



Maximum Yield Strategies in Nahmint & the Nibble Theory of Old Growth Management Areas:
An open opposition to the proposed SMZ 13 Land Act Order

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Re: SMZ 13 (Nahmint) draft Land Act order & public consultation

Ref: Encl Appendix 1-3 and Nahmint FSP blind review report

Preamble

- [1]. This open letter is in response to a Ministry of Forests (“MoF”) public consultation in the Port Alberni area.¹ The MoF public consultation seeks to acquire feedback on a draft ministerial order which seeks to *legalize* certain areas for old growth protection, and subsequently maintain non-legalized areas for continued industrial logging.²
- [2]. Both the public consultation and draft ministerial order are reliant upon a background document titled *Nahmint Landscape Unit Plan*, produced by British Columbia Timber Sales (BCTS).³ Of immediate concern is the general framing of this background document. The BCTS program area that produced the document had previously been subjected to multiple investigations regarding forestry management data within the area applicable to the order.

¹ Nahmint Engagement Summary (19 October 2022). [Province of B.C. web log]

<https://engage.gov.bc.ca/govtogetherbc/consultation/nahmint-landscape-unit/>

² Order of the Minister of Forests (10 September 2022 – DRAFT) pursuant to *Land Act* 93.4 [web log]

<https://engage.gov.bc.ca/app/uploads/sites/121/2022/10/Proposed-Order-Establishing-Objectives-for-Nahmint-LU.pdf>

³ Nahmint Landscape Unit Plan (22 August 2022). [PDF plan file]

<https://engage.gov.bc.ca/app/uploads/sites/121/2022/10/Nahmint-draft-Landscape-Unit-Plan-2022.pdf>

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The same investigations, which included third-party ecological re-planning documents and reports, had questioned BCTS's forestry planning methods. The results of these investigations, as well as recommendations made to government (2021) by the Forest Practices Board (FPB), were not disclosed to the public in any of the information presented for public consultation.

- [3]. For the reasons discussed herein, the undersigned author generally opposes the current consultation process on the grounds of transparency in ministerial decision making. Further, it is recommended the Province of B.C. **does not approve** the draft order proposed by BCTS staff as the documentation provided for consultation is not only lacking transparency but accurate history.
- [4]. This open letter focuses broadly on three key areas of forestry management practices within Special Management Zone (SMZ) 13, also known as Nahmint. These are:
 - A. historical SMZ 13 matters;
 - B. general methodologies of B.C. Timber Sales (BCTS) within SMZ 13; and,
 - C. the current public consultation process.

A. History of SMZ 13

- [5]. The Vancouver Island Land Use Plan (VILUP)⁴ and the Higher Level Plan Order⁵ (HLPO) form the backdrop to the current consultation process. These documents provide a benchmark that currently underpins the regulation and management of forests on Vancouver Island.⁶ They are structural documents that were (and are) meant to be adhered to by both the logging industry and provincial government staff.
- [6]. In the current public consultation, a Nahmint Landscape Unit Plan is provided to the public as an authority for resource management. However, the Higher Level Plan Order pursuant to VILUP provides legal conservation objectives and historical conservation and biodiversity intent, not the documents currently presented to the public as part of this consultation. The Nahmint Land Use Plan therefore creates confusion for the public. Although it is addressed in the text of the backgrounder itself, the main role of the Higher Level Plan Order pursuant to VILUP should be more clear on the government's website.

⁴ Later updated to Vancouver Island Summary Land Use Plan (February 2000).

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/vancouverisland-rlup/vancouver_island_slup.pdf

⁵ VILUP – Higher Level Plan Order (1 December 2000) [ministerial order]

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/vancouverisland-rlup/vancouver_island_lup_higher_level_plan_order.pdf

⁶ Historical commentary at

https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/west-coast/vancouver_island-lup

