

March  
2007



# NAFA

## National Forestry Conference—RCAP in Review


The National Aboriginal Forestry Association (NAFA) undertook to host a National Aboriginal Forestry Conference, Looking Back, Looking Forward: Royal Commission on Aboriginal Peoples (RCAP) in Review. NAFA determined that after ten years, it was time to review key lands and resources recommendations made within the RCAP Report (1996). NAFA made a number of presentations and recommendations to the RCAP Commission and was keen to assess how those were addressed. The conference attracted more than 130 delegates to the Marriott Hotel in Ottawa, February 28 to March 1, 2007.

Presenters came from as far away as Washington, DC, the Northwest Territories, British Columbia and Atlantic Canada to present on panels and in workshops. Former RCAP Commissioner, Viola Robinson, delivered the keynote address to delegates and offered insight into the Commission's recommendations and their original hopes for this report.

A series of workshops were offered to present on specific lands and resources recommendations, which

were made in RCAP's report in 1996. Presenters focused on the ten years since the RCAP report was published in an attempt to assess progress made on the numerous recommendations. "It was difficult to attribute any progress on the forestry front directly to RCAP, though RCAP created a general awareness of the issues nationally," said Lorraine Rekmans, Executive Director of NAFA. "What the difficulty seems to be is a lack of commitment from various levels of government to RCAP and its recommendations. We found very little evidence of implementation plans or strategies to move the actual recommendations forward."

Mickey Werstuik, Councillor from Westbank First Nation was on hand to discuss the First Nation tenure allocations in BC. Essentially he said the tenures offered to First Nations are short term, volume-based tenures which do not allow for long term strategic planning and sustainable development at the community level. They cannot be considered as anything but interim measures.

The conference proceedings will be available at the NAFA website on March 31<sup>st</sup>, 2007. 

# NATIONAL ABORIGINAL FORESTRY ASSOCIATION

## UNFF to Conclude Non-Binding Instrument

Forest policy at the international level will reach a significant milestone at the 7<sup>th</sup> session of the United Nations Forum on Forests (UNFF 7), scheduled for April 16-27, 2007 in New York. At UNFF 6, decisions were made to adopt four global objectives on forests that highlight the priorities of promoting sustainable forest management (SFM), curbing deforestation and forest degradation, and enhancing the contribution of forests to the achievement of international development goals. As well, key decisions were taken to strengthen the mandate of the UNFF, focus on regional initiatives, and most importantly, to conclude a non-legally binding instrument (NLBI) on all types of forests at UNFF 7. The new instrument will not be legally binding but it will shape the multi-year program of work for the UNFF, and guide policy development and programming of UNFF member countries and collaborating partners. Work on the NLBI is

underway with a draft now available on the UNFF website: [www.un.org/esa/forests](http://www.un.org/esa/forests)

Canada, with 10% of the world's forests and aspirations to be the world leader in sustainable forest management, has been active and vocal in the UNFF process. Since the United Nations Conference on Environment and Development (UNCED) in 1992, Canada has advocated for a forest convention arguing that only a legally binding instrument would provide the basis for a common understanding of SFM and the regulatory framework for monitoring and compliance. The new direction of the UNFF has not changed the Canadian position though UNFF will not consider this option until near the end of its new mandate, which runs to 2015. Canada will be exploring other approaches to achieve its stated international forest policy objectives in addressing global forest issues. — (continued on page 4)

# Aboriginal Consultation Policies in Canada

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Everyone is talking about consultation these days. Thanks to a handful of major recent court cases – the *Haida*, *Taku River Tlingit*, *Mikisew*, and *Dene Tha'* – the obligation on federal and provincial governments to consult with and accommodate First Nations in any decisions with a potential to infringe existing rights has become inescapable. In the forest sector this duty applies to almost any significant policy or planning decisions at all. All parties agree that finding an effective approach to consultation and accommodation is an urgent matter. Settling these questions is expected to foster social justice, rule of law, a more productive labour force, and a stable business environment.

Thus, we have both the legal precedents and a socio-economic incentive. In just the past 2-3 years, evidence of political will is beginning to emerge. There are a number of initiatives to develop institutional arrangements around the duty to consult: guidelines, policies, programs, and so on. What does it amount to, so far? Are we seeing results in the forest sector? This article outlines the current situation across Canada. Additional materials and links are also available at the Forest Home website: [www.nafaforestry.org/forest\\_home/institutions.html](http://www.nafaforestry.org/forest_home/institutions.html)

Aboriginal Peoples have been consistent in their demands around the specifics of a “meaningful consultation”. In some cases they have drafted their own consultation protocols, such as those of the First Nations of Québec and Labrador Sustainable Development Institute and of the Nishnawbe Aski Nation. Some of the most common demands are: involvement at an earlier stage and a higher level of decision-making; adequate time to respond to proposals and referrals; capacity building to engage in a meaningful way; accommodation of traditional land uses and capacity to express those values; and preferences first to avoid or minimize infringements of rights, second to accommodate, and third to compensate or mitigate.

