

# Chapter 4

## Department of Natural Resources

### Private Wood Supply

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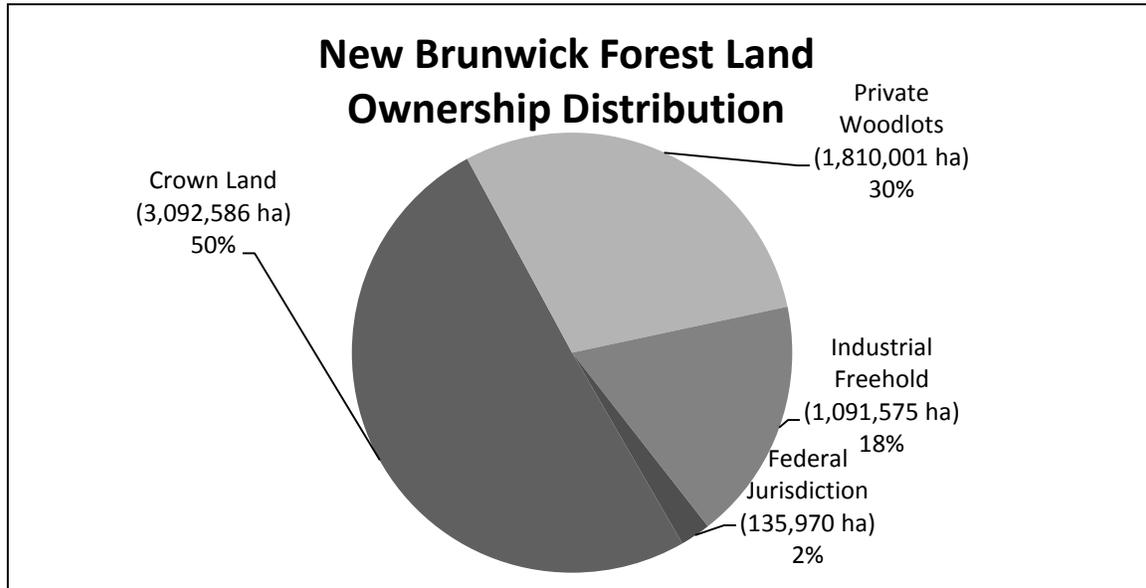
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# Private Wood Supply

## Introduction to Private Wood Supply

- 4.1** In this chapter we examine the legislated responsibilities of the Department of Natural Resources related to private woodlots under the *Crown Lands and Forests Act*. A glossary of terms is provided in Appendix I at the end of this chapter.
- 4.2** We also looked at the oversight role of the New Brunswick Forest Products Commission as it relates to the New Brunswick Forest Products Marketing Boards under the *Natural Products Act*.
- 4.3** We chose to look at these aspects of private wood supply for a number of reasons we believe are of significance to the Province, including:
- Private ownership of productive forest is significant in New Brunswick;
  - Private woodlots can provide a significant source of timber to industry;
  - Private timber sales provide economic benefits to the Province; and
  - Combined Department of Natural Resources and Regional Development Corporation (RDC) investment from 2010-11 through 2012-13 in private woodlot silviculture was \$6 million per year.

Exhibit 4.1 - New Brunswick Forest Land Ownership Distribution



Note: 1 hectare (ha) = 2.47 acres

Source: Department of Natural Resources

***Private ownership of productive forest is significant in New Brunswick***

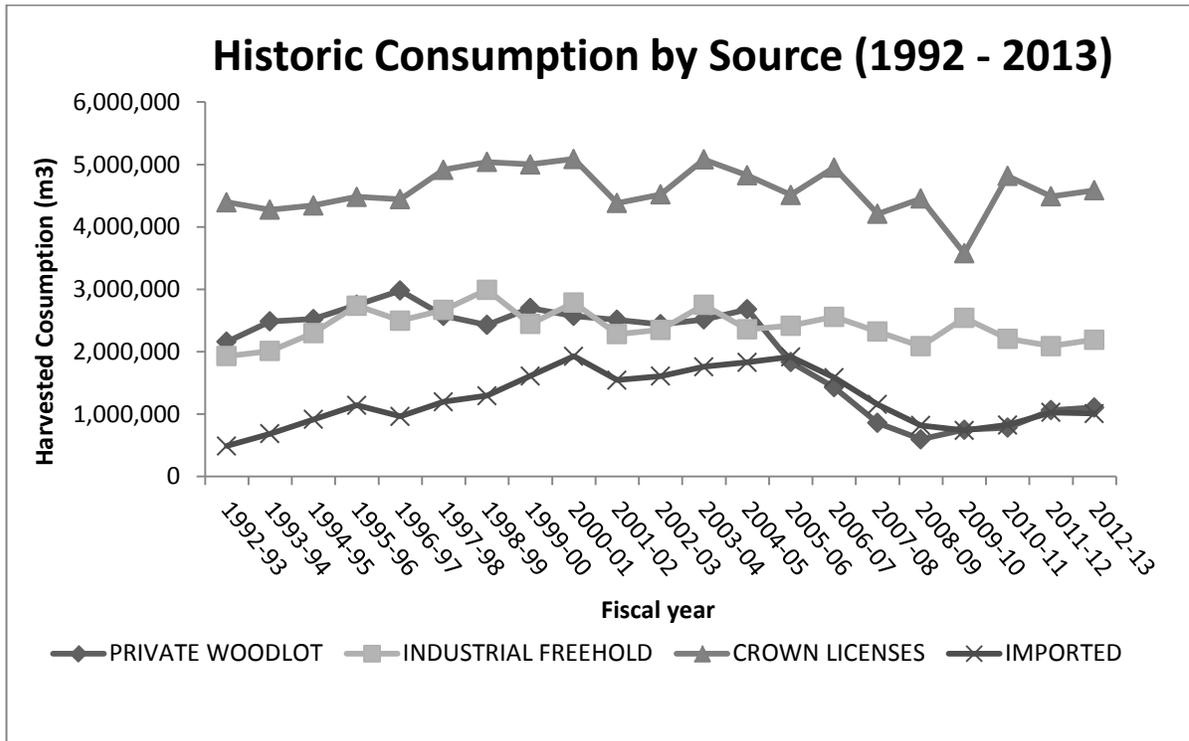
**4.4** Private woodlots account for 30% of forest area in the Province. Appendix A of the Private Forest Task Force report provided to government in December 2011 estimated there were nearly 42,000 non-industrial forest owners in New Brunswick. Industrial ownership represents an additional 18% of privately owned forest area<sup>1</sup>. Exhibit 4.1 presents an overview of New Brunswick forest land ownership.

***Private woodlots can provide a significant source of timber to industry***

**4.5** Exhibit 4.2 shows historic timber consumption figures for 1992 through 2013 by source to New Brunswick processors. Crown timber was the dominant source of supply for the period highlighted but prior to 2004-05 private woodlots were a relatively important source of timber supply. Current private wood supply is well below historical values but is beginning to increase as markets strengthen.

<sup>1</sup> "A Snapshot of New Brunswick Non-Industrial Forest Owners in 2011: Attitudes, Behaviour, Stewardship and Future Prospects."

Exhibit 4.2 - Historic Consumption by Source (1992-2013)



Source: Created by AGNB with Department of Natural Resources Data (unaudited)

**Harvested Consumption** refers to the amount of wood (measured in cubic metres) consumed by New Brunswick processors.

***Private timber sales provide economic benefits to the Province***

**4.6** As part of the forest sector, private woodlot timber sales provide economic benefit to the Province. The 2012 Private Forest Task Force report indicated that “*the forest sector supports families, fuels the rural economy, and pays for social services*”.<sup>2</sup> It further cited work done by Campbell in 2011<sup>3</sup> suggesting that each additional 10,000 m<sup>3</sup> of wood processed in the Province adds approximately 13 direct and 12 indirect jobs.

**4.7** Total private wood sales through the forest products marketing boards for 2012-13 reported by the New Brunswick Forest Products Commission exceeded \$50.5 million. This was an increase from the previous year’s total sales of \$45.9 million. These numbers do not include direct sales contracts between processors and producers, estimated by the Commission to be about \$15 million for 2013-14. Direct sales contracts were not estimated before 2013-14.

<sup>2</sup> Donald W. Floyd, Robert Ritchie, and Tony Rotherham. “*New Approaches for Private Woodlots: Reframing the Forest Policy Debate*”. (Province of New Brunswick, 2012). Page 4.

<sup>3</sup> Campbell, David. 2011. Jupia Consultants Inc. Personal communication to task force authors.

***Provincial investment in private woodlots was \$5 million in 2012-13***

- 4.8** The Province provides forest management funding for private land silviculture activities to encourage sustainable harvesting practices. The budget for 2012-13 was \$5 million. This amount was completely utilized in 2012-13.
- 4.9** The Department funds two other programs aimed, at least partially, at private woodlot management. In 2012-13 the Province granted \$90,000 to INFOR Inc. who, according to Department documents, provides “information, training, educational services and promotes sustainable management of private woodlots”. An additional \$200,000 was provided to INFOR Inc. to deliver the Maple Silviculture Program for Crown leases and eligible private woodlots.
- 4.10** In addition, the Department fully funds the New Brunswick Forest Products Commission. The budget allocated to the Commission by the Department in 2012-13 totaled \$330,000.

**Objectives**

- 4.11** The first objective we chose related to the role of the Department of Natural Resources under the *Crown Lands and Forests Act*. The objective was:

*To determine if the Department of Natural Resources is meeting its responsibilities respecting timber supply from private woodlots.*

- 4.12** Our second objective dealt with the oversight role of the New Brunswick Forest Products Commission. Our objective for this work was:

*To determine if the New Brunswick Forest Products Commission provides adequate oversight of Forest Products Marketing Boards.*

- 4.13** Appendix II provides criteria used to evaluate our objectives. The Department agreed with the criteria we used in our work.

**Conclusions**

- 4.14** We have concluded the Department of Natural Resources does not meet its principal responsibilities under legislation respecting timber supply from private forest lands.
- 4.15** While the Department has programs supporting sustainable management concepts aimed at increasing forest management practices on private woodlots, our work identified the following deficiencies:
- the Department has no documented, measurable goals and objectives specific to their role in private wood supply;

- the Department does not comply with legislated requirements under the *Crown Lands and Forests Act* specific to their role in private wood supply; and
- the Department does not publicly report on its performance in encouraging sustainable development of private woodlots.

**4.16** The Department's failure to comply with its own legislation and provide leadership on private wood supply issues through a well-defined role and clear objectives contributes to uncertainty for private woodlot owners and conflicts within the marketing board system.

**4.17** We have also concluded that, while the New Brunswick Forest Products Commission acknowledges its oversight role under the *Natural Products Act*, it fails to:

- adequately assess the performance of forest products marketing boards to ensure they are meeting regulatory obligations;
- consistently exercise its authority under legislation to address identified weaknesses in the marketing board system; and
- report publicly on the effectiveness of the Commission's work or marketing board performance.

**4.18** Consequently, the lack of strong marketing board oversight by both the Commission and the Department means the Province cannot determine if the marketing board system is operating as intended in legislation or if significant risks are being adequately managed. Should marketing boards fail, the Province, through the Commission, may be liable for marketing board obligations. For the 2013 fiscal year end, total liabilities for two of the most indebted marketing boards was just under \$1.2 million.

## Summary of Main Points

### Objective 1 – The Role of the Department of Natural Resources

**4.19** The Department of Natural Resources and the New Brunswick Forest Products Commission each have roles in private wood supply. Under the *Crown Lands and Forests Act*, the Department's role is to "...encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province consistent with subsection 29(7.1) and, with approval of the Lieutenant- Governor in Council, may initiate programs for such purposes."

***The Department has no clearly documented strategy for private woodlots providing measurable objectives against which to guide its efforts***

**4.20** We reviewed documentation supplied by the Department regarding its strategic planning and implementation. We could not identify a documented strategy, goal or objective for wood supply from private woodlots. Although it has initiated some actions related to private wood supply, none were complete. Further, despite government’s announcement that the Department would set objectives for private land wood sales in 2010, we saw no evidence that this has yet occurred.

***The Department is not compliant with the Crown Lands and Forests Act***

**4.21** The *Crown Lands and Forests Act* stipulates that the Department will ensure the wood supply from private woodlots is proportional to that from Crown land and the yield can be sustained.

**4.22** The Department has failed to ensure private wood supplied to mills is proportionate. They have not planned for, monitored, or reported on proportional supply since at least 2002.

***The Department does not plan for or target private wood yield***

**4.23** Although the Department establishes an “annual allowable cut” (AAC) for sustained yield, it is not based on complete and accurate forest inventory data and can be as much as ten years out of date. The Department does not use the AAC for planning and measuring effectiveness of its programs.

***Private land silviculture work is actively monitored by the Department for compliance against work standards***

**4.24** The Department has a private land silviculture program. We examined the Department’s processes for monitoring work completed against current, established standards. We found the Department actively monitors work completed against standards and recovers funds from marketing boards for inadequate work when identified.

***The Department has not defined and documented private land silviculture performance objectives that highlight the program’s benefit to the Province***

**4.25** In our review of the private land silviculture program, we could identify no defined goal or objective detailing potential benefit to the Province. The Private Forest Task Force found “Overall, the combined public and private investment in private land silviculture is marginally cost-effective.”<sup>4</sup>

**4.26** Although no specific program objective is defined, the Department indicated increased employment is considered a supplementary benefit of the program. Employment though has not been traditionally tracked, monitored, or reported as an objective of the program.

<sup>4</sup> Donald W. Floyd, Robert Ritchie, and Tony Rotherham. “*New Approaches for Private Woodlots: Reframing the Forest Policy Debate*”. (Province of New Brunswick, 2012). Page 15.

***Public reporting of private woodlot programs and initiatives by the Department can be improved***

**4.27** Public reporting of performance is a fundamental accountability mechanism for departments. By establishing objectives and targets against which results can be effectively measured and reported, departments are publicly accountable for their work.

**4.28** We reviewed the Department's annual reports for the past three years to identify any performance reporting related to their mandate for private woodlots. We found the reports to include statistical information on some aspects of private woodlots, such as private land silviculture, but does not provide performance targets or achievements.

***The public cannot assess if \$5 million annual investment is providing value***

**4.29** Therefore, the public cannot assess if the annual Departmental investment (\$5 million in 2012-13) in private woodlots is providing value to the Province or achieving a defined objective.

