



This Act is Current to July 5, 2017

# **PRIVATE MANAGED FOREST LAND ACT**

## **[SBC 2003] CHAPTER 80**

*Assented to November 17, 2003*

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## **Part 1 — Interpretation**

### **Definitions**

**1** In this Act:

**"assessor"** means an assessor appointed under the *Assessment Authority Act*;

**"board"** has the same meaning as in section 1 (1) of the *Forest Practices Code of British Columbia Act*;

**"commission"** means the Forest Appeals Commission continued under the *Forest Practices Code of British Columbia Act*;

**"council"** means the Private Managed Forest Land Council established under section 4;

**"exit fee"** includes interest that is calculated in accordance with the regulations;

**"management commitment"** means a management commitment that, as determined by the council, meets the applicable requirements of section 17 and includes any amendment made to the management commitment that, as determined by the council, meets the applicable requirements of section 17;

**"owner"** means the person registered in the records under the *Land Title Act* as owner of the land in respect of which there is a management commitment and that is classified as managed forest land under the *Assessment Act*;

**"private managed forest land"** means private land

- (a) in respect of which there is a management commitment, and
- (b) that is classified as managed forest land under the *Assessment Act*.

## **Interpretation**

- 2** (1) Nothing in this Act restricts a person from carrying out fire suppression activities in accordance with the *Wildfire Act* and the regulations under that Act.
- (2) An owner or a contractor, employee or agent of the owner does not contravene a provision of this Act or the regulations because of an activity that if carried out by the owner or a contractor, employee or agent of the owner would be a contravention, if the activity is carried out by a person who is authorized under another enactment
- (a) to be on the owner's private managed forest land, and
  - (b) to carry out the activity.

## **Application**

- 3** This Act applies to private managed forest land other than land that is in a tree farm licence area, a woodlot licence area or a community forest agreement area.

# **Part 2 — Private Managed Forest Land Council**

## **Council established**

- 4** The Private Managed Forest Land Council is established as a corporation consisting of the members appointed under section 6.

## **Object of council**

- 5** The object of the council is to encourage forest management practices on private managed forest land, taking into account the social, environmental and economic benefits of those practices.

## **Council members**

- 6** (1) The minister must
- (a) appoint 2 council members, and
  - (b) establish the terms of their appointment.
- (2) Subject to subsection (3), the owners must appoint 2 council members in accordance with the procedures set out in bylaws of the council and establish the terms of the appointment of those members.
- (3) If the owners do not appoint the council members referred to in subsection (2), the council members may be appointed by the minister in accordance with the regulations.
- (4) Council members appointed by the minister or by the owners must be knowledgeable in matters relating to
- (a) forest management practices, or
  - (b) local government.
- (5) The council members appointed under this section must appoint an additional person as a member of the council and designate that person to be the chair of the council.

(6) If, within 60 days after the expiry of the term of the chair, the council members do not appoint a new chair, the minister may appoint an additional person to the council, designate that person to be the chair and set the terms of the chair's appointment, as long as

- (a) the chair is selected from a list of persons provided by the remaining council members, and
- (b) the appointment is for no longer than 6 months.

(7) If the minister considers it necessary or advisable

- (a) a chair appointed under subsection (6) may be reappointed for a further period of 6 months, or
- (b) another chair may be appointed, as long as subsection (6) (a) and (b) applies.

(8) The council must designate one of its members as vice chair.

(9) A council member or former council member may be reappointed to the council.

(10) A council member appointed by the owners may be removed in accordance with the procedures set out in bylaws of the council.

(11) The council members are the board of directors of the council.

### **Staff of council**

- 7** (1) The council may appoint employees necessary for its purposes and may determine their duties and remuneration.
- (2) The council may retain consultants as it considers advisable and may set their remuneration.
- (3) The *Public Service Act*, the *Public Sector Pension Plans Act* and the *Public Service Labour Relations Act* do not apply to the council or its employees.

### **Operation of council**

- 8** (1) The council may pass resolutions and bylaws it considers necessary or advisable for the management and conduct of its affairs, the performance of its duties and the exercise of its powers.
- (2) Subject to subsection (4), the council may refer a matter that is before the council to a panel established by the council consisting of one or more council members as determined by the council.
- (3) A panel established under subsection (2) has all the powers and duties of the council and a decision of the panel is, for all purposes, a decision of the council.
- (4) The council must not refer the making of a resolution, bylaw or regulation to a panel of the council.

### **Annual administration fee, levy and surplus**

- 9** (1) In this section, "**bare land assessed value**" means the value of managed forest land as determined under section 24 (4) (a) of the *Assessment Act*.
- (2) An owner must pay an annual administration fee to the council on or before the date established by regulation of the council for each year during which the owner's land is

private managed forest land.

