
**ABORIGINAL PARTICIPATION IN FOREST MANAGEMENT: NOT JUST
ANOTHER STAKEHOLDER**

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**ABORIGINAL PARTICIPATION IN FOREST MANAGEMENT: NOT JUST
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PREFACE

This paper is intended to provide a greater understanding of the nature of Aboriginal and treaty rights and how they interface with emerging forest policy. When one examines the essence of Aboriginal and treaty rights an early observation must be that these rights are largely about continued use of the forests. This obvious linkage has never been reconciled in forest policy, and where it counts most - at the provincial level. Only now is there some evidence that change may occur. Court decisions on Aboriginal and treaty rights and the move to sustainable forest management have been the impetus.

This paper was originally prepared by Peggy Smith, R.P.F., National Aboriginal Forestry Association (NAFA) in December 1995 and received considerable distribution within the Aboriginal community. A summary of the paper was also published in the Forestry Chronicle (Volume 72, No. 1, Jan./Feb. 1996). The paper was then later revised and expanded in ??????. Since this time considerable changes have occurred at the provincial and federal levels of government, as well as the forest industries increased participation. There have been significant changes in Aboriginal and treaty rights and how they have merged with forest policy; however, there is a lengthy path ahead to fully incorporate Aboriginal issues, values and concerns into participation of forest management. This paper has been revised and updated by myself and Jean Paul Gladu, Policy Forester, NAFA in March 2000 to incorporate new developments in the forest sector with regards to Aboriginal involvement.

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INTRODUCTION & BACKGROUND

Public participation is as integral today to forest management planning as is understanding ecosystem dynamics. Neither process is easily understood or implemented, and in public participation this is especially so with Aboriginal involvement in planning. The purpose of public participation is to ensure that there is an integration of all social, economic and environmental considerations in natural resource management and decision-making. Depending on the sector and the jurisdiction, public participation takes the form of multi-party management boards, roundtables, advisory committees, hearings, media campaigns, open houses, and intervenor programs. These techniques, either used singularly or in combination, have been collectively dubbed multi-stakeholder processes. Aboriginal organizations, communities and individuals dependent on the forest, state repeatedly that they are not just another "stakeholder" or "interested party" in deciding how forest land is used and cared for. In fact, Aboriginal political organizations demand to be treated as a third level of government, in addition to the federal and provincial governments.

In British Columbia, the Courts have distinguished between Aboriginal title and Aboriginal rights and treaty rights.

Aboriginal rights, being embodied in the Constitution, cannot be diminished or interfered with in any way by Acts of the Parliament of Canada or of the Legislatures of the provinces. Those rights can only be diminished by a constitutional amendment which, for practical purposes, should be regarded as next to impossible in relation to

Aboriginal rights. Aboriginal title principles give exclusive use and occupation of the land to Aboriginal peoples, which is a right to the land itself. Aboriginal peoples also claim a special role as forest stewards. What makes them so special? Why should they merit special treatment? Are we not all equal in the twenty-first century?

The strongest single reason why Aboriginal peoples are not just another stakeholder is the fact that they were here first. The Courts have described Aboriginal rights as deriving from the Indians historic occupation and possession of their tribal lands (*Guerin*). This interpretation accounts for the fact that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries (*Calder*). As a result a number of decisions by the Supreme Court of Canada, Aboriginal and treaty rights have been enshrined in Sections 25 and 35 of the Constitution Act, 1982. Aboriginal peoples are certainly not just another stakeholder when their rights and their rights alone, enjoy constitutional protection.

As this paper points out, Aboriginal interests in forest land are tied to the particular historical, legal, economic, political and cultural circumstances that have evolved in this country since European settlement. To understand why Aboriginal peoples are not just another stakeholder in forest management, these circumstances must be more widely understood.