**Objective 2 – NB Forest Products Commission Oversight of Forest Products Marketing Boards**

**4.30** The New Brunswick Forest Products Commission, which is supported by full time staff on the Department payroll, is mandated to exercise oversight of the forest products marketing boards under the *Natural Products Act*. Forest products marketing boards are intended to “*control and regulate the marketing of primary forest products, and to ensure that private woodlot owners have a fair and orderly market system for sale of their wood products.*”<sup>5</sup> The Commission has broad powers to address marketing board operations and enforce Orders and directives issued to marketing boards.

***Commission governance practices could be improved***

**4.31** In order for the Commission to properly oversee the marketing board system, practices the Commission uses to govern and prioritize its work should be effective in meeting provincial policy and established best practices. We reviewed Commission documentation on its own governance practices against provincial policy and established best practices. We found the Commission could improve its processes by:

- creating board member profiles and selection criteria for appointments to highlight needed qualifications;
- staggering Commission appointments to ensure adequate knowledge transfer and continuity;
- collaborating with the Minister (or Department) to establish a mandate letter identifying priorities to clarify, focus, and guide the Commission's efforts in accomplishing its objectives;

<sup>5</sup> 2012-2013 Annual Report, New Brunswick Forest Products Commission, December 2013, Page 28.

- establishing a code of conduct defining member responsibilities as well as the rules and principles the Commission will adhere to;
- undertaking Commission self-evaluations to promote continuous improvement; and
- requiring members to annually complete conflict of interest declarations.

***The Department does not appear to regularly review the Commission's mandate and performance***

**4.32** The New Brunswick Agencies, Boards, and Commissions (ABC) appointment policy notes Ministers / departments are responsible for regularly reviewing and updating the mandate of an ABC and reviewing its performance.

**4.33** We requested from the Department any information and documentation they could provide supporting a “regular review and update” on the mandate of the Commission or its performance. They provided no information to confirm this is done on a regular basis for the Commission.

***The Commission has no documented strategy for its oversight role***

**4.34** The Commission has no strategy or specific plan that articulates their mandate for oversight and prioritizes their efforts. Given the limited resources the Commission is provided with, efficient application of those resources is critical. The Commission had begun a strategic planning exercise during our audit.

***Marketing board compliance with Commission Orders and directives is poor***

**4.35** We found that marketing boards do not always comply with the Commission's policy and Orders in the following areas:

- Financial information submissions by the marketing boards are sometimes late and do not meet policy requirements;
- Submission of required monthly reports is often late;
- Schedule A is a report submitted by the marketing boards to the Commission to confirm that cost sharing and funding allocation requirements governing private land silviculture have been respected. The submission of this report by marketing boards is sometimes late and reconciliation to financial statements is inadequate;
- Borrowing authorization requests do not follow policy; and
- Establishment of negotiating agencies representing both the marketing boards and industry to address issues such as price and quantity of product to be sold is not done.

**4.36** The Commission creates Orders and reporting requirements to monitor and review marketing board operations. If

marketing boards do not comply with requirements, the Commission cannot adequately oversee the marketing board system to ensure it is functioning as intended.

***Financial, strategic, and governance oversight by the Commission is inadequate***

**4.37** In our review of marketing board audited financial statements, we identified issues we believe should have prompted the Commission to request information from marketing boards due to financial, strategic investment, and oversight risk. These related to:

- the very weak financial condition of two marketing boards. Five of seven marketing boards operated at a deficit in 2012-13, highlighting the relatively weak overall financial condition of the marketing board system;
- an investment in a sawmill operation through a joint venture agreement entered into by a marketing board. This complex investment has increased from \$290,000 in 2008 to \$795,000 in 2013 and has not generated a return on investment. This strategy has exposed the marketing board to considerable financial risk. At the time of our audit it had yet to be investigated by the Commission ; and
- agent relationships that appear to be non-subsidiary in nature can result in conflict of interest situations and may indicate that a marketing board is not operating as intended by legislation. The Commission has not adequately reviewed these relationships.

**4.38** We discussed the specific points of risk outlined above with the Executive Director of the Commission to identify any oversight action taken by the Commission in these circumstances. In one instance action was taken by the Commission to address the financial weakness of a Marketing Board, but it was not timely and largely ignored by the marketing board involved. The Commission had not investigated or acted upon the other points of risk.

***The Commission does not always enforce its Orders and directives with marketing boards who do not comply with policy and requests***

**4.39** The Commission has significant authority to enforce Orders it makes under the *Natural Products Act*. It also has broad powers with respect to addressing serious marketing board financial issues.

**4.40** Although the Commission has acted on serious issues in the past, we found it typically does not enforce its Orders and directives.

**4.41** Recourse under the Act may require court action and fines. The Executive Director indicated they have not taken boards to

court to enforce Orders due to the relatively poor financial condition of boards. He indicated the Commission's preference is to work with boards collaboratively.

***The Commission has a broad mandate and limited support resources***

**4.42** The Commission acknowledged weakness in its oversight of the marketing board system. They indicated with only three Department resources for support, one of which is administrative, they cannot effectively fulfill their oversight mandate.

***The Commission does not report on the effectiveness of its oversight role***

**4.43** We reviewed the Commission's 2012-13 annual report. It provides much information of value including harvest and sales data, information on compliance issues, and challenges to the marketing board system. However, we could not identify any performance targets or effectiveness reporting on its oversight role or on marketing board performance.

**Recommendations**

**4.44** Exhibit 4.3 provides a summary of recommendations from our work as well as the Department's responses and timelines for implementation.

Exhibit 4.3 - Summary of Recommendations

Recommendation	Departmental Response	Target Date for Implementation
<b>Audit Objective 1 - To determine if the Department of Natural Resources is meeting its responsibilities respecting timber supply from private woodlots.</b>		
<p><b>4.96</b> We recommend the Department comply with the <i>Crown Lands and Forests Act</i> and regulations in meeting their responsibilities related to proportional supply and sustained yield. If current principles of proportional supply and sustained yield required under the Act are no longer relevant or applicable, the Department should pursue changes to the Act and regulations in order to facilitate accomplishment of its mandate.</p>	<p><i>DNR agrees, however this is a long-standing and complex issue. The Department will propose potential legislative amendments to government in a way that engages woodlot and industry representatives, and sets out responsibilities that can be reasonably achieved.</i></p>	<p>2 years</p>
<p><b>4.105</b> We recommend the Department establish a policy for sustained yield, set objectives and measurable targets, and monitor and publicly report on its performance in ensuring sustainable yield from private woodlots.</p>	<p><i>This recommendation is linked to 4.96 above. DNR can inform, help promote, and quantify sustainable forest management on private woodlots, but it lacks the authority and tools to enforce the concept. The decision to regenerate, grow, and harvest private forests rests with 42,000 independent landowners. DNR will develop a policy around its contribution to understanding and promoting sustained yield on private forests and will commit to reporting on any progress indicators developed.</i></p>	<p>2 years</p>
<p><b>4.113</b> We recommend the Department implement a single private land silviculture agreement for all marketing boards in order to limit duplication of effort.</p>	<p><i>DNR agrees and has recently standardized all private land silviculture agreements.</i></p>	<p>Complete</p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Departmental Response	Target Date for Implementation
<p><b>4.124</b> We recommend the Department set separate goals and objectives against which to measure its success in fulfilling its mandate regarding private woodlots. In addition, we recommend the Department establish goals and objectives for the Private Land Silviculture program to measure the benefits of the program to the Province.</p>	<p><i>DNR agrees. Clear objectives and metrics for the Private Land Silviculture program will be published.</i></p>	<p><i>12 months (dependent on 4.96)</i></p>
<p><b>4.128</b> We recommend the Department publicly report on the goals, objectives, performance targets and actual results of their work and programs in regards to private wood supply. This should include providing explanations for variances between planned and actual performance.</p>	<p><i>DNR agrees. Programs administered by DNR that focus on the sustainable management of private woodlots will have clear objectives and regularly reported metrics.</i></p>	<p><i>12 months (dependent on 4.96)</i></p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Departmental Response	Target Date for Implementation
<b>Audit Objective 2 - To determine if the New Brunswick Forest Products Commission provides adequate oversight of Forest Products Marketing Boards.</b>		
<p><b>4.149</b> We recommend the Commission establish member position profiles and criteria against which potential appointees can be evaluated.</p>	<p><i>The Department recognizes that the advertisements for positions need improvement. Position profiles for each of the member positions on the Commission have been developed by the Commission and in collaboration with the Department and will be implemented in the next round of appointments to be made.</i></p>	<p><i>April 2015</i></p>
<p><b>4.154</b> We recommend the Commission make appointment requests in a manner that effectively staggers member appointments to promote continuity.</p>	<p><i>The Commission recognized this as an issue prior to 2014 because all seven appointments were set to expire in May 2014 and September 2014. In response to this issue, the Commission requested appointments made in July 2014 to be a combination of 2 year and 3 year terms for the producer and industry appointments. On a go forward basis, the Commission will base its request for appointment terms on the expiry dates of other appointments so that it can avoid large group expiries and maintain better continuity of the Commission.</i></p>	<p><i>Implemented in July 2014.</i></p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.159</b> We recommend the Department review the Commission's mandate and performance to ensure government objectives for the Commission's work are being achieved, and the Commission's role and responsibilities are well communicated and understood.</p>	<p><i>The mandate of the Commission is defined by legislation under the Forest Products Act or Natural Products Act. The Department and the Commission will perform a review of the Commission's mandate and structure. As part of the review, they will establish performance targets that align with that mandate. The review will also seek to better define the relationship between the Department and the Commission and its staff. (See also paragraphs 4.237 and 4.241)</i></p>	<p><i>Mandate letter from Minister by December 31, 2015</i></p>
<p><b>4.161</b> We recommend the Commission review and compare their current governance policies and procedures against the Province's Agencies, Boards, and Commissions appointment policy as well as accepted governance best practices in order to define and implement tools to enhance current Commission practices.</p>	<p><i>The Commission has not undertaken a comprehensive review of its Policy and Procedure Manual since it was implemented in June 2010. The Commission will complete a comprehensive review of its current Policy and Procedure Manual to ensure that it is in line with the province's Agencies, Boards, and Commissions appointment policy and that it incorporates governance best practices. To assist in this and other similar exercises, the Commission struck a "Document Review" sub-committee in January 2015 to assist Commission staff in reviewing and creating new Commission policies and procedures and other documents.</i></p>	<p><i>Review and implementation of revised Policy and Procedures Manual to be completed by April 2016.</i></p>
<p><b>4.169</b> We recommend the Commission complete its strategic plan to reflect its mandate under legislation and articulate its strategic priorities.</p>	<p><i>The Commission will complete its strategic plan and review with the Minister to ensure that it aligns with Department direction and mandate.</i></p>	<p><i>Strategic plan to be completed and reviewed by Minister by October 2015.</i></p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.175</b> We recommend the Commission review its current policies and manuals to ensure these accurately and consistently reflect necessary requirements in accordance with accepted financial reporting standards. We further recommend current copies of these documents be provided to marketing boards.</p>	<p><i>Please refer to response to paragraph 4.161 with respect to Part 1 of this recommendation. With regard to Part 2 of this recommendation, the Commission had historically provided copies of a "Reference Manual" to the marketing boards. This "Reference Manual" included all pertinent Acts and Regulations (Provincial and Federal), Board Orders, Commission Orders, and the Commission's Policy and Procedures Manual. It was provided to the marketing boards in a binder format and although attempts were made to keep the various binders up to date for the Boards when amendments were made or new sections were added, it was difficult to control how many copies were in the marketing board offices and whether or not the marketing boards were incorporating amendments into the binder. In April of 2014, the Commission created an electronic version of the "Reference Manual" binder as a pilot project. The electronic "Reference Manual" was updated in July of 2014 and provided to the marketing boards at a meeting between the Commission and all seven marketing boards in November 2014. The Commission will continue to update the electronic reference manual as required and forward to the marketing boards electronically when updated.</i></p>	<p><i>Part 1 – see timeline for paragraph 4.161.</i></p> <p><i>Part 2 – Fully implemented in fall of 2014.</i></p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.193</b> We recommend the Commission evaluate its reporting requirements from marketing boards to ensure that what is being requested provides the benefits intended. We further recommend the Commission enforce its Orders to ensure marketing board compliance with regulation.</p>	<p><i>Reporting requirements are established by Orders of the Commission (2008-101 and 2008-102). These Orders were established in 2008 and have not been reviewed or amended since establishment. The Commission will review the Orders to ensure that the requirements established within the Orders provide the benefits intended. With regard to the enforcement recommendation, this will be dealt with in conjunction with the recommendation from section 4.234.</i></p>	<p><i>Part 1 – Review and amendments to Reporting Requirements Orders – December 2015.</i></p> <p><i>Part 2 – Refer to section 4.234.</i></p>
<p><b>4.205</b> We recommend the Department and Commission document how financial reviews of marketing boards will be undertaken, assign personnel with the appropriate background and expertise to do the analysis, and report on the results of this analysis with recommendations, if required.</p>	<p><i>The Department and Commission will document a procedure as to how financial reviews will be undertaken, including personnel qualifications required to do the analysis and with a standardized reporting format. This will be done either through establishing the expertise within the Commission's membership qualifications required for certain appointments or through direct involvement of Department staff.</i></p>	<p><i>July 2015</i></p>
<p><b>4.219</b> We recommend the Commission require Marketing Boards to provide them with a signed agreement between the Marketing Board and its associated agent(s) that defines the nature of the agent relationship and the roles and responsibilities of each party as they pertain to the mandate of the Marketing Board.</p>	<p><i>The Commission will prepare a directive to the marketing boards with the requirement to describe the relationships between the marketing board and their associated agent(s) through signed "service level" agreements between the marketing board and agent(s).</i></p>	<p><i>June 2015</i></p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.224</b> We recommend the Commission undertake regular meetings with the marketing boards, individually or in a group setting as required, and attend random district meetings to identify and act on areas of concern.</p>	<p><i>Meeting with the marketing boards was historically a practice that the Commission attempted to do, however was out of practice in recent years and throughout the audit period. The Commission met with the seven marketing boards in November of 2014 and plan to meet with the boards again in June of 2015. The intention is to have full meetings with all boards at least twice per year and occasional meetings with individual boards when required. As resources allow, the Commission will attempt to attend random district meetings of the boards and will continue the practice of attending the boards' annual meetings of delegates whenever possible, as has been past practice.</i></p>	<p><i>November 2014</i></p>
<p><b>4.226</b> We recommend the Commission document a framework, proactively identifying and addressing areas of risk in marketing board governance, to ensure that marketing boards operate as intended by legislation.</p>	<p><i>In February 2015, the Commission produced a document called "Guidelines for Forest Products Marketing Boards and Their Directors". Copies of the document will be given to each of the marketing boards to provide to their members (directors). The document is intended to provide marketing board staff and directors with clear guidelines as to how they should operate and governance "best practices". The Commission will also prepare and deliver a short workshop style presentation that can be given to each marketing board to go along with the guideline document. Further, the Commission will require the marketing boards to file with the Commission the names of all directors, length of their tenure, anticipated term expiry dates and improved details with respect to their qualifications to be a member (director) of the marketing board.</i></p>	<p><i>Guidelines document completed in February 2015 with presentations to individual Forest Products Marketing Boards to be completed July-September 2015.</i></p> <p><i>Filing of director information to be completed by June 30, 2015 and continued annually or as required.</i></p>