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- [7]. Creating a new ministerial order without a general historical understanding of SMZ 13 undermines Indigenous reconciliation, public consultation, and the conservation of rare ecosystems within our forests. The current Nahmint Landscape Unit Plan, which purports to suggest a new ministerial order, does not accurately reflect the recent history of Nahmint planning and timber harvesting issues.
- [8]. Substantial ecological studies were carried out in the 1990s during the development of the VILUP. The cursory findings of ecological and bioclimatic variants identified certain areas of Vancouver Island that were *special* as they contained underrepresented and rare ecosystems. Within these special areas were additional *extra-special* areas of concern, to which additional protections were granted under VILUP. Located by a large lake with productive, low-elevation old growth forests, and boasting lush green valleys with rich biodiversity and ancient rainforest floors and canopies, Nahmint (or SMZ 13) was designated an extra special place with extra conditions to be considered prior to and during any logging activities.
- [9]. As part of the ministerial protections granted to SMZ 13 under VILUP-HLPO (2000), various conservation targets were mandated and certain percentages of the forest and various tree species were to be managed with additional caution. Little bubbles of protection were drawn across the Nahmint landscape that identified rare rainforest ecosystems. These bubbles became what is known as Old Growth Management Areas (OGMAs). In theory, they were pockets of fully protected old growth forest stands that would interconnect with other OGMA pockets to form a sort of conservation bubble wall across SMZ 13. In practice, they became the most sought-after areas for industrial logging. In a simplistic way, you can think of an OGMA as a box of Smarties, and rare forest ecosystems as the red Smarties within that box. There are many trees and ecosystems in the OGMA box but some colours and types are rare (highlighted further in a metaphor below).
- [10]. As the Province of B.C. shifted from government regulation to industry reliance during the late 1990s and early 2000s, the responsibility for management and conservation of SMZ 13 was increasingly downloaded to the logging industry. Logging companies through the years successfully obtained approvals for various Forest Stewardship Plans (FSPs), the precursor document that grants a company permission to log an area over several years. Some of these FSPs allowed encroachments into the OGMAs in exchange for the logging industry protecting other areas of SMZ 13 (i.e., a bait and switch). As highly valued areas were felled, SMZ 13 became an industrial race to the proverbial last red Smartie. Leading the race was B.C. Timber Sales.

- [11]. As the VILUP required percentages for ecosystem protection dwindled across SMZ 13, a new “shifting baseline” approach to planning was adopted by both government and industry. In essence, industry planning and new interpretations advanced an argument that VILUP retention percentages were much lower than the required values that were identified in the 1990s and HLPO (2000). In practice, the shifting baseline approach resulted in various increases to logging (approximately 13% in some areas). All of these increases were within already sensitive ecosystems experiencing high industrial impacts (usually low elevation, moderate-high productive old growth forests).

Shifting baseline metaphor

- [12]. The ultimate impact of shifting baseline approaches in the Nahmint is shown by continuing the Smartie metaphor. Imagine that you have a box of Smarties (i.e., your OGMA). You may eat them in accordance with these rules:
- i. The overarching objective is to conserve 50% of the red Smarties.
 - ii. You must only eat 50% of the red Smarties at a time.
 - iii. You may manage and eat all the other colours as you wish, but Mom and Dad must approve your eating plan.
- [13]. **There are six red Smarties** in your box and Mom and Dad have approved your eating plan for the next several days. **You immediately eat two of the red Smarties** and half of the other remaining colours before putting the box away for tomorrow. When you open it the next day, **there are now four red Smarties**. **You eat another two red Smarties** and half of the rest before putting the box away again. When you come back the next day, Mom catches you as you are about to eat another red Smartie. “Stop that!” she says, “You should have three red Smarties left, but you have already eaten four.” You shove the Smartie in your mouth anyway and tell Mom that you are following the plan by eating less than 50% of the red Smarties left in the box. To confuse her, you add that Dad said it was ok because there is another box with more red Smarties in the cupboard, so the red Smarties in this box are just part of a larger pile of red Smarties the family hasn’t counted yet. Mom goes to confirm with Dad. This takes a full day.
- [14]. You eye the box and make a quick calculation. Either Dad doesn’t remember if he said that you are allowed to eat 50% of the remaining red Smarties in the box each day (which he didn't) and you are about to get away with it, or Mom is coming back with a wooden spoon. Either way, your best course of action is to double down and pop 50% of your remaining Smarties down the hatch to show how much you really believed you were right. You leave one red Smartie to prove you are not greedy and further justify your actions by telling yourself that Mom never said to stop, she just left the room to check with Dad. **There is now only one red Smartie left.**