Historical Background

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Aboriginal peoples' unique position within the country we now call Canada is based on original occupancy. The rights of original occupancy were recognized by the British in the Royal Proclamation of 1763 in which the Crown recognized that they were encroaching on Aboriginal lands. The Proclamation required the consent of Aboriginal peoples before that land was occupied and gave the Crown the sole authority to negotiate such land settlements. From the Proclamation flowed treaties between the Crown and Aboriginal peoples. Aboriginal peoples entered into these Treaties to solidify a special trust relationship with the Crown in which Aboriginal peoples' way of life would be protected. This way of life was based on an intimate relationship with the land which provided economic, cultural and spiritual sustenance.

The Crown had a very different interpretation of the Treaties. They were a convenient arrangement in which the Crown assumed Aboriginal peoples were surrendering their rights to land to allow settlement of immigrants and resource exploitation such as mining and logging. The Crown saw its end of the bargain filled by token payments of annuities, provision of token negotiated items such as farm implements, education benefits, health benefits and small parcels of Reserve land. At the time the Treaties were negotiated, the Crown thought that protection of the traditional Aboriginal way of life, mainly hunting, trapping, fishing and gathering, was an easy promise to keep over the wide expanses of "unoccupied" land.

At the same time the Treaties were being negotiated the Crown was also building a governing structure for the new country. Jurisdictions were defined and responsibilities delegated. By virtue of Section 91 (24) of the Constitution Act, 1867, responsibility for Indians and lands reserved for Indians was given to the Federal Government and administered through the Department of Indian Affairs. By Section 109, and subsequent Resource Transfer Agreements, the provinces received the lands, mines, minerals and royalties of the provinces, and in effect, the responsibility for natural resource management. Here lies one of the historical kernels which, to this day, complicates government dealings with Aboriginal peoples. The very natural resources which provide the basis for the Aboriginal way of life are managed by provinces but Indian Affairs are managed by the Federal Government and the two levels of government have continued to dodge the grievances of Aboriginal peoples in relation to natural resources by passing the buck. The Federal Government hoped that the "Indian problem"--very much a symptom of Aboriginal peoples being alienated from the land--would go away by Aboriginal peoples being assimilated into the larger society. Aboriginal peoples had another idea and have stubbornly maintained their unique identity through their connection to the land.

We all know what happened over the past century. For Aboriginal peoples, their way of life, in spite of the Treaties, was progressively restricted and they became, reluctantly, more and more dependent on the largesse of the Crown. Promises were broken, natural resources were licensed by

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provinces and exploited by powerful industrial interests, and Reserves became prisons preventing Aboriginal peoples from exercising their way of life and their rights.

Legal Decisions on Aboriginal Rights and Title

Aboriginal peoples remember the Treaties and the promises. The Treaties and promises are as meaningful and binding today as they were the day they were signed. They have never been officially abrogated. In areas where treaties were not signed, Aboriginal title to the land still exists. Even the Crown recognizes this, writing recognition of Aboriginal rights into the Canadian Constitution. Section 35 (1) of the *Constitution Act*, 1982 recognizes and affirms existing Aboriginal and Treaty rights. Canadian courts have also recognized these rights in recent decisions which place more than a moral imperative on federal and provincial governments and industrial interests to treat Aboriginal natural resource claims seriously. The National Aboriginal Forestry Association outlined in detail the implications of various legal rulings on Aboriginal rights and title related to natural resources in its intervenor submission to the Royal Commission on Aboriginal Peoples (1993).

Cases such as, among others, *Calder* (1973), *Guerin* (1985), *Sparrow* (1990), *Apsassin* (1995), *Delgamuukw* (1997), *Marshall* (1999) and *Halfway River* (1999) recognize that: Aboriginal title to the land is unique; Aboriginal rights cannot be extinguished by regulation; Aboriginal rights to hunt, fish, trap and gather (both commercially, and for subsistence purposes) take precedence over

other uses; and if the Crown does not protect Aboriginal interests (described as the Crown's "fiduciary obligation"), they are legally and financially responsible.

