

**Aboriginal-Held
Forest Tenures In Canada
2002-2003**

ACKNOWLEDGEMENTS

Part of National Aboriginal Forestry Association (NAFA's) mandate is to promote self determination and self reliance in Aboriginal communities across the country. As an Aboriginal organization NAFA works with its members, government, educational institutions, unions and industry associations to build a policy framework in Canada which enables the capacity of Aboriginal Peoples to participate in forest management.

NAFA would like to extend appreciation to all those who contributed to this study. A list of people who provided data and insight for this study is provided in Appendix A.

In addition, NAFA would like to acknowledge the support of the Department of Natural Resources, and Department of Indian Affairs who provided funding assistance for this study through the First Nations Forestry Program (FNFP). The FNFP was launched in April 1996 as a national partnership program jointly managed and administered by the Canadian Forest Service, Natural Resources Canada and Lands and Trust Services, Indian and Northern Affairs Canada.

FNFP assists First Nations to manage their forest resources and positions them to participate in local and regional forest economic development opportunities. The program works with more than 350 First Nation communities across Canada.



Table of Contents

ACKNOWLEDGEMENTS	I
CHAPTER 1: INTRODUCTION.....	1
CHAPTER 2: A CLASSIFICATION SYSTEM FOR FOREST TENURES ON CROWN LAND.....	5
A NOTE ON METHODOLOGY	7
CHAPTER 3: PROVINCIAL/TERRITORIAL SYSTEMS	8
3.1 NEWFOUNDLAND AND LABRADOR.....	8
3.2 NOVA SCOTIA	13
3.3 PRINCE EDWARD ISLAND.....	18
3.4 NEW BRUNSWICK	20
3.5 QUEBEC	26
3.6 ONTARIO.....	31
3.7 MANITOBA.....	38
3.8 SASKATCHEWAN.....	43
3.9 ALBERTA	50
3.10 NORTHWEST TERRITORIES.....	55
3.11 YUKON	57
3.12 BRITISH COLUMBIA	60
CHAPTER 4: SUMMARY OF ABORIGINAL TENURE ACCESS.....	72
4.1 ABORIGINAL TENURE HOLDINGS ACROSS CANADA	72
4.2 FACTORS INFLUENCING ABORIGINAL ACCESS.....	74
CHAPTER 5: CONCLUSION.....	77

Chapter 1: INTRODUCTION

Canada's forests cover 417.6 million hectares, accounting for nearly 10% of the world's forests and 30% of the world's boreal forests.¹ The majority of forest land in Canada is publicly-owned—88% by provincial and territorial governments and 5% by the federal government. The remaining 6.5%— or 27 million hectares—is privately owned. Much of this latter area of forest lands entered private hands during the period of expanding European settlement during the 1700s and 1800s. Approximately 1.1 million hectares of forested land is considered to be Aboriginal land, which is 0.25% of Canada's total forested area.²

Most of Canada's commercial forest activity occurs on or near Aboriginal traditional territories which are subject to Aboriginal rights, title or treaty considerations. Most Aboriginal communities in Canada are located within commercial forest zones.³ As a result, Aboriginal Peoples have a keen interest in asserting their rights in the management and economic utilization of these forests. Concerns that intensive fibre harvesting has degraded the forest's ability to support the broad range of Aboriginal use of the forest guaranteed under Aboriginal and treaty rights have frequently motivated efforts to gain a say in forest management.

Recognition of the economic opportunities presented by commercial timber and non-timber forest utilization has also been a major factor promoting Aboriginal determination to gain access to the economic benefits of the forest sector. The forest sector is of immense importance to the Canadian economy. At a time of high unemployment and low labour market participation amongst Aboriginal people living on reserves, this sector is seen by many Aboriginal communities to represent their best option for greater economic self-sufficiency.

Recognition of Aboriginal rights to influence and benefit from the way forests within Aboriginal traditional territories are managed and utilized comes from many Canadian institutions outside the Aboriginal community. For example, Canada's National Forest Strategy—developed by a broad-based coalition made up of federal, territorial and provincial governments, industry, and non-governmental organisations—makes a call to:

“Implement institutional arrangements between Aboriginal Peoples and governments that reflect a spirit of sharing responsibilities and benefits for the management, conservation and

¹ Natural Resources Canada. “The State of Canada's Forests: 2002-2003.”

² Derived from the National Forestry Database Program (NFDPP), Compendium of Canadian Forestry Statistics, 1991 inventory data. See <http://nfdp.cfm.org>.

³ For example, some 80% of First Nations are located within the commercial forest areas of Canada.

sustainable use of forest lands and resources; and give effect to land claim settlements, treaties and formal agreements on forest resource use and management.”⁴

The strategy further states that Aboriginal Peoples should enjoy “access to a fair share of benefits from the use of forest lands and resources.”⁵

The Royal Commission On Aboriginal Peoples (RCAP) recognized that access to formal tenure is one key way in which Aboriginal Peoples can begin to regain their rightful role in Canadian forest management and to re-instate the central importance that forests have played in Aboriginal economies. RCAP noted the importance of secured allocations of natural resources from sources off reserve, and called on governments to “rethink their overall allocation policies and licensing systems” in order to increase Aboriginal access to and control over resources.⁶

In the past decade as well, the courts have made significant progress in defining the nature and implications of Aboriginal rights and specific treaty rights in relation to consultation regarding the management of resource use and development activities regarding access to economic benefits from natural resources by Aboriginal Peoples.

Clearly, Canada—across the spectrum of its institutional apparatus—seems to be developing some degree of consensus that Aboriginal Peoples should gain greater influence over, and benefits from, forests. On the road to achieving this shared goal, a challenge will be to measure progress in these areas. Such measurement is needed both to hold governments accountable to their commitments and obligations, as well as to provide a means to test the effectiveness of efforts in achieving desired outcomes. How can this be accomplished on a national scale?

Several areas of indicators can be developed for use in monitoring levels of Aboriginal participation in forest management and forest-based economic activity. One area would include economic indicators such as Aboriginal ownership of forestry business and capital equipment, and employment levels in the forest sector.⁷ A second area where progress can be monitored is the participation of Aboriginal Peoples in the management of forest-based development activities, while recognition of Aboriginal and treaty rights to involvement in the forest through government policy and legislative instruments is a further area that could be measured. Currently, efforts to monitor government policy and Aboriginal management participation have been limited and anecdotal.⁸

⁴ Action Item 3.2 of the National Forest Strategy (NFS) 2003-2008.

⁵ Action Item 3.5 of the NFS.

⁶ RCAP Report. Chapter 4: Lands and Resources. Section 7.2: Improving Access to Natural Resources.

⁷ NAFA has explored levels of Aboriginal employment in the forest sector in a 1999 paper entitled, “Labour Market Prospects For Aboriginal People In The Forest Sector.”

⁸ For example, NAFA prepared a 1998 paper, “Aboriginal Forest-Related Traditional Ecological Knowledge in Canada” which explored some of the ways in which Aboriginal knowledge intersects with forest management in Canada.

Much work remains to be done in all these areas, especially in order to provide quantitative indicators that can relate to progress being made across jurisdictions on a national scale.

One indicator that may be useful in relation to measuring both economic participation and management influence, is the distribution of Crown forest tenure. Under current arrangements, access to appropriate tenure is critical to gaining participation in the forest sector. This applies both to economic participation as well as to participation in a primary role in forest management.

With regard to economic participation, arrangements made in accordance with provincial tenure systems inherently include an investment incentive whereby the private sector receives assurance of wood supply in exchange for the building of wood processing facilities. Tenure systems, in effect, establish the management environment dictating the manner in which economic growth is stimulated and for whom wealth is created. They greatly influence the way in which economic institutions function and forest companies, along with other players in the forest sector, behave in carrying out forest-related activities. To illustrate its far-reaching effect on the Canadian economy, the forest tenure system in Canada has been the primary issue behind the long-standing trade dispute with the USA on softwood lumber.

With regard to forest management, major tenure-holders typically design and implement the detailed management regimes practiced in the forest. Further, major industry players wield considerable influence on how government policy and programs relating to forest management evolve. In Canada, where most forest lands remain under public ownership, access to tenure has been the driving force behind corporate development in Canada's forest industry.

The purpose of this study is to present the results of research undertaken by NAFA to assess the level and kinds of access to tenures by First Nations across Canada's provinces and territories. Particular care has been taken to differentiate between the various forms of tenure that apply to Crown forest lands. Minor forms of tenure, as shall be seen, may provide some access to economic benefits from the forest, but little ability to undertake forest management activities. Major tenures may provide both access to economic benefit, corporate development, and management influence. Alternative tenure arrangements—whereby the tenure-holder is able to manage for diverse values—indicate the greatest potential for Aboriginal influence in forest management for Aboriginal values.

It is hoped that this data will help to assess progress in achieving increased Aboriginal participation in forest management and in the forest sector economy that is so widely called for by Canadian institutions. For example, how well have the commitments made in the National Forest Strategy been achieved? Has the spirit of major court decisions been reflected in the forest? As a first attempt to report on Aboriginal tenure across Canada, the study should also serve to set out a baseline against which future progress can be measured.

Other indicators of progress will also be required in addition to tenure access. To what extent, for example, have governments developed policy instruments that allow them to achieve their commitments to improving Aboriginal access to the forest? It is anticipated that work in these areas will be undertaken in the near future. Together these efforts to monitor progress will provide the

feedback needed by both government and Aboriginal institutions to improve future levels of Aboriginal participation in Canada's forests.

Chapter 2: A CLASSIFICATION SYSTEM FOR FOREST TENURES ON CROWN LAND

In order to compare access to Crown tenure across Canadian jurisdictions it is necessary to establish a common classification system. This way, the level of access to Tree Farm Licenses in British Columbia, for example, can be compared with that of Timber Supply and Forest Management Agreements in Quebec.

Several criteria have been used in the design of this common forest tenure system:

- It should be simple, with only a small number of categories;
- It should be able to accommodate all variations in provincial and territorial tenure forms;
- It should be able to distinguish forms of tenure based on level of management responsibility, economic value, and duration.

Taking these criteria into account, along with a review of provincial and territorial systems, a five-category system has been developed. These are presented in the following table.

The intent of this classification system is to allow for a comparison of Aboriginal access to Crown forests for the purposes of forest management and forest-based economic development. Forest tenure provides one important indicator that provides insight into both these dimensions of involvement in the forest.

Under this system, the 'Alternative' tenure (Group 'A') provides the greatest opportunity currently available for managing the forest for diverse values. Group I tenures provide significant management influence, although clear requirements for managing the forest for achieving commercial objectives limit the flexibility for other values to balance these objectives. Some progress may be made to improve how other values can better co-exist within an industry-oriented forest management regime. Group II tenures are those that focus on providing long-term access to forest timber resources, with less responsibility for the management of the forest. Both Group I and II tenures provide stable access to timber resources, assisting the tenure-holder in accessing capital financing in support of their commercial activities.

Like Group II, III and IV tenures are focussed on providing access to forest resources with little or no management role. However, these are short-term tenures. Group III supports existing commercial capacity but may be less effective than long-term, renewable tenures in building this capacity. Group IV are generally geared toward individual, non-commercial or micro-commercial use of forest resources.

NAFA Tenure Classification System

Tenure Type	Description
Group 'A': Alternative, conservation-based, tenures	<ul style="list-style-type: none"> - 'Alternative' tenures where the tenure-holder has flexibility to manage the forest for other values beyond sustainable supply of fibre and timber.
Group I: Major long-term tenures with management responsibility	<ul style="list-style-type: none"> - Usually 20 years (less in BC) and renewable (evergreen) - Licensee responsible for inventories, long-term management plans, operational planning, protection, roads, silviculture/reforestation - Area-based - Large scale in terms of area and volume
Group II: Significant timber volume supply	<ul style="list-style-type: none"> - Long-term and renewable - licensee responsible for operational planning, protection, reforestation but not long-term management or inventories
Group III: Small-enterprise-oriented tenures	<ul style="list-style-type: none"> - typically shorter-term or long-term but smaller volume - moderate to small scale timber volume access (under 50,000 m³) - licensee responsible for operational planning, protection, reforestation but not long-term management or inventories (although small-scale CAAF⁹ would be an exception) - term is variable, though generally short-term
Group IV: Minor tenures and special permits	<ul style="list-style-type: none"> - cutting permits for personal or small business/specialty use - includes firewood; Christmas trees; NTFPs - permit-holder is not involved in management or reforestation

⁹ CAAF - Abbreviation for a Forest Management and Timber Supply Agreement in Quebec. This is a contract between a forest company that operates a wood processing plant and the provincial government. It specifies the amount of timber that may be harvested on a specific forest territory. CAAFs also define silvicultural activities that must be carried out on common forest area(s).

A NOTE ON METHODOLOGY

Several methodological challenges that needed to be overcome in the course of this study.

First, while all jurisdictions report timber harvest data to the National Forestry Database Program, these are not necessarily tracked according to the provincial tenure system categories. Typically, the national database distinguishes between area-based and volume-based allocations, and between harvests from Crown lands and from private lands. Within jurisdictions, gaining a breakdown in allocated volumes according to form of tenure often required significant effort on the part of government officials. It should be noted that forest inventories and forest planning is continually being undertaken. At the same time, economic conditions are also constantly changing. Therefore it is difficult to use the data on allocated tenure as a unit of static measure as allocated volumes are constantly changing. The results, presented for each jurisdiction below, must be seen as a best effort to describe the allocation of Crown tenures during the current period of time, i.e., 2003.

The second challenge has been to fit the various provincial and territorial tenure forms into the unified classification system developed in the previous chapter. This was necessary to allow comparison on a national level. While this was generally fairly straight forward, judgement calls sometimes had to be made, introducing a potential source of error. The lines between Group III and Group IV were generally the most blurred. It is not felt, though, that this challenge has had any significant impact on the overall picture presented here.

The greatest challenge, however, has been to distinguish tenures held by Aboriginal interests. This information has simply not been rigorously tracked by the provinces and territories in any formal way. Generally, gathering this data required contacts with government managers who were familiar with specific tenure arrangements that had been made with Aboriginal groups. In larger jurisdictions, this typically meant carrying out research at the level of forest district, and by contacting individual First Nations known to hold some form of tenure.

A considerable level of research effort was undertaken in order to generate the picture of Aboriginal access to Crown tenure presented in this study. This research was verified by circulating the study to the key sources, in order to validate the data presented here.

Chapter 3: PROVINCIAL/TERRITORIAL SYSTEMS

A review of the different forms of tenure across Canada indicates a wide diversity of ways in which access to forest resources has been awarded to businesses and individuals. The following section provides a brief overview of forest tenure forms in each province and territory (except Nunavut which has no living forests). Following brief descriptions of the forms of tenure in use in each jurisdiction, a summary of the total areas and volumes under each form is provided. This is followed by a presentation of the level of access that Aboriginal entities have to the various forms of tenures.

3.1 Newfoundland and Labrador

Timber productive forest lands cover nearly 11.27 million hectares in Newfoundland and Labrador (NF&L). Of this, 11.02 million hectares, or 98%, are provincial forest lands, including Labrador. Private interests hold 188,000 hectares of productive forest land, with federal lands accounting for the remainder.¹⁰

3.1.1 Forms of tenure

In Newfoundland, access to Crown timber arises in a variety of ways. These can be divided roughly into two groups; 1) those tenure forms that provide exclusive rights to forest resources in a particular area to private interests, and 2) those which limit the benefit to a right to harvest specific volumes of timber.

Area-based Tenures and Land Grants (Group I)

Timber Licenses

Timber Licenses account for most access to Crown timber in Newfoundland, with nearly 3 million hectares under this form of tenure. These long-term licenses were issued by the Crown for varying periods of time, usually ninety-nine years. They are not renewable at the option of the licenseholder. The rental charge was usually \$2.00 per square mile and a royalty of \$0.50 per thousand board feet for wood processed into lumber. There is no royalty assessed on wood harvested for processing into pulp and paper. There are 23 original ninety-nine year licenses issued to Abitibi-Price (now Abitibi-Consolidated) containing 965,585 hectares. These are due to expire in 2010. Cornerbrook Pulp and Paper (Kruger) has 191 ninety-nine year licenses covering an area of 207,753 hectares due to expire in 2037.

¹⁰ National Forestry Database Program: <http://nfdp.ccfm.org>

Short-Term Timber Licenses

Short-Term Timber Licenses are awarded to operators of timber processing facilities (or in conjunction with an agreement to construct and operate a timber processing facility). The duration of these licenses is for 20 years, and is renewable subject to performance. There are just over 200,000 hectares of Crown land under these licenses.

Short-term license-holders have full responsibility for reforestation, and for a portion of the protection costs. The holder must enter into forest management agreements which are written for a 20-year period. At the end of each five-year period, the plan will be reviewed, at which time the license can be renewed by an additional five years. Thus the license is, in effect, 'evergreen.' These licenses are area-based, and are held by pulp mills with AACs of up to 181,000 m³.

Timber Leases

Timber Leases are a form of land lease, providing exclusive possession of the land for a limited period and subject to terms and conditions specified in the lease. The lessee normally has the right to assign (sublease) all or some of the rights granted to him by the lesser (the Crown). Lump sum payments are usually made in lieu of rents or royalties. Leases often include mineral and water rights as well as timber rights, and usually a renewal clause is included which can be exercised at the option of the lessee. There are 590,780 hectares of Crown land under long-term timber lease arrangements in the province.

Freehold Grants

Freehold, or 'fee-simple', ownership is the most complete form of land tenure possible under British law. It conveys ownership of the land, as well as the resources in, on, or over the land. In 1897, the Reid Newfoundland Company completed construction of the railway across Newfoundland and received from the government 151 freehold lots, as well as other considerations. These lots comprised a total of 1.03 million hectares and were issued to the company between 1897-1912. The lots range in size from several hundred hectares to 260 square kilometres. The timber rights to all the lots were re-purchased over time by the government and by the pulp and paper companies.

Volume-based Tenures (Group III)

There are three ways in which the NF&L government has assigned rights to harvest specific volumes of timber from Crown lands to private interests. These are timber sale agreements; commercial cutting permits, and domestic cutting permits. In each of these cases, cutting rights are limited and are short-term.

Timber Sale Agreements

Timber sale agreements are available to persons who operate processing facilities (other than pulp and paper mills) or who conduct logging operations in the province. Timber sale agreements are awarded based on tender or by negotiated agreements. They are generally valid for a period not

exceeding five years. In the event the volume of timber authorized for cutting under a timber sale agreement has not been cut by the end of the agreement period, the agreement may be renewed for a further term of up to one year, provided that the agreement-holder has cut a minimum of 75% of the authorized timber volume; and has complied with the other terms of the agreement.

Commercial cutting permits

Commercial Cutting Permits (CCPs) give the holder exclusive harvesting rights only. CCPs are issued under the forestry regulations to cut and remove timber from Crown or public land, for sale or barter. A CCP is usually larger than a domestic cutting permit (see below), but can vary widely according to the Annual Allowable Cut (AAC) in each district. A CCP is obtained through application to the forestry office. The provincial government is fully responsible for reforestation and protection. The holders of this permit are not required to own or operate a processing facility. The duration of this permit is one year and it is renewable. The sizes of CCPs vary widely, although they are generally no larger than 300 m³.

Domestic cutting permits

A domestic cutting permit gives the holder exclusive right to cut and remove, from Crown or public land, timber for personal use. The volume of timber to be cut and removed under this permit will depend on the cutting area but will not exceed 25 m³. The timber removed is not to be sold, bartered or used as a gift. Domestic cutting permits can be obtained at any forestry office having Crown land limits. The provincial government is responsible for reforestation and protection. The holders of this permit are not required to operate or open a processing facility. The duration of this permit is one year and it is renewable. These permits are volume-based and are generally smaller than a commercial cutting permit.

3.1.2 Summary of NF&L Forest Tenure

Table 1, below, indicates the relative importance of each of these Crown forest tenure types to the AAC in NF&L.