- [15]. Mom comes back and is hopping mad. Out comes the spoon, but you avoid a whacking by explaining to Dad that you just made an honest mistake. Mom demands you open all the Smartie boxes and pile up the reds for a proper counting. Turns out, you opened a few of the boxes at your last birthday party and now there are only two boxes left. You ask your friends, but nobody can remember how many red Smarties they ate at your party. You realize that there is probably not a secret stash of red Smarties in the unopened boxes. Together with your parents, you open the remaining boxes. There are no red Smarties in the first box, and only one in the second box. You call Nestlé, but they tell you it is going to take another 200–500 years to get some more red smarties manufactured. In a panic, you take all the other colours and add some water, hoping a red one rises to the surface. Your Smarties are now just a muddy mess that don't make much sense or resemble what was originally in the box. Welcome to SMZ 13.
- [16]. The OGMA's are the boxes of Smarties. There are many colours, some are rare, some are not. The Smarties are the trees. The red Smarties are the old growth trees comprising sensitive and rare ecosystems. The other colours matter too, just not as much. Mom is the compliance team. Dad is the one doing the final sign off on your eating plan (i.e., your FSP).
- [17]. Read strictly, your actual obligations under the eating rules allowed you to do what you did. The objective was to leave some red Smarties, but it did not say you must leave 50% of the six red Smarties that you started with—just that you could only eat 50% of the Smarties at one time. What simplistically played out in this Smartie metaphor is known as *maximum yield strategy*, or more colloquially “nibble theory.” Under a maximum yield strategy, there is no operational benefit to meeting conservation objectives as the risk of harsh punishment is low and the chance of immediate reward high. (The risk is further mitigated if you quietly slip a few Smarties to Dad and argue a couple were a little more “orange” than a proper red). Broadly speaking, and recognizing the many complex nuances not mentioned here, it is this methodology that currently underpins SMZ 13 management approaches by the Province of B.C.: **maximum yield through shifting baselines.**
- [18]. SMZ 13 conservation objectives lack strict enforceability. Another ministerial order will not address this structural problem. Due to the presence of rare, underrepresented, and sensitive ecosystems in SMZ 13, an unenforceable conservation objective is not appropriate. The current draft order should not be actioned any further as it relies on flawed interpretations of VILUO-HLPO (discussed again below). A structural fix requires statutory authority to immediately revoke harvesting permissions in the event that false, misleading, or inaccurate data is discovered. Further, adequate enforcement is required. Enforcement staff must be allowed to stop all works if reasonable grounds exist to believe that a harvest will exceed or otherwise not substantially comply with the Higher Level Plan Order (i.e., precautionary and preventive enforcement powers). Legalizing an OGMA, which may be in non-compliance with the Higher Level Plan Order from the outset, is reprehensible—and this was the previous concern of the FPB with BCTS's shifting baseline interpretations.

