

The following summary is provided subsequent to the Council on Forestry's (CoF) June 19, 2013 report "*The Managed Forest Law – A summary of Recommended Program Revisions*". This report presented the Council's conclusion on 24 potential Managed Forest Law revisions based on consensus reached amongst Council members.

The level at which the Council members could reach consensus varied by issue. Some issues have fairly specific proposed modification, while on others, Council members agreed the issue should be subject to more detailed legislative analysis. The ease or level at which the Council reached consensus on a given issue should not to be misconstrued as an indicator of the importance of the individual issue for MFL modification, or as a scale of the extent of the benefits resulting from any change. The package of 24 issues comprised, what the Council feels, is a well-balanced group of modifications. Attempts to single out certain issues could have consequences with interconnected issues or may impact support for the overall process.

In the Council's process, three proposed revisions emerged where consensus could be reached at a broad concept level only. This summary is intended to provide more detail on these three issues for potential future legislative consideration. The three issues are:

- *Change in the rate for open/closed acreage – Proposed Revision 1*
For any individual issue or proposed modification, the level of agreement, or importance of the modification being made to the MFL, typically varies by stakeholder, individual, or group. Adjusting the per acreage fee, and if so to what degree, is a modification where this is especially true. This, at least in part, played a role in the Council's difficulty in reaching consensus on a specific direction for this issue. The CoF concluded that the rates, how they are calculated and how the fees are distributed needs to be examined further.
- *Require modified management plans for DNR designated large ownerships to include the establishment of an allowable harvest calculation – Proposed Revision 13*
The CoF reached a consensus on the recognition that the continued production of timber on large ownerships be addressed within the parameters, requirements, and intent of the MFL to include considerations for timber volume and the time component of timber being on the market. The CoF consensus included awareness that this issue may warrant further analysis.
- *Allow landowners to open or close lands regardless of acreage – Proposed Revision 17*
The CoF hesitantly, by consensus, agreed that this modification addresses the process of "gerrymandering" ownerships to increase closed acreage. The CoF also agrees with the value of MFL lands open for public use and as such recognizes the conflict with this and the proposed modification

Content provided is partially derived from the CoF's MFL Committee's work and report dated April 10, 2013. <http://council.wisconsinforestry.org/pdf/COF%20MFL%20Committee%20Report%20041013.pdf>
More detail on each issue is as follows.

Proposed Revision 1: Change in rate for open/closed acreage

Note: In early issue identification efforts, Council members were asked to rank issues to be addressed for possible modification. This issue occurred more often (seven times) than any of the other 29 issues in Council members’ list of the top five to potentially be addressed for modification. Issues occurring at least three times in the Council member’s list of their “top 5” were selected for additional analysis by the Council’s MFL Committee.

Current Situation: MFL landowners pay an acreage share tax in place of regular property taxes. MFL landowners who close land to public recreation also pay a closed acreage fee. There are two acreage share and closed acreage fee formulas, depending if lands were enrolled in MFL in 2004 and earlier, or 2005 and later. Statewide data is used to determine the acreage share tax rate and closed acreage fees for both sets of formulas. Since assessed values, equalized values, tax rates, and other tax values differ depending upon land location within the state, using a statewide value can show greater MFL tax rate benefits in some parts of the state and lower MFL tax rate benefits in other parts of the state. Conversely, local municipalities may see that property tax revenues are greatly reduced with lands being enrolled in MFL, while other municipalities see a minimum reduction in property tax revenues. The open and closed per acre rates are summarized as follows looking back to 2003 and ahead to 2017.

EFFECTIVE DATES	Enrolled 1987 - 2004		Enrolled 2005 or Later	
	OPEN	CLOSED	OPEN	CLOSED
2003 - 2007	\$0.83	\$1.95	\$1.46	\$7.28
2008 - 2012	\$0.67	\$1.57	\$1.67	\$8.34
2013 - 2017	\$0.79	\$1.87	\$2.14	\$10.68

Open Acreage share tax = 5% of average statewide tax on productive forest land (\$42.70/acre)
 Closed acreage fee = 20% of average statewide tax on productive forest land (\$42.70/acre)

Under current law, local municipalities normally keep 80% of the open acreage tax and the remaining 20% is remitted to the County. The entire amount of the closed acreage fee is remitted to the County, who then remits the entire amount to the State’s Forestry Account for allocation by the Legislature.