A decision on *Delgamuukw* was appealed to the Supreme Court of Canada by the Gitksan and Wet suwet en people and the provincial government of B.C.. A decision was rendered on December 11th, 1997. The court described Aboriginal title as an Aboriginal right to the exclusive use and occupation of land which, like other Aboriginal rights, is protected under section 35 of the *Constitution Act*, 1982. This allows Aboriginal people to use the land in a contemporary fashion (not restricted to traditional uses), for example, they can mine as long as it is linked to the Aboriginal's traditional connection to the land. This is to say, the ultimate limit of the uses of land cannot destroy the ability of the land to sustain the kind of activities which made it Aboriginal title land in the first place. These are powerful implications for Aboriginal communities because of the economic opportunities that will surface. There are however no proven Aboriginal titles to the land, although there are a few currently in litigation.

The *Halfway River First Nation v. the British Columbia MoF* court case has proven to be a safeguard for protecting traditional lands from development if the *Sparrow* test holds as it did for *Halfway River*. The First Nation was successful in quashing a timber permit issued by the MoF because they proved that the permit unjustifiably infringed on their Treaty rights. *Halfway River* relied on section 35(1) of the *Constitution Act* 1982 in which the Court

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applied the tests of the Supreme Court of Canada in *R.v. Sparrow* which interpreted section 35(1). Halfway was able to establish an interference with their Treaty rights and established a *prima facie* infringement. They were able to prove that the interference was unreasonable, it cause undue hardship and that it denies the preferred means of exercising their rights. In conclusion, this decision has become a strong tool which First Nations can utilize to ensure that consultation occurs to help prevent infringement of Aboriginal Treaty Rights.

The *Paul* decision has forced Aboriginal peoples concerns regarding harvesting in New Brunswick to the forefront. The first ruling handed down by the Court ruled that Aboriginal people have the right to harvest any and all trees on Crown Land. This is to say that the trees on Crown land are Indian trees, and it is not a right restricted to personal use, but a full blown right of beneficial ownership and possession in keeping with the concept of this is our land - and that is your land. The significance of this court decision is that it incorporates the understanding that First Nations have not extinguished their land and other Treaty rights. This decision was then appealed to the New Brunswick Court of Appeal, where the decision was overturned. The case was then referred to the Supreme Court, to no avail. Although, ultimately the case was not a victory in sense of the Courts ruling, First Nations were victorious in gaining the provinces and ultimately Canada's acknowledgment of Aboriginal peoples right to the process of land use decisions. Another court decision having implications for forest management was the case *Claxton v. Saanichton Marina*. This is a Treaty case

where the Court granted a permanent injunction restraining the construction of a marina based on the Treaty rights of the Tsawout people to fish as formerly. The Court said that the right to the fishery which was protected by Treaty included rights incidental to its exercise. In the case of *Saanichton Marina*, the Tsawout people were able to prevent the destruction of critical habitat in order to ensure the exercise of their rights to their ancient crab fishery.

Based on the legal decisions to date, provinces have responsibility for natural resources subject to the Aboriginal interest and it is by virtue of the operation of Sections 109 and 91.24 that the special constitutional status of Aboriginal peoples is protected (provincial title is burdened by an Aboriginal interest; *St. Catherines Milling and Lumber Co. v The Queen*). It is further argued that the Natural Resource Transfer Agreements must be read subject to Section 109 and the pre-existing Aboriginal and Treaty rights which burden Provincial Crown title. In simpler language, the courts have inferred that not only does the Federal Government, whose constitutional jurisdiction is Indians and lands reserved for Indians, have a responsibility to ensure that Aboriginal rights are protected but so do those delegated with the responsibility for natural resource management, namely the provinces and those licence holders to whom the province delegates authority for forest management.

Aboriginal Forest Values

Aboriginal people have a unique relationship with the land, a relationship

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that, although warped by European settlement and imposition of foreign institutions and rules of order, continues to this day. It is a relationship that provides the basis of economic, cultural and political activity in Aboriginal communities. Traditional forest-based economic activities of hunting, fishing, trapping and gathering are protected in many areas by Treaty. These activities are still very much a part of the Aboriginal way of life, especially in those few areas where access to natural resources has not been diminished by overuse and industrial exploitation.