Table 1. Forest Tenure in Newfoundland & Labrador

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y) ¹¹	Aboriginal-held volume (m ³ /y)
Timber Licenses and long-term leases	Group I	1,402,900	0
Freehold Grants (Abitibi Consolidated)	Group I	601,900	0
Short-term timber license	Group I	No data	0
Timber Sale Agreements and Commercial Cutting Permits	Group III	No data	No data
Domestic Cutting Permits	Group IV	No data	No data
<i>Total</i>		<i>2,004,800</i>	<i>0</i>
<i>Aboriginal volume as a percent of total</i>			<i>0.0%</i>

Source: NF&L Department of Forest Resources & Agrifoods, personal communications. For the 2001-2005 wood supply period.

According to sources in the government, the volume of timber available from these tenures is not precisely tracked, nor is there a system in place to set AACs, or to track harvest, by tenure type. The province treats the timber and property rights conveyed to pulp and paper companies through the ninety-nine year leases as if they were private lands.¹² In 2001 the AAC for Labrador was 488,000 m³, included in the values in Table 1.

¹¹ These are the 2001 to 2005 estimated wood supply figures.

¹² National Forestry Database Program: http://www.nfdp.cfm.org/cp95/text_e/tab21ea.htm

3.1.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

According to sources within the NF&L government, no Aboriginal entities currently hold any forest tenure in the province.

Significant developments

The Innu of Labrador expects to obtain an annual allocation of 50,000 m³ in the near future. Over the past decade, the Innu Nation along with the provincial and federal governments, have been negotiating a modern treaty within the framework of Canada's comprehensive land claims process. As a matter of policy and law, the province has an obligation to consult with the Innu on decisions which may impact upon land and resources that are the subject of the claim. One outcome of these land claim negotiations, therefore, will be greater Innu control over the management of lands and resources in their territory. The Innu have always been interested in becoming active in the forest sector, but lacked the capacity to do so. Currently, only about 50,000 cubic meters is being utilized by a few local operators. Unlike the island of Newfoundland, all land in Labrador is unalienated Crown land. Since 1973, there have been many permits issued to the Innu over the years that could potentially fit into the Group 'A' of the NAFA classification system, but the details have not been tracked by provincial resource managers. These permits were issued primarily for personal subsistence use.

In January of 2001, the Innu Nation and the NF&L government signed a Forest Process Agreement. This agreement aims to improve operational standards and to implement an ecosystem-based forest management plan in a co-management environment. It provides for the full participation of the Innu Nation in management planning, designing practices and prescriptions for ongoing operations, and exploring models for co-management of the resources.

Activities to be undertaken during the term of the agreement include: completion of a forest management plan for Forest Management District 19 (Goose Bay area); establishment of an Interim Forest Activity Committee to guide forestry operations pending completion of the plan; and, negotiation of a long-term co-management agreement to define future forest management arrangements between government and the Innu Nation. This agreement will help in developing partnerships between the Innu Nation and the provincial government on managing the renewable resources of Labrador. The agreement will see the province committing in excess of \$520,000 in 2001-2002 towards the conclusion of the forest management plan, advancing the development of the Labrador forest industry.

In addition to these land claim-related developments, another key factor that will contribute to increased Innu access to forest tenure is increased forestry capacity through training initiatives. Recently, for example, the Innu Nation has developed a Forest Guardian Program which conducts pre-operational planning and is intended to clearly identify and map any streams, sensitive areas, slopes and wildlife buffers prior to the authorization of logging activities on Innu lands.

Another factor of significance is the location of commercial timber supply in Labrador. Seventy-five percent of the core timber supply is on the south side of the Churchill River. The opening up of access to the south side of the Churchill River by the construction of the Labrador highway is expected to create an opportunity for all operators, especially the Innu.

3.2 Nova Scotia

Over two-thirds of Nova Scotia's 3.76 million hectares of timber-productive forested lands or 2.62 million hectares are held under private ownership. Most of the remainder is held by the provincial Crown (1.03 million hectares), with a small portion (2%) held under various federal arrangements, including 11,000 hectares of Aboriginal lands.¹³ The current level of Crown forest holdings reflect efforts by the province to bolster the inventory of public lands by re-purchasing tracts that had previously been granted to private land-owners. Of the privately owned forest lands, one-third is considered to be under industrial forest management, while the other two-thirds is held in the form of over 30,000 small woodlots.¹⁴

A substantial portion of Crown forest lands is managed for objectives other than timber. In 1999, responsibility for administration of nearly 20% of Crown lands was transferred to the Department of Environment and Labour, under the *Wilderness Areas Protection Act*. The timber harvest in Nova Scotia was estimated at 6.18 million m³ for 2001. Of this, 5.63 million m³ was taken from private lands, while 0.55 million m³ was from provincial Crown lands.¹⁵

3.2.1 Forms of tenure

For timber management, provincial Crown forest tenure is broken down into several categories. These include large, long-term area-based tenures that were allocated in the 1960's, short local permits for smaller ventures, volume utilization agreements, land leases, and letters of authority for very small harvests.

License and Management Agreements (Group I)

There are two large long-term License and Management Agreements (LMAs) between private companies and the province of Nova Scotia. Both of these agreements are area-based and arise from special legislation. These agreements can be placed under Group I of NAFA's land tenure categories. Scott Maritime Pulp and Paper and Stora Enso hold the agreements respectively.

¹³ National Forestry Database Program, Compendium of Canadian Forestry Statistics: <http://nfdp.ccfm.org>.

¹⁴ Nova Scotia Department of Natural Resources forest inventory, 1999 data. See <http://www.gov.ns.ca/natr/forestry/inventory/pro1.pdf>

¹⁵ NFDP (http://www.nfdp.ccfm.org/cp95/data_e/tab55e_1.htm and following).

Scott Maritimes Limited Agreement Act

The Scott Agreement was originally legislated in 1965. This agreement assigns full management, protection and reforestation responsibilities to the license-holder. In addition, the company was obligated to construct a mill in Pictou County that began operation in March 1967. The mill stipulation includes an agreement that the licensed land will be operated under a forest management plan. The agreement does not exclude the use of the licensed land for other purposes, such as mining, trapping, hunting, fishing, or any other use so long as the rights granted to the company are not materially prejudice.

Stora Forest Industries Agreement Act

The Stora Agreement between the province of Nova Scotia and Stora Enso was ratified in the 1960s. The purpose of this agreement was to place the Crown lands in the eastern portion of Nova Scotia under experienced forest management so as to generate increased economic benefit to the province from these Crown lands. The agreement includes a mill stipulation, and, like the Scott Agreement, does not exclude the use of the licensed land for other purposes. It has a term of fifty years, and assigns full management, protection and reforestation responsibilities to the holder.

In 2001, the Unama'ki Institute of Natural Resources entered into an agreement with Stora Enso to access a portion (119,625 m³) of the volume allocated under the Stora Agreement and to participate in management of the associated forest lands. The Unama'ki Stora Enso Agreement is discussed below.

Forest Utilization Agreement (Group II)

The Forest Utilization Agreement (FUA) is a volume-based harvesting permit that may be awarded under the provisions of the *Crown Lands Act* to those who have (or agree to build) a processing facility in the province. Forest management, reforestation and protection responsibilities under this form of tenure rest with the government, although they may be partially assigned to the holder under specific agreements. Agreement-holders provide a silviculture fee as a portion of their stumpage payments. The duration of the FUA is a maximum of ten years, renewable for one ten year period. Tenures are usually smaller than LMAs, although there are no specific size restrictions for FUAs.

Timber License (Group III)

The Timber License (TL) is a short-term, local permit that grants volume-based harvesting rights, as provided for under the *Crown Lands Act*. The area rights are not exclusive — the area from which the allocated volume may be harvested may overlap with volumes allocated to other harvesters. TLs are issued for periods no longer than two years, nor renewed for periods longer than one year. There is no processing facility requirement for holders of this type of license. The government is responsible for forest management, reforestation, and protection, with the license-holder paying a silviculture fee as a portion of stumpage. This type of permit is issued to commercial firewood cutters.

Crown Land Leases/Easements/Rights-of-way (Group IV)

Crown Land Leases may be granted to allow exclusive use of Crown lands for specified purposes, under specified conditions. These may include, as examples, leases for operating camp sites on Crown land, or for maple syrup production. Easements (semi-exclusive or non-exclusive) or rights-of-way may be granted to allow passage or flow of resources or other materials across Crown lands. Issuance of these permits is legislated under the *Crown Lands Act*.

Permits and Letters Of Authority (Group IV)

Letters Of Authority are issued to cover a variety of different needs for individuals. A Letter Of Authority may be granted to an individual for a small allotment of wood for personal use. This is a volume-based agreement, usually used for firewood, craftwood uses, etc. Letters Of Authority do not allow timber harvests for domestic construction or re-sale. They may be used to support small community projects. The volumes allocated are variable, and considered negligible.

The Minister of Natural Resources may designate an area of Crown forest as a fuelwood cutting area or as an area for some other use deemed appropriate. The Minister may then issue permits to remove timber and other resources from the designated area, provided the timber is used for domestic purposes only and not for resale. This type of permit is issued for a maximum of one year, renewable for a maximum of one year.

3.2.2 Summary of Nova Scotia forest tenure

Table 2, below, indicates the relative importance of each of these Crown land tenure types in Nova Scotia.

Table 2. Forest Tenure in Nova Scotia

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y)	Aboriginal-held volume (m ³ /y)
License and Management Agreement	Group I	840,000	0
Forest Utilization Agreement	Group II	178,400	0
Unama'ki Stora Enso Agreement	Group III	(included in the Group I LMA volume)	119,625
Timber License, Permits, Letters of Authority, Leases	Group IV	10,000	0
<i>Total</i>		<i>1,028,400</i>	<i>119,625</i>
<i>Aboriginal volume as a percent of total</i>			<i>11.6%</i>

Source: Nova Scotia Department of Natural Resources, Regional Services Branch. Data from last calculation period (2001/2002). Note: The Aboriginal allocation under the Unama'ki Stora Enso Agreement is classified as Group III tenure given that it is currently a short-term agreement. This allocation is part of the provincial LMA volume. Should this arrangement become long-term, it could become an example of a jointly-held Group I tenure.

3.2.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

There are currently no special provisions in Nova Scotia legislation for Aboriginal people to gain access to forest tenure. This has led to some conflict in areas surrounded by existing land tenure agreements. The most notable development has been a case against 35 Mi'kmaq accused of illegal logging. The case is currently in the Nova Scotia Court of Appeals and has yet to be resolved. The Mi'kmaq assert they do not require licenses or permits to extract resources from Crown lands due to

the terms of early treaties (e.g. 1700s) that ensured on-going access to Crown lands and their resources by Aboriginal Peoples.¹⁶

It is worth noting however, that there is an existing agreement between Stora Enso and five Mi'kmaq First Nations, making up the Unama'ki Institute of Natural Resources (UNRI), to operate on Crown land. This agreement allows for increased First Nations participation in the Cape Breton portion of Stora's volume allocation over time. The UNRI currently has access to 29,000 m³ of softwood and 90,625 m³ of hardwood for a total annual allocation of 119,625 m³, under an agreement with an LMA-holder (Stora Enso Port Hawkesbury Ltd). Although they do not hold the tenure, the agreement does provide for a formal management committee and has legal status.

Under the two-year, 2001 Unama'ki Stora Enso Agreement, a joint Unama'ki/Stora Enso Forest Planning Committee is established to review and make recommendations to the Stora Enso company on the long-term forest management plan and on the annual forest management plans that relate to Crown forest lands within Cape Breton. The agreement also establishes a sliding scale for timber harvesting by Mi'kmaq contractors working for Stora Enso or UINR. Beginning at 10% of the 2002 harvest, the share allocated to these contractors will, subject to renewal of the agreement, increase to up to 25% of the 2005 to 2009 harvests, and up to 50% of the 2010 and subsequent harvests. Mi'kmaq contractors will be allocated silviculture contracts based on the area harvested by Mi'kmaq harvesters. Under the agreement, the UINR is obligated to make all timber available for purchase by the Stora Enso mill. UINR must also comply with the company's standard logging and silviculture contract requirements. Stora Enso also provided letters of commitment addressing Mi'kmaq employment at the Port Hawkesbury mill, scholarships, procurement, burial sites, wildlife management and annual donations to the signatory communities.

Apart from access to timber harvesting under the Stora Enso license, no other Aboriginal access to forest tenure has been achieved in Nova Scotia.

Significant developments

Crown wood supply in Nova Scotia is tight. As previously noted, significant areas of Crown forests have been to the Department of Environment and Labour for uses not related to the logging industry. The position of the Nova Scotia government is that there is no supply left to allocate to First Nations. There have not been any new long-term allocations awarded since 1993. First Nations in Nova Scotia were not involved in those allocations.

The Unama'ki Stora Enso Agreement came to fruition as a result of dissatisfaction amongst First Nations with the existing land tenure system, culminating in Aboriginal activism. In 1998/99, thirty-five Mi'kmaq loggers were charged with illegal harvesting of timber on Crown land. The provincial trial court convicted the loggers in 2001, fining them \$280 each. The decision was appealed to the

¹⁶ In New Brunswick, Joshua Bernard, a Mi'kmaq logger charged with illegal possession of Crown timber, was recently acquitted by the New Brunswick Appeal Court under a similar case.

Nova Scotia Supreme Court, where it was upheld a year later. The case has been appealed to the Nova Scotia Court of Appeal in 2003, the results of which remain pending.¹⁷ This case raised the profile of the issue of Mi'kmaq access to Crown forest resources and encouraged First Nations and Government leaders to negotiate the Unama'ki Stora Enso Agreement.

Another factor that will influence the future of First Nations tenures in Nova Scotia and throughout Canada is the success of the Pictou Landing First Nation. The Pictou Landing First Nation received SmartWood certification for its forest management practices on March 1, 2000. This initiative has influenced many, and in Nova Scotia there are a small but growing number of people looking for alternative and community-based approaches to forest management. This could be a very important factor contributing to future allocation of forest tenure. The community-based approach to forestry has become very popular given current concerns about wood shortage and a growing interest in sustainable forest management and environmental stewardship, the time is right for a community-based approach to forest management. The Pictou Landing First Nation holds approximately 405 hectares of forest land within their reserve. Their management plan is in keeping with the principles and philosophies of the Forest Stewardship Council (FSC). The Pictou Landing woodlot was the fifth certified woodlot in Canada, the first in Nova Scotia and remains the only certified woodlot on a First Nations reserve in Canada.

A third factor that could contribute to the future participation of First Nations in the Nova Scotia forest industry is their relationship with large private land-holders. Future progress in this direction might generate employment opportunities for First Nations. It may not, however, serve to provide access to forest tenure.

3.3 Prince Edward Island

PEI's timber-productive forest is largely found under private land ownership. Of a total 279,000 hectares of productive forest in the province, 257,000 hectares are privately owned. Only 20,000 hectares are under provincial ownership, while approximately 1,000 hectares are Aboriginal lands.¹⁸ The extent of private land ownership dates back over 200 years, when parcels of land were granted to settlers by the British Monarchy through a lottery held by the King in 1767. Under PEI's *Land Protection Act*, no one corporation can own more than 1,214 hectares of land, and no one individual can own more than 405 hectares of land.

3.3.1 Forms of tenure

¹⁷ Nova Scotia Government press release. See <http://www.gov.ns.ca/news>. The fact that the New Brunswick Court of Appeal found that a Mi'kmaq harvester was not guilty of illegal timber harvesting is of importance to Nova Scotia as well. Here again, the courts seem to be providing important encouragement to negotiate.

¹⁸ National Forestry Database: <http://nfdp.ccfm.org>.

Today, the average parcel size is 12 hectares. These parcels are referred to as woodlots, and are owned by an estimated 16,000 private landowners. The woodlot owners are responsible for the management of their land, although the government offers education and consulting services. Crown land in PEI today arises from government purchases from the private sector and due to non-payment of taxes. There is currently one timber processing facility in PEI, which is owned by the J.D. Irving Corp.

There are two First Nations in PEI—the Abegweit First Nation and the Lennox Island First Nation. These groups each have reserve land and parcels of private land, though none of it is currently being operated on a commercial forestry basis. There have been some forestry operations in the past, and some recent special projects, including the establishment of black and white ash on Lennox Island. There are currently negotiations surrounding the conversion of their private land parcels to reserve land status.

Crown Forest Land

Forest Products Sales Permit (Group IV)

The forest products sales permit gives the holder exclusive rights to harvest timber or other forest products. The Minister may grant a Crown forest product sales permit to cut, harvest or remove such quantities of timber and other forest products as he considers to be sustainable based on the District Crown Forest Land Management Plan. A management plan must be provided for a period of twenty years. Forest Products Permits are typically very small in scale (with regards to volume).

There is no processing facility requirement with this permit, although the permittee must harvest according to utilization standards, and environmental restrictions. The duration of this permit is usually up to one year, and may be renewable depending on the case. Tenures under this system are usually issued to small sawmills and for personal use. The permit may specify either area or volume allotments.

The Minister is responsible for the conservation, utilization for best end use, protection and integrated management of Crown forest lands including harvesting, regeneration and improvement of the timber resource, protection of timber and unlawful harvesting, damage or removal.

3.3.1 Summary of PEI forest tenures

Table 3, below, indicates the small scale of Crown forest tenure allocations in PEI. For comparative purposes, harvests from private lands were in the range of 400,000 to 600,000 m³ per year during the late 1990s and early 2000s.¹⁹

¹⁹ National Forestry Database Program.

Table 3. Forest tenure on Crown land in PEI

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y)	Aboriginal-held volume (m ³ /y)
Forest Products Sales Permits	Group IV	42,900	0
<i>Total</i>		<i>42,900</i>	<i>0</i>
<i>Aboriginal volume as a percent of total</i>			<i>0.0%</i>

Source: The State of Canada's Forest Report (2001/2002): Estimates are from the latest period calculated (1990-2002).

3.3.2 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Two First Nations—Lennox Island and Abegweit—are found within PEI. These comprise a total reserve land base of 678 hectares. They hold no forest tenure and are not involved in commercial forestry operations.

There are two First Nations in PEI—Abegweit and Lennox Island. The Abegweit First Nation has been involved in forestry operations in the past, but is not currently active. They do possess a small products mill that used to operate pre-1999. They milled wood from reserve land for band use. The Lennox Island band has carried out some forestry projects, including an effort to establish black and white ash on the island. Overall, though, activity in this sector is minimal.

Significant developments

The future of Aboriginal access to forest resources in PEI will depend upon resolution of current land claim negotiations that may lead to acquisition of additional reserve lands. The limited level of Crown forest lands in the province (under 50,000 m³ total annual harvest) means that the potential for transfer of significant Crown land is low. Arrangements could be made to allow for transfer of land through purchase of private-owned lands on the open market.

3.4 New Brunswick

Timber-productive lands make up some 5.95 million hectares of land in New Brunswick. Of this area, 2.89 million hectares (49%) are owned by the province, and 2.99 million hectares (50%) are

privately owned.²⁰ Federal ownership—including a very small area of First Nation reserve lands—accounts for the remainder. Large companies hold 40% of the privately-owned timber-productive forest lands, with the remaining private forests held in the form of small woodlots, numbering some 40,000. The timber harvest in New Brunswick was estimated at 11.87 million m³ for 2001.²¹ Of this, 6.72 million m³ was taken from private lands, while 5.12 million m³ was from provincial Crown lands.

3.4.1 Forms of tenure

Access to timber from Crown land is allocated under the following tenure arrangements.

Crown Timber License (Group I)

The Crown Timber License (CTL) gives the holder exclusive timber harvesting rights, as well as the authority to allocate sub-licenses. There are currently ten CTLs in New Brunswick, distributed to large industrial companies. A CTL is only issued to applicants who either currently own or operate a wood processing facility in the province, or who agree to construct and operate such a facility. CTL-holders must submit an industrial plan, a management plan and an operating plan. They must carry out all reforestation and forest protection activities. The licensee is also obligated to make available a specified volume to other sub-licensees within the license area. The duration of a CTL is 25 years, renewable every five years. These licenses are area-based, with average annual volumes of 500,000 m³. CTLs are typically held by the large industrial companies. In New Brunswick there is currently 5.1 million m³ allocated to large industrial licensees under CTLs. However, of this amount, 2.1 million m³ is re-allocated to sub-licensees under Crown Timber Sub-Licenses (see Table 4, below).