(3) The council must set the rate of the annual administration fee payable under subsection (2) for each fiscal year

(a) as a percentage of the bare land assessed value of private managed forest land, and

(b) so that the total amount of the annual administration fee collected proportionally from all of the owners and any other revenue of the council are sufficient to fund the council's operations for that fiscal year.

(4) If at any time during the fiscal year for which the annual administration fee has been calculated and collected, the total calculated and collected appears to the council to be insufficient to fund the council's operations for the months remaining in that fiscal year, the council

(a) must notify the owners of, and provide information to the owners about, the insufficiency, and

(b) may establish a levy to pay for the insufficiency.

(5) A levy established by the council under subsection (4) (b) must be set as a percentage of the bare land assessed value of private managed forest land and collected proportionally from all of the owners.

(6) If at the end of a fiscal year for which the annual administration fee or a levy has been collected there is a surplus, the council may do one or more of the following:

(a) return the surplus or part of it to the owners who contributed to it, in proportion to their contributions;

(b) set the surplus or part of it off from the total amount referred to in subsection (3) (b) for the following fiscal year;

(c) retain the surplus or part of it and dispose of it to further the fulfillment of the council's object.

(7) The council must, in accordance with the regulations of the council, notify the owners as soon as practicable of

(a) the amount of the annual administration fee or a levy and the date by which the fee or levy must be paid, and

(b) the following with respect to any surplus:

(i) the amount of the surplus;

(ii) the disposition of the surplus.

## **Financial and corporate matters**

**10** (1) The fiscal year of the council begins on April 1 of each year and ends on March 31 of the following year.

(2) The council must publish an annual report for each year of operation of the council that contains information about the following:

(a) the number of owners;

(b) the number of hectares subject to the Act;

(c) the number of management commitments withdrawn;

- (d) the number and nature of inspections performed;
- (e) the number and nature of consent agreements;
- (f) the amount of penalties collected and the amount of penalties owing;
- (g) the number and nature of remediation orders made;
- (h) the number and nature of stop work orders made;
- (i) new regulations enacted by the council;
- (j) any other information the council considers relevant to the fulfillment of its object or the exercise of its powers and performance of its functions and duties under this Act.

(3) The council must submit the report under subsection (2) to the minister and publish it.

(4) Subject to subsection (5), the *Business Corporations Act* does not apply to the council.

(5) The Lieutenant Governor in Council may, by order, declare that specified provisions of the *Business Corporations Act* apply to the council.

(6) The council may acquire and dispose of property and borrow and invest money for the purposes of fulfilling its object, exercising its powers and performing its functions and duties under this Act.

### **Minister may order audit of council performance**

**11** (1) The minister may order an independent audit by the board or other auditor, of the performance of the council in fulfilling its object or exercising its powers and performing its functions and duties under this Act.

(2) The minister must provide terms of reference for the audit.

(3) If requested by the auditor appointed under subsection (1), the council must submit records in its possession that are relevant to the audit.

(4) Before an audit report is finalized, the auditor must provide to the council

- (a) a copy of the draft audit report, and
- (b) a reasonable opportunity to review and comment on the report.

(5) As soon as practicable after completing an audit, the auditor must submit the final audit report and any comments of the council to

- (a) the minister, and
- (b) the council.

(6) The minister must publish the final audit report and any comments of the council.

## **Part 3 — Forest Management**

### **Division 1 — Management Objectives on Private Managed Forest Land**

#### **Soil conservation**

**12** The forest management objective for private managed forest land with respect to conservation of soil for areas where harvesting has been carried out is to protect soil productivity on those areas by minimizing the amount of area occupied by permanent roads, landings and excavated or bladed trails.

## Water quality

**13** (1) The forest management objective for private managed forest land with respect to water quality is to protect human drinking water, both during and after harvesting.

(2) Nothing in subsection (1) requires an owner to retain additional streamside trees or additional understory vegetation to address problems with water quality that originate outside of the owner's private managed forest land.

## Fish habitat

**14** (1) The forest management objective for private managed forest land with respect to the protection of fish habitat, both during and after harvesting, is to retain sufficient streamside mature trees and understory vegetation to protect all of the following:

- (a) a natural variation in water temperatures;
- (b) sufficient cover for fish;
- (c) a continual source of large woody debris for stream channel stability purposes;
- (d) a vigorous mass of roots capable of controlling stream bank erosion;
- (e) a filter to prevent the transport of sediment into stream channels;
- (f) woody debris sufficient for in-stream habitat;
- (g) a source of nutrients to the stream through litter fall.