Exhibit 4.3 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.234</b> We recommend the Commission establish and document an administrative process for the use of its investigative powers and formalize a series of escalating enforcement measures/mechanisms to be used in cases of non-compliance with Orders, regulations and policy directives.</p>	<p><i>As part of the review of the Commission's Policy and Procedures Manual, the Commission will incorporate a process or policy with respect to the Commission's investigative authority. The Commission will also seek legal advice to incorporate a cost-effective and efficient method of enforcement of Orders, regulations, and policy directives.</i></p>	<p><i>Review and implementation of revised Policy and Procedures Manual to be completed by April 2016.</i></p>
<p><b>4.237</b> We recommend the Department and the Commission jointly review the Commission's mandate and structure and make the changes required to ensure the Commission can effectively perform its legislated mandate.</p>	<p><i>The Department and the Commission will undertake a review of the Commission's mandate and structure. As part of the review, they will establish performance targets that align with that mandate. The review will also seek to better define the relationship between the Department and the Commission and its staff. (See also paragraphs 4.159 and 4.241)</i></p>	<p><i>December 31, 2015</i></p>
<p><b>4.241</b> We recommend the Commission establish performance targets for its own oversight work and for marketing boards against which the Commission can evaluate marketing board performance in critical areas. We further recommend the Commission report on the effectiveness of both its own work and marketing board operations against the predetermined targets.</p>	<p><i>The Department and the Commission will undertake a review of the Commission's mandate and structure. As part of the review, they will establish performance targets that align with that mandate. The review will also seek to better define the relationship between the Department and the Commission and its staff. (See also paragraphs 4.159 and 4.237)</i></p> <p><i>The Commission will redesign its current annual report format to incorporate the reporting of performance targets of both the Commission and the marketing boards.</i></p>	<p><i>December 31, 2015</i></p>

## Background

**4.45** Privately owned forest land in New Brunswick accounts for approximately 48% of productive forest in the Province. The *Crown Lands and Forests Act* (CL&F Act) provides the following definition related to private lands:

*“freehold lands” and “private lands” means lands other than Crown Lands and other lands vested in Her Majesty.*

## Private Woodlots in New Brunswick

**4.46** The CL&F Act also references the *Forest Products Act* (FPA) definition for private woodlots which states:

*“private woodlot” means all forest land except:*

*(a) forest land owned by the Crown;*

*(b) forest land owned by a person whose principal business is the operation of a wood processing facility, unless the main function of the wood processing facility is the production of wood chips and biomass at or on the harvest site; and*

*(c) forest land consisting of an aggregate area of at least 100 000 ha which is owned by the same person or persons.*

**4.47** Forest land categorized as (b) in the previous paragraph is commonly referred to as *“industrial freehold”* and is differentiated from other privately owned forest because the owners operate wood processing facilities. Approximately 18% of forest is owned and controlled by this group.

## Governance and Oversight of Private Wood Supply

**4.48** Governance authority over the private wood supply system is established in a number of legislated Acts and accompanying regulations.

### *The legislative framework governing private wood supply*

**4.49** According to the Department of Natural Resources (Department) 2012-13 annual report, the Department responsible for the administration of six Acts governing forest management:

- *Crown Lands and Forests Act;*
- *Forest Fires Act;*
- *Forest Products Act;*
- *Natural Products Act;*

- *Scalers Act*; and
- *Transportation of Primary Forest Products Act*.

**Department of  
Natural Resources**

**4.50** The Department states their mission as:

*“To ensure the natural resources of the Province are managed in the best interest of the people of New Brunswick, by fostering economic growth and balancing social and environmental values.”*

**4.51** This mission statement, taken from the Department’s strategy map, is broad and does not preclude the Department from undertaking a role in private forests and wood supply from private woodlots.

**4.52** Appendix III provides an organizational chart of the Department’s structure.

***The Forest  
Management  
Program***

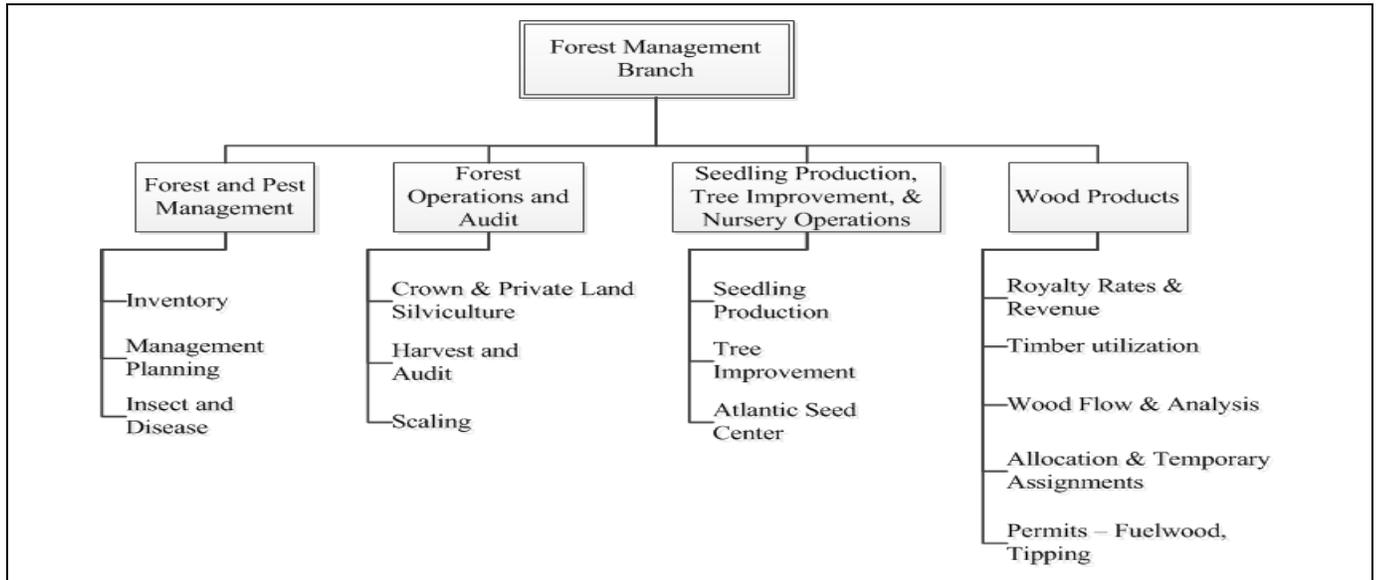
**4.53** Our work in this audit focused on the Department’s role under the *Crown Lands and Forests Act*. There is no separate program within the Department that specifically deals with private wood supply. Instead, the areas we reviewed were part of the Forest Management Program administered by the Forest Management Branch.

**4.54** The Department’s 2012-13 annual report states the objective of the Forest Management Program is:

*“To manage Crown timber resources in accordance with government policy.”*

There is no separate objective stated in the annual report related to the Department’s private land mandate under the *Crown Lands and Forests Act*.

Exhibit 4.4 - Forest Management Branch – Functions



Source: Created by AGNB from information provided by the Department of Natural Resources (unaudited)

### ***The Forest Management Branch***

**4.55** The Department’s Forest Management Branch is responsible for its role in private wood supply. Exhibit 4.4 highlights the main functional areas of the Forest Management Branch at the time of our audit. There is no single functional area responsible for private woodlot programs within the Department.

### **New Brunswick Forest Products Commission**

**4.56** The New Brunswick Forest Products Commission (Commission) was established in 1971 by the *Forest Products Act*. The *Natural Products Act* established the Commission’s authority to oversee forest products marketing boards and take action to address deficiencies in board operations.

**4.57** The Commission is currently comprised of six members and a Chair. The Commission’s 2012-13 annual report describes itself as “*an independent agency established in 1971*” and states that it “*oversees the Marketing Boards and is a liaison between the marketing relationships involving private woodlot owners, the seven Forest Products Marketing Boards, forest industries (pulpmills, sawmills and producers) and the provincial government.*”

The Commission has no employees of its own but is currently supported by three Department staff.

## Forest Products Marketing Boards

**4.58** Forest products marketing boards were established under the *Natural Products Act* “for the purpose of the promotion, control and regulation within the Province or that area of the marketing of the farm product”.

“Farm product” is defined under the *Natural Products Act*, to include “...such other natural products of agriculture and of the forest, including wood chips and biomass produced at or on the harvest site...”

**4.59** Under the *Natural Products Act*, a forest products marketing board is a “body corporate” and “is not a Crown corporation and is not an agent of Her Majesty in right of the Province”. The board is to be “fairly representative of the producers who market that farm product...”

**4.60** There are currently seven elected forest products marketing boards in the Province. Separate regulations establish the boundaries and governance structure of each board. For more information on forest product marketing boards please see Appendix IV.

## Audit Scope

**4.61** This chapter focuses on the roles of the Department of Natural Resources under the *Crown Lands and Forests Act* and the New Brunswick Forest Products Commission under the *Natural Products Act*. Our work was limited to oversight of the regulatory system for wood supply from private woodlots only. We did not include other sources of privately owned wood such as industrial freehold.

**4.62** Our audit was performed in accordance with standards for assurance engagements, encompassing value-for-money and compliance, established by the Chartered Professional Accountants of Canada, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

**4.63** Certain financial and statistical information presented in this chapter was compiled from information provided by various entities directly involved in the topic area. It has not been audited or otherwise verified. Readers are cautioned that this financial and statistical information may not be appropriate for their purposes.

**Objective 1**

**4.64** The first objective of our work was to determine if the Department of Natural Resources is meeting its responsibilities respecting timber supply from private woodlots.

**Scope**

**4.65** Our audit work focused on the principal sections of the *Crown Lands and Forests Act* providing the Department with its mandate for involvement in private wood supply.

**Methodology**

**4.66** We reviewed the legislative framework under which the Department operates. We examined applicable data and documentation provided by the Department and other participants in program delivery. We reviewed key department processes around program delivery and observed a joint assessment carried out by the Department and a marketing board.

**4.67** We conducted interviews with Department management and staff in both head office and selected regions. We conducted additional interviews with representatives of other organizations and stakeholders, including:

- The Forest Products Commission;
- Two licensee organizations;
- The New Brunswick Forest Products Marketing Boards; and
- The New Brunswick Federation of Woodlot Owners.

**The Role of the Department of Natural Resources under the *Crown Lands and Forests Act***

**4.68** The *Crown Lands and Forests Act* provides the mandate for the Department regarding private wood supply under section 3(2). This section states:

*“The Minister shall encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province consistent with subsection 29(7.1) and, with approval of the Lieutenant-Governor in Council, may initiate programs for such purposes.”*

**4.69** The Minister’s mandate then is to “*encourage*” private landowners to manage their forest land as the primary source of timber to provincial wood processing facilities. Although the CL&F Act does not define “*private forest lands*” we believe private woodlots as defined under the *Forest Products Act* are included in this term.

***Two principles set in the Crown Lands and Forests Act***

**4.70** While section 3(2) provides an overall mandate for the Department regarding all private forest land, section 29(7.1) establishes two principles against which the Department is to monitor wood supply from private woodlots. Section 29(7.1) segregates private woodlots from other privately owned forest and states:

*“The Minister, during the process of approving an operating plan under subsection (7), shall ensure that private woodlots are a source of wood supply consistent with the principles of*

*(a) proportional supply, and*

*(b) sustained yield.”*

***Proportional supply***

**4.71** The CL&F Act is clear that the Department must undertake its work regarding wood supply from private woodlots in a manner consistent with the two principles identified under section 29(7.1). The Act defines proportional supply to mean *“equitable sharing among the sources of wood supply identified in paragraph 29(5)(b) based on historic market share of supply to a wood processing facility”*.

***The Department has a 1992 policy regarding proportional supply***

**4.72** Upon our request, the Department provided a policy regarding proportional supply dated 1992.

***The policy is outdated and inadequate to effectively implement the principle of proportionate supply***

**4.73** The 1992 policy defined a minimum fibre requirement that licensees (and sub-licensees) needed to purchase from marketing boards (private woodlots) *“based on historic private woodlot deliveries during the period 1986- 1990”*. In our opinion, the policy does not adequately define how it is to be implemented or how associated reporting is to be completed. It has not been updated since 1992.

**4.74** We reviewed all documentation the Department supplied on proportional supply and could find little evidence of tracking, monitoring, or reporting related to this requirement.

***The Department has not complied with the Crown Lands and Forests Act or policy regarding proportional supply since at least 2002***

**4.75** Current Department management and staff indicated to us that proportional supply did not work and it had been discontinued. A letter dated July 26, 2002 from the then Minister of Natural Resources and Energy to the Southern New Brunswick marketing board confirmed this.

**4.76** The letter indicated “*as markets for all timber products increased through the mid-1990’s most mills were purchasing as much private land wood as they could and as a result this monitoring exercise ceased to perform a useful function and was discontinued*”.

**4.77** In times of strong markets there is little need for a mechanism to support private woodlot sales to processors as a primary source of supply. Exhibit 4.3 shows industry consumption of wood from private woodlots readily exceeded 2 million cubic metres from 1993 through 2004. However, with the market downturn between 2005 and 2007, there was no mechanism to address private woodlot supply concerns.

***Marketing boards suffered significant sales decreases during the market downturn between 2005 and 2010***

**4.78** The downturn in the market significantly affected sales from private woodlots. In 2004-05 total sales through all marketing boards were approximately \$97.9 million. This dropped to \$64 million in 2005-06 and to a low of \$27 million by 2009-10.

