When there's a Way, there's a Will

Report 3:

Review of Provincial and Federal Legislation Related to Community-Based Natural Resource Management in British Columbia

by Bryan Evans, David Boyd
Established in 1995, the Eco-Research Chair of Environmental Law and Policy at the University of Victoria seeks to identify the underlying legal, economic, and social causes of ecological decline, and develop sustainable alternatives to current policies, practices and institutional arrangements. The Chair encourages a trans-disciplinary approach to research, and a strategy of public education, legal and policy interventions. The Chair also provides opportunities for graduate study in the natural, social and health sciences, and in law.

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Background

This report is the third volume of a three-volume study on community-based natural resource management in British Columbia. The central objective of the study was to propose a new model for the management of renewable natural resources in this province, a model that integrates ecological sustainability with community-based governance of local resources. The model we propose—the Community Ecosystem Trust—is described in the first volume (Report 1) of this study.\(^1\) The second volume of the study (Report 2) documents models of community-based management of renewable natural resources from British Columbia and other jurisdictions.\(^2\)

A key part of this study involved the review of existing provincial and federal legislation related to community-based management of renewable natural resources in British Columbia. The findings of this review are presented in this report.

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PART 1: REVIEW OF PROVINCIAL LEGISLATION

1. Objectives and Scope

- The objectives of the following sections are to:
  - identify all provincial referral processes that regulate the permitting of renewable natural resource use in BC outside of large-scale industrial development projects captured under the *Environmental Assessment Act*. The sectors to be examined include forestry, fishing, mariculture, agriculture, water use (excluding groundwater), recreation and tourism.
  - identify all pertinent legislation that relates to community development and would require amending to devolve administration, management and/or ownership over renewable natural resources to communities. The sectors to be examined include forestry, fishing, mariculture, agriculture, water use (excluding groundwater), recreation and tourism development. Included in this analysis will be the identification and cross referencing of all provincial agencies responsible for administering Crown natural resource tenures and programs.

The following sections are organized by sector. Major provincial legislation and regulations that provide the regulatory and management framework for each of these resource sectors is identified, along with the lead provincial agency or agencies responsible for management and administration. Permitting and referral processes are briefly described.

Note that the legislation, regulations and policies governing natural resource management in BC is highly complex. Given the limited scope of this portion of the project, the following represents only the highlights of key legislation, regulations and policies with respect to permitting and referral processes.

2. Forestry

The following sections summarize the provincial legislation that regulates the permitting of forest resource use in British Columbia. The Ministry of Forests is the lead provincial agency responsible for forest management.

2.1 Forest Act, RSBC 1996, c.157

- The *Forest Act* is one of the key provincial statutes governing forest resource use. The *Act*:
  - establishes the chief forester’s responsibility to assess the potential of land to support continuous crops of trees or forage, determine the size of the BC forest land base, classify forest land, and establish the purposes to which it will be assigned.
establishes the timber tenure system in BC. The Act sets out the ways in which the provincial government may dispose of timber on public land, by authorizing the Minister of Forests (MOF), or regional or district managers of MOF, to enter into agreements granting rights to harvest timber. There are currently eleven types of tenures: forest licences; timber sale licences; timber licences; tree farm licences; pulpwood agreements; woodlot licences; community forest agreements; free use permits; licences to cut; road permits; and Christmas tree permits. The Act lists a range of requirements for each tenure, however, the specific rights and responsibilities of tenure holders are generally expressed in subsidiary documents such as the licence agreement, management and working plans developed under the tenure, or cutting permits.

sets out the legislative regime for managing and administering forest tenures, and the rules for marking timber, scaling timber, and the rules with respect to payment to the Crown for public timber in the form of stumpage and annual rent.

establishes the chief foresters responsibility and authority to determine the allowable annual cut (AAC), or rate of logging specified for an area to sustain timber production in each Timber Supply Area (TSA) and Tree Farm Licence (TFL). The allocation of the AAC to the licensees within each TSA is the responsibility of the regional and district managers of the Ministry of Forests. The tenure holder is legally obligated to maintain the determined rate of cut, and both overcutting and undercutting may result in penalties (ss. 65-66). (Recent amendments to the Forest Act allow the regional manager to increase the AAC for tenure holders who enter into “innovative forestry” agreements).

The Forest Act also sets out a number of important provisions relating to the transfer, exchange, suspension, and cancellation of tenures and eligibility requirements for applicants. For example:

- Licence holders must obtain the minister’s consent before a licence can be sold or transferred, at which time the AAC level for that licence is reduced by five per cent and taken back by the Crown [ss. 54(1), 56(10)].

- Logging rights may be cancelled or suspended where there has been a misrepresentation or where the licensee has failed to perform an obligation or otherwise comply with the provisions of the Forest Act (ss. 69-70).

### 2.2 Forest Practices Code of British Columbia Act, RSBC 1996, c. 159

The Forest Practices Code of British Columbia Act is the main legislation governing forest planning and forest practices. The Code governs forest and range practices on Crown land, but also includes private land in a woodlot licence or tree farm licence. Key sections of the Code include the following:

- Part 2 provides important mechanisms to link strategic land use planning with forest operations. It authorizes the chief forester to establish resource management zones and objectives (s.3), landscape units and objectives (s.4), sensitive areas and objectives (s.5), and interpretive forest sites, recreation sites and recreation trails (s.6).
Part 3 specifies the seven types of operational forest plans, that must be prepared by licensees [ss. 19(10), 21(1), 22(3), 24(2), 26(2), 27(1)], and their content including requirements to make plans available for review and comment (s. 39).

Part 4 regulates forest practices, and specifies requirements with respect to protection of the environment, soil conservation and rehabilitation, road design, construction, maintenance, use and deactivation, timber harvesting and silviculture.

Part 6 permits the levying of administrative penalties by forest officials, the issuance of remediation orders for contravention of forest practices requirements or operational plans, and mechanisms for administrative review and appeal of decisions by designated forest officials.

Part 8 establishes the Forest Practices Board, which has the powers to conduct audits and special investigations of compliance with the Code and the appropriateness of government enforcement. The Board must address complaints from the public respecting certain aspects of the Code, and may initiate the administrative review and appeal procedure on behalf of the public.

Part 9 establishes a Forest Appeals Commission, which is a quasi-judicial tribunal with forestry expertise established to hear appeals relating to determinations and orders made by forest officials under the Code.

Part 10 of the Code contains a number of important regulations respecting forest practices, including the: Administrative Remedies Regulation; Administrative Review and Appeal Procedure Regulation; Operational Planning Regulation; Forest Practices Board Regulation; and, Strategic Planning Regulation.

The Code regulations outline the approvals process for forest operational plans. In addition to agencies that would normally be included in referrals – such as DFO with respect to forest development impacts on fish – the Code regulations specify requirements for referrals to, and approval by, a designated environment official of the Ministry of Environment, Lands and Parks (MELP) for certain types of plans or activities under the Code. The following sections of the Act and regulations establish this requirement for joint approval by MELP:

Part 2 of the Act, Strategic Planning, Objectives and Standards [ss. 4(2), 4(5), 5(1-2), 5(6)].

Part 3 of the Act, Operational Planning Requirements for Government and Forest and Range Tenure Agreements – Division 3 – Exemption for Operational Planning Requirements [ss. 28(2), 40(2), 41(6,7,8b), 42(3), 42(3),43(2)].

Part 6 of the Act, Compliance and Enforcement – Division 1 – Inspecting, Stopping and Seizing [ss. 107(2,3,4), 108, 109, 11091), 110(2), 111, 113, 114]. Division 2 – Forfeiture [ss 115(1), 116(1,2,3)]. Division 3 – Administrative Remedies [ss. 117, 118, 119, 123(1), 125, 127].

Operational Planning Regulation: Part 1 – Interpretation; Part 2 – Administration [s.8 (Joint Approval)]; Part 3 – Forest Development Plans [ss. 24 (Silvicultural systems :general), 32 (Watershed assessment)]; Part 5 – Silviculture Prescriptions [ss. 44 (Silviculture systems in a riparian zone)]; Part 9 – Range Use Plans [s. 69
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(Range Use Plans)]; and, Part 10 – Riparian Management Areas [s. 73 (Minimum widths of riparian reserve zones and riparian management zones), s. 75 (Minimum widths of riparian reserve zones and riparian management zones for wetlands), s. 77 (Minimum widths of riparian reserve zones and riparian management zones for lakes)].

- **Silviculture Practices Regulation**: Part 2 – Silvicultural Treatment [s.3 (Use of livestock)].

- **Range Practices Regulation**: Part 3 – Range Practices [s.7 (Livestock in a community watershed)].

- **Forest Recreation Regulation**: Part 4 – Use of Recreation Sites, Recreation Trails, Interpretive Forest Sites and Wilderness Areas [s. 11 (Pets), s.18 (Order to vacate)].

- **Forest Road Regulation**: Part 2 – Road Layout and Design [s. 3 (Selecting road location), s.7 (Road design)]; Part 3 – Construction and Modification [s. 11 (subgrade construction or modification)]; and, Part 5 – Deactivation [s.18 (Road deactivation prescription)].

The Code also enables the designation of higher level plans which establish the broad, strategic context for operational plans and determine the mix of forest resources to be managed in a given area. The Higher Level Plans: Policies and Procedures document outlines the policies and procedures with respect to implementation of higher level plans. Higher level plans are of two types:

- plans that are directly enabled through Part 2 of the Forest Practices Code Act of British Columbia, specifically: resource management zones; landscape units; sensitive areas; and, interpretive forest sites, recreation sites and recreation trails; and,

- plans that are developed under non-Code legislation and policy, such as:
  - plans or agreements declared higher level plans by the Lieutenant Governor in Council or the ministers;
  - plans formulated pursuant to subsection 4(c) of the Ministry of Forests Act which are designated as higher level plans by the district manager in accordance with direction from the chief forester; and,
  - management plans which may be designated as higher level plans by the chief forester for tree farm licences, and by the regional manager for other agreements under the Forest Act.

The Code specifies that the objectives for both landscape unit plans and sensitive areas must be jointly approved by the district manager, Ministry of Forests, and the designated environment official, Ministry of Environment, Lands and Parks. In order

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for an operational plan to be approved, it must be consistent with any applicable higher level plan in effect.

**Memorandum of Understanding (MOU) Among the Three Principal Ministries Regarding Joint Administration of the Forest Practices Code**

In January 1995, a Memorandum of Understanding (MOU) Among the Three Principal Ministries Regarding Joint Administration of the Forest Practices Code was signed. The document outlines each agency’s responsibilities, and has formed the basis of regional MOUs and district action plans developed to facilitate the joint administration of the Code at the field level.

### 2.3 The Ministry of Forests Act, RSBC 1996, c. 300

- The *Ministry of Forests Act* establishes and sets out the mandate of the Ministry of Forests. The Minister is granted decision making authority over forest management, including the planning and management of timber production, and the assertion of the financial interests of the Crown. Section 4 of the *Ministry of Forests Act* sets out the purposes and functions of the Ministry, which are:
  - (a) to encourage maximum productivity of the forests and range resources in British Columbia;
  - (b) to manage, protect and conserve the forest and range resources of the government, having regard to immediate and long-term economic benefits they may confer on British Columbia;
  - (c) to plan the use of the forest and range resources of the government, so that the production of timber and forage, the harvesting of timber, the grazing of livestock and the realization of fisheries, wildlife, water, outdoor recreation, and other natural resource values are coordinated and integrated, in consultation and cooperation with other ministries and agencies of the government and the private sector;
  - (d) to encourage a vigorous, efficient and world competitive timber processing industry in British Columbia; and,
  - (e) to assert financial interests of the government in its forest and range resources in a systematic and equitable manner.

By policy, the Ministry of Forests interprets “private sector” in subsection 4 (c) to include the general public. Subsection 4 (c) is generally cited as the source of the Ministry’s obligation to integrate both timber and other resource values into its planning through consultation with other agencies and public stakeholders.
2.4 Forest Land Reserve Act, RSBC 1996, c. 158

- The Forest Land Reserve Act establishes the Forest Land Commission as a corporation and agent of government with the object to minimize the impact of urban development and rural area settlement on forest reserve land and to work to this end with local governments, first nations, and other communities of interests (s.4). The primary purpose of the Act is to prevent the conversion of forest land to residential development, and to provide increased land use certainty for forest companies and workers. Currently, 920,000 hectares of private land and approximately 15,000,000 hectares of public land are in the reserve.4

- Key provisions of the Act include:
  - The forest reserve land consists of: private land which was classified as managed forest land under the Assessment Act; private land to which a tree farm licence applies under the Forest Act (s.10); and, Crown land within the Provincial forest designated as forest reserve by the Lieutenant Governor in Council.
  - Forest reserve land must not be used except as permitted by or under the Forest Act or the Forest Practices Code of British Columbia Act [s.13(1)].
  - Forest reserve land, other than Crown land or Crown licence land, must be used in a way that is consistent with one or more of the purposes outlined in s.13(2).
  - An application may be made to permit a use of forest reserve land other than those identified in s.13(2), or to remove land from the forest reserve, subject to the approval of the Forest Land Commission [s. 26].
  - A local government must not (a) adopt a bylaw under any enactment, or (b) issue a permit under Part 21 or 26 of the Municipal Act (now the Local Government Act), that would have the effect of restricting, directly or indirectly, a forest management activity relating to timber production or harvesting (c) on land that is forest reserve land, or (d) on managed forest land other than forest land reserve land, so long as the managed forest land continues to be used for only that purpose [s. 17(1)].
  - A local government, to which an application for removal from the reserve has been referred:
    - (a) must review the application and provide the commission with its comments and recommendations concerning the application;
    - (b) must have notice of the proposal published in accordance with s. 6.4 of the Municipal Act at least twice before it makes its recommendations to the commission; and,
    - (c) if it considers it appropriate, may conduct a public meeting regarding the proposed removal.
  - The commission may refer any application under the Act to one or more of a local government, a first nation, or an organization recognized by the commission as representing a community of interests that may be affected by the application

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(s.27). The commission may give public notice of an application, or hold a public meeting, or conduct a public hearing regarding an application [s.28(2)].

- Removals of Crown land from the forest land reserve are decisions of the provincial Cabinet, on the advice of the commission (s.25).

### 2.5 Range Act, RSBC 1996, c. 396

- The Range Act establishes the authority of Ministry of Forests district managers to enter into agreements granting rights over Crown range in the form of grazing licenses, grazing permits, temporary grazing permits, hay cutting licences, hay cutting permits and temporary hay cutting permits. Key provisions of the Act are as follows:
  - Other than rights to Crown range under the Forest Practices Code of British Columbia Act and Land Act, rights to use or improve Crown range for grazing or cutting hay must not be granted by or on behalf of the government, except in accordance with this Act and the regulations made under this Act (s.2).
  - The district manager may enforce, administer or manage for and on behalf of the government the terms of a grazing lease (s.4).
  - Applications for licences and permits must be made to the district manager in the prescribed manner and form (s.10).
  - Decisions made under specific sections of the Range Act are subject to review and appeal (s.41). Subject to the requirement for prior review, appeals may be made to the Forest Appeals Commission, an independent commission appointed by government to review the determination of civil servants [s.41(4)]. The appellant or the minister may appeal the Commission’s decision to the BC Supreme Court within three weeks of the decision.

**Protocol Agreement regarding Range Act Agreements**

The Ministry of Forests and the Ministry of Environment, Lands and Parks (BC Parks) have a protocol agreement with respect to Range Act agreements (i.e. grazing and hay cutting permits and licences) in provincial parks and protected areas. The protocol acknowledges that many protected areas are subject to permits and licences issued under the Range Act. The role of the Protocol is to establish the basis for inter-ministry cooperation in the preparation of range use plans, compliance of range practices with the Forest Practices Code of British Columbia Act, and resolution of disagreements between MOF and BC Parks with respect to range management in protected areas.

