



NAFA

NATIONAL ABORIGINAL FORESTRY ASSOCIATION
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**THIRD REPORT ON
FIRST NATION-HELD
FOREST TENURE IN CANADA 2015**

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EXECUTIVE SUMMARY

As the first economic sector bringing together indigenous nations and non-indigenous settlers, forestry has a special place in the history, hearts, and minds of many Canadians. From the beginning, with the trade of European goods from the first pre-colonial era schooners in exchange for repair timbers and firewood, the forest has brought together different Peoples, economic markets, and world views. This function of the forest sector continues right up to the present, albeit in a modern form. While we pay brief homage to this important contextual backdrop here, this paper provides a technical update on an emerging critical aspect of the forest sector – First Nation-held forest tenure. Furthermore, we collate and comment on tenure metrics for a narrow period in the modern era – roughly a decade from 2003 to 2013. The data tells us that First Nations are repatriating forest management responsibility at a very fast pace.

Going outside of our dataset, our tenure uptake story begins in 1982 with Tl'azt'en Nation in present day British Columbia. Under Chief Ed John, this Band reclaimed responsibility for Tree Farm License 42, comprised of 54,000 ha of forest with a corresponding 125,000 cubic metres (m³) annual allowable cut (AAC). From this starting point, hundreds of other First Nations began reclaiming forest tenure nationally. By 2003, over 7,982,990 m³ AAC was held. In 2006, over 11,685,474 m³ AAC was held. Following this trend, in 2013 approximately 19,199,333 m³ AAC was held. We know due to our on-going outreach with First Nations that these numbers are actually conservative with many negotiations underway and/or being finalized at the time of writing (Spring 2015), representing millions more of First Nations AAC coming on stream every year. Reflecting today's changed landscape, Tl'azt'en Nation now manages Community Forest K4B (previously Tree Farm License 42), with Chief Ed John still in the picture as the Grand Chief of the British Columbia based First Nations Summit, an umbrella First Nations political organization.

Circling back to tenure, the discussion about activating this growing capacity is maturing with First Nations, governments, and businesses asking sophisticated

questions about utilization rates, supply chain efficiency, fibre transformation, and market access. Together, First Nations and their partners are coming up with innovative solutions to these timeless economic factors. However, in one narrow sense, it all begins with tenure. Which returns us to the content of this paper. We have updated our national First Nation-held tenure report for a third edition. Collectively, First Nations now hold approximately 10.4% of the national wood supply, an increase of 7.5 million m³ or 64% in volume from our last report in 2007, and a 140% increase since our first report in 2003. Enjoy the story these numbers tell.



INTRODUCTION



In 2003, the National Aboriginal Forestry Association (NAFA) carried out research to assess the level of access that First Nations had to Crown forests. The intent was to establish a baseline against which future progress could be measured. The research was updated three years later and a second edition of this report was produced in 2007. This third edition of the report provides comparable data of First Nation-held forest tenure along with a situational analysis of forest policy by region for the 2013/2014 operating year. The goal of this reporting series is to further develop First Nation-held forest tenure as a viable indicator of market access.

“Access” to Crown forest lands has multiple meanings for First Nations peoples. The concept encompasses access for purposes related to the pursuit and protection of traditional activities (or Aboriginal and treaty rights); access to wood fibre and non-timber forest products to support commercial enterprises; and access to influence forest management planning. Many different indicators might be chosen to measure each type of “access”.

Before research could begin in 2003, NAFA had to identify the type of “access” it wished to investigate and monitor over the long-term. It was decided that access to wood fibre in the form of secure tenure opportunities to support commercial enterprise was the most viable option for two reasons:

1 To create a “fibre basket” profile for First Nations in Canada: understanding wood fibre allocation would allow NAFA to assess, compare and advertise the market potential of First Nations to the global forest sector; and

2 To encourage longitudinal research and monitoring of First Nations potential rather than deficit: In other words, forest tenure information is already monitored by governments for non-First Nation entities to measure economic and political performance. The additional effort to identify First Nation-held tenure would be minimal and result in an expanded analysis of sustainability indicators.

This report is organized into three main sections. The first provides an overview of the forested landscape and tenure system in each province and territory (referred to as regions). A summary of regional timber allocations by volume (cubic metre - m³) is presented, including the portion of allocation held by First Nations. The next section presents the data in a collated format along with observations on emerging trends. The final section is a discussion about factors driving the change observed in First Nation-held tenure across the country. Methodological issues encountered during the writing of this report are identified and considerations for moving the research forward in the future conclude the report.

A photograph of a dense, moss-covered forest. Sunlight filters through the trees, creating a bright, ethereal atmosphere. The trees are tall and slender, with thick trunks and dense foliage. The ground is covered in moss and fallen branches. The overall scene is a lush, green, and serene forest environment.

PROVINCIAL AND TERRITORIAL FOREST TENURE SYSTEMS

FORESTED LAND

Newfoundland has approximately 5.2 million ha (46%) of forested lands while Labrador has 18 million ha of productive forest lands (or 62% of total land base). Approximately 98% are provincial Crown lands, 1% private, and another 1% federal. Two-thirds of the Crown land on the island of Newfoundland has been conveyed to pulp and paper companies through 99-year leases under the 1905 *Pulp and Paper Manufacturing Act* and the 1935 *Bowater Act*. The Province's legal system treats this licensed land as private property. Approximately 35%—or 3.7 million ha of the province's forest is available for forest development. The estimated wood supply available from private and Crown forest lands in 2013 was 1.18 million m³.

FORMS OF FOREST TENURE

Forest management in Newfoundland and Labrador is governed by the *Forestry Act* (1990) and associated regulations. Forest Planning is carried out in 18 Forest Management Districts with each District responsible for developing a five-year operating plan, an annual operating plan, and a past annual report. Each five-year operating plan is also subject to the province's *Environment Protection Act*.

In addition to the planning requirements, a provincial wood supply analysis is conducted every five years and is a key component of the 20-year Provincial Sustainable Forest Management Strategy. The Strategy is required under the *Forestry Act* and is renewed every 10 years. The 2011 Timber Resource Analysis established AACs for each of the 18 Forest Management Districts on the Island for the 2011-2016 period. This analysis determines the Annual Allowable Cut (AAC) for a planning period of 160 years¹. According to the analysis, the 2011-2016 AAC for Crown lands is 1.8 million m³.

The right to cut Crown timber is conveyed through the *Forestry Act* (Sec. 14) in three forms of licences or agreements: a Crown Timber Licence, a Timber Sale Agreement or a Cutting Permit. Each tenure is described below.

Crown Timber Licences

Timber Licences (TL) account for most access to Crown timber in Newfoundland, with nearly 3 million ha under this form of tenure. These long-term area-based licences are issued by

the Crown for varying periods of time but usually for a period of up to ninety-nine years.

Two conditions are necessary for the issuance of these licences:

- 1 the holder must own or operate a timber processing facility; and
- 2 the holder must have entered into a 20-year Forest Management Agreement with the Minister. These licences have associated annual royalty payments due to the Crown and the licence is not renewable at the option of the licence-holder.

The previous tenure report (2007) identified a substantial amount of land held under this tenure by Abitibi-Consolidated (965,858 ha). In 2008 the Newfoundland government introduced the *Abitibi-Consolidated Rights and Assets Act* to facilitate the return to the Crown rights related to timber and water use. All non-renewable TLs expired in 2010. Corner Brook Pulp and Paper Limited (acquired by Kruger in 1984) manages 1.5 million ha of forest lands on the island of Newfoundland; 760,000 ha of that land are productive forests.

Timber Sale Agreement

This area-based tenure may be issued to an entity who operates or proposes to establish and operate a timber processing facility, other than a pulp and paper mill, or who proposes to establish and conduct a logging operation. This tenure may be issued by a public tender process or as a direct award of the Minister. The term of a Timber Sale Agreement is five years, with a possibility of extension by 1 year. There are no royalty payments associated with this tenure.

Cutting Permits

Commercial Cutting Permits (CCPs) entitle the holder to cut and remove timber from Crown lands for commercial purposes, i.e. it can be sold or bartered. Holders of CCPs have timber rights only and are not responsible for activities related to the management of the forest resource (such as protection & reforestation). CCPs are annual permits that are renewable.

Domestic Cutting Permits are required to cut and remove timber from Crown land for personal use and not for sale, barter or gift.

¹ <http://www.nr.gov.nl.ca/nr/forestry/timber/>

Schedule 12-E lands permits

Under the Labrador Inuit Land Claims Agreement, an area identified as "Schedule 12E" which is approximately 0.8 million ha in size is identified. Under this agreement, Inuit who ordinarily reside in Labrador but outside of the Labrador Inuit Settlement Area (LISA), along with Inuit who reside in the LISA and Labrador Inuit Lands (LIL), can harvest within this area as

well. The Provincial Minister of Natural Resources is responsible for management activities in this area, including setting the harvest levels and any restrictions. Provincial timber cutting permits are required in this area. These permits are available from Provincial Natural Resources offices and are free of charge to Inuit people.

Summary of Newfoundland and Labrador Forest Tenure Allocation

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	2,004,800	0	0
2006	2,643,680	15,000	0.6
2013	2,967,970	215,000	7.3

The Interim Forest Agreement (2003) between the Innu Nation (Labrador) and the province to co-manage Forest District 19 is negotiated on an annual basis. The current AAC is 200,000 m³. The Nunatsiavut Government has an AAC of 15,700 m³.

FORESTED LAND

Nova Scotia has 4.2 million hectares of forested lands. Over two-thirds of this forested area—68%—is privately owned. Provincial Crown forest accounts for 29% and federal lands, including 8,000 ha of federal Aboriginal lands, accounts for the remainder. Of the total forested lands in Nova Scotia, approximately 18% are reserved for non-industrial uses. Most of the non-reserved Provincial Crown forest, 96%, is accessible by road. The estimated wood supply from private and Crown forests in 2013 was estimated to be 8.3 million m³. Of this supply, 83%, or 6.9 million m³ is estimated to come from private lands.

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 term local permits for smaller ventures, volume utilization agreements, land leases, and letters of authority for very small harvests. Nova Scotia's tenure system has remained the same since the previous NAFA report (2007). The major forms of tenures are discussed below.

Licence and Management Agreements

There are two large long-term Licence 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. Scott Maritime Pulp and Paper Agreement, and Stora Enso Agreement are the only LMAs in effect in the province. In 2014, the Nova Scotia government introduced legislation to repeal four LMAs: *Bowater Mersey Agreement Act 1962*, the *Halifax Power and Pulp Company Limited Agreement Act, 1962*, the *Oxford Lease Purchase Act of 1960* and the *Scott Maritimes Limited Agreement Act of 1965*. At the time of writing this report, Northern Pulp Nova Scotia Corporation was operating under the *Scott Maritimes Limited Agreement Act* while a new forest licence agreement is negotiated.

Stora Forest Industries Agreement Act

The Stora Agreement between the province of Nova Scotia and Company (now 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.

Forest Utilization Agreement

The Forest Utilization Agreement (FUA) is a volume-based harvesting permit that may be awarded under the provisions of the *Crown Land 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 pay a silviculture fee as a portion of their stumpage payments. The duration of the FUA can be for any term up to a maximum of ten years, renewable for one ten year period. Since 2000, many of these agreements have only been issued or extended for terms of one year. These tenures are much smaller than LMAs, although there are no specific size restrictions for FUAs specified in the *Act*.