Crown Timber Sub-Licenses (Group III)

The Crown Timber Sub-License (CTSL) gives harvesting rights to a volume of a specified species and class of timber within the allocated AAC of a major CLT-holder. CTSLs are only issued to companies with wood processing facilities in the Province. There are currently between 70 and 80 CTSLs in New Brunswick. The sub-license-holders undertake an obligation to maintain a specific productive capacity of their wood processing facility, in accordance with an industrial plan. CTSL-holders must co-operate with the primary CLT-holder in the preparation and revision of the operating and management plans. CTSLs range in annual volume between 400 to 400,000 m³/y. A sub-license can be extended at the end of each year by one year.

²⁰ NFDP (cited above).

²¹ NFDP (http://www.nfdp.cfm.org/cp95/data_e/tab55e_1.htm and following).

Special Timber Agreement with First Nations (Group III)

In 1998, the New Brunswick government made five percent of the Crown forest AAC available to First Nations in the province. There are fifteen First Nations in New Brunswick, each having access to a portion of the AAC relative to their community size. To date, thirteen of these First Nations have negotiated volumes valid for a five-year period. The remaining two agreements with Island Lake First Nation and Matawaska First Nation are pending. Each community must adhere to a special 'Interim Harvesting Agreement' that specifies a maximum volume and sets out operating cost responsibilities.

The First Nation licenses overlap with existing CTL management areas, thus becoming part of the CTL licensee's management plan and part of the total provincial AAC. The respective First Nation is responsible for all costs associated with harvesting wood plus the construction of roads. The primary licensee is responsible for protection and reforestation. The province has distributed these special agreement allocations evenly across CTL areas throughout province. All timber harvested under these agreements must be sold to mills in the province.

Crown Cutting Permit (Group IV)

These permits are issued primarily for the harvest of boughs in support of New Brunswick's substantial Christmas wreath industry.

3.4.2 Summary of New Brunswick forest tenures

Table 4, below, indicates the relative importance of each of these Crown land tenure types in New Brunswick.

Table 4. Forest Tenure on Crown land in New Brunswick

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y)	Aboriginal-held volume (m ³ /y)
Crown Timber License	Group I	3,052,310	
Crown Timber Sub-License	Group III	2,100,000	
Special First Nations Timber Agreement	Group III		233,800
<i>Total</i>		<i>5,152,310</i>	<i>233,800</i>
<i>Aboriginal volume as a percent of total</i>			<i>4.5%</i>

Source: New Brunswick Natural Resources and Energy. Volumes are allocated annual levels for the 1997-2002 period. All Aboriginal access is over-lapping with the major tenure, and falls into Group III.

3.4.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Under the interim harvesting agreement, New Brunswick First Nations have access to a share of both softwood and hardwood components of the Crown forest AAC. Aboriginal access to New Brunswick forest accounted for 5.1% of total volumes harvested in the 2001-02 period. This was the last year of a five-year harvest allocation cycle. The tenure form falls within NAFA's Group III category.

Currently, the Eel Ground First Nation owns and operates the Straight Arrow Forest Products mill. The wood supply for this small value-added mill comes from reserve forests and from the open market.

The year 2002 marked the beginning of the second five-year term that the Aboriginal communities will have had access to their five percent share. It is strongly hoped among the First Nations communities that this interim measures agreement will be renegotiated in the near future, resulting in access to a larger share of the provincial timber supply. This will not occur without difficulty for

the reason that any added share First Nations get, will have to result in the ceding of volume from the industrial companies in the province.

Table 5 presents the annual allocations to First Nations for the 2002-2007 provincial AAC calculation period.

Table 5. Annual volumes allocated to NB First Nations from 2002/07 AAC

First Nation	Allocated Volume (m ³ /y)		
	<i>Softwood</i>	<i>Hardwood</i>	<i>Total</i>
Eel River	9,500	3,000	12,500
Pabineau	4,000	1,000	5,000
Burnt Church	21,200	7,000	28,200
Eel Ground	13,360	3,000	16,360
Red Bank	8,820	1,000	9,820
Big Cove	37,500	10,000	47,500
Fort Folly	1,500	500	2,000
Oromocto	8,000	1,500	9,500
St. Mary's	19,000	7,500	26,500
Bucktuch (pending)	1,500	500	2,000
Indian Island (pending)	2,500	500	3,000
Madawaska	3,500	1,000	4,500
Kingsclear	12,500	2,500	15,000
Woodstock	12,000	3,000	15,000
Tobique	29,000	8,000	37,000
Total First Nation Allocation	183,880	50,000	233,880

Source: New Brunswick Natural Resources and Energy, 2003

The allocation of the volume within the band itself varies with each First Nation. For example, the Eel Ground First Nation band office hands out volume allocations on a first come, first served basis. The operators are community members, and the minimum requirements to be eligible to receive a cut share are possession of the proper safety equipment and a chainsaw. The volume that Eel Ground First Nation has access to, provides approximately fourteen days of work for a small crew. The revenue from the timber harvested, based on mill receipts, goes to the band council, which in turn pays the field crew. While there is no restriction on which mill the lumber can be sold to, the

wood must be sold within the province. The province collects stumpage fees, however, these are returned to a band fund for use as the bands see fit. In addition to creating some field jobs, the small volume allocation sustains a trucking enterprise owned by Eel Ground First Nation. The contract trucking company pays royalties to the band, so all revenue from harvesting and transport ultimately cycles through the First Nation community.

The Woodstock First Nation in western New Brunswick has a similar policy for offering access to employment opportunities within the band. The operators request to participate, and are eligible if they meet the minimum equipment requirements. While they do not have to be from the Woodstock First Nation, it is preferred. The work is divided out to the various contractors in strips of land that they harvest. The community pays the trucking costs and the remaining revenue goes to the contractors. The trucking company is owned by Woodstock First Nation, so most revenue gets re-invested in the community. The Woodstock First Nation indicated that they could easily harvest a greater annual allocation. This view is shared by most of the other First Nation communities, indicating a definite interest in having access to more volume.

Based on a handful of interviews, the following scenario is typical of New Brunswick First Nation forestry. The harvestable volume is allocated to crews of three or more for the actual work. The wood is then sold to a mill, and the revenue goes to the Tribal Council or band council, which in turn pays the crews, the transport costs, and any other associated costs. Remaining revenues go to the community. Typically all contractors or crews are members of the community itself.

Significant developments

One of the most important factors that will influence the future allocation of forest resources in New Brunswick are recent court decisions addressing Aboriginal and treaty rights as they relate to personal and commercial use of Crown resources. The consequences of these decisions are dramatic and complex.

The development of the Interim Harvesting Agreements between the province and New Brunswick First Nations is an indirect result of a court case involving illegal logging that occurred in 1997 between Thomas Paul, of the Mi'kmaq Nation and the Crown. The position Mr. Paul took in his defence was that according to the terms of Dummer's Treaty of 1725, the land, and all that it grows, belongs to Indians. The New Brunswick justice presiding over this case concluded in favour of Mr. Paul, stating that neither Dummer's Treaty nor the Royal Proclamation of 1763 extinguished native rights in the land, and therefore recognized Canada's Aboriginal communities have rights to hunt, fish, trap, and to cut trees on all Crown land. The preliminary court ruling in favour of Mr. Paul spurred many tense stand-offs between native and non-native loggers until the New Brunswick Court of Appeal overturned the lower court decision and found Paul guilty. Mr. Paul was ultimately charged under New Brunswick *Crown Lands and Forest Act* with illegally cutting valuable timber on Crown land, land on which a license to harvest timber was held by someone else. Since the Paul case, there have been others that continue to challenge the current land tenure arrangements in New Brunswick, such as the unresolved illegal logging case against Mi'kmaq logger Joshua Bernard, and a group of Nova Scotia Mi'kmaq loggers.

The Paul case led to a concerted effort by the government to determine the scope of treaty rights and to reduce uncertainty around the issue of Aboriginal rights to Crown land. It brought a sharp awareness to the provincial government of the need for some policy changes surrounding resource allocation. The Paul case spurred negotiations that resulted in the five percent volume allocation announcement. The decision, however much needed, at the time, presented a capacity issue for some of the First Nations. In the past, many of the First Nations were forced to hire outside contractors to do their harvesting and management planning because there was no one with the required expertise within the community. More recently the bands are increasingly skilled and knowledgeable about forest operations and are becoming more involved in the planning process. Generally speaking, the bands have harvested all their allocated volume by the end of the five-year planning period, and most are now capable of operating a larger volume allocation, if given the opportunity.

As a result of the above-mentioned cases, there has been a slow shift in government perception toward recognition of Aboriginal rights and toward consideration of the need for Aboriginal community economic development. The clear message from the courts is that government must negotiate solutions to resource conflicts.

3.5 Quebec

Timber-productive lands make up some 53.99 million hectares of land in Quebec. Of this area, 45.91 million hectares (85%) are owned by the province, and 7.77 million hectares (14%) are privately owned.²² Federal ownership, including 168,000 hectares of Aboriginal lands, accounts for the remainder. The timber harvest in Quebec was estimated at 40.59 million m³ for 2001.²³ Of this, 10.22 million m³ was taken from private lands, while 30.23 million m³ was from provincial Crown lands.

3.5.1 Forms of tenure

Forest tenure in Quebec consists of one major tenure system, and several smaller licenses available for sugar maple operations, firewood and miscellaneous permits. The forest Minister determines the amount of wood that can be sustainably harvested annually. This figure is used as the AAC, out of which wood volumes are allocated.

Timber Supply and Forest Management Agreements (Group I)

The Timber Supply and Forest Management Agreements (TSFMA) is the major form of tenure for Quebec Crown forest lands. It is valid for 25 years, renewable every five years. Tenure-holders are

²² NFDP (cited above).

²³ NFDP (http://www.nfdp.cfm.org/cp95/data_e/tab55e_1.htm and following).

responsible for all silviculture treatments and protection needed to maintain the annual yield within the forest area indicated in the agreement. Holders of this type of tenure are obligated to construct or operate a processing facility. Under a TSFMA, holder obtains the right to harvest a specific volume of a given species each year, based on the holder's mill timber and fibre needs.

Forest Management Agreement (Group II)

A Forest Management Agreement (FMA) may be provided to companies that do not own or operate processing plants. The term of the FMA is ten years, and is extendable. FMAs are volume-based, entitling the holder to harvest a volume of timber that must be sold to processing plants. The holder of the agreement has reforestation and protection obligations. Currently, the only FMA issued in Quebec is to the Kitigan Zibi First Nation.

Forest Management Contracts (Group III)

A Forest Management Contract (FMC) is a contract between the Minister and a single contract-holder entrusted with the management of an entire forest. The contract is for a variable duration, and the holder must comply with requirements similar to those imposed on TSFMA-holders. The contract-holder provides management plans, conducts reforestation activities, and provides protection services. An FMC entitles the holder to obtain, each year, a management permit to supply wood to processing facilities.

3.5.2 Summary of Quebec forest tenures

Table 6, below, indicates the relative importance of each of these Crown land tenure types in Quebec.

Table 6. Forest Tenure on Crown land in Quebec

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y)	Aboriginal-held volume* (m ³ /y)
TSFMA	Group I	35,125,200	408,500
FMA	Group II	147,000	147,000
FMC*	Group III	455,162	96,881
<i>Total</i>		<i>35,727,362</i>	<i>652,381</i>
<i>Aboriginal volume as a percent of total</i>			<i>1.8%</i>

Source: Quebec Ministry of Forests, personal communication, based on 2003 data. Note: FMC volumes are estimated from area allocations based on a sustainability calculation developed by the Quebec Ministry of Forests specific to the applicable forest regions. It should be noted that major agreements are in place or being negotiated to provide allocations of timber under Group I tenure to the Cree, Innu and the Mamuitun Tribal Council. A total increase of 1,130,000 m³ over three years is involved in these agreements.

3.5.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Aboriginal interests in Quebec hold tenures on Crown lands totalling 652,381 m³/y, accounting for 1.8% of the total harvest volume in the province. Table 7, below, details these holdings. It should be noted that these figures may underestimate Aboriginal influence over management of resources within traditional territories in Quebec. The province has, for example, developed policy²⁴ stating that Quebec will encourage management by Aboriginal nations “of certain activities on specified lands, through agreements.” Such a policy could lead to innovative Group ‘A’ tenures depending on the specifics of the resulting agreements.

²⁴ “Partnership, development, achievement” Aboriginal Affairs, Government of Quebec. April 1998.

Table 7. Aboriginal tenure holdings in Quebec

Provincial Classification	NAFA Classification	Aboriginal-held tenures	
		First Nation	Volume (m ³ /y)
TSFMA	Group I	Les industries Piékouagami inc (Mashteuiatsh FN)	78,000
		Scierie Opitciwan (Obedjiwan)	77,000
		Scierie Tackipotcikan (Wemotaci)	84,000
		Mishtuk Corporation (Waswanipi Cree)	166,000
		Gestion A. Blacksmith Inc. (Mistissini)	3,500
FMA	Group II	Entreprises Mitigog Inc/ (Kitigan Zibi Anishinabeg)	147,000
FMC [*]	Group III	Obedjiwan	42,662*
		Listuguj Mi'qmaq	5,512*
		Wemotaci	8,312*
		Betsiamites	25,723*
		Les Atikamekw de Manawan	14,172*
		Renovation Kakuss (Matimekosh)	500*
Total Aboriginal Allocation			652,381

Source: Relations avec les Autochtones, Gouvernement du Québec, Ministère des Ressources Naturelles, Forêt, Québec.

* Volumes are estimated from area allocations based on a sustainability calculation developed by the Quebec Ministry of Forests specific to the applicable forest regions.

Any progress that has been made in Quebec has not come to pass without difficulty. In 1988 the Algonquins of Barriere Lake began to voice their concern over the management and ownership of their traditional lands. The lack of response by the government resulted in many episodes of protest, including several blockades. In 1990, despite their protests, the province began to issue TSFMA's to forestry companies within the Algonquin traditional territories.

After repeated appeals to the government, the Algonquin's managed to bring both the federal and provincial governments to the table in 1991, resulting in the signing of a 'Trilateral Agreement'. This

agreement, which recognized the role of the Algonquins in land-use decisions within their traditional territories, was the first of its kind in Canada. The agreement covers an area of one million hectares (10,000 square kilometres) and includes a major portion of the Algonquins traditional use area.

Significant progress has been made toward completion of an integrated resource management plan; however, the Trilateral Agreement continues to be susceptible to changing political and fiscal environments. Protests and confrontational suspension of forestry operations have been recently carried out in order to pressure for the continued funding needed to support implementation of the integrated resource management plan.

Significant developments

A factor reported by Quebec government officials as contributing to increased tenure allocation to Aboriginal Peoples in the province has been the Waswanipi Model Forest. The Waswanipi Model Forest is the newest in Canada and the only one that is led by Aboriginal Peoples. It is made up of 209,685 hectares of boreal forest located within the traditional territories of the Waswanipi Cree. More than one dozen partners have come together in the Waswanipi Cree Model Forest. They include representatives of the Cree, government, industry, academia and non-governmental organizations. The goal of this model forest is to maintain and enhance the quality of the Cree traditional lands, known as *Eeyou Istchee*, to benefit Cree and other users and to assure the economic, social and cultural development of the Waswanipi Nation. All activities of the Waswanipi Cree Model Forest reflect and address Cree interests and concerns with respect to the sharing of resources.

Approval of an agreement between the Quebec Cree and the Government of Quebec has also made a significant impact on the management of forest resources in Quebec. The agreement secured provincial funds exceeding \$3.6 billion to be distributed to the Cree over the next half century, in exchange for an agreement by the Cree not to oppose regional development and to drop lawsuits against the government. The agreement settles previous forestry disputes as major adaptations will be made to ensure that Quebec forestry policy respects Cree rights. A joint Cree-Quebec forestry board will review forestry regulations and future plans and provide recommendations to conciliate forestry activities with Cree traditional land use. In addition, an allocation of 280,000 m³ over the next three years has been made available to Cree businesses.

Other major allocations of timber are also in place or being negotiated. The Mamuitun Tribal Council is to gain 600,000 m³, while the Innu of Natashquan, in a partnership with local municipalities, is to gain 250,000 m³. The tenure arrangements associated with these allocations are reported to be TSFMA's.²⁵

²⁵ Quebec Ministry of Natural Resources, Wildlife, and Parks. Personal Communication, 2003.

3.6 Ontario

Timber-productive lands make up 42.2 million hectares of land in Ontario. Of this area, 36.35 million hectares (86%) are owned by the province, and 5.54 million hectares (13%) are privately owned.²⁶ Federal ownership including 141,000 hectares of First Nation reserve lands accounts for the remainder. Most of the privately-owned timber-productive forest lands (87%) are held by non-industrial land-owners. The total timber harvest in Ontario was estimated at 24.10 million m³ for 2001.²⁷ Of this, an estimated 2.19 million m³ was taken from private lands, while 21.89 million m³ was from provincial Crown lands.

3.6.1 Forms of tenure

For the purpose of forest management, Ontario's Crown forest lands are organized into three major zones, the Northern Boreal in the provinces far north, Southern Ontario, and the Planning Area, located between the other two zones. The Planning Area is the area of the province within which the majority of forest management takes place. It encompasses most the province's Crown-owned timber-productive lands, and is subdivided into some 67 Management Units each having individual management plans.²⁸ Of the 33.6 million hectares of timber-productive land included in the planning area, 21.8 million hectares is Crown forest managed for timber harvest.²⁹

Sustainable Forest Licenses (Group I)

Most of the Planning Area is managed under large, area-based tenures called Sustainable Forest Licenses (SFLs).³⁰ The volume that may be harvested under an SFL fluctuates based on regular forest resources inventories. The respective SFL-holder has full management and planning obligations, which must comply with the *Crown Forest Sustainability Act* (CFSA). The Ontario Ministry of Resources (OMNR) maintains authority for establishing management practices and approving management plans. An "available harvest area" is calculated for each management unit individually.

²⁶ NFDPA (cited above). It should be noted that in its 2000/2001 Annual Report on Forest Management, the Ontario Ministry of Natural Resources report a total productive forest area of 55.74 million hectares, based on satellite imagery techniques. Of that area, 44.40 million hectares are Crown land, 4.96 million hectares parks, and the remainder fall into other categories. According to this annual report, the provinces forest resources inventory covers 40.19 million hectares of productive forest, of which 30.01 million hectares are Crown forest.

²⁷ NFDPA (http://www.nfdp.ccfm.org/cp95/data_e/tab55e_1.htm and following).

²⁸ OMNR 2000/2001 Annual Report on Forest Management.

²⁹ OMNR 2000/2001 Annual Report on Forest Management, Figure 10, page 16.

³⁰ A few management units remain as Crown management units, where the government is responsible for developing the long term management plans. Ontario State of the Forest Report, 2001.

A SFL grants the holder the right to harvest forest resources in a forest management unit for a term of up to 20 years. In 2000/01, there were 51 SFLs issued.³¹ These licenses are mainly held by larger corporations or cooperative (multi-party) SFL-holding corporations, which maintain full management responsibility. A SFL obligates the holder to carry out the renewal and maintenance activities necessary to provide for the sustainability of the Crown forest in the area covered by the license. The OMNR ensures reviews are conducted at least every five years to ensure that the licensee has complied with the terms and conditions of the license. If the review is satisfactory, the license is renewed for five years. SFLs can, therefore, be ‘evergreen.’

A SFL agreement specifies requirements for the preparation by the licensee of inventories and forest management plans, the silviculture and other standards to be met by the licensee, requirements for the submission of reports by the licensee to the OMNR. It also provides for development of procedures for the periodic review of the licensee's performance and the term of the license and any conditions for renewal. This license has no processing facility requirement.

