Module 3: Managing Access to Non-Timber Forest Resources

This professional development module on managing access to non-timber forest resources includes:

- An introduction to resource tenure concepts, including property rights, common pool resources, and transaction costs, and their relevance to the development of appropriate regulatory frameworks for non-timber forest resources (NTFRs);
- An overview of the primary policies and laws affecting NTFRs in British Columbia; and
- A comparison of approaches to structuring and implementing potential permit systems for NTFRs.

This module is aimed at resource managers, community development specialists, and others with an interest in forest management. A key goal of the module is to provide participants with an understanding of how policies and laws can be used as tools for achieving effective compatible management and sustainable utilization of non-timber resources.
Overview of the Module

The Managing Access to Non-Timber Forest Resources module consists of 3 lessons:

• Tenure and NTFR Management: Key Concepts of Property and Resources
• Tenure and NTFR Management: Case Studies
• Laws, Policies, and Permit Systems for NTFRs

This course module begins by laying out the conceptual foundation for understanding what elements must be in place for NTFR regulatory systems to work. It then explores a number of case examples to illustrate how an understanding of concepts such as property, common pool resources, and transaction costs is crucial to knowing when and how to develop effective NTFR laws, policies, and permit systems.

This module is part of a series of distance learning modules on compatible management. It is designed for on-line or distance education learners working individually or as part of an on-line group guided by an instructor. If part of a group, activities could be designed to promote collaboration and interaction with co-learners. Learning success will be evaluated based on the completion of a series of activities.

The required prerequisite for this module is Module 1: An Introduction to Compatible Management of Timber – Non-Timber Resources. Exceptions to the prerequisite requirement (i.e., for those able to demonstrate the required knowledge of the NTFR sector and the concept of compatible management) may be approved through prior discussion with the course instructor.

Resources

Learning is supported with the written notes provided as well as web links to on-line resources. Suggestions for additional resources are also included.

Module Outline & Timelines

This professional development module comprises the following 3 lessons. The estimated time that it will take you to work through each lesson is noted. Additional time may be required to complete assignments.

• Lesson 1. Tenure and NTFR Management: Key Concepts about Property and Resources (2 hours)
• Lesson 2. Tenure and NTFR Management: Case Examples (2 hours)
• Lesson 3. NTFR Laws, Policies, and Permit Systems (2 hours)

Assessment

Student assessment is based upon successful illustration of learning outcome achievement through the assignments provided in each lesson. These assignments involve:

• Summarizing key points from the readings and learning objects and
• Applying the knowledge gained about approaches to managing access to NTFRs and their markets to the student’s specific situation.

Marks are apportioned as follows:

• Lesson 1 – 30%
• Lesson 2 – 35%
• Lesson 3 – 35%
• Lesson 4 – 30%
Lesson 1. Tenure & NTFR Management: Key Concepts about Property & Resources

LESSON OVERVIEW

Appropriate policy and legal frameworks are prerequisites to the development of compatible management systems that address multiple values objectives. This lesson introduces participants to concepts of property and property rights, common pool resources, and transaction costs, all of which play important roles in whether and how NTFRs are regulated.

Lesson 1 helps set the stage for the other topics to be covered in this module. Through the readings and exercises, participants will develop an understanding of the circumstances in which it is desirable and feasible to develop regulatory frameworks for natural resources, and when it is not.

LEARNING OUTCOMES

By the end of this lesson, participants will be able to:

- Describe the major categories of property and list the elements that make up a bundle of property rights
- Identify the difference between open access and common property resources
- Understand the distinction between common pool resources and common property resources
- Describe how transaction costs affect NTFR regulation.

READINGS & RESOURCES


http://cfs.nrcan.gc.ca/publications?id=29185


LESSON NOTES

Harvesting of non-timber forest resources in British Columbia occurs on a range of landholding types, including provincial Crown, First Nations, municipal, large industrial timber, and small private holdings. Since the 1990s, when demand for NTFRs such as pine mushrooms, salal, and some wild medicinal plants increased dramatically, a variety of stakeholders have called for regulation of their harvest, transport, processing and sale. However, nearly two decades later, NTFR activities on all landholding types in British Columbia remain largely "unrestricted, unmonitored and unregulated, operating within, around and beneath a timber dominated system of land use (Tedder 2008).”

