land fragmentation and in this case, extreme silviculture, and then leave the lands to the next owner to pursue their goals. State subsidized "cut out and get out."

3. The entire issue of OBF was brought about by one large landowner highly disagreeing with the established guidelines in MFL, and disagreeing with the Division of Forestry's long-term interpretation of "sound forestry". In essence, the consideration of OBF as an operational avenue in MFL is a political decision, rather than a science-based proposal that would provide real positive "outcomes" and be a realistic option for landowners under MFL. After all, 40,000+ landowners in MFL are already "third-party" certified under DNR group certificate and they're not being included in this proposal. Allowing a very small subset of large landowners not headquartered in WI to pursue this option smacks of special consideration for those who exert the most political pressure. IF OBF were an option for any "third-party" certified landowner, then it would be more palatable as it would be fair to all.

4. Large landowners enrolled in MFL already have the maximum flexibility allowed in the law over the small side landowners. They're not required to have a publicly available management plan, don't have any mandatory practices scheduled, can schedule harvests at will to take advantage of positive market upswings and demands, and only work with two DNR foresters statewide versus individual county DNR foresters.

5. While OBF may be intended to be a "long-term approach" as stated in the concept document, the fact is that the only current large landowners that qualify to apply are one REIT and several TIMOs. By their very corporate structure and financial plans, they are not "long-term" landowners. Their financial ownership horizon is no longer than 15 years maximum, and most own it for less if they can achieve their internal ROIs in a shorter period. For example, the one REIT remaining in WI has owned lands here since late 2002. In 2003, they owned 560,000+ acres that were enrolled in MFL and FCL. As of current in mid-2014, they now own approximately 8,000 acres remaining in MFL. Their pattern has been to harvest all allowable within their projected financial models, then sell the land. That's the REIT model. By any traditional and science-based forestry principles, 12 years is not long-term. That is barely one standard time interval for re-entry into a pine stand, and is certainly not sufficient time to carry out a landscape level management plan on aspen covertypes.

6. Another principle mentioned in the OBF concept document deals with reforestation success. There are already provisions long-established in MFL that require reforestation success, so including that in an OBF agreement is redundancy, unless the landowners will be allowed to set their own measure of reforestation success. If so, that will require a change in admin code as that success is defined with specific metrics.

7. Landscape-level management is also mentioned. What is going to be the requirement for the minimum number of acres to define a "landscape", and how will management on that landscape be defined? Landscape level management theory has been discussed for many years, and to-date has most frequently been applied to publicly owned lands, and lands that are less intensively managed than privately owned aspen and red pine systems within a state tax program where landowners have significant accountability.

8. If ultimately adopted, any landowner being approved for OBF should be required to sign a statement that they will own the land for "X" number of years in order that forestry at the "landscape-level" can be a successful "outcome". The very picture of failure would be to grant the flexibility of OBF to a landowner, who then intensively harvests their aspen and pine, only to quickly sell the land before any auditing and subsequent enforcement action could take place. For example, the one REIT remaining in WI has approximately 8,000 acres left in MFL of which most is red or jack pine covertypes in two townships in adjoining counties. Most of those lands are under a real estate agreement to sell for conversion to agriculture and a large recreational interest. Granting them OBF under the pilot would amount to allowing a landowner with a track record of land sales following harvesting to exit the state, thus achieving their financial goals yet failing their responsibility to provide those desired "outcomes" to the WI tax-paying citizen.

9. One of the aims of the OBF program is to "streamline" the process of DNR oversight. For the two timber types targeted by the pilot (aspen and red pine), there is already maximum efficiency involved in evaluation of those stands for harvesting. Only two DNR Foresters work

with all of the MFL large landowners statewide. That is the most efficient example of field administration in MFL that exists. Those two DNR Foresters do not visit aspen clearcuts or red pine thinnings/clearcuts unless there is some inconsistency presented in the submitted cutting notice proposal. There will be very little internal operational efficiency gained by DNR adopting OBF on these two timber types. All the proposed OBF pilot will accomplish, in the simplest terms, is to eliminate the currently accepted rotation ages for healthy stands for those two species, and allow the large landowners who have maximum flexibility in the MFL program already, to further pursue maximum economic return and disregard the tenets of “sound forestry” as DNR has defined over a multitude of years, and by a multitude of professional foresters.

10. Each independent forest certification system (SFI, FSC, ATRP) has their own set of standards and foci on what is important in forest resource management. None fully mesh with MFL and FCL without some adjustments and improvements to make both partners compatible. Verification of forest and resource management is accomplished through third-party certification auditors. These auditing firms are hired under contract by the landowner, which is certainly acceptable to the landowner’s internal boards and sufficient to show they are meeting their own goals and planning systems. However, allowing the summary results of auditors hired by the landowner to serve as evidence of their compliance to MFL requirements is questionable at the least. Having been very closely involved with SFI audits for 10 years in industry and with FSC/ATFP audits for 7 years on MFL lands has shown that there is opportunity in audit planning to “game” the system if a landowner so desires. Accepting third party certification in lieu of direct DNR practice monitoring is not fulfilling the public trust nor following the spirit of the law.