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2.6 Land Act, RSBC 1996, c. 245

- The *Land Act* sets out the law respecting the disposition of Crown land in British Columbia. It authorizes the sale or lease of Crown land, and the granting of rights of way, easements, or licences to occupy Crown land, subject to certain restrictions. The *Act* is administered by the Ministry of Environment, Lands and Parks, and through a delegation Agreement, by BC Assets and Lands (BCAL), a Crown corporation.

- Key provisions of the *Act* are as follows:
  - The *Act* prohibits the disposal of Crown land that is suitable for the production of timber and pulp wood unless, in the opinion of the minister, such land is required for agricultural settlement and development or other higher economic use. The minister responsible for Crown land has the responsibility for administration of all Crown lands in the province except land specifically administered by another ministry, branch or agency of government.
  - The *Act* prohibits the minister responsible for Crown land from disposing by Crown grant any land that is suitable for mining, quarrying, digging or removal or building or construction materials, except by order of Cabinet.
  - The *Act* contains a power to reserve land from disposition that may be exercised by Cabinet for any purpose deemed to be in the public interest. This provision has been used to reserve lands for wildlife, environmental values, community water supply, and areas known as UREPs (i.e., areas for the “use, recreation, and enjoyment of the public”).

**BC Assets and Lands Corporation (BCAL)**

- The British Columbia Assets and Lands Corporation (BCAL) is responsible for the management and marketing of Crown land on behalf of the government of British Columbia. This responsibility was transferred to BCAL from the Ministry of Environment, Lands and Parks in October, 1998 through a Delegation Agreement. There are currently 30,000 active tenures on provincial Crown land in British Columbia managed by BCAL. BCAL manages this portfolio, and each year processes several thousand applications for new tenures and for tenure renewals. BCAL’s responsibilities include:
  - determining whether a disposition of Crown land is in the public interest;
  - temporarily reserving Crown land from disposition;
  - designating Crown land for a particular use or prohibiting certain uses of Crown land; and,
  - making a disposition of Crown land by temporary permit, licence of occupation, lease, right-of-way or easement or by Crown grant in fee simple.

BCAL administers licences and permits for a wide range of activities on Crown land, including aquaculture, ski developments, foreshore (marine) development, quarries,

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commercial and residential development, cottages, log handling, airports, agriculture, and commercial backcountry uses (e.g. hunting, guiding camps, river kayaking).

- BCAL reviews Crown grant applications and checks the status of the land on which the activity is proposed to determine whether there are prior obligations in place. BCAL may then refer applications to various agencies for comment depending on the program the activity falls under.\(^7\) Certain BCAL proposed dispositions may be part of a larger project which is subject to the *Environmental Assessment Act*, managed by the Environmental Assessment Office.

**BCAL Aboriginal Assessment Procedures**

In administering its responsibilities to manage and market Crown land on behalf of the provincial government, BCAL is subject to the *British Columbia Consultation Guidelines*.\(^8\) Under the guidelines, BCAL must assess the potential for aboriginal rights or title over properties intended for tenure or sale (See Section 0).

BCAL has developed its own *Aboriginal Interest Assessment Procedures*.\(^9\) The procedures outline the operational process that enables BCAL to carry out its mandate while ensuring compliance with the provincial Consultation Guidelines. The purpose of the *Aboriginal Interest Assessment Procedures* is to sequentially, where appropriate, identify the potential for aboriginal rights or title over the subject property; to determine whether infringement of either might occur; and, if it might, to determine what steps are to be taken to justify the possible infringement; and where a possible infringement could be justifiable, to look for reasonable opportunities to accommodate aboriginal interests; or otherwise mitigate any potential infringement; or where not justifiable, to attempt to negotiate a resolution.

Tenure applications or sale proposals can be disallowed at any stage of the *Procedures* where a significant potential for infringement or aboriginal rights or title may be identified and it may not be deemed feasible for BCAL to continue with the proposed disposition.

- The *Procedures* identify two phases in the assessment of potential aboriginal interests:
  - Phase 1 – the purpose of this phase is to determine whether there is a factual basis for the potential existence of aboriginal rights and title. During this phase, most *sale dispositions* must be referred to First Nations. *Tenure dispositions* may not always require a referral, depending on their type (e.g., administrative changes in land designation, minor tenure modifications, and tenure renewals with no changes

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may not be referred. However, renewal of log storage or a shellfish tenure may be referred where aboriginal rights and title are known to exist or have been asserted. If no potential to affect First Nations’ rights or title interests is determined, BCAL may proceed without referrals and clear the disposition.

- Phase 2 – the purpose of this phase is to make final determination as to whether there is a potential for aboriginal rights and title, and if there is, to consider whether the potential for infringement is significant, and if it is, to mitigate and/or negotiate a resolution of the potential infringement with the impacted First Nation(s). This is undertaken through direct consultation with the impacted First Nation(s).

3. Agriculture

Various provincial statutes provide the regulatory framework for management of the agricultural sector in BC 3.3. In July 2000, the Select Standing Committee on Agriculture and Fisheries proposed that full responsibility for the agricultural lease program, including all timber on agricultural leases, should be transferred to the British Columbia Assets and Land Corporation.

3.1 Agricultural Land Reserve Act, RSBC 1996, c. 10

The Agricultural Land Reserve Act, provides the legislative framework for the preservation of land resources for the agricultural industry. The Agricultural Land Reserve Act (ALRA) was formerly named the Agricultural Land Commission Act. The Land Reserve Commission Act, including the provision to merge the Agricultural Land Commission and Forest Land Commission into one Commission, was enacted April 1, 2000 (see Section 3.3).

- The Commission’s objects are broadly stated under the Land Reserve Commission Act discussed below. As they relate to the ALRs under the ALRA, the objects of the Commission are specifically expressed as follows (s. 10):
  - to preserve agricultural land;
  - to encourage the establishment and maintenance of farms, and the use of land in an agricultural land reserve (ALR) compatible with agricultural purposes;
  - to assist municipalities and regional districts in the preparation of land reserve plans required under this Act;
  - to encourage municipalities, regional districts, first nations and ministers, ministries and agents of the governments of British Columbia and Canada to support and accommodate farm use of agricultural land in their bylaws, plans and policies (s. 10(1)); and,
  - to acquire and dispose of property (s. 10(2)).
The Agricultural Land Reserve Act (ALRA) specifies situations when an application must be made to the Commission for certain types of agricultural activities:

- Under section 11 of the Act, an application process is triggered when land is proposed for designation as ALR land and prior approval is required from the Lieutenant Governor in Council (s. 11). For the purposes of section 10, the Commission may, with the prior approval of the Lieutenant Governor in Council, designate land that is suitable for farm use as agricultural land. Upon designation, the land is established as an agricultural land reserve.

- Under section 12 of the Act, the board of every regional district must adopt by bylaw a land reserve plan and file the bylaw and plan with the Commission. This may be done in cooperation with its member municipalities and electoral areas and with the assistance of the Commission if required. Furthermore:

  - a public hearing must be given before a regional board or municipal council can adopt a bylaw and a majority of all members of council or of all directors of a regional board vote for the bylaw;
  
  - if the Commission considers it advisable to amend the plan to better carry out the intent of this Act, it may recommend amendments to the plan to the Lieutenant Governor in Council; and,

  - if the municipal council or regional board fails or refuses to prepare and file a plan with the Commission, the Commission must prepare a land reserve plan and submit the land reserve plan to the Lieutenant Governor in Council for approval. The commission must not submit such a plan to the Lieutenant Governor in Council until it has held a public hearing. For the hearing, the commission has quasi-judicial powers and may accept written submissions or any other form of evidence.

- Under section 14 of the Act, an application to the Commission is required when a development is proposed which does not comply with the regulations, policies and general orders of the Commission. Usually, the municipality or regional district, depending on where the land is located, will be included as parties to the process. A public hearing must also be held. The Ministry of Forests, the Ministry of Transportation and Highways and BC Assets and Lands may be involved. The relevant provisions of sections 14 and s.15 of the Act are as follows:

  Section 14:

  - (1) On application by a municipality or regional district for land within the body’s territory, or on the commission’s own initiative, the commission may exclude land from a reserve, on the terms it considers advisable.
  
  - (2) On application by a municipality/regional district for land within that body’s territory, or on the commission’s own initiative, the commission, without excluding the land from a reserve, may grant permission under section 17 (3), 18, 20 or 21 (2) (to use the land for other than farm use) in respect of the land that is the subject of the application, on any terms the commission considers advisable.

  - (3) It is a condition of permission granted under subsection (2) that the owner or occupier must comply with the applicable Acts, regulations, bylaws of the
municipality or regional district, and the decisions and orders of any person or body having jurisdiction over the land under an enactment.

- (4) Before the application for exclusion is made, the proposed applicant, or the commission if acting on its own initiative, must hold a public hearing in the manner and with the notice determined by regulation.

- (5) A report of the public hearing must accompany the application.

- (6) The applications referred to in subsections (1) and (2) must be made in accordance with section 33.

Section 15:

- (1) An owner of land aggrieved by a designation of the owner's land as reserve land may apply to the commission in accordance with section 33 to have the land excluded from a land reserve.

- (2) After a hearing, the commission may allow the application on the terms it considers advisable or refuse the application.

- (3) Pending or after the hearing, with the consent of the applicant, the commission may permit, on terms, a use other than a farm use.

- (4) If an application for exclusion (a) applies to land that is zoned to permit agricultural or farm use in a bylaw, or (b) requires an amendment to an official community plan, rural land use bylaw or zoning bylaw of a municipality or regional district, the application may not proceed until authorized by the municipality or the regional district.

- (5) At the owner's request, the commission must (a) deliver its decision in writing to the owner, and (b) allow the owner to examine, and make available to the owner, copies of all relevant documents in the custody of the commission.

Under section 22 of the Act, the Commission may decide applications for permission under section 17 (3), 18, 20 or 21 (2) (i.e., using the land reserve for other than farm use) and may grant or refuse permission or impose terms it considers advisable. Where such non-farm use is proposed, and the land is currently zoned to permit agricultural or farm use in a bylaw, official community plan, rural land use bylaw, or zoning bylaw of a municipality or regional district, the application may not proceed until authorized by the municipality or regional district. In deciding an application under this section, the commission may, under the regulations, hold a hearing or may make a decision on the basis of written representations only.

- The Act contains a provision that allows for devolution of the Commission’s powers (i.e. the power to decide applications for non-farm uses within the agricultural land reserve) to municipalities or regional districts:

  - Under s. 2(1), the Commission may enter into an agreement with a municipality or regional district to enable the municipality or regional district to exercise some or all of the Commission's power to decide applications under section 22 with respect to lands within the municipality or regional district.
If an agreement is entered into under subsection (1), the municipality or regional district must consider each application covered by the agreement and advise the Commission of each application received and the decision made on each application. A decision made by a municipality or regional district under this section must be made by resolution of the council or board, as the case may be.

**Agricultural Land Policy 452-98**

Regulation 542-98 defines the application process and types of application regulations. Applications are made directly to the Commission, and no formal referral process with respect to other parties is outlined in the Regulation. The Land Reserve Commission has passed general orders that apply to ALR property prescribing subdivision and land uses that can take place. For example, the *Home Occupation Order* relates to a limited small business that can occur outright on the ALR property. The same applies with the *Bed and Breakfast Policy* and *Farm Retail Policy* which encourage a certain amount of retail activity that can occur unrelated to agriculture but helps agriculture. There are many general orders. These generally require formal applications which are usually approved if the application complies with the general order.10

### 3.2 Farm Practices Protection (Right to Farm) Act, RSBC 1996, c. 131

The *Farm Practices Protection (Right to Farm) Act* ensures that farmers can farm in the agricultural land reserve by protecting them from nuisance lawsuits, nuisance bylaws and prohibitive injunctions when they are using normal farm practices. It ensures that if a farmer farms properly on the land in the ALR or where aquaculture is licensed, the farmer is deemed not to contravene local government nuisance or miscellaneous bylaws.

The *Act* also makes changes to the *Municipal Act* by providing that zoning and rural land use bylaws created by local governments are subject to provincial standards and the approval of the Minister of Agriculture, Food and Fisheries. Specific bylaw powers are added for local governments, also subject to compliance with the provincial standards and the minister's approval, which may regulate farm conduct, require certain farm facilities and prohibit specific farm operations. A board is established to deal with complaints about farm practices, including the ability to order a farmer to improve or to stop poor farm practices. The board builds on an existing peer review process to investigate and attempt to resolve disputes before hearings are held.

The new *Farm Practices Protection (Right to Farm) Act* was designed to resolve concerns about farming for those British Columbians who live near farms. The

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10 Personal communication, Andrew Upper, Commission planning Officer, Nov 1, 2000.
legislation is unique in Canada because the Act links the "right to farm" concept with bylaw powers of local governments. The legislation is one tool in an overall agri-food strategy being developed by the ministry to strengthen farming in BC. This initiative will help to increase certainty for BC food producers and also raise greater public understanding for the needs of farmers and the valuable role of farming in society.

The fundamental policy of the Act, which replaces the former Agriculture Protection Act, is that farmers have a right to farm in BC’s important farming areas, particularly the Agricultural Land Reserve, provided they use "normal farm practices" and follow other legislation listed in the Act (e.g., Waste Management Act, Pesticide Control Act, Health Act). The Act establishes an improved complaint resolution process for people who live near farms and have concerns about farm practices which create dust, odour, noise or other disturbances. The Act also amends the Municipal Act and Land Title Act to encourage local governments to support farming by ensuring local bylaws reflect provincial standards for farming.

Farm Practices Board

The new legislation creates a Farm Practices Board to provide a fair and equitable process for resolving farm practice disputes as a cost effective alternative (for all parties) to the court system. The board includes members from the BC Marketing Board (currently six people) and up to 10 other members who may be appointed by the Minister of Agriculture, Food and Fisheries. Board members will have a wide range of experience including farming, local government and dispute resolution.

- The new legislation makes changes to the Municipal Act and Land Title Act to encourage local governments to support farming in their local plans and bylaws:
  - Farm practices which meet the conditions defined in the Act will be exempt from certain nuisance and miscellaneous bylaws. However, a local government’s nuisance (e.g. noise) and miscellaneous (e.g. animal control) bylaws will continue to apply to farmers’ non-farm activities (e.g. loud parties, barking dogs).
  - Changes to the Municipal Act state that community plans may include policies that help to maintain and enhance farming and may now designate development permit areas to protect farming (e.g. buffering to separate farming and residential areas).
  - Approving officers under the Land Title Act will have new powers to assess impacts of new subdivisions on farmland when they consider applications for subdivision.

3.3 Land Reserve Commission Act, SCBC 1999 c.14

The Land Reserve Commission Act (LRCA), SBC 1999, c. 14 is an umbrella legislation that merges the provincial Agricultural Land Commission and the Forest Land Commission into a single Land Reserve Commission (the “Commission”). The LRCA establishes the Commission as a corporation and agent of the government (s. 2) and consolidates the provisions of the two reserve statutes into a single commission
statute (s. 44). However, the respective legislation for each of the original commissions still remains in the two reserve statutes (the *Agricultural Land Reserve Act*, RSBC 1996, c. 10 and the *Forest Land Reserve Act*, RSBC 1996, c. 158).

The Commission has a quasi-judicial status. Although seen as a supportive agency, the commission is not established as a referral agency. The Commission is not compelled by law to send out any referrals to other agencies and other bodies. However, formal applications to the Commission are required to add or exclude land in the ALR and for specific uses in the ALR. Further, other Acts governed under other Ministries will make provision for a referral to the Commission for review (e.g., *Local Government Act, Soil Conservation Act*).