Exhibit 4.5 - Historic Use Summary – Consumption by Source

Historic Use Summary - Consumption by Source								
Period	Private Woodlots		Crown Licenses		Industrial Freehold		Imported	
	Cubic Metres	Percentage of Total Consumption <sup>1</sup>	Cubic Metres	Percentage of Total Consumption <sup>1</sup>	Cubic Metres	Percentage of Total Consumption <sup>1</sup>	Cubic Metres	Percentage of Total Consumption <sup>1</sup>
2012-13	1,106,486	12%	4,585,553	51%	2,193,766	25%	1,011,136	11%
2011-12	1,063,445	12%	4,490,647	52%	2,091,073	24%	1,028,972	12%
2010-11	784,237	9%	4,815,470	56%	2,208,311	26%	826,668	10%
2009-10	750,451	10%	3,577,905	47%	2,542,555	33%	738,843	10%
2008-09	596,384	7%	4,453,785	56%	2,089,320	26%	819,253	10%
2007-08	860,401	10%	4,209,783	49%	2,321,727	27%	1,155,977	14%
2006-07	1,429,871	14%	4,951,339	47%	2,560,412	24%	1,587,207	15%
2005-06	1,832,550	17%	4,512,290	42%	2,417,190	23%	1,918,597	18%
2004-05	2,680,020	23%	4,827,070	41%	2,358,330	20%	1,830,370	16%

Source: Created by AGNB with data from the Department of Natural Resources (unaudited).

*Cubic metre* columns present the consumption of wood by NB processors (does not include Federal land).

<sup>1</sup> *Percentage of total consumption* refers to the relative % consumption of the identified source of wood to the total consumption from all sources to NB processors for the period.

**Wood consumption from private woodlots, as a percentage of total consumption, decreased significantly**

**4.79** Exhibit 4.5 compares industry consumption of wood by source. Consumption from private woodlots decreased from 2,680,020 cubic metres in 2004-05 to a low of 596,384 cubic metres in 2008-09 (a drop of 78%). Consumption from Crown licences decreased from 4,827,070 cubic metres to a low of 3,577,905 cubic metres in 2009-10 (a much less substantial drop of 26%).

**4.80** Over the entire period (2004-05 to 2012-13) shown in Exhibit 4.5, private woodlot consumption decreased from 23% to 12% while Crown timber consumption increased from 41% to 51%.

**Private woodlot owners are under no obligation to harvest and can sell their wood outside the Province**

**4.81** It is important to recognize that private woodlot owners are under no obligation to harvest and sell their wood. When market prices declined they may have decided not to harvest and wait for prices to rebound. Further, private woodlot owners could and did sell outside of the Province. This very likely impacted the lower sales and consumption of private wood.

**4.82** However, a 2007 document we obtained from the Department stated that actions by the Department “contributed to the divergence between woodlot sales and Crown harvest” and that “Neither of the provisions of

*"Primary supply" or "proportional supply" has been maintained since 2005 for NB woodlot owners. Woodlot owners have clearly lost market share while the Crown share has increased."*<sup>6</sup>

***Department has potentially conflicting interests***

**4.83** Since the most significant source of departmental revenue is Crown timber royalties, any increase in Crown timber harvest supports the Department's efforts to balance budgets. This may put the Department in a conflict situation given it is also to "encourage" private forest land management as the "primary source of supply". Increased private wood sales could lower Crown timber consumption and consequently the related royalty revenue as well.

***Equitable Market Access pilot***

**4.84** In 2008 the Department undertook the Equitable Market Access Initiative (EMA). In a letter to all marketing boards, licensees and sub-licensees, the Department stated "*the purpose of this initiative is to ensure that woodlot owners have fair access for the sale of their forest products in NB*".

**4.85** A two-year pilot project started April 1, 2008. A Marketing Board Exclusive Agent Trial agreement between the Department, the NB Federation of Woodlot Owners, the seven marketing boards, and the NB Forest Products Association (on behalf of wood processors) was signed in June of that year.

**4.86** The objectives stated in the agreement were:

- *To determine whether New Brunswick Forest Products Marketing Boards as exclusive agents is a method for New Brunswick private woodlot owners to achieve equitable access to markets for sale of their forest products; and*
- *To provide a framework for the resolution of issues related to the marketing of wood from New Brunswick private woodlots.*

**4.87** The initiative faced substantial challenges during the two-year pilot. In particular, licensees disputed marketing board authority to approve direct contracts between wood processors and private woodlot owners / producers.

**4.88** In a February 2009 letter to all stakeholders the Minister of Natural Resources advised them of a Department legal

<sup>6</sup> Department of Natural Resources. Internal draft report on Equitable Market Access, 2007.

opinion supporting marketing board authority.

***The Equitable Market Access initiative failed to adequately address disputes or meet its overall objectives***

**4.89** Although extended until 2012, disputes could not be settled and the EMA initiative ultimately failed to establish marketing boards as exclusive agents or ensure equitable supply for private woodlot owners.

**4.90** The failure of the EMA initiative resulted in a follow-up letter from the Minister of Natural Resources dated July 24, 2012 to all licensees, sub-licensees, and marketing boards stating:

*“The Department will be re-initiating a process to develop proportional supply targets for mills in the province based on the legislative requirement under Section 29 of the Crown Lands and Forests Act.”*

**4.91** At least one Licensee responded to this letter expressing concerns over *“the Minister’s announced intention to [sic] develop and implement private wood proportional supply targets...”*. The response indicated *“While concepts of “primary supply” or “proportional supply” have been considered and discussed for over thirty years; they were never implemented by any New Brunswick government...”*.

***The Department remains non-compliant with the Crown Lands and Forests Act regarding proportional supply***

**4.92** When asked during our audit, Department representatives indicated proportional supply is not being implemented. They further indicated development of policy regarding wood supply from private woodlots is on hold due to the 2014 forest strategic announcement by government.

***The Department has mechanisms to address specific supply issues under the Crown Lands and Forests Act***

**4.93** Section 29(7.2) does provide the Minister with a mechanism to address shortfalls in purchasing of wood from private woodlots. It is based on approval of the annual operating plans submitted by licensees. If the licensee or any of its sub-licensees fail to purchase 98% or more of the proportion of wood identified to be consumed in any wood processing facility in an operating plan, the Minister may reduce the Crown timber that may be taken by the licensee the subsequent year by the amount of shortfall in private woodlot purchases. Section 29(7.3) provides further detail.

***The Department has never enforced purchase and supply contracts under the Crown Lands and Forests Act***

**4.94** However, the Department indicated it has never taken action under these sections of the *Crown Lands and Forests Act*.

**4.95** We believe the Department has a mandated responsibility to influence the wood supply from private woodlots consistent with its Act and regulations. If the tools established through legislation do not work, we believe it is the Department's responsibility to pursue changes to legislation allowing them to fulfill their responsibility. Further, we believe the Department needs to monitor and report on their performance in implementing these mechanisms.

***Recommendation***

**4.96** We recommend the Department comply with the *Crown Lands and Forests Act* and regulations in meeting their responsibilities related to proportional supply and sustained yield. If current principles of proportional supply and sustained yield required under the Act are no longer relevant or applicable, the Department should pursue changes to the Act and regulations in order to facilitate accomplishment of its mandate.

***Sustained Yield***

**4.97** The second principle the Department is required to consider under section 29(7.1) is sustained yield. The CL&F Act though does not define the term "sustained yield".

**4.98** In determining a sustainable yield for private woodlot harvest, Department personnel indicated they would normally look at level of harvest that would equal growth and then reduce it by a specified percentage. A 2004 analysis commissioned by the Department, the NB Federation of Woodlot Owners, and the marketing boards indicated "...reasonable levels of old forest conditions are maintained when wood supply is set at between 70% and 80% of the maximum...".<sup>7</sup> This would be considered a "fibre-only" strategy and would not consider social or environmental objectives.

<sup>7</sup> Thom Erdle and Chris Norfolk. "Analysis of Future Forest Condition and Wood Supply for Private Woodlots in New Brunswick". (2004). Page 5.

***Department information for private woodlots is 10 years old and may be incomplete***

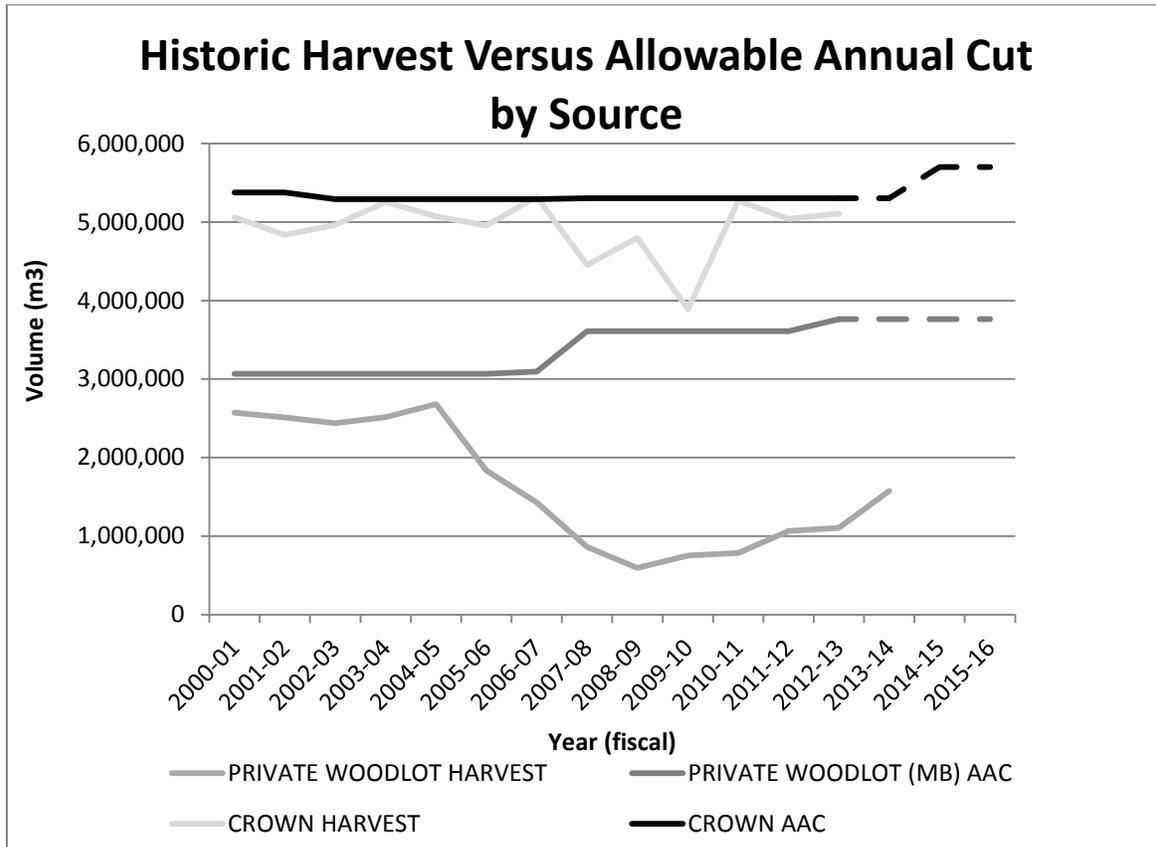
**4.99** Ensuring sustainable yield of fibre requires accurate forest inventory information from private woodlots. Department analysis of marketing board information is only completed on a 10-year cycle and issues with updating private silviculture information may exist. They indicated that no regular update is required from marketing boards between analysis periods. Staff indicated that no budget exists for this activity and no personnel are specifically responsible for private woodlot analysis.

**4.100** The Department uses modelling software to determine an annual allowable cut (AAC) for each marketing board. The AAC is the level at which yield is sustainable from private woodlots in each marketing board jurisdiction based on approximately 80% of the maximum under the fibre-only strategy.

***The Department established an AAC in support of studies and initiatives***

**4.101** Historically the Department did not set AAC for private land on a regular basis. However, since 2004 it has been looked at in conjunction with various studies and initiatives around private wood supply in the Province. In 2004 it was estimated as part of the analysis noted above that was commissioned by the Department and the Federation of Woodlot Owners. In 2008 an AAC level was established in support of the EMA initiative, and in 2012 in support of the Private Forest Task Force work.

Exhibit 4.6 - Historic Harvest Versus Allowable Annual Cut by Source



Source: Created by AGNB from the Department of Natural Resources and the Forest Products Commission data (unaudited).

Notes

- Harvest volume information is based on marketing board reporting. It may understate total harvest due to ongoing issues with current tracking systems acknowledged by the Commission.
- Dashed lines represent the future increases in AAC announced in the 2014 Crown forest strategy by government.

**4.102** Exhibit 4.6 highlights both private woodlot and Crown AAC levels as well as harvest levels since 2000-01. Marketing boards have consistently reported harvest values well below the AAC calculated by the Department, indicating increased harvest from private woodlots would be sustainable.

***The Department does not utilize the AAC for planning private wood supply targets or measuring the effectiveness of its programs and initiatives***

**4.103** The AAC is set at the estimated point where the harvest level can be sustained into the future while not impeding upon achieving other forestry objectives. This is not a stated policy of the Department but is implicitly understood as a practice of sustainable forest management. The Department does not use the AAC level to set private wood yield targets or to measure effectiveness of any programs or initiatives.

**4.104** We believe it is important for the Department to set, monitor, and report against well-defined objectives. This will allow it to evaluate whether it is complying with its own sustainability principle.

***Recommendation***

**4.105** We recommend the Department establish a policy for sustained yield, set objectives and measurable targets, and monitor and publicly report on its performance in ensuring sustainable yield from private woodlots.

***Private Woodlot Programs***

**4.106** Under section 3(2) of the CL&F Act government may initiate programs for the purposes of meeting its mandate. The Department indicated there are three programs in place for private woodlots:

- Private land silviculture;
- INFOR (education programs); and
- Maple silviculture (through INFOR).

**4.107** We reviewed the private land silviculture program in more detail than the other two programs due to its relative significance and the greater level of provincial funding provided. Exhibit 4.7 shows funding for the three programs over a five year period, beginning in 2008-09.