In summary, we would urge the Division of Forestry to re-consider offering Outcome-Based Forestry under the brief outline presented in the concept document. There are many, many details that remain unanswered, primarily of what positive “outcomes” would the WI tax-paying citizen expect to see from this program, and how, allowing a couple of well-connected large landowners to pursue their desired “outcome” of maximum economic return in the shortest time possible be a positive “outcome” for WI’s forests and forest industry.

This should be tried first on public lands, either state-owned or county-owned. After all, those two landowners have a more permanent sense of ownership, are active in regular forest management and have a more stable “landscape”, and any potential benefits or “outcomes” could be more successfully evaluated knowing the land base would be in place for a long-term period, rather than the few eligible landowners cutting those two timber types intensively, and then selling or further fragmenting the “landscape”. The Division of Forestry is naïve to think those landowners allowed to adopt OBF won’t press for further “flexibility” once they are given this freedom. A one-year trial program on a very small subset of privately-owned lands won’t provide sufficient evidence to adopt OBF with full confidence that it will be a positive acceptable and long-term option, nor to defend to the public that it is “sound forest” management.

#### **Comment 4**

Thank you for the opportunity to comment on this proposal.

I am not in favor of this proposal. As a tax payer subsidizing the MFL program, I expect that the Division of Forestry be responsible for oversight of the program, and not turn over your responsibilities to some "nationally recognized 3rd party forest management

certification". While I support the concept of subsidizing the property taxes of those who have made a commitment to practicing sustainable forestry through the MFL program, I do not want to see this program jeopardized by weakening the oversight of the program. Tax payers deserve accountability and for the Division of Forestry to defer to some other party is not a good idea. Tax payers could decide these large account owners don't deserve or need what they might consider a loop hole in paying their fair share. Losing support for MFL would be a huge set back in forest management in Wisconsin.

Secondly there is already a double standard of what is "acceptable" on large accounts MFL vs small account MFL land with large accounts sometimes practicing a lower quality of forest management. This would only increase the two sets of rules problem that already exists.

Thirdly simply opening the program up to some "nationally recognized 3rd party forest management certification" is not adequate. Standards and quality control varies greatly in forest certification programs, some are not very good.

Finally, the side boards of acceptable, sustainable forestry defined by the Division of Forestry's handbooks and polices are already "Outcome based". They are based on science and proven to provide positive outcomes if properly followed. This is not a good idea. If current policies are interfering with doing good forest management, then work to amend those policies, but do not abdicate your responsibilities or create a double standard.

#### **Comment 5**

I am strongly opposed to Outcome Based Forestry pilot as currently proposed. My opposition is based on the following:

1. Utilization of a third party would not assure the protection of water resources, biological diversity, or visual or recreational benefits. Third party certifiers audit a small subset of management activities once every 1 to 5 years. Their sample subset is limited to the lands that they own at the time of audit. It is highly probable that a company implement a practice that damages water resources, destroy biological diversity, or practices unsustainable forestry, then withdraw or sell the property and never be audited for the practice.
2. We have seen significant push back and opposition to any regulation designed to limit the spread of forest diseases such as Oak Wilt and Annosum. It is highly probable that a large landowner disregard guidelines to limit the spread of forest diseases because a third party is not there to monitor except every 1 to 5 years.
3. It is common for companies to seek out third party systems that fit their business needs and auditors that will likely decide in their favor. Companies are not required to select auditing firms that rigorously monitor or audit all the facets of their forestry operations and thus can shop for firms that will likely let them conduct forest management contrary to the requirements, spirit and intent of the Managed Forest Law if they wish to. Further an auditor is paid by the large landowner being audited. To rely on a third party to administer the MFL program with a documented conflict of interest is mistake and bad policy.
4. This proposal fails to describe any form of evaluation process to determine the success or failure of the pilot. Is there a system of independent sampling? What metrics will be used to

evaluate the success of failure of the pilot? How often will the outcomes be judged? The lack of any detail indicates that the whole pilot has not been fully developed, or that the outcome has already been predetermined.

