



**Final Report -  
Forest Practices Board  
Complaint 950036**

Forest Practices Board  
August 1996



## Complaint Investigation Summary - 950036

This summary provides an overview of the final report for a complaint investigation concluded by the Forest Practices Board in August, 1996. Investigation of public complaints is a primary responsibility of the Board under the *Forest Practices Code of British Columbia Act* (the Act).

### The Complaint

On November 28, 1995, the Board received a complaint from a member of the public asserting that "logging has been approved within the habitat of an extremely rare, probably endangered, species of mushroom in the genus *Tricholoma*". The blocks where logging had been approved are within the Small Business Forest Enterprise Program administered by the Ministry of Forests in the Sunshine Coast Forest District.

The Board decided the complaint was about preparation and approval of silviculture prescriptions for these blocks by the Ministry of Forests. The Ministry of Environment, Lands and Parks has the opportunity to participate in the preparation of silviculture prescriptions, making it necessary for the Board to examine their role in this complaint.

### Board Decision to Investigate

The Board's staff assessed the complaint to decide whether it was within the Board's jurisdiction, as defined by the Act, and whether circumstances existed which could lead the Board to refuse to investigate.

On December 15, 1995 the Board decided it must investigate the complaint.

### Summary of the Facts of the Investigation

The Board's investigators interviewed many individuals and reviewed documents relating to this complaint. It was found that:

- The complainant sent the District Manager a letter about pine mushroom habitat and harvesting of pine mushrooms within the area in the silviculture prescriptions. This letter was sent during the public review and comment period. The District Manager stated that he and his staff considered this submission from the complainant.
- After the public review and comment deadline, the District Manager received a letter from a mushroom specialist (a mycologist) describing 'an apparently rare' species of *Tricholoma* mushroom within the planned blocks. The District Manager states that he and his staff considered this submission in the preparation and approval of the silviculture prescriptions. There is no original documentation to support this statement.

### Complaint Investigation Summary (continued)

- The mycologist also sent his letter to the Ministry of Environment, Lands and Parks. This ministry did not contact the mycologist or the Ministry of Forests about this submission.
- There is no indication on the silviculture prescriptions of any actions planned to be taken to respond to the information provided in the letters from the complainant and the mycologist.

### Opportunity to Make Representations

As required by Section 182 of the Act, before the Board reached final decisions on this complaint, the Board provided nine parties and persons with draft materials which the Board considered might adversely affect each party or person. The Board received written representations from each party and person and considered these representations in reaching its decisions and preparing this final report.

### Interim Report

The representations to the Board from government decision-makers and the timber sale licensee indicated these parties were awaiting the Board's final report before deciding whether logging could begin again in the blocks involved in this complaint. On July 2, 1996 the Board issued an Interim Report to clarify matters arising from this investigation which may have had a bearing on the decisions about whether logging could begin again.

### Board's Conclusion

The Board concludes that the District Manager complied with the Act and the Regulations regarding the matters investigated in this complaint. However, the process of preparing and approving the silviculture prescriptions in September, 1995 was flawed.

### Board's Recommendations

The Board was considering making the following recommendations in June, 1996 when the draft materials were distributed:

- the District Manager of the Ministry of Forests should complete his reconsideration of his decisions to approve the silviculture prescriptions for the three blocks;
- in the reconsideration of those decisions, the District Manager should consult with the Regional Manager, Fish and Wildlife Management, Ministry of Environment, Lands and Parks, with regard to the "apparently rare" *Tricholoma* mushroom, before deciding; and,
- the two managers should use the most comprehensive and accurate information available to them. The Board identified the April 29, 1996 report by Dr. Shannon Berch titled "*Tricholoma Apium at the Roberts Creek Study Forest - a Scientific Review*" as providing the most comprehensive and accurate information that the Board had received. In considering this report, the Board recommended that these managers address and document their responses to the points raised by Dr. Berch.

### Complaint Investigation Summary (continued)

The District Manager and the Deputy Ministers of Forests and Environment, Lands and Parks advised the Board in June, 1996 that the reconsideration process had been completed. The District Manager then had the statutory responsibility to decide whether logging can begin again.

With respect to the timber sale for the area, the Board recommends the following:

1. The delays in logging, including those caused by this investigation, have reduced the operating time the licensee has available to complete the timber sale. The Board recommends that, if the District Manager chooses to allow logging to proceed, the District Manager should extend the timber sale by the length of time logging has been delayed, giving consideration to seasonal constraints on logging the remaining blocks.

Based on this complaint investigation, the Board makes the following general recommendations:

2. The Board recommends that the Ministry of Forests and the Ministry of Environment, Lands and Parks review their referral agreements to ensure adequate opportunity exists for consideration of substantial information about biological values that becomes available after a public review and comment deadline and before an operational plan is prepared.
3. The Board recommends that the government amend Section 40 of the Act, which relates to the District Manager's approval of operational plans prepared by the District Manager for the Small Business Forest Enterprise Program, to be consistent with Section 41, which provides for the District Manager's approval of operational plans submitted by agreement holders. Specifically, sub-section (b) of Section 41(1), which states "the district manager is satisfied that the plan or amendment will adequately manage and conserve the forest resources of the area to which it applies" should be added to Section 40(1).
4. The Board recommends that the government clarify the interpretation of the Biodiversity Guidebook regarding when 'special efforts may be needed' to protect the habitat of individual species.
5. The Board recommends that individuals who prepare and approve operational plans, such as the silviculture prescriptions in this complaint, should keep records of how substantial written submissions provided during public review and comment periods, and at other times prior to the preparation and approval of plans, were considered and used in those plans.
6. The Board recommends that the reasons for decisions to approve plans should be documented. When decisions are made to not include actions to accommodate forest resources that have been identified in substantial written submissions received prior to the approval of plans, the reasons for those decisions should be clearly recorded

### Complaint status

Closed

Further information on this complaint investigation is available from the Forest Practices Board office (1-800-994-5899):

- Interim Report - Forest Practices Board Complaint 950036      FPB/IRC/01
- Final Report - Forest Practices Board Complaint 950036      FPB/IRC/02
- Complaint Investigation Summary: 950036      FPB/CIS/02

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# 1. Introduction

One of the obligations of the Forest Practices Board is to investigate complaints from the public about operational planning, forest practices and protection activities undertaken by government and agreement holders, and the enforcement activities of government under *the Forest Practices Code of British Columbia Act* (the Act).

This report follows the completion of the investigation of a complaint filed with the Forest Practices Board on November 28, 1995 about the approval of silviculture prescriptions and protection of the habitat of a mushroom species in the Sunshine Coast Forest District in the Vancouver Forest Region. This report provides the Board's conclusions and makes recommendations about the matters raised in the complaint.

Section 185(1) of the Act requires the Board to provide copies of investigation reports to complainants and the party complained about. The Board will thus provide copies of this final report to the complainant, the Ministry of Forests and the Ministry of Environment, Lands and Parks. Because this investigation has attracted considerable public interest and the Board is of the opinion that the conclusions and recommendations are of interest to the public, the Board has decided that the report will be available to the holder of the timber sale licence involved, the three government Ministers that the Board reports to and the public, as provided in section 189(3) of the Act.

## 2. Complaint Details

### 2.1 Topic of the Complaint

The complaint filed with the Forest Practices Board on November 28, 1995 asserts:

“that logging has been approved within the habitat of an extremely rare, probably endangered, species of mushroom in the genus *Tricholoma*.”

In supporting material provided with the complaint, the complainant asserts that no reference is made to the *Tricholoma* mushroom in the approved silviculture prescriptions although information about it was provided to the District Manager prior to his approval of the prescriptions. The complainant also asserts that the District Manager did not make reference to the impact of logging on a significant commercial harvest of pine and chanterelle mushrooms in the three blocks when he approved the silviculture prescriptions.