Forest Resource License (Group III)

Within a SFL area, companies other than the SFL-holder may enter into an agreement with the province and the SFL-holder to harvest wood. These are called overlapping Forest Resource Licenses (FRLs). In addition, FRLs may be issued for harvesting timber from Crown lands not covered by SFLs. According to the OMNR's 2000/01 Annual Report on Forest Management, FRLs cover a total of some 203,029 hectares. Of these, 198 FRLs covered areas over 300 hectares, and 2,206 FRLs were issued for areas less than 300 hectares. An additional 36 FRLs were provided for salvage cuts.

The FRL is a volume-based license granted for harvesting within a designated management unit area. FRLs are most commonly issued within SFLs as overlapping licenses. FRL-holders must follow forest management plans developed and approved by the Ministry. The term of this type of license shall not exceed five years.

In the past, FRLs were granted on a competitive basis. Post-1995, however, the award process has changed. FRLs now involve agreements between SFL-holders, the Ministry, and the FRL applicant. Each agreement between the SFL-holder and the FRL-holder is unique. As a result, forest management responsibilities may vary.

Although there is no processing facility requirement, the licensee must provide evidence that there is a market opportunity for their products as well as submit to the CFSA requirement that all trees harvested must be processed in Canada. Typically, FRLs contain restrictive wood directives that serve to favour specific mills as customers for the wood, while preventing access to a potentially higher-value open market.

³¹ OMNR. 2000/2001 Annual Report on Forest Management, Table 3 page 29.

Other Licenses (Group IV)

Personal Use Permit

A personal use permit is typically issued for the purposes of fuel wood cutting. A personal use permit is an overlapping agreement arranged by the Local District Office and the SFL-holder. There are no specific volume or area restrictions, although the harvesting must be for personal use only. Since this is an agreement with the SFL-holder for wood within their SFL license, the cutting must occur within a designated area.

License to Harvest Trees Reserved to the Crown on Private Land

This type of license is rarely issued, but it is provided for in the *Forestry Act*. This license exists to provide access to timber on private land that was historically granted to individuals by the Crown, but where the Crown never gave away the timber rights. Therefore, these landholders must apply for a license from the Crown before they may harvest the timber on their land. There are currently some 50,000 hectares in Ontario under this arrangement.

Forest Resource Use License

This license is available for permission to cut Crown timber for other purposes than forestry (mining, pipe line installation etc.). The local district office must approve the license. These licenses can only be granted for an area of up to 25 hectares. There is a royalty payable to the Crown, and the timber, unless otherwise allocated, must go to a local processing facility.

3.6.2 Summary of Ontario forest tenures

Table 8, below, indicates the relative importance of each of these Crown land tenure types in Ontario.

Table 8. Forest Tenure on Crown land in Ontario

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume ³² (m ³ /y)	Aboriginal-held volume (m ³ /y)
SFL	Group I	14,335,883	0
FRL	Group III	16,064,883	0
Overlapping FRLs	Group III		254,828
Personal use and fuelwood permits	Group IV	80,737	0
Total		30,481,503	254,828
<i>Aboriginal volume as a percent of total</i>			<i>0.8%</i>

Source: Annual planned volumes provided by Ontario Ministry of Natural Resources for the current five-year planning period.

3.6.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Aboriginal Peoples have had few opportunities to participate in the Ontario forest sector. In spite of the requirement for Aboriginal benefits from the forest sector imposed by Terms and Condition #77 (T&C #77) of the Class Environmental Assessment, there are currently no Aboriginal SFL-holders, and Aboriginal interests hold licenses allocating less than 1% of the total harvest volume from Ontario Crown forests. These tenure holdings are detailed in Table 9, below.

³² Note that Ontario does not determine an AAC. Rather, area regulation, referred to as "Available Harvest Area" is used to determine the area where harvesting will be carried out, usually over a five-year term, within the context of a forest management plan. These management plans also provide estimates of the Annual Planned Volumes available for harvest, used here.

Guidelines from the OMNR place the responsibility for T&C #77 with the District Manager, who has no responsibility to allocate forest tenures. This has had the effect of minimizing the benefits to Aboriginal Peoples, since it results in Aboriginal groups being visualized as no more than competing third-party interests. Until recently, Ontario had a diverse system of harvest licensing.

Table 9. Aboriginal tenure and access in Ontario

	Districts	First Nation/Aboriginal Interest	Annual Volume (m ³ /y)
SFL (Group I)		None	None
FRL (Group III)		None	None
Overlapping FRL (Group III)	Dryden	Eagle Lake First Nation	22,582
		Wabigoon First Nation	43,916
	Fort Frances	Six First Nations (9 FRLs)	42,892
		Stanjikomig First Nation	4,329
	Kenora	Iskutewizaagegan First Nation	2,407
		Wabasseemoong Independent First Nation	7,221
	Nipigon	Aroland First Nation	9,381
		Ojibways of Pic River First Nation (Heron Bay)	21,993
	Wawa	Pic River First Nation	6,748
	Hearst	Constance Lake First Nation (Mammamatwa Inc.)	13,000
	Pembroke	Algonquins of Pikwakanagan (Makwa Community Development Corporation)	13,140
	Sault District	Sagamok Anishnawbek First Nation	12,910
		Ten First Nations Forestry Company	16,846
		N'Swakamok Forestry Corporation	8,560
Robinson Huron Forestry Company Inc.		28,903	
Total Volume			254,828

Source: Compiled from data presented in OMNR's Annual Report On Forest Management 2000/2001 (Chapter 9: Implementation of Term and Condition #77), combined with interviews with OMNR District Offices and with the Forestry Coordinator of the Union of Ontario Indians.

However, with the current system of SFLs, many former small license-holders who previously were directly responsible to the government are no longer primary tenure-holders, but rather have become overlapping license holders. As such, they must sign third-party agreements with the major private-sector corporations who hold the long-term harvesting rights under their SFLs. These include a requirement to pay management fees to the primary license-holder.

Ontario forest management is governed under the *Crown Forest Sustainability Act*. However, this legislation does not make any specific provisions for taking Aboriginal and treaty rights into account in the context of forest management and forest industry activities taking place on Crown land. Rather, it simply states that it does not abrogate, derogate from or add to any Aboriginal or treaty right that is recognized and affirmed by Section 35 of the *Canadian Constitution Act*. Further, even the provisions that might be used under the Act to improve Aboriginal access have never been put into practice. Under Sections 23 and 26 of Ontario's *Crown Forest Sustainability Act*, and through Orders In Council, the OMNR is empowered to enter into management agreements with First Nations, and to provide Aboriginal communities with wood supply commitments through a non-competitive process. These instruments have never been used.

Rather than addressing the need for primary access to forest resources by awarding tenure to Aboriginal interests, Ontario has attempted to address some of its other obligations set out under T&C #77. These relate to involving First Nations in forest planning teams and facilitating harvest and silvicultural contracts between Aboriginal companies and the non-Aboriginal interests that actually hold the tenure. Although some First Nation communities receive cutting contracts from SFL-holders, few have any significant voice in the management and planning of resources in their traditional territories. Further, most harvest allocations to First Nations are given to collectives of five to ten communities. Consequently, the resulting harvest shares are too small to support sustainable economic development.

For example, in the Fort Frances district there are a total of ten separate harvesting licenses issued to seven different First Nations with a combined five-year harvest allocation of 236,105 m³. This equates to roughly 4,700 m³ per year, per community. Another example is a five-year overlapping FRL that was issued in the Sudbury District to N'Swakamok Forestry Corporation, a coalition of five First Nations (Dokis, Henvey Inlet, Wahnapiatae, Wikwemikong, and Whitefish Lake) for 42,800 m³. That equates to 1,712 m³ per year, per community. In many cases when harvest allocations are granted to First Nations, they must agree to bring the wood exclusively to the SFL-holder's mill.

Another action that the Ontario government has taken in an attempt to comply with T&C #77, is adding one or two First Nations representatives to the Forest Management Planning Teams for certain management units, or to seats on the Local Citizens Committee (LCC) for the respective management unit. In essence, the small representation of First Nations on these committees, however, leaves the communities with little or no influence over forest management decision-making.

The most relevant factor that contributed to the current status of First Nations participation in the Ontario forest sector, is the legislation put in place that converted management units into SFLs. The

creation of SFLs actually removed tenure from the control of many smaller entities, and subsequently required them to become third-party contractors or overlapping FRL-holders to maintain a harvest share. In 40 of the province's approximately 55 SFLs, the license is held by a single corporate entity. In the remaining 15 SFLs, new corporations have been formed to hold the license. The shareholders of these multi-party SFL corporations include a wide range of large and smaller forest industry players.

Some examples of the current tenure systems in place in various forest management units are the following. In Ontario there are a few management units that are still managed under Crown authority, not under SFL-holders. The Algonquin Park Forest Management Unit is in fact managed by the Algonquin Forestry Authority (AFA), which also holds the tenure for the area. They have an FRL and a Forest Management Agreement with OMNR, an arrangement very similar to an SFL. The AFA has full planning and management responsibilities. In the Algonquin Forest Management Unit, there is an existing Memorandum of Understanding (MOU) with three First Nations, Mattawa North Bay, Algonquins of Piwakanagan and Sharbot Lake, to collectively harvest 21,000 m³ annually under a contract that includes a silviculture work agreement. This equates to 7,000 m³ per year per community. The MOU was implemented to address T&C #77, to increase FN participation in forestry. However, the arrangement is essentially a small third-party cutting contract. The communities maintain no management influence.

In the Bancroft Midden Forest Management Unit, Bancroft Midden Forest Company (BMFC) holds the SFL. BMFC gave the Whitney Algonquin's 100 hectares to harvest annually, for five years. The volume of this agreement varies depending on the type of stand they harvest, but it is so small that it is considered negligible. This volume is administered as a cutting contract, awarded to the Algonquin's by the SFL-holder.

Significant developments

A significant factor that could determine the future allocation of forest tenures to First Nations could largely lie with the success of the Moose Cree pursuit of an SFL in northern Ontario. The Moose Cree First Nation is pursuing a SFL as part of the Northern Boreal Initiative of the OMNR. This First Nation is exploring the feasibility of developing forestry operations in the proposed Moose Cree Management Unit, an area of 1.1 million hectares located north of the 50th parallel. This land has an estimated sustainable annual harvest of 204,800 cubic metres of softwood, which is considered to be an adequate to support a forestry operation. Moose Cree First Nation has been developing this venture since 1996 with a partnership group that includes the Ontario Living Legacy Trust, OMNR, and Tembec Inc. The Moose Cree are represented through their corporate entity, the Moose Band Development Corporation. So far the partnership groups have developed a forest resource inventory and a land use plan.³³

³³ Source: Department of Indian and Northern Affairs, Press release, January, 2003

An important development that could lead industry and government to make changes to tenure access will be the development of Ontario regional standards for Forest Stewardship Council (FSC) accreditation. These regional standards are designed to reward companies by allowing them to put the FSC logo on their products, potentially enhancing global competitiveness. The FSC requirements include four criteria relating to Indigenous peoples' rights. Specifically, criterion 3.1, states that, "Indigenous Peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies."

Another factor that could influence future tenure allocation is the availability of funding to support forestry capacity development amongst First Nations. Many First Nation communities in Ontario are lacking in skills and capital needed to operate forest based businesses. Remote locations and general community disparity make opportunities unavailable to a majority of Aboriginal people in Ontario.

Finally, an additional factor that is worth noting is the widespread displeasure of the First Nations communities with the governments SFL tenure system. This leaves no volume available for smaller ventures, and large licensees do the management. There is the possibility of future activism in by First Nations to communicate their desire to become long-term tenure-holders in Ontario.

3.7 Manitoba

Manitoba has over 26 million hectares of forestlands, much of which is remote or otherwise not appropriate for commercial harvest. Timber-productive lands make up some 15.24 million hectares of land in the province. Of this area, 13.82 million hectares (91%) are owned by the province, and 1.08 million hectares (7%) are privately owned.³⁴ Federal ownership, including 89,000 hectares of First Nation reserve lands, accounts for the remainder. Private forest lands in Manitoba are held by non-industrial and municipal entities. The timber harvest in Manitoba was estimated at 2.19 million m³ for 2001, all from provincial forests.³⁵ Access to timber from Manitoba Crown land is allocated under the following tenure arrangements.

3.7.1 Forms of tenure

Manitoba's Crown forests are managed for diverse economic, environmental, social and cultural uses. To effectively meet these varied needs, Crown forestlands are designated for different uses such as provincial parks, wildlife management areas, ecological reserves or provincial forests. Today there are fifteen designated provincial forests, encompassing almost 22,000 km² of forested lands.

³⁴ NFDP (cited above).

³⁵ NFDP (http://www.nfdp.cfm.org/cp95/data_e/tab55e_1.htm and following).

Responsibility for management of Manitoba's Crown forests falls within the mandate of the Manitoba Department of Conservation's Forestry Branch. Specific management responsibilities, such as forest renewal, may be delegated to private forest companies under various forms of tenure arrangements. Four significant types of forestland tenures are available within Manitoba's Crown forest. They include:

- Forest Management License (FML)
- Timber Sale Agreement (TSA)
- Community Timber Sale Agreement (CTSA)
- Timber Permit

Forest Management Licenses – Hardwood/Softwood (Group I)

The *Manitoba Forest Act* provides for the establishment of long-term Forest Management Licenses (FMLs) to provide a continuous timber supply to a wood using industry. FMLs are granted for periods of not more than twenty years, and may be renewed for further periods of not more than twenty years. There are currently three FMLs in Manitoba, held by Tembec Inc., Louisiana-Pacific Corporation and Tolko Industries Ltd.. The FML agreement is a legally binding agreement that sets out the size of area and the amount of wood the company can access, stumpage fees, the amount of land the Crown can withdraw in the interest of the public good, and rights and responsibilities of the Crown and the company.

Companies who hold or are seeking an FML are required to develop long-term forest management plans. These plans must be developed in accordance with current guidelines provided by Manitoba Conservation. The forest management plan proposes long-term timber harvesting, access development, and forest renewal activities throughout the FML area. To acquire an FML, potential license-holders must have sufficient investment in a wood processing plant to warrant a continuous timber supply.

Timber management and forest renewal are the responsibilities of Manitoba Conservation on Crown forest land outside the FML agreement areas, and within the Tolko Industries Ltd. and Tembec Inc. FML areas where the wood is used by a facility other than that operated by the licensee. Reforestation and other silviculture treatments are the responsibility of the license-holder for lands within the FML area, although the government is responsible for all protection.

Timber Sale Agreement – Hardwood/Softwood (Group IV)

A Timber Sale Agreement (TSA) is a volume-based allocation. It is usually a five-year, renewable agreement, but can be issued for up to fifteen years. The TSA is used for a variety of different ventures, and includes all miscellaneous forest products harvesting including firewood cutting and salvaging. The size of these agreements varies greatly, anywhere from 100 to 10,000 m³. All silviculture treatments, protection and reforestation are the responsibility of the province. There is no processing facility requirement for this type of agreement.

Community Timber Sale Agreements (Group IV)

Community Timber Sale Agreements (CTSA) are permits that are issued specifically to communities. They have mainly been distributed to First Nations communities within the Manitoba Interlake region. A CTSA is a legal agreement for a volume-based allocation of Crown timber. The CTSA is usually a five-year renewable agreement, but can be issued for up to fifteen years. All silviculture treatments, protection and reforestation are the responsibility of the provincial government. There is no processing facility requirement for this type of agreement.

Timber Permit (Group IV)

Timber Permits are short-term, non-renewable permits that are volume-based. These have no processing facility requirements, and because they are so small in size (from 100-200 m³), there is no stipulation for reforestation. These are typically provided to individuals for personal use such as firewood or crafting wood.

3.7.2 Summary of Manitoba forest tenures

Table 10, below, indicates the relative importance of each of these Crown land tenure types in Manitoba.

Table 10. Forest Tenure on Crown land in Manitoba

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y)	Aboriginal-held Volume
FML (softwood)	Group I	2,000,000	0
FML (hardwood)	Group I	900,000	
TSA (softwood)	Group IV	466,921	132,605
TSA (hardwood)	Group IV	127,505	
Total		3,494,426	132,605
Aboriginal volume as a percent of total			3.8%

Source: Manitoba Conservation, Forestry Branch, 2003, personal communication.

3.7.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Currently in Manitoba, TSAs are held by First Nations in the Interlake region. In addition to these, several First Nations and First Nation members hold TSAs of varying size in the southeast region of the province. Although these do not provide long-term tenure they do allow the holder greater participation in forest management than would third-party contracts. In the Interlake region, three communities have been granted very small volumes under Community Timber Sale Agreements. These were allocated in response to a desire by community members to be license-holders, not contractors.

In addition to these tenure allocations, various First Nations and individual First Nation members hold contracts with the major license-holders to harvest timber.

Table 11. Aboriginal tenure and access in Manitoba

Provincial classification	NAFA classification	Tenure-holder	Volume (m ³ /y)
TSA	Group IV	Marcell Colomb First Nation	4,900
		Metis Loggers	85
		Peguis First Nation-individual	370
		Peguis First Nation-individual	74,000
		Matheson Island First Nation (individual)	17,000
CTSA	Group IV	Jackhead First Nation	1,250
		Peguis First Nation	5,000
		Lake St. Martin First Nation	5,000
		Other	25,000
Total (all forms)			132,605

Source: Manitoba Conservation, Forestry Branch, 2003

Significant developments

The province of Manitoba has committed to increasing access to forest resources for Aboriginal communities in order for them to pursue both traditional and economic development activities. The province has also committed to help increase the capacity of Aboriginal communities, organizations and individuals to participate in and carry out commercial-oriented forest management.

The most significant factor in the short-term that will increase forest land base available to First Nations in Manitoba will be through the Treaty Land Entitlement (TLE) Framework Agreement, signed in 1997. This Framework Agreement provides for a total of 394,400 hectares of unoccupied Crown land to be transferred to reserve status. Not all the land area provided for under the TLE Framework Agreement has yet been selected, therefore the actual commercial potential of this land is still unknown.

In addition to these treaty processes, there are additional potential opportunities for Aboriginal participation in the forest sector. Although most of the softwood supply in accessible regions of the province is allocated to licence and quota-holders, the latter sell their allocation rights periodically and Aboriginal groups and individuals have both purchased and sold these allocations in recent years.

The province has recently announced a new Sustainable Forestry Unit with a mandate that includes increasing Aboriginal participation in the forest sector. This unit is housed within Manitoba Conservation. The Keewatin Community College in The Pas has also established the Northern Forest Diversification Centre to assist communities to develop and market non-traditional forest products as a means of economic diversification.

Tembec Inc. Expansion

One of the most significant issues that could impact the future of First Nations forest tenure is the completion of the Lake Winnipeg East Side Plan. This plan will help to determine the level of industrial forestry expansion that can occur within a large area of previously undisturbed forest. A proposed development that includes two joint venture companies, Kiinetino Ma'ingan Forest Management and the Gaa-bi-mooka'ang Sawmill, involves up to fourteen Manitoba First Nations and Tembec Inc.. Collectively, this group has submitted a comprehensive proposal that seeks an expansion of forestry operations on the east and west sides of Lake Winnipeg.

This expansion has been the source of much concern amongst other First Nations who believe the expansion will negatively impact their treaty rights, their traditional land use areas and their way of life, as well as result in the degradation of the environment.

The area in question contains a significant amount of unallocated hardwoods (400,000 m³ or more) in the FML #2 area of northern Manitoba, along with un-quantified amounts of under-utilized hardwood volumes in the Interlake and Lake Winnipeg East Forest Sections. Agreement on the building of an all-weather road, the completion of a land-use planning process, and economic factors related to the forest industry, are contributing to a slow down in the proposed development.

The East Side Lake Winnipeg Round Table has been established to resolve issues and develop stakeholder participation in the planning process. The resolution of these concerns will contribute to the way the forests of this region are managed and to the level of Aboriginal participation and tenure control that is achieved.

Aboriginal contract arrangements with Tolko Industries Ltd.