(2) Nothing in subsection (1) requires an owner to retain additional streamside trees or additional understory vegetation to address problems with fish habitat that originate outside of the owner's private managed forest land.

## Critical wildlife habitat

**15** The forest management objective for private managed forest land with respect to critical wildlife habitat is to facilitate the long term protection of that habitat by

- (a) providing a reasonable opportunity for a person designated in writing by the deputy minister to the minister responsible for the administration of the *Wildlife Act* to assess whether critical wildlife habitat is present on private managed forest land, and
- (b) fostering efforts of the government and the owners to enter into agreements for the protection of any critical wildlife habitat identified under paragraph (a).

## Reforestation

**16** The forest management objective for private managed forest land with respect to reforestation of areas where timber has been harvested or destroyed is to promptly regenerate the areas with a healthy, commercially valuable stand of trees that is not impeded by competition from plants or shrubs.

## Division 2 — Private Managed Forest Land

### Application for private managed forest land

**17** (1) Before private land may be classified as private managed forest land under this Act or managed forest land under the *Assessment Act*, the landowner or owner must submit to the council a proposed management commitment that is in the prescribed form and contains

(a) the legal description of the land to which the management commitment relates and any other information specified in regulations of the council, and

(b) an acknowledgement of the requirements to

(i) pay the annual administration fee under section 9

(ii) pay the exit fee under section 19, if applicable, and

(iii) otherwise comply with this Act and the regulations.

(2) An owner may at any time submit to the council an amendment to a management commitment that meets the applicable requirements of subsection (1) and the regulations of the council.

(3) The council must

(a) review the proposed management commitment or amendment to determine if it complies with the applicable requirements of subsection (1) and the regulations of the council, and

(b) notify the landowner or owner of its determination under paragraph (a) and if the council concludes that the management commitment or amendment does not comply with the applicable requirements, provide reasons.

(4) If the council determines that a proposed management commitment or amendment meets the applicable requirements of subsection (1) and complies with the regulations of the council, the council must notify the assessor and recommend to the assessor that the land that is the subject of the management commitment or amendment be classified as managed forest land under the *Assessment Act*.

(5) After classifying land that is the subject of a management commitment as managed forest land under the *Assessment Act*, the assessor must notify the council and the owner.

(6) A management commitment that the council determines meets the requirements of subsection (1) and the regulations is ineffective to the extent that

(a) it contains information in addition to the information required under subsection (1), and

(b) the additional information conflicts with a provision of this Act or the regulations in effect on the date of the council's determination.

### **Withdrawal of management commitment**

**18** An owner may give written notice in the prescribed form and with the prescribed content to the council that the owner is withdrawing his or her management commitment.

### **Exit fee**

**19** (1) Except when exempted by regulation or in prescribed circumstances, an owner must pay an exit fee in accordance with the regulations if the assessor declassifies the land under section 24 (3) (b) of the *Assessment Act*.

(2) If an owner from whom an exit fee is recoverable is an owner of property that is subject to property taxation under the *Local Government Act, Taxation (Rural Area) Act* or

*Vancouver Charter*, the exit fee may be recovered as follows:

- (a) in the case of property within a municipality, the council must file a notice of the amount of the exit fee with the municipality, which may collect the amount in the same manner as taxes against the property under the *Local Government Act* or the *Vancouver Charter*, as applicable;
- (b) in the case of other property, the council must file a notice of the amount of the exit fee with the Surveyor of Taxes appointed under the *Taxation (Rural Area) Act*, who may collect the amount in the same manner as taxes against the property under that Act.

(3) If an amount is to be collected under subsection (2), the amount is deemed to be a municipal or Provincial tax, as applicable, and must be dealt with in the same manner as taxes against the property would be under the *Local Government Act*, *Taxation (Rural Area) Act* or *Vancouver Charter*, as applicable, and the following apply:

- (a) in the case of property within a municipality, the municipality may retain the amount collected as though it were a tax against property;
- (b) in the case of other property, the Surveyor of Taxes must deposit the amount collected in the consolidated revenue fund.

(4) The minister must conduct a review of the manner in which the exit fee is calculated under the regulations at least once every five years.

## **Annual declaration**

**20** An owner must submit to the council on or before May 1 of each year, a declaration in the prescribed form that contains all of the following information with respect to the private managed forest land of the owner for the preceding operating season:

- (a) the location and size of areas where timber was harvested;
- (b) the location and size of areas where timber was destroyed and the cause or probable cause of the destruction;
- (c) the location and approximate length of roads constructed;
- (d) any other information prescribed by the council.