Existing consultation approaches by non-Aboriginal governments vary widely. Market conditions, cultural distinctions,

geography, and even historical chance unfold differently across provincial and territorial boundaries. Therefore, we find an assortment of approaches that the Aboriginal communities and their counterparts adopt. The same players may use several different approaches at once. Below is a preliminary typology of what can be seen in a scan of consultation developments across the country.

First, we find a number of jurisdictions that have committed, at quite a high level of their policy frameworks, to “consult” with Aboriginal peoples in cases of potential infringement of their rights. Manitoba, Saskatchewan, Québec, and more recently BC, are examples of this type. However, a lot of uncertainty generally remains regarding the content of such commitments. How exactly will consultation be carried out? To what standards? Who is to pay the expenses of the process? Mistrust due to historical conflict can often be a barrier.


Second, some provinces and territories can be put in the “legalistic” category, meaning they generally seek to minimize their accountability through narrow readings of written-tradition documents and court decisions. Ontario, Nova Scotia, Alberta, and New Brunswick fall into this category. These jurisdictions tend to be most vulnerable to the impact of new court decisions such as *Haida*, *Bernard*, *Mikisew*, *Dene Tha'*, and *Sappier and Gray*.

Third, some jurisdictions address consultation through co-management and cooperative land use planning arrangements on a case-by-case basis, rather than working at the provincial scale. In this type of arrangement, it is established from the outset that success is only possible with full First Nations consent. Arrangements of this type are found in the Innu/Newfoundland and Labrador Forest Process Agreement; the Land Use Agreements between the First Nations of BC’s Central and North Coasts and the Province; the developing agreements between Manitoba and First Nations on the East Side of Lake Winnipeg; the Athabasca Land Use Plan of Saskatchewan; and the Cree-Québec Forestry Board. Ontario

has also taken this approach through the Northern Boreal Initiative, which applies only to areas outside of commercial forest areas, north of the 51<sup>st</sup> parallel (about two thirds of the province).

A fourth type is the land claims-driven approach to consultation, found to some extent in the Northwest Territories, Yukon, BC, Québec, and Newfoundland and Labrador. As with all of the types identified here, the land-claims driven approach overlaps with other approaches, particularly with the co-management approach. Land claims settlements and sometimes interim measures agreements have the effect of institutionalizing First Nations participation at the sub-regional level. For example, British Columbia and the Central Region Nuu-chah-nulth have renewed their Interim Measures Agreement (a component of the standard tripartite BC Treaty Process) for the second time since 1994, continuing operations of the Central Region Board as a cooperative mechanism for overseeing land and resource use planning in Clayoquot and Barkley Sounds.

With all of these consulting initiatives, how does a First Nation community keep up? Right now the answer is, with few exceptions: They *don't* keep up. Most NAFA members are familiar with the sight of offices stacked chest-high with referrals of all kinds, waiting for response. They have been asking for action to address this gap, and one of the newer trends in provincial/territorial policy is the idea that the Crown and industry are responsible not only for providing the opportunity to consult, but also for providing support to First Nations to develop capacity for a meaningful consultation process.

There are big gaps in all of this activity, of course. Variability in how different communities are treated raises questions of equitability. In addition, many wonder where the federal government is in this scene: Generally, it has lagged behind the provinces and territories, in both its own processes and its collaboration with provincial and sub-provincial processes. Unfortunately, a closer examination of these gaps will have to wait for another day. 

# Union of Ontario Indians Negotiates Forestry Framework Agreement with Province

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Over the past several months staff and designated Chiefs of the Union of Ontario Indians (UOI) have been meeting regularly with the Ministry of Natural Resources (MNR) to establish the rules of engagement for a forestry framework development process. This initiative flows from the letter of intent that was signed by Anishinabek Grand Chief John Beaucage and Minister of Natural Resources David Ramsey on July 7, 2006, that commits both parties to working together on resolving issues of concern related to natural resource management. Prominent among the issues is the need for a forestry framework “that will provide real economic opportunities and benefits for Anishinabek First Nations”. Anishinabek Chiefs in Assembly agreed to the initiative and set the broad parameters for the forest framework development process by resolution.

It is expected that the development process, spanning a period of up to 2 years beginning April 1, 2007, will include an intensive Anishinabek community-focused consultation and fact-finding component, a UOI policy analysis and research function,

negotiations with MNR, and the development of an implementation strategy once an agreement-in-principle can be reached. Integral to the process will be a community communications strategy and frequent reporting to the UOI Executive and to Chiefs in Assembly, in accordance with milestones to be established in the workplan, which is currently under development. To provide direction and leadership with respect to the development process, the aforementioned Chiefs’ resolution created the Anishinabek Forest Commission. The Commission is an internal UOI mechanism that will play a key role in linking the entire initiative with the Anishinabek political process.