B. General methodologies of B.C. Timber Sales in SMZ 13

- [19]. This section addresses certain matters not presented to the public in the current consultation process.
- [20]. The undersigned author was previously a lead provincial forestry officer during a complex compliance investigation involving SMZ 13. Of particular interest to the investigator were the FSP approval processes and forestry data sets located at the Port Alberni field office.
- [21]. The investigation covered an extensive review of OGMA delineations and old growth retention values (the Smartie boxes and the red ones inside) and found what appeared to be cumulative effects and serious ecological impacts of FSPs being approved in error over many years (all the red Smarties were disappearing too fast as the boxes were opened). Looking ahead at the FSP years left (the length of the eating plan), there were concerns that deficit harvesting would occur. The undersigned author, as lead investigator, warned BCTS of these issues through a Compliance Notice.⁷
- [22]. BCTS submitted a written reply to the Advisory Letter suggesting that the lead investigator did not have authority to review or investigate FSP approval processes. Further, BCTS claimed (and later further argued) that once an FSP was approved, even if it was approved in error, it could not be rescinded or challenged.⁸
- [23]. Simultaneous to this investigation, the lead investigator commissioned a blind ecological review for SMZ 13 to re-confirm OGMA delineations and retention values.⁹ This review also found significant concerns with the way retention values and OGMA delineations were being shown on paper. The math appeared to favour industry and BCTS interests, not conservation objectives or proper legal order interpretations. An Advisory Letter (a step above a notice) was then issued to BCTS showing the government to be in non-compliance with overarching conservation objectives.¹⁰
- [24]. Like the kid in the aforementioned Smartie metaphor, BCTS maintained internally within government that the logging was approved and non-investigable. BCTS argued they were strictly following the “nibble” rules. The lead investigator highlighted for various government officials and BCTS staff that providing misinformation to a responsible official in order to acquire logging authorization (lying to get your eating plan approved by your parents), constituted a statutory offence that could be investigated. In essence, regardless of the existing FSP and enforcement authority over its approval, it would be in the best interests of BCTS to immediately correct their behaviour. The alternative could be further investigation in providing false and/or misleading information to a forestry official.

⁷ Appendix 1: Compliance Notice - Inspection Findings (SMZ 13) [18 June 2018].

⁸ Appendix 2: BCTS Reply to Compliance Notice - Inspection Findings (SMZ 13) [9 August 2019].

⁹ Nahmint SMZ 13: Consistency of Forest Stewardship with Management Intent and Legal objectives (22 October 2018) [enclosed by-email as PDF attachment to this consultation submission].

¹⁰ Appendix 3: Advisory Letter - Nahmint (SMZ 13) [22 October 2018].

- [25]. During this time, the provincial government cancelled all of its funding for the RCMP Forest Crimes Unit, which was subsequently disbanded (although still exists in other parts of Canada). This left the lead investigator as the only field-level enforcement authority willing to pursue the matter (police oversight became an impossibility).
- [26]. It was suggested by the FSP approval authority (i.e., Dad) that the investigator should close the investigation and not make any written findings . Ultimately, multiple complaints were filed against the lead investigator at the ADM level by BCTS and their staff. Provincial executives in Victoria (who oversaw both BCTS and the investigators chain of command) then made attempts to retract investigation findings without the investigator’s knowledge. During this time, the investigator was also contacted by the Forest Practices Board (FPB) about a public complaint involving the potential over harvesting of timber in Nahmint. The investigator refused to shut down the investigation and instead turned over all documentation to the Forest Practices Board.
- [27]. An important factor during this investigation were the attempts being made by BCTS at the time to legalize OGMAs under ministerial order. In simple terms, while being notified that the logging practices were questionable and needing review in SMZ 13, the response by BCTS was to approach the minister and attempt to have a ministerial order rushed through that would essentially legalize and/or disregard what had taken place over the previous twenty years, thereby allowing maximum yield without strict adherence to conservation objectives within the Higher Level Plan Order. This was directly countered by the lead investigator at the time and BCTS was advised in writing to voluntarily cease that legalization process.
- [28]. The Forest Practices Board conducted an audit of the investigation and ecological review, which confirmed multiple issues .¹¹
- [29]. On September 21 (2021), the Ministry of Forests responded to the Forest Practices Board and agreed with all recommendations. It stopped short of committing to addressing the issue of FSP correction once approved. The responsible ADM also paused to note:

I also want to share that while the ministry agrees with the Board’s recommendations, we do not agree with the Board’s methodology. This methodology that resulted in a finding of 10 site series deficits did not use nor fully examine the best available information. The ministry believes that the current state of old and mature forests in the Nahmint Landscape Unit, including within these ten site series, all but one exceed the requirements of the HLPO.¹²

¹¹ Compliance with Biodiversity Requirements in the Nahmint Watershed. Complaint Investigation #18047 (May 2021). Forest Practices Board [investigation report].