## **Restriction on local government authority regarding uses of private managed forest land**

**21** (1) A local government must not

- (a) adopt a bylaw under any enactment, or
- (b) issue a permit under Part 21 or 26 of the *Local Government Act*

in respect of land that is private managed forest land that would have the effect of restricting, directly or indirectly, a forest management activity.

(2) For certainty, this section applies if the bylaw or permit would have the effect described in subsection (1) even though the bylaw or permit does not directly apply to land referred to in that subsection.

## **Part 4 — Compliance and Enforcement**

### **Division 1 — General**

## Production of records

**22** The council may require that an owner or a contractor, an employee or an agent of the owner submit records in that person's custody or control if the council considers it necessary in determining whether the owner or a contractor, an employee or an agent of the owner has contravened or is contravening a provision of this Act or the regulations.

## Right of entry of council

**23** (1) For any purpose related to the administration of this Act or the regulations, including administrative remedies under this Part, the council or a person authorized in writing by the council may enter on private managed forest land at any reasonable time if the council has reasonable grounds to believe that the private managed forest land is the site of an activity regulated under this Act.

(2) A person who enters on private managed forest land under this section

(a) may inspect any thing or activity that is reasonably related to the purpose for which the council entered on the private managed forest land,

(b) may require production for inspecting or copying either or both of the following:

(i) an authorization to engage in the activity;

(ii) a record required to be kept in accordance with a provision of this Act or the regulations, and

(c) on the request of the person who has apparent custody or control of the property or activity being inspected, must provide proof of identity to that person.

(3) An owner or a contractor, employee or agent of the owner must admit the council or authorized person to all parts of the private managed forest land for the purposes of this section.

## Right of entry of government

**24** (1) For any purpose related to the management of critical wildlife habitat on private managed forest land, the minister responsible for the administration of the *Wildlife Act* or any person authorized in writing by the minister may enter on private managed forest land at any reasonable time if the minister has reasonable grounds to believe that critical wildlife habitat is present on private managed forest land.

(2) The minister or authorized person who enters on private managed forest land under this section

(a) may inspect any thing or activity that is reasonably related to the purpose for which the person entered on the private managed forest land,

(b) may require production for inspecting or copying either or both of the following:

(i) an authorization to engage in the activity;

(ii) a record required to be kept in accordance with a provision of this Act or the regulations, and

(c) on the request of the person who has apparent custody or control of the property or activity being inspected, must provide proof of identity to that

person.

(3) An owner or a contractor, employee or agent of the owner must admit the minister or authorized person to all parts of the private managed forest land for the purposes of this section.

## **Division 2 – Administrative Remedies**

### **Consent agreements**

**25** (1) If the council and an owner agree that the owner or a contractor, employee or agent of the owner may have contravened or is contravening a provision of this Act or the regulations, the council and the owner may enter into a consent agreement under which

(a) the owner agrees to

- (i) carry out any remedial measures specified in the agreement,
- (ii) take any measures specified in the agreement to prevent the contravention from continuing or a similar contravention occurring in the future, and
- (iii) pay to the council a penalty, not greater than \$5 000, that is specified in the agreement, and

(b) the council agrees not to make any further determinations or orders under this Division with respect to the contravention unless the owner does not comply with the terms of the agreement.

(2) An owner who enters into a consent agreement under subsection (1) must comply with the agreement.

### **Penalties**

**26** (1) The council, after giving an owner or a contractor, employee or agent of the owner who is alleged to have contravened a provision of this Act or the regulations an opportunity to be heard, may determine whether the person has contravened a provision of this Act or the regulations.

(2) After giving a person an opportunity to be heard under subsection (1), or after one month has elapsed after the date on which the person was given the opportunity, the council

(a) if it determines that the person has contravened the provision,

- (i) may levy an administrative penalty against the person in an amount that does not exceed \$25 000, or
- (ii) may refrain from levying an administrative penalty against the person if the council considers that the contravention is trifling, or

(b) may determine that the person has not contravened a provision of this Act or the regulations.

(3) If a corporation contravenes a provision of this Act or the regulations, a director or an officer of the corporation who authorized, permitted or acquiesced in the contravention also commits the contravention.

(4) The time limit for levying a penalty against a person under subsection (2) is 2 years after the facts on which the penalty is based first came to the knowledge of a council member or a contractor, an employee or an agent of the council.