Across the border in the states of Washington and Oregon, concerted efforts by state and federal agencies to regulate floral greens and wild mushroom harvesting during this same period proved costly, contentious, and only marginally effective in many locations. The underlying assumptions of these efforts are that regulation will increase incentives to manage NTFRs more sustainably, generate revenues for landowners and governments, reduce conflict among stakeholders, or a combination of these objectives. However, in an analysis of NTFR policies, laws, and regulation in the U.S. and parts of Canada, Tedder (2008:7) challenges these assumptions. He identifies two questions that need to be considered when evaluating whether and under what circumstances regulation of these resources is a viable option:

1. "Do more well defined property rights necessarily influence the way in which
NTFRs are managed?

2. What NTFR characteristics support or hinder the efficacy of any particular property rights regime?"

Answering these questions requires an understanding of property rights, the nature of the resources, and the social context in which the proposed regulatory framework would be implemented. This module introduces participants to fundamental concepts such as property rights, property types, and transaction costs. It also clarifies the distinction between common property and open access resources, and between common property and common pool resources.

Having a clear grasp of these distinctions is critical to knowing not only what policies and regulations would be helpful for achieving management objectives, but also what social conditions need to be present before regulation is a viable option.

POINTS TO PONDER

As you make your way through the unit resources, keep in mind the following questions and comments.

- How does the heterogeneity of NTFRs and those who use them pose a challenge for efforts to regulate them?
- Under what circumstances might regulation exacerbate rather than solve problems such as excessive harvesting or tensions between NTFR stakeholders?

ASSIGNMENT 1.1

After completing the required readings for this unit answer the following questions:

1. Briefly describe each of the four property types and the seven components that make up a bundle of property rights. How would you describe the mix of property types in the area that you live or work in? What are the implications of this mix for NTFR policy and regulation in your area?

2. Tedder states that the “tragedy of the commons” is more accurately described as the “tragedy of open access.” Explain what he means by this statement. What are the implications of his statement for NTFR regulation?

3. Explain the difference between a common pool resource and common property. Do you agree with Tedder that NTFRs are a common pool resource? Provide an example that supports your position.

4. Explain what transaction costs are, including some examples of transaction costs related to NTFRs. Drawing on your own experiences or the reading material, describe how the heterogeneity of NTFRs affects transaction costs and thus the viability of efforts to regulate them.

Limit your answer to 500 words or less. Submit your answer to the instructor by the date indicated in your course schedule.

ADDITIONAL READINGS & RESOURCES


Lesson 2. Tenure & NTFP Management: Case Examples in British Columbia

LESSON OVERVIEW

A complex set of laws and policies govern how resources are managed on both public and private lands in British Columbia. However, as Tedder (2008) points out, the mere existence of laws and regulations does not guarantee that they will be enforceable. The question of enforceability is crucial when considering the development of regulatory frameworks for NTFRs since lack of capacity or unwillingness to enforce creates de facto open access conditions on lands nominally held under other property arrangements. This in turn can heighten the likelihood of resource degradation under conditions of significant and chronic resource scarcity.

Lesson 2 explores four case studies of NTFR management on lands held under different property regimes in British Columbia to examine how property rights affect NTFRs. The types of property regimes examined include de facto open access on public land, community forest tenures on public land, a small municipal forest reserve, and a large private industrial forest. Through the readings and exercises, participants will learn how property regimes and contextual characteristics influence investment in sustainable NTFR management as well as management costs and entrepreneurial environments.

LEARNING OUTCOMES

By the end of this lesson, participants will be able to:

- Describe how the Land Act, Forest Act, and Forest and Range Practices Act relate to NTFR management,
- Demonstrate an understanding of how property rights and contextual characteristics influence NTFR management
- Identify possible alternatives to current approaches to NTFR management

READINGS & RESOURCES


LESSON NOTES

The majority of British Columbia’s land base is public land managed under the authority of the provincial Crown. The Land Act grants the provincial Crown the authority needed to sell, lease, and grant licenses to occupy Crown land; the Forest Act governs the forest tenure system (oriented toward commercial timber production), and the Forest and Range Practices Act (FRPA) is a key component of the legal framework for forest resource management in British Columbia. FRPA establishes a planning process for forest and range management and governs forest practices, monitoring, and enforcement (Hamilton, 2012). In practice, the provincial Crown’s authority over forest and
other natural resources on much of British Columbia’s public land base is constrained by the presence of First Nations’ unextinguished aboriginal rights or title in many areas.