Tolko Industries Ltd. collaborates with First Nations in many harvesting activities. Various First Nations have third party harvesting contracts with Tolko Industries Ltd. for a designated volume. The following outlines the First Nations participation and agreements that exist within Tolko Industries Ltd.'s FML area:

- Mathias Colomb Cree Nation of the Pukatawagan Band has a commercial contract for 50,000 m³ per year.
- Marcell Colomb Cree Nation of the Black Sturgeon First Nation has a commercial contract to harvest 10,000 m³ per year (training done by Tolko Industries Ltd. staff).
- Nisichawayasihk Cree Nation having Nelson House Forest Industries have a commercial harvesting contract for 50,000 m³ per year).
- The Grand Rapids First Nation have a commercial contract for 25,000 m³ per year for harvesting.
- Opaskwayak Cree Nation has a band member with a commercial contract for harvesting of 10,000 m³ per year.
- Mosakahiken Cree Nation has a harvesting contract for 120,000 m³ per year. This is carried out by Moose Lake Loggers (MLL), Manitoba's oldest Aboriginal forestry company. MLL was established as a Crown corporation in 1974 and was sold back to the First Nation in 1992.
- Chemawawin/Pine Creek Cree Nation in Easterville have a joint agreement for the management of Land Base and Timber Purchase through commercial agreement for 60,000 m³ per year. Tolko Industries Ltd. agreed to help with the planning, if 50% of the volume was brought to their mill.
- There is also an ongoing dialogue to develop and train forestry crews to harvest on reserve lands with the Sapatowayak Cree Nation in Shoal River, which will lead to the set up of a Timber Purchase Agreement with Tolko Industries Ltd.
- Norway House Cree Nation through its Kinosao Sipi Development Corp. have a five-year Timber Purchase Agreement of 25,000 m³ per year, harvested from their reserve lands. Tolko Industries Ltd. provides planning and management expertise for their reserve-based supply area. This area is managed under the same regime as Tolko Industries Ltd.'s surrounding FMA.

Louisiana-Pacific Corporation also has agreements with the First Nations near their operating area in Manitoba. Pine Creek First Nation and Valley River First Nation respectively have 30,000 m³ annual harvesting contracts with that company. There has also been some discussion around future tree-planting opportunities.

3.8 Saskatchewan

Saskatchewan has 35.5 million hectares of boreal forestland, more than half of its total area. Timber-productive lands make up some 12.64 million hectares of land in Saskatchewan. Of this area, 11.78

million hectares (93%) are owned by the province, and 390,000 hectares (3%) are privately owned.³⁶ Federal ownership including 133,000 hectares of First Nation reserve lands accounts for the remainder. Privately-owned timber-productive forest lands are held by non-industrial entities in Saskatchewan. The timber harvest in Saskatchewan was estimated at 4.12 million m³ for 2001.³⁷ Of this, 3.83 million m³ was taken from provincial Crown lands, while 253,000 m³ was harvested private lands, with another 39,000 from federal (including First Nation) lands.

3.8.1 Forms of tenure

Large-scale commercial forestry is just beginning in the province's northern forests. In the mixed woods region of southern Saskatchewan, much of the land is under long-term agreements. Saskatchewan legislation sets out one major form of long-term forest tenure—the Forest Management Agreement—and several shorter-term arrangements that involve less responsibility.

Forest Management Agreement (Group I)

The duration of a Forest Management Agreement (FMA) in Saskatchewan is not to exceed twenty years, with the possibility of extension every five years. FMA-holders must submit an operating plan for approval by government prior to commencing any activity. The forest management plan must be for the full term of the agreement. Ten years prior to any extension of agreement, the licensee must submit a revised forest management plan for the full term of the extended agreement.

The holder of a Saskatchewan FMA must operate a processing facility. In addition, the licensee is responsible for silviculture on harvested land, although the ministry provides the seedlings. These agreements are usually area-based, and typically cover areas in the range of 300,000 to 500,000 hectares.

Each FMA-holder is required to undergo an independent audit of its forest management plan every five years to assess the health of the forest within its license area and to determine how well the company is achieving its stated forest management objectives. The company funds the audits and the results are made public. Information obtained from the audits and the monitoring program is essential in improving understanding of forest ecosystems and in sustaining their integrity. Following the five-year audit, the agreement may be extended for an additional five years so that the term of the agreement after each extension is twenty years.

³⁶ NFDP (cited above).

³⁷ NFDP (http://www.nfdp.cfm.org/ep95/data_e/tab55e_1.htm and following).

Term Supply Licences (Group II)

The Term Supply License (TSL) is a five-year renewable license. The TSL may be renewed if the licensee is in good standing and if there exists sufficient supply of the forest resource, as determined by the Minister. The licensee is obliged to submit an operating plan for the full term of the license for approval before commencing operations. If the licensee wishes to amend the operating plan, the licensee can submit the proposed amendment to the minister for approval in accordance with the regulations.

TSL's can be volume or area-based, depending on the operating area and the respective timber supply. The license-holders may or may not be required to have a processing facility for their wood supply. If the TSL in question lies within an existing FMA, the major license (FMA)-holder is responsible for reforestation of the areas. If the TSL lies outside any FMA, then the responsibility for reforestation falls to the provincial government.

There are currently three TSL-holders in the northern part of the province that are in the process of trying to convert their TSLs into FMAs. These proponents all have strong Aboriginal connections. These three potential FMAs are currently undergoing environmental impact assessment and public consultation. This evolution of licensing can take place due to a volume exclusion clause within the FMA license that ensures volumes remain available for the province to allocate to small business.

Forest Products Permits and Timber Licenses (Group III)

The minister, in accordance with the regulations, may grant forest product permits conferring the right to harvest specified forest products. Timber Licenses (TLs), for example, permit specified timber harvests for a one year period. The permit is not renewable, but it can be reissued year after year. The licensee is obliged to submit an operating plan for the full term of the license before commencing operations.

A TL-holder may or may not be required to operate a processing facility, depending on the size of their grant, and the respective wood supply. Some small businesses actually hold multiple TLs and therefore can supply a processing facility. The TL agreement is also used for harvest ventures as small as 1000 m³ per year.

On average, 330 TLs are issued each year to small business operations. Thirty percent of timber volume allocated under these permits is allocated to ten wholly Aboriginal-owned businesses. Expanding this to include businesses where more than 80% of the company's work force is Aboriginal raises the allocation percentage to 50% of total volume.

Sub-designations Under Timber License/Own-Use Permits (Group IV)

Own-use permits are sub-designation of the TL, they can be categorised as non-formal agreements for small products.

Small products such as firewood and fence posts all fall under the TL, although there are some modifications made to the agreement if the forest product is for personal use. It is worth noting that there is a section in the TL that can be applied to non-timber forest products.

3.8.2 Summary of Saskatchewan forest tenures

Table 12, below, indicates the relative importance of each of these Crown land tenure types in Saskatchewan.

Table 12. Forest Tenure on Crown land in Saskatchewan

Provincial Tenure	NAFA Classification	Total Annual Allocated Volume (m ³ /y)	Aboriginal-held volume (m ³ /y)
Forest Management Agreements (FMA)	Group I	5,992,690	571,845
Term Supply License (TSL)	Group II	351,000	351,000
Forest Products Permits and Timber Licenses (FPPs and TLs)	Group III	471,068	141,320
Total		6,814,758	1,064,165
Aboriginal volume as a percent of total			15.6%

Source: Saskatchewan Environment, 2003, personal communication. Crown TSL allocations include two to Aboriginal interests (First Nation and Metis, see Table 13) and sub-allocations from two FMAs to support the Meadow Lake OSB mill, which is owned by Tolko Industries Ltd. (80%) with Metis and First Nation (Meadow Lake Tribal Council) as minority partners.

3.8.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

The Aboriginal Economic Development Strategy released in 1999 was a key factor in the improvement of First Nations involvement in the Saskatchewan forest sector. That strategy was closely tied to an expansion of Saskatchewan's forest sector, as the province of Saskatchewan announced a series of potential development projects made possible by a re-allocation of timber supply. Table 13, below, summarizes Aboriginal tenure holdings in the province.

Table 13. Aboriginal tenure and access in Saskatchewan

Provincial classification	NAFA classification	Tenure-holder	Annual Volume (m ³ /y)
FMA	Group I	FMA #1 - NorSask Forest Products (owned by Meadow Lake Tribal Council)*	571,845
TSL	Group II	NorthWest Communities Wood Products (Metis-owned)	351,000
FPPs and TLs	Group III	Vermet Forest Products (Metis-owned)	90,653
		Other Aboriginal FPPs (estimate)*	50,667
Total (all forms)			1,064,165

Source: Saskatchewan Environment, personal communication, 2003. **Note:** The FMA has a total AAC of 1,143,690. It is held by NorSask Forest Products, 100% owned by the Meadow Lake Tribal Council. Forest operations are carried out by Mistik Management, a company owned equally by NorSask and Millar Western. The AAC has therefore been allocated 50% to Aboriginal interests, since it is the non-Aboriginal partner that operates the mill, a condition of FMA award. The TSL recently allocated to the Lac La Ronge First Nation also involves Zelinski Bros. as minority partners. The Aboriginal-held volume for TLs is based on an estimate that Aboriginal interests hold 30% of volume allocated under this tenure form (SERM, personal communication).

The current status of Aboriginal tenure is also a result of the Treaty Land Entitlement (TLE) process and settlement agreements that resulted in funds being granted to various Saskatchewan bands for investment in economic development. This process was integral in creating organizations such as Green Lake Métis Wood Products. The available funding allowed First Nation entities to become active in the forest sector by becoming major investors in existing companies, as well as providing the capacity to create companies of their own. A key objective of TLE funding was to establish First Nations in the forestry industry.

An additional factor pertaining to the increased involvement of Saskatchewan Aboriginal Peoples in the forest sector was the lobbying of the Métis to the federal and provincial governments for the opportunity to enter into the forest industry as tenure-holders. In response to this demand, the government of Saskatchewan released the Aboriginal Economic Development Strategy discussed above. The implementation of this strategy resulted in a restructuring of the current tenures held by Weyerhaeuser and Mistik Management. These two FMA-holders held more volume than was required by their respective processing facilities. The restructuring resulted in a size reduction of their FMA area, thereby freeing up area for re-allocation to new players. The outcome of the restructuring is to be directed primarily at addressing Aboriginal concerns and interests. One outcome has been the application for a TSL by the Métis-based corporation, Northwest Communities.

In 1994, the Peter Ballantyne Cree Nation (PBCN) and the province signed a partnership agreement with the intent to secure an FMA on an area coinciding with their traditional territory. Since that time, the PBCN has been busy consulting with community members, conducting environmental

impact and business feasibility studies, and seeking out potential industry partners for effective use of the estimated annual harvest of one million cubic meters of softwood. The outcome of this agreement is currently pending.

FMA's and associated agreements

There are currently four FMA's in Saskatchewan. FMA #1 is held by NorSask Forest Products, wholly-owned by the Meadow Lake Tribal Council. It is managed by Mistik Management, a forest management company owned equally by NorSask and Millar Western. FMA # 2, 3 & 4 have no direct First Nation involvement, but all tenure-holders supply a First Nation-owned sawmill in some capacity, or they use field contractors from the various First Nations or Métis communities throughout their respective operating area.

The Wapawekka Lumber sawmill is almost exclusively supplied by FMA #2 (Weyerhaeuser Saskatchewan). Although this sawmill has no tenure associated with it, it is a joint venture agreement between a coalition of three Cree bands and Weyerhaeuser. The coalition collectively owns 49% of the sawmill, and Weyerhaeuser owns 51%.

TSLs held by First Nations, and agreements pending

In Saskatchewan there are several TSLs held by First Nations, as well as several that are pending. The details are as follows:

TSL: AAC = 120,000 m³/yr

This TSL is held by three Métis communities (non-status) that have formed a company called NorthWest Communities Wood Products. This is wholly Métis owned.

TSL: AAC = 50,000 m³/yr pending

The company of North West Communities Wood Products has applied for this TSL and the allocation is pending.

TSL: AAC = 60,000 m³/yr pending

The company of Green Lake Métis Wood Products has applied for this TSL and the allocation is pending.

TSL: AAC = 320,000 m³/yr for five years pending (waiting for favourable economic conditions) The PBCN Nation has an application pending for a TSL on their traditional territory. They have a wholly First Nation owned company called Mee-Toos Forest Products that currently operates on that land on annual permits of 80,000 m³ per year.

TSL: AAC = recently signed, allocation not reported

The Lac La Ronge Indian Band (Kitsaki Development Corp.) and Zelinski Brothers have applied for a TSL allocation as a joint venture. They currently operate a sawmill. The joint venture is made up of 51% Zelinski Brothers and 49% Lac La Ronge Indian Band. This joint venture operation was recently operating under an annual permit in an unregulated area i.e., land that was released in 1999 due to the major policy decisions to involve First Nations in the forest industry. The TSL has now been awarded to the joint venture.

Sawmills associated with TSL agreements

Green Lake Sawmill: Owned by the Green Lake Métis, have an annual wood supply allocation of 60,000 m³. This is a wood supply agreement between Northwest Communities Wood Products, Weyerhaeuser and Mistik Management, to get a supply from all their respective FMAs.

Forest Products Permits

Vermet Forest Products: Post Operation, owned and operated by a private Métis family.

Significant developments

The most significant factor is the 1999 announcement by the provincial government re-allocating under-utilized land from major tenure-holders, making it available for First Nations opportunities. Since the 1999 decision, there has been an increasing number of applications by First Nations for TSLs. The increased initiative on behalf of the First Nations for starting forestry based companies will be a significant contributing factor in the future.

3.9 Alberta

Timber-productive lands make up some 25.70 million hectares of land in Alberta. Of this area, 22.46 million hectares (87%) are owned by the province, and 1.28 million hectares (5%) are privately owned.³⁸ Federal ownership including 15,000 hectares of First Nation reserve lands accounts for the remaining 1.70 million hectares, or 7%. The timber harvest in Alberta was estimated at 23.39 million m³ for 2001.³⁹ Of this, 2.00 million m³ was taken from private lands, while 21.39 million m³ was

³⁸ NFDPA (cited above).

³⁹ NFDPA (http://www.nfdp.cfm.org/cp95/data_e/tab55e_1.htm and following).

from provincial Crown lands. Access to timber from Crown land is allocated under the following tenure arrangements.

3.9.1 Forms of tenure

The tenure system in Alberta is an important element of the provinces commitment to sustained yield management. This system provides the forest industry with a long-term perspective for timber harvesting practices. In addition, the government attaches compliance obligations on the forest company to help ensure sustained yield is achieved. Alberta Sustainable Resource Development is responsible for overall land management and ensuring that the forest industry meets all responsibilities and obligations.

The tenure system includes three forms:

- Forest Management Agreement
- Timber Quota
- Timber Permit

Forest Management Agreements (Group I)

A Forest Management Agreement (FMA) is a long-term, negotiated and legislated agreement between the province and companies to establish grow and harvest timber on a sustained yield basis within a defined land area. These are twenty-year, renewable agreements. Under the FMA, the Alberta government commits an area, not a pre-defined timber volume, to the FMA-holder. The allowable harvest volume is determined through the AAC allocation. At the present time there are twenty-one FMAs in Alberta, covering nearly 20 million hectares of forested lands.

FMAs cover areas ranging from 2,200 to 58,000 km². The corporate partner to the agreement is required to carry out forest management responsibilities, established by the government, which can change over time based on changing needs and science. The company is also required to construct facilities to process the timber. Timber harvesting activities must be conducted according to the *Forest Act*, the *Timber Management Regulations*, and general province-wide or FMA-specific harvest ground rules. In addition, there must be a management plan approved by the province of Alberta, and the company must carry out, at its own cost, all inventory studies, planning, harvesting, road development and regeneration required for the area.

Timber Quota (Group II)

Timber Quotas (TQ) are twenty-year, renewable allocations of timber within an individual forest management unit. There are two types of tenures included in a Timber Quota; a Coniferous Timber Quota (CTQ) and a Deciduous Timber Allocation (DTA). A CTQ is a percentage of a forest management unit's AAC, and a DTA is a volume or area of deciduous forest to be cut within the management unit. To access their quota, the holder must also possess a timber license, which provides the authority to cut timber.

Forest management planning for quota-holders is completed in a number of ways; by the provincial government, by the quota-holder, or as a joint planning exercise with the FMA-holder. The province completes forest management plans in forest management units that are not covered by FMAs. Smaller quota-holders with an AAC of less than 10,000 m³ per year have the option to reforest themselves, or pay a reforestation fee to the province. In cases where the quota-holder's allocated volume is greater than 10,000 m³, the quota-holder is obligated to carry out reforestation on their own.

Introduced in 1966, the timber quota system was intended to provide small to medium-sized timber operators with a long-term secure wood supply. Quota-holders are commonly sawmill operators, ranging in size from approximately 400 to 480,000 m³ per year. Recently the requirement for a sawmill has been removed from the legislation. Since the 1980s, deciduous timber has been harvested commercially within the province. The DTA was created to address the demand for deciduous timber within the quota system.

As of 2003, there were some 52 registered quota-holders (CTQ and DTA combined) throughout the province.

Timber Permit (Group III)

A portion of the AAC is reserved for local community use and timber operators with lesser volume requirements. Timber in this category is issued through a permit system. The permit-holder either pays a reforestation levy or is responsible for all reforestation costs. The provincial government develops the management plan for the permit harvesting area.

In most cases the permit-holder is not required to operate a processing plant. There is no specification for maximum term, but a timber permit is generally less than five years, and it is generally non-renewable. These tenures are usually small, for personal or commercial use, and are volume-based.

Commercial Timber Permit

Commercial Timber Permits are issued for terms of up to five years, and are non-renewable. These timber permits are volume-based, with the total volumes allocated not exceeding a certain percentage of the AAC within the forest management unit to which the permit applies. The permit-holder pays a reforestation levy to the government, which care of reforestation and protection activities. Some permit-holders may have processing facility requirements, based on the class of sale that the permit-holder conducts.

Deciduous Timber Permit

Deciduous Timber Permits are issued for terms of up to five years, and are non-renewable. These agreements are volume-based. The permit-holders pay a reforestation levy to the government, which takes care of reforestation and protection activities. Some permit-holders may have processing facility requirements, based on the class of sale that the permit-holder conducts.

Local Timber Permit

A Local Timber Permit (LTP) allows an individual to carry out small-scale harvesting of Crown timber. These permits are for personal use only, and are volume-based, granting up to a maximum of 50 m³. They are non-renewable, issued for a maximum of one year. LTPs are also used for disposal of timber endangered by acts of nature or development activities not authorized under the *Forest Act* (e.g. fence lines on grazing leases, or small volumes of fire-killed timber).

3.9.2 Summary of Alberta forest tenures

Table 14, below, indicates the relative importance of each of these Crown land tenure types.

Table 14. Forest Tenure on Crown land in Alberta

Provincial Tenure	NAFA Classification	Total Annual Allocated Volume* (m ³ /y)	Aboriginal-held volume (m ³ /y)
FMA	Group I	15,200,000	0
Timber Quotas	Group II	6,119,000	659,329
Timber Permits	Group III	1,651,000	103,286
TOTAL		22,970,000	762,615
Aboriginal volume as a percent of total			3.3%

Source: Alberta Sustainable Resource Development Database, 2003. *Total Volume' is the amount actually harvested during the 2001/02 season. The actual allocated AAC was 24,074,540 m³, but this was not broken down by category. Aboriginal volumes are allocated, not harvested, volumes.

3.9.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

The factors that led to the current tenure allocations to Aboriginal groups in Alberta are negotiations between First Nations and the provincial government as part of a provincial, industry and First Nations agreement. The most active Aboriginal participants, all within the Treaty 8 area, have been the Tall Cree First Nation, Little Red River Cree Nation (LRRCN), Whitefish Lake First Nation, Bigstone First Nation, and the Dene Tha' First Nation. In the mid- 1980's, the LRRCN was awarded CTQ by the province. Around that time, the Tall Cree accessed timber volume through permits, until receiving a quota in 2001. These First Nations are seeking to protect the environment, create long-term employment, preserve important cultural sites, and become economically self-sufficient by developing a sustainable forest-based economy. In 1995 both the LRRCN and Whitefish First Nation signed Memorandums of Agreement with the province.