Chief Wilfred King of Kiashke Zaaging First Nation has been appointed Chair of the Commission. Nadine Roach, Forestry Coordinator, and Al Dokis, Director of Intergovernmental Affairs of the UOI Secretariat, are responsible for administration and the coordination of all activities related to the framework development process. Harry Bombay, Director of Strategic Initiatives for the National Aboriginal Forestry Association,

will provide advisory support to both the Commission and the UOI Secretariat. Other members of the Commission include Chief Paul Gladu of Bingwi Neyasshi, Chief Pierre Pelletier of Lake Helen First Nation, Art Jacko of Wikwemikong, and Roy Michano of the Ojibways of Pic River.

This agreement will be a significant achievement considering the low level of Anishinabek participation in the Ontario forest sector currently. To this point in time, Ontario forest policy on first Nation forest issues has been reactionary to conditions established by the Environmental Assessment Board on Timber Management in 1994. A new forestry framework implies policy change and a proactive approach which will strengthen and institutionalize the role of Anishinabek communities in forest management and result in opportunities for forest-based development. Based on discussions to-date on goals, principles, and objectives of the forest framework development process, Anishinabek representatives are moving forward with guarded optimism.



## First Nations Forestry Council Up and Running in BC

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First Nations in BC have followed up the initial successes of their Mountain Pine Beetle Action Plan (2005) with the establishment of the First Nations Forestry Council (FNFC). The FNFC’s mandate is to address all forest sector needs of BC First Nations, extending beyond the immediate challenge of the mountain pine beetle epidemic.

The establishment of the FNFC took place against the backdrop of two major events in BC. First, the impacts of the mountain pine beetle on forests of the BC interior reached crisis proportions around the turn of the millenium. The epidemic growth of the beetle population will have severe and lasting effects on the culture and traditions of First Nations people. In March 2005, BC received \$100 million in support from the Government of Canada to carry out assessment, planning, and

treatments for adaptation to this threat by all communities in the Province.

At almost the same time, the Province and the BC First Nations Leadership Council — comprised of the First Nations Summit, Union of BC Indian Chiefs, and the BC Assembly of First Nations — concluded the New Relationship agreement, committing the parties to work towards reconciliation based on “respect, recognition and accommodation of Aboriginal title and rights”. This event seemed unthinkable three years previous, when the Province put the principles of treaty negotiations to a general referendum under the vehement protests of First Nations and many others.

In September 2005, the two developments—the beetle epidemic and the new relationship

— coalesced in the Leadership Council’s successful facilitation of a “BC First Nations Mountain Pine Beetle Action Plan”, supported by 69 First Nations and 8 First Nations organizations. A Working Group was established to roll out the Action Plan, and the initial progress in advancing a rights-based agenda in the forest sector was encouraging. The Working Group successfully secured 20% of the total federal funding to the Province for initiatives and programs driven by First Nations. In 2006, the Leadership Council passed a motion to establish FNFC as the next step to serving all forestry needs for First Nation communities — including a policy forum for addressing additional issues and additional regions such as the Coast. Linda Simon was hired as Executive Director, offices were secured, and a workplan developed.





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*“Advancing the concepts  
of sustainable forest  
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## UNFF — Continued...

From the perspective of Indigenous Peoples organizations, there has been general disappointment that the UNFF process has been unable to translate the broad direction provided through UNCED instruments, i.e. Agenda 21, UNCED Forest Principles, into relevant proposals for action. With respect to those proposals for action that do address Indigenous Peoples issues and concerns, their identification and context have been in accordance with the priorities of governments, conservation and environmental organizations, and commercial interests. As a result, there have been serious gaps in UNFF proposals for action that will now be transformed into a NLBI.

An NLBI could result in greater consensus on international forest policy priorities and through the UNFF multi-year program of work, new mechanisms to address the priorities will be proposed and adopted. Consequently, the international arrangement on forests (IAF) which includes the UNFF, member countries and other partners, is likely to have a greater impact on the forest interests of Indigenous Peoples than previous processes. To ensure greater consideration of their interests, Indigenous Peoples organizations will need to intensify their involvement beginning with UNFF 7. NAFA will be producing a discussion paper that will identify the key forest issues and concerns of Aboriginal Peoples of Canada in the international forest policy context. The intent is to complete this paper by the end of March, prior to UNFF 7. 

## Forest Communities Program Update—NRCan

The Call for Proposals for the proposed Forest Communities Program at Natural Resources Canada has closed. The site selection process has moved into the proposal review phase. Proposals will be reviewed by an impartial multi-disciplinary review committee. Their recommendations will be presented to Canadian Forest Service Senior Management at Natural Resources Canada for decision. It is expected that all applicants will be notified of the status of their application by early spring 2007. 

## National Aboriginal Forestry Association

The goal of NAFA is to promote Aboriginal involvement in forest management and related commercial opportunities. NAFA is committed to holistic or multiple-use forestry, which implies the rebuilding and the sustainable development of the forest resource to serve a multitude of community needs.

NAFA is a grass roots initiative backed by First Nations and other Aboriginal groups and organizations that function at either the regional or community level in the area of forestry.



**The Board of Directors is comprised of ten representatives, one from each of the provinces and territories, except for the Atlantic region which has two directors.**



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