A study by Tedder (2008) of the influence of property rights and contextual characteristics on NTFR management for four different types of property regimes (open access to provincial Crown land, community forest agreements, small community-based private holding, and large industrial timber holding) found that NTFR management differed considerably on public and private lands. Private landowners sought to restrict access, but invested little in enhancing or maintaining non-timber resources. Public landholders made some investments in enhancing NTFRs, but did little to restrict access. Tedder found that in all cases, integrating NTFRs into forest management was hampered by lack of information about the resources and their markets, heterogeneity of the resources and users, unwillingness to develop or inability to enforce access restrictions, among other factors. He argues that given these factors, a single unified approach to NTFR management and regulation is unlikely to work. He calls for disassociating NTFRs from timber tenures and instead linking their management to silvicultural tenures as a means for creating property incentives for broad-based multiple values oriented management.

POINTS TO PONDER

As you make your way through the unit resources, keep in mind the following questions and comments.

• What provisions in the various Acts described directly affect NTFPs?

• What commonalities exist among the four case studies with respect to NTFR regulation and management?

• How do First Nations’ unextinguished aboriginal rights and title impact or have the potential to impact the NTFR policy landscape in British Columbia?

ASSIGNMENT 2.1

After completing the required readings for this unit answer the following questions:

• How do the Land Act, Forest Act, and Forest and Range Practices Act affect NTFR regulation and management? Provide examples based on the reading materials or your own experiences to support your answer.

• In their review of policies and legislation affecting NTFRs in British Columbia, Tedder et al. (2002: 84) conclude that “one size fits nothing.” Explain what they mean by “one size fits nothing”, drawing on the case examples and analysis in Tedder’s 2008 report and Hamilton’s 2012 paper to support your argument.

Limit your answer to 500 words or less. Submit your answers to the instructor by the date indicated in your course schedule.

ADDITIONAL READINGS & RESOURCES

Laird, S.L. and R.P. Wynberg. 2007. Less is often more: governance of a non-timber forest product, maurla (Sclerocarya birrea subsp. caffra) in southern Africa. International Forestry Review. 9(1): 475-490. [This journal article makes a case for a cautious approach to regulating NTFRs, and provide examples of how hasty and inappropriate regulation can hinder achievement of social, economic, and ecological policy objectives.]

Lesson 3. NTFR Laws, Policies & Permit Systems

LESSON OVERVIEW

In British Columbia, a range of policies and laws affect who has access to non-timber forest resources, the conditions of access, and the distribution of benefits derived from their harvest, processing, and sale. However, these
policies and laws rarely specifically target NTFRs or associated activities. Instead, they are designed to regulate a much broader set of resources and activities. At the harvesting and buying level, permitting systems can be used as mechanisms for controlling access to non-timber forest resources. Designing an appropriate permit structure requires a good understanding of the resource and the institutional context in which harvesting, management and use take place. Understanding First Nations’ claims and concerns related to NTFRs are likewise critical considerations when crafting NTFR regulatory systems given the long Aboriginal history of use of these resources and the importance NTFRs continue to have in subsistence and cultural practices of Aboriginal peoples.

Lesson 3 provides an overview of the major policies and laws at the federal and provincial level that affect non-timber forest resources in British Columbia. It also discusses some common approaches to permitting NTFRs – time-based, volume-based, and area-based permits – and issues related to the design and enforcement of permit systems. A discussion of First Nations’ rights to non-timber forest resources concludes the lesson.

**LEARNING OUTCOMES**

By the end of this lesson, participants will be able to:

- Describe the major laws and policies governing the harvest, transport, processing, and sale of NTFRs in British Columbia
- Understand the difference between time-based, volume-based, and area-based permits and the circumstances under which each is likely to be an effective approach for controlling access to NTFRs
- Summarize key aspects of First Nations’ rights to NTFRs.