Current MFL Open Acres ±: 1,107,000 acres (82% enrolled 1987 – 2004)
 Current MFL Closed Acres ±: 2,138,000 acres (65% enrolled 1987 – 2004)
 Total MFL Acres: 3,245,000 acres

Concern has been expressed by some that the current closed acreage fee, in particular, is too high and can lead to landowners seeking other tax treatments and pursuing land management which can have negative impacts on forest sustainability. Property taxes on land categorized for taxation purposes as Agricultural Forest can be lower than the MFL per acre closed rate in parts of Wisconsin. Concern has also been expressed that per acre property tax rates much above the open rate are not conducive to economically and sustainably managing forested properties for timber. Conversely, a minimal difference between the open and closed rates may negate the incentive to have lands open for public recreation, a recognized and valued component of the MFL. There is also concern regarding revenue amount and shifting of tax burdens if rates were lowered. The rates have just been adjusted for 2013 and will become evident for the first time for landowners with tax bills this upcoming fall. The increase this year will be about 19% for the pre 2005 enrollments and around 28% for the 2005 and later enrollments.

Proposed Modifications: The CoF’s MFL Committee’s conclusion was that lower rates, primarily for closed acreage, could be considered with additional consideration to be given to redirecting a portion of the closed acreage fee to local municipalities and Counties.

Retroactive / Prospective: The 2005 and later tax formula was made effective for all lands enrolled or re-enrolled in MFL on or after April 28, 2004, perhaps setting precedent that any new tax rate or formula also be made prospective for new enrollments after the effective date of the law change, although there is no recommendation on this from the MFL Committee. A prospective modification of rates would create a third tier of lands based on tax rates or calculation procedures and add to program complexity. It is also likely to be seen by those with lands currently enrolled as unfair if a new, lower rate is created.

Proposed Revision: Change in rate for open/closed acreage (continued)

Analysis: The MFL Committee, for full Council review, presented additional information on modification advantages and disadvantages and also an evaluation as to how well the modification fit with the Committee’s initial 7 criteria used to focus the identification and analysis of potential MFL revisions. (The analysis is presented for a lowered closed acreage fee.)

POTENTIAL ADVANTAGES / DISADVANTAGES

ADVANTAGES	DISADVANTAGES
1. Landowners will continue to receive a property tax reduction to encourage sustainable forest management and timber production.	1. Loss of revenue to State Forestry Account
2. Enrollment in the MFL may be enhanced.	2. Public perception
3. Minimize loss of sustainably managed forestland due to other land taxation options that can have negative forestry consequences.	

CRITERIA EVALUATION

Reduce WDNR administration cost, conflict, and/or law complexity	Maintain public, non-MFL stakeholder understanding and support	Maintain municipality and local government support	Support core MFL purpose of sound forest management and commercial timber production (as ref Wis. Stat. § 77.80)	Encourage continued program enrollment and discourage non re-enrollment	Address concerns of MFL forest owner stakeholder groups	Address concerns of forest industry stakeholder groups
Ø	-	Ø	+	+	+	Ø

Favorably meets criteria = “+”, Does not meet criteria = “-”, Neither favorable nor unfavorable = “Ø”

The proposal to lower rates is anticipated to meet three of the seven criteria favorably. It may be seen favorably by forest industry stakeholders as encouraging more participation in the program and more land available for timber production although the impression is that it is not a significant, individual forest industry stakeholder concern. A lowered closed acreage fee is anticipated to be neutral for local government entities as this entire amount is directed into the State’s Forestry Account. Lowered rates are also expected to have little influence on reducing DNR administration cost, conflict or MFL complexity. The MFL Committee felt that lowering rates could be viewed negatively by the general public and potentially impact support for the MFL. A lowered closed rate could be viewed as a move away from the recognition of the significance of MFL lands being available for public recreational use.

A specific fiscal analysis could be completed based on a proposed change in rates. For this report, for baseline information, it is estimated that the current MFL acreage will generate roughly \$11,600,000 from 2013 per acre taxes. Approximately 90 percent of this amount is tax on the closed acreage. The 2013 total tax will be roughly 25 percent more than last year’s total.

