



SEABIRD ISLAND FIRST NATION



INTERIM FOREST AND RANGE AGREEMENT 2004

**SEABIRD ISLAND FIRST NATION
INTERIM FOREST AND RANGE AGREEMENT
(the “ AGREEMENT “)**

BETWEEN:

**The Seabird Island First Nation
As Represented by Chief Wayne Bobb**

AND

**Her Majesty the Queen in Right of the Province of British Columbia
As Represented by the Minister of Forests
(The “Government of British Columbia”)**

(Collectively the “Parties”)

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**The Seabird Island First Nation
Interim Forest and Range Agreement
(the "Agreement")**

Between:

**The Seabird Island First Nation
As Represented by Chief Wayne Bobb**

And

**Her Majesty the Queen in Right of the Province of British Columbia
As represented by the Minister of Forests
(the "Government of British Columbia")**

(collectively, the "Parties")

Whereas:

- **The Seabird Island First Nation has Aboriginal Interests within the Seabird Island First Nation Area of Interest as outlined on the map in Appendix A.**
- **The Parties wish to enter into an interim forest and range agreement in relation to forest and/or range resource development and related economic benefits arising from this development within the Seabird Island First Nation Area of Interest.**
- **Seabird Island First Nation asserts that the historic and contemporary uses and stewardship of land and resources by the Seabird Island First Nation are integral to the maintenance of the Seabird Island First Nation's society, governance and economy within the Seabird Island First Nation Area of Interest.**
- **The Government of British Columbia will fulfil any responsibility it has to consult and to seek workable accommodation with the Seabird Island First Nation on forest and/or range use resource development activities proposed within the Seabird Island First Nation Area of Interest that may lead to potential infringement of the Aboriginal Interests.**

- Seabird Island First Nation has a responsibility to participate in any consultation initiated by the Government of British Columbia or a Licensee, in relation to forest and/or range use resource development activities proposed within the Seabird Island First Nation Area of Interest, that may lead to a potential infringement of the Aboriginal Interests.
- The Parties have an interest in seeking workable interim accommodation of the Aboriginal Interests where forest and/or range use development activities are proposed within the Seabird Island First Nation Area of Interest that may lead to the infringement of the Aboriginal Interests.
- The Government of British Columbia and the Seabird Island First Nation wish to resolve issues relating to forest and/or range use resource development on a government to government basis as set out in this Agreement where possible through negotiation as opposed to litigation.
- Seabird Island First Nation wishes to assert that it has a longer-term interest in sustainable resource management and harvesting through the eventual acquisition by Seabird Island First Nation of an area-based forest tenure within Seabird Island First Nation Area of Interest:
- Seabird Island First Nation wishes forest industry participants to enter into discussions outside of the context of this Agreement with Seabird Island First Nation on all aspects of sustainable forestry, environmental issues, integrated sustainable resource management, preservation of biological diversity, or old-growth forests.

Therefore the Parties wish to enter into this Agreement in relation to forest and/or range resource development, consultation and accommodation, and related economic benefits arising from forest and/or range resource development within the Seabird Island First Nation Area of Interest and agree as follows:

1.0 Definitions

For the purposes of this Agreement, the following definitions apply:

- 1.1 “Aboriginal Interests” means aboriginal rights and title asserted by the Seabird Island First Nation.