Aboriginal peoples have developed a knowledge of the land based on their traditional use of resources and it is this knowledge that must be incorporated into modern forest management planning. Use of the forest for food, clothing, medicine, cultural artifacts and spirituality continues.

This intimate connection to the land is linked to Traditional Ecological Knowledge (TEK). LaDuke (1994) defines TEK as the culturally and spiritually based way in which indigenous people relate to their ecosystems . TEK is invaluable to Aboriginal people as it is part of living; however, it has not yet reached the merited potential in the forest sector. Recognition of TEK is increasing as forest managers are discovering its application potential. The value of TEK is gaining momentum through initiatives such as the National Forest Strategy, Commitment 7.4 which states:

We will ensure the involvement of Aboriginal peoples in forest management and decision-making, consistent with Aboriginal and Treaty rights... By identifying means by

which traditional knowledge can contribute to sustainable forest management, and by developing guidelines for defining this knowledge, incorporating it into forest research, management practices, planning and training, in a manner that respects Article 8(j) of the Convention on Biological Diversity .

Traditional Land Use and Occupancy Studies (TLUOS) build upon TEK, where mapping of the TLUOS requires interviews with elders and other local Aboriginal resource experts. This information usually consists of identifying cultural and spiritual sites and economic importance. The cultural and spiritual sites may consist of but are not limited to grave sites, wildlife and fishing areas, berry harvesting sites, medicinal plant areas, or even culturally modified trees. Identifying and drawing upon traditional knowledge and the traditional way of life will help ensure healthy land management practices and economic security.

Aboriginal peoples, with their cultural preoccupation towards respect and spiritual harmony with their natural environment, must have equal rights to sustain themselves and their culture based on forest use as those whose values dictate that the forest should be harvested for profit.

MULTI-STAKEHOLDER PROCESSES AND THE RECOGNITION OF ABORIGINAL RIGHTS

The recognition of Aboriginal rights in forest management has been slowly filtering

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through policy and practical decisions over the past ten years on the international level, in the federal government, in most provincial governments, within the forest industry and among individual communities and organizations. The recognition of Aboriginal rights in Canada has only just begun. Many levels of government and industry have addressed issues of concern to Aboriginal communities but, in many cases, as just one more issue, one more value in a wide range of competing interests in processes often termed multi-stakeholder. Too often Aboriginal participants in policy and planning decisions are seen as just another stakeholder. Some Aboriginal peoples have critically defined these consultation processes as *What third party interests use to receive consent to take resources* (Nuxalk Nation Government, Native Network News, July 1994) and they warn that consultation may lead to extinguishment of Aboriginal rights and title.

However, the stage is set for greater stakeholder participation in forest management. Concepts of sustainable forest management and ecosystem management embrace the participation of the public, as represented by interest groups, as critical to the eventual success of planning and management functions. Aboriginal peoples interests are acknowledged to varying degrees.

International Recognition

Out of the United Nations Conference on the Environment & Development in 1992 came several significant areas where Aboriginal

peoples contribution to sustainable development was recognized.

Agenda 21, Chapter 26, Clause 26.1 stated:

"In view of the interrelationship between the natural environment & its sustainable development & the cultural, social, economic & physical well-being of indigenous people, national & international efforts to implement environmentally sound & sustainable development should recognize, accommodate & promote & strengthen the role of indigenous peoples & their communities."

The Convention on Biological Diversity, Article 8(j) made the commitment:

"Subject to its national legislation, respect, preserve & maintain knowledge, innovations & practices of indigenous & local communities embodying traditional lifestyles relevant for the conservation & sustainable use of biological diversity & promote the wider application with the approval & involvement of holders of such knowledge, innovations & practices & encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations & practices."