The complaint is about the “approval” of “logging” by the District Manager. This decision was made when the District Manager of the Sunshine Coast Forest District, on behalf of government, approved the silviculture prescriptions for the three blocks involved<sup>1</sup>. As the District Manager is responsible for the preparation of silviculture prescriptions for the Small Business Forest Enterprise Program, the Board decided it was also necessary to examine the preparation of the prescriptions by the staff of the Ministry of Forests. The Ministry of Environment, Lands and Parks has an opportunity to participate



in the preparation of silviculture prescriptions, making it necessary for the Board to consider their role in this complaint.

## 2.2 Location

The three blocks that are the subject of this complaint are located in a 90-120 year old forest on the slopes of Mount Elphinstone, near the community of Roberts Creek in the Sunshine Coast Forest District. The forest is predominantly Douglas-fir, including scattered old trees, with a lesser amount of Western hemlock and Western red-cedar. The sizes of the three blocks are 10.1, 11.0, and 11.4 hectares.

These blocks are within a substantially larger area on Mount Elphinstone where a Local Resource Use Plan (LRUP) has been under development since 1992. In addition, a 140 hectare area of Mount Elphinstone is being considered as a protected area under the Protected Areas Strategy.

The blocks are part of the Roberts Creek Study Forest Project, a research trial undertaken by the Vancouver Forest Region and the Sunshine Coast Forest District to assess silvicultural systems that are alternatives to conventional clearcutting. One block is described as a clearcut with reserves while the other two are partial cuts (a shelterwood with reserves and an extended rotation block). Long term research is being conducted to determine the effects of the three systems on the ecosystem. Mycology, which is the study of mushrooms, is one of the research topics in this project.

The three blocks are administered as Timber Sale A-48268 within the Ministry of Forests Small Business Forest Enterprise Program. At the present time, all operational planning approvals are in place and harvesting has occurred in portions of each of the blocks.

## 2.3 Complainant

The complaint was filed by Adrian Belshaw, a resident of Roberts Creek, on behalf of a local organization, Elphinstone Forest Watch. Mr. Belshaw has been actively involved in planning on Mount Elphinstone and was a member of the LRUP.

## 2.4 Subject of the Complaint

The complainant names the District Manager of the Ministry of Forests, Sunshine Coast Forest District, Mr. Greg Hemphill, as the subject of the complaint. Throughout this report Mr. Hemphill is referred to as the District Manager.

The Ministry of Forests District Manager who prepared and approved the silviculture prescriptions that are the subject of the complaint investigation is named in the complaint, and is named above. However, the investigation focuses on the activities of the District Manager as a representative of government, not as an individual. Other employees of the Ministry of Forests who acted on behalf of the government are not named in the report and it is their activities as representatives of government, not as individuals, that have been investigated.

## 2.5 Others Involved in the Complaint

Another government ministry and several other individuals were involved in the complaint or may be potentially affected by the complaint investigation process, and the Board's conclusions and recommendations. These are:

- **Ministry of Environment, Lands and Parks:** This government ministry and its staff received information about the *Tricholoma* mushroom. The ministry has a role, as does the Ministry of Forests, in maintaining biodiversity. Also, the ministry participates in the review and consideration of operational plans prior to their approval by the Ministry of Forests.
- **Ken Sneddon:** Mr. Sneddon is the owner of Sechelt Creek Contracting Ltd.. His firm was the successful bidder on Timber Sale A-48268 in December, 1995, and has legal authority to cut the timber in the three blocks involved in this complaint.
- **Paul Kroeger:** Mr. Kroeger is a mycologist (an expert in mushrooms) and has conducted studies of the mushrooms in the area where this complaint is located for several years. In August, 1995, he wrote a letter to the District Manager that is a central piece of information in this complaint investigation.
- **Staff of the Ministry of Forests:** These individuals worked under the direction of the District Manager to prepare the silviculture prescriptions that are the subject of the complaint investigation.

## 3. Complaint Investigation Process

### 3.1 Complaint Assessment

When the Forest Practices Board receives a complaint, an assessment is completed to determine that:

- the information provided in the complaint meets the Notice of Complaint requirements of Section 7 of the Forest Practices Board Regulation
- the complaint is about matters that are within Parts 3-6 of the Act and that have occurred since June 15, 1995 when the Act came into effect
- none of the reasons set out in Section 177(2) of the Act would cause the Board to consider refusing to investigate the complaint.

The Board determined that the complaint included the required information, and that it concerned the preparation and approval of operational plans (three silviculture prescriptions) which occurred after June 15, 1995. The complaint was thus within the Board's jurisdiction to investigate.

The Board also decided that, since the silviculture prescriptions had been approved and the District Manager had proceeded with plans to sell the timber sale, there were no other administrative remedies available to the complainant. There were no other reasons for the Board to refuse to investigate the complaint.

### 3.2 Decision to Investigate

On December 15, 1995, the Board decided that it must investigate the complaint. The Board advised the complainant, the Ministry of Forests, and the successful bidder for the timber sale by letter on December 19, 1995 of its decision.

Subsequently, the Board advised the Ministry of Environment, Lands and Parks that it was investigating the complaint.

### 3.3 Investigation

During the investigation, Board staff collected relevant documents and interviewed Ministry of Forests employees involved in the preparation and approval of the silviculture prescriptions or in preparing correspondence related to these plans. Interviews were also conducted with the complainant, staff of the Ministry of Environment, Lands and Parks and a number of individuals with expertise in mycology. Board staff also attended a field trip to view the three blocks with the parties involved.

### 3.4 Special Report

During January and February, 1996, in the course of this investigation, the Board obtained information from mycologists about the status and distribution of the *Tricholoma* mushroom.

In March, 1996 logging began in the extended rotation block. The Board understood that no work was expected on the clearcut with reserve block, where the concentration of the *Tricholoma* mushroom was believed to be located, until the fall of 1996. However, the logging plan for the clearcut with reserve block was amended on April 1, 1996 and logging began in the block that day.

The Board was concerned that it had received recent information about the *Tricholoma* mushroom that was not available to the government ministries or other parties involved in the amendment to the logging plan. The commencement of logging in the clearcut with reserve block precluded consideration of this new information and limited future options should full review of the new information suggest that protection of the mushroom habitat was necessary.

On April 4, 1996 the Board notified the Ministry of Forests District Office, the Ministry of Environment, Lands and Parks Regional Office and the licensee that the Board was considering making a Special Report regarding this situation to the three ministers to which the Board provides reports. The Board was considering recommending that the ministries meet with the licensee to arrange for the logging operations in the clearcut with reserve block to be stopped immediately to

permit full consideration of all information about the *Tricholoma* mushroom. The Board provided these parties the opportunity to respond to the Board before it made a decision to release a Special Report.

On April 5, 1996, after receiving representations from all three parties, the Board decided not to make a Special Report because the Ministry of Forests and the licensee had voluntarily agreed to stop all operations on the block. It was agreed that the logging would not begin until the District Manager advised the Board that there had been an opportunity for him to review all the information available from the mycologists involved and he had received and considered any suggestions from the Ministry of Environment, Lands and Parks resulting from their review of the information.

### 3.5 Opportunity to Make Representation

The Board reviewed the information collected in the investigation and, on May 31, 1996, completed draft materials including conclusions and recommendations the Board was considering making.

Section 182 of the Act states:

“If it appears to the board that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect a party or person, the board must inform the party or person of the grounds and must give the party or person the opportunity to make representations, either orally or in writing at the discretion of the board, before it decides the matter.”

The Board determined that nine parties and persons may have been adversely affected by the conclusions and recommendations the Board was considering. These parties and persons were sent the parts of the materials which may have adversely affected them and were provided an opportunity to make written submissions to the Board. The Board received written submissions from each of the nine persons and parties.