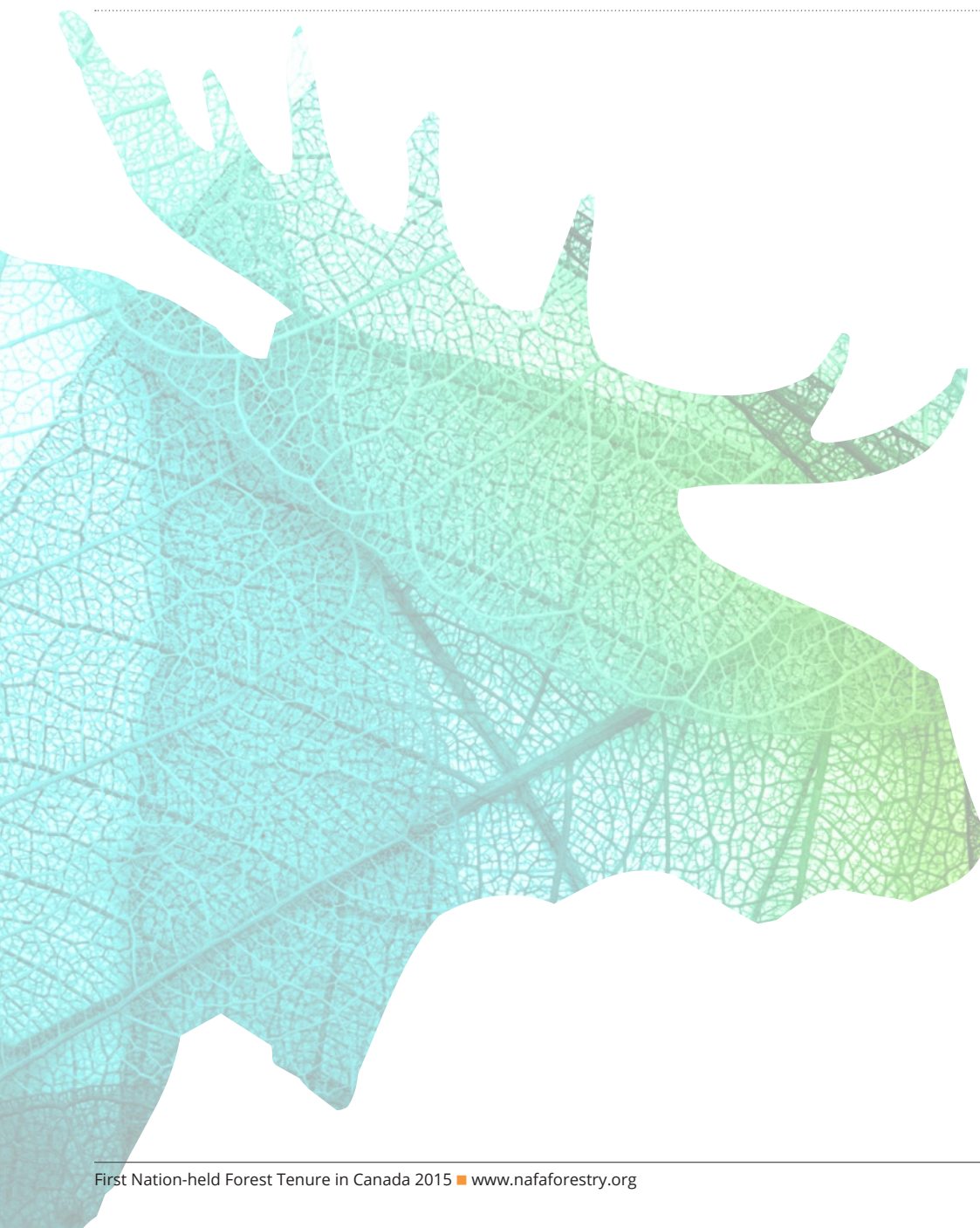
Timber Licence

The Timber Licence (TL) is a short-term, local permit that grants volume-based harvesting rights, as provided for under the *Crown Lands Act*, including commercial firewood. The area rights are not exclusive — the allocated volume for harvest for a shared area 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 licence. The government is responsible for forest management, reforestation, and protection, with the licence-holder paying a silviculture fee as a portion of stumpage.

Summary of Nova Scotia Forest Tenure Allocation

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	1,028,400	0	0
2006	1,063,876	0	0
2013	4,079,000	n/a	n/a

There are currently no Crown forest tenures held by First Nation entities in Nova Scotia.



FORESTED LAND

PEI has a small inventory of 265,000 ha of forested lands. Of this, 91% is privately owned. Provincial Crown forest accounts for only 22,000 ha, or 8% of the total. No forested federal Aboriginal lands are registered in the forest inventory. The island's Crown forest lands are not reserved and are all easily

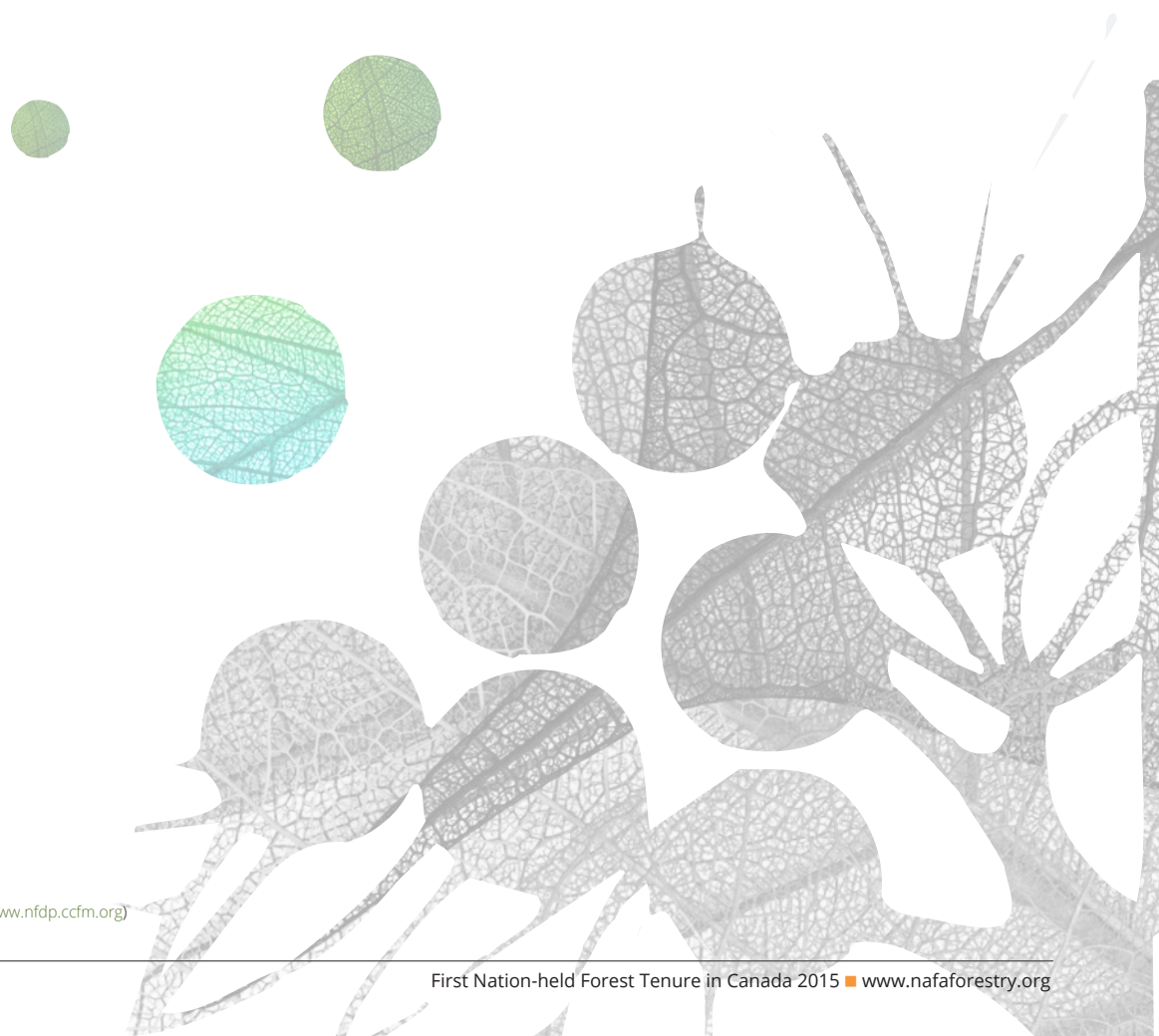
accessible by road. The estimated wood supply from both private and provincial forests on PEI has been 460,000 m³. The vast majority of this was harvested from private lands—only 40,000 m³ came from Crown forests².

Summary of PEI Forest Tenure Allocation

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	42,000	0	0
2006	42,900	0	0
2013	460,000	n/a	n/a

We were unable to find any indication of First Nation involvement in the PEI forest sector through research conducted for this report.

² According to the National Forestry Database (www.nfdp.ccfm.org)



FORESTED LAND

Just under half (48%) of New Brunswick's 6 million ha of forested land is held by the provincial Crown. Private owners hold 3 million ha of which 58% is held by a large number of small woodlot owners, with the remaining 42% held by large companies. Aboriginal forested lands, classified as federal lands, account for only 2,000 ha across the province. Other federal lands combine to account for a total of 2% of New Brunswick forests. The total wood supply available from both provincial and private forest lands was estimated to be 9.05 million m³ for 2013.

FORMS OF TENURE

Access to timber from Crown land is allocated under the same tenure arrangement as were in place during the previous report period. However, in 2014, the New Brunswick government introduced a new forestry plan with a stated timber objective of 5.7 million m³ which included an additional allocation of 30,000 m³ of softwood to First Nation communities to ensure that 5% of the timber harvest is used to support ongoing First Nation commercial harvest agreements.

Crown Timber Licence

The Crown Timber Licence (CTL) gives the holder exclusive timber harvesting rights, as well as the authority to allocate sub-licences. 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 licence area. The duration of a CTL is 25 years, renewable every five years. These licences are area-based, with average annual volumes of 500,000 m³. CTLs are typically held by the large industrial companies.

Crown Timber Sub-Licences

The Crown Timber Sub-Licence (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. The sub-licence-holders undertake an obligation to maintain a specific productive capacity of their wood processing facility, in accordance with an industrial plan. CTSL-holders must cooperate with the primary CLT-holder in the preparation and revision of the operating and management plans. CTSLs range in annual volumes between 400 to 400,000 m³ per year. A sub-licence can be extended at the end of each year by one year.

Special Timber Agreement with First Nations

In 1998, the New Brunswick government made 5% 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. Each community must adhere to a special 'Interim Harvesting Agreement' that specifies a maximum volume and sets out operating cost responsibilities. Most agreements are for a five-year period. The First Nation licences 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.

While the First Nations share of the total CTL volumes averages at 4.5%, the proportion held under these Special Timber Agreements varies across individuals licence areas, ranging from a low of 1.8% to a high of 8.2%. Royalties collected from the sale of timber harvested under these agreements are returned to First Nations. The New Brunswick Department of Natural Resources also provides training and technical advice for First Nation crews.