(5) Before the council levies a penalty under subsection (2), it must consider all of the following:

- (a) any previous contravention of a similar nature by the person if the contravention was the subject of
  - (i) a determination under this section in the previous 10 years, or
  - (ii) a consent agreement under section 25 in the previous 12 months;
- (b) the gravity and magnitude of the contravention;
- (c) whether the contravention was repeated or continuous;
- (d) whether the contravention was deliberate;
- (e) any economic benefit derived by the person from the contravention;
- (f) the person's cooperation and efforts to remedy the contravention;
- (g) the person's efforts to prevent the contravention;
- (h) whether relevant forest management objectives specified in Division 1 of Part 3 are being achieved despite the contravention.

(6) If the council levies a penalty under subsection (2), the council must give a notice of determination to the person, and the owner if the owner is not the person against whom the penalty is levied, and the notice must set out

- (a) the nature of the contravention,
- (b) the amount of the penalty,
- (c) the date by which the penalty must be paid,
- (d) the person's right to request that the council reconsider the penalty, and
- (e) the person's right to appeal the penalty to the commission.

(7) If the council levies a penalty under subsection (2), the council must give particulars of the penalty to the Minister of Finance as soon as practicable

- (a) if there is no appeal of the penalty, after the end of the appeal period, and
- (b) if there is an appeal of the penalty, after the person who is the subject of the penalty has no further right of appeal.

(8) The council must not levy a penalty under this section on an owner if the council has entered into a consent agreement under section 25 with the owner and the owner is complying with the agreement.

(9) An order under subsection (2) (a) (i) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

## Remediation orders

**27** (1) The council, after giving an owner or a contractor, employee or agent of the owner who is alleged to have contravened a provision of this Act or the regulations an opportunity to be heard, or after one month has elapsed after the date on which the person was given the opportunity, may determine whether the person has contravened a provision of this Act or the regulations.

(2) If the council determines that an owner or a contractor, employee or agent of the owner has contravened a provision of this Act or the regulations, the council may order the person to remedy the contravention by

- (a) carrying out a requirement of this Act or the regulations that the person has failed to carry out, or
- (b) repairing or mitigating damage to private managed forest land caused by the contravention,

and the person must comply with the order.

(3) The time limit for making an order under subsection (2) is 2 years after the facts on which the order is based first came to the knowledge of a council member or a contractor, an employee or an agent of the council.

(4) If the council makes an order under subsection (2), the council must give a copy of the order to the person named in the order, and the owner if the owner is not the person named in the order, and the order must set out

- (a) the nature of the contravention,
- (b) the nature of the work to be done to remedy the contravention,
- (c) the date by which the work must be completed,
- (d) the person's right to request that the council reconsider the order, and
- (e) the person's right to appeal the order to the commission.

(5) An owner must not obstruct a person who is complying with a remediation order.

(6) If the council makes an order under subsection (2) against a person other than the owner of the private managed forest land, the owner may, on written notice to the council in the prescribed form and in the prescribed manner, assume responsibility for complying with the order and the order is deemed to be an order naming the owner instead of the other person.

(7) If an owner gives written notice to the council under subsection (6), the council must serve notice on the person who is named in the order that the owner has assumed responsibility for complying with the order and the person named in the order is not responsible for complying with that order.

### **Limitation on proceedings**

**28** (1) The council must not levy a penalty under section 26 for a contravention in respect of which the government has proceeded with a prosecution of the contravention under a regulation that provides the contravention is an offence.

(2) The government must, in accordance with the regulations, stay a proceeding for an administrative remedy under section 26 in respect of a contravention if the government has proceeded with a prosecution of the contravention under a regulation that provides the contravention is an offence.

### **Defences to administrative proceedings**

**29** For the purposes of a determination of the council under sections 26 and 27, a person must not be found to have contravened a provision of this Act or the regulations if the person establishes that

- (a) the person exercised all due diligence to prevent the contravention,
- (b) the person reasonably and honestly believed in the existence of facts that if true would establish that the person did not contravene the provision, or
- (c) the person's actions relevant to the provision were the result of an officially induced error.

### **Stop work orders**

**30** (1) If the council or a person authorized in writing by the council considers that an owner or a contractor, employee or agent of the owner is contravening a provision of this Act or the regulations, the council or authorized person may order that the contravention cease, or cease to the extent specified by the order.

(2) An order under this section may be made to apply generally or to one or more owners or persons named in the order.

(3) An order under this section must be in writing and include

- (a) the nature of the contravention,
- (b) the extent to which the contravention must cease, and
- (c) the date by which the requirement of paragraph (b) must be met,

and the person named in the order must comply with that order.

(4) Despite subsection (3), if the council or authorized person is of the opinion that the contravention is causing, or may imminently cause, serious damage to the environment, the council or authorized person may order that the contravention cease, or cease to a specified extent, and subject to subsection (5), the order need not be in writing.