5. The Department has already promulgated rules that provide significantly lower requirements for large landowners. Lack of stand data and highly simplified management commitments provide a high level of administrative relief. To create another level of MFL creates unnecessary complexities and fails to treat all participants equally.
6. The Department commits two positions to administer the law on over 700,000 acres. This is the most efficient administration of the FCL and MFL in any facet of either program. The time savings to the department are far outweighed by the risks to this large and important land base.
7. The State has invested a significant sum of money and resources in forest legacy easements and almost all of these easements are on large landowners. All of the easements require that these lands comply with the MFL program rules and requirements. Almost all of these easements are funded in large part by the Federal Government and they also require adherence to the MFL program requirements as a condition of the grant or face repayment of funds or loose eligibility of future easement funds. It is unclear if this proposed change in policy would satisfy the federal requirements for the grants. If they fail, they could result in the State having to repay millions of dollars in federal grants and jeopardize future grants.
8. The Department has documented a number of instances where a few large number of landowners have failed to adhere to the requirements of the MFL program and failed to practice sound forestry. It seems imprudent to step back and loosen the oversight of these same landowners given some of the issues the Department has experienced in the past. It would be easier to support easing oversight to a large landowner if they have not received a Notice of Investigation, citation, involuntary withdrawal or denial of a cutting notice of a period of 10 years. Unfortunately those companies seeking relief through this pilot are the vary same ones that have had issues in the past.

The Department has a **administrative duty** (a legal requirement) to administer, enforce, and monitor all participants of the Managed Forest Law. To abdicate that responsibility to a third party that is paid by the large landowner creates a conflict of interest and puts the resources of the State at risk. The time saving from the pilot are negligible and would unnecessarily complicate the law. The pilot does no place any requirements on the large landowners to have demonstrated adherence to the law in the past, nor does it describe how the pilot will be evaluated, and how often. The pilot could also risk present and future Forest Legacy funds and easements. Third party auditors sample practices once every one to five years and only on lands still owned by the large landowner. It is a huge gap in administration of the program that can and will lead to mismanagement and violations of the law. In short, this proposed pilot is bad policy and a bad idea that borders on dereliction of duty in public office. Do not adopt this pilot program.

#### **Comment 6**

Nowhere in this brief document is it explained why OBF is needed, what it is intended to replace, the timeframes over which “sustainability” determinations are made, and what the

consequences of failure to meet OBF are. With those deficiencies, it is difficult to make much sense of the proposal.

As an experienced FSC auditor, I also question DNR's intended abdication of its sole role in oversight of large landowner MFL. Sampling for third-party certification purposes is not as intensive as DNR review of submitted cutting notices. Nor are all third-party certifications of equal rigor. Review of cutting notices can address site-level problems before they occur. This may not happen with third-party auditing.

This concept needs much more public discussion before implementation.

#### **Comment 7**

First, any/all of your field foresters know that the silvicultural concepts mentioned in that OBF paper are contrary to the best science available. That is all there is to that.

Do not get confused. OBF, as purported in that white-paper, has absolutely nothing to do w/ forestry or forest management. There is an old axiom w/in the forest industry that goes, "When a company buys land it must recoup 1/2 of the purchase price in an immediate cut, or the interest etc. will kill them." ***So the situation is - wisCONSIN has two large-industrial landowners whose fairly recently purchased MFL lands are comprised of large percentages of immature aspen and immature red pine timber types and they want to get 1/2 of their purchase price back immediately - and they are going to get the Div. of Forestry allow it.*** And I am sure that OBF was not a concept that came from w/in the Div. of Forestry.

Purposely redundant :- Going to the public to have them send comments to a Section Chief is useless. OBF will happen and the decision will be, or has been, made above the Section Chief, the Div. Administrator/State Forester, and even the Secretary level. Any thinking person would be contacting his legislators. I think those two formerly mentioned companies have. Between the legislature's work on the MFL lands on the Penokee Range and now this OBF there is no hope for the small people to affect the MFL.

Kudos to your staff for that brilliant white-paper that announced the "Outcome Based Forestry Concept". It is so well crafted as to be crafty. One may say that it is so polished as to be transparent. But the paper took a lot of serious verbiage, that has been used for decades to describe forestry in WI, and made those words meaningless, hollow and, therefore, useless. Shame on all and you. Instead of creating that prose your staff should've used their time and talent to insure that science based resource management is followed on all MFL lands.

Your white-paper announcing OBF and requesting comment, was so vague on "rotation ages" that a discussion of the "new rotation ages" and what is to follow is impossible. But any of that would only complicate a rather simple situation.

The idea for companies to hire their own inspectors makes me ask, "Who are the hired inspectors beholdng to and what will they recommend to mitigate anything they find that is not certainly certified?" But the budgetary savings on time spent on the Div's/State's accountability can be re-allocated toward getting yourself an "E-Mail Answerer and Sender-Outer - Advanced" position.

Allow me to submit the following as a solution/substitution for MBO: Tell those two companies that this is Wisconsin, not some colony, and we are proud of our forests and forestry. Also tell them that there already is a way they can cut their timber any way they wish - the MFL has provision for withdrawal - and as long as the property taxes are paid, ad valorem allows for premature harvesting of forest resources.