

# **Audit of Forest Practices Code Enforcement on Nisga'a Lands**



**FPB/ARE/04**

**June 2006**

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# Board Commentary

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The Board's audit of the appropriateness of the government of British Columbia's enforcement of the *Forest Practices Code of British Columbia Act* (the Code) on Nisga'a lands included all ministries that have responsibility to enforce the Code. Audit findings are reported to the Nisga'a people and the public.

The two ministries that have primary enforcement authority under the Code are the Ministry of Forests and Range (MOFR) and the Ministry of Environment (MOE). MOFR is the lead agency with responsibility for the delivery of compliance and enforcement of forest practices legislation. MOE provides broad policy and guidance for environmental values, and support to MOFR compliance and enforcement staff. The scope of the audit was from July 19, 2003, through to the end of the transition period, May 10, 2005.

MOFR conducted 67 inspections during the audit period. Although there was limited forestry activity within the area during the timeframe of the audit, there were significant road maintenance, road deactivation, bridge maintenance and silvicultural obligations.

The audit identified three areas of concern:

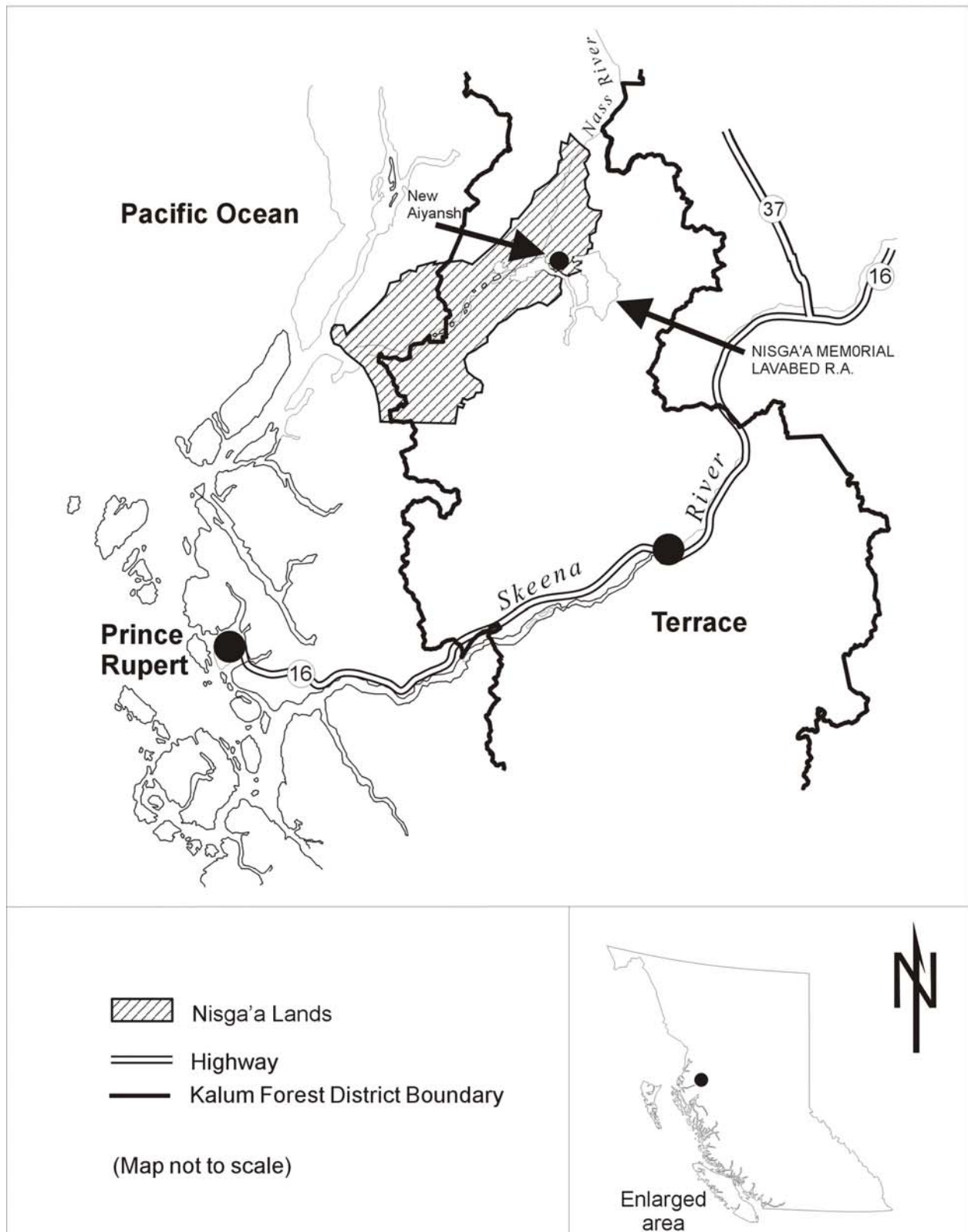
- data inaccuracies within the silviculture information system;
- insufficient actions taken to address safety concerns on a bridge crossing; and
- inconsistencies between the summary of compliance and enforcement activities provided to the Nisga'a Lisims Government and the content of MOFR inspection reports.