### 3.6 Interim Report

The submissions from decision-makers in government and the licensee for Timber Sale A-48268 indicated they were waiting for a report from the Board before making a decision about whether logging could begin again in the blocks involved in this complaint. The Board issued an Interim Report on July 2, 1996 (Appendix 1) to clarify matters arising from the investigation which may have had a bearing on the decisions about whether logging could begin again. The Interim Report was made available to the public.

The Board has been informed that logging began again in late July, 1996.

## 3.7 Final Report

Each Board member considered the submissions from the nine parties and persons. The Board then collectively discussed the submissions and developed the conclusions and recommendations in this Final Report.

## 4. Investigation Topics

### 4.1 Compliance with the Forest Practices Code

The matters raised in this complaint required consideration of sections of the Silviculture Practices Regulation, the Operational Planning Regulation and the Act. The relevant sections are discussed in detail in Section 6 of this report. The Board considered the following questions regarding compliance with the Code:

- Question 1.** Did the District Manager comply with the requirements of the Forests Practices Code in the *preparation* of the three silviculture prescriptions?
- Question 2.** Did the District Manager comply with the requirements of the Forest Practices Code in *approving* the three silviculture prescriptions on September 14, 1995?

### 4.2 Fair and Reasonable Decision-making

When investigating complaints, the Board expects to be able to draw conclusions and offer opinions about whether particular decisions or actions achieved administrative law principles for fair and reasonable decision-making. This goes beyond an examination of compliance and requires opinions from the Forest Practices Board as to whether decisions were appropriate in view of administrative law principles.

The Board examined the following questions regarding the decision-making process in this investigation:

- Question 3.** Did the Ministry of Forests and the Ministry of Environment, Lands and Parks genuinely consider submissions from the public regarding the silviculture prescriptions?
- Question 4.** Did the District Manager give the reasons for, and show the process of, making his decision to approve the silviculture prescriptions?

### 4.3 The *Tricholoma* Mushroom

This investigation focused on the preparation and approval of the three silviculture prescriptions which permitted logging in three blocks within the area where the *Tricholoma* mushroom had been

found. The investigation did not require the Board to consider the geographical distribution of the mushroom within those blocks, whether the mushroom was rare or endangered, or whether logging would have an impact on the habitat of the mushroom. Consequently the Board has not developed an opinion on these matters.

During the course of the investigation, a substantial amount of new information about the *Tricholoma* mushroom was provided to the Board by a number of sources. All the information that the Board received was provided to the Ministries of Forests and Environment, Lands and Parks. The District Manager subsequently retained Dr. Shannon Berch, a mycologist working for the Ministry of Forests Research Branch, to consult with other mycologists and undertake a full review of all the information about the mushroom. Dr. Berch prepared a thorough review of the state of knowledge about the *Tricholoma* mushroom in a report dated April 29, 1996 "*Tricholoma Apium at the Roberts Creek Study Forest - a Scientific Review*". This report includes all the information obtained by the Board. The District Manager has made this report available to the public. Letters responding to Dr. Berch's report, (see Appendix 2 of this report) provide additional information.

In the Interim Report, the Board referred to Dr. Berch's report, the opinions of mycologists referenced in the report and subsequent correspondence as providing the most comprehensive and accurate information available about the *Tricholoma* mushroom when the Interim Report was prepared.

## 5. Investigation Findings

A chronological listing of the events related to this complaint and the investigation are included in Appendix 2. The following are the Board's findings for this complaint investigation:

1. The silviculture prescriptions for the three blocks in Timber Sale A-48268 are operational plans under the Act. The preparation of these prescriptions was completed and they were signed by an employee of the Ministry of Forests on September 12, 1995. They were approved by the District Manager on September 14, 1995.
2. In response to an advertisement inviting public comment on the proposed silviculture prescriptions (called pre-harvest silviculture prescriptions at the time), the complainant, Adrian Belshaw, wrote to the District Manager. This letter was sent on July 12, 1995 during the period advertised for public review and comment. In addition to describing concerns regarding wildlife and late successional forest values in the three blocks, Mr. Belshaw's letter makes specific reference to mushrooms as follows:

"The three cutblocks are in known pine mushroom habitat. The clearcut and shelterwood will certainly eliminate the pine mushroom and other mycorrhizal fungi of ecological importance, and the extended rotation may be expected to eliminate the pine mushroom along the yarding corridors. The pine mushroom is of economic importance, and no harvesting should proceed which cannot maintain the pine mushroom.

The expected long-term value of the pine mushroom harvest must be specifically addressed by any eventual PHSP.

The PHSP implies in error that "mushroom picking...can resume following harvesting".

The area of these cuts is apparently critical habitat for mycorrhizal macrofungi in general, and several rare and/or late successional species in particular. No cuts should be approved in this area without adequate inventory. Harvesting, if any, must maintain and restore mushroom diversity."

Mr. Belshaw's letter does not specifically refer to the *Tricholoma* mushroom that is subsequently referred to in the complaint.

3. The District Manager stated that he and his staff considered the submission from Mr. Belshaw in preparing and approving the silviculture prescriptions. The letter of response from the Ministry of Forests to Mr. Belshaw was sent on August 30, 1995, before the silviculture prescriptions were completed on September 12, 1995 and approved by the District Manager on September 14, 1995. With regard to concerns raised about mushrooms, the letter from the Ministry states:

"The presence of mushrooms and other understory species that you have identified in Timber Sale A-48268, an area of second growth timber, indicates that these species will survive or become established after a disturbance. These areas have been previously harvested or burned and very thrifty stands and accompanying vegetation now occupy these sites indicating that these areas are very suitable for forest management. The value of research in these areas is that it will provide some answers to the effect of the various silvicultural systems on understory species present."

4. The District Manager received a submission from Paul Kroeger, dated August 10, 1995, describing "an apparently rare" mushroom species that occurred in "large populations" within the three blocks for which they were preparing and considering approval of silviculture prescriptions. This information was provided in a two page letter sent to the District Manager with an attached list of mushroom collections on Mount Elphinstone. The letter indicates that copies were sent to another person in the Ministry of Forests district office, the Regional Manager of the Ministry of Forests and two other Ministry of Forests employees. Copies were also indicated as being sent to Ministry of Environment, Lands and Parks staff at the regional and headquarters levels, politicians, environmental organizations and the media.

The letter from Mr. Kroeger was received by the Ministry of Forests in Powell River on August 21, 1995, approximately 5 1/2 weeks after the advertised review and comment period had ended. It was received approximately 3 1/2 weeks before the silviculture prescriptions were completed and approved. There is no indication in the letter that it was intended to be a response to the advertisement of the silviculture prescriptions.

5. Mr. Kroeger's letter is titled "Mount Elphinstone LRUP Study Area - Critical Mushroom Habitat". In the letter, Mr. Kroeger identifies himself as "active in mycological research" and as "a consultant on identification and toxicology of native fungi, especially forest mushrooms". He states that "over the years I've taught several mushroom identification courses and led many walks in the Roberts Creek, Mt. Elphinstone area".

His letter describes "an abundance" of certain vascular plants which indicate "a strong mycorrhizal component in a forest". He states that a variety of mushrooms "including species of economic importance such as pine mushroom, chanterelles and boletes has made the area a favorite destination for locals and visitors and supports a significant commercial mushroom harvest."

His letter further states:

"There is at least one species that thus far appears to be unnamed. This interesting species of *Tricholoma* grows abundantly in the very portion of the Small Business Forest Enterprise Program areas which are scheduled to be logged soon (A-48268). Only three small collections are known from outside this area, one from Buntzen Lake in the Lower Mainland and two from Vancouver Island. The presence of large populations of an apparently rare mycorrhizal mushroom is of great significance.

I've been collecting and studying several other taxa that are of particular interest. [Note to reader: A list of 40 collections involving 30 species was attached]. This area has great value for the study of late successional fungal diversity."