- 1.2 “Administrative Decision” means one or more of the following decisions made by a person under forestry legislation:**
- 1.2.1 setting or varying Allowable Annual Cut (AAC) for a Timber Supply Area or a Forest Tenure;**
 - 1.2.2 the issuance, consolidation, subdivision or amendment of a Forest Tenure or a Range Tenure;**
 - 1.2.3 the adjustment of Animal Unit Month to a Range Tenure;**
 - 1.2.4 the replacement or extension of a Forest Tenure or a Range Tenure;**
 - 1.2.5 the disposition of volumes of timber arising from undercut decisions on a Forest Tenure;**
 - 1.2.6 the conversion of Timber Sale Licence to another form of Forest Tenure;**
 - 1.2.7 the issuance of a Special Use Permit; and**
 - 1.2.8 the establishment of an interpretative forest site, recreation site and /or a recreation trail.**
- 1.3 “British Columbia government fiscal quarter” means the periods from April 1 to June 30, July 1 to September 30, October 1 to December 31 and January 1 to March 31.**
- 1.4 “Forest Tenure” means a contract between a company and the Government of British Columbia that grants the rights to harvest a specified volume of timber as defined in the *Forest Act*.**
- 1.4.1 “Area-based Forest Tenure” provides the right to carry out forest management on a specific area of Crown Land.**
 - 1.4.2 “Non-replaceable, volume-based Forest Tenure” provides the rights to harvest an annual volume of timber within a TSA (timber supply area), under cutting permits with no provision for renewal at the end of a five year term.**
- 1.5 “Licensee” means a holder of Forest Tenure or Range Tenure.**

- 1.6 “Operational Decision” means a decision that is made by a person with respect to the statutory approval of a Forest Development Plan, a Forest Stewardship Plan, a Woodlot Licence Plan, a Range Use Plan or a Range Stewardship Plan that has an effect in the Seabird Island First Nation Area of Interest.**
- 1.7 “Operational Plan” means a Forest Development Plan, Forest Stewardship Plan, a Woodlot Licence Plan, a Range Use Plan or Range Stewardship Plan that has an effect in the Seabird Island First Nation Area of Interest.**
- 1.8 “Range Tenure” means an agreement granting rights over Crown Range as defined in the *Range Act*.**
- 1.9 “Response Period” means the greater of:**
- 1.9.1 60 days from the initiation of the processes set out in sections 4 and 5 of this Agreement, where the initiation date is the date on which the Seabird Island First Nation is notified of an Administrative Decision or Timber Supply Review process, or in the case of Operational Plan Reviews, the date on which the Seabird Island First Nation receives the plan to be reviewed; and**
 - 1.9.2 the number of days as may be otherwise agreed to by the Parties in writing.**
- 1.10 “Seabird Island First Nation Area of Interest” means the area in which Seabird Island First Nation has Aboriginal Interests as outlined in Appendix A.**

2.0 Purpose

The purposes of this Agreement are to:

- 2.1 Increase the Seabird Island First Nation's opportunity to participate in the forest sector and thus to facilitate the Seabird Island First Nation's business vision and strategy of establishing a forestry business and operations in and around Seabird Island First Nation Area of Interest.**

- 2.2 Provide economic benefits to the Seabird Island First Nation through Forest Tenure opportunities and the sharing of revenues received by the Government of British Columbia from forest resource development.**
- 2.3 Provide an adequate consultation process and interim workable accommodation(s) during the term of this Agreement, with regard to any potential infringements of Aboriginal Interests that result from Administrative Decisions and/or Operational Decisions relating to forest and/or range resource development within the Seabird Island First Nation Area of Interest.**
- 2.4 Provide a period of stability to forest and/or range resource development on Crown lands within the Seabird Island First Nation Area of Interest, during the term of this Agreement, while longer-term interests are addressed through other agreements or processes.**

3.0 Economic Benefits to the Seabird Island First Nation

During the term of this Agreement, the Government of British Columbia will adopt the consultation processes set out in sections 4 and 5 of this Agreement and will provide the following to the Seabird Island First Nation, based on a population of 717 (taken from the Department of Indian and Northern Affairs Canada census April 2003):

3.1 Forest Licence

After the execution of this Agreement by the Parties and after the Minister has determined that sufficient volume of timber is available for disposition to the Seabird Island First Nation as a result of the implementation of the *Forestry Revitalization Act*, the Minister will invite the Seabird Island First Nation to apply under section 47.3 of the *Forest Act* for a non-replaceable licence (the "forest licence") for 21,500 cubic meters annually in the Fraser Timber Supply Area. For greater certainty, the maximum volume that may be available under the licence referred to in this section will be a total of 107,500 cubic meters over 5 years.