However, the Board is encouraged by the progress made by MOFR, since the audit, in working to update silviculture information and in installing a replacement bridge.

Additionally, MOFR is working in conjunction with the Nisga'a Lisims Government and other agencies to identify and address all outstanding obligations on Nisga'a lands under a two-year action plan. Outstanding Forest Practice Code compliance obligations are a major element of this process, and the Board recently released an interim compliance report that reflects the Board's commitment to complete its assessment of performance against Code compliance obligations through an additional field visit in 2006. At the request of the Director of Lands and Resources for the Nisga'a Lisims Government, this work will be completed in Fall 2006.

A final assessment of the completion of all outstanding obligations is to be undertaken in 2008.

# Audit of Nisga'a Lands



# Introduction

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The *Nisga'a Final Agreement* (the Agreement) required the Forest Practices Board to perform audits of the appropriateness of government's enforcement of the *Forest Practices Code of British Columbia Act* (the Code) and related regulations on Nisga'a lands during the five-year transition period, which ended on May 10, 2005.

In September 2005, the Forest Practices Board conducted its final enforcement audit on Nisga'a lands. Previous enforcement audits were conducted in 2001 and 2003.

The Nisga'a lands are located in and around the Nass Valley, approximately 100 kilometres northwest of Terrace. Administratively, the Nisga'a lands lie within portions of the Kalum and North Coast Forest Districts of the Ministry of Forests and Range (MOFR) and within the Skeena Region of the Ministry of Environment (MOE).

Forestry operations on Nisga'a lands were subject to the Code and the Agreement. Although the *Forest and Range Practices Act* was enacted January 2004, the Code and related regulations and standards under that Act, as they were on December 16, 2002, continued to apply to the Nisga'a lands until the end of the five-year transition period. The Kalum Land and Resource Management Plan and higher-level planning elements of the Code did not apply. Direction regarding key forest resources and transitional provisions was provided by the Agreement. A Forestry Transition Committee was responsible for jointly approving forest development plans during the five-year transition period and also approved other operational plans. The Committee consisted of the Kalum Forest District Manager and one person authorized by the Nisga'a Lisims Government.

There was little new forestry activity during the period covered by the enforcement audit. New Skeena Forest Products Inc. (NSFP),<sup>1</sup> conducted minor harvesting operations. NSFP, Sim Gan Forest Corporation, West Fraser Mills Ltd., and British Columbia Timber Sales–Skeena Region all had continuing silviculture and road maintenance obligations within the Nisga'a lands.

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<sup>1</sup> Under the direction of the Official Receiver.

# Audit Scope and Approach

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## Audit Scope

The scope of the audit encompassed the enforcement planning and operational activities of two of the three ministries with authority for Code enforcement on Nisga'a lands—MOFR and MOE.

While the Ministry of Energy, Mines and Petroleum Resources also had Code enforcement authority during the audit period, it was not included within the scope of the audit because there was no mining activity involving timber removal during the audit period.

The period over which activities were examined was July 19, 2003, to May 10, 2005.

The specific activities carried out during the audit period, and therefore subject to government enforcement, were:

- harvesting on eight cutblocks
- maintenance obligations on approximately 390 kilometres of forest road and deactivation of approximately 4.9 kilometres of forest road
- licensee obligations for silviculture treatments and achievement of regenerated and free-growing stands
- fire protection requirements during forest operations

No road construction took place during the audit period.

In relation to the above activities and obligations, the following compliance and enforcement (C&E) inspections were undertaken:

- MOFR undertook a total of 41 harvest and road inspections, 26 inspections of silviculture obligations, including free-growing regeneration obligations, and one general inspection.
- MOE did not undertake any inspections during the audit period.