6. The District Manager stated that he and his staff considered Mr. Kroeger's submission in the preparation and approval of the silviculture prescriptions. The District Manager provided documentation that:
  - At an unknown date in August, the District Manager discussed Mr. Kroeger's letter with his Operations Manager.
  - On August 25, 1995 a Ministry of Forests employee who was involved in the preparation of the prescription sent a message by electronic mail to the Operations Manager. This note indicates the person had read Mr. Kroeger's letter. It includes no substantial information to respond to Mr. Kroeger's letter.
  - On September 5, 1995, prior to the completion and approval of the silviculture prescriptions, a letter of response to Mr. Kroeger was drafted for the District Manager's signature and was sent to the Operations Manager. There is no information as to when this response was provided to the District Manager.



7. On September 26, 1995, after the silviculture prescriptions were approved, the District Manager signed and sent a letter to Mr. Kroeger which states:

“The Ministry of Forests recognizes the importance of fungi to the biodiversity and ecological balance of our forest ecosystems, including the value of mushrooms as a food source. Because of the value of mushrooms in the Mount Elphinstone area, the Ministry of Forests Forest Sciences section will undertake a thorough mycological inventory for this area.”

Further, the letter states:

“As you know, a local planning process is currently underway for the Mount Elphinstone area. The objective is to integrate the management of all the area’s natural resources, including old growth and fungi. The mycology inventory will play a valuable role in the process of integrated management.”

The letter does not include reference to the information from Mr. Kroeger regarding the ‘apparently rare’ species of *Tricholoma* mushroom.

8. On February 6, 1996, in response to requests from the Forest Practices Board, the District Manager sent a letter to the Board describing two actions taken by Ministry staff at his request before the approval of the silviculture prescriptions. The District Manager states:

“Upon receipt [Note to reader: Of the letter from Kroeger] I requested staff to review the issue, seek advice and develop a response for my signature. Planning staff consulted with... a mycologist and with ... the Ministry’s Regional Forest Ecologist [Note to reader: Names of the individuals have been deleted] regarding the accuracy and implications of the input received”

Additionally, in the letter the District Manager states:

“In making my decision to approve silviculture prescriptions, I considered input received from the public review of the subsequent Forest Development Plan and advertisement of the silviculture prescriptions. This input included the letter of Paul Kroeger as well as aforementioned expert advice [Note to reader: from a consulting mycologist and the Ministry’s Regional Forest Ecologist]. In my judgment the requirements of the Forest Practices Code were sufficient to ensure that fungal diversity would be provided reasonable protection while the inventory and research was undertaken.”

9. On February 15, 1996 the District Manager sent the Board a second letter with an attached "Chronological Listing of Actions Taken in Response to Paul Kroeger's Mushroom Habitat Letter". This list provides the dates of his request to staff to prepare a response and of phone calls made by staff to the mycologist and the regional ecologist and one additional staff person. There is no original documentation from when these actions were taken to verify the evidence.

The District Manager's letters of February 6 and February 15, 1996 do not explain how information obtained in these calls was evaluated by the District Manager's staff or by what mechanism that evaluation was conveyed to the District Manager, his designate or to the individual who prepared the silviculture prescriptions.

10. No contact was made by any Ministry of Forests staff with Mr. Kroeger between receipt of Mr. Kroeger's letter on August 21, 1995 and approval of the silviculture prescriptions by the District Manager on September 14, 1995. The first contact with Mr. Kroeger was the letter of response sent to Mr. Kroeger on September 26, 1995.
11. The silviculture prescriptions were completed on September 12, 1995 and were approved on behalf of the government by the District Manager on September 14, 1995.

The three silviculture prescriptions include reference to "mushroom picking" as a "recreational feature". They state:

"Recreation features such as mountain biking, mushroom picking and hiking are common to the area. No special features (e.g. designated trails) located on the block. All activities can resume following harvesting."

The silviculture prescriptions make no reference to the *Tricholoma* mushroom or to any of the other mushrooms referred to in the submissions from Mr. Belshaw and Mr. Kroeger. There is also no reference to commercial harvest of mushroom species as described in these submissions.

There is no indication on the silviculture prescriptions of any actions planned to be taken to respond to the comments and information provided by Mr. Belshaw and Mr. Kroeger.

12. There is no information indicating the Ministry of Environment, Lands and Parks received a copy of Mr. Belshaw's letter of July 12, 1995.

Mr. Kroeger sent his letter of August 10, 1995 which included the information about the *Tricholoma* mushroom to appropriate senior managers in the Ministry of Environment, Lands and Parks. This Ministry has a responsibility, as does the Ministry of Forests, to conserve biological diversity, although their legislated authority to protect "rare" species does not extend to fungi such as the *Tricholoma* mushroom<sup>2</sup>. The Memorandum of Understanding between the Ministry of Forests and the Ministry of Environment, Lands and Parks regarding implementation of the Forest Practices Code provides this ministry the opportunity to participate in the review of silviculture prescriptions.

Ministry of Environment, Lands and Parks staff did not contact Mr. Kroeger in response to his submission. They did not provide any information or advice to the Ministry of Forests regarding this submission prior to the approval of the silviculture prescriptions.

## 6. Conclusions

### 6.1 Compliance with the Forest Practices Code

As the preparation and approval of the silviculture prescriptions for the three blocks in Timber Sale A-48268 occurred after June 15, 1995, when the Act came into force, they are actions that must comply with the Act and the Regulations. The Board's investigation examined whether these actions did comply with the following sections of the Act and the Regulations:

- sections 10-14 of the Silviculture Practices Regulation (BC Reg 42/94) concerning the content and handling of public input for silviculture prescriptions
- section 11 of the Operational Planning Regulation regarding the use of available information in operational plans
- section 40(1) of the Act regarding the approval of operational plans

#### a) Sections 10-14 of the Silviculture Practices Regulation (BC Reg 42/94) - Content and handling of public input for silviculture prescriptions

The Silviculture Practices Regulation (BC Reg 42/94) was a regulation under the *Forest Act*. Compliance with Sections 10-14 of this regulation was required under one of the transitional provisions of the *Forest Practices Code Act*, Section 231(2). This section of the Act is applicable in this investigation because the silviculture prescriptions were advertised as pre-harvest silviculture prescriptions under the *Forest Act*, before the *Forest Practices Code Act* came into effect.

Section 231(2) of the Act states:

“Despite section 22(1), if on or before a date that is 6 months after the date this action comes into force, the district manager prepares a silviculture prescription.. the prescription...

- (b) must, at a minimum, comply with the requirements of sections 10 - 14 of the Silviculture Practices Regulation, B.C. Reg 42/94, as it was immediately before the coming into force of this section.”

Section 10 of the regulation is not relevant to this investigation.

Section 11(1)(l)(iv) of the Silviculture Practices Regulation states that:

“a pre-harvest silviculture prescription must ... include actions, if any, that will be taken by the person who is required to carry out the obligations under the prescription to accommodate resources other than timber...”.

Section 12(1) of the Silviculture Practices Regulation states that a silviculture prescription submitted for approval must be advertised in a newspaper and that the proposed prescription must be available for public review and comment for not less than 6 weeks. This section requires the District Manager to:

- “(c) review all written comments received during the period for comment that is set out in the notice, and
- (d) make any revisions to the proposed prescription that the person or the District Manager, as the case may be, deems appropriate.”

Sections 13 and 14 include requirements which are not relevant to this investigation.

The Silviculture Practices Regulation required that silviculture prescriptions include “actions, if any” to accommodate resources other than timber. It also required the District Manager to review comments and make any revisions to the silviculture prescriptions that he deemed appropriate. These requirements pertained to Mr. Belshaw’s letter which was received before the end of the public review and comment period.