<https://www.bcfpb.ca/wp-content/uploads/2021/05/IRC237-Nahmint.pdf>

¹² Ref: 267201 (21 September 2021) [ministry response to Forest Practices Board, no title]

<https://www.bcfpb.ca/wp-content/uploads/2021/05/IRC237-Response-to-Recommendations.pdf>

C. The current public consultation process

- [30]. Between 2021 and 2022 (i.e., during COVID restrictions) the Province of B.C. produced the documents associated with the current public consultation. These documents are based on their September 21, 2021, response to the Forest Practices Board, which continues to carry forward significant data interpretation issues.
- [31]. Again, the current consultation process purports to legalise OGMA's. While OGMA's are often thought of as legalised protections, they are not absolute. Once legalised, the converse result of an OGMA is that all non-legalised areas may be open for industrial logging. Further, various provisions allow for encroachments and other old growth removals. They are a poor tool for enforcement of broader conservation objectives and often misrepresent SMZ values and intended VILUP-HLPO restrictions. OGMA's are a lower level of protection than often thought.
- [32]. Considering the September 21 (2021), response to the Forest Practices Board, the Province of B.C. appears to adopt interpretations of maximum-yield nibble theory which do not substantively address the HLPO protective restrictions on harvesting in SMZ 13. There are significant concerns of future shifting baselines if SMZ 13 OGMA's are legalised.

Technical responses to the public consultation draft documents

- [33]. The new OGMA plan attempts to address the legal objectives missing from previous 2007 and 2012 draft OGMA's by looking at deeper representation (known as site series). However, errors within the earlier 2007 and 2012 OGMA drafts (also the subject of the aforementioned investigations) are simply carried forward again in this current iteration. It is noteworthy there appears to be a lack of consideration and/or weighting given to the current science on disturbance regimes and ecological risk. The mythology underpinning the draft order is older scientific findings that lacks modern scientific knowledge.
- [34]. It appears the draft order is premised on the wrong definition of "mature seral." It is clear from the text and tables in the Biodiversity Guidebook that mature seral was never intended to include old growth. The legal requirement for 25-33% mature forest **is in addition to old forest**. The practical result of proper HLPO interpretation (i.e., meeting the legal intent) would increase the targets across Nahmint Valley Watershed and within SMZ 13 specifically.
- [35]. The proposed OGMA design to be legalised appears to be larger and to protect more conservation areas than previous drafts. In fact, it is simply including areas that were never threatened by harvest in the first place. The draft order protections are artificially inflated. There are also questions concerning the double-counting of protected areas. Wildlife Habitat Areas (WHAs), for example, are already protected and do not need to be reclassified. Additional concerns regarding a lack of analysis on old growth deferral areas remain.

- [36]. Common site series values and underrepresentation of rare ecosystems remain a concern.
- [37]. OMGAs in SMZ 13 should not be legalized at this time and no further non-Indigenous FSPs should be approved until there has been significant consultation and review regarding the manner in which the Province is interpreting the Higher Level Plan Order and retention percentages. Due to differences in Higher Level Plan Order interpretations, it is necessary that BCTS and FSP holders are provided further clarification by regulation and that such regulations consider the historical context of impacts to Nahmint and original VILUP design and conservation intent, as well as, modern Indigenous consultation obligations (now ratified).

Summary remarks

The rainforests of Nahmint are extra special places for Indigenous peoples, the citizens of B.C., and all future generations. This area requires careful handling in well-considered processes that take into account the history of industrial activities and place Indigenous and community values front and centre. If VILUP-HLPO were to be strictly applied and properly interpreted, it is highly likely there would only be allowances for Indigenous logging. It is unlikely BCTS would be able to continue selling timber in SMZ 13 in its current manner. BCTS is only able to achieve ministerial authorizations for “business as usual” through the process of OGMA legalisation, which purports to adopt its own interpretations of VILUP-HLPO. BCTS erodes impartiality in the decision-making process by playing a dual role of the holder of an FSP and an authority capable of drafting a ministerial order on behalf of the government and launching public consultations.

The current approach in Nahmint runs counter to general transparency and impartiality in government decision making. Pushing Nahmint farther towards the brink of irreparable harm by adopting nibble theory is the epitome of maximum yield strategies, which place government finances and timber supply ahead of biodiversity protections, Indigenous reconciliation, and the overall resilience of our forests.

Sincerely,



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