## Audit Criteria

The audit assessed three broad aspects of government enforcement: the design of the C&E organization and business processes; their application in practice (through sampling compliance and enforcement activities); and the management framework used to direct, support, monitor and report on C&E activity.

The following audit criteria were used:

- Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement.
- Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.
- Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.
- Investigations and determinations are carried out in all applicable situations and only when warranted. They are performed in a fair, objective and consistent way, and are accurately recorded and reported.
- Agencies establish, through operational plan approval and related processes, expectations for forest practices, which are enforceable and in accordance with the Code.
- There are established organizational structures, policies and processes that contribute to and support appropriate enforcement of the Code.
- The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.
- Reporting systems provide adequate information on agency performance in relation to enforcement objectives.

The audit criteria developed by the Forest Practices Board for assessing the appropriateness of government enforcement have traditionally been applied separately to each agency with enforcement responsibilities. However, the business model adopted by MOE and agreed with MOFR, through a memorandum of understanding (MOU), puts MOFR very clearly in a lead agency role and MOE in a support agency role. This business model makes separate reporting of each agency's enforcement responsibilities using the Board's audit criteria inappropriate. What remains appropriate is the overall assessment of government enforcement.

It should be noted that assessing the effectiveness of the overall business model at a scale the size of the Nisga'a lands is not appropriate, especially given the limited amount of forestry activity on the Nisga'a lands in the last four years. As a result, the audit focused on how MOE's model affected decisions on the landbase during the audit period through the following criterion:

- Does field and interview evidence collected during the audit indicate that environmental protection concerns, related to forestry activities, are being addressed appropriately through the model?

## Audit Work and Activities Examined

The audit work included:

- interviews and communications with MOFR administration and staff, and communications with MOE administration;
- a review and evaluation of agency policies, processes and controls;
- an office-based examination and analysis of MOFR C&E inspections that were undertaken during the audit period; and
- an assessment of the C&E implications of field inspections undertaken as part of the related 2004 and 2005 compliance audits of NSFP, Sim Gan Forest Corporation, West Fraser Mills Ltd., and British Columbia Timber Sales–Skeena Region, carried out by the Forest Practices Board.

## Conclusions

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### Ministry of Forests and Range

MOFR takes the lead role in Code enforcement, consistent with its primary responsibility for the administration of forestry legislation in British Columbia. During the audit period, this role was significantly complicated by the ongoing bankruptcy of NSFP, the primary licence holder on the Nisga’a lands. Although NSFP did carry out some harvesting activities, it did not address either its road maintenance or silvicultural obligations, leading to a steady decline in the status of the road networks and a number of silvicultural obligations not being met.

Overall, MOFR appropriately monitored the status of the landbase. Concerns were identified in numerous inspections, but the opportunities for a timely resolution of the concerns identified were somewhat limited. By the time of our audit, the situation had evolved to the point where MOFR had begun to carry out the required works itself (both in relation to silviculture surveys and road maintenance and deactivation). At this point, the pursuit of potential enforcement actions against a bankrupt company appears to have been replaced by MOFR’s direct role in addressing NSFP’s obligations.

The assessment identified some weaknesses in MOFR’s systems (primarily relating to silvicultural obligation data) and implementation (particularly in relation to inconsistency in classifying road maintenance inspection findings and ensuring that necessary inspection follow-up was carried out). However, in the case of the Nisga’a lands, these weaknesses appeared to have little ultimate impact, as a result of the additional activities carried out by MOFR at the end of the transition period (such as road maintenance, road deactivation and silvicultural survey activity to address NSFP’s obligations).



Within the context of the above, the key areas of concern identified were:

- Data inaccuracies in the silviculture information system undermine its ability to act as a reliable source of data to MOFR on current silvicultural obligations [it should be noted that, beginning in 2005, significant effort has been expended by MOFR to improve the quality of the silviculture data, specifically in relation to the outstanding silvicultural obligations on Nisga'a lands].
- While MOFR met its obligation to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims Government, the data provided was inconsistent with MOFR's inspection reports and indicated that all inspections found compliance. In fact, several inspections reported non-compliance, but were not reported as such because no enforcement actions or adjudication procedures were undertaken.
- While MOFR had identified that a bridge on the Grease Trail Forest Service Road had failed and needed replacing, insufficient steps were taken to address safety concerns on the bridge, which was still in use by local traffic at the time of our audit. The district has since advised the Board that the bridge has been replaced.