The approved silviculture prescriptions do refer to mushroom picking as a recreational feature but do not include any specific measures to address the concerns raised in Mr. Belshaw’s letter with regard to pine mushrooms. Compliance with this regulation required the inclusion of actions to be taken, but is unlikely to be legally interpreted as requiring a notation that no action would be taken. Since it does not appear that any action was to be taken in these circumstances, there was no requirement for a notation. Similarly, as the District Manager did not deem that any revisions to the silviculture prescriptions were appropriate, no revisions were required.

As this situation illustrates, without a legal requirement to note the reasons for a decision not to take action in response to public comments on the silviculture prescription, it is not clear whether a District Manager failed to weigh information provided in public comments or weighed the information and decided that no action was appropriate.

Mr. Kroeger’s letter was sent to the District Manager on August 10, 1995, well after the public review and comment deadline. The Silviculture Practices Regulation did not require the District Manager to consider this submission.

## Conclusion 1

The Board concludes that the District Manager and the Ministry of Forests staff who prepared the silviculture prescriptions met the requirements of relevant sections of this Regulation.

Section 11 of this Regulation required the prescription to include "actions, if any" that will be taken to accommodate resources other than timber. Since no specific action was proposed to be taken to accommodate the habitat requirements of mushroom species, there was no requirement to include a notation of any actions in the silviculture prescriptions.

Section 12 required the District Manager to review written comments received during the period for public comment and to make any revisions to the silviculture prescriptions that he deemed appropriate. Staff working for the District Manager did consider Mr. Belshaw's comments in his letter of July 12, 1995 and responded to Mr. Belshaw prior to the approval of the prescriptions. Since no revisions to the prescriptions were deemed appropriate, none were required to be made<sup>3</sup>. Section 12 did not require consideration of Mr. Kroeger's letter because it was received approximately five weeks after the advertised period for public comment had ended.

### b) Section 11 of the Operational Planning Regulation - Use of available information in silviculture prescriptions

In the Small Business Forest Enterprise Program, the District Manager is responsible for the preparation of silviculture prescriptions which are operational plans in the Act. The Board had to consider whether the District Manager complied with Section 11 of the Operational Planning Regulation when the three silviculture prescriptions were prepared<sup>4</sup>. Section 11 states:

- "11. (1) A person that is required to prepare an operational plan must, when preparing the plan, use the most comprehensive and accurate information available to the person.
- (2) Without limiting subsection (1), a person must, at a minimum, use
- (a) (repealed)
  - (b) all information that is known to the person.

The term "known" is defined in the Operational Planning Regulation as:

- "(3) ... a feature, objective or thing that is
- (a) contained in a higher level plan,
  - (b) otherwise made available by the government at least 4 months before the operational plan is submitted.

Sub-section 2 of Section 11 of the Operational Planning Regulation is not relevant to this complaint because there is not a higher level plan in place for this area, and the government did not provide information about mushrooms in the area before the silviculture prescriptions were prepared. Sub-section 1 of Section 11 is relevant to this complaint.

The silviculture prescriptions in this complaint were prepared in the context of a LRUP process for the area which has been ongoing since 1992 and forest development plans including these blocks which were approved in 1993, 1994 and 1995. These broad planning processes generally provide information and direction to silviculture prescriptions. The presence of 'an apparently rare' mushroom species had not been raised in the LRUP process or in the public review for the development plans. Forest development plans are the landscape level of planning where management practices for biodiversity are defined. Ministry of Environment, Lands and Parks staff responded favourably to the forest development plans for this area in part because, in their opinion, measures to protect biodiversity were incorporated in these plans. In addition, a proposal for a protected area on Mount Elphinstone under the Protected Areas Strategy was submitted in the fall of 1995. This proposal was being discussed when the silviculture prescriptions were prepared and approved.

In addition to these broader levels of planning, sub-section 11(1) of the Operational Planning Regulation is explicit in requiring the person preparing an operational plan, including a silviculture prescription, to 'use the most comprehensive and accurate information available to the person'.

The Regulation does not prescribe or define "use". In the Board's opinion, use implies evaluation and consideration, leading to a decision whether or not and how the information affects judgment. Consequently, the Board expects a reasonable effort will be made to evaluate and consider new information that arrives before a silviculture prescription is finalized to decide whether it must be used in the prescription. Although the submission from Mr. Kroeger arrived after the public review and comment deadline, it contained substantial information about "an apparently rare" mushroom species which required this level of consideration.

The District Manager contends that he and his staff did use Mr. Kroeger's information in the preparation of the silviculture prescriptions. The Board received submissions from the District Manager and his Operations Manager asserting that the matter was discussed and dealt with prior to the silviculture prescriptions being prepared and prior to the response being prepared to Mr. Kroeger's letter. The Deputy Minister of Forests has supported these assertions. These assertions are not supported by original documentation made at the time the actions were taken and there is no reference to the information in the silviculture prescriptions.

## Conclusion 2

Without original documentation completed when the silviculture prescriptions were prepared, the Board had great difficulty reaching a decision regarding compliance with subsection 11(1) of the Operational Planning Regulation. The Board has considered the assertions of the District Manager, including the confirmation of the Deputy Minister of Forests, and had to conclude that the District Manager complied with this requirement.

### c) Section 40(1) of the Act - Approval of operational plans

Section 40(1) places a responsibility on the District Manager to ensure that operational plans approved by the District Manager meet the requirements of the Act and the Regulations. Section 40(1) states:

“The district manager may only give effect to an operational plan or amendment prepared by the district manager if the plan or amendment meets the requirements of this Act, the Regulations and the standards.”

Given the wording of Section 40(1), if the silviculture prescriptions met the requirements of the Act and the Regulations, then the District Manager complied with the Act in approving, or “giving effect to”, them. Consequently, relative to the issues raised in this complaint, previous sections of this report regarding compliance with the Act and the Regulations need to be considered when examining compliance with this section.

The Board is concerned that Section 40 is substantially different from Section 41, the parallel section in the Act which relates to approval of operational plans prepared and submitted by agreement holders. Section 41(1) states:

“The district manager must approve an operational plan or amendment submitted under this part if:

- (a) the plan or amendment was prepared and submitted in accordance with this Act, the Regulations and the standards, and
- (b) the district manager is satisfied that the plan or amendment will adequately manage and conserve the forest resources of the area to which it applies.”

The preamble to the Act is intended to assist in explaining the meaning of the details in the Act and the Regulations. The following sections of the preamble illuminate what is intended by the requirement to ‘adequately manage and conserve the forest resources of the area’:

“WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations;

AND WHEREAS sustainable use includes

- (a) managing forests to meet present needs without compromising the needs of future generations,
- (c) balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations,
- (d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources

Section 41(1) and the preamble to the Act appear to emphasize the District Manager’s responsibility to conserve forest resources when approving plans and amendments prepared by agreement holders. There is no similar language in the Act regarding a District Manager’s approval of operational plans that are prepared by the District Manager. The Board expects that plans prepared by government should meet the same standards for plans prepared by agreement holders, particularly when the District Manager both prepares and approves the plans.

In this complaint, the remaining matter to be considered by the Board relating to Section 40(1) of the Act is whether the provisions for biodiversity in the silviculture prescriptions adequately addressed the habitat requirements of ‘an apparently rare’ mushroom species. There is not a specific section of the Act or the Regulations which makes explicit reference to habitat requirements of a ‘rare’ species. However, the language in the preamble provided above indicates the intention of the Forest Practices Code to achieve sustainable use which includes ‘conserving biological diversity... and other forest resources’. Forest resources are defined in the Act as:

“resources and values associated with forests and range, including, without limitation, timber, water, wildlife, fisheries, recreation, botanical forest products, forage and biological diversity.”