The Tall Cree (Netaskinan) currently have a DTA of 98,670 m³ per year, and a CTQ of 23,298 m³ per year. These were issued in 2000. Although these are significant allocations, there has not yet been any harvesting due to the remote location of the timber. Plans are being discussed around harvesting the five-year allocations all at once in order to improve the economic viability. The Tall Cree also have a volume-based allocation in the form of an overlapping agreement on the Tolko Industries Ltd./Footner Management Unit for 80,000 m³. These tenures are held by the band-owned Tipseemdo Corporation that has joint venture contracting agreements with outside harvesting operators, although they do have some of their own equipment.

LRRCN has one of the largest First Nation timber allocations in Canada. They hold a DTA of 218,544 m³ per year, and a CTQ of 186,483 m³ per year. These were allocated in the early 1990s following negotiations with the province. These dispositions are held by the First Nation-owned Askee Development Corporation.

Significant developments

The climate for acquisition of further tenures by First Nations in Alberta is currently unfavourable. Accessible timber volumes are currently allocated. Should northern areas be opened up for commercial timber harvesting, significant economic feasibility challenges will need to be overcome. Nonetheless, under the Alberta government's Aboriginal Policy Framework entitled, "Strengthening Relationships," the province seeks to encourage development of Aboriginal businesses and partnerships/joint ventures between Aboriginal and non-Aboriginal businesses.

Table 15. Aboriginal tenure holdings in Alberta

Provincial Classification	NAFA Classification	Aboriginal-held tenures	
		First Nation	Annual Volume (m ³ /y)
Timber Quota	Group II	Askee Development Corp. (LRRCN)	405,027
		Netaskinan (Tall Cree First Nation)	121,968
		Che K'il Enterprises (Dene Tha' First Nation)	80,001
		Zama Mills Ltd. (Dene Tha' First Nation)	52,333
Timber Permit	Group III	S11 Logging (Bigstone First Nation)	53,286
		Whitefish First Nation	50,000
		Total Aboriginal allocation	762,615

Source: Alberta Sustainable Resource Development, personal communication.

3.10 Northwest Territories

Timber-productive lands make up some 14.32 million hectares of land in the NWT. Of this area, 11.95 million hectares (83%) are under territorial jurisdiction, with the remaining 2.37 million hectares (17%) under federal ownership.⁴⁰ The timber harvest in the NWT was estimated at 22,000 m³ for 2001,⁴¹ all of which was taken from territorial lands.

3.10.1 Forms of tenure

There are currently no forest tenures allocated in the NWT using an area-based allocation model, as is commonly used in other provinces. Rather, the territory grants rights to harvest, under the authority of the *Forest Management Act*. These are licenses or permits issued to an individual or corporation that grant the holder the right to harvest a certain volume within a management unit. There are no fixed geographical areas attached to the authorization, although for the purposes of management, a license or permit-holder is held to a specific operating area. The license or permit is strictly a volume-based allocation. The three forms include: Timber Cutting Licences; Timber Cutting Permits; and Free Timber Cutting Permits.

The *Forest Management Act* does provide for area-based tenures that require forest management plans in a given area, but there are currently no such plans being negotiated, and none have been allocated to date. The timber license or permit-holder, under the current management regime, does not have responsibilities for inventory, protection or reforestation. Those responsibilities remain in the hands of the territorial government. The right to harvest can be granted for a period of one year under a permit, or for a five-year term under a license. There is currently no processing facility requirement for any of the permits or licenses found in the NWT.

Timber Cutting License (Group IV)

A Timber Cutting License is a volume-based license that is issued for a time period not to exceed five years. The volume agreed upon will depend on how much extraction the area in question can sustain based on sustainability studies. Currently, there are five timber cutting licenses, one large scale commercial firewood cutting operation, and there is one small sawmill being supplied. None of the timber is currently being exported.

⁴⁰ NFDP (cited above). Note that the federal, territorial and aboriginal governments are actively in the process of concluding land claims and self-government agreements in the territory. These settlements will have significant influence in re-defining land ownership in the territory. See, for example, press releases issued by the NWT government for recent developments: <http://www.gov.nt.ca/MAA/newsreleases/index.htm>.

⁴¹ NFDP (http://www.nfdp.cfm.org/cp95/data_e/tab55e_1.htm and following).

Timber Cutting Permit (Group IV)

Volume based permit that is issued for a maximum time period of one year and a maximum volume of 5,000 m³.

Free Timber Cutting Permits (Group IV)

Volume based permits that are issued to individuals for personal use only. These permits allow up to a maximum of 60 m³ to be harvested. Personal use such as firewood, construction material etc. can be included under this designation.

3.10.2 Summary of NWT forest tenures

Table 16, below, indicates the relative importance of each of these tenures types in the NWT.

Table 16. Forest Tenure on Crown land in the NWT

Tenure	NAFA Classification	Total Annual Volume Allocated (m ³ /y)	Aboriginal-held Volume (m ³ /y)
Total	Group IV	235,000	70,000
<i>Aboriginal volume as a percent of total</i>			29.8%

Source: State of the Forest Report, 2000/2001. Aboriginal volume is derived from Table 17 below.

3.10.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Land claims negotiations are currently underway in the Deh Cho territory. These need to be resolved prior to any commitment of timber volumes. Currently, however, there is a short-term Timber Cutting License held by an Aboriginal party that allows for the harvest of up to 60,000 m³/year and a Timber Cutting Permit to harvest up to 10,000 m³/year.

Table 17. Aboriginal tenure holdings in the NWT

Provincial	NAFA	Aboriginal-held tenures

Classification	Classification	First Nation	Volume (m ³ /y)
Licenses and Permits	Group IV	Deh Cho	70,000
Total Aboriginal allocation			70,000

Source: Forest Management, Resources, Wildlife and Economic Development, NWT. Note that these are short-term allocations, no specific volume of timber has been allocated in any long-term tenure, pending resolution of current land claims negotiations.

Significant developments

The Deh Cho Interim Measures Agreement was recently signed between the Deh Cho First Nations, Canada and the Government of the NWT. Deh Cho territory includes areas affected by Treaties 8 and 11. The three parties agreed that until the negotiations are finished, no new forest management authorizations will be issued in the Deh Cho territory without the support of the affected Deh Cho First Nations. The agreement identified many other interim arrangements until land claims have been settled in the area. The eventual tenure arrangements within Deh Cho territory will depend upon the outcome of the land claims negotiations.

Settlement of land claims and Aboriginal capacity to undertake forest management seem to be the factors which will most significantly influence the development of future tenure allocations in the NWT. In light of the current Deh Cho Interim Measures Agreement, the most important factor will be the development of a new form of tenure that would meet the needs of Aboriginal communities in the NWT. This change in forest policy will eventually be initiated following the settlement of the Deh Cho negotiation process. The objective of negotiations is to complete a Deh Cho Final Agreement which will implement a Deh Cho government, and spell out control over the use, management and conservation of land, water and other resources in their traditional territory.

3.11 Yukon

Timber-productive lands make up some 7.47 million hectares of land in Yukon. Of this area, 7.40 million hectares (99%) are under territorial jurisdiction, with the remaining 73,000 hectares

controlled by the federal government.⁴² The 2001 Yukon timber harvest was estimated at 39,000 m³, all of which was derived from territorial lands.⁴³

3.11.1 Forms of tenure

Yukon does not yet have a system of long-term forest tenures. Currently there is only one 28,000 m³ forest tenure in Yukon, held by Kaska Forest Resources, an Aboriginal-owned company. Other than the Kaska agreement, timber has been allocated through short-term permits (currently one year, but soon to be extended to three-year). These are volume-based, with a maximum allocation of 20,000 m³ annually. They occur in planned areas and require management plans that must go through a public consultation process.

Yukon's small forestry industry is pushing for more stable access to wood supply, through long-term tenures. Yukon Conservation Society and others insist that any such tenures must be planned and allocated in ways that protect other forest users. There is a significant forest tenure currently being negotiated for award to Kaska. A management plan has been drafted and is currently the subject of an environmental assessment review. The proposed tenure agreement would be area-based with a maximum volume of 30,000 m³ per year. The land base area in question is 74,000 hectares. It remains to be seen if this tenure will actually be created.

The regulatory environment in Yukon is not well-established to support large-scale commercialization of forest resources. With no *Forest Act* in place, current timber regulations deal only with issuing commercial timber cutting rights. With the April 1, 2003 devolution of responsibility for forest resources from the federal government to the territory, Yukon is now on the verge of significant changes in their government policies.

⁴² NFDP (cited above).

⁴³ NFDP (http://www.nfdp.ccfm.org/cp95/data_e/tab55e_1.htm and following). Note that the total harvest estimate provided by the territorial government for the most recent period (266,500 m³ as reported in Table 17) is significantly higher than the NFDP figure. Presumably small-scale harvest permits had not yet been factored into the NFDP figures for 2001. NFDP data indicate that harvests in the mid-1990s ranged between 193,000 to 421,000 m³.

3.11.2 Summary of Yukon forest tenures

Table 18, below, indicates the relative importance of each of these Crown land tenure types in Yukon.

Table 18. Forest Tenure on Crown land in Yukon

Territorial Tenure	NAFA Classification	Total Annual Volume Allocated (m ³ /y)	Aboriginal-held volume (m ³ /y)
Timber Permits	Group III	28,000	28,000
	Group IV	238,500	No data
Total		266,500	28,000
<i>Aboriginal volume as a percent of total</i>			10.5%

Source: The State of Canada's Forests Report, 2000/2001 and Yukon Renewable Resources. The Group III allocation is to Kaska Forest Resources, an Aboriginal-owned company. No data were provided to indicate what portion of other timber permits, if any, are held by Aboriginal individuals.

3.11.3 Analysis of Aboriginal access to Crown forest tenure

Significant developments

Aboriginal Peoples comprise at least half of the population in Yukon communities outside of Whitehorse. Generally, First Nations have been regarded as "governments" and with the recent settlement of all but two of Yukon's land claims, they have achieved official self-governing status and a land base to manage. Land use planning is not complete anywhere in Yukon. The land claim has not been settled in the southeast. Forest and other inventories are inadequate in the south and almost non-existent everywhere else.

In September 2000, the Department of Indian and Northern Affairs Canada (INAC) attempted to create a system of forestry tenures called Timber Harvest Agreements (THAs) in the southeast Yukon. The plan was to allocate more than 6,600 km² of essentially pristine forest to one company as a ten year, renewable, 100,000 m³ THA. Three smaller THAs were also planned, but the wood supply for these smaller operators would only have lasted five years. After that period, only the large THA would have remained. In total, the proposed new tenures would have pushed the harvest in that part of the southeast Yukon 100,000 cubic meters above the 128,000 cubic meter per year harvest ceiling established by the current Timber Supply Analysis. The tenures in the southeast were meant to serve as a template for tenure development in the rest of Yukon. The tenure in question has been held by two prior operators, and at one point was managed by the Yukon government. In the

early 1990's the THA was assigned to Liard First Nation, with final award dependent on submission of a forest management plan, and the successful joint venture of a small mill in Watson Lake. Fifteen years later the tenure is still not awarded, however the First Nation has submitted a management plan and this plan is being reviewed under the *Canadian Environmental Assessment Act*.

The Kaska Dene Nation signed a MOU with the Government of Yukon and the Government of Canada on July 29, 2002, regarding the establishment of the Kaska Forest Resources Stewardship Council which will oversee the development of a regional forest resources management plan. Also signed was a Consultation Protocol which formalizes a comprehensive planning process that will enable Kaska to participate in forestry decisions in traditional Kaska Dene territory. The MOU is an historic agreement, which creates a tri-partite council representing Kaska, Canada and Yukon, to oversee the development of forest management plans and policies for the Kaska Traditional Territory. The MOU will ensure that there is a plan for the Rancheria Caribou Herd winter range, and a remedial plan for Garden Creek before any more logging occurs in those areas, regional and sub-regional forest management plans, and an interim wood supply plan to keep industry going while the regional plan is being developed. The public and stakeholders will be invited to provide input into these plans.

3.12 British Columbia

Timber-productive lands make up 51.74 million hectares of land in British Columbia. Of this area, 49.15 million hectares (95%) are owned by the province, and 2.12 million hectares (4%) are privately owned.⁴⁴ Federal ownership, including 198,000 hectares of Aboriginal forest lands, accounts for the remainder. None of the privately-held forest lands are owned by industrial interests. The timber harvest in BC was estimated at 73.64 million m³ for 2001.⁴⁵ Of this, 65.84 million m³ was taken from Crown lands, while 7.80 million m³ was from privately-owned lands.

3.12.1 Forms of tenure

British Columbia's *Forest Act* specifies ten forms of forest access agreement, commonly referred to as 'tenures,' under which timber may be sold or harvested from Crown land in British Columbia.

Over 90 per cent of the annual harvest of Crown timber occurs under three tenure forms; Tree Farm Licenses (TFLs), Forest Licenses (FLs), and Timber Sale Licenses (TSLs). Several forms of tenure grant exclusive rights to harvest the timber within a specified area of land. These include TFLs, Woodlot Licenses (WL) and most TSLs. Other tenures confer a right to harvest an annual volume within an area of land, but also entitle other licensees to operate within the same area, in effect

⁴⁴ NFDLP (cited above).

⁴⁵ NFDLP (http://www.nfdp.cfm.org/cp95/data_e/tab55e_1.htm and following).

sharing the timber supply among a number of licensees over time. Forest Licenses and some TSLs are examples of tenures that grant non-exclusive rights.

Some of the key features of each of these tenure forms are summarized below.

Tree Farm License (Group I)

A TFL is an agreement between the province and a corporation that gives the industrial partner a level of exclusive right to harvest timber and manage forests in a specified area. The duration of a tree farm license is 25 years, replaceable every five years. This is an area-based tenure. All protection, inventory, five year management planning, operational planning, road building, maintenance and reforestation are the responsibility of the license-holder. All the above is auditable by the province to ensure that the corporation is complying with provincial standards regulations. TFLs typically have a processing facility requirement.

Notwithstanding the near exclusivity of this tenure form, the province may allocate volume within a TFL persons other than the TFL-holder. Such allocations are made in consideration of government objectives for the area, the timber quality, existing commitments and other relevant information.

Forest License (Group II)

A FL gives a right to harvest an annual volume of timber within a timber supply area (TSA), under cutting permits. The license requires that the holder take responsibility for protection, operational planning, road building, and reforestation. Most FLs require the holder to maintain a processing facility. Most FLs have a 15-year term and are replaceable every five years.

Timber Sale License (Group III)

A TSL is an agreement between the province and an individual and/or corporation giving them rights to harvest timber within a specified TSA, under cutting permits.

The TSL has a “major license” form (Group III) with an AAC of >10 000 m³. The license-holder is responsible for protection, planning, and reforestation activities. Major TSLs have a term not exceeding ten years and most are replaceable on expiry.

Pulpwood Agreement (Group III)

The Pulpwood Agreement (PA) grants a conditional right to harvest “pulp-quality timber” if the holder is unable to obtain sufficient suitable, reasonably priced material for its mill. The license-holder is required to construct and operate a processing facility. A PA-holder must first have a TSL to harvest timber from Crown land in the PA area. The TSL specifies a maximum annual volume of timber. Under a TSL, the PA-holder is responsible for protection, planning, and reforestation activities. PAs have a term not exceeding 25 years. All existing PAs are non-replaceable.

Woodlot License (Group III)

A WL is an agreement between the province and an individual or company giving them the exclusive right to harvest timber and manage forests in a specified area. The duration of a WL is 25 years, and it is replaceable every ten years. This is an area-based tenure, not to exceed 400 hectares on the coast, and 600 hectares in the interior. All protection, inventory, management planning, operational planning, road building and reforestation are the responsibility of the license-holder, all of which is auditable by the provincial government. WLs are typically issued to individuals, First Nations, and small corporations. WLs do not usually require production facilities.

An estimated 5.6% of the Crown WL volume is held by First Nations. The average AAC on Crown woodlots is 1,141,776 m³/year.⁴⁶

Small Business Agreements (Group IV)

The Small Business Forest Enterprise Program (SBFEP) provides small business loggers and owners of small sawmills and independent manufacturing facilities access to Crown timber through TSLs and non-replaceable FLs. New SBFEP TSLs are awarded competitively. SBFEP FLs are awarded on the basis of proposals.

In 2002, there was a total \$195.5 million gross revenue under the SBFEP, with a total harvest volume of 9.96 million m³.

SBFEP licenses vary greatly in volume and term. They may convey rights to all timber within the license area, or specify the maximum volume that may be cut. A non-replaceable small business license gives the holder exclusive rights to harvest an estimated volume from a specified area of Crown land. These licenses do not exceed ten years, and most are between one and five years in duration.

SBFEP replaceable TSLs can grant rights of up to 10,000 m³ of the AAC in a specified TSA, and carry a maximum term of ten years, replaceable within one year before expiry. On most of these existing licenses, the Ministry carries out the planning, development of the area (including access structures) and reforestation. The licensee is normally responsible for protection, harvesting and minor road construction. There is rarely a processing facility requirement.

SBFEP non-replaceable FLs are granted as a volume from an AAC in a specified area. SBFEP non-replaceable FLs generally carry a 10-year term, but can be up to a maximum of 20 years. They usually require a licensee to construct or maintain a remanufacturing facility, and to create or maintain jobs. The licensee is responsible for most of the protection, planning, access development, and silviculture.

⁴⁶ Source: British Columbia Ministry of Forests, based on 2002 total harvested volume.

Free Use Permit (Group IV)

The Free Use Permit gives the right to remove minor volumes of Crown timber for purposes including personal use (e.g., firewood, Christmas tree, traditional or cultural activity), developing land for agriculture, and using timber to develop a mining claim. These licenses are issued for up to but not exceeding one year, non-replaceable. These licenses can be area or volume-based.

Christmas Tree Permit (Group IV)

A Christmas tree permit may only be entered into with an applicant who is eligible based on the criteria outlined in the *Forest Act*. A Christmas tree permit authorizes an individual to grow and harvest Christmas trees on a specified area of Crown land for commercial purposes. These agreements are a maximum of ten years in duration, and are area-based.

Community Forest Pilot Agreement (Group I or III)

The community forest program was first introduced in 1998. To date, eleven Community Forest Pilot Agreements (CFPAs) have been offered. Of these, seven have been issued, of which five are operational (see Table 19, below).

The CFPA conveys exclusive rights to harvest timber, through cutting permits, from the Crown land portion in the community forest. It may give the right to harvest, manage, and charge fees for botanical forest products or other prescribed products or other prescribed products in the community forest. The CFPA requires public consultation, a management plan, audits, and performance reports on community forest activities. The CFPAs will undergo a probation period of five years before an assessment to determine whether or not to award a long-term CFPA with terms of 25-99 years. The long-term PCFAs will be replaceable every ten years. There is no processing facility requirement for this agreement. Long-term CFA can be placed in the Group I category, while shorter-term probationary CFPAs fall into Group III.

Of the eleven current CFPAs, four are issued to First Nation communities. Since the creation of the CFA tenure form, demand has exceeded supply. Available land and AAC have been the limiting factors to the number of CFPAs that can be offered. However with the recent overhaul of forest policy in BC, there may be considerable land made available for further CFPAs.

Table 19. Community Forest Pilot Agreements

Agreement Holder	Location	Area (Ha)	Approved AAC m ³ /y)
------------------	----------	-----------	---------------------------------

<i>CFPA Signed, Approved Management Plan:</i>			
*Cheslatta First Nation	Burns Lake	39,129	210,000
*Esketemc First Nation	Williams Lake	25,000	17,000
Burns Lake Community Forest Ltd.	Burns Lake	23,325	53,677
Harrop-Proctor Watershed Protection Co-op	Nelson	10,860	2,603
District of Fort St. James	Fort St. James	3,582	8,290
<i>CFPA Signed, Management Plan Pending:</i>			
Village of McBride	McBride	60,860	50,000
*Bamfield Huu-ay-aht Community Forest Society	Bamfield	418	1,000
<i>CFPA Offered, Agreement Pending</i>			
Nuxalk First Nation	Bella Coola	46,000	20,000
Island Community Stability Initiative	QCI	24,000	50,000
Likely Community Forest Corp.	Likely	15,000	12,5000
North Island Woodlot Association	Comox	715	2,090

Source: BC Ministry of Forests. *The harvest rate for the Cheslatta CFPA reflects additional cutting to deal with the mountain pine beetle epidemic. Note: * held by First Nation

Pilot Agreements

These licenses have been made available through the 5% take-back on tenure transfer, or during change in control over a company or amalgamation of companies. The extent to which these programs can expand is limited by the fact that they are in competition with each other for AAC. This is due to change with the 2003 revitalization program for BC forest policy.