- Under s.3 of the Act, the objects of the Commission are:
  - (a) to protect the integrity of the agricultural land base and the working forest land base in British Columbia;
  - (b) to work with owners, local governments, first nations, the governments of British Columbia and Canada and other communities of interest in achieving the object set out in paragraph (a);
  - (c) to assist the communities of interest referred to in paragraph (b) in the accommodation, support and encouragement of farming, forestry and agro forestry on agricultural reserve lands and forest reserve lands;
  - (d) to provide a fair, effective and independent mechanism for considering applications under the *Agricultural Land Reserve Act*, the *Forest Land Reserve Act* and the *Soil Conservation Act*;
  - (e) to carry out its powers and duties under the *Agricultural Land Reserve Act*, the *Forest Land Reserve Act* and the *Soil Conservation Act* in a manner consistent with the objects of the Commission under this section and under those Acts;
  - (f) to provide recommendations to the ministers responsible for the administration of the *Agricultural Land Reserve Act* and the *Forest Land Reserve Act* to protect and strengthen the land reserve system in British Columbia.

- The operations of the Commission are set out in s. 6 of the *Act* as follows. Note that the law only compels the Commission to refer any applications to its own *ad hoc* created panel:
  - The Commission may pass resolutions and bylaws it considers necessary or advisable for the management and conduct of its affairs and for the performance of its duties and the exercise of its powers.
  - The Commission may refer an application or other matter that is before the Commission under the *Agricultural Land Reserve Act*, the *Forest Land Reserve Act* or the *Soil Conservation Act* to a panel established by the Commission and consisting of one or more members as determined by the Commission.

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11 Personal communication, Andrew Upper, Agricultural Planning Officer, MAFF, Nov 1, 2000.
The panel has all the powers and duties of the Commission in respect of the application or other matter and a decision of a panel in respect of the application or other matter is, for all purposes, a decision of the Commission.

Based on s. 3 and s. 6 of the Act, the Commission may often consult with local governments or other agencies under the following triggers:

- BC Ministry of Forests administers and provides range licenses – provincial leases for grazing on Crown land. This activity is permissible on land reserves and will require an application for approval from the Ministry of Forests and a referral to the Commission.
- The Ministry of Forests issues the permits for timber harvesting and silviculture on ALR property which will involve a referral to the Commission.
- Where land owners or a local government want to perform land filling activities in land reserves, the Commission would receive the application under authority of the Waste Management Act.
- Stream set-backs (for fish-bearing streams) are jointly administered by MELP and DFO and may be referred to the Commission.
- Applications have also been received from Ministry of Transportation and Highways with regard to roads being proposed near Land Reserves, requesting the Commission to review the proposal.
- There is also an informal ‘understanding’ between the Commission and the British Columbia Assets and Land Corporation (BCAL) for crown land applications which are outside of the ALR. BCAL fulfills part of its mandate by leasing of Crown land for agricultural use, amongst other uses (e.g. residential, commercial, industrial and recreational use). BCAL will become involved when Crown land is being proposed by an applicant for agricultural use. For example, BCAL may send an application under s.33 of the ALRA to the Commission to include the crown land in the ALR. This would then trigger a referral process between the Commission and BCAL.
- When a proposal for an activity occurs on the land reserve and it does not fit a policy or general order of the Commission, then the proposal will require a formal application to the Commission. The commission will either approve it with conditions or refuse it.

3.4 Local Government Act, RSBC 1996, c.323

The Local Government Act, formerly the Municipal Act, sets out the framework for the local government system in British Columbia. It provides for the creation, structure and operation of municipalities, regional district and improvement districts and sets out their main powers and responsibilities from elections to public work and real property

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12 Personal communication, Andrew Upper, Agricultural Planning Officer, MAFF, Nov 1, 2000.
taxation to land use planning. Division 2 of Part 15 (Police Services) is the responsibility of the Attorney General.

- While primary responsibility for the administration of this Act lies with the Ministry of Municipal Affairs, the provisions dealing with farm bylaws (sections 916 - 919) are the administrative responsibility of the Ministry of Agriculture, Food and Fisheries. These sections:
  - allow for the setting of provincial standards for local government (land use and farm) bylaws;
  - enable the development of special bylaws for farming; and,
  - direct that local government bylaws be reviewed in relation to the provincial standards.

Where a local or regional district plan affects the ALR, the Local Government Act also triggers referrals to the Land Reserve Commission. Section 882(3)(c) states that after first reading of a bylaw adopting an official community plan, the council must refer the plan to the Land Reserve Commission for comment where that plan applies to land in an agricultural land reserve established under the ALRA.

3.5 Soil Conservation Act, RSBC 1996 c. 434

- The Soil Conservation Act is intended to protect soil on land in an agricultural land reserve by regulating its removal and the placement of fill. The process requires that the Land Reserve Commission provide written approval and the local authority must issue a permit. The specific provisions which outline the referral process are as follows:
  - Prohibition of soil removal and land fill (s. 2): A person must not remove soil from or place fill on land in an agricultural land reserve unless: (a) the commission approves in writing; (b) the local authority where the land is located issues a permit; and (c) the soil is removed or the fill is placed in accordance with the regulations and the terms and conditions in the permit.
  - Application (s.3): A person may apply in respect of land in a municipality or regional district to a local authority for a permit under section 5 and to the commission for an approval under section 2 by (a) submitting an application in the prescribed form and manner, and containing or accompanied by the prescribed information or types of information, and (b) paying the prescribed application fee, to the local authority.
  - Permit (s. 5): On application in accordance with section 3, if a local authority where land is located is satisfied that (a) approval of the grant of a permit has been given by the commission, and (b) the applicant has complied with the regulations, the local authority may grant a permit to remove soil from or place fill on land in an agricultural land reserve.
3.6 Waste Management Act, RSBC 1996

- The Waste Management Act is the main statute for the regulation of pollution and waste in the province. Under the Act, BC Environment is responsible for overall waste management including:
  - regulating the confinement, storage, disposal and transportation of special wastes;
  - approving discharges requiring a permit;
  - regulating spill prevention, reporting and response activities; and,
  - issuing variance orders and regulating the production of regional solid, liquid and biomedical waste management plans.

The Act provides for enforcement; regulating contaminated sites; issuing pollution abatement orders; developing and operating an appeal process to the Environmental Appeal Board; and requires the implementation of regional waste management plans.

- Section 10 of the Act outlines the permitting process. A manager may issue a permit to introduce waste into the environment, to store special waste or to treat or recycle special waste subject to requirements for the protection of the environment that the manager considers advisable and, without limiting that power, may in the permit do one or more of the following:
  - (a) require the permittee to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;
  - (b) require the permittee to give security in the amount and form and subject to conditions the manager specifies;
  - (c) require the permittee to monitor in the way specified by the manager the waste, the method of handling, treating, transporting, discharging and storing the waste and the places and things that the manager considers will be affected by the discharge of the waste or the handling, treatment, transportation or storage of the waste;
  - (d) require the permittee to conduct studies and to report information specified by the manager in the manner specified by the manager;
  - (e) specify procedures or requirements respecting the handling, treatment, transportation, discharge or storage of waste that the permittee must fulfill; and
  - (f) require the permittee to recycle certain wastes, and to recover certain reusable resources, including energy potential from wastes.

3.7 Pesticide Control Act, RSBC 1996, c.360

The Pesticide Control Act establishes a regulatory regime for the control of pesticides, and is administered by BC Environment. BC Environment is responsible to licence and certify sales, purchases and the use of pesticides in the province. This duty also
includes regulating the application, storage, disposition and transportation of pesticides.

4. Commercial Recreation

Management of commercial recreation is undertaken by the Ministry of Environment, Lands and Parks under the authority of the Land Act and the guidance of the Commercial Recreation on Crown Land Policy.13

4.1 Land Act, RSBC 1996, c. 245

- Commercial backcountry recreation permits are issued under the Land Act and administered by the Ministry of Environment, Lands and Parks. These permits grants rights, and responsibilities for consultation and referral, depending on the type of permit:
  - Investigate Use Permit [s.14(a)]: An investigatory use permit grants the right to carry out specified activity(s) for a short term. The tenure holder must permit public access to the area without interference, and must recognize that overlapping and layering of tenures may be authorized by the ministry. An investigatory use permit does not imply that a subsequent tenure will be issued for commercial use. An investigatory use permit may be issued to any commercial recreation business or proponent requiring access to the land for appraisals, inspections, analyses, inventories, surveys or other investigations of Crown land or its natural resources or where otherwise required. A permit holder must not conduct commercial activity during an investigative period. Standard procedures such as field inspections are undertaken where deemed necessary at the discretion of MELP. Referrals: Generally, referrals and/or advertising for authorization of an investigatory use permit are not required, unless deemed necessary by the MELP regional office. If required, they should be consistent with the scale of the proposal and its potential for impacts and conflicts. Where there is a reasonable possibility of disturbance of the land, wildlife, cultural or heritage resources, or other users, investigatory use permit applications must be referred to relevant agencies and/or organizations.
  - Temporary Permit [s.14(b)]: A temporary permit provides an opportunity for authorization of short term or temporary commercial recreation use by granting the right to carry out specified activity(s) for a short term. The tenure holder must permit public access to the area without interference, and must recognize that overlapping and layering of tenures may be authorized by the ministry. A temporary permit may be issued for any temporary use (including one-time events) which exceeds 'incidental commercial use', and meets the criteria outlined in the Commercial Backcountry Recreation Policy. Referrals: Standard procedures such

as field inspections are undertaken where deemed necessary at the discretion of the ministry. Referrals are not normally undertaken, unless deemed necessary by MELP. Advertising for a temporary permit is not required unless deemed necessary by MELP.

- **Licence of Occupation** (s.39): A license of occupation is the standard form of tenure used to authorize commercial recreation use of Crown land where such use requires tenure terms greater than five years over an extensive area which may also involve intensive use of small sites. A license of occupation provides the right to carry out specified activities for a term of up to 10-20 years. The tenure holder may be given the right to modify the land and/or construct improvements as specified in an approved management plan. A single license of occupation can be used to authorize both an extensive operating area and one or more intensive use sites. The tenure holder may, in accordance with section 65 of the Land Act, take legal actions against other commercial (and, in some cases, general public) users interfering with the holder's right to use the land as authorized by the tenure (e.g., stealing personal property, damaging improvements). However, the license of occupation restricts the licensee from curtailing public access over the license area. A license of occupation does not confer on the licensee exclusive use and occupancy of the license area (as opposed to a lease). The licensee must recognize that overlapping and layering of tenures may be authorized by MELP, except for intensive areas. The means by which MELP will manage applications for competing uses will be guided by the strategic principle "Business Certainty" and the Staff Guide section "Overlapping Tenures" in the Commercial Backcountry Recreation Policy. Licenses of occupation are generally issued for a term of up to 10 years. A license term greater than 10 years to a maximum of 20 years may be considered where such a license and term are shown to be critical to the operation. **Referrals:** Referrals will be sent to government agencies, local governments and other interested parties as determined by MELP. Advertising will be required in the local newspaper serving the area under application as well as the British Columbia Gazette. First Nations consultation will be consistent with provincial and ministry guidelines.

- **Lease** (s.65): Long term, site specific use may be granted through the issuance of a lease. This applies to a small parcel of Crown land (normally 1 ha., or less) where long-term tenure is required, where the use is intensive and it is necessary to define specific boundaries for the use and quiet enjoyment of the lessee and to minimize conflict. A lease provides the right to carry out specified activity(s) for a term of up to 20 years. The tenure holder has the right to modify the land and/or construct improvements as specified in an approved management plan. The tenure holder is granted the right to exclusive use and enjoyment of the area, and has the right to charge the public for use of improvements. The lessee may, in accordance with section 65 of the Land Act, take legal action against trespassers to the lease area. Leases will be issued only where substantial improvements and investments are to be made in and on the land for permanent facilities, or on small sites which are absolutely critical to the operation. **Referrals:** Referrals will be sent to government agencies, local governments and other interested parties as determined by MELP. Advertising will be required in the local newspaper serving the area under
application as well as the British Columbia Gazette. First Nations consultation will be consistent with provincial and ministry guidelines.

**Commercial Backcountry Recreation Policy**

- Management of commercial recreation in British Columbia is guided by *Commercial Backcountry Recreation on Crown Land Policy*. The Policy applies to all forms of outdoor recreation activities authorized by the ministry to be carried out on provincial Crown land (including Crown land in a provincial forest and Crown land covered by saltwater and freshwater) on a fee-for-service basis. This includes:
  - commercial mechanized ski guiding;
  - commercial hunting and fishing; and,
  - commercial recreation activities that require the operator to construct or place improvements on the foreshore (e.g., wharves, floats, storage sheds).

The policy also includes floating facilities anchored to Crown land covered by water where those facilities remain anchored to the same land for more than 14 consecutive days. This does not, however, include facilities offering moorage spaces, such as commercial marinas, unless they are offering guided services.

- The policy does not apply to incidental commercial use, defined as a fee-for-service operation which:
  - uses any Crown land fewer than 14 days in a 6 month period; and,
  - makes no modifications or changes to the existing landscape, including vegetation, and is of a non-disturbing nature to other users of Crown land and wildlife; and,
  - does not use any motorized equipment for other than basic transportation of clientele and staff on public highways or forest service roads (however, it should be noted that the Ministry of Forests and the holder of the road permit have the authority to object to such uses); and
  - does not use any livestock or bicycles other than on trail systems designated by Ministry of Forests with the approval of that agency.

Except for applications for areas crossing provincial park boundaries or recreation area boundaries, the policy also does not apply to commercial recreation activities undertaken within a provincial park, recreation area or protected area. These operations require a park use, or resource use, permit which must be applied for through BC Parks. In addition, commercial alpine developments are administered under the *Commercial Alpine Ski Policy*, not under this policy.

5. **Fisheries and Aquaculture**

The Department of Fisheries and Oceans (DFO) regulates the commercial harvest of fish in tidal waters on behalf of the federal government. Under the *Constitution Act*, 1867, the Province has jurisdiction in the field of property and civil rights. In the case
of tidal fisheries, the Province, and in particular MAFF, become involved once fish are caught and become the property of the fisher. The buying, processing and selling of fish are therefore under provincial jurisdiction. The Province also exercises delegated authority under the federal *Fisheries Act* for the management of the non-salmon freshwater fisheries and wild oyster harvest.

The provincial regulatory framework for management of the fisheries and aquaculture sector in BC is provided by the provincial *Fisheries Act, Fish Inspection Act, and Fish Protection Act* and associated regulations. Primary responsibility for administration of this sector lies with the Ministry of Agriculture, Food and Fisheries (MAFF).

### 5.1 BC Fisheries Act, RSBC 1979, c. 137 and Fish Inspection Act, RSBC 1979, c. 136

- The provincial *Fisheries Act and Fish Inspection Act* establish the mandate of the Ministry of Agriculture, Fisheries and Food (MAFF) to regulate and manage fisheries resources.
- The Aquaculture and Commercial Fisheries Branch of MAFF is the branch responsible for licensing and administration under the *Fisheries Act*. Part 2 and 3 of the *Act* are the essential sections dealing with the power of licensing:
  - Part 2 deals with the “ Licensing of Fisheries.” Under s. 8(1) of the *Act*, a person must not fish, take fish, or attempt to take fish, within British Columbia or its coastal waters, unless the person holds a valid licence issued for that purpose and has paid the fee prescribed by the Lieutenant Governor in Council. An order in council may impose licence fees either on all fish or on certain specified kinds of fish [s. 9 (1)].
  - Part 3 of the *Act* deals with “Licensing of Fish and Aquatic Plant Processors and Fish Buying Stations”. Section 13 outlines the kinds of activities required to be licensed by BC Fisheries, Management Branch.

**Licencing and Referrals**

- The provincial *Fisheries Act* and *Fish Inspection Protection Act* – along with several Memorandum of Understanding (MOU) with the federal Department of Fisheries and Oceans (DFO), the Ministry of Health, and the Ministry of Environment, Lands and Parks (MEP) – enables MAFF to regulate and licence:
  - fish processing plants, fish buying stations, fish vendors and brokers;
  - commercial aquaculture operations;
  - fishers involved in the commercial harvest of fish in non-tidal (fresh) water; and,
  - harvesters of wild oysters and/or marine plants.