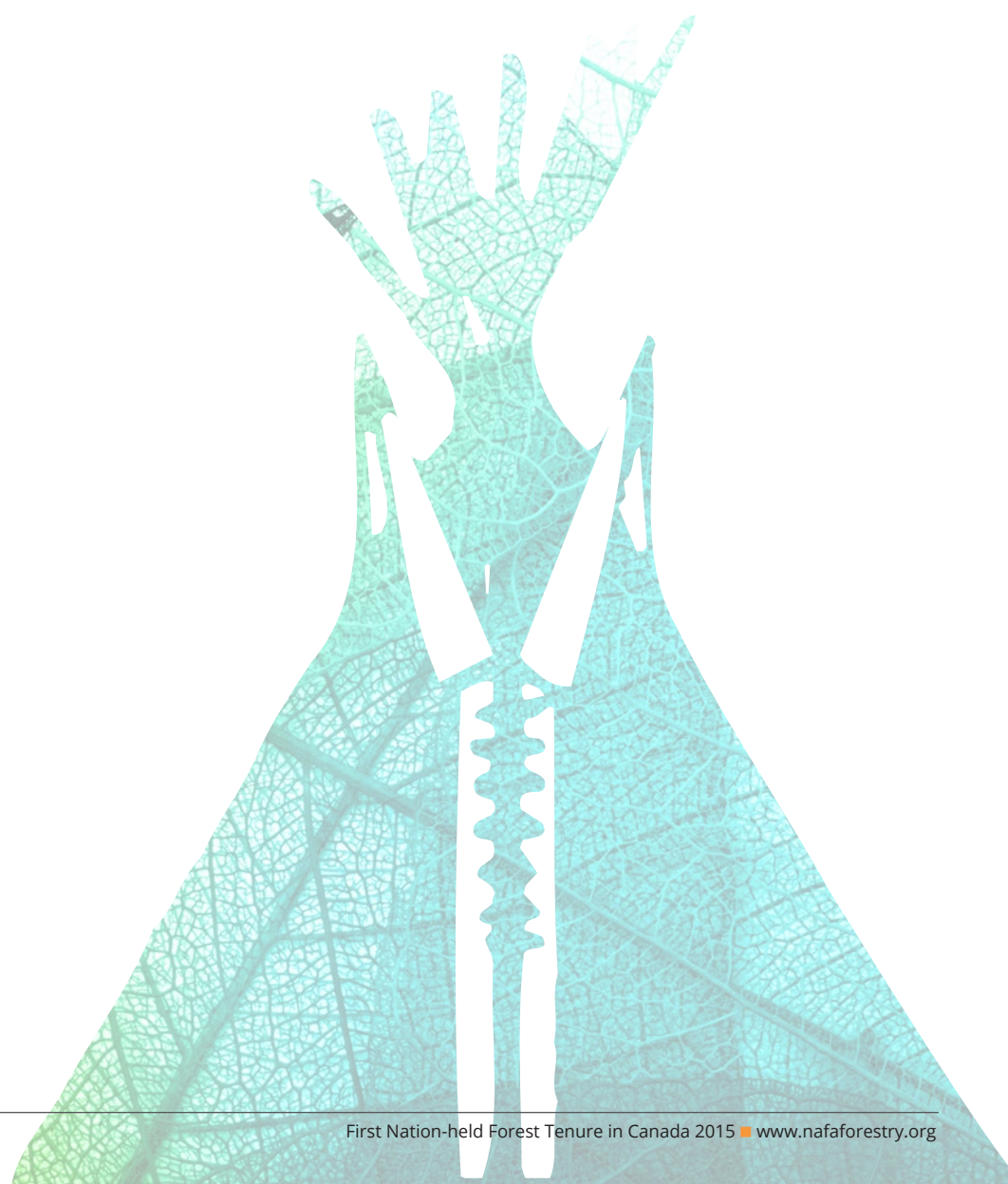
Crown Cutting Permit

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

Summary of New Brunswick Forest Tenure Allocation

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	5,152,310	233,800	4.5
2006	5,429,992	237,097	4.4
2013	5,700,000	285,000	5.0

The entire allocation of volume to First Nations is accounted for by the Special Timber Agreements. As the Agreements are based on a target volume of 5%, the volume allocation has increased relative to the provincial AAC.



FORESTED LAND

Forested lands in Québec account for an area of some 73.4 million ha. Most of this area—89%—is provincial Crown land, with only 11% private ownership. Federal lands account for less than 0.5%, with half of that amount—176 ha—under Aboriginal ownership. Of the total forested lands in Québec, approximately 1% is reserved for non-industrial uses. The total wood supply from public and private forested lands in the province in 2013 was 40.71 million m³.

NEW TENURE RULES

Since the last publication of this report (2007), the rules of forest tenure have changed significantly in Québec. On April 1, 2012, the province adopted amendments to the *Sustainable Forest Development Act* (the new *Act*) and other legislative provisions bringing into force a new forestry regime and replacing the 1986 *Forest Act* (R.S.Q.,c.F-4.1). The new *Act* makes broad commitments to sustainable forest development through the introduction of ecosystem based management, regionalized management of forest resources (including provisions specific to First Nation communities), a major change to the forest tenure system to create and support a free market within the province for timber harvested from public lands.

The Timber Marketing Board, also created by the new *Act*, was fully implemented in 2013. The main function of the new Board is to sell 25% of the timber available on public land throughout the province, on the open market. The intention is to make timber from the public forests available to a wider selection of buyers, at its market value.

Timber Supply Guarantee (TSG)

Timber Supply Guarantees (TSG) replaced the previous Timber Supply and Forest Management Agreements (TSFMA). The new *Act* provided opportunities for TSFMA holders to obtain a TSG on April 1, 2013, provided they applied before January 1, 2012, thereby maintaining a stable supply of timber to the mills. However, the Ministère des Ressources naturelles et de la Faune (MRNF) held back a percentage of volumes to help establish an open market for timber in Québec and to create local forests.

A TSG entitles its holder to purchase an annual volume of timber in one or more specific regions to supply the mill for which the guarantee was granted (five-year term). The TSG specifies the AAC by species or group of species for each region within a Forest Management Unit the TSG covers. The volume of timber available under a TSG is calculated as a percentage of the AAC to which each TSFMA holder would have been entitled if its agreement had not been cancelled. This is done using criteria such as changes in the requirements of wood processing mills; availability of timber from private forests or from other supply sources; or a change in the provincial AAC. This “proposed volume” is then reduced to ensure sufficient timber is available for auction sales of timber from public forests by the timber marketing board and social and economic development projects at the regional and community levels.

There are no forest management requirements connected to this tenure as the new *Act* transfers responsibility for all forest management to the MRNF. TSG holders pay annual dues on every cubic metre of timber purchased during the year. The Timber Marketing Board sets the rate and cost of timber purchased under a TSG. This price is calculated on the basis of the price obtained at auction of timber from public forests.

Forestry Permit

A Forestry Permit (FP) is required to harvest timber on public lands to supply a wood processing plant, provided the plant is not otherwise authorized under the new *Act*. This permit is valid for up to five-years but may be reduced at the discretion of the Minister.

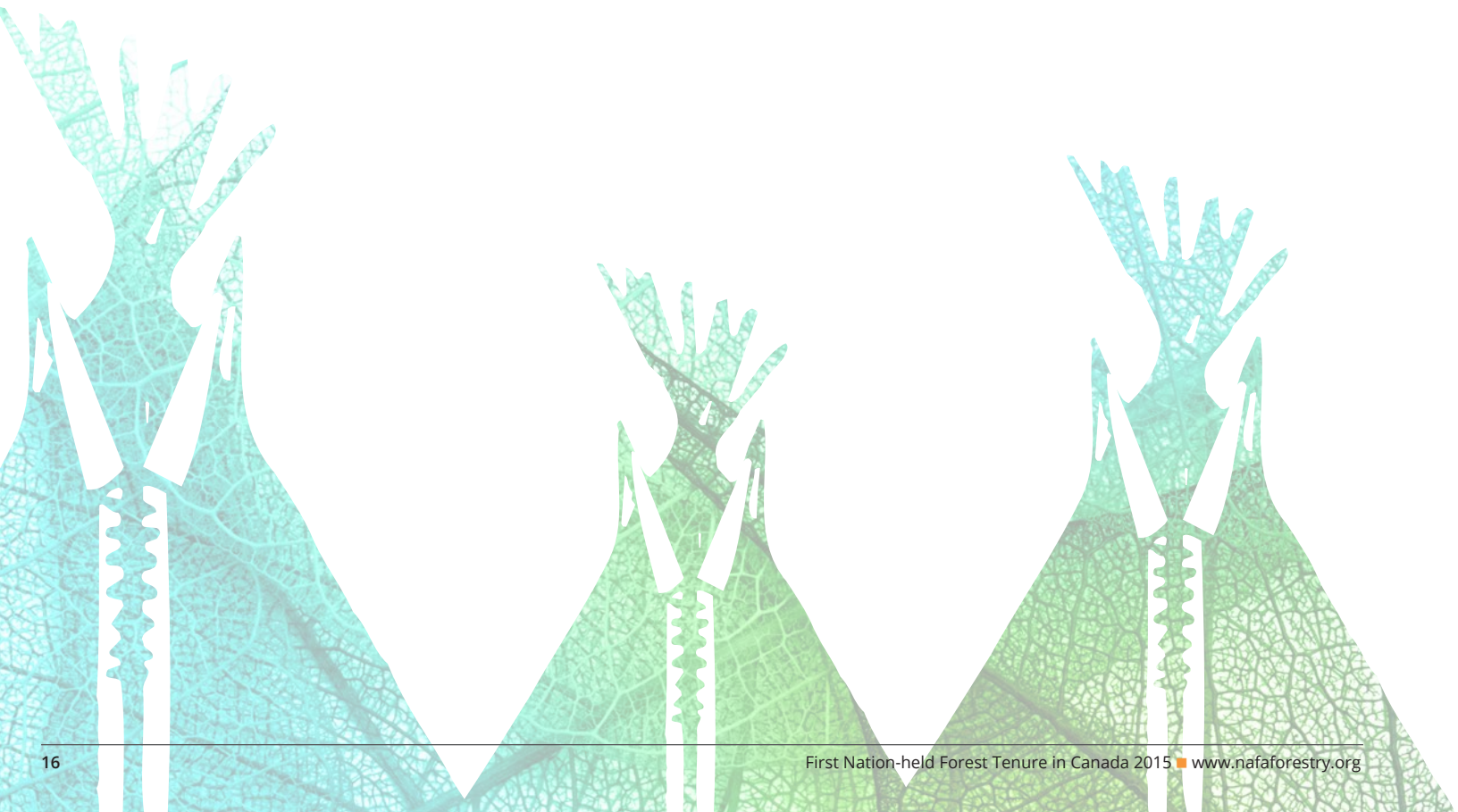
A Forestry Permit is also required to harvest firewood for domestic or commercial uses, the operation of a sugar bush, carry out harvesting activities related to the exercising of mining rights, the creation of wildlife, recreational or agricultural development projects, experimental or research projects or any other activity determined by the Minister. These permits are usually issued on an annual basis.

Summary of Québec Forest Tenure Allocations

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	35,727,362	652,381	1.8
2006	31,763,257	858,652	2.7
2013	17,175,800	1,183,400	6.9

Note that during the writing of this report, five First Nation communities signed a Management Delegation Agreement (MDA) with an allocation of 85,650 m³, or 17.7% of the total MDA volume allocated in the province. This value was not included in the calculation of First Nations allocation to maintain a consistent reporting timeframe across all jurisdictions.