(5) Within 96 hours of making a stop work order under subsection (4), the council or authorized person must issue the order in writing, as specified in subsection (3), or the order ceases to be effective.

(6) The council or authorized person may

- (a) rescind a stop work order if the council or authorized person determines that there were insufficient grounds for issuing the order, or
- (b) vary a stop work order
  - (i) on new information being provided, and
  - (ii) with the consent of the owner or person who is the subject of the order.

(7) Despite subsection (6), the council or authorized person may not rescind or vary a stop work order that is the subject of a decision of the council under section 32.

### **Notification to assessor**

**31** (1) The council may notify the assessor that an owner or a contractor, employee or agent of the owner, in the course of carrying out the contract, employment or agency, has contravened or is contravening a provision of this Act or the regulations.

(2) On September 30 of each year the council must notify the assessor of

- (a) the names of the owners and the legal descriptions of private managed forest land, and

(b) the names of the owners and the legal descriptions of land in respect of which a management commitment has been withdrawn under section 18 during the preceding 12 months.

### **Power of the council to rescind or vary orders, decisions or determinations**

**32** (1) On the request of an owner or a contractor, employee or agent of the owner, or on its own initiative, the council may rescind an order, a decision or a determination made by the council or an authorized person under this Act if the council determines that there were insufficient grounds for making the order, decision or determination.

(2) On the request of an owner or a contractor, employee or agent of the owner, or on its own initiative, the council may vary an order, a decision or a determination made by the council or authorized person under this Act

(a) on new information being provided to the council, and

(b) with the consent of the person who was the subject of the order, decision or determination.

(3) Despite subsections (1) and (2), the council may not rescind or vary an order, a decision or a determination that is the subject of an appeal under section 33 after the conclusion of the appeal.

(4) If the council rescinds or varies an order, a decision or a determination under this section and the order, decision or determination is the subject of an appeal under section 33 that is not yet concluded, the council must notify the commission.

### **Appeal to commission**

**33** (1) A person who is the subject of an order, a decision or a determination of the council under section 26 (1), 27 (1) and (2), 30, 31 (1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

- (9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.
- (10) The commission or a member of it may make an interim order in an appeal.
- (11) Hearings of the commission are open to the public.
- (12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions
- (a) to summon and enforce the attendance of witnesses,
  - (b) to compel witnesses to give evidence on oath or in any other manner, and
  - (c) to compel witnesses to produce records and things.
- (13) The failure or refusal of a person
- (a) to attend,
  - (b) to take an oath,
  - (c) to answer questions, or
  - (d) to produce the records or things in the person's custody or possession,
- makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.
- (14) The commission may retain, call and hear an expert witness.
- (15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may
- (a) by order, confirm, vary or rescind the order, decision or determination,
  - (b) refer the matter back to the council or authorized person for reconsideration with or without directions,
  - (c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or
  - (d) make any other order the commission considers appropriate.
- (16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

### **Appeal to court**

- 34** (1) A party to the appeal before the commission may appeal, within 3 weeks of being given the decision of the commission in writing and by application to the Supreme Court, the decision of the commission on a question of law or jurisdiction.
- (2) After an application is brought to the Supreme Court, a judge may order, on terms he or she considers appropriate, that all or part of the decision of the commission be stayed.
- (3) An appeal from a decision of the Supreme Court lies with the Court of Appeal with leave of a justice of the Court of Appeal.

### **Division 3 – Offences**

## Offences

- 35** (1) The Lieutenant Governor in Council may provide, by regulation, that
- (a) a contravention of a regulation of the Lieutenant Governor in Council or a regulation of the council is an offence, and
  - (b) a person convicted of an offence contravening a regulation is liable to a fine not exceeding \$500 000.
- (2) The time limit for laying an information respecting an offence under the regulations is 2 years after the facts on which the information is based first came to the knowledge of a council member or a contractor, an employee or an agent of the council.
- (3) In a prosecution of an offence for contravention of the regulations, it is sufficient proof of the offence to establish that it was committed by the defendant's employee or agent even if the employee or agent has not been identified or prosecuted for the offence.
- (4) If a corporation commits an offence for contravening the regulations, a director or an officer of the corporation who authorized, permitted or acquiesced in the offence also commits the offence.
- (5) A proceeding, conviction or penalty for an offence under the regulations does not relieve a person from any other liability.
- (6) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

