

MANAGED FOREST LAW (MFL)

Reaction of Private Forest Landowners to A Recent Change in Law That Prohibits Leasing Land Enrolled In MFL Executive Summary

*A Report to the Wisconsin Council on Forestry
by the Wisconsin Council on Forestry MFL Task Group¹
March 18, 2008*

Sixty-one percent of lands (based on acres) in the Managed Forest Law (MFL) program are “closed” to public access and could be affected by the recent change to prohibit recreational leasing of lands “closed” under MFL. The Task Group gathered information from various private landowner groups so the Council could evaluate the potential impact this change would have on the practice of sustainable forestry as embodied in the Managed Forest Law.

Background

The Managed Forest Law (MFL) was enacted in the mid 1980’s with first designations taking place January 1, 1987. MFL replaced the Forest Crop Law (FCL) and Woodland Tax Law (WTL) programs and became the primary device in which the Department of Natural Resources (DNR) encourages sustainable forestry on privately owned lands.

Originally the Managed Forest Law (MFL) prohibited receiving consideration for recreation on lands designated as MFL and this prohibition included hunting leases.

In 1992 landowners requested the department’s help in allowing hunting leases on MFL lands. A new rule was enacted that year re-defining ‘developed for recreation’, which read that if the physical landscape was not altered, landowners would be allowed to receive consideration for recreation on MFL lands. Hunting leases did not physically alter the landscape and therefore were allowed.

In 2006, one industrial landowner changed its ownership interest on over 10,000 acres of previously open lands in order to close the lands to public access and lease it out for hunting. This action raised many concerns in the Legislature. The public benefit of open lands for recreation that the MFL program was to provide was being negatively impacted and the Legislature was faced with a balancing question of private landowners being able to lease their lands versus the public benefit of open lands and asked the department to prepare alternative modifications to MFL to remedy this situation.

The Legislature took one of the alternatives and passed a new law prohibiting receiving compensation or consideration for allowing recreation on lands designated as MFL, in essence returning the program back to the original provision.

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One of the biggest differences between FCL, WTL and MFL is that FCL and WTL is a contractual relationship between the landowner and the state. The statutes that govern the MFL program replace the word *contract* with the word *order*. The Legislature specifically left out the word ‘contract’ from the MFL laws and in so doing made a deliberate choice and evinced a clear intent not to make designation into the MFL program a contractual relationship.

Reaction of Industrial Forest Landowners

Industrial forest landowners’ opinion about the recent action by the legislature to prohibit recreational leasing on acres closed under MFL depends on whether they were leasing or intended to lease MFL land prior to the change. Those industrial landowners that were engaged in recreational leasing prior to the change were universally not happy with the change and thought that the change to prohibit leasing did not make sense in protecting a good program from being dissolved. One landowner posed the following question in the comments section: “Why is it that a landowner cannot change the MFL law but government at a drop of a hat can change the law?”

Industrial forest landowners that did not have “closed” MFL lands generally were happy with the change (2 out of 8 were not) and thought the change made sense as a means of protecting the integrity of MFL.

Reaction of Private Non-Industrial Forest Landowners Who are Members of the Wisconsin Woodland Owners Association

WWOA was not able to supply detailed numerical data on responses of their members to changes in the MFL because the organization does not track this kind of data. However, WWOA, representing private forest landowner members, has gone on record of disagreeing with the Legislature’s decision to approve Act 20 which prohibits recreational leasing on closed MFL lands. WWOA has also opposed legislation to modify Act 20 as evidenced by the following excerpt from their recent legislative testimony: “We feel the government broke our MFL contracts by enacting the recreational leasing provision in Act 20 and unfortunately AB 781 does not repeal this action to our satisfaction.”

Reaction of Private Non-Industrial Forest Landowners Who Belong to Family Forests or Forest Cooperative Groups

This group had eight respondents, of which seven had 734 acres under the MFL program. None were currently leasing land for recreational purposes. However, their prevailing opinion of the change to prohibit recreational leasing was negative, because the change affected these groups either directly (losing the option of leasing in the future) or indirectly (e.g. loss of ability to lease hunting lands from others who formerly leased MFL lands).

Reaction of Individual Non-Industrial Forest Landowners not Affiliated with any Forest Group or Organization

Consulting foresters were asked to share the reactions they are receiving from their clients regarding the changes in Act 20. There is not a consensus among private forest landowners that work with Cooperating Foresters regarding whether they agree with the change to prohibit leasing MFL land for recreational purposes. Their responses appear to be equally divided for and against and their reaction appears to depend on whether there is a market for leasing, and whether or not they have decided to lease themselves or not.

Twenty Five percent or less (with one exception) of private landowners reported in this group have previously leased their MFL lands for recreational purposes.

Few enrollees are considering withdrawing from the program because of the change but some are not happy and may consider not renewing the program.

If there is any one general theme about dissatisfaction with the change among this group it is the seeming unfairness of the state's ability to change provisions of the law unilaterally with no provision for landowners to opt out of the program if they do not agree with the change without incurring a penalty for withdrawing.

Recommendation of the Task Group to the Council

Opinions about the recent change to MFL prohibiting the leasing of lands closed to public access under MFL vary within and among groups. Several different interest groups are affected by the change, and some vigorously support the change while others oppose it just as vigorously. While there seems to be no clear consensus in reaction to the changes, it is apparent that a significant number of people/organizations are unhappy with the change, and reasons for this discontent need to be addressed.

The Task Group believes further consideration may be needed to ensure that the current changes, which presumably affect hunting as a management tool for some forest owners, do not create un-intended consequences, given the Council's public position in support of a variety of efforts to reduce the size and impacts of Wisconsin's deer herd.

While the task group did not have time to fully explore or deliberate on these questions, we suggest the need for a more thorough analysis of policy options for recreational access for MFL lands to consider alternative policies that could protect the public interest in recreational access embodied in the enabling legislation of the MFL program, while maintaining as full a range of options as possible for forest owners, especially as needed to help maintain forest health through effective hunting efforts. Possibly a distinction could be made between MFL industrial and non-industrial enrollments for purposes of developing draft alternatives.

Therefore the Task Group recommends the Council support the necessary action by the Legislature and the Department of Natural Resources to critically review the recent change to MFL prohibiting leasing for recreational purposes in light of the comments and opinions expressed in this report and consider modifications that would be consistent with the intent of MFL of encouraging good stewardship of forest resources while minimizing abuses and negative consequences to private forest landowners.

The Task Force could not come to consensus on including the following recommendations/statements:

- Have the Attorney General offer an opinion on the leasing amendment. Many of us think the legislative action which is retroactive to the day of entry is illegal seizure.
- Seek to repeal the action since there were no hearings - just an amendment to a budget bill.
- Ask the Legislature to create a Legislative Council Study Committee to take a look at the whole issue of wood supply, recreation and MFL.