Biological diversity is defined in the Operational Planning Regulation as:

“the diversity of plants, animals and other living organisms in all their forms and levels of organization and includes the diversity of genes, species, ecosystems and the evolutionary and functional processes that link them”

Guidance on the management of biodiversity relative to conservation of individual species is provided in the Biodiversity Guidebook for the Forest Practices Code which states:



“Developing a biodiversity conservation strategy that is based on a variety of management strategies for individual species is neither feasible nor effective. The impact of forest management practices on many species is unknown and certain practices that benefit some species are often detrimental to others. Recommended instead is the development of an ecosystem management approach that provides suitable habitat conditions for all native species. In this way, habitat diversity is used as a surrogate to maintain biodiversity.

At the same time, however, special efforts may be needed to protect the habitat of species known to be at risk, such as threatened, endangered, or regionally important species. Specific strategies for addressing these species are outlined in the *Managing Identified Wildlife Guidebook*.”<sup>5</sup>

A submission from the District Manager, which is supported by the Deputy Minister of Forests, states:

“The approach to management we have taken and one that is consistent with government direction under the BC Forest Practices Code is to use habitat diversity for a surrogate to maintain biodiversity. Developing a strategy for conservation based on a variety of management strategies for individual species is unlikely to be feasible or effective. It is not expected that all elements of biodiversity can or need to be maintained on every stand or in this case timber sale. Apart from listed exceptions the expectation is that we will move away from single species management.”

The District Manager also states that the provisions for biodiversity contained in the Forest Practices Code have been incorporated into the development plans for this area, and these practices will ensure fungal diversity is provided reasonable protection. The submissions from the Deputy Minister of Forests and the District Manager state the present government policy with respect to the conservation of rare species in the context of managing for biodiversity is clear. However, a submission from staff of the Ministry of Environment, Lands and Parks indicates this policy requires clarification and the Deputy Minister of Environment, Lands and Parks indicates this policy is ‘evolving’.

### **Conclusion 3**

The lack of original documentation completed when the silviculture prescriptions were approved has made it difficult for the Board to reach a conclusion regarding compliance with Section 40(1). The Board has considered the assertions of the District Manager, which are supported by the Deputy Minister of Forests, that he did consider Mr. Kroeger’s submission when deciding to approve the prescriptions. The Board concludes that Section 40(1) was complied with.

### Conclusion 4

The Board concludes that the correspondence and submissions received by the Board reveal a range of interpretations of government policy and its application with regard to the conservation of rare species.

## 6.2 Fair and Reasonable Decision-making

The Board has looked to the Forest Practices Code Training Program “Administrative Law for Managers”, particularly the ‘Administrative Law and the Forest Practices Code’ insert, for guidance in considering fair and reasonable decision-making in this context. These training materials were developed specifically for government officials to relate the principles of administrative law to decision-making under the Forest Practices Code. Page 10 of these materials state:

“...it is desirable to give reasons, especially where there is a right of appeal.”

“It is important for the decision maker to show the process he or she went through in making the decision when drafting reasons. The decision maker must show that he or she considered all relevant factors in making the decision and that the decision was based only on those relevant factors.”

The submission provided by Mr. Kroeger in his letter of August 10, 1995 includes the following information:

- Mr. Kroeger identified himself as an authority on mushrooms who was very familiar with the Mount Elphinstone area, having studied and collected mushrooms there for more than 10 years.
- the letter refers to “large populations of an apparently rare mycorrhizal mushroom”, a species of *Tricholoma*, which he states is known from only three other locations in BC.
- the letter specifically describes the presence of this mushroom in Timber Sale A-48268 for which the silviculture prescriptions were being prepared and approved.
- Mr. Kroeger provided the information in writing and included documentation of the species that he had collected in the area.

The District Manager received the submission from Mr. Kroeger on August 21, 1995 and replied to Mr. Kroeger by letter on September 26, 1995, approximately 2 weeks after the silviculture prescriptions were approved. No attempt appears to have been made to contact Mr. Kroeger directly during this time, nor was receipt of his letter acknowledged by the District Office.

The District Manager also did not attempt to contact the Ministry of Environment, Lands and Parks to receive their input on this submission.

### **Conclusion 5**

The Board is of the opinion that the District Manager, faced with a written submission offering information about an "apparently rare" species from a qualified individual, should have given it thorough consideration. At a minimum, this would have included discussions with Mr. Kroeger, and the Ministry of Environment, Lands and Parks, prior to completing and approving the silviculture prescriptions. The Board concludes that the District Manager did not do this.

In the Board's view, the records kept by the District Manager about how the information provided in Mr. Kroeger's letter was considered in the preparation and approval of the silviculture prescriptions were inadequate.

Mr. Kroeger also sent copies of his letter to the Ministry of Environment, Lands and Parks. This ministry, which has a role to maintain biodiversity as does the Ministry of Forests, did not contact the District Manager to discuss how the issues raised in Mr. Kroeger's letter were being addressed.

### **Conclusion 6**

The Board is of the opinion that the Ministry of Environment, Lands and Parks also had a responsibility to respond to a submission about an "apparently rare" species within proposed logging areas received from a qualified individual. The Board concludes that the Ministry of Environment, Lands and Parks should have contacted the District Manager to discuss how the issues raised in Mr. Kroeger's letter were being addressed.

The training materials indicate the need for decision-makers to 'show the process he or she went through in making the decision when drafting reasons. The decision maker must show that he or she considered all relevant factors in making the decision and that the decision was based only on those relevant factors.' Documentation of the decision-making processes and the reasons for the decisions in this situation was especially important because this area has been the subject of a local planning process, with considerable local concern about logging in the area, so the District Manager should have expected substantial interest in his decisions about the silviculture prescriptions.

### Conclusion 7

The Board is of the opinion that the District Manager should have recorded his reasons for the decisions to prepare and approve these particular silviculture prescriptions because Mr. Kroeger's submission included substantial information about an "apparently rare" species.

The above conclusions are specific to the submission from Mr. Kroeger and the three silviculture prescriptions that were investigated. The Board is not establishing a precedent that documentation of the decision-making process is required for all submissions which have a bearing on silviculture prescriptions. The Board is aware that this would create impossible workloads given the number of silviculture prescriptions and other operational plans considered by District Managers every year. In the Board's view, substantial submissions such as Mr. Kroeger's require appropriate consideration and documentation.

### 6.3 Summary Conclusion

The Board concludes that the District Manager complied with the Act and the Regulations regarding the matters investigated in this complaint. However, the process of preparing and approving the silviculture prescriptions in September, 1995 was flawed.

## 7. Recommendations

Draft materials sent to parties and persons that may have been affected by the conclusions and recommendations which the Board was considering included the following preliminary recommendations:

- the District Manager of the Ministry of Forests should complete his reconsideration of his decisions to approve the silviculture prescriptions for the three blocks;
- in the reconsideration of those decisions, the District Manager should consult with the Regional Manager, Fish and Wildlife Management, Ministry of Environment, Lands and Parks, with regard to the "apparently rare" *Tricholoma* mushroom, before deciding; and,
- the two managers should use the most comprehensive and accurate information available to them. The Board identified the April 29, 1996 report by Dr. Shannon Berch titled "*Tricholoma Apium at the Roberts Creek Study Forest - a Scientific Review*" as providing the most comprehensive and accurate information that the Board had received. In considering this report, the Board recommended that these managers address and document their responses to the points raised by Dr. Berch.

In the Board's July 2, 1996 Interim Report, the Board provided the following statements relative to the reconsideration process:

The Deputy Minister of Forests, the Deputy Minister of Environment, Lands and Parks, the District Manager and the Regional Manager, Fish and Wildlife Management have, in written submissions, advised the Board that they have considered the report of Dr. Berch. Their responses are documented in an exchange of letters between the District Manager and the Regional Manager, Fish and Wildlife Management dated May 1, May 17, May 21 and May 28, 1996. They have advised the Board that they have considered all available information as agreed with the Board in April when logging halted.