Innovative Forestry Practices Agreement

The Innovative Forestry Practices Agreement (IFPA) was introduced in 1996 to encourage and test new forest practices that improve forest productivity. An IFPA is superimposed on designated existing major replaceable volume-based licenses; it offers holders an opportunity to increase their allocated harvest levels. By September 2001, seven IFPAs had been issued, including six pilots and one non-pilot agreement. IFPAs have a term not exceeding 15 years, and are primarily directed towards holders of FLs. The IFPA is an area-based agreement, which carries all the same requirements for silviculture and processing facilities as the license within which the IFPA exists.

3.12.2 Summary of British Columbia forest tenures

Table 20, below, indicates the relative importance of each of these Crown land tenure types in British Columbia.

Table 20. Forest Tenure on Crown land in British Columbia

Provincial Tenure	NAFA Classification	Total Allocated Annual Volume (m ³ /y)	Aboriginal-held volume (m ³ /y)
lisaak Agreement	Group 'A'	97,762	97,762
TFL	Group I	15,153,724	380,672
FL	Group II	35,165,626	639,575
TSL, WL, FL (non-renewable)	Group III	9,717,004	1,762,509
SBFEP	Group IV	1,175,129	835,714
Total		61,309,245	3,716,232
Aboriginal volume as a percent of total			6.1%

Source: BC Ministry of Forests, personal communications.

3.12.3 Analysis of Aboriginal access to Crown forest tenure

Current Aboriginal holdings

Forestry legislation developed in the 1940s and in the 1970s allowed for allocation of most First Nations traditional territories to forestry companies through the tenure system. For the most part, this occurred without First Nations input or consent. However, the Aboriginal tenure situation in the province has begun to change over the past decade. The Supreme Court of Canada has affirmed that Aboriginal title and rights continue to exist in British Columbia. Nonetheless, most timber on Crown lands subject to treaty negotiation has been allocated through the tenure system. This situation has constrained options for First Nations throughout the province.

The creation of the CFPA in 1998 opened up some opportunity for Aboriginal communities to operate in the forest sector as collective entities. As previously noted, four of the eleven CFPAs have been issued to First Nation communities. Four additional community forest agreements with First Nations are pending approval. The current number of CFPAs have been made available through a 5% take-back on tenure transfer, changes in control over a company or amalgamation of companies. The potential for expansion of this program is limited by the fact that it is in competition with other alternative tenure forms (IFPAs and WLs) for AAC.

Another form of tenure that is currently significant for First Nations is the WL program. Since most First Nations do not have the capacity to operate on a large industrial scale, there has been larger participation by First Nations in this level of tenure. Although there are many woodlots held by First Nations, the availability of new woodlot tenures has been very limited since the summer of 1999. For example, between September 30, 2000, and September 30, 2001 only seven new WLs were issued, and the total AAC issued to this form of tenure increased by just 82,888 m³. During this period, some 6,735 hectares of Crown land were added through new WLs and top-ups of existing licenses.⁴⁷

Treaty-making and settling of Aboriginal land claims have played a significant role in the current status of access to forest tenure for BC First Nations. Several notable Supreme Court cases, such as *Delgamuukw* and *Sparrow*, as well as signing of the Nisga'a Treaty, have moulded and will continue to mould forest tenures in BC.

On May 11, 2000, B.C.'s first modern-day land claims agreement, the Nisga'a Final Agreement, came into effect. On the effective date, a number of Final Agreement provisions were fulfilled including the transfer of nearly 2,000 square kilometres of Crown land to the Nisga'a Nation, creation of Bear Glacier Provincial Park, and the establishment of a 300,000 cubic decametre water reservation. Canada, British Columbia and the Nisga'a Nation are continuing to implement the Nisga'a Final Agreement, guided by an Implementation Plan and the tripartite Implementation Committee.

Table 21. Aboriginal tenure holdings in British Columbia

Provincial System	NAFA Grouping	Aboriginal-held tenures	
		First Nation	Volume (m ³ /y)
Unique agreement	Group 'A'	Iisaak Forest Resources Ltd. (joint venture between Nuu-Chah-Nulth Tribal Council and Weyerhaeuser Corp.)	97,762
TFL,CFPA	Group I	TFL 42 held by Tanizul Timber Ltd. (owned by TI'azt'en First Nation)	152,672
		CFPA Held by Cheslatta First Nation	210,000
		CFPA Held by Esketemc First Nation	17,000
		CFPA held by Bamfield Huu-Ay-Aht Community	1,000
FL (renewable)	Group II	9135 Investments Ltd. (Joint venture between Coldwater First Nation NATION, Cook's Ferry First Nation, Lower Nicola First Nation, Nooaitch First Nation, Shackan First Nation, Siska First Nation, Upper Nicola First Nation, and Upper Similkameen First Nation)	950
		Babine Forest Products Ltd. (Joint venture between industrial company and Burns Lake First Nation)	409,942
		Decker Lake Forest Products Ltd. (Joint venture between industrial company and Burns Lake First Nation)	124,075

⁴⁷ Dave Haley, BC Senior Woodlot Forester.

		Sim Gan Forest Corp. (Joint venture between industrial company and Gitwinksihlkw Village Gov.)	45,999
		Hecate Logging Ltd. (The Ehattesaht First Nation hold 50% of Company shares)	58,609
Large TSL WL, FL (non- renewable)	Group III	Esdilagh Enterprises Ltd. (Owned by Alexandria Band)	15,000
		Yun Ka Whu'ten Holdings Ltd. 3 FLNRL's (Owned by Ulkatcho Band)	100,000 140,000 15,000
		Tsilhqot'in Forest Products Inc. (Owned by Tsilhqot'in Nat. Gov.)	65,000
		Borland Creek Logging Ltd. (Owned by Williams Lake Band)	15,000 12,500
		Tsi Del Del Enterprises Ltd. (Joint venture between and industrial company and Alexis Creek Band)	60,000
		Nazko Resource Management Ltd. (Owned by Nazko Band)	25,000
		Red Bluff Development Corp. (Owned by Red Bluff Band)	15,000
		Xat'Sull Logging Ltd. (Owned by Soda Creek Band)	15,000
		Ndazkhot'en Forest Management Ltd. (Nazko Band)	70,000 15,000
		Billyboy's Logging Ltd. (Owned by band member of Alexandria Band)	15,000
		Peyah Forest Products (Joint venture between industrial company, Cook's Ferry First Nation and Siska First Nation)	15,000
		Forest License A49782 Holdings Ltd. (Joint venture between and industrial company, Osoyoos First Nation and Spallumcheen First Nation)	15,000
		Qwa'eet Forest Products (Joint venture between and industrial company, Upper Nicola First Nation, Coldwater First Nation, Nooaitch First Nation and Siska First Nation)	60,000
		Hu'Kwa Resources Inc. (Joint venture with Upper Similkameen First Nation)	30,000
		Simpcw Development Co. Ltd. (North Thompson Band)	53,000
		N'Quatqua Logging Co. Ltd. (Owned by N'Quatqua Band)	7,278
		Creston Valley Forester Corp. (Joint venture with Lower Kooteny First Nation)	15,000
		Takla Track and Timber Ltd. (Joint venture with Takla Lake First Nation)	192,856
		Takla Development Corp. (Owned by Takla Lake First Nation)	80,000
		Takla Development Corp.	36,663
		Chunzoolh Forest Products Ltd. (Joint venture between industrial company and Lheidli-T'enneh First Nation)	50,000
		Tsay Keh Dene First Nation (Owned by Tsay Keh Dene First Nation)	53,404
		Akie Gataga Forest Ltd. (Owned by Kwadacha First Nation)	53,404
C Ged Forest Products Ltd. (Owned by Gitwangak First Nation)	100,000		
Kispiox Forest Products Ltd. (Joint venture with Kispiox First Nation)	30,435		

	FLNRL A64561 (Joint venture between industrial company, Iskut First Nation and Tahltan First Nation)	120,000
	Moricetown Band Council (FLNRL held by Moricetown First Nation)	14,250
	Southern Nlaka'Pamux Forest (Boothroyd FN hold 25%, Boston Bar FN hold 25% and Spuzzum First Nation hold 25% shares in the company)	10,000
	Equis Forest Products Ltd. (Owned by Tseshahat First Nation)	18,664
	Nootka First Nations Forest (Owned by Mowachaht/Muchalaht First Nation)	17,883
	Gwa'Sala'-Nakwaxda'xw Timber (Owned by Gwa'Sala-Nakwaxda'xw First Nation)	33,795
	Echa-Peh Forest Resources Ltd. (Owned by Toquaht First Nation)	18,664
	Kvamua Enterprises Ltd. (Owned by Oweekeno First Nation)	24,209
	Heiltsuk Coast Forest Products Ltd. (Owned by Heiltsuk First Nation)	25,000
	TSL A66259 (Held by the Kwakiutl, Quatsina and Tlatlasikwala Bands)	43,345
	Alkali Lake Indian Band (WL held by Band)	4,175
	Canim Lake Indian Band (WL held by Band)	602
	Soda Creek First Nation (WL Held by Band)	1,143
	Williams lake First Nation (WL held by Band)	836
	Alexandria Indian Band (WL held by Band)	1,164
	Little Shuswap FN (WL held by Band)	931
	Adams Lake Indian Band Council (WL held by Band)	859
	Spallumcheen Indian band Council (WL held by Band)	345
	Westbank FN (WL held by Band)	1,104
	Lower Similkameen Indian Band (WL held by Band)	956
	Coldwater Indian Band (WL held by Band)	499
	Nooatch Indian Band (WL held by Band)	421
	North Thompson Indian Band (WL held by Band)	947
	Upper Similkameen Indian Band (WL held by Band)	1,508
	Cooks Ferry Indian Band (WL Held by Band)	780
	Osoyoos Indian Band (WL held by Band)	646
	Skeetchestn Indian Band (WL held by Band)	740
	Bonaparte Indian Band Council (WL held by Band)	600
	Shackan Indian Band (WL held by Band)	2,999
	Upper Nicola Indian Band (WL held by Band)	1,120
	Nicommen Indian Band (WL held by Band)	550
	Neskonlith Indian Band (WL held by Band)	1,465
	Saulteaux FN (WL held by First Nation)	1,093
	The Stellaquo Indian band Council (WL held by First Nation)	1,060
	Doig River Indian Band (WL held by First Nation)	700
	Kamloops FN (WL held by First Nation)	1258

		Canoe Creek FN (WL held by First Nation)	500
		Stoney Creek Indian Band (WL held by Saik'uz First Nation)	1,505
		Nak'Azdli Development Corp. (WL held by Nak'Azdli First Nation)	1,160
		Kwadacha Band (WL held by Kwadacha First Nation)	1,069
		Yekooche First Nation (WL held by First Nation)	951
		Glen Vowell Band Council (WL held by First Nation)	1,055
		Nee Tahi Buhn Band (WL held by First Nation)	1,100
		Wud'at Development Corp. (WL held by Lake Babine First Nation)	813
		Wet'suwet'en FN (WL held by First Nation)	1,160
		Nedo'ats FN(WL held by First Nation)	1,405
		Ahousaht Band Council (WL held by First Nation)	463
		Tsawataineuk FN (WL held by First Nation)	5,635
		Quatsino FN (WL held by First Nation)	3,200
		Chehalis FN (WL held by First Nation)	1,918
		Klahoose FN (WL held by First Nation)	736
		Mount Currie FN (WL held by First Nation)	1,000
		Sliammon FN (WL held by First Nation)	2,555
		N'quatqua FN (WL held by First Nation)	1,000
		Chemainus FN (WL held by First Nation)	1,690
		Skookumchuck Indian Band (WL held by First Nation)	1,200
		Skidegate FN (WL held by First Nation)	2,000
		Old Masset Village Council (WL held by Council)	1,500
		Kyuquot First Nation (WL held by First Nation)	2,390
		Toquaht Enterprises Ltd. (WL held by First Nation)	1,209
		Lower Nicola Indian Band (WL held by Band)	764
		Toosey Indian Band (WL held by Band)	680
SBFEP, Special Permits, small TSL	Group IV	Tl'etingox-t'in Logging Ltd. (Owned by Tl'etingox-t'in Band)	15,000
		Xat'sull Development Ltd. (Owned by Soda Creek Band)	8,136
		Nikec Partners Products Inc. (Owned by Canim Lake First Nation)	10,000
		Adams Lake Dev't Corp/Big Foot Manufacturing Inc. (Owned by Adams Lake First Nation)	10,000
		Heartland Economics Ltd. (Owned by Westbank First Nation)	7,287
		Heartland Economics Ltd.	412
		Neskonlith Development Corp. (Owned by Neskonlith Band)	2,527
		Sk7Ain Ventures Ltd. (Joint venture with Skeetchestn First Nation)	15,000
		McLeod Lake Indian Band (Owned by McLeod Lake First Nation)	17,961
		Chunta Resources Ltd. (Owned by Ulkatcho First Nation)	30,000
		FSJ All Nations Forest (Owned by Tl'azt'en First Nation)	60,000
		Dzitl-Ainli Forest Cporporation (Owned by Tl'azt'en First Nation)	50,000
		Ta-Da-Chun Timber Ltd. (Joint venture with Nak'azdli First Nation)	100,000

	McLeod Lake Indian Band (Owned by McLeod Lake First Nation)	22,442
	Tin Toh Forest Products Ltd. (Owned by Saik'uz Band)	60,000
	Nak'Al Koh Timber Ltd. (Owned by Nak'azdli First Nation)	68,255
	593818 BC Ltd. (held jointly by Lax-Kw'Alaams FN and Tsimshian Tribal Council)	22,000
	Key-Oh-Wood Products Ltd. (Joint venture between industrial company and Burns Lake First Nation)	47,000
	Cheslatta Forest Products Ltd. (Joint venture between industrial company and Cheslatta Carrier Nation)	100,000
	Burnslake Specialty Wood Ltd. (Owned by Burns Lake First Nation)	90,000
	Kyahwood Forest Products (Joint venture with Moricetown First Nation)	25,000
	Creekside Resources Inc. (Owned by Mt. Currie First Nation)	125
	Williams (held by band member, Gwawaenuk Tribe)	1,999
	Sts'ailes Natural Resources Inc. (Owned by Chehalis First Nation)	8,000
	9096 Investments Ltd. (Owned by Homalco First Nation)	10,000
	Tsain-Ko Forestry Development Inc. (Owned by Sechelt First Nation)	25,000
	Kitasoo Forest Company Ltd. (Owned by Kitasoo First Nation)	19,600
	Total Aboriginal Allocation	3,716,232

Source: British Columbia Ministry of Forests, personal communications.

Significant developments

As stated in the throne speech of 2002, the BC government has committed to working to create new opportunities for First Nations that wish to help revitalize the forest industry. The Minister clearly stated that partnerships with First Nations will help bring certainty to the land base, which helps generate more opportunities and investment. From the government perspective, it is hoped this initiative will lead to a revitalized forest industry, a stronger economy, and more jobs for the benefit of all British Columbians.

In BC, the major tenure form, TFLs, cover only eight percent of the province but contribute roughly 25 percent of the province's annual timber supply. Virtually all land included in TFLs is subject to Aboriginal land claims. New licenses or extensions to existing licenses must not be granted without full consultation with First Nations. Further, the issue of compensating First Nations for past and current logging of trees on their lands will be addressed through treaty-making negotiation processes.

In March 2003, the provincial government announced its framework for the comprehensive 'Forest Revitalization Plan.' This policy initiative is designed to bring the BC forest allocation system more in line with market forces. It is expected to create opportunities for new entrepreneurs and value-added manufacturers, facilitate regional job creation, and open up new partnerships with First Nations. To accomplish this, government plans to reallocate 20 per cent of the allocated AAC from major licensees. They will be compensated for their lost harvesting rights. This allocation will be

added to what is already available on the open market. As a result of these and other changes, up to 45 per cent of the province's total harvest will eventually be made available through the open market. This may make more timber available for First Nations, community forests, woodlots, the value-added sector and new entrepreneurs.

Under new legislation the BC government is increasing Aboriginal participation in the forest sector. Forest companies that have failed to utilize their assigned volumes forfeit some of their undercut to other interested parties, primarily Aboriginal. This 'use it or lose it' initiative is believed by many to signal that government is willing to use the undercut of forest companies as a part of the treaty negotiation process. Presently, four Vancouver Island First Nations have signed interim measures agreements with the province in which the government committed to provide them with timber allocations. So far under this system, the Ditidaht and Pacheenaht First Nations have gained access to 300,000 m³ of un-utilized volume from TFL 46, while the Uchucklesaht and Huu-ay-aht First Nations have gained access to 265,000 m³ from TFL 44. To date, First Nations have been invited to apply, without competition, for a total of 1,128,000 m³ of timber allocation.

In the medium to longer-term, it is expected that the future of Aboriginal forest land access and ownership will continue to be significantly enhanced through the treaty-making process. Treaties will define areas over which First Nations will have jurisdiction and may provide guidelines for First Nation's involvement in planning and development of resources management. Treaties will clarify roles and responsibilities of First Nations and governments and provide certainty over who can use the land and in what manner.

Continuing development of joint ventures between forest companies and First Nations may also lead to enhanced access to forest resources and increased influence over forest management, outside of the treaty process.

The future of tenure allocation to First Nations is also highly correlated to the intensity of Mountain Pine Beetle (MPB) infestations in the interior of BC. In March 2003, a total of 600,000 m³ in non-renewable three-year Forest Licenses were awarded to First Nations (Lheidli Tenneh and Saik'uz) in the Prince George Region. The timber will supply fibre to a value added facility owned and operated by the First Nations. The Lheidli Tenneh and the Saik'uz First Nations must submit detailed business plans outlining how the forest licenses will be managed, including meeting silviculture and reforestation guidelines. The agreement also allows the minister to award a CFPA once Canada, B.C. and the Lheidli Tenneh reach and approve an agreement-in-principle under the B.C. treaty process. More wide spread MPB infestations will open up more new short-term tenure opportunities.

Chapter 4: SUMMARY OF ABORIGINAL TENURE ACCESS

The previous chapter has presented Aboriginal forest tenure holdings in each forested jurisdiction across Canada. In Section 4.1, these data are summarized, by jurisdiction and by the form in which tenure is held. The factors influencing Aboriginal access to forest tenure are assessed in Section 4.2.

4.1 Aboriginal tenure holdings across Canada

As indicated in Table 22, below, Aboriginal groups and individuals hold a total allocation of some 7.0 million m³ of Canada's Crown timber. This accounts for 4.1% of the 169.5 million m³ annual volume of timber allocated for industrial use across the country.

Table 22. Aboriginal forest allocation according to form of tenure

	Allocated Volume (m ³ /y)					Total
	Group I	Group II	Group III	Group IV	Group 'A'	
Aboriginal holdings	1,361,017	1,796,904	2,740,329	1,038,319	97,762	7,034,331
Percentage of Aboriginal Holdings	19%	25%	38%	15%	1%	
National AAC allocated to Group	94,604,607	41,961,026	30,487,117	2,376,692	97,762	169,527,204
Aboriginal as percent of National within each group	1%	4%	9%	44%	100%	4.1%

Source: Compiled from data reported in Chapter Three.

4.1.1 Aboriginal Access to Different Tenure Types

In most jurisdictions across Canada, there exists a 'major' form of forest tenure. Categorized as 'Group I' tenures, these are large-scale, long-term (often evergreen) forms of access to forest timber resources that require the holder to undertake a high level of commerce-oriented forest management functions. Aboriginal access to this form of tenure is found in three of Canada's twelve forested jurisdictions; Quebec, Saskatchewan, and British Columbia (see Table 23).