And, finally, in preparation for negotiating a world-wide Forest Convention, the Guiding Principles on Forests included several elements on indigenous rights:

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Governments should promote & provide opportunities for the participation of interested parties, including local communities & indigenous people, industries, labour, non-governmental organizations & individuals, forest dwellers & women, in the development, implementation & planning of national forest policies."

"National forest policies should recognize & duly support the identity, culture & respect the rights of indigenous people, their communities, & other communities, & forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, & achieve & maintain cultural identity & social organization, as well as adequate levels of livelihood & well-being, through, among others, those land tenure arrangements which serve as incentives for the sustainable management of forests."

Appropriate indigenous capacity & local knowledge regarding the conservation & sustainable development of forests should, through institutional & financial support, & in collaboration with the people in local communities concerned, be recognized, respected, recorded, developed, & as appropriate, introduced in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should

therefore be equitable shared with such people."

The Government of Canada has agreed with goals of Agenda 21, is a signatory to the Biodiversity Convention, and is a leading proponent of a world wide Forest Convention.

There is also currently an initiative to create a Permanent Forum for Indigenous People in the UN, which is fully supported by Canada. This process was proposed in 1993, and is still on-going, and expected acceptance is unknown.

Another International development that has promoted awareness and interest in TEK is the establishment of the Intergovernmental Panel on Forests (IPF) by the UN Commission on sustainable Development. Traditional Forest-Related Knowledge (TFRK) was addressed in an IPF report (February 1997), and stated that:

Indigenous people and other forest dependent people embodying traditional lifestyles should play a key role in developing participatory approaches to forest and land management and that these approaches should focus on community forest management, land-use systems, research, training and extension, the formulation of criteria and indicators, and conflict resolution

In addition to the international acceptance by the IPF, Canada has also recognized the importance of TEK by revising the National Forest Strategy (NFS) through development

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of Strategic Direction Seven Aboriginal Peoples: Issues of Relationship .

Federal Government

From Strategic Direction Number Seven of the National Forest Strategy (CCFM, 1992), which addresses the Canadian Council of Forest Ministers' commitment to increased Aboriginal participation in the forest sector, to the current Criteria and Indicators for Sustainable Forest Management (CCFM, 1995) process which recognizes Aboriginal rights and makes the commitment to measure Aboriginal participation as an indicator of sustainable forest management, a framework for more meaningful Aboriginal participation in the forest sector has been established. The NFS has been renewed (1998 - 2003). The onus for appropriate implementation mechanisms rests primarily with Provincial Governments though their development, which has been limited.

Provincial Governments

Many provincial natural resource ministries now have Aboriginal Affairs departments with staff delegated to negotiating with Aboriginal communities. However, dedicated staff and written policy are not in themselves enough. In fact, Aboriginal communities have voiced frustration in negotiating with provincial governments in a system which weighs financial and human resources too heavily on government side while Aboriginal communities face excessive demands for consultation with few resources.

Many provinces have begun to consider and implement "co-management" arrangements, although very few can be seen as "government-to-government" agreements where decision-making is a genuine shared responsibility between the province and the Aboriginal government or organization. More commonly, decision-making authority remains with the provincial Minister and the arrangement is thus more properly termed co-operative management as co-jurisdiction is not implied.

Provincial Legislation and Regulations

British Columbia and Ontario have incorporated Aboriginal involvement in forest management planning processes and regulations. The new *B.C. Forest Practices Code Standards* states its Guiding Principles for First Nations involvement in planning (section 3.7):

The nature and extent of aboriginal rights should be determined by consultation and negotiation with those aboriginal peoples directly affected.

Aboriginal rights should be recognized and considered at every level of planning, but practical solutions with benefits for all parties are most likely to be found at the operational planning stages.

Before authorizing resource use activities, resource managers must accommodate constitutionally protected aboriginal rights through discussion and negotiation.