- The type of licence required and agencies involved depend on the nature of the operation. Recreational fishing licences include the following:
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- **Freshwater fishing licence:** Required to sport fish any species of fish in non-tidal waters (including salmon) in BC, administered by BC Fisheries.

- **An Angling Guides Licence:** Necessary in British Columbia to assist or transport anglers in freshwater or between angling sites; administered by MELP.

- **Saltwater Angling and Recreational Shellfish Harvesting Licence:** Required to fish, spearfish or net, or to capture any species of finfish or shellfish; administered by DFO.

- Commercial harvesting licences include:
  - **Oyster Picking Permit:** Required to commercially harvest oysters from vacant Crown foreshore; administered by BC Fisheries.
  
  - **Marine Plant Harvesting Licence:** Required to undertake the commercial harvest of any marine plant. The commercial spawn on kelp fishery is administered by DFO.
  
  - **Non-Tidal Water Commercial Harvesting:** Required to harvest non-tidal or freshwater fish for commercial purposes; administered by BC Fisheries. (Tidal water commercial fishing licences are managed by DFO).
  
  - **Fish Vending Licence:** Required by commercial fishers who sell their own catch directly to the public for personal use. The facility is subject to inspection under the Fish Inspection Standards of the *Fish Inspection Act*, administered by the Ministry of Health.

  - **Fish Buying Station Licence:** Required for each vessel, vehicle or site used to receive fish directly from the fisher. Inspection requirements vary depending on the activity and whether the buying station is a vehicle, vessel or shore station. All vessels must have a valid Fish Hold Inspection (DFO) and a current Commercial Fishing Licence (DFO).

  - **Fish Broker Licence:** Required by any person or company purchasing fish directly from the fisher for resale or acting as an agent on behalf of another individual or company.

  - **Fish Processing Licence:** Required by any company or individual processing fish or aquatic plants. Processors exporting seafood products outside of British Columbia, or processing bivalve shellfish or farmed salmon or trout, must also have their processing facility registered with DFO Inspection Branch.

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**Salmon Aquaculture**

Jurisdiction over salmon farming is shared by the provincial and federal governments, although local governments and First Nations have strong interests, and some direct control of its management. The roles and responsibilities of the these parties, and their
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authorities, is described in detail in the *Salmon Aquaculture Review Final Report*, and summarized below.\(^{14}\)

- **Direct provincial controls** over the industry are applied through approvals required under the:
  - *Land Act* — a grant of Crown land issued by the Minister of Environment, Lands and Parks is usually required for a marine grow-out site.
  - *Fisheries Act* — every aquaculture operation requires a licence from the Ministry of Agriculture Fisheries and Food (by policy, this excludes federal and provincial enhancement and hatchery facilities).
  - *Waste Management Act* — all operations discharging to the environment must be in compliance with Regulations under the *Fisheries Act (Aquaculture Regulation)* and under the *Waste Management Act (Aquaculture Waste Control Regulation)*, *Land-Based Fin Fish Waste Control Regulation* for farms using feed exceeding 630T/yr require a permit.
  - **Other statutes** — several provincial statutes provide a basis for mitigation measures to avoid adverse effects associated with salmon farming, but these provisions are not unique to salmon farming and are applicable to a range of activities generally in a prohibitive or prescriptive manner. These include: *Drug Scheduling Act* and Veterinary Drug and Medicated Feed Regulation; *Wildlife Act* and Freshwater Fish Regulation; *Health Act; Heritage Conservation Act; Water Act*, and *Environmental Assessment Act* (for groundwater extraction).

- The federal government has constitutional authority over the sea coast and inland fisheries (which has been interpreted to extend to marine mammals), navigation and shipping and managing or controlling the use of substances relied on by the salmon aquaculture industry. Direct federal controls over the industry are applied through approvals required under the:
  - *Fisheries Act* — to protect fish and fish habitat from deleterious discharges; to assess proposals which have the potential to adversely affect fish habitat under the *Policy for the Management of Fish Habitat*; to issue licences to kill seals and sea lions where they are attacking fish farm stock (*Marine Mammal Regulation and Fishery (General) Regulations*); to regulate the transfer of fish eggs into the country and across provincial boundaries (*Fish Health Protection Regulation*).
  - *Navigable Waters Protection Act* — to approve plans for salmon farms where the farm is located in navigable waters or if farm improvements could impede navigation.
  - **Other statutes** — to inspect farmed fish for export, and to test for residues of substances harmful to human health (*Fish Inspection Act*); to govern the import of veterinary biologics (*Health of Animals Act*); to set requirements for medicines or drugs included in feeds for fish consumed by humans (*Feeds Act*); to govern which drugs may be sold in Canada and under what conditions they may be used *Food

\(^{14}\) Environment Assessment Office. no date. *The Salmon Aquaculture Review Final Report*
and Drug Act; and, to regulate registration and labeling of pest control products (Pest Control Products Act).

- Furthermore, some First Nations have entered into agreements with the Province with respect to aquaculture within their traditional territories:
  - Memorandum of Understanding between the Province of British Columbia and the Kwakiutl Territorial Fisheries Commission (December 10, 1993) The MOU establishes a process for communication, consultation and information sharing regarding the siting and licensing decisions in the traditional territories identified by the First Nations affected by the agreement.
  - Clayoquot Sound Interim Measures Extension Agreement between the Province of British Columbia and the Haiwh of the Tla-o-qui-aht First Nations, the Ahousat First Nations, the Hesquiat First Nation, the Toquaht First Nation and the Ucluelet First Nation (April 1996). As a result of the Agreement, the Central Region Board, at its discretion, may review any plan, application, permit, decision, report, or recommendation made by any ministry, agency, or panel charged with management of planning related to aquaculture in Clayoquot Sound.

Under the Municipal Act, local governments prepare and administer Official Community Plans containing policies about land uses and development, which are implemented using zoning bylaws and permits. They also prepare and implement Rural Use Bylaws for planning and regulating use of land including the surface of water.

- In 1988 the federal and provincial governments signed an MOU stipulating that DFO would be the lead agency representing the federal government and MAFF would represent the Province with respect to aquaculture referrals. Under the MOU, the federal government maintains regulatory authority for:
  - health of fish in aquaculture facilities;
  - conservation and protection of wild fish stocks and habitat; and,
  - protection of navigable waters.

- The Province has authority for:
  - overall development and management of the industry;
  - size and location of aquaculture facilities;
  - use and enforcement of site development plans;
  - reporting requirements;
  - protection of confidentiality regarding information from licence holders and applicants; and,
  - standards relative to the design, construction, materials and layout of aquaculture facilities.

MELP has entered into administrative agreements with MAFF to clarify roles and responsibilities and to establish a basis for cooperative administration of salmon aquaculture with respect to Crown land and water management.
**Licensing and Referrals**

Most salmon farms in BC operate on provincial aquatic Crown land. Proponents make application to BCAL for an investigative permit to determine the feasibility of developing a salmon farm at the site. The proponent will then apply for a licence of occupation or a lease if the site is deemed feasible. *Land Act* licence or lease tenure applications must be accompanied by an aquaculture development plan. Applications are reviewed for completeness and compliance with siting criteria and other policy requirements. Applicants are required to advertise in the local newspaper and public comments may be registered with BCAL.

Once an application package is complete, BCAL distributes it to various government and non-government organizations for review and comment. The standard referral distribution is to about a dozen or more agencies or groups, including the federal and provincial agencies, relevant local governments, First Nations, and other interested non-governmental groups. Referral contacts are asked to review the proposal from the perspective of their regulatory authority or interest, advise on whether or not the proposal should proceed, or advise on amendments or conditions that should become part of the approval. Referral comments are collected and assessed by BCAL as a basis for an adjudication decision.

BCAL has considerable discretionary authority in making salmon farm siting decisions. The decision criteria are not set out in regulation; decisions are made to reflect an “on balance” consideration of the information assembled during the application process. Primary considerations are referral comments and land use zoning designations. At the application adjudication stage, proposals are either disallowed or approved subject to a number of conditions, including the requirement to obtain all necessary approvals, including an aquaculture licence from BCAL.

Once a salmon farm site tenure is approved, the main provincial mechanism for regulating salmon aquaculture production and operations is the aquaculture licence. All operators are required to obtain an aquaculture licence, renewable annually, for each farm site. The licences are administered by BCAL on behalf of the MAFF under the authority of the provincial *Fisheries Act* and the associated *Aquaculture Regulation*.

On October 18, 1999, the provincial government accepted the recommendations of the Environmental Assessment Office’s Salmon Aquaculture Review Process and established a new salmon aquaculture policy. The new salmon aquaculture policy addresses environmental and social concerns through the staged implementation of a new regulatory and management framework that is currently being implemented through inter-agency committees. As part of this process, the government’s application and tenure referral process will be streamlined through a one-window approach.

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policy also capped the number of stand-alone conventional technology salmon tenures at 121.

5.2 Fish Protection Act, RSBC 1996, c. 149

- Passed in July 1997, the Fish Protection Act provides legislative authority for water managers to consider the impacts on fish and fish habitat before approving new licences, amendments to licences or issuing approvals for work in or near streams. The Act focuses on four major objectives:
  - ensuring sufficient water for fish;
  - protecting and restoring fish habitat;
  - improved riparian protection and enhancement; and
  - giving local governments greater powers for environmental planning.

The Act is administered by the Ministry of Environment, Lands and Parks. There are no formal referral processes established by virtue of this Act, however, MELP intends to work closely with the Union of BC Municipalities, local governments, landowners, community groups, and developers to refine policy development under the Act. The following directives are under development by the ministry.

Streamside Protection Policy Directives

The Fish Protection Act, along with amendments to the Local Government Act, provide tools to protect streamside areas across the province. The Streamside Protection Policy allows local governments to protect streamside areas from impacts of urban development by ensuring certain objectives are met. This includes protecting root systems, leaf litter, logs, snags, wetted areas and vegetation. Local governments will be given the flexibility to implement the directives in a manner that takes into account capacity issues, local values, settlement patterns and stream conditions. They will also be able to develop their own streamside protection measures, provided that these measures are comparable to the directives.

The directives will be implemented in a phased-in manner over the next 5 years. They will initially apply only to local governments located on the East side of Vancouver Island, the Lower Mainland and the Southern Interior, as these are the parts of the Province that are experiencing the most rapid urban growth. The directives do not apply to agriculture, mining or forestry-related land uses. Streamside protection for these activities are provided by other initiatives.

- The Act identifies three categories of streams for the purposes of water allocation and approval decisions:
  - sensitive streams (under s. 6 of the Act);
  - General streams where fish are present and flow or habitat concerns exist (s. 13(2)(b) of the Act); and,
- General streams where fish and fish habitat are not an immediate concern (s. 5 of the Act).

**General Streams Regulation**

- A proposed *General Streams Regulation* will be designed to incorporate consideration of potential impacts on fish and fish habitat in water allocation decisions or approvals for changes in or about streams. Water managers will have specific legislative authority to consider impacts to fish and fish habitat on all streams in the province. The *General Streams Regulation* will apply to:
  - applications for new licences;
  - amendments to existing licences;
  - applications for approvals (both short term water use and changes in and around a stream or stream channel); and,
  - amendments to existing approvals.

- The *General Streams Regulation* would put existing policy and practices into law, determining how fish and fish habitat are considered in water licence decisions. As a result of the regulation, water licence applicants may be required to:
  - provide habitat and stream flow data and analysis of the proposed water licence prepared by a qualified professional;
  - comply with water licence conditions established to protect fish and fish habitat interests;
  - monitor the impact of water use on fish and fish habitat;
  - install and operate a stream flow measuring device; and/or,
  - develop mitigation or compensation measures to address potential impacts.

- In evaluating an application and assessing the water flow necessary for fish and fish habitat, the comptroller or regional water manager may refer a copy of the application to provincial and/or federal fish agencies for review and comment. The comptroller or regional water manager will be required to consider fish and fish habitat in the adjudication of an application for a water licence where:
  - the stream provides habitat for a species of fish which is designated as threatened or endangered by the Lieutenant Governor in Council under section 6 of the *Wildlife Act*; or,
  - the stream provides habitat for a species of fish that is on the red list or blue list of *Species At Risk in British Columbia*, as designated by the Conservation Data Centre; or,
  - the stream provides habitat for other regionally significant fish species.
Sensitive Streams

The Act enables the designation of sensitive streams (s. 6) and development of recovery plans. The process of designating sensitive streams will involve consultation with municipalities, First Nations, communities, the public and other stakeholder, and will be led by MELP. A recovery plan is a fisheries and water management tool intended to provide for the recovery of a fish population living in a sensitive stream as designated under the Act.

Recovery plans can be initiated by direction of the Minister of Environment, Lands and Parks. Alternatively, a person of group may propose that a recovery plan be developed. The Act requires a public participation process; depending on the issues within a specific watershed, each recovery plan would involve a different mix of stakeholders.

A recovery plan can be implemented in a cooperative fashion that takes advantage of existing water planning processes and stream stewardship activities. Alternatively, and if it is deemed in the public interest, Cabinet can approve implementation of a recovery plan. Each recovery plan will include a strategy for enforcement and monitoring, including voluntary and government compliance measures.

The Sensitive Streams Regulation was enacted in March 2000. Fifteen sensitive streams have been designated in the Lower Mainland and Vancouver Island, and pilot recovery plans are being launched for Black Creek and Kanaka Creek. Consultations in the southern interior will lead to the designation of more sensitive streams.

6. Water Use

There is a complex array of federal, provincial and local agencies that each have roles in managing water resources, through a wide range of legislative and regulatory tools. There is a public expectation that all levels and agencies of government coordinate their activities to ensure that water is adequately protected. The basic regulatory framework for water management in British Columbia is through the Water Act and Water Protection Act, administered through the Ministry of Environment, Lands and Parks.

6.1 Water Act, RSBC 1996, c. 483

- The Water Act creates a comprehensive system for the regulation of the Province's fresh water systems. It provides for:
  - granting water licenses for specified quantities and purposes;
  - approving the short-term use of water or changes in and about a stream without a licence;
  - entertaining objections to licence applications from persons with standing;
  - amending, transferring and apportioning rights under licences;
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- suspending and canceling licences;
- requiring submission of records;
- regulating licensees, approval holders and works;
- issuing permits to construct works on, or flood, Crown land;
- licensees’ expropriation rights and obligations with respect to paying compensation;
- holding inquiries;
- rights of appeal to the Environmental Appeal Board;
- reserving all or part of the flow in a stream from being licensed under the Act; and,
- incorporating and overseeing water users’ communities.

**Licencing and Referrals**

Water licences are issued by the comptroller of water rights, or the regional water manager of the Water Management Program of MELP. Licences may be issued to an owner of land or a mine; a holder of a certificate of convenience and necessity under the Public Utilities Act, or under the Water Utility Act; a municipality, improvement district, water users’ community or development district; the Crown as represented by the minister appointed by the Governor General or the Lieutenant Governor; a commission, board or person having charge of the administration of any land, mine, or other property owned or controlled by a ministry, department, branch or other subdivision of the government of Canada or British Columbia; the Greater Vancouver Water District of the Greater Nanaimo Water District; or any other water district incorporated by an Act of the Legislature; and BC Hydro (s.7).

- The Water Regulation outlines the procedure of acquiring water rights and application process for the water license; fees, rentals and charges; developments for power generation; expropriation of land by licensees; the water districts; and, authority and limits to making changes in and about streams. Under s.3 of the Regulation, the comptroller or water manager shall provide notice of applications to:
  - any licensee or applicant for a water licence whose rights will not be protected by the precedence of his licence or application;
  - any riparian owner whose rights may be prejudiced by the granting of the application;
  - any owner whose property may be physically affected by the applicant’s works; and,
  - any other person, agency or minister of the Crown whose input the comptroller or regional water manager considers advisable.