There was a 4.2% increase in allocation to First Nations between 2006 and 2013. While the overall provincial allocation decreased by 14.6 million m³ (or 46%) in 2013, the allocation to First Nations increased by 324,748 m³ or 38%.



Ontario has 71 million ha of forested lands, of which approximately 80% are provincial Crown land and 9.8% is private. Aboriginal forested lands account for some 416,000 hectares, or 0.8% of the total forested land in the province. Approximately 7% of forest lands are reserved. Of the non-reserved area of provincial Crown forest, just under half—20.7 million ha—is accessible for commercial forest development. The wood supply from public and private lands in Ontario in 2013 was estimated to be 30.31 million m³.

INTRODUCING NEW FORMS OF TENURE

The forest tenure regime for Ontario has changed significantly since the last version of this report in 2007. Ontario's Crown forests are still organized into three major zones for the purpose of forest management—the Northern Boreal in the province's far north, Southern Ontario, and the *Area of the Undertaking*, located between the other two zones. The Area of the Undertaking is the area of the province within which the majority of commercial forest management takes place (the Planning Area). The province continues to licence and allocate timber resources via three legislated and legal arrangements: Sustainable Forest Licences (SFL); Forest Resource Licences (FRL); and Supply Agreements. However, in 2011 the *Ontario Forest Modernization Act* (OFMA) came into effect, along with amendments to the *Crown Forest Sustainability Act*. This legislation enabled the creation of a new corporate entity, the Local Forest Management Corporation (LFMC) and the new Enhanced Sustainable Forest Licence (eSFL). Each tenure is discussed in detail below.

Sustainable Forest Licences

Most of the Planning Area is managed under large, area-based tenures called Sustainable Forest Licences (SFLs). The volume that may be harvested under an SFL is determined based on forest resources inventories. The 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. Forest management planning is carried out by the SFL-holder under the terms of the OMNR Forest Management Planning Manual. This manual was revised in 2004 and is being implemented as new plans are developed.

A SFL grants the holder the right to harvest forest resources in a forest management unit for a term of up to 20 years. These licences are mainly held by larger corporations or cooperative (multi-party) SFL-holding corporations. "Independent Forest Audits" are conducted at least every five years to ensure that the licensee has complied with the terms and conditions of the licence. If the review is satisfactory, the licence is renewed for five years. SFLs can, therefore, be 'evergreen.'

Forest Resource Licences

Forest Resource Licences (FRLs) are issued for a term of up to five years. They may cover a portion of a management unit and can overlap on a forest covered by an SFL. For example, Company X may be issued an FRL to harvest hardwood on an SFL held by Company Y who harvests exclusively softwood. These volume based licences may also be overlapping (i.e. each restricted to specific forest products within the same area) and issued for Crown lands not covered by SFLs. Holders of FRLs must follow the forest management plans developed and approved by the Ministry. Each agreement between the SFL-holder and the FRL-holder is unique and, as a result, forest management responsibilities may vary.

Wood Supply Agreements

These agreements provide access to a secure supply of wood to a mill. Existing SFL and FRL holders can make available a portion of their AAC through a mutually beneficial business arrangement. These supply agreements are also known as commitments and are listed in Appendix E of the SFL. All FRLs issued under an SFL may be impacted by a wood supply agreement.

Tenure Modernization

In 2011, Ontario embarked on a forest tenure modernization process. On June 1st, the *Ontario Forest Modernization Act* (OFMA) came into effect, along with amendments to the *Crown Forest Sustainability Act* to enable support for the modernization objectives.

The OFMA objectives included:

- The establishment of 2 Local Forest Management Corporations (LFMC) within first 5 years;
- Transitioning “single entity” and existing share holder SFLs to enhanced Sustainable Forest Licences (eSFL);
- Aboriginal tenure agreements; and the
- Reduction of Forest Management Units (FMUs) from 49 down to 20-25 FMUs

Local Forest Management Corporation

Local Forest Management Corporations (LFMCs) are crown agencies that are expected to sustainably manage provincial forests through the use of SFLs by providing for economic development opportunities for Aboriginal peoples, recognizing the importance of local economic development as well as marketing, selling and enabling access to a predictable and competitively priced supply of provincial forest resources. The Corporation’s Board of Directors include representatives of local and Aboriginal communities and all are 100% independent from government.

The first (and only at the time of this report) LFMC was established in 2012 - the Nawiinginioka Forest Management Corporation (NFMFC). This crown agency is responsible for the management and sale of timber along the northeast shore of Lake Superior. Four existing FMUs are managed by the LFMC - Nagagami Forest, White River Forest, Big Pic Forest, and Pic River Ojibway Forest, totaling 1.9 million ha of productive forest. The AAC is 2.2 million m³ (merchantable fibre) and 435 K m³ (biomass fibre).

The six local communities involved are:

- Tic River First Nation
- Pic Moberg First Nation
- Hornepayne
- Marathon
- Manitowadge
- White River

Enhanced Sustainable Forest Licences

Enhanced Sustainable Forest Licences (eSFLs) have a new governance model that incorporates greater local and Aboriginal community involvement. Corporate decision-making is shifted away from single corporate entity to local shareholder groups with a mix of Directors representing owners of the eSFL Corporation as well as independent Directors representing local and Aboriginal communities.

Over a five to seven year period, the Ministry of Natural Resources and Forestry will identify management areas and associated SFL holders, Aboriginal and local communities to transition from SFL to eSFLs. This transition is guided by a Minister endorsed “Principles Document” outlining the following key characteristics of an eSFL: governance, Aboriginal and local community involvement, sustainable forest management delivery, wood use, new entrants and economic viability and competitive wood costs.

The following Principles and Terms guide the transition³:

- Crown to honour its duty to consult and accommodate Aboriginal and treaty rights;
- eSFL companies will be formed to undertake the responsibilities associated with holding an SFL;
- The transition process to eSFL will be locally-driven, inclusive and collaborative;
- Collaboration will take place in an environment of trust, openness, inclusiveness, mutual respect and personal responsibility where decisions are made collaboratively and accountability is shared;
- The MNR will provide oversight and resources to facilitate transition and monitor progress;
- The eSFL transition will create efficiencies and promote competitive wood costs;
- Composition, structure and governance of eSFL companies will be flexible to address local circumstances and interests of local eSFL participants;

³ Source: <https://dr6j45jk9xcmk.cloudfront.net/documents/3060/2012-2938-principles-document.pdf>

Please note that the principles and terms have been shortened or paraphrased to accommodate space in this report. For a full version of the Guiding Document, see source.

- The eSFL company's business agreement will respect existing wood supply and harvest commitments;
- Existing wood supply and harvest commitment holders will have the option to become shareholders and nominate representation to the board of directors of the eSFL company;
- The Business Agreement will provide opportunities for membership changes;
- Local Aboriginal communities and local communities will be provided the opportunity to participate in the eSFL company with a minimum of 1 voting Board of Directors position reserved for each;
- Board of Directors representing shareholders with financial obligations will have proportional influence over financial decisions of the eSFL company;
- An independent General Manager shall be hired/retained/report to the Board of Directors;
- All Board of Directors have a fiduciary duty to make decisions in the best interest of the eSFL company;
- The Board of Directors will be bound and directed by the Business Agreement; and
- The eSFL company will promote the sustainable use of the full available Crown wood supply by ensuring it is used or made available to others for use.

Summary of Forest Tenure in Ontario

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	30,481,503	1,100,341	3.6
2006	22,606,885	1,281,380	5.7
2013	29,233,900	4,210,477*	14.4

* Does not include the AAC for LFMC. With LFMC the allocation to First Nation would be 6.86 million m³ or 23.4% of the provincial allocation.

The data shows a steady and significant increase in forest tenure volume to First Nations since NAFA began tracking this indicator of access to the forest sector in 2003. We did not determine factors such as a change in policy, market development or socio-economic capital influenced the gain in volume by First Nations.

Manitoba has 19 million ha of forested lands, of which approximately 92% are provincial Crown lands and 6% is private land in the form of municipal and non-industrial holdings. Aboriginal forested lands account for around 97,000 ha—or 0.5% of total forested lands in the province. Approximately 6% of Manitoba's forests are reserved for uses such as Provincial Parks, Wildlife Management Areas, Ecological Reserves or Provincial Forests. Of the non-reserved area of Crown forest, only 36%—or 5,930 ha—is accessible for commercial forest development. The estimated wood supply from forested lands in 2013 was 8.8 million m³.

FORMS OF TENURE

In Manitoba there are currently three significant types of forest land tenures available:

- Forest Management Licence Agreement (FMLA) ;
- Timber Sale Agreement (TSA); and
- Timber Permit (TP).

Forest Management Licences

The *Manitoba Forest Act* provides for the establishment of long term Forest Management Licences (FMLs) to provide a continuous timber supply to 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 two FMLs in Manitoba, held by Tolko Industries Ltd. – FML 2 (The Pas, MB) and Louisiana Pacific Canada Ltd. – FML 3 (Minitonas, MB). The FML agreement is a legally binding agreement that sets out the size of area and the amount of wood the company can access, the stumpage fees the company pays, the amount of land the Crown can withdraw from the company's FML area in the interest of the public good, and rights and responsibilities of both the Crown and the company within the defined FML.

Timber management and forest renewal are the responsibilities of Manitoba Conservation on Crown forest land outside the FML agreement areas and within 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 licence holder for lands within the FML area, although the government is responsible for all

protection. Licence holders must have sufficient investment in a wood processing plant to warrant a continuous timber supply.

Timber Sale Agreement

Timber Sale Agreements (TSA) are volume-based allocations that are issued either directly or through competitive processes. They are usually five-year renewable agreements but can be issued for up to twenty years. TSA volumes range from 100 to 10,000 m³. In most circumstances Manitoba Conservation assumes responsibility for forest management planning for areas under TSAs. The exception is that holders of 'special allocation TSAs' that can be up to twenty-year agreements, must submit ten-year forest management plans. Silviculture treatments, protection, and reforestation are generally the responsibility of the provincial government. There is no processing facility requirement for this type of tenure.

Some TSAs are issued via auction or direct award. Direct awards generally fall under three categories: Community Allocation, Special Allocations and Quotas. A Community Allocation is a direct award that is granted to a community in order to provide economic and other benefits to the community, rather than to an individual or an industry. Community Allocations can range in size but are generally up to 5,000 m³ but they can be larger based on wood availability and a sound business plan. Special Allocations are granted under special circumstances to individuals, industry or other groups. A business plan is required explaining how the TSA would benefit the province as a whole via the creation of employment or benefits to the economy. The new quota system (1980 to present) entitles each quota holder to possess an annual allocation of wood. However, either a TSA or Timber Permit is still required to harvest the quota.

Timber Permit

Timber permits are provided for both commercial and personal harvests of less than 300 m³, often for purposes such as cutting for firewood, fence posts, or for small lumber/sawmill operations. These permits are only issued for a maximum of one-year and are not to be extended. Forest Management Plans for areas harvested under Timber Permits are the responsibility of Manitoba Conservation.