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The B.C. Ministry of Forests also provides guidance and direction to its staff to address the issues of Aboriginal rights and title and the subsequent duty to consult with Aboriginal people in a number of documents, they are: *Crown Land Activities and Aboriginal Rights Policy Framework (1997)*, *British Columbia Consultation Guidelines (1998)*, *Ministry of Forests Aboriginal Rights and Title Policy (1999)*, and the *Ministry of Forests Consultation Guidelines (1999)*.

Ontario's new *Crown Forest Sustainability Act* in its *Forest Management Planning Manual for Ontario's Crown Forests (1995)* and its *Forest Information Manual (1994 Draft)* have provisions for a Native Consultation Program and Native Values Mapping. However, these provisions are advisory only and were formulated and defined by the Ministry of Natural Resources, not Aboriginal organizations.

The disdain for the consultation process offered by the Ontario Government caused the Chiefs of Ontario to pass a resolution calling the Native Consultation Program and the Native Values Mapping Program unconstitutional and disrespectful of Treaty rights. As a result, some First Nations in Ontario decline to participate in either the public participation or the parallel Aboriginal consultation process. Most other provinces have not begun to address Aboriginal interests in their promulgation of forest policy.

In January 1996, the MNR released the draft Implementation Guidelines for Term and Conditions #77 of the Class Environmental Assessment. Again, Aboriginal community

leaders have generally been dissatisfied with the process of developing these guidelines (without Aboriginal input), and the fact that these guidelines are not being implemented to provide equal participation in land management.

Scientific Panel for Sustainable Forest Practices in Clayoquot Sound

The Province of B.C. responded to conflicts over resource development in Clayoquot Sound by establishing a Regional Planning Board and an independent Science Panel. Local Aboriginal people have a form of veto on the Regional Planning Board and Aboriginal traditional knowledge played an integral role in the Science Panel's recommendations. Aboriginal representatives sat on the Science Panel as technical and scientific experts based on their traditional knowledge of the land. Western scientists on the Panel accepted this knowledge after verifying it using their scientific methods.

The Panel made a comprehensive set of recommendations to incorporate First Nations perspectives and interests in sustainable ecosystem management within Clayoquot Sound covering international conventions, co-management, consultation and planning, recognition of traditional knowledge, foreshore and offshore resources, cultural, sacred, historic, current and future use areas, tribal parks, inventory and mapping, operations, education and training, employment, monitoring, evaluation, restoration and research.

Forest Industry

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Some companies and industry associations recognized the need for Aboriginal involvement in forest management as a matter of corporate strategy. The B.C. Council of Forest Industries appointed a vice-president of Aboriginal Affairs and they have drafted an *Aboriginal Forestry Strategy in response to requests from forest industry members for information and guidance on how to pursue a key industry objective, that of involving aboriginal people in the mainstream of the forest sector economy.* The Ontario Forest Industries Association has addressed Aboriginal issues in its code of practice (1992) resolving to *be a major factor in the resolution of aboriginal issues as they apply to forest management, and a proponent of cooperative ventures with aboriginal groups.*

A few individual companies like Alberta-Pacific have been conducting traditional land use studies and incorporating Aboriginal values identified in these studies into their forest management plans. A brochure describes the study:

The Aboriginal traditional land use study looked at where, when and how the Aboriginal people of northeast Alberta use the land. The study set out to locate significant aboriginal sites. Many were traditional locations, such as grave sites, historical trails, gathering grounds and harvesting locations. Areas now used by people in the region, including cabin sites and registered traplines, were also documented. Maps were made to show where each of these sites are

located. These maps show us the river valleys, lake shores, meadows and grazing areas where most Aboriginal land use takes place. With this information, it is now possible for Alberta-Pacific to work with Aboriginal communities in developing harvesting plans. This cooperative planning will help protect the cultural and spiritual land use of the communities who live in the region.

It is of utmost importance for industry to involve Aboriginal communities from the beginning. This will ensure that Aboriginal interests will be adequately addressed, which will in turn provide smoother operations for industry and the Aboriginal communities. Tembec Forest Products has taken a pro-active approach to involving First Nations from the inception of consultation. They have approached Aboriginal communities to seek their advice in how consultation is to take place. Tembec has also initiated a pilot project where two First Nations were chosen to participate in the forest management planning process where they will also reap the rewards of employment, and royalties.