A licensee, riparian owner or applicant for a licence who considers that his or her rights would be prejudiced by the granting of an application for a licence may, within the prescribed time, file an objection to the granting of an application [s. 3 (5)]. The
comptroller or the regional water manager has the authority to decide whether or not the objection warrants a hearing, and he or she must notify the objector of his or her decision. If the comptroller or the regional water manager decides to hold a hearing, the applicant and objectors are entitled to be notified, to be heard and to be notified of the comptroller or regional water manager's decision following the hearing.

A person who applies for a licence must comply with the directions of the comptroller or the regional water manager with respect to filing the application, giving notice of it by posting, service or publication and paying the prescribed fees, and must provide the plans, specifications and other information the comptroller or the regional water manager requires (s. 10).

With respect to an application, whether objections to it are filed or not, the comptroller or the regional water manager may refuse the application, amend the application in any respect, grant all or part of the application, require additional plans or other information, require the applicant to give security for the purposes and in the amount and form the comptroller or the regional water manager considers in the public interest, and issue to the applicant one or more conditional or final licences on the terms the comptroller or the regional water manager considers proper (s.12).

On compliance with the regulations by a licensee or a person to whom approval was given under section 8, the minister may issue to the licensee or person one or more permits authorizing the flooding of Crown land or the construction, maintenance or operation on the land of works authorized under a licence or approval. A person must not cause Crown land to be flooded or construct, maintain or operate works on it unless the person holds a permit authorizing that flooding, construction, maintenance or operation (s.26).

**Water Use Planning**

A Water Use Plan (WUP) is a technical document that outlines the detailed operating procedures for designated water use facilities.¹⁶ WUPs outline how rights of provincial water users will be exercised, taking into account the multiple uses for those resources.

- The water use planning process is carried out as part of the licencing procedures of the BC Water Act. With respect to referrals and the public consultation process, the following aspects of water use planning are noteworthy:
  - The Comptroller of Water Rights may require a WUP as a condition of a new water licence, as part of a review of an existing licence, or in response to a perceived water conflict. The licensee or other interested parties may also request a WUP.
  - The licensee or proponent must meet with regulatory agencies, First Nations, local governments, and key interested parties to identify issues and interests associated with water management; review and summarize available information on water use

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impacts; identify gaps in information and the need for further studies to develop a WUP; and explore appropriate approaches to consultation.

- The licensee/proponent, in consultation with the Comptroller, will set up a process for involving government agencies, First Nations, key interested parties, and the general public in plan development. WUP consultations are advisory, providing information and facility operating proposals for use in the Comptroller’s decision-making.

- Every WUP must consider fish and aquatic habitat protection, flood control, beneficial use of the water, and First Nations issues.

- Consensus on an operating alternative for the facility is a goal, but not a requirement of the WUP consultative process. A report signed off by the participants and made public will describe the consultative process and its results. If no consensus is achieved, the licensee/proponent will select a proposed operating regime.

- The Comptroller will refer the draft plan for review and comment along with the notice of any licence amendment or application for a licence, to affected and other interested parties as required under the Water Act.

- A formal inquiry may be held if some issues have not been adequately addressed or the positions of affected parties are not completely defined.

- The Comptroller and licensee/proponent will work together on any modifications to the draft plan necessary for its regulatory approval. When sufficient information is obtained, the Comptroller will make the appropriate licencing decisions and approve the plan.

- Affected parties under the Water Act can appeal the Comptroller’s authorization of a WUP to the Environmental Appeal Board (EAB). If the Comptroller’s decision is rejected on appeal, the EAB will either make a decision itself or send the matter back to the Comptroller for further review.

- The federal Department of Fisheries and Oceans will review the authorized plan and provide advice and authorizations as appropriate. If DFO disagrees with the WUP, it may exercise other regulatory options at its disposal.\(^{17}\) The plan will specify monitoring programs and reports for preparation by the licensee to enable

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\(^{17}\) Water control facilities are subject to the federal Fisheries Act. The Act empowers DFO to set requirements for minimum water flows, the construction of fishways, fish guards, or screens, pollution prevention, habitat protection, and other matters. For example, under Section 22(3) of the Act, DFO can issue an order to ensure the availability of sufficient water flow from water control structures to ensure the safety of fish and spawning grounds. In addition, s. 35(1) ensures that fish habitat is not harmfully altered, disrupted or destroyed, unless authorized by the Minister of Fisheries and Oceans under s. 35(2). Such an authorization would trigger a review under the Canadian Environmental Assessment Act. DFO’s stance with respect to referrals is guided by the Policy for Management of Fish Habitat which identifies a long-term policy objective of achieving a net gain in the productive capacity of fish habitat (Canada, Department of Fisheries and Oceans. October 1986. The Department of Fisheries and Oceans Policy for Management of Fish Habitat).
provincial and federal regulatory authorities (e.g., the Comptroller and DFO) to assess compliance with the authorized WUP.

Water use planning has begun with a review of BC Hydro hydroelectric facilities and involve the licensee, government agencies, First Nations, key stakeholders and the general public in the development of water use plans for these facilities.

6.2 Water Protection Act, RSBC 1996, c. 484

The Province owns the water of BC and is responsible for ensuring its protection and sustainable use. The Water Protection Act, proclaimed in 1995, reconfirms that ownership of, and the right to use, surface and groundwater are vested in the Crown except in so far as private rights have been established. The Water Protection Act:

- establishes a registration system to define and limit the quantity of bulk water being removed from British Columbia. The legislation essentially maintains pre-1995 bulk water removal rights, within clearly defined limits on quantity.
- prohibits the bulk removal of BC’s water to locations outside the province. The legislation protects the province’s water supplies by prohibiting persons from removing water from the Province unless they:
  - were grandfathered under the Act or had applied for registration prior to September, 1996 and were subsequently registered,
  - are removing water in containers of 20 litres or less;
  - obtained the water outside the Province; or,
  - carry the water in vehicles, vessels of aircraft for the use of persons and animals while in transit across British Columbia’s borders.
- prohibits large-scale diversion between major watersheds of the province. The Water Protection Act defines nine major watersheds of British Columbia and prohibits the construction and operation of large-scale projects capable of diverting or transferring water from one major watershed to another. The prohibition does not apply to small scale projects or to the transfer of water by large scale projects within major watersheds; both of these categories would be covered by the Environmental Assessment Act.

7. Consultation on Aboriginal Rights and Title

In order to ensure that the rights of aboriginal groups are considered and protected, provincial organizations consult with First Nations on the potential existence of aboriginal rights. Provincial ministries and agencies have implemented a strategy to consult with aboriginal groups to gather information on aboriginal interests related to land and resource activities. Methods of consultation vary by ministry and agency, but they are all guided by the terms of the Province’s Crown Lands Activities and Aboriginal Rights Policy Framework which spells out the essential principles on
consultation with First Nations. The policy was amended in 1997 to reflect the Supreme Court of Canada decision known as Delgamuukw. Current provincial guidelines for consultation with First Nations are outlined in the British Columbia Consultation Guidelines.

The Guidelines outline the process for statutory decision makers to address consultation requirements raised in Delgamuukw. The Guidelines state that provincial agencies have a duty to consult with aboriginal people when the Crown by its actions will infringe aboriginal title. The consultation required will vary with the contemplated use of the land, ranging from discussions carried out in good faith to circumstances which may require the full consent of the First Nation. It is the Province’s view that compensation is the exclusive responsibility of the federal government. Generally, provincial organizations use a number of tools that build on working relationships between the Province and aboriginal groups. Many agencies have drafted their own internal procedures to formalize their plans to address aboriginal issues within the context of their own operations.

- The Guidelines outline five stages in the consultation process:
  - **Pre-consultation assessment** to determine whether consultation is necessary.
  - **Step 1**: If consultation is deemed necessary, initial consultation is undertaken with First Nations to determine whether the potential exists for aboriginal title.
  - **Step 2**: Where aboriginal title potentially exists, further consultation is undertaken to determine if an activity will infringe or interfere with potential aboriginal title.
  - **Step 3**: Where aboriginal title potentially exists, and there may be infringement, determination of whether the potential infringement can be justified.
  - **Step 4**: Where the infringement is not justifiable, negotiation of a resolution of the issue that will allow the project to proceed. This may involve the use of interim measures, programs, training, economic development opportunities, and so forth.

In exceptional circumstances, step four may involve seeking First Nations’ consent. The Guidelines state that seeking consent should be reserved for situations where the proposed activity is of critical importance to the Province and the indicators of aboriginal title are strong. Consent should only be sought after senior level review is completed in conjunction with legal advice.

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8. Legislation Potentially Requiring Amendment to Facilitate Community Development

This section briefly summarizes the pertinent provincial legislation that would require amending to devolve administration, management, and/or ownership over renewable natural resources to communities, focusing on the following sectors: forestry, fishing, mariculture, agriculture, water use, recreation and tourism. Some examples of the types of amendments that might occur are provided as context but these are by no means exhaustive.

8.1 Forestry

- The *Forest Act* would require substantial amendments to devolve control over forest resource management to communities. For example, amendments would be needed:
  - to modify the intended purposes of the management of Crown forest land;
  - to divest authority over allowable annual cut (AAC) determinations from the chief forester to community authorities;
  - to modify or introduce new forms of community-based tenures beyond those already provided for in the *Act*;
  - to modify provisions with respect to the transfer, exchange, suspension or cancellation of tenures, or to change eligibility requirements; and,
  - to enable alternative arrangement with respect to stumpage appraisal and revenue sharing between the Province and community authorities arising from the harvest of Crown timber.

The *Ministry of Forests Act* would require amendment to divest decision-making authority over forest management to community organizations, including authority over the planning and management of Crown forest management to meet a range of forest management objectives.

- The *Forest Practices Code of British Columbia Act* would require amendment to provide community organizations with more authority over forest management and practices. For example, the *Code* could be amended to enable community organizations:
  - to establish resource management zones, landscape units, sensitive areas and their associated objectives, or to establish interpretive forest sites, recreation sites, and recreation trails;
  - to establish, vary or cancel a forest standard;
  - to change the types of operational plans that must be developed by licensees and their content, and to have authority over their approval; and,
  - to attach conditions to permits to protect specific resource values.
The *Forest Land Reserve Act* and the *Land Reserve Commission Act* may require amendment to expand the jurisdiction of community authorities over the designation, modification or deletion of Forest Land Reserves.

### 8.2 Agriculture

The *Agricultural Land Reserve Act* and the *Land Reserve Commission Act* may need to be amended to expand the jurisdiction of community authorities over the designation, use, or deletion of Agricultural Land Reserves. (The *Agricultural Land Reserve Act* has been amended to enable the Commission to delegate some of its decision-making to local governments, where there is mutual agreement and supportive farming policies in place. However, local bylaws under the *Local Government Act* must be consistent with the *Agricultural Land Reserve Act*, and official plan referrals to the Commission are required.) The *Soil Conservation Act* would require amendment to allow local communities authority over issuing permits for soil removal.

### 8.3 Fisheries and Aquaculture

Amendments to the provincial *Fisheries Act* and *Land Act* and associated regulations would be required to devolve authority to community organizations over such matters as the licencing of provincially-regulated fisheries, fish processing operations and fish buying stations, and commercial aquaculture.

Changes to the *Fish Protection Act* would be required to expand the scope of authority of community based organizations to protect fish habitat.

### 8.4 Water Use

- Under the *Water Act*, communities already have considerable scope to manage water. The Act already provides that a municipality, improvement district, development district or water users' community is entitled to apply for a licence under the Act. A licence then entitles its holder to do the following in accordance with any terms set out in the licence:
  1. divert and use a specified quantity of water for a specified purpose;
  2. store water;
  3. construct, maintain and operate any works authorized under the licence;
  4. alter or improve a stream or channel for any purpose; and
  5. construct fences, screens and fish or game guards across streams for the purpose of conserving fish or wildlife.

Similarly, a municipality or regional district can apply for an approval. An approval entitles the holder to:
- use water on a short-term basis, or
- make changes in and about a stream.
Amendments to the Water Act and the Water Regulation, and possibly the Water Protection Act, would be required to expand the authority of community organizations, beyond those described above, with respect to regulation and management of surface water use in the province.

8.5 Recreation

Amendments to the Land Act would be required to expand the legislative authority of community organizations over the permitting process for commercial backcountry recreation.

8.6 Local Government Act

The Local Government Act is the primary mechanism through which the Province has devolved certain powers to local governments. Further amendments to this Act would be needed to devolve additional authority and responsibility for administration and management of natural resources to local governments.
PART 2: REVIEW OF FEDERAL LEGISLATION

9. Objectives and Scope

The purpose of the following sections is to identify federal legislation that affects the use of renewable natural resources in British Columbia, excluding large-scale industrial development projects that are subject to the provincial Environmental Assessment Act. The sectors to be examined include forestry, agriculture, commercial recreation and tourism, fisheries, aquaculture, water use and coastal zone management.

Each section will identify and summarize applicable federal laws and regulations relating to renewable resource management in British Columbia.

Canada's Constitution Act divides jurisdictional powers between the federal and provincial governments. The majority of renewable resource activities fall under provincial jurisdiction, with several important exceptions. First, the federal government is given authority over "seacoast and inland fisheries". This fisheries authority has broad implications, as federal legislation relating to fisheries has implications for forestry, water use, agriculture, commercial recreation and tourism — in short, all of the renewable resource activities that are the subject of this paper. Second, the federal government has authority regarding navigation and shipping. Third, the federal government is responsible for federal lands — most importantly for purposes of this study, national parks.

Fourth, the federal government is responsible for negotiating international treaties on behalf of Canada. These treaties may result in obligations that are legally binding on the provinces, such as the North American Free Trade Agreement (NAFTA), the Pacific Salmon Treaty and the Softwood Lumber Agreement. These international treaties have significant consequences for renewable resource management in British Columbia. The federal government also has the constitutional authority to pass criminal laws, laws related to health and laws for the peace, order and good government of Canada.

Under Canada's Constitution, the federal government has exclusive jurisdiction over "Indians and land reserved for Indians". There will be a separate section dedicated to an analysis of the complicated issues relating to Aboriginal rights, Aboriginal title, treaty negotiations, existing treaties and Interim Measures Agreements. Numerous court cases add to the complexity and controversy surrounding First Nations and renewable resource management in British Columbia.

Finally, it is worth noting that the federal government has drafted but not yet passed several laws including the Marine Conservation Areas Act and endangered species legislation that have the potential to affect renewable natural resource management and use in British Columbia.

The paper will conclude with a summary of the potential for amending federal legislation to facilitate community-based management of renewable resources.
10. **Forestry**

Forestry is primarily regulated by the provincial government. The following sections summarize the federal legislation relating to forest management in British Columbia. The complex issues involving First Nations and provincial Crown land are assessed separately later in this paper in section 9.

10.1 **Fisheries Act, R.S.C. 1985, c. F-14**

The federal Department of Fisheries and Oceans, now known as Fisheries and Oceans Canada, is consulted in the process of developing provincial land use plans and forest development plans in areas that have fisheries values.

The two primary legislative provisions that are relevant to forestry activities are sections 35 and 36 of the *Fisheries Act*. Section 35 prohibits damage to fish habitat without a permit. Section 36 prohibits the deposit of deleterious substances into fish-bearing waters without a permit. The application for permits from Fisheries and Oceans Canada under either of these two sections may trigger the operation of the *Canadian Environmental Assessment Act*.

10.2 **Forestry Act, R.S.C. 1985, c. F-30**

The Canadian Forest Service is a part of Natural Resources Canada. The Canadian Forest Service role in forestry is limited to research, education and promotion. One of the programs, known as the Model Forest program, operates eleven model forests across Canada. Model forests are intended to provide for improved community participation and more sustainable forestry. There are two model forests in BC—at Long Beach and McGregor. Overall, however, there is no permitting role occupied by the Canadian Forest Service vis-a-vis commercial forestry in British Columbia.