Summary of Manitoba Forest Tenures

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	3,494,426	132,605	3.8
2006	3,450,634	153,887	4.5
2013	2,504,370	n/a	n/a

The much-anticipated Southern Hardwood Development Project proposed between Ainsworth Lumber Company and First Nations Forestry Limited Partnership in 2006 (at the time of the writing of the last NAFA Tenure report), did not materialize due to impacts of the global recession on Manitoba's forest products sector. No new allocations could be identified for the 2013/2014 operating year.



Saskatchewan has some 20 million hectares of forested lands, of which 90% are provincial Crown lands and 7% is private. Aboriginal forested lands account for 103,000 ha or 0.5% of total forested lands in the province. Approximately 2% of forested lands are reserved. The estimated wood supply from forested lands in the province in 2013 was 8.2 million m³.

FORMS OF TENURE

Saskatchewan legislation sets out one major form of long-term forest tenure—the Forest Management Agreement (FMA)—along with licensing and permitting arrangements that are smaller scale and/or duration.

Forest Management Agreement

The duration of a 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 activities on harvested land. These agreements are usually area-based and typically cover areas in the range of 300,000 to 500,000 ha.

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 licence area and to determine how well the company is achieving its stated forest management objectives. Following the audit, the FMA may be extended for an additional five years so that the term of the agreement after each extension is twenty years.

Term Supply Licence

A Term Supply Licence (TSL) is a licence with a term of up to ten years and confers rights to harvest forest products as well as responsibilities for forest management. A TSL may be area-based or volume-based. *Area-based TSL* essentially function as “mini-FMAs.” The TSL may be renewed if sufficient resource supply exists, as determined by the Minister. The

licensee is obliged to submit and undertake sustainable forest management planning and silviculture prescriptions. *Volume-based TSL* typically have a shorter term than area-based TSLs.

Forest Products Permits

Under the *Forest Resources Management Act*, small volumes of wood—and non-timber forest products—are allocated through Forest Products Permits (FPPs). These permits are for one year only but may be reissued year after year. FPPs do not require the holder to undertake the kinds of forest management planning and silviculture activity that TSL holders are responsible for. Rather, the government carries out this work where it is needed. This permit is used to regulate activities such as fuelwood harvesting (green or dead), grazing cattle and the harvesting of non-timber forest products such as mushrooms, berries and medicinal herbs for commercial purposes.

Summary of Saskatchewan Forest Tenure Allocation

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	6,814,758	1,143,690	16.8
2006	8,105,350	1,971,690	24.3
2013	8,251,060	3,485,650	42.2

First Nations in Saskatchewan have substantially increased an already significant portion of the forest tenure volume since this report was first published in 2003. The continued successful operation of the Mistik FMA, the new Sakâw Askiy Management Inc. partnership responsible for Prince Albert FMA, in addition to TSLs has resulted in an 18% increase in tenure volume allocated to First Nations since 2006. First Nation entities in Saskatchewan now control 42.2% of the provincial forest tenure allocation.

FORESTED LAND

Alberta has 27.7 million ha of forested lands, of which approximately 87% are provincial Crown land, 4% private, and another 9% federal. First Nation-owned lands account for less than 1% of the land base. Approximately 5% of Alberta provincial Crown lands are reserved for various purposes. Approximately 57%—or 13 million ha of the province's non-reserved Crown forest has access. The estimated wood supply from Alberta forest lands in 2013 was 31.16 million m³.

FORMS OF TENURE

Under Alberta's Forests Act, three major forms of forest tenures support commercial timber harvesting activities:

- Forest Management Agreement
- Timber Quota
- Timber Permit.

Forest Management Agreements

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. As of 2014, there are twenty FMAs in Alberta, covering nearly 20 million ha of forested lands and involving 19 companies.

FMAs cover areas ranging from 585 to 58,120 square kilometres. 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 *Forests 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

Timber Quotas (TQ) are twenty-year, renewable allocations of timber within an individual forest management unit. Timber quotas can be area-based or volume-based tenures, however there are no area-based timber quotas at this time (2014). The size of the quota can range from less than 1000 m³ to over 1 million m³. There are two types of tenures included under Timber Quotas—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 licence, 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, however, there is no longer a requirement for a sawmill. 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.

Timber Permit

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 Permits (CTP) 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 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.

Coniferous Community Timber Permits (CCTP) are usually issued through direct award to local operators registered under the Community Timber Program. The size can vary but a permit is generally less than 5,000 m³ and is issued to operators harvesting less than 21,000 m³ of timber. The province issues an average of 50 permits per year, but the range is between 5 and 172 permits per year, and is based on market and timber demands.

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 Forests Act (e.g. fence lines on grazing leases or small volumes of fire-killed timber).

Summary of Alberta Forest Tenures

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	24,070,000	975,941	4.1
2006	24,570,880	1,145,963	4.7
2013	32,000,000	1,056,237	3.3

Previous versions of this report identified First Nation entities holding around 4% of the forest tenure allocation in Alberta. This most recent allocations in the form of Coniferous and Deciduous Timber Quotas for 2013/2014 is 3.3% to First Nations. The 1.4% decrease is due in part to a slightly lower allocation to First Nations (89,726 m³ less than 2006) but a significant rise in AAC for the province (+7,429,120 m³) is the most likely reason for the decrease.

FORESTED LAND

British Columbia accounts for 57.9 million ha of forested lands, of which approximately 96% are provincial Crown land and 3.0% is private. Aboriginal forested lands account for approximately 220,000 ha or 0.4% of total forested lands in the province. Timber-productive forests make up 52 million ha in British Columbia of which 49 million ha (95%) is Crown land and just over 2 million ha (4%) are privately owned. Federal ownership, including 198,000 ha of Aboriginal forest lands, accounts for the remainder. Total wood supply from British Columbia's public and private forested lands in 2013 was estimated to be 78.3 million m³.

FORMS OF TENURE

The B.C. Ministry of Forests, Mines and Lands convened a Working Roundtable on Forestry in 2008 to identify key issues and opportunities facing the forest sector. Their first order of business was to consult with communities across the province and identify conditions for long-term success of the forest sector. In 2009, they released their first report with the following recommendation related to First Nations participation in the sector: "We should create more long term, area-based forest tenures that are of an economically viable size and create legislation for a First Nations forest tenure"⁴. In response, the Minister introduced legislation in 2010 to create a new form of forest tenure called the First Nations Woodland Licence (FNWL). The details of this tenure, along with ten other forms of agreements (or tenures) conferring a right to harvest timber are explained below.

Tree Farm Licence

A Tree Farm Licence (TFL) is an agreement that gives the licensee the right to harvest timber and manage the forest in a specified area, which may include private land. The term of a TFL is 25 years, replaceable every five to ten years. The holder of this form of tenure assumes responsibility for strategic and operational planning, inventory, reforestation, and stumpage payments. The TFL may also confer an obligation upon the holder to use logging contractors for a portion of the volume harvested each year. All these activities are auditable by the province to ensure that the licensee is complying with provincial regulations.

Forest Licence

A Forest Licence (FL) grants the right to harvest an annual volume of timber (AAC) within a Timber Supply Area (TSA) or TFL area. This is a volume-based tenure lasting up to twenty years and may be replaceable every 5 to 10 years or it may be awarded as non-replaceable. This tenure can either be issued through competitive or direct award processes. The licence requires the holder to be responsible for operational planning, road building, stumpage payments and reforestation. The holder of these licences may also be required to use logging contractors for all or part of the volume harvested.

Timber Sale Licence

A Timber Sale Licence (TSL) grants the holder the right to harvest a volume of timber in a specified area or purchase logs. This tenure is only issued by BC Timber Sales⁵ via competitive auction. This tenure is issued for up to four years and is non-replaceable. The licensee is responsible of operational planning in some cases and stumpage payments. They are also obligated to operate in accordance with certification bodies.

Woodlot Licence

A Woodlot Licence (WL) is an agreement between the province and an individual or company and grants the right to harvest timber and manage forests in an exclusive area. This licence may be awarded through competitive or direct award processes. The duration of a Woodlot Licence is twenty years and it is replaceable every ten years. This is an area-based tenure, not to exceed 800 ha on the coast and 1200 ha in the interior. The licensee is responsible for inventory, management and operational planning, reforestation and stumpage payments. Woodlot Licences may only be issued to a Canadian citizen or permanent resident 19 years of age or older, a band as defined in the federal *Indian Act*, or a corporation controlled by such entities.

Community Forest Agreement

The Community Forest Agreement (CFA) grants exclusive rights to a First Nation, municipality, regional district or society to harvest an AAC in a specified area, including private or reserve lands. It may also confer the right to harvest, manage, and charge fees for botanical forest products or other prescribed non-timber forest products. This tenure may be

⁴ Forestry Roundtable. 2009. Implementation of The Working Roundtable on Forestry's Recommendation - Status Update. Available at: https://www.for.gov.bc.ca/mof/forestry_roundtable/20090930_RoundtableStatusReport.pdf

⁵ BC Timber Sales (BCTS) is a division of the BC Ministry of Forests, Lands and Natural Resource Operations that develops timber sale licenses for competitive auction. These auctions provide a reference point for costs and pricing of all timber harvested from public land in BC.

competitively or directly awarded. The CFA requires public consultation, a management plan, audits, and performance reports. A long-term Agreement has a term of 25 to 99 years and is replaceable every ten years.

Several Community Forest Agreements are held by First Nations or First Nations affiliates. Also, as noted above, as a result of recent tenure reforms, previously committed harvesting rights are being reallocated to, in part, community-based tenures such as *Probationary Community Forest Agreements*. This has resulted in new invitations from the Minister of Forests and Range to community entities to apply for Probationary Community Forest Agreements and several of these invitations have been made to First Nations.

Community Salvage Licence

The Community Salvage Licence is a form of agreement designed to facilitate small-scale salvage of *qualifying timber*, which is dead, damaged or diseased trees that would not otherwise be harvested by the holders of other forest tenures. This also includes infested timber that – if not harvested immediately – could allow insects or disease to spread. Community Salvage Licences provide rights to salvage scattered small amounts of timber from large areas in order to increase administrative efficiency compared with offering small individual salvage licences. This licence is not considered a major licence.

Applications for a Community Salvage Licence are invited by the Minister of Forests and Range. Eligible community-based entities are the same as those for Community Forest Agreements. The licence must not exceed a term of five years, must outline one or more areas of land from which timber may be salvaged, and must specify a maximum harvestable volume of qualifying timber. There is currently a moratorium on issuing any new Community Salvage Licences.

Licence to Cut

Licence to Cut are short-term forms of agreement designed for the harvest of small amounts of timber from a specific area for a variety of miscellaneous purposes.

The Forest Act defines three types of Licences to Cut:

- **Occupant Licence to Cut (where the holder occupies land but has no previously assigned rights to the timber);**

- **Master Licence to Cut (for oil and gas development); and**
- **Forestry Licence to Cut (for small-scale salvage; harvesting under a Pulpwood Agreement; harvest rights for treaty-related measures; harvesting Crown timber to reduce wildfire risk to communities; and developing areas auctioned for harvest by BC Timber Sales)**

A Licence to Cut does not exceed five years and specifies a maximum volume that may be harvested over its term.

Free Use Permit

The Free Use Permit gives the right to remove minor volumes of up to 50 m³ (in most cases) of Crown timber, and up to 250 m³ in prescribed circumstances when the timber is used for the construction of a longhouse, community hall or other similar structure (i.e. non-commercial purposes). The term of a Free Use Permit is up to five years (depending on the use). Holders of Free Use Permits do not pay stumpage, royalty, or rent, but must comply with any requirements contained in the permit regarding cutting, destroying, and using the timber.