Note: 2011 Senate Bill 161 and 2011 Assembly Bill 402 addressed taxation of Managed Forest Land (as described in the Wisconsin Legislative Council Report to the Legislature –“Special Committee on Review of the Managed Forest Land Program” August 15, 2011, (Revised 12/5/11) RL2011-02, pg. -11-) as follows. (Senate Bill 161 failed to pass pursuant to Senate Joint Resolution on March 23, 2012.)

Proposed Revision: Change in rate for open/closed acreage (continued)

This bills specify new calculations for the closed land acreage shares for managed forest land orders that take effect on or after the effective date of the draft. Under the bills, owners of closed land under new managed forest land orders would pay the greater of the following:

- The acreage share applicable to MFL orders that take effect on or after April 28, 2004.
- A total of 25% of the full value of the closed managed forest land times the full value effective rate of taxation applicable to general property in the same taxation district as the closed managed forest land.

These bills modify the distribution of certain moneys received by local units of government in connection with the MFL program. Under the bills, 20% of MFL payments for closed acreage received by a municipal treasurer would be paid to the DNR. Forty-eight percent of the closed acreage managed forest land payments received by a municipal treasurer (equivalent to 60% of the amount remaining after payment to the DNR) would be paid to the county. From the closed acreage payments received by a county, the county must spend 5/6ths of the amount received to acquire by purchase, lease, easement, or other agreement land that is open to public recreational use, as defined in s. 77.895, Stats., except that a county with 40% or more of its total area consisting of public access lands may also elect to expend the reserved amount on activities to improve resource management, including forest growth, forest health, fish habitat, wildlife habitat, and watershed protection.

CoF Conclusion: The CoF concluded that the rates, how they are calculated, and how the fees are distributed needs to be examined. There was Council consensus that consideration should be given to allocating some portion of the closed acreage fee to local municipalities. In the end CoF believes MFL rates need to be attractive to landowners to incentivize enrollment and foster sustainable forest management while at the same time providing the public with a return consistent with their investment in the program.

Proposed Revision 13: Require modified management plans for DNR designated large ownerships to include the establishment of allowable harvest calculations.

Note: In early issue identification efforts, Council members were asked to rank issues to be addressed for possible modification. This issue was combined with three other modifications which as a group occurred five times in Council members’ list of the top five to potentially be addressed for modification. Issues occurring at least three times in the Council member’s list of their “top 5” were selected for additional analysis by the Council’s MFL Committee.

Current Situation: Landowners who qualify as a large landowner are expected to follow their own management plans. DNR can audit those plans and other program criteria to ensure that lands continue to meet the conditions of the MFL program. Harvesting occurs according to the large landowner’s management plan and silvicultural forest type prescriptions approved by the DNR as part of the requirement that a large landowner submit a formal Managed Forest Law Management Commitment. There are approximately 144 large account landowners with 750,000 (±) acres.

Proposed Modifications: Require that an allowable harvest be established. This modification would need to provide for the multiple accepted approaches to calculating allowable harvests and allow harvest levels that can vary to some definable degree over time. The allowable harvest would need to be approved by DNR to ensure compliance with any statutory requirements. Administrative code would need to be developed to identify how and what is required in the allowable harvest analysis.

Retroactive/Prospective: The CoF remains silent as to whether or not requirements to address this topic be retroactive or prospective.

Analysis: The MFL Committee, for full Council review, presented additional information on modification advantages and disadvantages and also an evaluation as to how well the modification fit with the Committee’s initial 7 criteria used to focus the identification and analysis of potential MFL revisions.

POTENTIAL ADVANTAGES / DISADVANTAGES

ADVANTAGES	DISADVANTAGES
1. Prevents landowners from choosing to be inactive and meets the intent of the MFL to provide forest products to market.	1. Increases administrative cost of MFL program as DNR Foresters ensure that large landowners are meeting the conditions of the MFL provision.
2. May provide information on expected harvest volumes and severance tax revenue from large landowners for industry and local government planning.	2. Large landowners will likely lose some ability to time harvests and manage their asset in a financially prudent manner.
	3. Difficult to standardize one method for allowable harvest calculations.
	4. Added cost for designated large landowners to develop, plan, and track allowable harvest volumes.