Industry's approach to the Aboriginal interest in forest land has been ad hoc at best as most provincial governments, in granting forest tenure, have not provided policy direction on how Aboriginal rights should be dealt with. Industry is developing their own policies on Aboriginal consultation to ensure that fibre flow continues. Maintaining and acquiring of wood supply is a primary consideration of the forest industry in its relationship with Aboriginal

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groups. Transparent relationships are also key in ensuring more successful partnerships.

Northward Movement of Forest Development into Aboriginal Communities

There has been increasing interest in northern forests. Along with this interest is the acknowledgement of Aboriginal communities and their values, who depend on these forests.

There are large tracts of land that have been untouched by industry, and with this comes great economic opportunities. Industry must also understand the importance of working with Aboriginal people in joint venture partnerships. Recognition of the importance of the land to the northern communities, and the intimate connection that exists between Aboriginal people and the land has forced the industry to step back and reevaluate the past and future relationships with the First Nations.

In developing the northern forests, industry must be willing to incorporate TEK, which may involve decreasing annual harvests, specialized silviculture systems and more intense planning. This integration of Aboriginal issues, values and concerns signifies partnership, and not dictatorship.

Certification Systems for Sustainable Forest Management

The two major certification initiatives in Canada are being led by the Forest Stewardship Council (FSC) and the Canadian Standards Association (CSA).

The FSC's certification of forest products and the CSA's sustainable forest management systems are the proposed means, via the marketplace, to provide evidence that wood and paper products are derived from sustainable, environmentally-sensitive forest practices. The forest industry is complying with certification systems not as a result of government regulation, but in a voluntary effort to convince consumers to continue to buy their forest products (see *Assessment of the Need for Aboriginal Compliance with Sustainable Forest Management and Forest Product Certification Systems*, NAFA, 1996). Both the FSC and the CSA envisage multi-stakeholder participation in the development of regional standards and at the operational level. With respect to Aboriginal interests, the FSC has adopted four broad criteria for natural resource management guided by their principle #3: *The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.*

The FSC is working on a regionally specific standards within Canada. These regions include the Maritimes, Great Lakes St. Lawrence (GLSL), BC, an Ontario Boreal pilot process, and a potential Alberta process. During the formation of the GLSL process, the steering committee recognized a need for greater participation of First Nations. The FSC made an effort to involve First Nations through a presentation at the 1997 NAFA Annual General Meeting. The B.C. process has been dominated by Environmental Non-Governmental Organizations, but an effort is being made to broaden involvement. The completion of

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the BC process is expected in spring of 2002. The latest regional standards process is being developed for Ontario's boreal forest. This region has strong interest in what First Nations can contribute to the process.

The CSA's sustainable forest management system, has released national standards incorporating performance indicators under the heading *Respect and Provision for Aboriginal and Treaty Rights*. In terms of how Aboriginal peoples will be involved in the CSA system, the standards state that the *Aboriginal legal status is unique and should be reflected in the public participation process* and in the context of sustainable forest management. Aboriginal interests are being further investigated by the CSA Technical Committee through a plus document created by NAFA. This document will embellish the CSA criterion 6 to further Aboriginal involvement in sustainable development.

Certification is becoming an international expectation for the forest industry. A continuing challenge for certification organizations and 3rd party certifying bodies has been to harmonize international standards while maintaining recognition of unique regional factors. Along with the forest industry opting for certification there are businesses such as Home Depot. As the world's largest limber retailer, they have demonstrated a strong message to the global economy. In 1994, Home Depot became the first home centre to offer wood products that were certified as well-managed by Scientific Certification Systems Forest Conservation Program. In 1999, they were

persuaded to lead industry by joining the Certified Forest Products Council.