Christmas Tree Permit

A Christmas Tree Permit grants an individual the right to harvest – or grow and harvest – Christmas trees on a specified area of Crown land for commercial purposes. Christmas Tree Permits have a term up to ten years, replaceable every five years and do not specify a volume. Agreement holders must pay deposits or fees prescribed by the Minister of Forests and Range.

Road Permit

A Road Permit may be issued to an entity that has a right to harvest timber under one of the previously described forms of agreement but does not have physical access to that timber. It authorizes the right to harvest a small amount of timber, necessary to construct a road on Crown land. The permit may include the right to manage and use adjacent sand, gravel pits and rock quarries related to the construction of the road.

First Nations Woodland Licence

The First Nations Woodland Licence (FNWL) is an area-based tenure with a term of 25 to 99 years, replaceable every 10 years. The land included in this tenure may be private and/or reserve land. The basic stewardship responsibilities included with other area-based tenures are included and expanded in the FNWL. Holders of an FNWL must produce a management plan, including inventories and AAC, as well as cultural heritage resource management plans. The holder can choose to do either a Forest Stewardship Plan (FSP) or a Woodlot Licence Plan if the size of the new licence is less than or equal to 800 ha on the Coast or less than or equal to 1200 ha in the interior, otherwise as FSP is required. The

FNWL also includes opportunities to manage non-timber forest resources (e.g. mushrooms, evergreen boughs).

The holders of a FNWL pay stumpage based on market rates, however a portion of the paid stumpage would be shared through a revenue sharing agreement. There are no annual rents charged to the tenure holder. However, the fire preparedness levy portion of the annual rent is required. A silviculture security deposit may be required, however the District Manager may accept revenue sharing payment as security in lieu of security deposit. Unlike the other tenures available in the province, the FNWL is not transferrable.

Summary of British Columbia Forest Tenure Allocation

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	61,309,245	3,761,232	6.1
2006	82,586,149	6,006,805	7.3
2013	81,670,605	8,842,869	10.8

At the writing of this report, almost four years after the FNWL was ready of issuance there are only two FNWL in the province with a total allocation of 90,000 m³: Huu-ay-aht First Nation with an allocation of 70,000 m³ within a 9,500 ha area (coastal BC) and Canim Lake First Nation with an allocation of 20,000 m³ from a 21,400 ha area of land (Interior BC).

There has been an increase in forest tenure allocation to First Nations since 2003. Unlike other jurisdictions, the volume making up the 10.8% allocation comes from well over 100 Agreements with First Nations, both direct awards and competitive bids. At time of writing this report, there were 149 different First Nations with forest agreements with an AAC ranging from 25 m³ to 340,000 m³.

According to sources within the BC Ministry of Forests, Lands and Natural Resources Operations, the significant decline in reported allocation between 2012 and 2014 is attributed in part to changes to the provincial tenure administration database. A database error resulted in an inflated allocation for reporting periods prior to Dec 2014. Also, Mountain Pine Beetle tenures are being closed as the economic value of damaged and dead pine decreases and associated tenures expire. Several large short-term tenures expired in 2013 that also contributed to the decline in tenure allocation to First Nations for this reporting period.

FORESTED LAND

The Northwest Territories (NWT) has 28 million ha of forested lands, of which approximately 97% are territorial Crown lands, with another 3% comprised of other federal lands. Only 11.5%—or 3.3 million hectares—of the territory's forested lands have road access. With the signing of several major land claims agreements, Aboriginal Peoples—through their land claims organizations—own major tracts of land. Three agreements, with the Tlicho, Gwich'in, and Sahtú Dene & Métis account for 10.2 million ha of forested land. The National Forestry Database does not estimate a wood supply for 2013, however in previous versions of this report between 21,000 m³ and 26,000 m³ (2001 and 2004) was reported.

Forms of Tenure

Northwest Territories lands are used primarily for traditional activities such as hunting and trapping. Currently there are no large-scale timber harvesting operations and no land-base tenures. Small operators may harvest locally for fuel wood, cabin and log home building, and small amounts of saw timber. Forest resources are beginning to reflect the impact of oil and gas exploration and developments. Due to the relatively low pressure on forest resources, there is little area covered by detailed management inventories. Wood has been made available to small-scale harvesters, with little concern about negative impact on the landscape-level forest resource.

The NWT grants rights to harvest wood under the authority of the Northwest Territory's *Forest Management Act (1988)*. Although the GNWT has responsibility for the management of forest resources, through delegation from the federal government, the federal department of Aboriginal Affairs and Northern Development Canada (AANDC) retains responsibility for land management. As one consequence of this delegation environment, all tenures in the NWT are volume-based.

The Government of the NWT does not calculate annual allowable harvests for defined forest management areas. The nature of northern community relationships to the forest, as well as the on-going land claims resolution processes taking place across the territory preclude the need, and ability, to carry out comprehensive wood supply determinations. Rather, licences and permits are volume allocations that are determined based on wood supply analyses and evaluation of

sustainability on a situation-specific basis. For the purposes of sustainable forest management, a licensee may be directed to harvest within a specific operating area.

Three instruments are currently used to permit access to Crown wood. These include: Timber Cutting Licences; Timber Cutting Permits; and Free Timber Cutting Permits. The right to harvest can be granted for a period of one year under a permit or for a five-year term under a licence. There is currently no processing facility requirement for any of the permits or licences.

Timber Cutting Licence

A Timber Cutting Licence (TCL) is a volume-based licence that is issued for a time period not to exceed five years or for volumes that are greater than 5,000 m³. The licensee is responsible for the preparation of necessary maps and long-term development plans. These include a fire control plan, a reforestation plan, a restoration plan, and an environmental protection plan. The volume agreed upon will depend on how much extraction the area in question can sustain based on sustainability studies.

Timber Cutting Permit

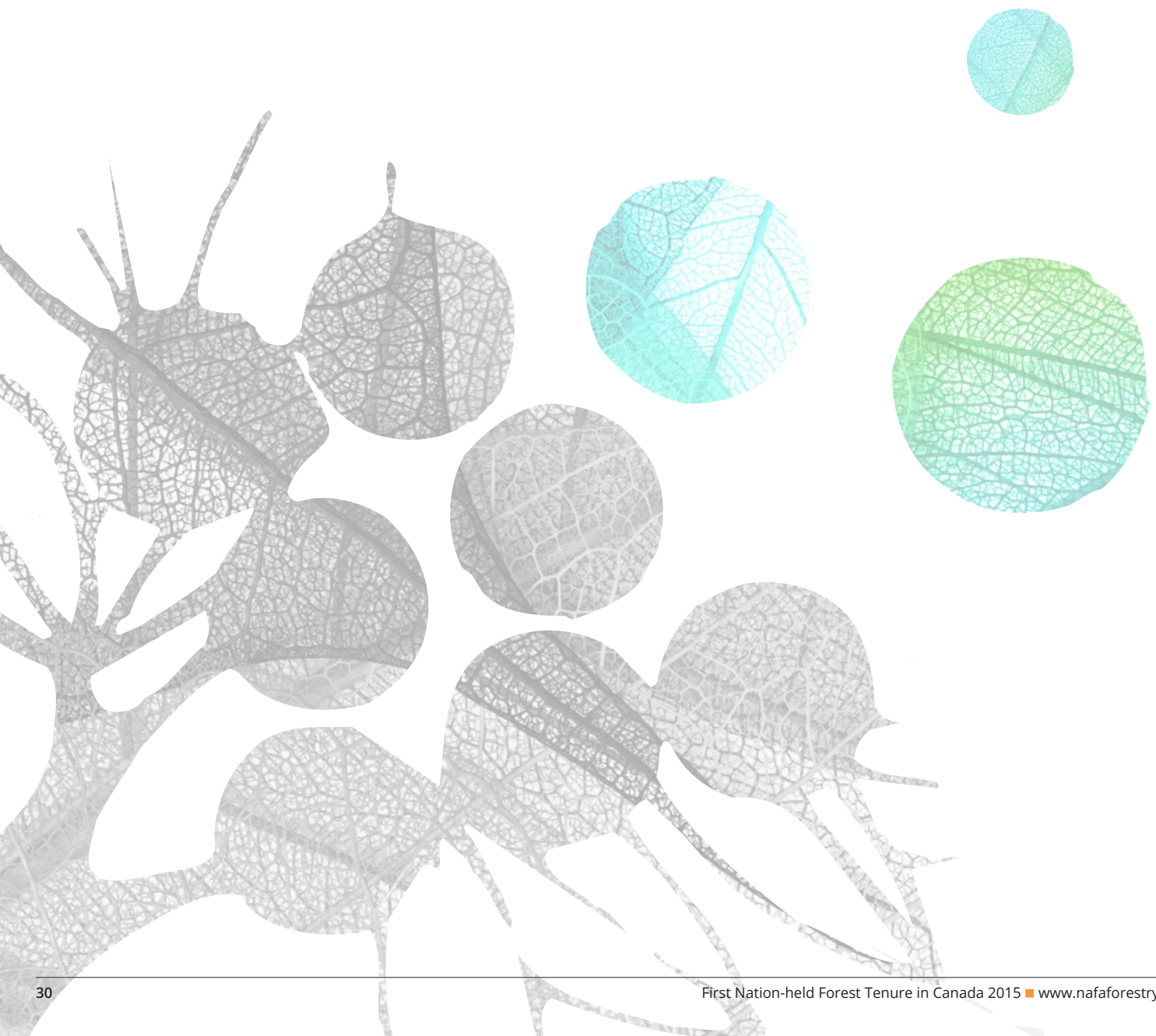
A Timber Cutting Permit (TCP) is a volume-based permit that is issued for a maximum period of one year and a maximum volume of 5,000 m³.

Free Timber Cutting Permits

Free Timber Cutting Permits (FTCP) are volume-based permits that are issued to individuals for personal firewood collection. These permits allow up to a maximum of 60 m³ to be harvested.

Summary of NWT Forest Tenure Allocations

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	235,000	0	0
2006	35,000	0	0
2013	n/a	n/a	n/a



FORESTED LAND

About 27 million ha (57%) of the Yukon is forested. Approximately 4 million ha (15%) of this forest is considered by the Yukon government as capable of growing trees of sufficient size and quantity to warrant “commercial” harvesting. The

National Forest Inventory identifies 7.9 million ha of forested lands in the Yukon, of which just over one-quarter (27%—or two million ha) has access. The estimated wood supply from forested lands in the territory is 187,000 m³.

Summary of Yukon Forest Tenure Allocations

Year	Provincial Allocation (m ³ /yr)	First Nation Allocation (m ³ /yr)	%
2003	266,500	28,000	10.5
2006	465,000	15,000	3.2
2013	187,000	n/a	n/a

The Yukon does not have a system of long-term forest tenures. In 2006 there was only one forest tenure - a Timber Permit - held by a First Nation-owned company. Other than this agreement, timber has been allocated through short-term permits. These are volume-based tenures normally for less than 1000 m³ per year.

After devolution of forest management to the Yukon from the Federal Government in 2003, significant advances have been made with regard to forest management. This has not yet resulted in large scale offerings of timber. However, the Yukon is making significant changes to forest management and administration. New forest legislation is being created to provide certainty with regard to strategic and operational planning, tenure reform and compliance and enforcement regimes. This change in approach will provide certainty to industry, stakeholders, Yukoners and First Nations.