*Exhibit 4.7 - Program Funding in Support of Private Woodlots*

<b>Program Funding in Support of Private Woodlots</b>					
<b>Department Program Funding</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-2012</b>	<b>2012-13</b>
Private land silviculture	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$5,000,000
INFOR (education programs)*	180,000	180,000	180,000	90,000	90,000
Maple silviculture*	300,000	300,000	350,000	250,000	200,000
<b>Total</b>	<b>\$4,480,000</b>	<b>\$4,480,000</b>	<b>\$4,530,000</b>	<b>\$4,340,000</b>	<b>\$5,290,000</b>

*\*Note that the INFOR program may benefit more stakeholders than just private woodlot owners. The maple silviculture program is used for Crown land and private maple sugary operations. In 2012-13, only 67 hectares (166 acres) of the total 493 hectares (1218 acres) treated across the Province were on private land. Therefore, most funding goes to Crown land lease recipients.*

*Source: Created by AGNB with budget information from the Department of Natural Resources (unaudited)*

**Private Land  
Silviculture  
Program**

**4.108** As the Department has not established a separate budget under Main Estimates for private woodlot programs, private land silviculture is funded through the Crown land silviculture budget. For the past five years there has been additional funding through the Regional Development Corporation (approximately \$1 million in 2012-13).

*There are current standards for private land silviculture*

**4.109** The Department provides an annual, updated version of the *New Brunswick Private Woodlot Silviculture Manual* to stakeholders. The manual details rates, treatments, criteria, monitoring processes, and penalties for non-compliance.

*Private land silviculture is delivered by third-party agreements*

**4.110** Private land silviculture is delivered pursuant to two agreements. The first is between the Department, the NB Federation of Woodlot Owners (Federation), and six of the seven marketing boards. The Federation is a board with current representation from each of the marketing boards. It considers itself to be the umbrella organization representing all marketing boards.

*A separate agreement exists for a single marketing board, creating some duplication of effort*

**4.111** The second agreement is between the Department and the North Shore Forest Products Marketing Board. We were told by the Board that the reason for this separate agreement lies in a past disagreement between the Board and the Federation. Although the Board is now a member of the Federation, this separate agreement has continued. The Department directly administers aspects of program delivery for the North Shore board generally administered by the Federation, resulting in some duplication of effort.

**4.112** We reviewed program implementation processes with stakeholders and believe they are consistent with the terms of the agreements in place and the silviculture manual.

*Recommendation*

**4.113** **We recommend the Department implement a single private land silviculture agreement for all marketing boards in order to limit duplication of effort.**

*Private land silviculture work is actively monitored by the Department for compliance against work standards*

**4.114** The Department uses similar monitoring processes for private land and Crown land silviculture. It samples treatments done on private lands at 10% or 20% of area treated (percentage is dependent upon treatment completed) and physically measures compliance with silviculture standards on selected jobs.

**4.115** If a treatment discrepancy exceeds 3% across the sample, a year end funding adjustment is made. If the treatment discrepancy exceeds 5% marketing boards can choose to complete a joint assessment with the Department to verify the error. If a subsequent joint assessment verifies work completed is below standard, the year-end reconciliation process will result in the marketing boards reimbursing the Department.

**4.116** We attended a joint assessment to observe and verify the process described to us by stakeholders. We believe the Department adequately monitors work completed against standards for private land silviculture work and recoups funding from marketing boards for non-compliance to these standards.

*The Department has not defined and documented private land silviculture performance objectives that highlight the program's benefit to the Province*

**4.117** In our review of program documentation for private land silviculture, we could identify no clearly-defined provincial goal or objective for the program. The Private Forest Task Force found that investment in private land silviculture is only marginally cost-effective in terms of invested private and public funds.

**4.118** When we discussed this with various Department personnel they agreed there is no defined objective and indicated benefits from the program would include any increased employment it provides. The Private Forest Task Force also identified employment as a possible benefit but noted it is difficult to determine employment levels for private silviculture work due to the way Statistics Canada categorizes work in the forestry sector. They noted Statistics Canada reported a decline in employment in the "Support Activities for Agriculture and Forestry" category of 39% between 1997 and 2010.

*There is no agreement between private woodlot owners and the Department or marketing boards regarding future benefits of silviculture investments*

**4.119** The private land silviculture program appears to be the primary tool the Department uses to encourage owners to actively manage their private woodlot. However, there is no agreement between the Department or marketing boards and land owners stipulating a specific benefit to the Province for silviculture work done. The landowner is not obligated to the Province in terms of how the long-term results of silviculture investments will be utilized.

**4.120** The program does not address primary source of supply or provide a mechanism the Department can use to set targets and influence wood supply from private woodlots. There is currently no defined and measured long term benefit to the

Province for this program.

**4.121** We believe programs should have documented goals and objectives against which effectiveness of the program in meeting desired outcomes can be measured, monitored, and evaluated.

*No specific  
Department strategy  
for private woodlots*

**4.122** We reviewed the Department Strategy Map, balanced scorecard, and SOMIA (Strategies, Objectives, Measures, Initiatives, and Actions). We also reviewed commissioned studies completed over the past decade, procedural documentation for the private land silviculture program, and other operating-level information. None of this documentation identified a specific strategy (i.e. overarching goals and measurable targets) for the Department’s involvement in private woodlots.

**4.123** In the SOMIA document under the government wide objective to “drive economic development efforts”, the Department has its own objective to “implement improved policy framework for forest sector”. It also has an Action Plan for initiatives listed under this objective, in part to address certain recommendations of the Private Forest Task Force. Initiatives that were identified for completion during 2013-14 included:

- establishment of timber objectives and a multi-year silviculture plan with increased funding each year;
- facilitate the flow of private wood; and
- develop a Wood Transparency Portal to support the flow of private wood.

While these had commenced, none had been completed by the end of our audit work.

*Recommendation*

**4.124** We recommend the Department set separate goals and objectives against which to measure its success in fulfilling its mandate regarding private woodlots. In addition, we recommend the Department establish goals and objectives for the Private Land Silviculture program to measure the benefits of the program to the Province.

**Performance  
Reporting**

**4.125** Public reporting of performance is a fundamental accountability mechanism for departments. By establishing objectives and targets against which results can be effectively measured and reported, departments can be held publicly accountable for their performance.

***Public reporting of private woodlot programs and initiatives by the Department can be improved***

**4.126** We reviewed the Department’s annual reports for the past three years to identify any performance reporting completed under their mandate for private woodlots. The Department reports statistical information on some aspects of private woodlots such as private land silviculture but does not report its performance against pre-established targets.

**4.127** Effective performance measurement requires pre-set targets to be established against which actual results can be compared. No such targets were reported in the Department’s annual reports for private wood supply. Therefore, readers cannot determine how successful the Department was in performing its mandated role in this area.

***Recommendation***

**4.128** We recommend the Department publicly report on the goals, objectives, performance targets and actual results of their work and programs in regards to private wood supply. This should include providing explanations for variances between planned and actual performance.

**Objective 2**

**4.129** Our second objective was to determine if the New Brunswick Forest Products Commission provides adequate oversight of Forest Products Marketing Boards.

**Scope**

**4.130** Our audit work focused primarily on the Commission’s role in overseeing operations of seven forest products marketing boards, as mandated under the *Natural Products Act*.

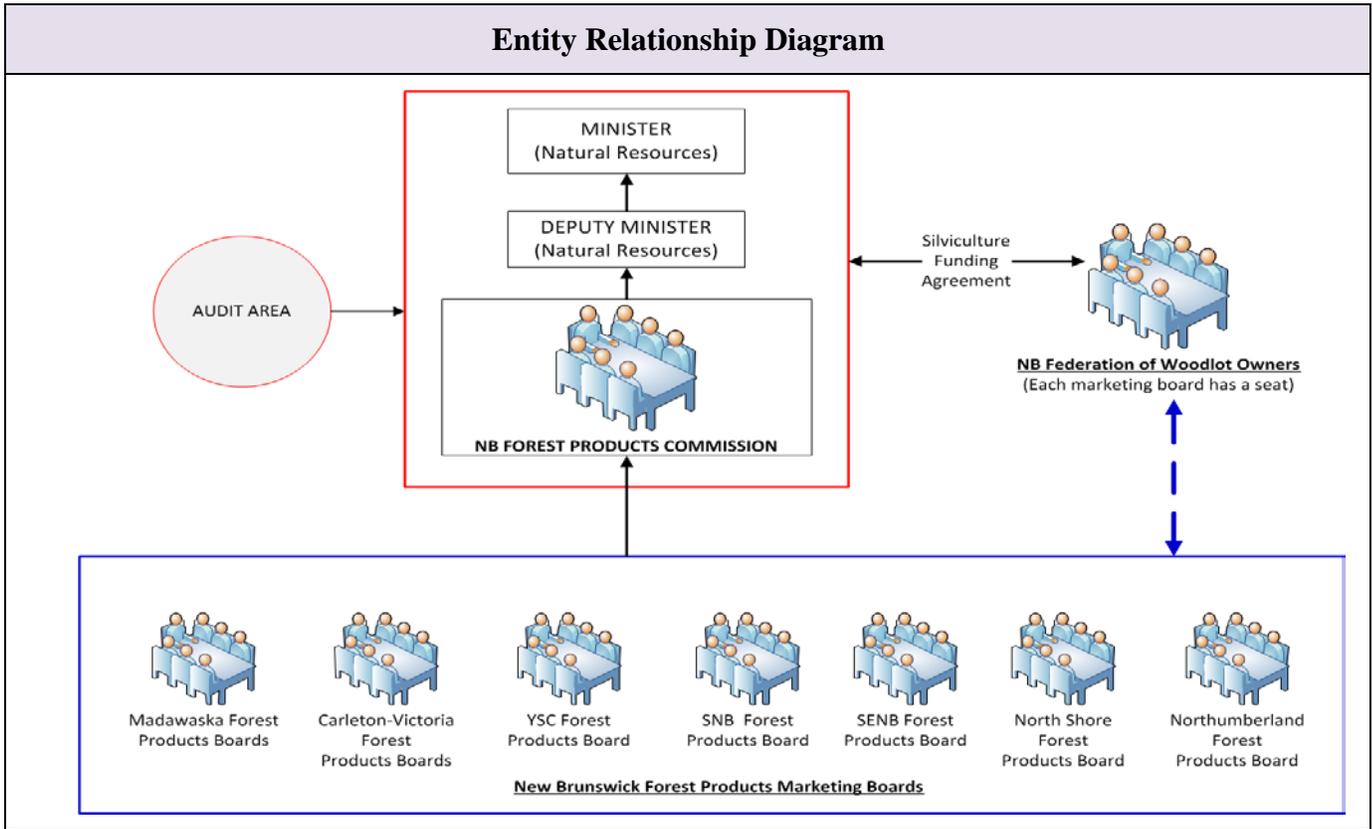
**Methodology**

**4.131** We reviewed the regulatory framework under which the Commission operates, including Acts, regulations, Orders, policies, and bylaws. We examined data, documentation, and Commission meeting minutes. We reviewed information received from marketing boards and other relevant entities, and we tested regulatory compliance with Commission Orders and policy.

**4.132** We conducted interviews with members of the Commission and Department staff who support the Commission, as well as representatives of other organizations and stakeholders, including:

- Seven New Brunswick forest products marketing boards; and
- The New Brunswick Federation of Woodlot Owners.

Exhibit 4.8 - Entity Relationship Diagram



Source: Created by AGNB

SENB – South East New Brunswick  
 SNB – Southern New Brunswick  
 YSC – York Sunbury Charlotte

**Governance Structure and Role of the New Brunswick Forest Products Commission**

**4.133** Exhibit 4.8 provides a simplified representation of the relationships between the various entities involved in the marketing board system in the Province. Although the marketing boards are represented as a group through membership in the NB Federation of Woodlot Owners, a non-government entity, they are accountable through the *Natural Products Act* to the NB Forest Products Commission.

**4.134** The New Brunswick Forest Products Commission provides the following description in its 2012-13 annual report:

*“The New Brunswick Forest Products Commission (FPC), an independent agency established in 1971, oversees the Marketing Boards and is a liaison between the marketing relationships involving private woodlot owners, the seven Forest Products Marketing Boards, forest industries (pulp*

*mills, sawmills and producers) and the provincial government.”*

**4.135** The Commission is funded directly from the operating budget of the Department under the Private Land Development program. The Department’s 2012-13 budget for the Commission was \$330,000.

**4.136** The Commission can exercise oversight of the seven forest products marketing boards under different sections of the *Natural Products Act*. Supervision is directly referenced in Section 15 which states (respecting “*farm products of the forest*”):

*“The Commission has general supervision over all agencies and boards constituted under this Act and shall perform such other duties and functions and exercise such authority prescribed by regulation in order to carry out the purpose and intent of this Act.”*

Section 101 and definition (b) under “*Minister*” in the *Natural Products Act* assigns responsibility for administration of the Act with respect to “*farm products of the forest*” to the Minister of Natural Resources.

**4.137** The Commission has broad authority under the *Natural Products Act* to investigate marketing board conduct, request any information it requires to undertake its mandate, and make Orders that must be complied with under the Act and regulations.

***Commission  
governance structure***

**4.138** Section 5 of the *Forest Products Act* establishes the Commission as “*a corporation with its head office at The City of Fredericton*”. Section 2 identifies the Minister of Natural Resources (or designate) responsible for administration of the Act.

**4.139** Commission membership consists of a Chair and six members appointed by the Lieutenant-Governor in Council. The Commission is supported by an Executive Director position established under the *Forest Products Act* and two additional Department employees. The Executive Director reports directly to the Deputy Minister of Natural Resources.

**4.140** The 2012-13 annual report of the Commission states “*The Commission reports to the Minister of Natural Resources and to the Crown Corporations Committee, a standing committee of the New Brunswick Legislature.*” The Department’s

organization chart depicted in Appendix III clearly indicates the Commission reports to the Minister.

***The Commission reports through the Deputy Minister of the Department and all support is provided by Department employees***

**4.141** However, Commission members that we interviewed indicated they report to the Deputy Minister of the Department and not the Minister. We confirmed this with the Deputy Minister. We asked for any documentation for this delegation of authority and the Department could provide none.

**4.142** Reporting directly to a Minister is different than reporting through a Deputy Minister. As stated in the Department's 2012-13 annual report:

*“The Deputy Minister is responsible for the overall management of the Department and for meeting legislative and policy requirements.”*

**4.143** The Commission then is an arm (i.e not independent) of the Department with oversight at the Deputy Minister level. Support is provided by Department employees who take direction from Department management.