10.3 **Indian Act, R.S.C. 1985, c. I-5**

Under the *Indian Timber Regulations* passed pursuant to s. 57 of the *Indian Act*, the Department of Indian Affairs and Northern Development regulates logging on reserves. In British Columbia, 196 Indian bands possess 1613 reserves covering approximately 338,000 hectares. Half of this land is classified as productive forest land, amounting to 0.3% of the provincial forest land base.

10.4 **First Nations Land Management Act, S.C. 1999, c. 24**

The *First Nations Land Management Act* transfers responsibility for land management on reserves to fourteen First Nations in Canada (including the Westbank, Musqueam,
Anderson Lake and Squamish First Nations in British Columbia) from the Department of Indian Affairs and Northern Development. Powers transferred include granting licences, passing laws for conservation, management and use, and collecting revenue from natural resources. A more comprehensive law, called the First Nations Forest Resources Management Act, has been drafted by the National Aboriginal Forestry Association in consultation with the Department of Indian Affairs and Northern Development. This law has not yet been passed and the likelihood of its future enactment is unknown.

11. Agriculture

Although agriculture is primarily regulated by the provincial government, there are many federal laws and regulations that are directly related to agriculture. Generally speaking, federal regulation focuses on financial assistance, research, marketing support, health issues, and other issues of national concern.

The following Acts and Regulations are implemented by the Department of Agriculture and Agri-Food (3.1 through 3.13), the Canadian Food Inspection Agency (3.14 through 3.24), and the Pest Management Regulatory Agency (3.25):

11.1 Agricultural Marketing Programs Act, S.C. 1997, c. 20

The Agricultural Marketing Programs Act consists of the Advance Payments Program (APP) and the Price Pooling Program (PPP). The PPP provides price guarantees to marketing agencies to facilitate the marketing of agricultural products under cooperative plans while the APP provides guarantees to producer organizations which allows them to provide advances to producers thereby improving marketing opportunities for eligible crops.

11.2 Animal Pedigree Act, S.C. 1985, c. 8

The Act's principal purposes are breed improvement and protection of persons who raise and purchase animals. For these purposes, the Act provides for the establishment of animal pedigree associations that are authorized to register and identify animals that have significant value.

11.3 Agricultural Products Marketing Act, R.S.C. 1985, c. A-6

The Canada Agricultural Products Marketing Act regulates: the marketing of agricultural products; the import, export, and inter-provincial trade in agricultural products; and provides a national system for inspection and grading of agricultural products. The Act extends provincial marketing boards' authority to the federal level, so they can improve marketing conditions for agricultural commodities by means of
inter-provincial and export trade and levy authority. Authority is granted as a result of a provincial request and is delegated by way of Order in Council. The boards are given the authority to exercise, for the benefit of their producers, the same powers in inter-provincial and export trade which provincial legislation permits for trade within the province. This applies to such areas as marketing, handling, pricing information and appointment of shippers and shippers-dealers. The federal government can also give the boards the authority to charge levies, which can be similar to service charges and license fees, on commodities moving inter-provincially or being exported.

A variety of agricultural food product regulations include provisions that define contaminated products as containing chemicals, additives, heavy metals, industrial pollutants, ingredients, toxins or any other substance not permitted by, or in an amount in excess of limits prescribed under the Canadian Environmental Protection Act. They also require that contaminated food products be destroyed or disposed in a way that does not harm the environment.

11.4 **Canada Grain Act, R.S.C. 1985, c. G-10**

The *Canada Grain Act* empowers the Canadian Grain Commission to carry out the provisions of the Act. The Commission must, in the interests of grain producers, establish and maintain standards of quality for Canadian grain, regulate grain handling in Canada, and ensure a dependable commodity for domestic and export markets.

11.5 **Canadian Wheat Board Act, R.S.C. 1985, c. C-24**

The *Canadian Wheat Board Act* incorporates the Canadian Wheat Board with the object of "marketing in an orderly manner, in inter-provincial and export trade, grain grown in Canada." As set out in the Act and regulations, the Canadian Wheat Board's principal responsibilities are to market wheat and barley delivered to it, to the best advantage of the grain producers; to provide producers with initial payments established and guaranteed by the federal government; to pool selling prices for the same grains so that all producers get the same basic return for the same grain delivered; to equalize delivery opportunities so that each producer gets his fair share of available markets; and to organize grain shipments to meet sales commitments in order to make the most effective use of the handling and transportation system.

11.6 **Canadian Dairy Commission Act, R.S.C. 1985, c. C-15**

The objects of the Canadian Dairy Commission are to provide efficient producers of milk and cream with a fair return for their labour and investment and to provide consumers with a continuous and adequate supply of dairy products of high quality. The Commission is empowered to purchase, sell, and dispose of dairy products; make payments for the benefit of milk and cream producers, make investigations relating to the production, processing or marketing of dairy products, and to promote and assist in
the promotion of their use. The Act was amended in July 1995 to allow the Commission to administer certain milk classes that are priced to meet international competition, in co-ordination with provincial authorities. The Commission is also mandated to work with provincial authorities in pooling of a market returns system on behalf of the dairy sector.

11.7 *Experimental Farm Stations Act*, R.S.C. 1985, c. E-16

The *Experimental Farm Stations Act* permits the establishment of farm stations across Canada. These stations conduct research in a number of specific areas pertinent to agricultural productivity and conservation, and publish the results of such research.

11.8 *Farm Credit Corporation Act*, S.C. 1993, c. 14

The purpose of the Act is to enhance rural Canada by providing specialized and personalized financial services to farming operations, including family farms, and to those businesses in rural Canada, including small and medium-sized businesses, that are related to farming.

11.9 *Farm Debt Mediation Act*, S.C. 1997, c. 21

The Farm Debt Mediation Service provides insolvent farmers and their creditors with mediation services to help them arrive at a mutually satisfactory arrangement. The service is a private, confidential and economical alternative to the often costly, public and drawn-out process of resolving insolvency disputes in the courts. Where this is not successful, the parties still have recourse to the courts.

11.10 *Farm Improvement Loans Act*, R.S.C. 1985, c. F-3

The *Farm Improvement Loans Act* was designed to help make credit available to farmers to improve the efficiency of their operations and to improve living conditions on farms. To accomplish this, the Act authorizes the federal government to guarantee lenders against loss incurred on loans made in accordance with the Act and Regulations. The *Farm Improvement and Marketing Cooperatives Loans Act* superseded the *Farm Improvement Loans Act* in 1987; however, the *Farm Improvement Loans Act* will continue in effect for outstanding loan guarantees.
11.11 *Farm Improvement and Marketing Cooperatives Loans Act, R.S.C. 1985, c. 25 (3rd Supp.)*

The Act authorizes the Minister of Agriculture and Agri-Food to guarantee against loss term loans made to farmers and cooperatives by chartered banks and other designated lenders for farm improvement projects and to assist marketing cooperatives for processing, distribution and marketing of agricultural products.

11.12 *Farm Income Protection Act, S.C. 1991, c. 22*

The Act authorizes agreements between the Government of Canada and the provinces to provide for protection for the income of producers of agricultural products and to enable the Government of Canada to take additional measures for that purpose.

11.13 *Farm Products Agencies Act, R.S.C. 1985, c. F-4*

The *Farm Products Agencies Act* allows producers of farm products other than industrial milk and wheat to develop national or regional marketing plans. Plans, including supply management, are permitted only for eggs, poultry and tobacco.

11.14 *Agriculture and Agri-food Administrative Monetary Penalties Act, S.C. 1995, c. 40*

The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

11.15 *Canada Agricultural Products Act, R.S. 1985, c. 20 (4th Supp.)*

*Dairy Products Regulations, Egg Regulations, Fresh Fruit and Vegetable Regulations, Honey Regulations, Licensing and Arbitration Regulations, Livestock and Poultry Carcass Grading Regulations, Maple Products Regulations, Processed Egg Regulations, Processed Products Regulations*

This Act regulates the marketing of agricultural products in import, export and inter-provincial trade and provides national standards and grades of agricultural products, requires the registration of agricultural establishments and for standards governing these establishments. Agricultural products include plants, animals and products derived from plants and animals.
11.16 **Canadian Food Inspection Agency Act, S.C. 1997, c. 6**

This enactment establishes the Canadian Food Inspection Agency in order to consolidate federal inspection services related to food and animal and plant health and to increase collaboration with provincial governments in this area. The Agency is responsible for the administration and enforcement of the *Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Health of Animals Act, Meat Inspection Act, Plant Breeders’ Rights Act, Plant Protection Act, Seeds Act,* for the enforcement of the *Consumer Packaging and Labeling Act* as it relates to food and the enforcement of the *Food and Drugs Act* as it relates to food.

11.17 **Feeds Act, R.S.C. 1985, c. F-7**

This Act controls and regulates the sale of feeds, i.e. products that are fed to livestock.

11.18 **Fertilizers Act, R.S.C. 1985, c. F-9**

This Act regulates the import, sale, packaging and labeling of agricultural fertilizers.

11.19 **Food and Drugs Act, R.S.C. 1985, c. F-27**

This *Act* applies to all food, drugs, cosmetics and medical devices sold in Canada, whether manufactured in Canada or imported. The *Act* and Regulations specify safety, compositional, nutritional and labeling requirements for food. Legislation and regulations under this *Act* are the responsibility of Health Canada.

11.20 **Health of Animals Act, S.C. 1990, c. 21**

*Export Inspection & Certification Exemption Regulations; Hatchery Exclusion Regulations; Health of Animals Regulations; Honeybee Prohibition Regulations, 1999; Compensation for Destroyed Animals; Reportable Diseases Orders/Regulations; Ungulate Movement Regulations*

This *Act* and its regulations attempt to control diseases and toxic substances that may affect animals or that may be transmitted by animals to persons. The *Health of Animals Act* governs the importing and exporting of animals, reporting and disposal requirements for diseased animals and establishing quarantine areas.
11.21 **Meat Inspection Act, S.C. 1985, c. 17**

*Meat Inspection Regulations, 1990*

This *Act* governs importing, exporting and inter-provincial trade in meat products, the registration of meat establishments, the inspection of and standards for animals and meat products in registered establishments and the standards for those establishments.

11.22 **Plant Breeders' Rights Act, S.C. 1990, c. 20 / Plant Breeders' Rights Regulations**

This *Act* protects the rights of persons who breed new varieties of plants.

11.23 **Plant Protection Act, S.C. 1990, c. 22**

*Eggplants and Tomatoes Production (Central Saanich) Restriction Regulations; Golden Nematode Order; Plant Protection Regulations; Potato Production and Sale (Central Saanich) Restriction Regulations.*

The purpose of this *Act* is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada. For example, several of the regulations identified above restrict the farming of certain vegetables in the Saanich area of southern Vancouver Island due to pest problems.


This *Act* governs the import, testing, inspection, quality and sale of seeds in Canada.

11.24 **Pest Control Products Act, R.S.C. 1985, c. P-9**

The *Pest Control Products Act* regulates products used for the control of pests and the organic functions of plants and animals. The *Act* is administered by the Pest Management Regulatory Agency, which reports to the Minister of Health. The agency maintains a system for the registration of pesticide products. Export of pesticide products from Canada and movement of products between provinces is prohibited unless the manufacturing establishment is licensed and complies with prescribed conditions. There is also a general prohibition against manufacture, storage, display, distribution or use of pest control products under unsafe conditions.
12. Commercial Recreation and Tourism

Commercial recreation and tourism fall largely under provincial jurisdiction. The federal role is limited to management of national parks, marine protected areas, international initiatives (such as the designation of biosphere reserves and world heritage sites) and specific responsibilities incidental to other areas of federal jurisdiction, such as whale-watching, migratory birds and international trade in endangered species.

12.1 Canada National Parks Act, S.C. 2000, c. 32

The *Canada National Parks Act* and regulations govern all commercial activities in national parks. Permits are required not only for commercial users but for recreational visitors as well. There are four national parks in British Columbia--Gwaii Haanas/South Moresby National Park Reserve, Pacific Rim National Park Reserve, Yoho National Park and Glacier National Park. There is a co-management agreement in place between the federal government and the Haida First Nation regarding Gwaii Haanas/South Moresby National Park Reserve.

12.2 Oceans Act, S.C. 1996, c. 31

The *Oceans Act* gives the federal government the authority to establish Marine Protected Areas. A Marine Protected Area is an area of the sea that has been designated for one or more of the following reasons: the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitat; the conservation and protection of endangered or threatened marine species, and their habitat; the conservation and protection of unique habitat; the conservation and protection of marine areas of high biodiversity or biological productivity; and the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister. To date, this program is still in the process of being implemented, although the proposed designation of Race Rocks was announced in November 2000. Once Marine Protected Areas are formally established, special permits probably will be required for a range of commercial and recreational activities.

12.3 Biosphere Reserves and World Heritage Sites

The Biosphere Reserve and World Heritage Site programs are based on international conservation agreements but lack a specific legislative basis in Canada. As a result there are no permitting or tenure requirements specific to these areas. One of the important consequences of these international designations is that they attract federal resources for the stewardship of these areas.
12.4 Whale Watching

At present there are no specific laws or regulations dealing with the rapidly growing whale watching industry. The only restriction in federal law is s. 7 of the Marine Mammal Regulations (passed pursuant to the Fisheries Act) which states "No person shall disturb a marine mammal except when fishing for marine mammals under the authority of these Regulations." The federal Minister of Fisheries and Oceans recently commissioned a study that recommended creating detailed regulations to govern whale watching boats, but has not yet drafted such regulations.

12.5 Canada Wildlife Act, R.S.C. 1985, c. W-9

The Canada Wildlife Act provides the authority for the acquisition of lands by the Minister of the Environment for the purposes of wildlife research, conservation, and interpretation. The Act also provides for the establishment of protected marine areas. The Minister may enter into an agreement with any province for wildlife research, conservation, and interpretation, including measures to protect any wildlife in danger of extinction. National Wildlife Areas are created and managed pursuant to regulations made under this Act. Designation as a National Wildlife Area helps ensure that lands of national importance are protected. Permits are required to undertake certain activities, such as farming, in National Wildlife Areas.


The Migratory Bird Convention Act implements the 1916 treaty between Canada and the United States, in which the two countries agree to adopt a co-ordinated system to protect migratory birds and their habitat from indiscriminate harvesting and destruction. Permits may be required for activities that negatively affect migratory birds and their habitat and federal environmental assessment legislation (the Canadian Environmental Assessment Act) may also be triggered.

12.7 Wild Animal and Plant Protection and Regulation of Inter-provincial and International Trade Act, S.C. 1992, c. 52

This Act creates a permitting system for international and inter-provincial trade in wild plants, animals, their parts and related products in order to conserve Canadian and foreign species, and to protect Canadian ecosystems from the introduction of harmful wild species. The Act prohibits the importation of wildlife taken illegally from another country, and implements Canada's international obligations under the Convention on International Trade in Endangered Species (CITES).
13. Fisheries

13.1 Fisheries Act, R.S.C. 1985, c. F-14

Fishery (General) Regulations; Pacific Fishery Regulations; Marine Mammal Regulation; Fish Health Protection Regulation; Aboriginal Communal Fishing Licences Regulations

The federal government has jurisdiction over "seacoast and inland fisheries" pursuant to s. 91 of the Constitution Act, 1982. The federal government, through Fisheries and Oceans Canada (formerly known as the Department of Fisheries and Oceans, or DFO) regulates the harvest of fish in marine waters as well as the harvest of salmon in fresh water. However, for many years the federal government has delegated to the province of British Columbia the responsibility for managing freshwater fisheries, other than for salmon.