3.2 Invitation for a Forest Licence

3.2.1 An invitation to apply for a forest licence (an "Invitation") and any licence entered into as a result of an Invitation will be subject to the policies, regulations and statutes of British Columbia as amended from time to time.

3.2.2 An Invitation for a forest licence:

3.2.2.1 will be subject to a condition that prior to the Seabird Island First Nation making an application for the licence, the Seabird Island First Nation must contact and work together with Ministry of Forests personnel to assist the Ministry to identify the location of an operating area for the licence, which to the extent that it is operationally feasible will be within the Seabird Island First Nation Area of Interest and, for greater certainty, it is understood that the Parties will identify the operating area prior to the Seabird Island First Nation making application for the licence; and

3.2.2.2 will contain terms and conditions required by the Minister in accordance with applicable legislation.

3.2.3 A forest licence entered into as a result of an Invitation will:

3.2.3.1 be for a term of no longer than 5 years, and executed by the Minister;

3.2.3.2 not be divisible;

3.2.3.3 not be replaceable as defined in the *Forest Act*;

3.2.3.4 contain other terms and conditions required by law, including the condition that the Seabird Island First Nation must comply with this Agreement;

3.2.3.5 contain a term that the forest licence will not expire or terminate solely because this Agreement expires or terminates pursuant to 8.2.1; and

3.2.3.6 include other terms and conditions as may be required by the regional manager.

3.2.4 Subject to:

3.2.4.1 the Government of British Columbia and the Seabird Island First Nation entering into another interim measures agreement providing for an invitation to apply for a forest licence; and

3.2.4.2 the Minister determining that there is sufficient volume of timber available for disposition to the Seabird Island First Nation,

the Minister may invite the Seabird Island First Nation to apply for a subsequent forest licence under the *Forest Act* for a term that would commence after the expiry of this Agreement.

3.3 Revenue Sharing

3.3.1 During the term of this Agreement, the Government of British Columbia will pay to the Seabird Island First Nation the amount of \$357,285 annually.

3.3.2 The funding commitment set out in section 3.3.1 is subject to the availability of annual appropriations for that purpose by the Government of British Columbia.

3.3.3 For the purposes of determining amounts for partial years, one-fourth (i.e. $\frac{1}{4}$) of the annual amount will be used for each British Columbia government fiscal quarter or part thereof that the Agreement is in effect. Payments will be made quarterly.

3.3.4 Upon signing of this Agreement, the Seabird Island First Nation will be paid the full revenues for the quarter in which the Agreement is signed, being July 1, 2004-September 30, 2004 with subsequent payments being made at the end of each quarter.

3.3.5 The Seabird Island First Nation will maintain financial records and prepare financial statements in accordance with Canadian generally accepted accounting principles for each year of this Agreement.

3.3.6 Upon request, the Seabird Island First Nation will provide a copy of an audit extract to the Government of British Columbia for the revenue sharing expenditures provided under this Agreement.

4.0 Consultation and Accommodation Regarding Operational Plans

4.1 The Government of British Columbia agrees to consult in a timely manner with the Seabird Island First Nation, as set out in this section 4, on Operational Plans that may potentially infringe the Aboriginal Interests within the Seabird Island First Nation Area of Interest.

4.2 The Seabird Island First Nation agrees to fully participate in a timely manner, as set out in this section 4, in the review of all Operational Plans dealing with forest development within the Seabird Island First Nation Area of Interest provided to them by the Government of British Columbia, and by Licensees.

4.3 The purpose of the consultation under this section 4 is to consider interim workable accommodations regarding Operational Decisions, other than the provision of economic benefits for any potential infringements of Aboriginal Interests in the Seabird Island First Nation Area of Interest.