***Commission membership***

**4.144** The method by which members are appointed to the Commission is established under the *Forest Products Act*. Representation is established as:

- two members representing producers;
- two members representing the forest industry; and
- two members representing the Department of Natural Resources.

The Chair is recommended by the Minister but appointed by the Lieutenant-Governor in Council.

***The Agency, Boards, and Commissions appointment policy***

**4.145** To enhance accountability, the Province has established “an Appointment Policy for New Brunswick Agencies, Boards, and Commissions” (ABC).

***Commission vacancies are advertised***

**4.146** Under the policy, expressions of interest are used to advertise Commission vacancies. Section 2.4 of the ABC policy indicates the selection process is to be merit-based to ensure selection of the most competent individuals.

**4.147** We reviewed the ads posted for Commission member positions and noted that all ads are identical, regardless of what area the member is to represent. Specifically, the key qualification statement for all vacancies is:

*“...demonstrated leadership in your sector and have*

*experience working in organizations. You need to be an effective communicator.... You should be a team player and a creative thinker especially in the area of problem solving”.*

***The Commission has no member profile or specific selection criteria for member appointments***

**4.148** The ABC policy states selection criteria will be developed by the ABCs in cooperation with the government department and central agencies. We requested member profiles and selection criteria from the Commission and were told they do not exist. We believe criteria should be developed by the Commission to best ensure future appointees provide the specific skills needed by the Commission.

***Recommendation***

**4.149 We recommend the Commission establish member position profiles and criteria against which potential appointees can be evaluated.**

***Commission terms are established in legislation and generally respected***

**4.150** To be effective and promote knowledge transfer, board members should have predetermined terms and be replaced at staggered intervals. Terms for the Commission are established under the *Forest Products Act* as:

- three years for representatives of the producers and forest industries; and
- five years for the Chair and representatives of the Department of Natural Resources.

Under section 4(2) “*a member shall continue to be a member until he or she is replaced*”.

The Act does not address repeat appointments.

**4.151** We reviewed appointment history over the past 10 years and found term limits are typically respected, within a reasonable appointment window.

***Commission appointments are not appropriately staggered to maintain board continuity***

**4.152** We did note member appointments are not always staggered well. In four of these years, including 2014, multiple appointments were required leading to significant change of Commission membership. In two of these years most Commission members were replaced. This lack of continuity leads to loss of knowledge and longer learning curves for new members. It may impact negatively on Commission effectiveness as well.

**4.153** We believe the Commission should ensure future appointment terms are staggered to ensure continuity of membership.

- Recommendation**      **4.154 We recommend the Commission make appointment requests in a manner that effectively staggers member appointments to promote continuity.**
- Ministerial review of the Commission’s mandate and performance**      **4.155** Under section 3.2.1 of the ABC policy, a Minister is responsible for “*providing the first line of government oversight*” of every provincial agency, board, or commission. The Minister / department is responsible for:
- administering the enabling legislation;
  - regularly reviewing and updating the mandate of the ABC; and
  - providing broad policy direction to the ABC by communicating the government’s strategic priorities to the board and management.
- The Department does not appear to review the Commission’s performance or mandate on a regular basis**      **4.156** We requested the Department provide any information and documentation available supporting a regular review and update on the mandate of the Commission or its performance. They offered no information to confirm this is done on a regular basis.
- 4.157** Commission representatives could not recall the Department ever doing this. They indicated the current Minister had never attended a Commission meeting.
- 4.158** This type of review is important to ensure the Commission has a clear understanding of its mandate and reporting accountability, especially considering turnover in Commission membership. We believe a review of the Commission’s mandate should be completed and documented by Department senior management on a regular, ongoing basis.
- Recommendation**      **4.159 We recommend the Department review the Commission’s mandate and performance to ensure government objectives for the Commission’s work are being achieved, and the Commission’s role and responsibilities are well communicated and understood.**
- General Commission governance practices could be improved**      **4.160** We discussed a number of other accepted governance best practices with Commission representatives. We found Commission governance processes could be improved by adding the following:
- Mandate Letter – A letter from the Minister identifying priorities to clarify, focus, and guide the Commission’s

efforts in accomplishing its objectives;

- Code of Conduct – A document establishing parameters under which a board operates and processes it follows. It should be approved by the Minister and signed by all members;
- Board self-evaluations – This is a defined process used by boards to evaluate and enhance their performance; and
- Conflict of interest declaration – The Commission covers conflict of interest in a policy document but does not require a signed and current declaration statement from members.

We believe by establishing practices such as these the Commission can strengthen its governance processes and thereby increase its effectiveness.

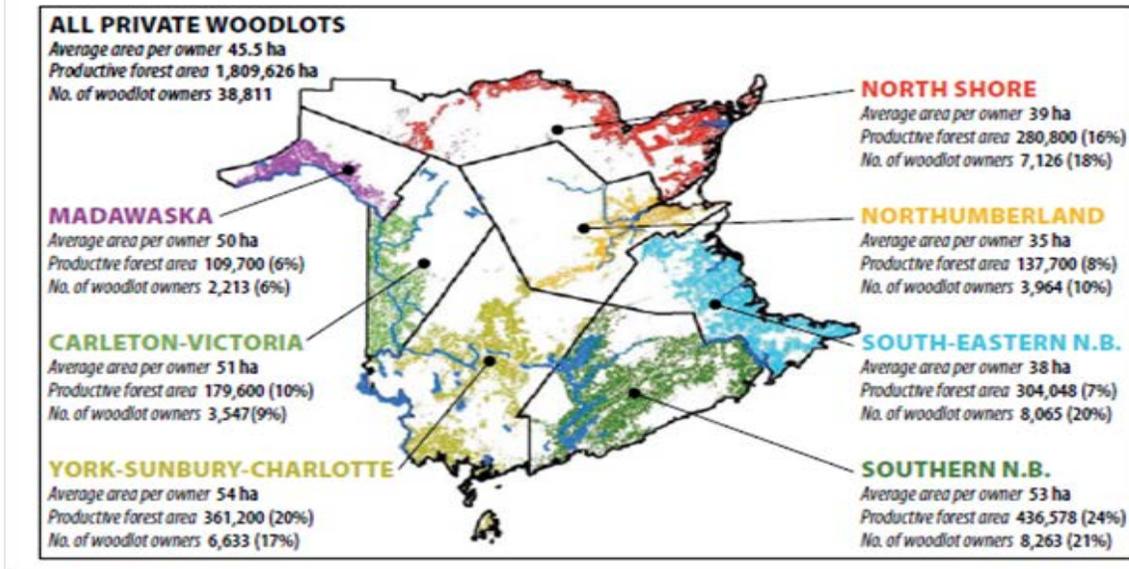
***Recommendation***

**4.161 We recommend the Commission review and compare their current governance policies and procedures against the Province’s Agencies, Boards, and Commissions appointment policy as well as accepted governance best practices in order to define and implement tools to enhance current Commission practices.**

**Oversight of the Forest Products Marketing Boards**

**4.162** As noted above the Commission is responsible for overseeing the operations of seven forest products marketing boards established under the *Natural Products Act*. Each marketing board represents wood producers from defined regions of the Province.

Exhibit 4.9 - Marketing Board Regions and Statistical Information



Source: Private Forest Task Force Report Appendix B (unaudited)

4.163 Exhibit 4.9 provides the general jurisdictional boundaries and statistical information on marketing boards.

Exhibit 4.10 - Marketing Board Subsidiary Bodies

Forest Products Marketing Board	Regulation/ Year Established	Co-operative or Association
Madawaska	(Reg. 2006-85, 2006-87) 1961	N/A
North Shore	(Reg. 2005-141, 2005-142) 1973	North Shore Forestry Syndicate Inc.
Northumberland County	(Reg. 2005-143 & 2005-144) 1974	Northumberland County Woodlot Owners & Pulp Producers Association Inc.
York-Sunbury-Charlotte	(Reg. 2005-147 & 2005-148) 1978	N/A
Carleton-Victoria	(Reg. 2005-139 & 2005-140) 1978	Carleton-Victoria Wood Producers Assoc.
Southern New Brunswick	(Reg 2005-145 & 2005-146) 1979	S.N.B. Wood Co-operative Ltd.
South East New Brunswick	(Reg. 2005-105 & 2005-106) 1981	N/A

Source: 2012-13 Annual report of the New Brunswick Forest Products Commission (unaudited)

4.164 Exhibit 4.10 is an excerpt from the Commission’s 2012-13 annual report. It identifies three associations and one wood co-operative linked to four of the marketing boards. It is our understanding that net assets of the North Shore Forestry Syndicate Inc. were transferred to the North Shore Forest Products Marketing Board in 1996.

- 4.165** In the Commission’s 2012-13 annual report, it identified these associations and co-operative as “*subsidiary bodies*” to the marketing boards. These associations and co-operative are also commonly referred to as “*agents*” who undertake specific work such as administration of the Private Land Silviculture Program on behalf of the marketing boards.
- The Commission acknowledges its oversight role**
- 4.166** Commission representatives readily acknowledged the Commission’s responsibility to oversee marketing boards but expressed concern with the level of resourcing available to them. They stated that having only three full time employees significantly limits their ability to effectively perform this function.
- The Commission has no strategic framework interpreting and prioritizing its various duties under two Acts**
- 4.167** The Commission has no strategy or specific plan that articulates its mandate for oversight and prioritizes their efforts. Given the limited resources available to the Commission, it is critical application of those resources be as efficient as possible.
- 4.168** We noted the Commission was in the process of developing a strategic plan when we began our work. We believe strategic planning is critical to the Commission’s success and the Minister should ensure that the Commission strategy is aligned with government objectives and resourced adequately.
- Recommendation**
- 4.169** **We recommend the Commission complete its strategic plan to reflect its mandate under legislation and articulate its strategic priorities.**
- The Commission has a 2010 “Policy and Procedural Manual” and a 2013 “Reference Manual”**
- 4.170** The Commission provided us with a Policy and Procedure Manual dated June 23, 2010 and a current Reference Manual. The Policy and Procedural Manual stipulates detailed requirements for marketing board compliance in a number of areas. It also provides limited guidance on Commission procedures related to arbitration and conciliation, legal opinions, and conflict of interest.
- The quality of the Commission’s 2010 policy manual is lacking**
- 4.171** We reviewed the 2010 Policy and Procedure Manual. Some requirements differ from accepted financial reporting standards and other sections of the manual appear contradictory. To be effective, policies must reflect applicable standards and provide consistent direction.
- 4.172** We surveyed the marketing boards to identify if they had current versions of the Policy and Procedural Manual. Only

one board confirmed it had the current version of the manual. Others had older versions or none at all.

**4.173** The Commission also maintains and updates a Reference Manual citing the Acts, regulations, and Orders pertaining to the Commission and marketing boards. It is a valuable document used by marketing boards in meeting Commission Order requirements.

**4.174** We believe the Commission should address inconsistencies in its policy to better support its work. Inconsistency in policy or application of policy leads to confusion, poor marketing board compliance, and increased Commission effort in enforcement. In addition, we believe the Reference Manual and the Policy and Procedures Manual should be distributed to marketing boards when updated to ensure they have a clear and current understanding of Commission requirements.

*Recommendations*

**4.175** We recommend the Commission review its current policies and manuals to ensure these accurately and consistently reflect necessary requirements in accordance with accepted financial reporting standards. We further recommend current copies of these documents be provided to marketing boards.

**Commission Oversight of Marketing Board Compliance**

**4.176** We used the 2010 Policy and Procedural Manual and the 2013 Reference Manual as basis for testing the Commission's effectiveness in fulfilling its identified oversight responsibilities. We tested the following marketing board requirements identified as mandatory in Commission documents:

- financial statement submission and review;
- submission of monthly reports;
- schedule A submission and reconciliation;
- borrowing authorizations; and
- establishment of negotiating agencies.

**Financial Statement Submission and Review**

**4.177** Commission Order 2008-101 requires each marketing board to file specific documents and reports with the Commission within specified timelines. Included in this Order is the requirement for specific financial information, including audit engagement letters with prescriptive requirements and audited financial statements for the marketing boards and any agent organizations to be filed.

***Financial statement submissions by marketing boards do not always conform to the Commission policy***

**4.178** We reviewed the marketing boards' annual report and financial statement submissions for a three year period (2011 - 2013) and found numerous issues with filing requirements for financial statements when compared to the Commission policy. For example:

- The dates we reviewed on the audit reports indicate submission for at least two boards were late;
- In all cases across all three years the format of financial statements and/or engagement letters did not appear to be consistent with the Commission's policy document; and
- One of the Associations submitted review level rather than audited financial statements as stipulated in the Order.

**Submission of Monthly Operating Reports**

**4.179** Commission Order 2008-101 requires marketing boards to submit specific documents related to production and sales, transportation certificate reporting, records of board minutes, bonding renewal, etc. as well as financial statements and other information. Prior to 2012-13, the Executive Director's report tracked the submissions of all reporting requirements as an attachment to most Commission meeting minutes. We reviewed these reports, which highlighted filing arrears, and present a summary of findings in Exhibit 4.11.

Exhibit 4.11 - Marketing Board Submission Arrears

Marketing Board Submission Arrears			
Commission Meeting	Number of Marketing Boards with Late Report Submissions		
	2012	2011	2010
January	5	No meeting	2
February	4	2	No record
March	3	No meeting	4
April	No meeting	3	4
May	3	6	No meeting
June	5	2	5
July	2	3	4
August	No meeting	No meeting	No meeting
September	4	1	5
October	3	4	5
November	No meeting	No meeting	No record
December	No record	4	3

*Note – Where no number exists, no Commission meeting was held or no record of late submissions was maintained. The numbers presented are the number of marketing boards (of the total of seven) highlighted with late submissions from the Commission documents at the date of the meeting.*

*Source: AGNB created table from Executive Director’s Report as attached to Commission meeting minutes (2010 through 2012).*

***Marketing board submissions of required reports are often in arrears***

**4.180** Exhibit 4.11 highlights the number of marketing boards that were in arrears as presented to the Commission in the Executive Director’s Report and reflected in Commission minutes. Note some arrears are long-standing and will therefore appear in many of the reports.

***Commission follow-up on late submissions is inadequate***

**4.181** The Executive Director’s Reports we reviewed contained a statement that “*all boards receive a monthly reminder*” of the status of their reporting requirements. This appears to be ineffective. We asked current Commission support staff if any other follow-up is completed and they indicated nothing further is done. The Executive Director’s Reports were not available after 2011-12.