Under the Fisheries Act, Fisheries and Oceans Canada is responsible for managing fish populations, protecting fish habitat and allocating access to fisheries among Aboriginal, commercial and recreational users.

Section 35 of the Fisheries Act prohibits damage to fish habitat without a permit. Section 36 prohibits the deposit of deleterious substances into fish-bearing waters without a permit. The application for permits from Fisheries and Oceans Canada under either of these two sections may trigger the operation of the Canadian Environmental Assessment Act.

Recreational marine (tidal) fishing (including both finfish and shellfish) requires a federal license (the Saltwater Angling and Recreational Shellfish Harvesting Licence). These activities are regulated by daily or total catch limits and by area closures. Freshwater fishing licences are regulated by the province and are also regulated by daily or total catch limits and by area closures.

Commercial fisheries are regulated through limited boat licences, area closures, seasonal closures, equipment restrictions and quotas. All commercial fishing vessels require a current Commercial Fishing Licence and a valid Fish Hold Inspection from Fisheries and Oceans Canada. To commercially harvest any marine plant requires a Marine Plant Harvesting Licence.

Aboriginal fisheries are also subject to federal licensing and conservation regulations, including the Aboriginal Communal Fishing Licences Regulations.

Fisheries and Oceans Canada also administers the Marine Mammal Regulation which restricts the killing of various marine mammals unless certain permits are obtained.
13.2  *Fisheries Development Act, R.S.C. 1985, c. F-21*

Pursuant to the *Fisheries Development Act*, the Minister of Fisheries and Oceans can enter into agreements with a province or any person and pay for the following projects:

- the more efficient exploitation of fishery resources and for the exploration for and development of new fishery resources and new fisheries;
- for the introduction and demonstration to fishermen of new types of fishing vessels and fishing equipment and of new fishing techniques; and
- -or the development of new fishery products and for the improvement of the handling, processing and distribution of fishery products.

13.3  *Fisheries Improvements Loan Act, R.S.C. 1985, c. F-22*

The *Act* authorizes the Minister of Fisheries and Oceans to guarantee loans made to fishermen by chartered banks and other designated lenders for fisheries improvement projects (the purchase of new boats, fishing equipment, etc.).

13.4  *Fisheries Prices Support Act, R.S.C. 1985, c. F-23*

The *Act* creates the Fisheries Prices Support Board buy fish from commercial fishermen at higher than market price in order to "secure a fair relationship between the returns from fisheries and those from other occupations."

13.5  *Fishing and Recreational Harbours Act, R.S.C. 1985, c. F-24*

The *Fishing and Recreational Harbours Act* allows the federal government to enter agreements with the provincial governments, First Nations or other persons regarding the administration, development, operation and maintenance of fishing and recreational harbours. This legislation enables the federal government to share the responsibility, costs and benefits of managing harbours.

13.6  *Fish Inspection Act, R.S.C. 1985, c. F-12*

Once fish are caught, the buying, selling and processing of fish are largely governed by provincial laws and regulations. However, processors exporting seafood products, farmed fish or marine plants outside of BC (i.e. internationally or inter-provincially) must have their processing facilities registered with the Inspection Branch of the Ministry of Fisheries and Oceans.
13.7 **Oceans Act, S.C. 1996, c. 31**

The *Oceans Act* gives the federal Minister of Fisheries and Oceans extensive power to share planning and management responsibilities with First Nations, coastal communities and other parties. Part I of the *Oceans Act* defines Canadian maritime zones and the need to protect and preserve the marine environment. The *Oceans Act* also represents an ecological approach to resource management and incorporates the precautionary principle.

For further details on the *Oceans Act*, please refer to section 8 of this paper on Coastal Zone Management. Much of the discussion in that section is equally relevant in the fisheries context.

13.8 **Marine Conservation Areas Act**

Although not yet passed, the federal government has committed to enacting a *Marine Conservation Areas Act*. This legislation will create designated areas where there are restrictions on certain types of activities, including fishing and aquaculture.

14. **Aquaculture**

Jurisdiction over aquaculture is shared by the federal and provincial governments. Pursuant to a 1988 Memorandum of Understanding between the two levels of government dealing with aquaculture, the Department of Fisheries and Oceans (now Fisheries and Oceans Canada) retained regulatory responsibility for

- monitoring the health of fish in aquaculture facilities;
- maintaining the navigability of waters (under the *Navigable Water Protection Act*); and,
- and conserving and protecting wild fish populations and their habitat (through the *Fisheries Act* and associated regulations).

The provincial government has authority pursuant to the Memorandum of Understanding for:

- overall management of the aquaculture industry;
- size and location of aquaculture facilities;
- reporting requirements; and,
- standards governing design, layout, construction and operation of aquaculture facilities.

For further details on the provincial role, see Part 1 of this report which deals with the provincial referral process.
14.1 *Feeds Act, R.S.C. 1985, c. F-7*

In the context of aquaculture, this law regulates the inclusion of medicines and drugs in feed for fish that is intended for human consumption.

14.2 *Fisheries Act, R.S.C. 1985, c. F-14*

*Fish Health Protection Regulation; Marine Mammal Regulation*

The general provisions of the *Fisheries Act* prohibiting damage to fish habitat (s. 35) and the deposit of deleterious substances into fish-bearing waters (s. 36) without the required permits apply to aquaculture. The application for permits from Fisheries and Oceans Canada under either of these two sections may trigger the operation of the *Canadian Environmental Assessment Act*.

Fisheries and Oceans Canada also administers the *Marine Mammal Regulation* which restricts the killing of various marine mammals unless certain permits are obtained.

The *Fish Health Protection Regulation* regulates the import of fish eggs and their transfer across provincial boundaries. For example, aquaculture operations relying on Atlantic salmon eggs require permits pursuant to this regulation.

14.3 *Fish Inspection Act, R.S.C. 1985, c. F-12*

Pursuant to this law, it is the responsibility of Fisheries and Oceans Canada to inspect farmed fish that are to be exported and to test for residues of substances that are harmful to human health.

14.4 *Food and Drugs Act, R.S.C. 1985, c. F-27*

This *Act* applies to all food, drugs, cosmetics and medical devices sold in Canada, whether manufactured in Canada or imported. The *Act* and Regulations specify safety, compositional, nutritional and labeling requirements for food. New drugs cannot be marketed in Canada without a Notice of Compliance (NOC) from Health Canada verifying that the manufacture and sale of the new drug is in compliance with *Food and Drugs Act Regulations*. Medical devices, cosmetics and "old" drugs must also meet departmental safety standards. Parts III and IV of this *Act* provide for regulations governing the sale of restricted and controlled drugs.

In the context of aquaculture, the *Food and Drugs Act* and regulations limit the sale and use of certain drugs used in fish farming operations.
14.5 *Health of Animals Act*, S.C. 1990, c. 21

This Act governs the application and use of veterinary medicines, some of which may be used by aquaculture operations.


This law requires permits for any structures or facilities that may impede navigation. Such permits may be required for salmon farms and other aquaculture operations. The permitting process is handled by the Canadian Coast Guard, which is a part of Fisheries and Oceans Canada. An application for a *Navigable Waters Protection Act* permit may trigger the operation of the *Canadian Environmental Assessment Act*.

14.7 *Marine Conservation Areas Act*

Although not yet passed, the federal government has committed to enacting a *Marine Conservation Areas Act*. This legislation will create designated areas where there are restrictions on certain types of activities, including fishing and aquaculture.

15. *Water*

The regulatory authority for water is shared by the federal and provincial governments and involves a complex array of laws, regulations and policies. The relevant federal legislation is reviewed below.


15.1.1 *Water Quantity (Flows)*

Although water licensing and management decisions generally fall under provincial jurisdiction (see BC’s *Water Act*), Fisheries and Oceans Canada is involved in water use planning in a consultative role. There are provisions in the *Fisheries Act* that allow the federal government to ensure that there is a sufficient flow of water in rivers and streams to protect fish and fish habitat, particularly from the operation of dams and other obstructions. Sections 20 through 26 of the *Fisheries Act* give Fisheries and Oceans Canada the power to require minimum water flows, require the construction of fishways or fish ladders and require the removal of obstructions.

The federal government's authority to require sufficient water for fish has been the subject of legal challenges by industrial water users (Alcan, BC Hydro) who have argued that this is an area of provincial jurisdiction. However, thus far courts have
upheld the federal government's authority to intervene in the regulation of water flows based on their constitutional authority over fish.

### 15.1.2 Water Quality

The *Fisheries Act* also addresses water quality. Any activity that will harm, alter, disrupt or destroy fish habitat requires a permit from the Minister of Fisheries and Oceans pursuant to s. 35 of the Fisheries Act. Decisions regarding applications to damage fish habitat are guided by Fisheries and Oceans Canada's "Policy for Management of Fish Habitat". Such activities will also require environmental assessment pursuant to the *Canadian Environmental Assessment Act*. The *Canadian Environmental Assessment Act* applies to a much broader range of activities than its provincial equivalent, the *BC Environmental Assessment Act*.

The Fisheries Act makes it illegal to deposit harmful substances into water frequented by fish (s.36(3)). Numerous regulations set limits to the amounts of specific pollutants that can lawfully be disposed of in water, including the Chlor-Alkali Mercury Liquid Effluent Regulations, Meat and Poultry Plant Liquid Effluent Regulations, Metal Mining Liquid Effluent Regulations, Petroleum Refinery Liquid Effluent Regulations, Potato Processing Plant Liquid Effluent Regulations, Fish Toxicant Regulations and the Pulp and Paper Effluent Regulations. Permits are required to discharge these kinds of industrial effluents.

### 15.2 Canada Shipping Act, R.S.C. 1985, c. S-9

*Garbage Pollution Prevention Regulations*, C.R.C. 1978, c. 1424; *Oil Pollution Prevention Regulations*, SOR/93-3; *Pollutant Substances Regulations*, C.R.C. 1978, c. 1458; *Pollution Discharge Reporting Regulations*, SOR/92-211

The *Garbage Pollution Prevention Regulations* passed pursuant to the *Canada Shipping Act* effectively prohibit the disposal of garbage in Canadian waters. Garbage is defined to include "solid galley waste, food waste, paper, rags, plastics, glass, metal, bottles, crockery, junk or similar refuse". The other regulations deal with the requirements for preventing and reporting various kinds of marine pollution. Some polluting activities may be allowed if permits are obtained pursuant to the *Canadian Environmental Protection Act*.

### 15.3 Canadian Environmental Protection Act, 1999, S.C. 1999, c. 32

The goal of the renewed *Canadian Environmental Protection Act, 1999 (CEPA)* is to contribute to sustainable development through pollution prevention and to protect the environment, human life and health from the risks associated with toxic substances. *CEPA* also recognizes the contribution of pollution prevention and the management and control of toxic substances and hazardous waste to reducing threats to Canada's ecosystems and biological diversity. It acknowledges for the first time the need to
virtually eliminate the most persistent toxic substances that remain the environment for extended periods of time before breaking down and bioaccumulative toxic substances that accumulate within living organisms. Health Canada works in partnership with Environment Canada to assess potentially toxic substances and to develop regulations to control toxic substances.

Permits are required under CEPA for the use and disposal of certain toxic substances as well as for ocean dumping.

### 15.4 Canada Water Act, R.S.C. 1985, c. C-11

Part I of the Canada Water Act enables the Minister of the Environment, with Governor-in-Council approval, to establish consultative arrangements with provinces on water resource matters, and to conclude federal-provincial water resource agreements for planning and implementation programs in any waters where there is a significant national interest in water resource management. It also permits the Minister, directly or in co-operation with any provincial government, institution, or person, to establish an inventory of those waters, collect data, and conduct research associated with water resources.

Part II enables the Minister, with Governor-in-Council approval, to conclude agreements with provinces for the joint designation of water quality management areas for federal waters or any other waters where water quality management has become a matter of urgent national concern.

### 15.5 International Boundary Waters Treaty Act, R.S.C. 1985, c. I-17

This Act outlines the federal role in managing water quality and water quantity in trans-boundary waters and establishes the International Joint Commission to carry out these duties in cooperation with the United States.

### 15.6 International River Improvements Act, R.S.C. 1985, c. I-20

The International River Improvements Act prohibits the construction, operation or maintenance of certain projects on international rivers without a permit. Projects covered by this legislation include dams, canals and reservoirs that alter the natural flow of rivers flowing from Canada into the United States.

### 15.7 Navigable Waters Protection Act, R.S.C. 1985, c. N-22

This law requires permits for any structures or facilities that may impede navigation. Such permits may be required for dams or projects to expand hydroelectric facilities. The permitting process is handled by the Canadian Coast Guard, which is a part of
Fisheries and Oceans Canada. An application for a Navigable Waters Protection Act permit may trigger the operation of the Canadian Environmental Assessment Act.

15.8 National Energy Board Act, R.S.C. 1985, c. N-7

Electricity generated by water may be considered a renewable resource. The federal government's role is limited to energy exports. The National Energy Board is responsible for approving or rejecting applications to export energy outside Canada. BC Hydro and other industrial power generators in BC (such as Alcan Aluminum) export significant amounts of electricity to the United States under permits granted by the National Energy Board.

15.9 Water Exports

The federal government has a policy that bulk water exports should not be permitted. However, the federal water policy is that provincial governments are responsible for legislative restrictions on bulk water exports. British Columbia has passed the Water Protection Act, R.S.B.C 1996, c. 484 to prohibit bulk water exports and to prohibit large-scale diversion or transfer between major watersheds.

16. Coastal Zone Management

Jurisdiction over coastal zone management is again divided between the federal and provincial governments. The primary piece of federal legislation governing coastal zone management is the Oceans Act, a progressive new law that envisions community involvement in planning and managing coastal ecosystems.

16.1 Oceans Act, S.C. 1996, c. 31

The new Oceans Act, which became law in 1997, gives the federal Minister of Fisheries and Oceans extensive power to share planning and management responsibilities with First Nations, coastal communities and other parties. Part I of the Oceans Act defines Canadian maritime zones and the need to protect and preserve the marine environment. The Oceans Act also represents an ecological approach to resource management and incorporates the precautionary principle.

Part II mandates a national Ocean Management Strategy based on principles of sustainable development, integrated management, and the precautionary approach, and details the Minister's responsibilities in respect of advancing integrated management plans. It also defines a Marine Protected Area (one designated for special protection in order to conserve fishery resources, endangered or threatened marine species and their habitats, unique habitats, and areas of high biodiversity or biological productivity).
The Minister is charged with leading and co-ordinating a national system of such Areas.

Part III further specifies the Minister’s powers, duties and functions. The Oceans Act is unique federal legislation in the extent to which it recognizes and facilitates the importance of community participation in resource management. The following sections of the Oceans Act detail the proposed role of provincial and territorial governments, aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements:

29. The Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems in waters that form part of Canada or in which Canada has sovereign rights under international law.

30. The national strategy will be based on the principles of

(a) sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

(b) the integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and

(c) the precautionary approach, that is, erring on the side of caution.

31. The Minister, in collaboration with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements, shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law.

32. For the purpose of the implementation of integrated management plans, the Minister

(a) shall develop and implement policies and programs with respect to matters assigned by law to the Minister;

(b) shall coordinate with other ministers, boards and agencies of the Government of Canada the implementation of policies and programs of the Government with respect to all activities or measures in or affecting coastal waters and marine waters;

(c) may, on his or her own or jointly with another person or body or with another minister, board or agency of the Government of Canada, and taking into
consideration the views of other ministers, boards and agencies of the
Government of Canada, provincial and territorial governments and affected
aboriginal organizations, coastal communities and other persons and bodies,
including those bodies established under land claims agreements,

(i) establish advisory or management bodies and appoint or designate, as
appropriate, members of those bodies, and

(ii) recognize established advisory or management bodies; and

d) may, in consultation with other ministers, boards and agencies of the
Government of Canada, with provincial and territorial governments and with
affected aboriginal organizations, coastal communities and other persons and bodies,
including those bodies established under land claims agreements,
establish marine environmental quality guidelines, objectives and criteria
respecting estuaries, coastal waters and marine waters.