Canada's Model Forest Program

The ultimate in multi-stakeholder processes is of course Canada's Model Forest Program. The purpose of the program is to accelerate the implementation of sustainable development in the practise of forestry using partnerships to incorporate the diversity of interests. Each of the ten model forests in Canada has established a management structure consisting of *concerned individuals, professional organizations, non-governmental environment organizations, native peoples, industry, private landowners, universities, colleges, schools, all levels of government and international organizations*.

Aboriginal groups or communities have been involved in eight of the eleven model forests. The Waswanipi Cree were awarded the most recent model forest in 1997, which consists of 209,600 hectares of boreal forest in northern Quebec. The other seven Aboriginal communities who were not directly awarded model forests play important roles as partners with unique knowledge to contribute to the process of developing sustainable forests. With two exceptions, they have however, felt apprehension or expressed dissatisfaction with the program. In most of the management structures established, Aboriginal people are seen as one interest group, and consequently, are accorded one vote or voice in the process. On the other hand, non-Aboriginal people are seen to have almost limitless interest including wildlife, recreation, labour, fish and game,

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business, to name a few. As a result, Aboriginal people are inevitably the minority. Some Aboriginal groups express the view that the Model Forest Program perpetuates the status quo with respect to natural resource management. While Aboriginal organizations, at the political level, seek access to resources, self-government and greater recognition of Aboriginal and Treaty rights, the Model Forest Program explicitly states that nothing is changed with respect to jurisdiction over land use decisions.

In those model forest structures where Aboriginal people are not an insignificant minority, or where Aboriginal interests, pertaining to resource base, are reflected in the objectives of the organization, there has been a greater willingness to participate. As well, in these cases, an understanding that the issues to be dealt with are relevant solely from a forest management point of view has contributed to a mutually beneficial working relationship. To gain this assurance, some of the mission statements have stated that Aboriginal participation shall be without prejudice to Aboriginal and Treaty rights.

CONCLUSION

Most Aboriginal groups take the view that public participation through multi-stakeholder processes is not the vehicle to obtain resolution of long standing grievances on rights issues or self-

government. As First Nations and their organizations have repeatedly stated, government-to-government negotiations is the appropriate approach in this regard. The problem with existing multi-stakeholder processes is that they assume the predominance of non-Aboriginal control of the forest. Because governments, both federal and provincial, have not been proactive in interpreting the Aboriginal rights jurisprudence as it applies to forest management, multi-stakeholder processes will continue to be a source of frustration for those Aboriginal groups that take the position that the rights issue must first be resolved.

However, there is no question that forestry operations will continue and that public participation will be integral in the move to sustainable forest management. Despite the shortcomings of the multi-stakeholder processes in addressing the historical injustices, Aboriginal peoples have much to gain by being involved. These processes can provide a forum for creating public awareness of Aboriginal issues and values, and provide a more immediate means of achieving environmental mitigation measures, creating alliances with other stakeholders or influencing resource use decisions.

Litigation is a costly and time consuming process that is all too often used. Governments must promote partnerships between industry and Aboriginal people. Along with developing and strengthening current initiatives, industry must be willing to relinquish direct control over lands to be co-managed and/or solely managed by

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Aboriginal people in order to create healthy long-lasting, litigation free relationships.

With respect to national forest policy, and measures to implement sustainable forest management, there is considerably more movement in recognizing Aboriginal and Treaty rights. Canada's National Forest Strategy commits federal and provincial forest ministers to respect and make provisions for Aboriginal and Treaty rights. CCFM Criteria and Indicators for Sustainable Forest Management, and the FSC's and CSA's certification systems, also seek substantial activities in integrating Aboriginal rights in forest management operations and generally recognize that Aboriginal peoples have a valuable and unique role to play in forest management. The evolution of the Sustainable Forest Management framework is on the leading edge in recognizing that Aboriginal peoples are not just another stakeholder and that this approach can serve to benefit improved stewardship of our forest lands. That's where the proof of the benefits of co-existence based on respect for Aboriginal rights and aspirations will lie: in our forests.

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