***Schedule A submission and reconciliation***

**4.182** Commission Order 2008-102 requires marketing boards to submit a signed Schedule A report before June 30<sup>th</sup> of each year. The Order states “*The report shall be completed based on the information contained in the audited financial statement for the last fiscal period. An officer of the board or agent shall*

*sign the report.”*

**4.183** Schedule A confirms that cost sharing and funding allocation requirements governing provincial silviculture funding have been respected. The main stipulations marketing boards must comply with are:

- Cost-sharing – The Province will fund up to 90% for private land silviculture in total. The other 10% must be paid by the landowner; and
- Use of funding - Marketing boards can retain 20% of the funding to apply against program administration costs but the remaining 80% must go directly to silviculture treatment work completed on the ground.

***Department and Commission oversight of the Schedule A is weak***

**4.184** Schedule A forms were submitted over the three years we reviewed, though at times late. We reviewed submitted forms with marketing boards and Commission support staff. We found that the financial information from these forms could not be reconciled to the Boards audited financial statements. More information on this silviculture related issue can be found in Chapter 3.

**Borrowing Authorizations**

**4.185** Section 26(1) of the *Natural Products Act* requires marketing boards to gain, through written request, authorization from the Commission for all borrowing. In its policy, the Commission states it will not consider a request for a Borrowing Authorization until all filing requirements are received. The requirement for borrowing authorization requests provides the Commission with an opportunity to review and evaluate the risk of increased borrowing by marketing boards that could further increase liquidity concerns.

**4.186** We looked at borrowing requests over a 4 year period (2010 through 2013). As noted above, boards were often late in required submissions but would generally try to catch up before the July Commission meeting when borrowing authorizations were typically reviewed and approved. We identified a number of process requirements in the Policy and Procedures manual that were not met.

***The Commission approves borrowing authorizations when policy requirements have not been met***

**4.187** In our review of the Commission meeting minutes, problems with borrowing authorizations were sometimes flagged and a release to borrow would be delayed. At other times the authorization was provided without required information. A decision to authorize borrowing without the

required information may result in the Commission failing to properly identify and analyze marketing board financial or operating risk, a key component of good oversight.

**Establishment of Negotiating Agencies**

**4.188** Commission Order 2005-189 requires both boards and processors purchasing from boards to establish negotiating agencies annually unless both notify the Commission in writing that they do not wish to do so for a given year. Negotiating agencies are comprised of a specified number of submitted representatives from both boards and processors. They are intended to settle such matters as minimum price, quantity and delivery, and terms of agreements between processors and marketing boards.

**Marketing boards and processors do not comply with the Commission Order to establish negotiating agencies**

**4.189** We reviewed requirements of the Order and submissions to the Commission by both marketing boards and processors for 2010 through 2012. Exhibit 4.12 highlights the number of non-compliant marketing boards and processors based on information supplied by the Commission.

*Exhibit 4.12 – Non-Compliant Marketing Boards and Processors 2010-2012*

<b>Non-Compliant Marketing Boards and Processors 2010-2012</b>			
	2010	2011	2012
Marketing Boards	3	5	2
Processors	19	5	13

*Source: Forest Products Commission*

**The Commission does not enforce its Order**

**4.190** Commission support staff indicated all terms of this Order are not enforced by the Commission and they did not act in cases where negotiating agencies had not been established.

**4.191** Increased compliance by Boards and processors with the structure provided by the Negotiating Agencies Order would serve to better organize the negotiations process and reduce the number of disputes that the Commission attempts to mediate outside of the defined process provided by the Order.

**4.192** We believe the Commission should ensure compliance with its Orders pursuant to its authority under the Act. Non-compliance with Commission Orders reduces the quality and timing of information provided by marketing boards to the Commission in support of its oversight role. It can lead to increased Commission investigation of disputes that could be dealt with by negotiating agencies. In some instances, non-

compliance can prevent the Commission from taking timely action to address increasing financial and operating risk in the marketing board system.

**Recommendation**

**4.193 We recommend the Commission evaluate its reporting requirements from marketing boards to ensure that what is being requested provides the benefits intended. We further recommend the Commission enforce its Orders to ensure marketing board compliance with regulation.**

**Commission Oversight of Marketing Board Operations**

**4.194** In our work at the Commission we identified circumstances where we believe the Commission should have addressed specific areas of risk in marketing board operations. These related to:

- financial oversight;
- strategic oversight; and
- marketing board governance.

**Financial Oversight**

***The Department completes a financial review for the Commission***

**4.195** We examined documentation at the Commission office supporting their review of audited financial statements and annual meeting records of the marketing boards. We found it is Corporate Services in the Department that conducts financial analysis of marketing board audited financial statements, not the Commission.

**4.196** We discussed the review process with senior management at the Department and they indicated this review was done as a courtesy to the Commission and was not mandated to the Department.

**4.197** However, in the Department's 2012-13 annual report under Corporate Services, the Financial Resources Management section states it is responsible for, among other things, "*providing financial support and advice to the New Brunswick Forest Products Commission*".

***Two marketing boards have significant solvency risk***

**4.198** We reviewed the Department's analysis and summary reports provided to the Commission on financial strength of the marketing boards. We noted they identified significant financial risk for at least two of the seven boards regarding solvency. They indicated one board was "*basically insolvent*" and stated that "*liquidity of the organization is very poor*" for a second board. These warnings existed at least as far back as 2010-11.

Exhibit 4.13 - 2012-13 Marketing Board Statement of Operations Summary

2012-13 Marketing Board Statement of Operations Summary								
Year 2012-13	Carleton-Victoria	Madawaska	North Shore	Northumberland	SENB	SNB <sup>1</sup>	YSC	Total
Wood Sales	\$7,708,280	\$7,365,283	\$6,209,351	\$ 2,341,227	\$6,195,271	\$11,643,389	\$9,080,488	\$50,543,289
Cost of wood sales	7,701,149	7,209,221	6,209,180	2,253,158	6,193,129	11,440,267	8,859,450	49,865,554
Net proceeds from wood sales	7,131	156,062	171	88,069	2,142	203,122	221,038	\$ 677,735
Fees, levies, and other revenue	191,340	911	138,232	550,403	220,230	1,658,766	1,240,476	4,000,358
Net revenue	\$ 198,471	\$ 156,973	\$ 138,403	\$ 638,472	\$ 222,372	\$ 1,861,888	\$1,461,514	\$ 4,678,093
Expenditures	200,949	173,367	311,530	669,347	230,251	1,759,101	1,421,118	4,765,663
<b>Net income (loss)</b>	<b>\$ (2,478)</b>	<b>\$ (16,394)</b>	<b>\$ (173,127)</b>	<b>\$ (30,875)</b>	<b>\$ (7,879)</b>	<b>\$ 102,787</b>	<b>\$ 40,396</b>	<b>\$ (87,570)</b>

Source: AGNB created table from NB Forest Products Commission 2012-13 annual report (unaudited)

SENB – South East New Brunswick

SNB – Southern New Brunswick

YSC – York Sunbury Charlotte

Note 1 - Fees, levies, and other revenues are corrected for an error in the Commission's annual report.

**4.199** Exhibit 4.13 shows the comparative financial operating results of all marketing boards as presented in the Commission's 2012-13 annual report. As shown above, five of the seven marketing boards were operating at a net loss in 2012-13, highlighting the poor financial condition flagged by the Department.

**4.200** We reviewed marketing board audited financial statements for three years, 2010-11 through 2012-13 and believe the solvency issues identified by the Department were valid.

**The Commission does not address potentially serious financial issues with marketing boards in a timely manner**

**4.201** We reviewed Commission minutes to determine what actions the Commission had taken to address the above-noted concerns. The Commission has been aware of these situations since well before 2010 and has been working since then with one marketing board to address its financial situation. The Commission has struggled repeatedly to get information they required from the marketing board. As late as July 2012 the Commission was still trying to get information from this marketing board.

**4.202** We noted nothing in the minutes that suggested the

Commission has taken any steps to address the conditions of a second board in serious financial trouble. Although aware of this since at least 2010 our understanding is the Commission has yet to request documentation or an action plan from the second marketing board on how that marketing board intends to address its liquidity issues.

**4.203** We were told by Commission members the Executive Director does review the marketing board financial statements annually with the Commission but it may not be recorded in minutes. The Commission relies on an informal arrangement with the Department to have a financial review completed by Department resources. There is no formal report with recommendations from the Department to the Commission on the analysis completed.

*The Commission lacks financial expertise*

**4.204** We believe this highlights a resourcing problem for the Commission. The Commission is responsible for overseeing the financial position of boards but there is no individual directly available at the Commission with a financial background. Without access to resource personnel with a financial background, the Commission cannot effectively meet its oversight responsibility and address financial risk in the marketing board system.

*Recommendation*

**4.205 We recommend the Department and Commission document how financial reviews of marketing boards will be undertaken, assign personnel with the appropriate background and expertise to do the analysis, and report on the results of this analysis with recommendations, if required.**

**Strategic Oversight**

**4.206** Our analysis of the marketing board financial statements and annual meeting reports also identified potential risk related to a strategic investment made by a marketing board. This risk was also flagged in the Department's financial review of the board's audited financial statements.

**4.207** In 2008 a marketing board entered into a joint venture agreement to purchase assets of a previously bankrupt sawmill operation. At that time the marketing board invested approximately \$290,000 in this venture. By 2013, the amount due to the marketing board from related parties to this venture had grown to approximately \$795,000. The 2013 annual meeting report of the marketing board indicated the mill was being upgraded and a firm start-up date could not be provided.

**4.208** In addition to the risk of financial loss and insolvency

arising from this purchase, it places the Marketing Board in a potential conflict of interest.

**4.209** The Marketing Board acts as the sole marketer for private wood in their area. It is an agent for the sale of its member's timber to the mills at the best price and highest volume. The potential conflict arises as it will also be on the purchasing side as a mill owner.

*The Commission's review of investment risk prior to authorizing debt is weak.*

**4.210** We reviewed Commission minutes for this period as well as borrowing requests made and authorized for this board but found no mention of this investment. We found at the time of our audit, five years after the initial purchase, the Commission had not taken steps to understand and mitigate the risks to the Marketing Board and the Commission posed by this venture.

**4.211** We were informed that the Commission was formally investigating this matter after the completion of our audit work.

**Oversight of Marketing Board Governance**

**4.212** In our review of marketing board annual reports and audited financial statements we noted the relationship between the agent organizations (producer association or co-operative as the case may be) and marketing boards is significant and appears to impact the structure and overall operations of the marketing boards.

**4.213** For example, in one instance the producer association handles virtually all administration of the marketing board. Both organizations operate under the same board and the marketing board as a corporate entity has no actual employees. All are employees of the Association and a proportion of payroll is allocated to the marketing board to cover costs associated with its administration.

**4.214** In the 2012-13 audited financial statements of the association in this example, a contingent liability note indicates the marketing board is "*a company controlled by the management*" of the Association. This appears to go beyond a traditional "*agent*" role and certainly cannot be considered "*subsidiary*" as noted in the Commission's annual report.

**4.215** A similar, second example relates to the relationship between a marketing board and its associated co-operative. In the co-operative's 2012-13 audited financial statements under note 10 "*economic dependence and related party transactions*", it states "*under the terms of a contract...the Marketing Board contracted the Co-operative to provide the*

*services to fulfill the Marketing Board's mandate". Again, fulfilling an entire mandate would suggest a different relationship than a subsidiary might normally have.*

**4.216** Only one marketing board has a current agreement with its associated co-operative. The two other marketing boards have no current agreements detailing the relationship with their respective agent associations.

*The Commission does not review Marketing Board – Association agreements*

**4.217** The Executive Director of the Commission indicated that they do not require agreements between these corporations and do not review any agreements that may exist.

**4.218** We believe these examples highlight areas where the Commission should have investigated the structure of the marketing boards and the relationship with agent organizations to ensure regulations are adhered to and no conflict of interest exists.

*Recommendation*

**4.219 We recommend the Commission require Marketing Boards to provide them with a signed agreement between the Marketing Board and its associated agent(s) that defines the nature of the agent relationship and the roles and responsibilities of each party as they pertain to the mandate of the Marketing Board.**

*The Commission does not meet regularly with the marketing boards and Commission representatives do not attend marketing board district meetings*

**4.220** We reviewed Commission minutes and found no documentation of regular meetings between the Commission and the boards (individually or as a group). Commission representatives indicated that there are no regular, pre-scheduled meetings of this nature.

**4.221** Under regulation, marketing boards are required to hold annual district meetings of producers to, among other things, elect delegates and marketing board members. Marketing boards are also required to hold an annual meeting of delegates to review the operations of the board and vote on matters of decision.

**4.222** We reviewed Commission minutes and other records to determine Commission representative attendance at marketing board annual meetings. The Executive Director has generally attended most of these meetings over the past three years. However, no Commission representative attends the annual district meetings where elections are carried out.

**4.223** While we understand the Commission has resourcing challenges, we believe regular meetings with boards and

attendance at some district meetings would be beneficial to ensure board governance processes follow regulations and key issues are understood by Commission members.

**Recommendation**

**4.224 We recommend the Commission undertake regular meetings with the marketing boards, individually or in a group setting as required, and attend random district meetings to identify and act on areas of concern.**

**4.225** The Executive Director indicated the Commission has never documented the governance arrangements of marketing boards. We believe governance oversight is important to ensure marketing boards are structured and operated in the manner intended in legislation.

**Recommendation**

**4.226 We recommend the Commission document a framework, proactively identifying and addressing areas of risk in marketing board governance, to ensure that marketing boards operate as intended by legislation.**

**Commission Enforcement**

**4.227** The Commission has broad powers with respect to addressing serious marketing board financial issues. For specific references to the investigation options available to the Commission please refer to Appendix V.

***The Commission has addressed serious marketing board issues in the past***

**4.228** The Commission has exercised its authority in the past. This was most apparent in October of 2005 when the Commission assumed responsibility to exercise the powers of the North Shore Forest Products Marketing Board. The Commission tried to re-establish a Board in 2007 and the entire board resigned in 2010, leaving the Commission to assume responsibility again. This lasted until December of 2013 when the Commission returned authority to a newly appointed board.

**4.229** When a situation degrades to the point where the Commission must step in and assume responsibility, the Commission and potentially the Province can become liable for the ongoing operating costs and any new debts incurred.