33. (1) In exercising the powers and performing the duties and functions assigned to
the Minister by this Act, the Minister

(a) shall cooperate with other ministers, boards and agencies of the Government of
Canada, with provincial and territorial governments and with affected
aboriginal organizations, coastal communities and other persons and bodies,
including those bodies established under land claims agreements;

(b) may enter into agreements with any person or body or with another minister,
board or agency of the Government of Canada;

(c) shall gather, compile, analyse, coordinate and disseminate information;

(d) may make grants and contributions on terms and conditions approved by the
Treasury Board; and

(e) may make recoverable expenditures on behalf of and at the request of any
other minister, board or agency of the Government of Canada or of a province
or any person or body.

33 (2) In exercising the powers and performing the duties and functions mentioned in
this Part, the Minister may consult with other ministers, boards and agencies of the
Government of Canada, with provincial and territorial governments and with
affected aboriginal organizations, coastal communities and other persons and bodies,
including those bodies established under land claims agreements.

34. The Minister may coordinate logistics, support and provide related assistance for
the purposes of advancing scientific knowledge of estuarine, coastal and marine
ecosystems.

The Regional Aquatic Management Society (RAMS) is one example of an attempt to
shift some of the federal and provincial governments' management responsibilities to a
community level, relying in part on the foregoing provisions of the Oceans Act.
RAMS represents a broad range of local partners seeking greater community control
over renewable resource management. In February 1998, the governments of Canada,
British Columbia and the Nuu-chah-nulth First Nation agreed to establish a pilot, area-
based aquatic management board for the West Coast of Vancouver Island. The Board is intended to provide community-based ecosystem management. The federal and provincial governments will retain ultimate authority and responsibility. The Board will participate in decision-making on a spectrum ranging from information-sharing to consultation to shared decision-making to the assignment of specific decision-making responsibilities. It is envisioned that the Board will be composed of eight representatives from government (two federal, two provincial, two regional, two First Nation) and eight non-government representatives with a range of skills and experience plus commitment to the Board's principles.

At this time, negotiations on the Terms of Reference for the Board are ongoing. In the mean time, the Regional Aquatic Management Society is carrying out some of the functions that it is anticipated that the Board will eventually assume.

17. **First Nations, Aboriginal Rights, Aboriginal Title and Treaty Negotiations**

Under s. 91(24) of the Canadian *Constitution*, jurisdiction over "Indians and land reserved for Indians" is the exclusive responsibility of the federal government. Because of the Constitutional protection afforded to Aboriginal rights and to treaties by s. 35 of the *Constitution*, different principles apply to First Nations with respect to renewable resource management. Moreover, the application of provincial legislation to Aboriginal people and their land is a matter of extraordinary complexity and considerable controversy.

Recent court decisions have clarified some issues but raised other as yet unanswered questions. The fact that most of BC was never subject to treaties between First Nations and the colonial governments lies at the root of much of the difficulty, and while efforts are ongoing to remedy this problem, progress is slow. The following discussion will provide a brief overview of the relationship between First Nations and management of renewable resources in British Columbia. A more detailed examination is warranted but beyond the scope of this particular project.

17.1 **Aboriginal Rights**

17.1.1 **Aboriginal Right to Fish**

The law regarding the Aboriginal right to fish has evolved considerably since Aboriginal rights were given constitutional protection pursuant to s. 35 of the *Constitution Act, 1982*. In a series of decisions including *Sparrow, Van der Peet, Gladstone, Cote, Nikal* and most recently *Marshall*, the Supreme Court of Canada has provided extensive guidance to the federal government with respect to its fisheries management responsibilities. These court decisions are of great importance because they supplement the legal obligations set forth in the *Fisheries Act* and other federal legislation relating to fisheries management.
The foregoing cases clearly establish several important principles. First, the over-riding priority in fisheries management must always be conservation. Laws and regulations passed for legitimate conservation purposes apply to Aboriginal people in full force. Second, because of the constitutional protection enjoyed when they have an Aboriginal right to fish, Aboriginal people must be given priority access over other potential fisheries users (commercial and sports fishers). Third, if trade in fish was integral to the distinctive culture of an Aboriginal group prior to European contact, then there may be a constitutionally protected and therefore priority Aboriginal commercial right to fish. Fourth, again because of their constitutionally protected rights, First Nations must be consulted by the federal and provincial governments when those governments are contemplating fisheries management decisions that potentially affect Aboriginal rights. Fifth, Aboriginal rights can only be infringed when there is a substantial and compelling legislative purpose (such as conservation) and the onus lies on the government to justify (and possibly compensate for) any infringement. Sixth, both levels of government, because of their special historical relationship with First Nations, owe a fiduciary duty to Aboriginal people, meaning their interests must always be protected in good faith.

The conclusion to be derived from this brief overview of the Aboriginal right to fish is that any devolution of power vis-a-vis community-based fisheries management will have to include First Nations participation.

17.1.2 Aboriginal Right to Forests

The Aboriginal right to forests has not yet been established in court to the same extent as the Aboriginal right to fish. However there are a number of cases in the legal system at this time (R. v. Paul in BC, R. v. Peter Paul in New Brunswick, as well as cases involving the Mi'gmaq in Nova Scotia). There is a substantial likelihood that an Aboriginal right to forests exists in BC. The legal test for proving an Aboriginal right is that an activity must be an integral part of a particular First Nation's distinctive culture prior to European contact. This is obviously the case for First Nations such as the Haida, as a recent British Columbia Supreme Court decision suggests (Council of the Haida Nation vs. Minister of Forests, Halfyard J., November 21, 2000, unreported decision).

If an Aboriginal right to forests is legally established, then the same principles that apply to fisheries management would presumably apply to forest management. To reiterate these principles in the context of forest management:

- the over-riding priority in forest management must always be conservation;
- Aboriginal people with a proven Aboriginal right must be given priority access over other potential forest users;
- if trade in forest products was integral to the distinctive culture of an Aboriginal group prior to European contact, then there may be a constitutionally protected and therefore priority Aboriginal commercial right to those forest products;
- First Nations must be consulted by the government is contemplating forest management decisions that potentially affect their Aboriginal rights; and,
Aboriginal rights can only be infringed when there is a substantial and compelling legislative purpose (such as conservation) and the onus lies on the government to justify (and possibly compensate for) any infringement.

Again, the conclusion to be derived from this brief overview of the Aboriginal right to forests is that any devolution of power vis-a-vis community-based forest management (assuming there are areas where Aboriginal people can establish a right to the forests) will have to include First Nations participation.

**17.1.3 Other Aboriginal Rights (Hunting, Trapping, Gathering, Ceremonial and Spiritual)**

The same constitutional and legal principles described above in the context of fisheries and forestry apply to the whole spectrum of Aboriginal rights. Where these other Aboriginal rights exist, they must be respected and protected in accordance with the foregoing principles. Any devolution of power vis-a-vis community-based renewable resource management will have to recognize and respect these Aboriginal rights, probably through direct First Nations participation.

**17.2 Aboriginal Title**

Underlying all renewable resource activities on provincial Crown land in British Columbia is a vexing and unresolved question, namely the extent of Aboriginal title. For more than a century, the federal and provincial governments assumed that Aboriginal title had been extinguished, and allocated Crown land resources accordingly. In 1997, the Supreme Court of Canada, in the *Delgamuukw* case, ruled against the federal and provincial governments, concluding that Aboriginal title exists and has not been extinguished. The full consequences of this landmark decision for resource management in British Columbia are not yet known.

The Supreme Court of Canada provided extensive guidance about the legal nature of Aboriginal title including its unique aspects and what is required for First Nations to prove Aboriginal title. Aboriginal title is a right to the land itself, a unique form of property interest and includes the "right to exclusive use and occupation" (*Delgamuukw*, paras. 117, 138). Aboriginal title land, like any privately owned land, can only be subject to community-based management with the owners' consent.

In *Delgamuukw*, the Supreme Court also confirmed that the same legal principles that apply to Indian reserve land apply to Aboriginal title land. One of these legal principles is that provincial laws regarding land and land use do not apply on reserve lands (see earlier decisions in *Derrickson, Peace Arch* and *Isaac*). In the words of the Supreme Court, "the vesting with the federal government over Indians and Indian lands under s. 91(24) operates to preclude provincial laws in relation to those matters" (*Delgamuukw*, para. 179). This passage suggests that provincial laws regarding land and land use do not apply on Aboriginal title lands.
Professor Kent McNeil, an expert frequently quoted by the Supreme Court of Canada in cases involving Aboriginal title, has written an article called "Aboriginal Title and the Division of Powers: Rethinking Federal and Provincial Jurisdiction". McNeil argues, and many British Columbia First Nations agree, that:

_The provinces are barred not only from infringing and extinguishing Aboriginal title, but also from regulating the use of these lands by laws of general application. In concrete terms, this means that the provinces cannot derogate from Aboriginal title by granting interests in land, or even licences for resource extraction, to third parties. . . . Those kinds of activities would clearly violate the Aboriginal titleholders' right of exclusive use and occupation._

In other words, contrary to a century of conventional wisdom, the federal government may have legal authority (even a responsibility) to defend the Aboriginal interest in provincial Crown land. As the Supreme Court of Canada noted in _Delgamuukw_,

_separating federal jurisdiction over Indians from jurisdiction over their lands would have a most unfortunate result--the government vested with primary constitutional responsibility for securing the welfare of Canada's aboriginal people would find itself unable to safeguard one of the most central of native interests--their interest in their lands_ (para. 176).

There is another unique but relevant aspect of aboriginal title. The Supreme Court of Canada explained that Aboriginal title is subject to an inherent limit, and cannot be used for any purpose that would sever the unique bond between the Aboriginal people and the land, even by the Aboriginal people themselves. The Court used the examples of paving a burial ground and strip-mining a hunting ground to demonstrate activities that would not be compatible with Aboriginal title. This principle will apply to community-based resource management that includes Aboriginal title lands.

In summary, the unresolved question of the extent of Aboriginal title in British Columbia is a potentially significant barrier to community-based management of renewable resources. Where Aboriginal title exists, any form of community-based resource management will have to include the full consent and participation of any affected First Nations in order to be legally viable. A fundamental problem is that the geographical extent of Aboriginal title is currently unknown.

### 17.3 Treaty Negotiations

The federal government is engaged in tripartite treaty negotiations along with some First Nations and the provincial government. Treaties arising from these negotiations, managed by the BC Treaty Commission, will have profound implications for the management of renewable resources. At this time, only one modern treaty has been finalized in BC—with the Nisga'a First Nation. The Nisga'a Final Agreement is discussed further below. Treaty negotiations are proceeding along two tracks—negotiations aimed at securing final agreements and negotiations aimed about short-term agreements, known as Interim Measures Agreements or IMAs. On both tracks, all
First Nations engaged in the tripartite BC Treaty Commission process are negotiating for greater use and management of various natural resources.

There are also First Nations that are attempting to negotiate directly with the federal government in order to resolve longstanding disputes about Aboriginal title, rights and self-government. If resolved successfully, these negotiations would also result in significant changes to existing management of renewable natural resources.

Further attempts to devolve resource management responsibilities or resource rights to parties other than First Nations prior to the successful resolution of treaty negotiations will result in strong objections and may well be unconstitutional in light of the special protection afforded to Aboriginal rights by s. 35 of the Constitution Act, 1982. It is beyond the scope of this report to assess this legal issue.

17.4 Existing Treaties

Only a handful of treaties covering a small portion of British Columbia have been negotiated to date. There are fourteen treaties covering parts of Vancouver Island (collectively referred to as the Douglas Treaties, 1850-54), Treaty 8 (covering part of northeast British Columbia since 1899) and the recently concluded Nisga'a Final Agreement.

The Douglas Treaties and Treaty 8 guarantee the protection of certain Aboriginal rights such as hunting and fishing but do not specifically address resource management issues. However treaty rights enjoy the same level of constitutional protection as Aboriginal rights and so the principles described above in the fishing and forestry sections (9.1.1 and 9.1.2) apply equally to these treaty rights.

The Nisga'a Final Agreement, which came into force in 2000, provides the Nisga'a with extensive management responsibilities as well as new resource entitlements in the areas of land, water, fisheries, forestry and wildlife. The Nisga'a treaty demonstrates that treaties can be a vehicle for creating greater local responsibility and a greater local share of benefits from resources. At the same time it is important to recognize that the Nisga'a treaty has been subject to widespread criticism from all sides—for transferring too much power and resources to the Nisga'a, for not transferring sufficient power and resources to the Nisga'a and for perpetuating unsustainable resource use. Once treaties are concluded, re-negotiation of resource management or allocations will be difficult because treaties are constitutionally entrenched and any changes would require the agreement of all three parties.

17.5 Interim Measures Agreements

A number of Interim Measures Agreements have been negotiated in the areas of fisheries, aquaculture, forestry and protected areas. While each of these agreements is unique, they do demonstrate that IMAs provide a mechanism through which progress towards community-based management can be achieved. In the forestry context, the
Clayoquot Sound Interim Measures Extension Agreement between the Province of British Columbia and the Hawith of the Tla-o-qui-aht First Nations, the Ahouast First Nations, the Hesquit First Nation, the Toquaht First Nation and the Ucluelet First Nation (April 1996) establishes a new form of community-based management. The agreement between the Government of Canada and the Haida First Nation regarding management of Gwaii Haanas/South Moresby National Park and the agreement between the Haisla First Nation and the provincial government regarding management of the Kitlope demonstrate community-based management of protected areas. In recent years, the provincial government has demonstrated a reluctance to enter into further IMAs, a position that has been criticized by the independent BC Treaty Commission.

18. The Federal Government's Role in Facilitating Greater Community Control of Renewable Resource Management in British Columbia

The federal government has ample legal authority to participate in the devolution of renewable resource management to local communities in British Columbia. Some federal legislation, such as the Department of the Environment Act and the Department of Fisheries and Oceans Act, give responsible Ministers broad discretion to enter agreements with the provinces. For example, under s. 7 of the federal Department of the Environment Act, R.S.C. 1985, c. E-10, "The Minister may, with the approval of the Governor in Council, enter into agreements with any province or any agency thereof respecting the carrying out of programs for which the Minister is responsible." Pursuant to this authority, the federal Environment Minister has entered into an agreement with the government of British Columbia to create a single window environmental assessment process.

Similarly, s. 5 of the Department of Fisheries and Oceans Act, R.S.C. 1985, c. F-15 states that "The Minister may, with the approval of the Governor in Council, enter into agreements with the government of any province or any agency thereof respecting the carrying out of programs for which the Minister is responsible." The federal Fisheries Minister has already entered into such agreements with the government of British Columbia for the management of freshwater fisheries and the regulation of aquaculture.

Other federal legislation, such as the Oceans Act, the Fishing and Recreational Harbours Act and the First Nation Land Management Act, takes a more proactive approach, by specifically authorizing the devolution of resource management responsibilities and in the latter two cases, revenue generation. Furthermore, these laws anticipate going beyond partnerships with the provincial government to include a broad range of partners including First Nations, coastal communities and other interested parties. The Regional Aquatic Management Board proposed for the West Coast of Vancouver Island is an example of an innovative community based renewable resource management regime.
Although in theory the provincial government has primary responsibility for renewable resource management in British Columbia, the extensive array of federal legislation identified in this paper suggests that there is also a substantial federal role. The federal government's role in devolving management of renewable resources will be relatively more important in the areas of fisheries, aquaculture, water and coastal zone management and relatively less important in forestry, agriculture, commercial recreation and tourism. The most complex issues, from both a federal and provincial perspective, involve Aboriginal rights, Aboriginal title, self-government and treaties. While these issues are complicated, they also pose opportunities for creative solutions that respect First Nations and promote reconciliation.