The District Manager has stated that, since both the process of review as agreed in April and the process of reconsideration recommended by the Board in the draft report are complete, he has determined that the currently approved operational plans for Timber Sale A-48268 are appropriate.

The Forest Practices Code designates the District Manager as the official with the responsibility to determine whether logging should recommence. Having advised the Board that the reconsideration is complete, it is the statutory responsibility of the District Manager to make the decision whether logging can begin again. No constraints to that statutory authority or to the authority of the licensee have arisen in this investigation.

With respect to Timber Sale A-48268, the Board now recommends the following:

1. The delays in logging, including those caused by this investigation, have reduced the operating time the licensee has available to complete the timber sale. The Board recommends that, if the District Manager chooses to allow logging to proceed, the District Manager should extend the timber sale by the length of time logging has been delayed, giving consideration to seasonal constraints on logging the remaining blocks.

Based on this complaint investigation, the Board makes the following general recommendations:

2. The Board recommends that the Ministry of Forests and the Ministry of Environment, Lands and Parks review their referral agreements to ensure adequate opportunity exists for consideration of substantial information about biological values that becomes available after a public review and comment deadline and before an operational plan is prepared.
3. The Board recommends that the government amend Section 40 of the Act to be consistent with Section 41. Specifically, sub-section (b) of Section 41(1), which states "the district manager is

satisfied that the plan or amendment will adequately manage and conserve the forest resources of the area to which it applies” should be added to Section 40(1).

4. The Board recommends that the government clarify the interpretation of the Biodiversity Guidebook regarding when ‘special efforts may be needed’ to protect the habitat of individual species.
5. The Board recommends that individuals who prepare operational plans, such as the silviculture prescriptions in this complaint, should keep records of how substantial written submissions provided during public review and comment periods, and at other times before the final preparation of the plans, were considered to decide whether they should be used in those plans.
6. The Board recommends that the reasons for decisions to approve plans should be documented. When decisions are made to not include actions to accommodate forest resources that have been identified in substantial written submissions received prior to the approval of plans, the reasons for those decisions should be clearly recorded.

## Appendix 1 Interim Report - Forest Practices Board Complaint 950036



# Interim Report - Forest Practices Board complaint 950036

The Forest Practices Board is completing an investigation and preparing a final report about a complaint received by the Board in November, 1995. The complaint involves the preparation and approval of three silviculture prescriptions and logging operations which the complainant asserted were within the habitat of "an extremely rare, probably endangered, species of mushroom" on Mount Elphinstone in the Sunshine Coast Forest District in the Vancouver Forest Region.

The Board completed a draft report which made preliminary conclusions and recommendations. As required by the Forest Practices Code, that draft report was sent on May 31, 1996 to parties who might be adversely affected by the report or by its conclusions and recommendations. Each party was given an opportunity to make submissions to the Board. The draft report is a confidential document.

The Board has considered those submissions and the substantial issues raised in them. It will take some time for the Board to complete a final report on this matter. We are aware that decision-makers in government and the licensee are awaiting the final report prior to making a decision about whether logging can begin again in the three blocks.

**The Board is, therefore, issuing this interim report to make the following statements which will clarify matters arising from the investigation which may have a bearing on the decision about whether logging can begin again in the three blocks:**

- 1 The Board's investigation has not revealed any contraventions of the Forest Practices Code that bear on the decision about whether logging can begin again in the three blocks.
- 2 It is the Board's opinion that there were shortcomings in the process of making decisions about the silviculture prescriptions in September, 1995.
- 3 This complaint investigation has focused on the preparation and approval of three silviculture prescriptions which permitted logging in the three blocks where the mushroom was reported. Concluding this investigation report does not require the Forest Practices Board to provide an opinion about the geographical distribution of the *Tricholoma* mushroom within those blocks, whether the mushroom was rare or endangered as asserted, or whether logging would have an impact on the habitat of the mushroom.

**Interim Report (continued)**

The Board believes the review by Dr. Shannon Berch provides the most comprehensive and accurate information presented to the Board about the *Tricholoma* mushroom.

- 4 Logging was underway in the three blocks that are the subject of the complaint in April, 1996. Logging was halted after discussions between the licensee, Sechelt Creek Contracting Ltd., the Ministry of Forests and the Forest Practices Board. It was agreed that the halt would continue until the District Manager advised the Board that there had been an opportunity for him to review all the information available from the mycologists involved and that the District Manager had received and considered any suggestions from the Ministry of Environment, Lands and Parks resulting from that review. The logging has not recommenced to date although all necessary approvals are in place to permit the licensee to recommence logging.
- 5 In the draft report, the Board recommended as follows:
- that the District Manager of the Ministry of Forests should complete his reconsideration of his decisions to approve the silviculture prescriptions for the three blocks;
  - that, in the reconsideration of those decisions, the District Manager should consult with the Regional Manager, Fish and Wildlife Management, Ministry of Environment, Lands and Parks, with regard to the *Tricholoma* mushroom, before deciding; and
  - that the two managers should use the most comprehensive and accurate information available to them. The Board identified the April 29, 1996 report by Dr. Shannon Berch titled "*Tricholoma apium* at the Roberts Creek Study Forest - a Scientific Review" as providing that information. In considering that report, the Board recommended that these managers address and document their responses to the points raised by Dr. Berch.

- 6 The Deputy Minister of Forests, the Deputy Minister of Environment, Lands and Parks, the District Manager, and the Regional Manager, Fish and Wildlife Management have, in written submissions, advised the Board that they have considered the report of Dr. Berch. Their responses are documented in an exchange of letters between the District Manager, and the Regional Manager, Fish and Wildlife Management dated May 7, May 17, May 21 and May 28, 1996. They have advised the Board that they have considered all available information as agreed with the Board in April when logging halted.

The District Manager has stated that, since both the process of review as agreed in April and the process of reconsideration recommended by the Board in the draft report are complete, he has determined that the currently approved operational plan approvals for TSL A48268 are appropriate.

- 7 The Forest Practices Code designates the District Manager as the official with the responsibility to determine whether logging should recommence. The Board having been advised that the reconsideration is complete, it is the statutory responsibility of the District Manager to make the decision whether logging can begin again. No constraints to that statutory authority or to the authority of the licensee have arisen in the investigation or can arise from the matters still being considered.

The Board's final report will deal comprehensively with this complaint, the investigation conclusions and the Board's recommendations.

Keith Moore, Chair, Forest Practices Board  
on behalf of the Board June 28, 1996.



## Appendix 2

### Events Related to this Complaint Investigation

#### Events leading to the complaint

The following is a description of the significant events leading up to the complaint as they have been determined in the complaint investigation. It is not intended to be a complete chronology of all events pertaining to the three blocks:

#### 1995

- January 27      The District Manager approved the 1994-1997 SBFEP forest development plan. Three blocks in Timber Sale A-48268 were approved subject to approval of silvicultural prescriptions. Forest development plans including these blocks had been approved in 1993 and 1994.
- May 16          The Ministry of Forests provided copies of the 1995-1999 Five Year Development Plan for the Small Business Forest Enterprise Program in the Sunshine Coast Forest District to members of the Mount Elphinstone LRUP committee, which included the complainant.
- The plans included preliminary copies of proposed silviculture prescriptions for the three blocks in proposed Timber Sale A-48268. These blocks had been the subject of discussion at the LRUP committee since approximately March, 1992.
- May 29          The Ministry of Forests advertised in a local paper that the three silviculture prescriptions (at that time called pre-harvest silviculture prescriptions) for the blocks in proposed Timber Sale A-48268 were available for public viewing and comment. The deadline for comments was July 13, 1995.
- June 15          **Forest Practices Code came into effect.**
- June 29/30      Public viewing of the 1995-1999 SBFEP forest development plan.
- July 12          Adrian Belshaw submitted written comments on the silviculture prescription addressed to the District Manager and four other Ministry of Forests staff in response to the advertisement.
- July 13          Closing dates for comments on the advertised silviculture prescriptions.
- Early August    Paul Kroeger learned that logging was proposed in an area that he frequently visited to study what he believed to be a rare mushroom.
- August 10       Mr. Kroeger sent a letter to the District Manager about the three blocks in Timber Sale A-48268. The letter indicates copies were sent to 20 other individuals.