## **Ministry of Environment**

MOE has designed, and has begun implementation of a new business model. However, as the scope of our audit was limited to enforcement on Nisga'a lands, which had little forestry activity during the audit period, there was insufficient audit evidence for the Board to conclude whether or not MOE's business model and its level of implementation constitute appropriate enforcement.

While there was insufficient audit evidence to form conclusions about MOE's business model and its level of implementation, the Board did, however, note the following:

- MOE conducted no forestry related inspections on Nisga'a land during the audit period. However, MOE did undertake other activities on Nisga'a lands during the period that, given the limited forestry activity, could be considered to have a higher priority from an environmental protection perspective.
- MOFR did not identify any potentially significant enforcement concerns that warranted involvement of MOE.
- No new forestry plans were submitted for approval during the audit period. As a result, there was no potential need for MOE involvement in assessing the impacts of proposed activities.

# Findings

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The audit examined the organization and activities of the two government agencies with Code enforcement responsibilities on Nisga'a lands for the period July 18, 2003, to May 10, 2005.

The detailed findings of the audit with respect to MOFR as the primary enforcement agency are set out in this section, by assessment criterion. There was insufficient audit evidence on which to base detailed findings for MOE.

## **Audit criterion #1 - Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement**

Very few forest activities took place during the audit period. While notification of harvest activities is mandatory, the notification process itself is informal and was not particularly effective, as notification was recorded for only 6 of the 8 cutblocks with harvest activity during the period. As a result, MOFR had no opportunity to inspect 2 of the 8 cutblocks at the time they were active.

No road construction or deactivation took place. Adequate records of existing roads are in place to drive inspection planning in relation to roads.

All licencees had silviculture obligations during the audit period. The district uses an electronic silviculture information system to identify cutblocks with outstanding obligations; to verify that required information is submitted on a timely basis, and to ensure that licensees are meeting silviculture obligations, such as free-growing obligations. However, our assessment found significant data errors in the system, which undermine its reliability for determining the population subject to inspection. As a result, MOFR did not have reliable information on which to base silviculture inspections during the audit period.

## **Conclusions**

MOFR obtained and maintained adequate information on forest activities with the following two exceptions:

- The informal notification process used for harvest notifications only captured 75 percent of the harvest activities during the period.
- Data inaccuracies in the silviculture information system undermine its ability to act as a reliable source of data on current silvicultural obligations.

## **Audit Criterion #2 - Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning**

### **Risk assessment**

A formal risk-assessment process exists for harvesting and road construction activities. Risk ratings consider relevant risk factors, including past performance, inherent risk (such as terrain), and geographic isolation.

The risk-assessment process for cutblocks with silvicultural obligations for free growing and regeneration was locally developed and considers forest health problems and ecosystem classification. It also considers aspects of operator performance such as vegetation management history and previous amendments to prescriptions.

### **Inspection planning**

In planning inspections for forest activities subject to C&E, risk ratings determine the minimum number of planned inspections. The district inspection plan sets requirements for inspections, by risk, for all relevant forest activities.

### **Conclusions**

MOFR has a process for identifying risks associated with forest activities. This process was in place during the audit period and used to assist inspection planning.

## **Audit criterion #3 - Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results**

### **Inspection frequency**

The number of inspections carried out by MOFR was appropriate for the level of activities, obligations, and risk, identified in the district inspection plan. However, as noted in audit criterion #1, the district inspection plan did not include sufficiently accurate silvicultural obligations data. This data deficiency clearly had the potential to impact the overall inspection frequency and inspection priorities, but it was not possible to determine the extent to which this may have occurred; as the process of improving the silvicultural obligations data is not yet complete.

Inspection activities appeared to be carried out to a suitable standard. However, consistent with the 2003 enforcement audit results, there were weaknesses in the follow-up on inspections. Of the 18 inspections where follow-up was documented as required, only 10 were determined to have adequate follow-up. The lack of follow-up was not associated with significant environmental impact. All of the 8 inspections lacking follow-up related to NSFP, which was in bankruptcy protection at the time and unlikely to address issues raised, which were primarily about road maintenance.

As there were low levels of harvesting and silvicultural activities during the audit period, the primary risk factor was related to the potential for water quality and human safety impacts from the existing, but relatively inactive, forest road network, especially given the fact that NSFP did not conduct road maintenance during the audit period. MOFR conducted a total of 37 road maintenance inspections during the audit period, and appeared to have a reasonable understanding of the status of the road network. A number of inspections identified washed out or damaged bridges and culverts, and sections of road that had been washed away. However, while the inspections appeared to identify the critical issues, there appeared to be little consistency in whether the problem was treated as non-compliance, an item for follow-up, or simply noted in the report.