Strategic level planning to establish the timber harvesting land base for the Yukon is taking place in three First Nations traditional territories. Two of these processes have been approved and a third is close to completion. These plans have been jointly managed by First Nations and the Yukon Government. Once the plans are completed, they become the basis for a timber supply analysis and subsequent determination of the AAC. The allocation process has included both Yukon and First Nations partnerships and these partnerships will likely continue.



SUMMARY OF TENURE ALLOCATIONS AND OBSERVATIONS



First Nation-held tenure represented by access to annual harvest allocations in 2013/2014 was 19.2 million m³ or 10.4% of the AAC in Canada. This represents a 64% increase since the 2006 reported value of 11.7 million m³.

Table 1: National Allocation of Forest Tenure Volume to First Nations in 2003

Jurisdiction	Allocation (m ³ /yr)	First Nations Allocation (m ³ /yr)	% by Jurisdiction	% of National Allocation
NL	2,004,800	0	0	0
PEI	42,900	0	0	0
NS	1,028,400	0	0	0
NB	5,152,310	233,800	4.5	2.9
QC	35,727,362	652,381	1.8	8.2
ON	30,481,503	1,100,341	3.6	13.8
MB	3,494,426	132,605	3.8	1.7
SK	6,814,758	1,143,690	16.8	14.3
AB	24,070,000	975,941	4.1	12.2
BC	61,309,245	3,716,232	6.1	46.6
NWT	235,000	0	0	0
YK	266,500	28,000	10.5	0.4
	170,627,204	7,982,990	4.7	100



Table 2 : National Allocation of Forest Tenure Volume to First Nations in 2006

Jurisdiction	Allocation (m ³ /yr)	First Nations Allocation (m ³ /yr)	% by Jurisdiction	% of National Allocation
NL	2,643,680	15,000	0.6	0.1
PEI	42,900	0	0	0
NS	1,063,876	0	0	0
NB	5,429,992	237,097	4.4	2.0
QC	31,763,257	858,652	2.7	7.3
ON	22,606,885	1,281,380	5.7	11.0
MB	3,450,634	153,887	4.5	1.3
SK	8,105,350	1,971,690	24.3	16.9
AB	24,570,880	1,145,963	4.7	9.8
BC	82,586,149	6,006,805	7.3	51.4
NWT	35,000	0	0	0
YK	465,000	15,000	3.2	0.1
	182,763,603	11,685,474	6.4	100

Table 3 : National Allocation of Forest Tenure Volume to First Nations in 2013/2014

Jurisdiction	Allocation (m ³ /yr)	First Nations Allocation (m ³ /yr)	% by Jurisdiction	% of National Allocation
NL	2,967,970	215,700	7.3	0.1
PEI	460,000	0	0	0
NS	4,079,000	n/a	n/a	n/a
NB	5,700,000	285,000	5.0	1.5
QC	17,175,800	1,183,400	6.9	6.4
ON	29,233,900	4,130,477	14.1	22.3
MB	2,504,370	n/a	n/a	2.0
SK	8,251,060	3,485,650	42.2	18.8
AB	32,000,000	1,056,237	3.3	5.5
BC	81,670,605	8,842,869	10.8	47.8
NWT	n/a	n/a	n/a	n/a
YK	187,000	n/a	n/a	n/a
	184,229,705	19,199,333	10.4	100



REGIONAL OBSERVATIONS

CHANGE BETWEEN 2003 AND 2006

With the exception of Saskatchewan and the Yukon, the change in tenure allocation was fairly consistent across all regions with a range between -0.1% and +2.1%. Saskatchewan experienced the greatest increase in tenure allocation to First Nations (7.5%) and held 24% of the Saskatchewan forest tenure volume while the Yukon had almost the equivalent decrease in allocation to First Nations (7.3%).

CHANGE BETWEEN 2006 AND 2013/2014

All regions have increased their forest tenure allocations to First Nations. The greatest increases were in Newfoundland (6.7%), Ontario (8.4%), and Saskatchewan having the greatest increase of 17.9%. There was also an increase in British Columbia (3.5%) but this value is suspect given the database error discovered during the writing of this report and it will have to be further investigated.

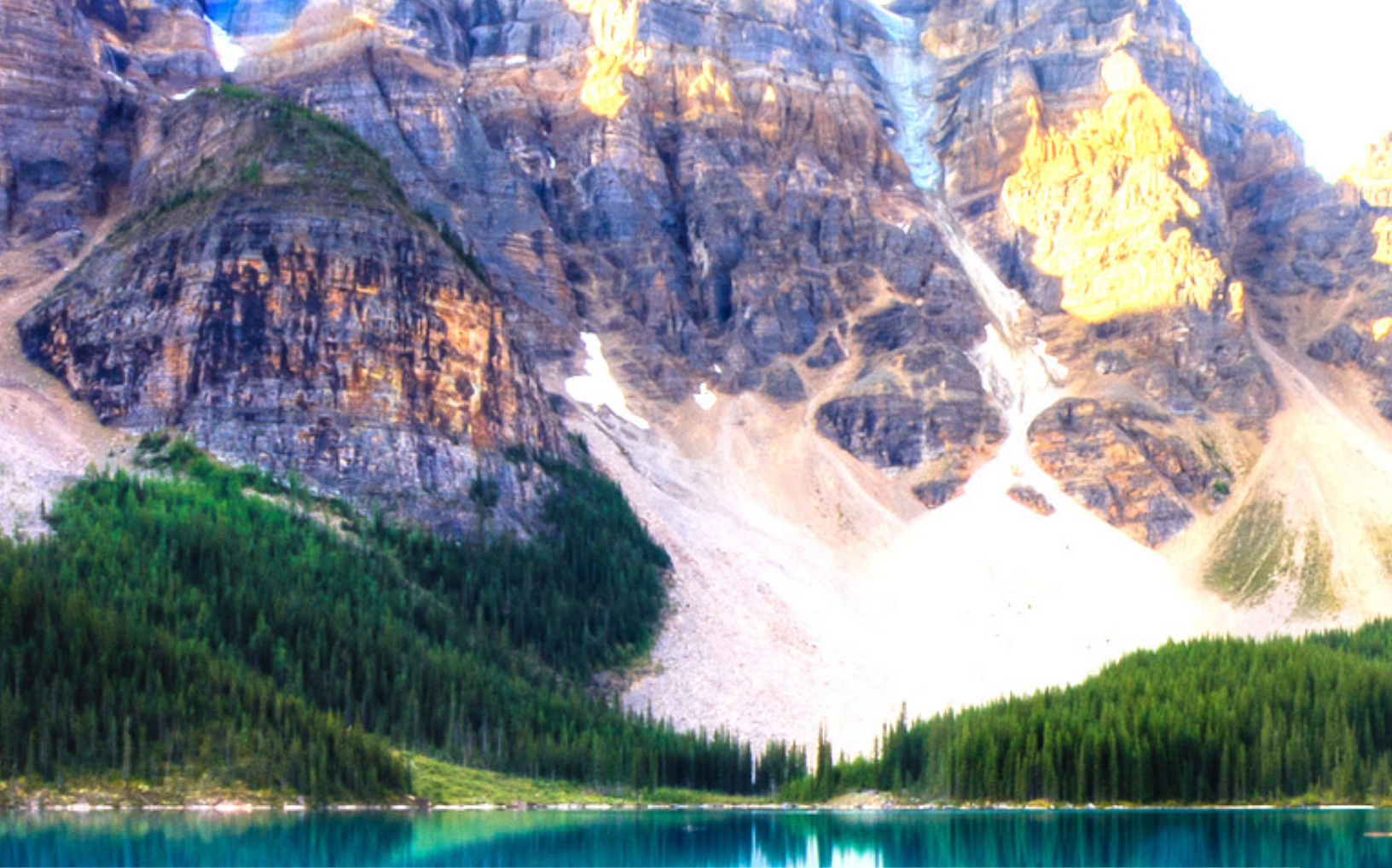
NATIONAL OBSERVATIONS

CHANGE BETWEEN 2003 AND 2006

First Nation-held forest tenure increased by 46% overall in Canada between the 2003 and 2006 reporting period. The national AAC increased by 7.1% over the same timeframe. BC experienced all around gains in relation to the proportion of the national AAC held by the province (+9.3%) and the proportion of national First Nation-held forest tenure allocation (+4.8%). The BC forest land base contributed approximately 45% of the national AAC while BC First Nations controlled 51.4% of all First Nation-held forest tenure in Canada. Ontario decreased its portion of the overall tenure by 5.5% but managed to increase First Nation-held forest tenure allocations by 2.1%. They contributed 17% of the overall First Nation-held allocation in Canada in 2006.

CHANGE BETWEEN 2006 AND 2013/2014

First Nation-held forest tenure increased by 64% overall in Canada between the 2007 and 2013/2014 reporting period, while the national AAC increased by only 0.8%. Ontario First Nations gained a greater stake in the national forest volume with an increase of 11.3% to bring their holdings to approximately 22% of the national First Nation-held allocation. BC First Nations experienced a decrease of 3.6% in allocation of forest tenure volume but still contribute 47.8% to the overall First Nation-held forest tenure volume in Canada.



DISCUSSION



A goal of this report was to further develop First Nation-held forest tenure as a viable indicator of market access. The main objective was to gather and present data and comparative analyses of First Nation-held forest tenures across the entire forested landscape of Canada for the 2013/2014 operating year and compare to the previous two reporting timeframes (2006 and 2003).

RESULTS

First Nations access to Crown forest tenure has increased by 64% in 2013/2014 compared to that reported in 2007. First Nation tenure allocations now account for 10.4% of Canada's total allocated wood supply in terms of volume, up from 6.4% reported in 2007. Total wood volumes allocated through Crown tenure arrangements have decreased a negligible amount (approximately 234,000 m³) in the 2013/2014 reporting period.

Progress is not evenly distributed across all regions. Saskatchewan and Ontario have increased their First Nation-held forest tenure volume by approximately 18% and 8.4% respectively. Newfoundland and Labrador gained a presence with a 6.7% increase to its First Nation-held tenure. These changes can be attributed to a number of factors. Three factors directly impacting tenure allocations reported in this document are: the settlement of land claims, provincial tenure reform and as a result, the creation of new business partnerships to take advantage of a policy environment that favours First Nation-industry partnerships. Each is described below with examples from the 2013/2014 reporting period.

Land Claim Settlements

In 2003, the Province of Newfoundland and Labrador, Canada and the Innu Nation of Labrador entered into an interim co-management agreement to administer Forest District 19A. This agreement provides a timber allocation that is negotiated on an annual basis. In 2014, a volume of 200,000 m³ was allocated. At the time of writing the 2007 report, no volume had yet been negotiated.

The BC Treaty negotiation process is the dominant forum for negotiated land claims settlement in British Columbia. As of April 2015, 65 First Nations representing 105 *Indian Act* Bands

were participating in or have completed treaties through the BC treaty negotiation process, which has been ongoing since 1992⁶. Negotiations may include a number of forestry-related treaty and interim measure arrangements. A significant portion of the existing First Nation-held tenure volume (8.8 million m³) has been direct-awarded as a result of treaty-related measures, interim measure or economic measures. Sections 43.5 and 47.3 of the BC *Forest Act* enables the Minister of Forests to direct award an application of a First Nation or its representative for a Community Forest Agreement (CFA), Forestry Licence to Cut (FLtC), Forest Licence (FL), Woodlot Licence (WL) or a First Nation Woodlands Licence (FNWL) in order to further an agreement between the First Nation and the province.