- August 17 The letter sent by Mr. Kroeger was received in the Sechelt field office of the Sunshine Coast Forest District.
- August 21 The letter sent by Mr. Kroeger was received by the Ministry of Forests District office in Powell River.
- August ? The District Manager discussed Mr. Kroeger's letter with his Operations Manager and requested a response be drafted for his signature. The Operations Manager directed the District Planner to draft a response.
- August 25 A Ministry of Forests employee read Mr. Kroeger's letter and responded in an e-mail note to the Operations Manager.
- August 30 A Ministry of Forests employee in the Ministry of Forests Sunshine Coast District office sent a letter to Mr. Belshaw responding to Mr. Belshaw's letter of July 12.
- September 5 A letter of response to Mr. Kroeger was drafted for the District Manager's signature and given to the Operations Manager.
- September 12 The three silviculture prescriptions were completed and signed by a registered professional forester.
- September 14 The three silviculture prescriptions were approved on behalf of the government by the District Manager.
- September 26 The District Manager sent a letter to Mr. Kroeger responding to Mr. Kroeger's letter of August 10.
- November 22 Having learned that the silviculture prescriptions for the Timber Sale had been approved and that the Timber Sale was proceeding as planned, Mr. Belshaw called the District Manager to express his concern. His interpretation of the District Manager's response was that the proposed timber sale was proceeding.
- November 28 Mr. Belshaw filed a complaint with the Forest Practices Board.

### Events since the complaint was filed

There has been considerable activity involving the three blocks in Timber Sale A-48268 since the complaint was filed. The Board has focused its investigation on the preparation and approval of the silviculture prescriptions which are the subject of the complaint. The following description of events since the complaint was filed provides the context for the current situation and the Board's recommendations. This chronology is not intended to include all events pertaining to the three blocks that have occurred since November 28, 1995.

**1995**

- December 4 Viewing of Timber Sale A-48268 for potential bidders.
- December 11 Bids on the timber sale were opened. Ken Sneddon was the successful bidder.
- December 15 The Forest Practices Board decided to investigate the complaint filed by Mr. Belshaw.
- December 19 The Forest Practices Board advised Mr. Belshaw, the Ministry of Forests and Mr. Sneddon of the decision to investigate the complaint.

**1996**

- February 27 The logging plans for the three blocks were approved by the Field Operations Supervisor, Sechelt Field Office.
- March 9 Logging operations were underway in the extended rotation block.
- March 23 The Board was advised that logging in the extended rotation block was almost completed and there would be no activity in the clearcut with reserves block.
- April 1 The logging plan was amended to permit operation to commence in the clearcut with reserves block due to sapflow concerns in the shelterwood block and Mr. Sneddon commenced logging operations.
- April 3 The Board learned that falling had commenced in the clearcut with reserves block.
- April 4 Logging was voluntarily halted in the clearcut with reserve block and other blocks after discussion with the Forest Practices Board. The District Manager agreed to undertake an assessment of issues pertaining to the *Tricholoma* mushroom. He subsequently retained Dr. Shannon Berch, a forest soil ecologist employed by the Ministry of Forests, to compile and evaluate all available information and consult with other mycologists with knowledge of the *Tricholoma* species, including Mr. Kroeger.
- April 26 Dr. Berch completed her report entitled "*Tricholoma Apium at the Roberts Creek Study Forest - a Scientific Review*".
- May 7 The District Manager sent a memo to the Forest Practices Board outlining his assessment of Dr. Berch's report and describing his response to the information in her report. His letter stated that he had reviewed the report and had determined that the currently approved operational approvals for Timber Sale A-48268 were appropriate.
- May 17 The Regional Manager, Fish and Wildlife Management, in the Ministry of Environment, Lands and Parks, wrote to the District Manager outlining his assessment of Dr. Berch's report, disagreeing with some of the District Manager's assumptions related to the report and indicating 'BC Environment's position that logging operations associated with TSL A48268 should not resume until the

- scientifically sound inventories and other related studies identified in Dr. Berch's report are complete.'
- May 21 The District Manager responded to the May 17 letter, and proposed a field trip and further discussion of the issue.
- May 22 The District Manager and the Regional Manager Fish and Wildlife Management held a field trip to the site.
- May 27 Dr. Shannon Berch wrote to the District Manager to clarify comments in her April 29 report.
- May 28 The Regional Manager, Fish and Wildlife Management, in the Ministry of Environment, Lands and Parks, wrote to the District Manager to say that he had decided to modify his position to remove any reference to a continued deferral of logging in Timber Sale A-48268.
- June 2 As required by the Act, the Forest Practices Board provided portions of its draft report to adversely affected parties.
- June 12 The last day on which the Board received representations from the parties who received the draft report.
- June 28 The Board issues an Interim Report on this investigation.

## Endnotes

<sup>1</sup> The legal requirements for preparation and approval of silviculture prescriptions is different for prescriptions in the Small Business Forest Enterprise Program (SBFEP) than for those of major agreement holders.

In the SBFEP, the District Manager is required to prepare, and meet the requirements for preparation of, silviculture prescriptions. This is a task that he or she normally delegates to staff within the Ministry but the legal requirements remain with the District Manager. For major licensees, these requirements apply to the agreement holder.

The requirements to approve, and to meet the requirements for approval of, silvicultural prescriptions, always apply to the District Manager. For agreement holders, the District Manager "approves" the prescriptions prepared by the agreement holder. In the SBFEP, the District Manager "gives effect to" the prescriptions that are prepared by the staff of the Ministry of Forests on his or her behalf. These are the circumstances in this complaint investigation. In this report, the Board has chosen to use the words "approve" although the legal requirement uses the words "to give effect to".

<sup>2</sup> The legislation in British Columbia which provides authority to protect rare species is the *Wildlife Act*, which is administered by the Ministry of Environment, Lands and Parks. The definition of wildlife in the *Wildlife Act* means "raptors, threatened species, endangered species, game or other species of vertebrates described as wildlife and, for sections 3 to 5, 7, 8 and 110 (2)(v), includes fish." Section 6 of the *Wildlife Act* allows for the Lieutenant Governor in Council to designate species as either endangered or threatened. Four species - two mammals and two birds - have been so designated in BC.

The definition of wildlife under the *Forest Practices Code Act of British Columbia* means:

- "a) a vertebrate that is a mammal, bird, reptile or amphibian prescribed as wildlife under the *Wildlife Act*, S.B.C. 1982, c. 57,
- b) a fish, including
  - i) any vertebrate of the order Petromyzoniformes (lampreys) or class Osteichthyes (bony fishes), or
  - ii) any invertebrate of the class Crustacea (crustaceans) or class Mollusca (mollusks)
- c) an invertebrate or plant listed by the Minister of Environment, Lands and Parks as an endangered, a threatened or a vulnerable species.

and includes the eggs and juvenile stages of these vertebrates, invertebrates and plants."

The *Wildlife Act* does not refer to fungi.

<sup>3</sup> The Board did not inform the District Manager that the Board was required to investigate his consideration of information regarding the commercial harvest of mushrooms provided in the letter from Mr. Belshaw. However, because the Board has found the District Manager to be in compliance in this matter, the District Manager has not been asked to provide evidence on this finding.

<sup>4</sup> The Board received a submission from the Ministry of Forests presenting an alternative view of the application of this section during the first six months after the Act came into effect. The Board takes a view contrary to that of the Ministry of Forests on this matter.

<sup>5</sup> The *Managing Identified Wildlife Guidebook* had not been released when this report was finalized.