No enforcement actions resulted from inspections. However, by the time of the audit, the role of MOFR had fundamentally changed, as MOFR was undertaking various works to address environmental and safety risks associated with obligations and liabilities, rather than acting primarily as an enforcement agency.

Additionally, while MOFR had identified that a bridge on the Grease Trail Forest Service Road had failed and needed replacing, insufficient steps were taken to address safety concerns on the bridge, which was still in use by local traffic at the time of the audit. The district has since informed the Board that the bridge has been replaced with a new fully engineered structure.

## **Conclusions**

It should be noted that by the time of the audit the primary role of MOFR appeared to have switched from an enforcement role to one of addressing outstanding obligations, as a result of the continuing bankruptcy of NSFP.

Up to this point, MOFR generally achieved this criterion for harvesting and roads, except that:

- Silvicultural obligations data used to drive the district inspection plan were flawed.
- There was a lack of documented follow up on 8 of 18 inspections.
- There was inconsistency in the way that road maintenance issues were classified in inspection reports.
- Actions taken in relation to a failed bridge on the Grease Trail Forest Service Road were insufficient to address public safety concerns.

Classification of road maintenance issues and follow-up on inspection findings were both, to some extent, linked to the fact that the licensee involved (NSFP) was in bankruptcy protection at the time, and unlikely to act on the identified concerns.

**Audit criterion #4 - Investigations and determinations are conducted or made in all applicable situations and only when warranted. They are performed in a fair, objective and consistent way, and are accurately recorded and reported**

Neither the compliance audit nor the enforcement audit identified instances of non-compliance for which an investigation was warranted.

No formal investigations were completed during the audit period.

Accordingly, it was not possible to assess performance against this criterion.

**Conclusion**

The audit was unable to assess the investigation and determination processes.

**Audit criterion #5 - Agencies establish, through operational plan approval and related processes, expectations for forest practices that are enforceable and in accordance with the Code**

There were no new operational plans during the audit period and very limited forest activities under pre-existing operational plans, limiting the ability to assess performance against this criterion.

Changes to reforestation standards did occur during the audit period, specifically to adjust free-growing standards for pine infected with Dothistroma needle blight. These changes reduced the potential for pine stands to be declared free growing, then subsequently (following transfer to the Nisga'a) revert to a non-free growing or unstocked status.

**Conclusions**

There were very few activities on which to base an assessment of this criterion. However, expectations for meeting silvicultural obligations were adjusted during the audit period, which improved their local appropriateness and maintained their enforceability.

**Audit criterion #6 - There should be organizational structures, policies and processes that contribute to, and support, appropriate enforcement of the Code**

**Organizational Structure**

Since April 1, 2003, the district's program administration has been separated from the C&E organization.

Human, physical and financial resources devoted to C&E functions were sufficient, and staff performing C&E functions were assigned the proper authority.

## **Policy and Management Direction**

An appropriate policy framework for C&E is in place within the district. C&E authority, responsibility and accountability are clearly defined and documented in the district's organization chart and through job descriptions.

## **Staffing**

C&E supervisors and staff have training needs identified and incorporated into their training plans. Interviews and sampling of training records indicated that staff have received adequate C&E training in relation to MOFR's mandate. However, as C&E staff are now also effectively responsible for identifying situations where MOE's involvement is required, additional training appears to be warranted in areas traditionally addressed through MOE's mandate (e.g., in relation to wildlife habitat and species at risk). This training, while critical for areas of new development, was not determined to be critical in specific relation to the Nisga'a lands during the audit period, due to the low level of activity (particularly new development) on these lands.

## **Conclusions**

MOFR's organizational structure, policies and processes adequately support implementation of the Code within the audit area. However, training processes do not currently reflect the expanded role required of MOFR inspectors as a result of the absence of an MOE field presence under the MOU in place between the two agencies, regarding C&E activities.

## **Audit criterion #7 - The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated**

MOFR and MOE were the only agencies with active Code enforcement responsibilities on Nisga'a lands during the audit period. MOFR took the lead enforcement role, consistent with its primary responsibility for administration of the Code.