**READINGS & RESOURCES**


**LESSON NOTES**

A variety of laws and policies besides the Land Act, Forest Act, and the Forest and Range Practices Act affect NTFR harvesting, use, processing, and sales. Hillyer and Atkins (2004) report on the policies and laws affecting NTFRs that are wild foods indicates that little direct regulation of NTFRs takes place. Instead, many of the statutes, regulations, and common law that apply generally, such as tax and employment laws or laws covering the transportation and sale of goods, also apply to individuals and firms.
participating in the NTFR industries. Similarly, laws and regulations that govern access to and uses of forest, range, and cultural resources in general, such as the Endangered Reserve Act, the Heritage Conservation Act, the Species At Risk Act, and the Plant Protection Act, also apply to NTFRs.

In many parts of the world, permit systems are used to regulate commercial access to NTFRs on private and public land. As noted in Lesson 2, some large industrial private landowners in British Columbia have implemented permit systems for NTFRs but in general, permitting for these resources remains relatively rare. A well-designed permit system can provide a variety of benefits, but also requires a significant investment of time and resources to design, implement, and enforce. Enforcement is typically the weakest element of NTFR permit systems, particularly in situations involving large, remotely situated landbases or small landbases where gating is impractical. The likelihood that permit holders will self-police is greater when they have significant opportunity to help shape the structure of the system. This form of participation can substantially lower the costs of enforcement.

First Nations’ aboriginal rights and title add an additional layer of complexity to the NTFR policy landscape. Many First Nations communities continue to harvest NTFRs on their traditional territories. Traditional use of NTFRs was not limited to meeting personal and household subsistence needs, but also included the gathering of products with the intention of exchanging them in long-standing and extensive trade networks. Legal principles that have emerged from court decisions regarding Aboriginal rights to fish, such as the priority of Aboriginal rights over other users’ rights and the requirement that First Nations be consulted when government actions may affect Aboriginal rights, appear likely to apply to NTFRs as well.

**POINTS TO PONDER**

As you make your way through the unit resources, keep in mind the following questions and comments.

- What are some examples of natural resources-related laws that affect NTFRs?
- What are some examples of laws outside the domain of natural resources that affect NTFPs?
- What are the distinguishing characteristics of area, volume, and time-based permit systems?
- What are some examples of the legal principles from decisions related to Aboriginal rights to fish that are likely to apply to NTFRs as well?

**ASSIGNMENT 3.1**

After completing the required readings for this unit answer the following questions:

- Select two laws or regulations from one of the regulatory stages mentioned by Hillyer and Atkins (harvesting, selling to buyer’s agents/distributors/exporters, processing, or selling to final consumer) and drawing on examples from the readings or your own experiences, describe how those laws apply to NTFRs. If you cannot think of real-life examples, answer the question using plausible hypothetical examples.

- Select one permit system type (i.e., area, volume, or time-based) and describe how it works using examples from the readings or your own experiences. What are the limitations of that system with respect to enforcement? Describe some of the strategies that can be used to overcome those limitations.

- Describe how First Nations’ unextinguished Aboriginal rights and title are likely to influence NTFR investment, regulation, and management in coming years. Use examples from the readings or your own experiences to support your case.

Limit your answer to 500 words or less. Submit your answer to the instructor by the date indicated in your course schedule.
ADDITIONAL READINGS & RESOURCES

http://cntr.royalroads.ca/law-policy-compendium. [This series of reports summarizes policies and laws affecting NTFPs in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and the Yukon.]

http://www.treesearch.fs.fed.us/pubs/21091 [This report summarizes the results of a national survey of NTFP management programs on national forests in the United States.]

McLain, Rebecca J. 2008. A wild mushroom panopticon: The extension of nation-state control over the forest understory in Oregon. Economic Botany. 62(3): 343–355. [This article describes efforts by the U.S. Forest Service to establish a regulatory framework for wild mushrooms on national forests in the northwestern United States during the 1990s.]

http://cntr.royalroads.ca/files-cntr/Property%20Rights.pdf (Pp. 62-83 Section 4.3 Examples of the management of CPRs and NTFPs in other jurisdictions and Section 4.4 From status quo to management). [Section 4.3 provides examples of NTFP permit systems in the United States and discusses their strengths and limitations; Section 4.4 summarizes the salient characteristics of NTFPs and the industries and tensions associated with their use. Section 4.4 also identifies the key elements of effective resource management systems].