4.4 During the term of this Agreement, and subject to its terms being met, the Seabird Island First Nation agrees that the Government of British Columbia will have fulfilled its duties to consult and to seek interim workable accommodation with respect to the economic component of potential infringements of the Aboriginal Interests in the context of Operational Decisions that the Government of British Columbia will make and any forest practices and development activities that may be carried out under an Operational Plan in the Seabird Island First Nation Area of Interest.

- 4.5** In reviewing and responding to an Operational Plan submitted to them, the Seabird Island First Nation will, within the Response Period, provide the party that supplied the plan to them with all reasonably available information that will identify any potential non-economic impacts to the Aboriginal Interests that may result from the forest development activities within the Seabird Island First Nation Area of Interest.
- 4.6** Upon receiving the response from Seabird Island First Nation as specified in section 4.5 above, the Government of British Columbia and/or the Licensee will discuss and attempt to resolve with the Seabird Island First Nation any non-economic impacts on the Aboriginal Interests that may occur as a result of proposed forest and/or range resource development activities within the Seabird Island First Nation Area of Interest.
- 4.7** If no response is received from Seabird Island First Nation within the Response Period then the Government of British Columbia may assume that the Seabird Island First Nation does not intend to respond or participate in the consultation process in respect of the Operational Plan and that a decision on the Operational Plan may proceed.
- 4.8** In making a final decision on an Operational Plan, the Government of British Columbia will fully consider information it receives from the Seabird Island First Nation, and will consider whether concerns identified by the Seabird Island First Nation have been addressed.

5.0 Consultation and Accommodation Respecting Administrative Decisions

- 5.1** The Government of British Columbia will provide to the Seabird Island First Nation on an annual basis a list of all proposed Administrative Decisions anticipated within the upcoming calendar year that will have an effect in the Seabird Island First Nation Area of Interest, and either upon the request of the Seabird Island First Nation or when the Government of British Columbia becomes aware of other proposed Administrative Decisions, will provide to the Seabird Island First Nation an updated list.

- 5.2 The Government of British Columbia will meet with the Seabird Island First Nation at mutually agreed times throughout the year to provide an opportunity for the Seabird Island First Nation, to make known to representatives of the Government of British Columbia their concerns and comments relative to the effect of the Administrative Decision(s) on the Aboriginal Interests within the Seabird Island First Nation Area of Interest.**
- 5.3 The Government of British Columbia will include the Seabird Island First Nation in the public Timber Supply Review processes that will lead to AAC determinations made pursuant to section 8 of the *Forest Act* for the Fraser Timber Supply Area, and for Tree Farm Licence #26 and Tree Farm Licence #43.**
- 5.4 The Seabird Island First Nation agrees to participate, within the Response Period, in the public Timber Supply Review processes by providing all reasonably available information about the Aboriginal Interests within the Seabird Island First Nation Area of Interest potentially affected by AAC determinations to be made pursuant to section 8 of the *Forest Act*.**
- 5.5 The Parties acknowledge that the public Timber Supply Review processes will be consistent with approved land use plans when higher-level objectives have been established.**
- 5.6 If after considering the concerns and comments of the Seabird Island First Nation, the statutory decision maker is of the opinion that an Administrative Decision creates a potential infringement of the Aboriginal Interests that is not adequately addressed by the economic benefits provided by the Government of British Columbia in section 3.0, the statutory decision maker will seek to accommodate the concerns and comments in the Administrative Decision or, alternatively, in relevant Operational Plans or Operational Decisions in accordance with the consultation process outlined in section 4.0 of this Agreement.**
- 5.7 The Government of British Columbia will provide a written response to the Seabird Island First Nation as to how the concerns of the Seabird Island First Nation raised in section 5.2 have been addressed.**

- 5.8** During the term of this Agreement, and subject to its terms being met, the Seabird Island First Nation agrees that the Government of British Columbia will have fulfilled its duties to consult and to seek interim workable accommodation with respect to any potential infringements of the Aboriginal Interests resulting from Administrative Decisions made by statutory decision makers from time to time during the term of this Agreement.