A memorandum of understanding is in place between MOFR and MOE, which guides agency interactions with respect to enforcement activities. While the agreement had been distributed to enforcement staff responsible for Nisga'a lands, the audit found no formal local processes for implementing the agreement, and communication with MOE was solely through informal channels. The extent to which formal processes are required to effectively implement the MOU is dependent on both the extent and nature of forestry activities. Because activities on Nisga'a lands were very limited and confined to areas under previously approved plans that had generally been at least partially logged in prior years, the need for MOE involvement in enforcement would likely be very low. As a result, there was little likelihood of a need for coordination, making it infeasible to assess how effective MOFR's processes are for implementing the MOU and ensuring that MOE's enforcement obligations are also met.

## Conclusion

Agency interactions are determined through a MOU at the provincial level. While there were no formal processes for implementing this locally, the level of forestry activity on Nisga'a lands was too low to reliably determine how effectively MOFR has implemented the MOU at the local level.

## **Audit criterion #8 - Reporting systems provide adequate information on agency performance in relation to enforcement objectives**

District wide enforcement objectives were set and performance against these objectives was monitored by MOFR during the audit period. There were no requirements to set enforcement objectives separately for the Nisga'a lands.

Data on enforcement activities is captured in the Compliance Information Management System (CIMS), which is used to monitor inspection activity and outcomes. The level of detail within the system is appropriate for monitoring C&E performance.

CIMS is used for internal reporting with reports being rolled up at the district, regional and provincial level. Consolidated provincial reports on enforcement activities are publicly summarized.

Under Appendix H of the *Nisga'a Final Agreement*, there is a specific requirement for the province to provide to the Nisga'a Lisims Government with a summary of compliance and enforcement activities on Nisga'a lands for each year of the transition period. MOFR prepared only two reports over the five-year transition period, one for the first four years, the second for the last year of the transition. The reports were reviewed and found to have inaccurately categorized all inspections as demonstrating compliance. The Board's audit determined that 6 of the 27 inspection reports in the final year's report identified non-compliance. MOFR used CIMS to develop the report, but appeared to limit the definition of non-compliance in the report to enforcement actions or determinations, of which there were none.

## Conclusions

MOFR reporting systems are in place. And, while MOFR met its obligation to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims Government, the data provided was inconsistent with MOFR's inspection reports and indicated that all inspections found compliance.



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# NEWS release

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**For Immediate Release**

**June 21, 2006**

## **Forest practices law appropriately enforced on Nisga'a Lands**

VICTORIA – A Forest Practices Board audit of government's enforcement on Nisga'a lands found, with some minor exceptions, that the Ministry of Forests and Range (MOFR) and Ministry of Environment are appropriately enforcing forestry legislation.

MOFR has primary enforcement responsibility on Nisga'a lands, which are located in and around the Nass Valley, about 100 kilometres northwest of Terrace, and cover about 2,000 square kilometres.

As required by the Nisga'a Final Agreement, the board audited the appropriateness of government's enforcement of the Forest Practices Code of British Columbia Act and related regulations on Nisga'a lands for the period from July 19, 2003 to May 10, 2005.

The minor exceptions noted in the report relate to MOFR. These are:

- data inaccuracies in the system that tracks reforestation obligations;
- inconsistencies between the summary of compliance and enforcement activities on Nisga'a lands provided to the Nisga'a Lisims Government, and the content of MOFR inspection reports; and
- insufficient actions taken to address safety concerns on one bridge crossing.

"The board is encouraged by the progress made by MOFR since the audit in working to update silviculture information and in installing a replacement bridge," says board chair Bruce Fraser.

Government has an obligation under the Nisga'a Final Agreement to provide a summary of compliance and enforcement activities on Nisga'a lands to the Nisga'a Lisims government. However, the data provided was inconsistent with MOFR's inspection records, inaccurately categorizing all inspections as finding compliance when six of the 27 inspection reports identified non-compliance.



The Forest Practices Board is an independent public watchdog that reports to the public about compliance with the Forest and Range Practices Act (FRPA) and the achievement of its intent. The board's main roles under FRPA are:

- Auditing forest practices of government and licence holders on public lands.
- Auditing government enforcement of FRPA.
- Investigating public complaints.
- Undertaking special investigations of forestry issues.
- Participating in administrative appeals.
- Providing reports on board activities, findings and recommendations.

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**This news release and more information about the board are available on the Forest Practices Board Web site at [www.fpb.gov.bc.ca](http://www.fpb.gov.bc.ca) or by contacting:**

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**Communications**

Forest Practices Board

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