**4.230** The Commission can also enforce its Orders through the court system under section 84 of the *Natural Products Act*. If upheld under the court system, the marketing board could be fined in an amount dependent upon the category of the offence.

***The Commission does not always enforce its Orders and directives with marketing boards who do not comply with policy and requests***

**4.231** As noted above, when we reviewed marketing board compliance with Commission Orders and policy, we found it to be weak in most areas. We also identified, in the Commission minutes, multiple requests for information and plans from a marketing board over a three year period that appeared to go unanswered.

**4.232** We asked the Commission if it enforces its Orders, policies, and requests. The Executive Director indicated they have not taken boards to court to enforce Orders due to the relatively poor financial condition of boards. The Commission's preference is to work with boards collaboratively.

**4.233** While we understand the Commission's perspective respecting court action, we believe postponing enforcement without alternative mechanisms to address non-compliance can lead to more significant action becoming necessary later. Actions such as this consume Commission resources and hinder the Commission's ability to plan and undertake more proactive oversight activities.

***Recommendation***

**4.234** We recommend the Commission establish and document an administrative process for the use of its investigative powers and formalize a series of escalating enforcement measures/mechanisms to be used in cases of non-compliance with Orders, regulations and policy directives.

**The Commission Acknowledges Weakness in its Oversight Role**

**4.235** The Commission acknowledges weakness in their oversight of marketing boards. They indicated to us with only three fulltime staff, they do not have resources to effectively fulfill their oversight mandate.

**4.236** We believe the Commission's oversight role is important to the integrity of the marketing board system as it exists today. We further believe the Department should review the mandate, resources, and structure of the Commission to ensure it is able to effectively perform its legislated requirements.

***Recommendation***

**4.237** We recommend the Department and the Commission jointly review the Commission's mandate and structure and make the changes required to ensure the Commission can effectively perform its legislated mandate.

**Performance Reporting**

**4.238** We reviewed the Commission's 2012-13 annual report. We looked for targets they have established to measure both the performance of marketing boards and its own performance.

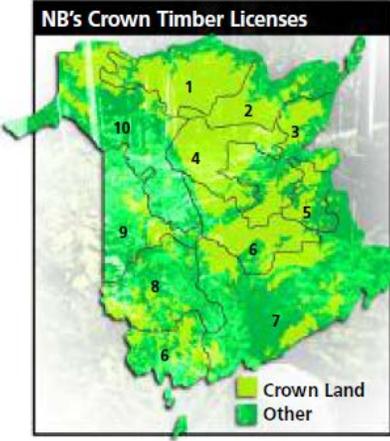
**4.239** While we noted the Commission provides much information of value including harvest and sales data, information on compliance issues, and challenges to the marketing board system, we could not identify any performance targets.

**4.240** Consequently, the Commission's annual reports lack performance information, related to the Commission's operations and the marketing board system in general. This makes it difficult for annual report readers to assess both the Commission's and marketing boards' effectiveness in carrying out their respective mandates.

**Recommendation**

**4.241** We recommend the Commission establish performance targets for its own oversight work and for marketing boards against which the Commission can evaluate marketing board performance in critical areas. We further recommend the Commission report on the effectiveness of both its own work and marketing board operations against the predetermined targets.

## Appendix I - Glossary

AGNB	<i>Auditor General of New Brunswick</i>	
Annual Allowable Cut (AAC)	<p>“The AAC is the volume of timber that may be harvested during a given time to maintain sustained production, and is based on forest inventory data.”</p> <p>(New Brunswick Forest Products Commission, 2012-13 annual report)</p>	
Code of conduct	<p>“Principles, values, standards, and rules of behavior that guide the decisions, procedures, and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations.”</p> <p>(“Defining and Developing an Effective Code of Conduct for Organizations”. International Federation of Accountants, 2007. Page 8)</p>	
New Brunswick Crown land	<p>“Crown Land includes all or any part of land (including land covered by water) that is not privately owned in the Province of New Brunswick. Crown Land is managed by various New Brunswick Government Departments.”</p> <p>(Crown Land Fact Sheet – Department of Natural Resources)</p>	
Crown timber licenses	<p>Ten defined zones of the Province’s total Crown land area, each of which “is leased through a 25-year forest management agreement to a large forest-based company called a licensee”.</p> <p>(Management of New Brunswick’s Crown Forest, Department of Natural Resources, 2003)</p>	
Forest Products Marketing Board	<p>“a corporate entity established under the Natural Products Act to control and regulate the marketing of primary forest products, and to ensure that private woodlot owners have a fair and orderly market system for sale of their wood products.”</p> <p>(New Brunswick Forest Products Commission, 2012-13 annual report)</p>	
Hectare (ha)	Measure of land area equal to 2.471 acres.	
Licensee (or Crown Timber Licensee)	<p>“Licensees are the managers of Crown licenses under the administration of the Department of Natural Resources.”</p> <p>(Management of New Brunswick’s Crown Forest, Department of Natural Resources, 2003)</p>	

## Appendix I - Glossary (continued)

Primary Forest Product	<p><i>“includes wood chips and biomass produced at or on the harvest site, and any unmanufactured product of forest trees of hardwood and softwood species, but does not include coniferous trees cut for sale as Christmas trees and products made from the sap of maple trees”</i></p> <p>(New Brunswick Forest Products Commission, 2012-13 annual report)</p>
Producer	<p><i>“a person who produces primary forest products for sale from a private woodlot”</i></p> <p>(Forest Products Act Chapter 105)</p>
Producer Association	<p><i>“includes marketing boards, cooperatives and other associations established for the marketing of primary forest products”</i></p> <p>(Forest Products Act Chapter 105)</p>
Royalty	<p><i>“means the amount prescribed by regulation that is payable to the Crown</i></p> <p><i>(a) for timber harvested on Crown lands, or</i></p> <p><i>(b) for any other resource prescribed by regulation that is extracted, harvested or taken from Crown Lands;”</i></p> <p>(Crown Lands and Forests Act, Chapter 38.1)</p>
Silviculture	<p>Silviculture <i>“is the science of establishing, growing and tending forest stands, and can boost the rate of natural forest renewal”</i>.</p> <p>(Management of New Brunswick’s Crown Forest, Department of Natural Resources, 2003)</p>
Sustainable Forest Management	<p><i>“Management of the forest in a manner to sustain the “forest” ecosystem, and, environmental, economic and social values.”</i></p> <p>(New Brunswick Forest Products Commission, 2012-13 annual report)</p>
Sustainable Yield	<p><i>“The sustainable yield of natural resources is traditionally defined as the extraction level of the resource which does not exceed the growth.”</i></p> <p>(Organization for Economic Co-operation and Development, Glossary of Statistical Terms, 2005)</p>

## Appendix II – Audit Criteria

The audit criteria we used to evaluate our objectives are listed below.

### **Objective 1**

To determine if the Department of Natural Resources is meeting its responsibilities respecting timber supply from private woodlots.

Criterion 1 - The Department of Natural Resources should have a documented strategy encouraging sustainable management of private woodlots.

Criterion 2 - The Department of Natural Resources should have structures and programs to implement its strategy for private woodlots.

Criterion 3 - The Department of Natural Resources should monitor and publicly report on its performance in encouraging sustainable management of private woodlots.

### **Objective 2**

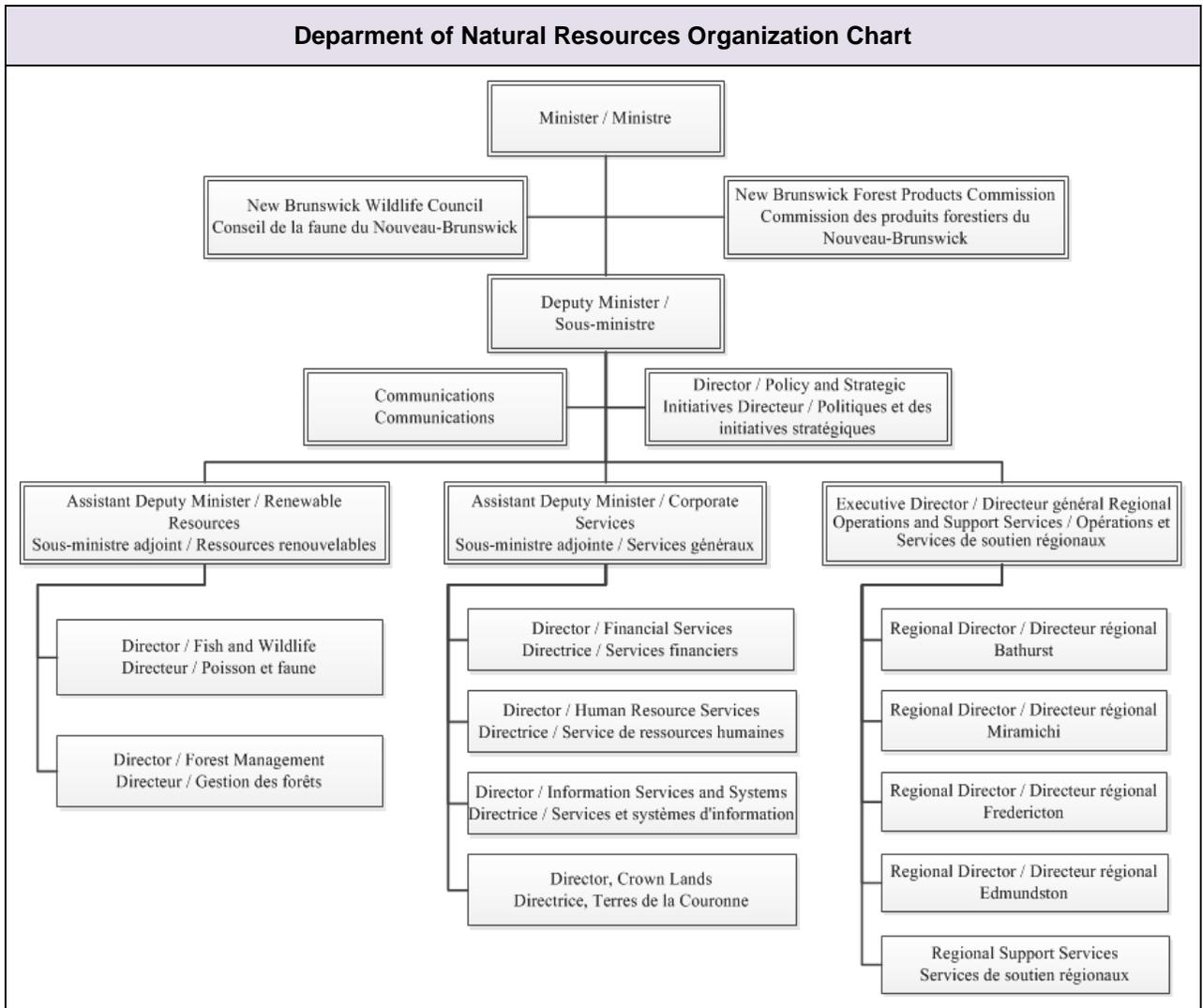
To determine if the New Brunswick Forest Products Commission provides adequate oversight of Forest Products Marketing Boards.

Criterion 1 - The Commission should regularly assess the performance of forest products marketing boards in meeting their obligations under legislation.

Criterion 2 - The Commission should exercise its authority to address performance weaknesses in the marketing board system.

Criterion 3 - The Commission should report publicly on the effectiveness of its work and marketing board performance.

## Appendix III – Department of Natural Resources Organization Chart



Source: Created by AGNB with Department of Natural Resources 2012-13 annual report data (unaudited).

## Appendix IV – New Brunswick Forest Products Marketing Boards

The *Natural Products Act* (the Act) establishes marketing boards to represent producers under Section 18(1) upon recommendation of the New Brunswick Forest Products Commission. In case of “farm products of the forest”, there are seven forest products marketing boards. The Act also defines the purpose of these marketing boards under a single regulation 2014-1 (consolidated January, 17, 2014), replacing separate such regulations for each marketing board.

### *The purpose and power of Forest Products Marketing Boards*

The purpose of forest products marketing boards is defined by the *Natural Products Act*. Section 7 of regulation 2014-1 under the Act states the following:

*The purposes for which a Board is established are:*

- (a) the promotion, control and regulation within its regulated area of the marketing of the regulated product;*
- (b) the promotion within its regulated area of the production of the regulated product;*
- (c) the development, conservation and management of forestry resources on private woodlots in its regulated area; and*
- (d) the promotion of the consumption and use of the regulated product.*

Section 9 and 10 of regulation 2014-1 details many specific powers of marketing boards. Among these are:

- to market the regulated product;
- to prohibit the marketing or the production and marketing, in whole or in part, of the regulated product;
- to regulate the time and place at which, and to designate the body by or through which, the regulated product shall be marketed or produced and marketed;
- to require any person who produces the regulated product to offer to sell and to sell the regulated product to or through the Board; and
- to implement and administer forest management programs on private woodlots.

### *Forest Products Marketing Boards are Elected Bodies*

Marketing boards are elected through a regulated process and are meant to be representative of producers throughout the marketing board area.

#### Annual District Meeting of Producers

Producers elect members of the board (if a member’s term is expiring) and delegates at annual district meetings.

#### Annual Meeting of Delegates

Boards also have an annual meeting of delegates to present financial statements and information on activities undertaken by the board. Terms for board members are defined in regulation.

## Appendix V – New Brunswick Forest Products Commission Enforcement Authority

Established in the *Forest Products Act* (FPA), the New Brunswick Forest Products Commission (Commission) takes much of its oversight and enforcement authority over forest products marketing boards from the *Natural Products Act* (NPA). Both are administered by the Minister of Natural Resources.

**Section 12(3) of the NPA states, among other things, that the Commission may take action if marketing board conduct serves to:**

- violate this Act or the regulations;
- constitute an unsound business practice;
- prejudice the interests of persons for whose benefit the agency or board has been established; and/or
- constitute a failure by the agency or board or person to file a report or document required to be filed with the Commission or to provide information required to be provided to the Commission.

**Section 12(4) states that “for the purposes of subsection (3), the Commission may do any one or more of the following:**

- (a) investigate the business and affairs of the agency or board, or the business and affairs of the person carrying out functions on behalf of the agency or board;*
- (b) prepare a report concerning the results of an investigation and, where the Commission considers it necessary, make the report public; and*
- (c) order the agency or board to take such remedial action as the Commission considers necessary.”*