While the number of Aboriginal holders of this form of tenure is small, the volumes associated with them are relatively large, so the group accounts for a total allocation of 1.36 million m³, or 19% of all Aboriginal allocated AAC holdings. However, these holdings account for only 1% of Group I tenures nation-wide.

Group II tenures also tend to be large, long-term, and renewable. Unlike the area-based Group I tenures, these are volume-based and provide less management responsibility. Aboriginal holdings of Group II tenures total 1.79 million m³ accounting for 25% of all Aboriginal holdings. Aboriginal access to this form of long-term tenure is also limited accounting for 4% of the total national allocation of 30.49 million m³ to this category of tenure.

The form of access to forest tenure that has most commonly been made available to Aboriginal groups in Canada are the less permanent, and less management-intensive tenures that fall into Group III. These include licenses or permits to harvest timber from major tenures held by large industrial companies. A total of 2.74 million m³, or 38% of all Aboriginal allocations, are held in this category. This level of allocation makes up 9% of nation-wide allocations made under Group III tenure arrangements.

Group IV accounts for a wide range of minor tenure forms, and make up 15% of allocations to Aboriginal groups. Aboriginal groups are over-represented in this grouping, accounting for 44% of total Group IV allocations (refer to Table 22).

Table 23. Aboriginal forest allocation by form of tenure and jurisdiction

Jurisdiction	Volume Allocated To Aboriginal Groups (m ³ /y)						Total Allocation (m ³ /y)	Aboriginal as a percentage of jurisdiction
	Group I	Group II	Group III	Group IV	Group 'A'	Total Aboriginal		
NF&L	0	0	0	0	0	0	2,004,800	0%
Nova Scotia	0	0	119,625	0	0	119,625	1,028,400	11.6%
NB	0	0	233,880	0	0	233,880	5,152,310	4.5%
PEI	0	0	0	0	0	0	42,900	0%
Quebec	408,500	147,000	96,881	0	0	652,381	35,727,362	1.8%
Ontario	0	0	254,828	0	0	254,828	30,481,503	0.8%
Manitoba	0	0	0	132,605	0	132,605	3,494,426	3.8%
Sask.	571,845	351,000	141,320	0	0	1,064,165	6,814,758	15.6%
Alberta	0	659,329	103,286	0	0	762,615	22,970,000	3.3%
NWT	0	0	0	70,000	0	70,000	235,000	29.8%
Yukon	0	0	28,000	0	0	28,000	266,500	10.5%
BC	380,672	639,575	1,762,509	835,714	97,762	3,716,232	61,309,245	6.1%
Total	1,361,017	1,796,904	2,740,329	1,038,319	97,762	7,034,331	169,527,204	4.1%

Identification of alternative, conservation-based tenures was limited to the Iisaak Agreement tenure. Iisaak Forest Resources Ltd. is a joint venture between Weyerhaeuser and Ma-Mook Development Corporation, owned and operated by the First Nations of the Nuu-Chah-Nulth

Central Region. While Iisaak's operations are based on their access to a Group I tenure (TFL 57), an adjustment to the typical harvest demands has been allowed by government to allow ecosystem-based management according to guidelines provided by the Clayoquot Sound Scientific Panel. These guidelines provide for great flexibility in carrying out logging operations that reflect the values and knowledge of Aboriginal Peoples in the region. Hence this tenure has been allocated to the 'Alternative' grouping.

4.1.2 Aboriginal access to Crown forest tenure across Canada

The relative participation of Aboriginal people in forest tenure opportunities varies across the country (Table 24). In BC, allocations of timber volumes to Aboriginal groups make up 6% of the provincial total. This level declines to 3.3% in Alberta and 3.8% in Manitoba, while current Aboriginal holdings in Saskatchewan make up 15.6% of that province's total. The lowest Aboriginal tenure holdings are in Newfoundland & Labrador (none at this time), Ontario (0.8%) and Quebec (1.8%). In the Maritime provinces, Aboriginal allocations vary from 11.6% in Nova Scotia, arising from the Unama'ki Stora Enso Agreement, to 4.5% in New Brunswick, with no allocations in PEI. Aboriginal interests have gained some access to the small timber allocations made available in Yukon and NWT, 10.5% and 29.8% respectively.

Table 24. Aboriginal access to forest tenure allocations across Canada

Jurisdiction	Allocated Annual Volume (m ³ /y)		
	Total Aboriginal	Total Allocation	Percent Aboriginal
Newfoundland & Labrador	0	2,004,800	0.0%
Nova Scotia	119,625	1,028,400	11.6%
New Brunswick	233,880	5,152,310	4.5%
Prince Edward Island	0	42,900	0.0%
Quebec	652,381	35,727,362	1.8%
Ontario	254,828	30,481,503	0.8%
Manitoba	132,605	3,494,426	3.8%
Saskatchewan	1,064,165	6,814,758	15.6%
Alberta	762,615	22,970,000	3.3%
Nunavut	0	0	--
Northwest Territories	70,000	235,000	29.8%
Yukon	28,000	266,500	10.5%
British Columbia	3,716,232	61,309,245	6.1%
Total	7,034,350	169,527,204	4.1%

4.2 Factors influencing Aboriginal access

Access to forest tenure and timber allocations has, across Canada, arisen only as a result of concerted Aboriginal-initiated efforts. These have typically involved activism leading to court cases,

legal action, and claims settlement. Table 25, provides a visual assessment of how these key factors have played out across Canada.

Table 25. Factors affecting current allocation of forest tenures to Aboriginal interests

Jurisdiction	Aboriginal activism	Court cases/legal developments	Claim settlement	Policy shift inside government	Aboriginal capacity increase	Demographic changes	New form of tenure
NF&L							
Nova Scotia							
NB							
PEI							
Quebec							
Ontario							
Manitoba							
Sask.							
Alberta							
NWT							
Yukon							
BC							

Source: Based on interviews carried out by NAFA with key government sources. Note: Darkly shaded areas indicate greater importance, while lightly shaded areas indicate lesser importance for the corresponding factor.

In some jurisdictions, notably Saskatchewan and Yukon, this Aboriginal initiative has led to government policy change, including efforts to ensure new allocations include Aboriginal Peoples. As Aboriginal capacity to participate in commercial forestry activities increases along with a growing Aboriginal population in Canada’s commercial forest zones, governments and industry are sometimes becoming more supportive of Aboriginal access to forest resources.

However, gaining access to commercial-oriented tenures does not fully address the objectives that have driven many Aboriginal Peoples and First Nations to activist positions in the forest. Across Canada, concern that singularly focussed industrial tenures are threatening the ability of Aboriginal Peoples to exercise their Aboriginal rights and cultural practices within their traditional territories.

Equally, some Aboriginal people and communities are re-awakening their commitment to their ancient responsibilities for protecting the land of their traditional territories. Clearly, simple transfer

of commercial allocation from one corporate interest to an Aboriginal corporate interest may not, in itself, fulfill the vision of Aboriginal Peoples for the forest.

Looking forward, a number of factors can be expected to influence the future of forest tenure allocations to Aboriginal Peoples in Canada. These are represented in Table 26.

Table 26. Factors expected to influence future allocations

Jurisdiction	Aboriginal activism	Court cases	Claim settlement	Policy shift inside government	Aboriginal capacity increase	Demographic changes	New form of tenure
NF&L							
Nova Scotia							
NB							
PEI							
Quebec							
Ontario							
Manitoba							
Sask.							
Alberta							
NWT							
Yukon							
BC							

Source: Based on interviews carried out by NAFA with key government sources. Note: Darkly shaded areas indicate greater importance, while lightly shaded areas indicate lesser importance for the corresponding factor.

Chapter 5: CONCLUSION

The purpose of this study, as stated in the introduction, was to assess forest tenure as one indicator of Aboriginal participation in the management and economic aspects of forestry, on a national scale. The results presented in the preceding chapters suggest that data can be generated on a jurisdiction-by-jurisdiction basis, and that tenures can be grouped into categories that are reasonably comparable in terms of the levels of management responsibility they entail. Current data reporting systems are not, however, designed to make such data collection easy. In most jurisdictions, government managers had to be interviewed individually to determine the types and amounts of tenure allocated to Aboriginal interests, as these data are not tracked separately from other forms of Aboriginal involvement in the forest such as contract harvesting.

When the tenure data are set out, a picture of Aboriginal involvement in the forest begins to emerge. The current situation in Canada is one where Aboriginal Peoples have limited, if any, access to significant forest tenures. Only four percent of the total allocated timber volumes are held by Aboriginal groups across the country. Further, only three jurisdictions have provided major area-based (Group I) tenures to Aboriginal Peoples (BC, SK and QC), and these account for only 14% of all Aboriginal tenure. Over half of the tenure allocations held by Aboriginal Peoples involve small volumes under Group III and Group IV arrangements. These are typically short-term in nature and are often located within major tenures where well-established forest companies hold long-term access and are responsible for all levels of planning and decision-making.

In jurisdictions such as Ontario and Manitoba, some progress is being made in planning for Aboriginal access to tenures in forested regions that have not previously been commercially exploited. However, for those Aboriginal Peoples who have attempted to coexist with forestry activities within their traditional territories over the past, the struggle to gain access and influence has far to go. Typically, most provinces feel that all their available timber supply has already been fully allocated. Clearly there is tension developing here, considering the widely acknowledged commitments to share the benefits of forests with Aboriginal Peoples made by Canadian jurisdictions through instruments such as the National Forest Strategy. Canada's federal, provincial and territorial forest ministers have identified forest tenure distribution and distribution of the financial benefits from the timber products industry as core indicators for assessing how benefits are distributed.⁴⁸

Therefore, Aboriginal groups are frequently advised to seek business relationships or contracting opportunities with established companies that hold Crown tenures. Many First Nations reject this as the sole approach available to them to gain influence within their traditional forests. Aboriginal activism in British Columbia, Quebec, New Brunswick and Nova Scotia, including blockades of logging operations and cutting within Crown forests without licenses or permits, has led to court

⁴⁸ Criteria 5.2.1 and 5.2.2 of the 2003 Criteria and Indicators for Defining Sustainable Forest Management in Canada. Canadian Council of Forest Ministers. See <http://www.ccfm.org>.

action and some degree of provincial re-evaluations of the current timber allocations. In BC and Quebec, this has led to some genuine progress in gaining influence over how forests are managed. In other jurisdictions, the ability to manage for diverse Aboriginal values has yet to be demonstrated.

Yet the objective to gain increased access to, and influence over, forest tenure in Canada is important. Long-term forest tenure can provide the level of stability and certainty of access that Aboriginal communities and businesses require in order to gear up for economic participation in the forest sector. Gaining tenure responsibilities particularly major tenures such as those of Group I and Group II (as described in this study) provides a level of control that is not obtained in third party contract arrangements with a license-holder.

Further, gaining primary tenure responsibilities allows Aboriginal Peoples to gain a voice in the management of forests. Aboriginal Peoples seek to maintain and to regain their ability to express their culture and values within the forests that comprise their traditional territories. To achieve this fundamental goal will require the ability to influence the management of these forest lands. Access to major tenures, particularly Group I tenures that are long-term and involve full management responsibilities, may provide First Nations the ability to exert this kind of influence.

The limited experience available in Canada suggests, however, that even when First Nations hold major tenure forms, the ability to express Aboriginal values is constrained by the overwhelming orientation of the tenure conditions to support sustained flow of wood and fibre to industrial mill operations. In a recent paper by Ross and Smith⁴⁹, it is noted that the current system of tenure on Crown forest lands has failed to lead to respect for Aboriginal forest values in the forest. Rather, the system has resulted in “drawing Aboriginal Peoples into the industrial tenure system, compelling them to operate according to industrial management practices which are incompatible with their values and culture.” This has contributed to “creating internal tensions and crises in many Aboriginal communities.”

Nonetheless, experience also suggests that when Aboriginal interests do hold significant forest tenures, considerable efforts to bring forest management into line with non-timber uses and traditional values is made. Access to major tenures brings the decision-making process much closer to members of the First Nation community, and forest managers become intimately familiar with the inherent conflicts between the tenure conditions and the diversity of values, both traditional and commercial, that Aboriginal Peoples seek to express in the forest.

Alternative tenure arrangements such as that established for Iisaak Forest Resources may be the start of an ‘Aboriginal forest tenure’. Such a tenure system would provide the flexibility needed to accommodate diverse forest management objectives, creating room for multiple values to co-exist in the forest.

⁴⁹ Ross, Monique M. and Peggy Smith. 2002. “Accommodation of Aboriginal Rights: The Need For An Aboriginal Forest Tenure.” Synthesis report prepared for the Sustainable Forest Management Network, University of Alberta.

This analysis of the present tenure system in Canada shows that Canada has a long way to go in order to achieve a system of forest tenure where Aboriginal rights are recognized in the way Crown forests are managed and utilized. In some jurisdictions, a tentative first step has been taken as Aboriginal Peoples gain access to conventional forms of industrial tenure. The next step that of Aboriginal tenures whereby diverse values and Aboriginal perspectives can be integrated into the management of Crown forests, can begin to be visualized. Making progress in this direction will be a significant and important achievement.

Tenure as an indicator of Aboriginal participation in forest management and economic activity has its limitations. For example, Aboriginal groups could have a significant role in forest land management without holding tenure. This may be the case with the Waswanipi Model Forest and the Algonquin Trilateral Agreement, both in Quebec. Likewise, Aboriginal businesses may gain significant participation in the forest-based economy through contracts to tenure-holders. Nonetheless, tenure does seem to be a powerful and meaningful indicator. Grouping tenures according to level of management responsibility, as has been done in this study, also serves to relate to level of economic involvement and stability. Combined with other indicators such as employment, business ownership, government policy instruments, Aboriginal tenure should continue to be tracked in order to assess Canadian progress in meeting national commitments and obligations to increase Aboriginal participation in forest management and economic participation.

APPENDIX A

CONTACT LIST

State of Forest Report

Angie Larabie, Canadian Forest Service (CFS), Natural Resources Canada (NRCan)

Newfoundland

Charlie Butler, Policy co-coordinator, Forest Resources and Agrifoods, Policy Co-ordination division, NF&L government, St. John's

Keith Deering, Regional Forester, Newfoundland and Labrador Forest Resources and Agrifoods Department

Kitt Head, NF&L Forest Resources and Agrifoods Dept.

Basil English, Senior Management Planner, NF&L Forest Resources and Agrifoods Dept.

Nova Scotia

Peter MacQuarrie, Director of Program Development, Natural Resources, Division of Renewable Resources

Dan Eidt, Director of Forest Management of Crown Land

Jack Kite, Kimberley – Clark Forest Corp.

Jon Porter, Bowater-Mersey Paper Company

Peter Jones, Bowater – Mersey Paper Company

Prince Edward Island

Ian Millar, Policy & Liaison Officer, CFS, NRCan, Atlantic Region

Stan McAskill, Provincial Forest Manager, Forestry and Land Resource Modeling

Benny Sark, Abegweit First Nation

Jesse Francis, Eco-Tourism Manager, Lennox Island First Nation

Paul McKnight, Policy Analyst, Forestry and Land Resource Modeling

M.J. Keef, Lands Officer, PEI Forestry and Land Resource Modeling

New Brunswick

Tom Reid, Assistant Deputy Minister, Natural Resources and Energy, Renewable Resources Division, Fredericton

T. MacFarlane, Forest Utilization and Silviculture Forester, Fredericton

Dennis Simon, Director of Forestry, Big Cove First Nation

Alvery Paul, Burnt Church First Nation

Chief George Ginnish, Eel Ground First Nation

Stephen Ginnish, Eel Ground First Nation

Bevan Lock, Woodlands Manger, Stora Enso Forest Corp.

Quebec

Christian Leclerc, Quebec Ministry of Natural Resources, Wildlife and Parks

Jean-François Gravel, Relations Avec les Autochtones, Quebec Ministry of Natural Resources, Wildlife and Parks

Geoff Quail, Grand Council of the Crees of Quebec

Ontario

Keith Sayers, Forestry Coordinator, Union of Ontario Indians, North Bay

Monique White, CFS, NRCan, Ontario Branch

Helen Drouin, CFS, NRCan, Ontario Branch

Brian Hadden, CFS, NRCan

Graham Vance, Ontario Ministry of Natural Resources (OMNR), Native Affairs Unit, Peterborough

Kevin Coombs, SFL Specialist, OMNR, Wood Allocation & Measurement, Sault Ste. Marie

Chris Leale, Area Forester for Lake Nipigon Forest District, OMNR

Joe Yaraskavitch, Area Forester, Algonquin Forest Authority
Jon Orpana, Forester, Bancroft Forest Company
Steven Foley, Forester, Cochrane Forest District, OMNR
Paul Leale, Area Forester, Espanola District Office, OMNR
Bob David, Area Supervisor, Wabigoon Forest, Dryden District, OMNR
Bob Davies, Forester, Fort Frances District, OMNR

Manitoba

Dan Bullock, Forest Development Analyst, Sustainable Forestry Unit, Manitoba Conservation
Rick Mamalygo, Regional Forester, Central Region, Manitoba Conservation
David Neufeld, Tolko Industries Ltd.
Bruce Holmes, Regional Forester, Northeast Region, Manitoba Conservation
Barry Waito, General Manager, Louisiana-Pacific Paper Company
Doug Hunt, Tolko Industries Ltd.
Tony Scribe, Financial Officer, Norway House Cree Nation

Saskatchewan

Larry Stanley, Manager of Finance and Administrative Services, SERM
Trevor Ives, Peter Ballantyne Cree Nation

Alberta

Ray Dupres, Economic Development Manager, Tall Cree First Nation
Eric Davey, Athabasca Tribal Council
Baptiste Metchooyeah, Den Tha' First Nation
Tim Gauthier, Manager Little Red River Forestry Woodlands Division, Little Red River Cree
Howard Grey, ADM, Land and Forest Division, Alberta Sustainable Resources Development
Andy Masiuk, Senior Advisor, Alberta Sustainable Resources Development
Daphne Cheel, Executive Director of Policy and Planning, Alberta Sustainable Resources Development
Grant Klappstein, Database Manager, Alberta Sustainable Resources Development
Lindsay Kirkoff, Timber Revenue and Dispositions Section, Alberta Sustainable Resources Development

North West Territories

Susan Corey, Director Forest Management, Resources, Wildlife and Economic Development, Yellowknife

Yukon

Ed VanRanden, Forest Policy Analyst, Yukon Renewable Resources, Policy and Planning Branch, Whitehorse

British Columbia

Glenn Ricketts, Assistant Director, Aboriginal Affairs Branch, BC Ministry of Forests (MOF)
Phil Symington, Senior Resource Analyst, Aboriginal Affairs, BC MOF, Victoria Branch
Kelly Finck, Senior Forester, Community Forests Section, BC MOF, Victoria Branch
David Haley, Senior Woodlot Forester, BC MOF, Victoria Branch
Don Williams, Timber Forester, Kalum Forest District, BC MOF
Harry Jennings, Planning and Issues Forester, Cariboo Forest Region, BC MOF

Michael Blackstock, Aboriginal Affairs Manager, Kamloops Forest District, BC MOF
Dave Parsons, Tenures Officer, Nelson Forest Region, BC MOF
Val Ciaponni, Tenures Manager, Vancouver Forest Region, BC MOF
Maury Drage, Timber Tenure Specialist, Prince George Forest Region, BC MOF
Sharon Hadway, Aboriginal Affairs Manager, Vancouver Forest Region, BC MOF
Duane Clark, Forest Tenure Officer, Kamloops Forest Region, BC MOF
Trudy Goold, Regional Tenures Forester, Kamloops Forest Region, BC MOF
Dennis McPhail, Senior Timber Tenures Forester, Victoria, BC MOF
Tan Calhoun, Babine Forest Products, Burns Lake
Tim Smith, Forester, Canadian Forest Products, Huston
Brian McNaughton, BC Federation of Woodlot Associations
Brian Larson, Kispiox Woodlot Association
Geoff Stevens, Burns Lake Specialty Wood Inc.
Mike Robertson, Economic Development Officer, Cheslatta Nation, Burns Lake