6.0 Stability for Land and Resource Use

- 6.1** The Seabird Island First Nation will respond as soon as is practicable to any discussions initiated by the Government of British Columbia and will work co-operatively to assist in resolving any issues that may arise where acts of intentional interference by any Seabird Island First Nation members with provincially authorized activities related to forestry resource development, including timber harvesting or other forestry economic activities, occur within the Seabird Island First Nation Area of Interest. Seabird Island First Nation Chief and Council will work co-operatively with the Government of British Columbia to mitigate intentional and unlawful interference by members of Seabird Island First Nation.

7.0 Dispute Resolution

- 7.1** If a dispute arises between the Government of British Columbia and the Seabird Island First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to discuss and attempt to resolve the dispute.
- 7.2** If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and of the Seabird Island First Nation.

8.0 Term

- 8.1** This Agreement will take effect on the date on which the last Party has executed it.
- 8.2** This Agreement will terminate on the occurrence of the earliest of any of the following events:
- 8.2.1** five years from the effective date of this Agreement;

8.2.2 the coming into effect of a treaty that includes the Parties;

8.2.3 the mutual agreement of the Parties;

8.2.4 written notice of withdrawal from the Agreement by either Party which will take effect 90 days following receipt of the notice by the other Party; or

8.2.5 the date on which economic benefits are suspended or cancelled under section 9 below.

8.3 If this Agreement is terminated in accordance with section 8.2, then the Minister may terminate the economic benefits under this Agreement.

9.0 Suspension or Cancellation of Economic Benefits by the Minister

9.1 Without limiting the actions that may be taken by the Minister of Forests or by the Government of British Columbia, the Minister or a person authorized by the Minister may suspend or cancel revenue sharing payments and may suspend or cancel the licence(s) entered into as a result of an Invitation under this Agreement, if the Minister or a person authorized by the Minister determines that the Seabird Island First Nation is not in compliance with this Agreement.

9.2 Prior to taking any action referred to in section 9.1, the Minister or his delegate will provide written notice to the Seabird Island First Nation of any alleged contravention of this Agreement that may lead to Seabird Island First Nation being determined to not be in compliance with this Agreement.

9.3 Upon receiving written notice under section 9.2, the Seabird Island First Nation will make all reasonable efforts to cure the alleged contravention within 20 days after receipt of this notice.

9.4 If, during the term of this Agreement, the Seabird Island First Nation challenges, or supports a challenge to, an Administrative Decision and/or Operational Decision or an Operational Plan or activities carried out pursuant to those decisions/plans, by way of legal proceedings or otherwise, on the basis that the economic benefits set out in section 3.0, and the consultation processes set out in sections 4.0 and 5.0 of this Agreement are not adequate or sufficient to:

- 9.4.1** substantially address the economic component of the Aboriginal Interests with regard to Operational Decisions relating to forest and/or range resource development within the Seabird Island First Nation Area of Interest, or
- 9.4.2** substantially address the Seabird Island First Nation's concerns and to provide an interim workable accommodation in respect of any potential infringements of the Aboriginal Interests with regard to Administrative Decisions relating to forest and/or range resource development within Seabird Island First Nation Area of Interest,

then, without limiting any other remedies that may be available to the Government of British Columbia, the Government of British Columbia may suspend or cancel the economic benefits set out in section 3.0.

- 9.5** If the Minister or a person authorized by the Minister cancels any economic benefits as a result of this Agreement, then this Agreement will automatically terminate upon such cancellation.
- 9.6** For greater certainty, if either Party terminates this Agreement, then any money paid to the Seabird Island First Nation prior to the date of such termination is not repayable by Seabird Island First Nation to the Government of British Columbia.