## Court orders

- 36** (1) If a person is convicted of an offence under this Act, in addition to any other punishment that may be imposed, the court may order the person to do one or more of the following:
- (a) refrain from doing anything that may result in the continuation or repetition of the offence;
  - (b) take any action the court considers appropriate to remedy or avoid any harm to the environment that may result from the act or omission that constituted the offence;
  - (c) publish, at the person's own cost, the facts relating to the conviction;
  - (d) pay court costs;
  - (e) pay costs of the investigation;
  - (f) pay compensation to make restitution.
- (2) The court that convicts a person of an offence under this Act may increase a fine imposed on the person by an amount equal to the court's estimation of the amount of the economic benefit derived by the person as a result of having committed the offence.
- (3) A fine increase under subsection (2)
- (a) applies despite any enactment that provides for a maximum fine, and
  - (b) is in addition to any other fine under this Act.
- (4) Nothing in this section prevents a court that is determining the amount of a fine from taking into consideration
- (a) the payment of an administrative penalty, or
  - (b) actions taken by the person before, during and after the commission of the

offence.

### **Defences to a prosecution**

**37** The following are defences to the prosecution of a person under this Act:

- (a) the person exercised all due diligence to prevent the commission of the offence;
- (b) the person reasonably and honestly believed in the existence of facts that if true would establish that the person did not commit the offence;
- (c) the person's actions relevant to the offence were the result of an officially induced error.

### **Remedies preserved**

**38** The provisions of this Part are in addition to the provisions of any other enactment or rule of law under which

- (a) a remedy or right of appeal is provided, or
- (b) a procedure is provided for inquiry into or investigation of a matter, and nothing in this Act limits or affects that remedy, right or procedure.

### **Powers cumulative**

**39** Subject to section 28, the powers in this Act and the regulations for the council or the commission to

- (a) make an order, a decision or a determination,
- (b) impose a fine or penalty, or
- (c) commence a proceeding

may be exercised separately, concurrently or cumulatively and do not affect the powers of the government under this or any other enactment.

## **Part 5 – General**

### **Service and receipt of documents**

**40** If this Act or the regulations require or authorize the council to serve a notice or other document on a person, the service may be effected in one of the following ways:

- (a) by personal service, in which case service is effected when the person is served;
- (b) by registered mail to the person's last known address, in which case service is deemed to be effected on the 14th day after the document was sent by registered mail;
- (c) if the person or address is not known, by publication once in a newspaper having general circulation in the locality in which the private managed forest land is situated, in which case service is deemed to be effected on the 7th day after the date of publication.

## Penalties into the consolidated revenue fund

**41** Penalties under sections 25 and 26 must be paid into the consolidated revenue fund.

## Power to make regulations

**42** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing procedures for appointment of council members in accordance with section 6 (3);
- (b) respecting the custodianship and disposition of property held by the council, including revenue from annual administration fees and levies charged to and collected from owners, if the Lieutenant Governor in Council considers it necessary or advisable;
- (c) respecting the management of critical wildlife habitat on private managed forest land, and without limitation, including the following:
  - (i) identification of critical wildlife habitat;
  - (ii) notification to prescribed persons;
  - (iii) limitation on an activity within critical wildlife habitat provided that the limitation on activity, unless otherwise agreed to by the owner, does not exceed
    - (A) 1% of the total area of private managed forest land owned by that person, and
    - (B) a period of one year;
- (d) specifying
  - (i) the manner in which an exit fee to be paid in accordance with section 19 is to be calculated,
  - (ii) to whom notification of an exit fee and its amount must be given by the council and the manner in which the council must give the notification,
  - (iii) when the exit fee must be paid, and
  - (iv) the rate of interest that may be charged on exit fees and the manner of calculating the interest;
- (e) exempting an owner from paying an exit fee in accordance with section 19 or prescribing circumstances when an exit fee is not required to be paid;
- (f) prescribing the form of notices and manner in which notice is given by an owner under section 27 (6);
- (g) respecting stays of proceedings under section 28 (2);
- (h) specifying rules of practice and procedure for appeals to the commission, including time limits, extension of time limits, rules of evidence, notices and forms;
- (i) specifying records that must be transferred from the Provincial Agricultural Land Commission established under section 4 of the *Agricultural Land Commission Act* to the council for the purposes of this Act and when the

records must be transferred;

(j) subject to subsection (3), providing that contravention of a regulation of the Lieutenant Governor in Council or of a regulation of the council is an offence.

(3) The Lieutenant Governor in Council must not make a regulation under subsection (2) (j), unless regulations are also made or enacted respecting stays of proceedings referred to in section 28 (2).

(4) The Lieutenant Governor in Council may make regulations respecting matters that are

- (a) referred to in this Act as having to be in accordance with the regulations, or
- (b) indicated by this Act as being a matter for regulation.