Proposed Revision: Require for designated large owners the establishment of allowable harvest calculations
(continued)

CRITERIA EVALUATION

Reduce WDNR administration cost, conflict, and/or law complexity	Maintain public, non-MFL stakeholder understanding and support	Maintain municipality and local government support	Support core MFL purpose of sound forest management and commercial timber production (as ref Wis. Stat. § 77.80)	Encourage continued program enrollment and discourage non re-enrollment	Address concerns of MFL forest owner stakeholder groups	Address concerns of forest industry stakeholder groups
-	Ø	+	+	-	-	+

Favorably meets criteria = “+”, Does not meet criteria = “-”, Neither favorable nor unfavorable = “Ø”

This modification is seen as favorably meeting two of the seven criteria. It would meet the criteria that revisions support of the core purpose of the MFL as follows: (as ref Wis. Stat. § 77.80) Purpose. The purpose of this subchapter is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

It also may be supported by local government entities who might have better information available for predicting income from severance taxes on harvested timber, and who could potentially recognize more severance income if the process generates a higher level of timber harvests. It is expected that public non-MFL stakeholder understanding and support for the MFL would not be influenced by this issue. This modification was estimated to meet three of the criteria unfavorably; it may increase DNR administration cost and complexity, it may be seen as an additional encumbrance on the management of large forested acreages and discourage continued MFL participation, and it is generally believed to be contrary to the concerns of at least large MFL forest owner stakeholder groups. If retroactive, this exemplifies a change to the program with negative consequences for a landowner after their enrollment or purchase of the property and acceptance of the terms of the MFL.

From a fiscal perspective this revision potentially increases DNR MFL administrative costs including (1) one-time costs to establish criteria for developing an allowable harvest, contacting large landowners about the new program provisions and approving the allowable harvest criteria to ensure compliance with the MFL provisions, and (2) annual costs to ensure that large landowners continue to meet program requirements.

Note: 2011 Senate Bill 161 and 2011 Assembly Bill 402 addressed harvesting on large ownerships (as described in the Wisconsin Legislative Council Report to the Legislature –“Special Committee on Review of the Managed Forest Land Program” August 15, 2011, (Revised 12/5/11) RL2011-02, pg. -12-) as follows. (Senate Bill 161 failed to pass pursuant to Senate Joint Resolution on March 23, 2012.)

The bills require modified management plans for ownerships that exceed 1,000 acres to include the establishment of an annual allowable harvest. This requirement would not apply to ownerships exceeding 1,000 acres whose lands are certified by an independent third party. The bills direct the DNR to promulgate rules to establish an annual allowable timber harvests in modified management plans.

In the current Council on Forestry’s efforts on this subject, the consensus was to remove the exemption for independent third party certified lands.

CoF Conclusion: The CoF reached a consensus on the recognition that the continued production of timber on large ownerships be addressed within the parameters, requirements, and intent of the MFL to include considerations for timber volume and the time component of timber being on the market. The CoF consensus included awareness that this issue may warrant further analysis.

Proposed Revision 17: Allow small landowners to close lands regardless of acreage

Note: In early issue identification efforts, Council members were asked to rank issues to be addressed for possible modification. This issue was combined with the modification to assure access to MFL “open” lands. Together these issues occurred five times in Council members’ list of the top five to potentially be addressed for modification. Issues occurring at least three times in the Council member’s list of their “top 5” were selected for additional analysis by the Council’s MFL Committee. Removing the 160 acre cap is provided as an alternative to limiting the ability of owners to close land using the collection of personal identification data.

Current Situation: Under current law, landowners enrolled in the MFL are allowed to close 160 acres of land to public recreation, of which only 80 acres or two legal descriptions per municipality may be lands enrolled in 2004 or earlier. This acreage limitation encourages landowners to subdivide property into different ownerships in order to legally close as much land as possible. In some situations, lands are subdivided and land-locked properties are created. The land-locked properties are taxed under MFL as open to public recreation; however there is no legal entry into the lands, making it inaccessible to the public. Landowners whose intent is to close as much land to public recreation as possible have many legal means to create different ownerships in order to close 160 acres per ownership per municipality. The ability to create different ownerships results in the majority of lands enrolled in MFL by non-industrial private landowners to be closed to public recreation. The additional number of owners in entities such as LLCs, Trusts, Partnerships, etc. also increases the number of MFL applications.