10.0 Renewal of the Agreement

- 10.1** Prior to this Agreement terminating in accordance with section 8.2, if the terms and conditions of this Agreement are being met, the Government of British Columbia and the Seabird Island First Nation will seek the necessary authorities and approvals to renew this Agreement.
- 10.2** Any subsequent forestry agreement between the Government of British Columbia and the Seabird Island First Nation may provide for an opportunity to acquire a licence, and/or other economic benefits, as well as other terms and conditions that are agreed to by the Parties.

- 10.3** The revenue sharing set out in this Agreement reflects an amount that the Government of British Columbia is willing to pay, subject to available appropriations, as an interim measure and Seabird Island First Nation has agreed to accept as an interim measure for the term of this Agreement.

11.0 Amendment of Agreement

- 11.1** Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 11.2** Any Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

12.0 Entire Agreement

- 12.1** This Agreement and any amendment to it constitute the entire Agreement between the Parties with respect to the subject matter of this Agreement.

13.0 Notice

- 13.1** Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile (with receipt acknowledged) to the address of the other Party as provided for in section 13.3 of the Agreement.
- 13.2** Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.

- 13.3 The address and facsimile number of either Party may be changed by notice in the manner set out in this section of the Agreement.**

British Columbia

Deputy Minister
Minister of Forests
P.O. Box 9525 STN PROV GOVT
Victoria B.C. V8W 9C3
Telephone (250) 387-3656
Facsimile (250) 953-3687

The Seabird Island First Nation

Box 650
Agassiz, British Columbia
V0M 1A2
Telephone: (604) 796-2177
Facsimile: (604) 796-3729

14.0 Miscellaneous

- 14.1 The Parties agree that this Agreement is an agreement respecting interim measures or economic measures for purposes of section 47.3 of the *Forest Act*.**
- 14.2 Nothing in this Agreement will be interpreted in a manner that requires the Government of British Columbia to act in a manner inconsistent with provincial or federal law, or that fetters the statutory discretion of any government decision-maker.**
- 14.3 Nothing in this Agreement, or the fact that the Parties have entered into this Agreement, is intended to limit or prejudice the position that either Party may take in litigation or other negotiations on the existence or extent of any duty or duties of consultation and/or accommodation owed by forest licensees or other third parties to the Seabird Island First Nation.**
- 14.4 This Agreement is not a treaty or a lands claims agreement within the meaning of section 25 and 35 of the Constitution Act, 1982 and does not recognise, define, amend, affirm, deny or limit any priorities afforded to aboriginal rights, including aboriginal title, or treaty rights, other than as provided in this Agreement.**

- 14.5** Subject to section 9.4 of this Agreement will not limit the positions that a Party may take in other negotiations or court proceedings.
- 14.6** This Agreement will not be interpreted as addressing any potential infringements other than potential infringements that may result from decisions contemplated by this Agreement during the term of this Agreement. Nothing in this Agreement shall be interpreted to authorize any infringement that may occur following the termination of this Agreement.
- 14.7** Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 14.8** There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.9** The applicable laws of British Columbia and Canada will govern this Agreement.
- 14.10** This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

14.11 The Government of British Columbia will meet with the Seabird Island First Nation from time to time in good faith to explore viable forestry business opportunities that may be available to the Seabird Island First Nation. The Parties also acknowledge and agree that this Agreement does not exclude the Seabird Island First Nation from accessing other forestry economic opportunities or benefits, which may be available from time to time.

Signed on behalf of:

Seabird Island First Nation

Date: Sept 24/04

Wayne Bobb
Chief Wayne Bobb

Richard Shanks
Witness

Signed on behalf of:

Government of British Columbia

Date: Sept 24, 2004

Michael de Jong
**Michael de Jong
Minister of Forests**

Richard Shanks
Witness



**ABORIGINAL RIGHTS AND TITLE
DEPARTMENT SHOWCASE
SEPTEMBER 2002**

Sto:lo Traditional Territory

Seabird Island First Nation Area of Interest Appendix A