(5) The Lieutenant Governor in Council may make a regulation defining a word or expression used but not defined in this Act.

(6) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:

- (a) delegate a matter to a person;
- (b) confer a discretion on a person;
- (c) make different regulations for different persons, places, things, transactions or special concerns, or classes of persons, places, things or transactions.

(7) The Lieutenant Governor in Council may make regulations establishing criteria that a person must use when exercising a discretionary power conferred on the person by this Act or the regulations.

(8) The Lieutenant Governor in Council may make regulations exempting a person, place or thing, or class of persons, places or things, from a requirement of this Act or the regulations and may make the exemption subject to conditions.

(9) The Lieutenant Governor in Council may make regulations respecting the recovery of money that is required to be paid to the government under this Act.

## **Power of council to make regulations**

**43** (1) The council may make regulations as follows:

- (a) prescribing procedures and rules for notification to the owners about the amount of the annual administration fee, a levy or a surplus under section 9 and time limits for payment of a fee or levy;
- (b) respecting information that must be included in a management commitment under section 17 and the form of management commitments;
- (c) prescribing the form and content of the notification of withdrawal under section 18;
- (d) respecting information that must be included in an annual declaration under section 20 and prescribing the form and content of declarations;
- (e) respecting requirements for and constraints on management of soil conservation, water quality and fish habitat on private managed forest land;
- (f) respecting the requirement to reforest, including, without restriction,
  - (i) the attributes, including species, density and distribution of crop trees, that must be attained by a crop of trees on an area before the

area is considered to be reforested, and

(ii) the time period within which the area must be reforested;

(g) exempting a person, place or thing, or class of persons, places or things, from a requirement of the regulations under paragraph (e) or (f) and may make the exemption subject to conditions;

(h) prescribing circumstances in which regulations under paragraph (e) or (f) do not apply.

(2) A regulation made by the council under subsection (1) (e), (f), (g) or (h) must not be inconsistent with the forest management objectives in Division 1 of Part 3 unless

(a) the regulation is made under subsection (1) (g) or (h) to address the management of forest health factors,

(b) the forest health factors must be managed in a unique manner in order to preserve resource values on private managed forest land or on surrounding land, and

(c) the management of the forest health factors cannot be accomplished in a manner that is consistent with the forest management objectives in Division 1 of Part 3.

(3) The council may make regulations concerning its practices and procedures for the purposes of section 32.

(4) In making a regulation under this section, the council may do one or more of the following:

(a) delegate a matter to a person;

(b) confer a discretion on a person;

(c) make different regulations for different persons, operations, places, things, transactions or special concerns, or classes of persons, operations, places, things or transactions.

## **Part 6 – Transitional**

### **Repealed**

**44** [Repealed 2003-80-44 (3).]

### **Transitional – existing managed forest land classification**

**45** (1) On the coming into force of this section, any land that was classified as managed forest land under section 24 of the *Assessment Act*, as it read immediately before its re-enactment by this Act, is deemed to be private managed forest land under this Act and managed forest land under the *Assessment Act* without the owner having to submit a management commitment under section 17 of this Act, and the owner must comply with this Act and the regulations.

(2) If an owner referred to in subsection (1) notifies the council and the assessor that he or she is withdrawing his or her private managed forest land within one year of the coming into force of this section, the owner is not required to pay the exit fee under section 19.

## Transitional — council members

- 46** (1) Despite section 6, this section applies for the first 6 months of operation of the council in respect of appointment of the council members.
- (2) The minister must appoint a chair of the council for a term of no longer than six months and set the other terms of appointment of the chair.
- (3) The minister may appoint council members for a term of no longer than six months and set the other terms of appointment of the council members.

## Part 7 — Consequential Amendments and Repeals

### Consequential Amendments and Repeals

[Note: See Table of Legislative Changes for the status of sections 47 to 62.]

<b>Section(s)</b>	<b>Affected Act</b>
47-49	<i>Assessment Act</i>
50	<i>Community Charter</i>
51	<i>Environmental Assessment Act</i>
52	<i>Forest and Range Practices Amendment Act, 2003</i>
53	<i>Forest Land Reserve Act</i>
54	<i>Forest Practices Code of British Columbia Act</i>
55	<i>Freedom of Information and Protection of Privacy Act</i>
56-58	<i>Local Government Act</i>
59	<i>Miscellaneous Statutes Amendment Act, 2000</i>
60-61	<i>Private Managed Forest Land Act</i>
62	<i>Vancouver Charter</i>

## Commencement

- 63** This Act comes into force by regulation of the Lieutenant Governor in Council.