Proposed Modifications: Eliminate the closed acreage limitation. The provision to remove the closed acreage limitation would allow landowners the ability to close lands to public recreation without having to create LLCs, trusts, other non-natural entities, or combinations of natural persons.

Even though this modification is contrary to the original intent of the law, it addresses the issue generating the largest number of complaints to the DNR; MFL participants navigating around the closed acreage limit. The issue of assuring reasonable public access to lands entered as MFL “open” is addressed in Revision 18.

Prospective: This provision would apply to landowners who are entering or renewing lands into MFL. Landowners already in the MFL would not benefit from this modification.

Analysis: The MFL Committee, for full Council review, presented additional information on modification advantages and disadvantages and also an evaluation as to how well the modification fit with the Committee’s initial 7 criteria used to focus the identification and analysis of potential MFL revisions.

Proposed Revision: Allow small landowners to close lands regardless of acreage (continued)

POTENTIAL ADVANTAGES / DISADVANTAGES

ADVANTAGES	DISADVANTAGES
1. Would reduce a landowner's desire to subdivide properties and reduce the total number of MFL applications received.	1. Changes some of the intent of the MFL program to provide public access to private lands for recreational purposes. Has the potential appearance that a large public purpose of MFL is being removed.
2. Reduces the number of MFL applications; the average acreage per application would increase.	2. Has the potential appearance that there are fewer MFL applications, regardless if the acreage per application increases. (Temporary anomaly in tracking.)
3. Reduces the amount of paperwork for landowners, DNR Foresters, CPWs and others.	
4. Allow for lands to remain in larger working forests for management purposes.	
5. Landowners who purchase large tracts of land would be able to close their entire ownership, potentially preventing a new owner from becoming ineligible to remain in the MFL program due to productivity concerns as they further subdivide their properties in order to close lands to public recreation.	
6. May limit fragmentation.	

CRITERIA EVALUATION

Reduce WDNR administration cost, conflict, and/or law complexity	Maintain public, non-MFL stakeholder understanding and support	Maintain municipality and local government support	Support core MFL purpose of sound forest management and commercial timber production (as ref Wis. Stat. § 77.80)	Encourage continued program enrollment and discourage non re-enrollment	Address concerns of MFL forest owner stakeholder groups	Address concerns of forest industry stakeholder groups
+	-	Ø	Ø	+	+	Ø

Favorably meets criteria = “+”, Does not meet criteria = “-”, Neither favorable nor unfavorable = “Ø”

This modification is anticipated to meet three criteria favorably; it is expected to reduce DNR administration, conflict and law complexity, it should encourage continued enrollment, and it addresses MFL owner concerns such that it does allow for the option of entering the MFL and still retaining control of who uses the property. Three criteria are expected to be neither favorably nor unfavorably impacted, including the support of local government entities, the MFL core purpose, and forest industry concerns. Although, for two these three, if this modification leads to continued enrollment of lands, this could be seen as beneficial. Local government support could also benefit if the ratio of closed to open land remains high and the allocation of the closed acreage fee is adjusted so that local government entities receive a portion of the monies. This modification's greatest downside is its' likely impact on public support as it appears contradictory to the public access MFL benefit.

There is expected to be little to no fiscal impact on MFL administration. The number of applications will decrease, allowing for fewer hours spent in reviewing ownership documents in MFL applications. Additional time will be spent in reviewing acreage, productivity and other conditions of each MFL application due to the possible increase in entry acreage per order. The net result is expected to be a slight reduction in reviewing of MFL applications statewide.

Note: Senate Bill 161 was silent on addressing public access issues related to MFL.

CoF Conclusion: The CoF hesitantly, by consensus, agreed that this modification addresses the process of “gerrymandering” ownerships to increase closed acreage. The CoF also agrees with the value of MFL lands open for public use and as such recognizes the conflict with this and the proposed modification.

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