Tenure Reform

Ontario has undergone the most recent tenure reform process. The "modernization" of forest tenure significantly alters the governing structure of Crown forest management and how companies acquire wood.

Two key goals of the tenure modernization plan are related to First Nations participation in the Ontario forest sector:

- 1 to provide local First Nations a greater say in the management of local forests; and
- 2 engage with First Nations in meaningful dialogue to foster partnerships and agreements.

⁶ Source: <http://www.bctreaty.net/documents/FINALNewsRelease-TrueInvestmentinTreatyNegotiationscopy.pdf>

Numerous forest tenures are still in the “reform” process and it is difficult to determine the extent to which First Nations have benefited. However, it is evident that the process has created space for new entrants into the forest sector, particularly First Nation entities and partnerships. For example, the Sapawe Forest is licenced to the Rainy Lake Tribal Contracting – an economic development group made up of six First Nation partners – under an enhanced Forest Resource Licence. They have an annual AAC of 250,302 m³.

The same cannot be said for tenure reform in B.C. While a First Nations-specific tenure was developed with the expressed purpose of meeting the long-term sustainable forest development principles of First Nations, only two FNWL have been issued since it became available in 2011. There are a number of factors that may be impacting First Nations uptake. First, the BC FNWL requires both a strategic plan (e.g. management plan) and an operational plan (e.g. forest stewardship plan or woodlot licence plan) before harvesting can begin. Some First Nations may not have the capacity to undertake this level planning and may therefore prefer volume-based tenure options.

Second, there are issues related to locating a source of replaceable AAC and available operating areas that would support a viable forestry operation. Third, the BC government has set up an eligibility schedule based on which First Nations the government is interested in negotiating with. They determine this using the following factors: local forest conditions, identification of suitable operating areas, operating area conflicts, First Nation capacity to undertake management obligations and government reconciliation objectives. And finally, because the FNWL is tied to a Forest Tenure Opportunity Agreement (FTOA), which is a form of interim accommodation of Aboriginal rights, many First Nations will not concede to the government-set conditions and will therefore not be eligible.

New Business Partnerships

Many business partnerships between First Nations and forest companies exist in Canada. In fact new partnerships emerge just as old ones disappear. Two partnerships are mentioned here to provide an example of an emerging trend for First Nations involvement in tenures with substantial timber allocations. The first is Miitigoog LP, a co-operative SFL holder

that runs a unique forest management unit in Ontario that is structured similarly to the enhanced SFL. Miitigoog is a 50/50 partnership between local First Nation communities and local forestry companies and contractors to share management of the 1.2 million ha Kenora Forest SFL. This SFL had an AAC of 550,000 m³ in 2013, making it a significant contributor to First Nation-held forest tenure in the province.

The second partnership that has significantly affect the regional standing of First Nation-held tenure is Sakâw Askiy Management Inc. in Saskatchewan. This entity is a partnership between six forest companies and two First Nations. They have jointly managed the Prince Albert FMA since 2010, with each shareholder conducting their own operations (planning, harvesting, hauling and renewal) within discrete operating zones of the FMA. Sakâw Askiy monitors and reports on the overall forest activities in the FMA on behalf of the partners. The First Nations shareholders have a combined allocation of 640,000 m³/yr.

TENURE AS AN INDICATOR OF MARKET POTENTIAL

The contribution to Canada’s GDP from forestry and logging on First Nations forest tenure exceeds \$406 million annually. According to the State of Canada’s Forest Report, in 2013, the forest industry’s contribution to Canada’s GDP was \$19.8 billion (Forestry and Logging ~ \$3.9 billion; Pulp and paper product manufacturing ~ \$8.8 billion; and Wood product manufacturing ~ \$7.1 billion). First Nation-held tenure is 10.4% of the national forest tenure allocations, most of which can be categorized as forestry and logging.

METHODOLOGICAL ISSUES

The research supporting this report was fraught with challenges. The most important methodological issues to be considered when reviewing the data and final comparisons are explained below.

Access to Data

The researchers were unable to identify (with reliable proof) First Nation-held allocations in 4 out of the 12 regions investigated (or 33%). The only region that explicitly makes First Nation forest tenure information publically available on the

government website is British Columbia. Previous versions of this report made reference to a government ideology that collating information on “First Nation-held tenure” would amount to race-based data collection and therefore did not invest in the activity. There was no follow-up on the pervasiveness of that belief during the research for this report, however, it was clear that governments did not prioritize the publication of First Nation forestry data.

In an effort to maintain a consistent level of research effort across all regions, the primary source of data used was limited to what was found in public sources. There were two exceptions – Newfoundland and Labrador and Quebec. The researchers tasked with data collection had knowledge of First Nation-held tenure in these jurisdictions but could not validate the volumes without contacting key government and academic experts in the regions.

Another challenge was related to the Ontario tenure-reporting format. Ontario does not report a provincial AAC but instead reports the area (ha) harvested or allocated by tenure. Volume allocations are determined through the licencees planning process and are therefore difficult to ascertain through public documents. However, government officials familiar with the NAFA Tenure Report provided aggregated (tenure and contract) data and estimated an annual AAC based on internal information.

If time and resources permitted, data could have been collected from government, industry and First Nations sources directly via survey instruments, similar to the data collection methods used in the 2003 and 2007 versions of this report. Unfortunately there was neither time nor resources to carry out such an extensive project.

Apportioning Tenure Data

Many of the First Nation-held tenures were held by shareholder entities, such as joint ventures or as in the case of Ontario, a Crown corporation. The previous version of this report identified the challenge of accurately identifying the ownership share structure within these arrangements, making it almost impossible to apportion the tenure volume to First Nation shareholders.

In an effort to remain consistent in the reporting of First Nation-held tenure, the following rule was implemented: For every region, other than BC, tenure volume was apportioned based on share structure. If the share structure of the entity was not identified, the volume was not included in the report. The authors acknowledge that may be an overly cautious decision but it was decided that the integrity of the data set would be preserved by noting this intentional omission. The only exception was tenure data collected from BC. The reason for this is related to the consistent presentation of First Nations-tenure information since 2003. The parameters have not changed since the original report therefore any comparisons within the region or between BC and other regions would be valid.

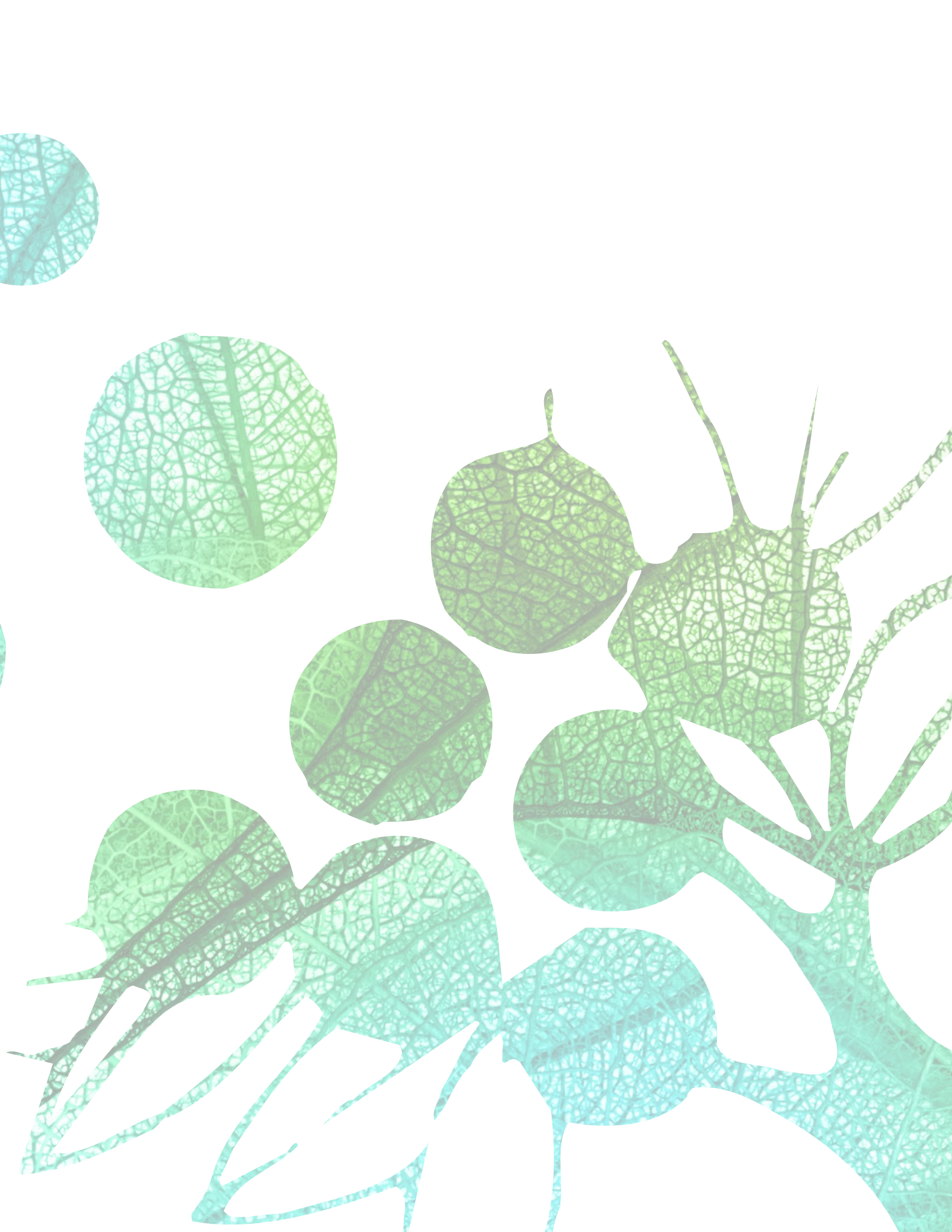
Cautious Comparisons

As mentioned in the previous section on apportioning tenure data, the authors make cautious comparisons between regions and across timescales. With 33% of the regional tenure data missing the summative information should be considered incomplete. However, when the data set is completed, there is speculation on the part of the authors that the relative ratios will be similar but the overall First Nations allocation would increase.

MOVING FORWARD

Identifying First Nation-held tenure as an indicator of market access is an important aspect of monitoring progress in achieving stated objectives related to sustainable forest management and Canada's National Forest Strategy. Regions such as British Columbia have proven that ongoing monitoring of tenure allocations to First Nation entities is possible and crucial in the development of viable forest policy frameworks and economic measures. As the rate of tenure reform and volume allocation to First Nations increases, so too should the reporting of these developments. This is the third version of the only known First Nation-held tenure report in Canada to be produced in 13 years – the last version of the report being almost 8 years old. NAFA will continue to seek resources and develop partnerships at the regional level to ensure First Nation-held tenure is reported on a more frequent basis.

Finally, Provinces and Territories that have not yet allocated First Nations a fair portion of forest tenures are encouraged to do so in order to support the development of viable economic development options among Canada's fastest growing population located within and near productive forested landscapes.




NAFA

NATIONAL ABORIGINAL FORESTRY ASSOCIATION



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