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Panel: “Is the Industrial Forestry Model a Viable Alternative for Aboriginal North Americans?”

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Abstract

In this presentation, I contend that there are three structural impediments to the incorporation of Aboriginal peoples’ values in forest management in Canada: 1) the rate and amount of timber harvest; 2) the allocation of long-term licenses; and 3) and mill requirements (appurtenancy). In order to develop a truly sustainable forest management system, which recognizes Aboriginal peoples’ involvement as a key component, there is a need to consider a form of Aboriginal tenure.

Keywords: Aboriginal peoples’ participation, sustainable forest management, values, Aboriginal and treaty rights, tenure
The Problem

- Forest management in Canada does not recognize Aboriginal Peoples’ tenure
- Provincial governments’ forest tenure systems—a barrier to incorporation of Aboriginal Peoples’ rights & values

KEY CULPRITS:
- Rate & amount of timber harvest
- Allocation of long-term licenses
- Mill requirements (appurtenancy)
Definition & History

- “Tenure”—ownership of lands & resources
- Canada: recognition of Aboriginal Peoples as original occupants, commitment to negotiate
- British Royal Proclamation, 1763—treaties (1700-1910)
- 1867 Canada is formed
History (cont’d)

- Constitution: defines Government jurisdiction
- Provinces: natural resources
- Federal: “Indians & lands reserved for Indians” (the Indian Act), trade, international treaties
- Treaties signed, “Reserves” (small land areas)
- Most forest lands publicly owned by the “Crown” (provinces)
- Constitution Act, 1982: recognition of “Aboriginal people” (“Indians”, Metis & Inuit) & their rights
How Timber Harvesting Works

- Provinces give large area, long-term (20 years), renewable licenses to forest companies to harvest timber with responsibilities to prepare plans, renew forest, consult public on environmental, social & economic issues
- Provinces determine rate & amount of timber harvest—Chief Forester, Minister of Forests
- To get license, companies must have processing facility (pulp or saw mill)—the appurtenancy requirement
Legal & Policy Context for Aboriginal Peoples

- Aboriginal & treaty rights: historical use
- Hunter-gatherer societies—hunting, fishing, trapping & gathering—subsistence *and* commercial
- Natural resource management jurisdiction: federal & provincial governments “pass the buck”
- Rights upheld & defined by courts (Delgamuukw, Haida, Mikisew, Paul, Powley)
- Rights recognized & commitments made in national & provincial forest policy

☑ Canadian Council of Forest Ministers Criteria & Indicators of Sustainable Forest Management
☑ National Forest Strategy
Aboriginal Peoples & Forest Management

- Rights ignored in practice
- Access to forest resources restricted by industrial tenure system
- Current models—an “integration” approach (RCAP, 1996)—short-term quotas or licenses, co-management with limited consultation, no consent, joint ventures with industry
- Arguments to U.S. Dept. of Commerce in softwood lumber dispute
Aboriginal Peoples’ Forest Issues

■ RIGHTS
■ ECONOMIC DEVELOPMENT
■ VALUES
  - First Nations: sovereign before colonization with governance, knowledge & management systems
  - Willingness to share, responsibility to welcome, chose to co-exist
  - Treaties: protecting a way of life (hunting, trapping, fishing & gathering)
Aboriginal Tenures in Canada
Culprit #1: Harvest Rate & Amount

- As much a political as a scientific decision
- Major role: Mill capacity & economic issues
- Determination of sustainability based on macro-scale; questionable accuracy at local level
- Once established, difficult to change
- Still timber-oriented; other values a “constraint”
- Aboriginal non-timber uses
Culprit #2: Allocating Timber Rights

- Lack of Aboriginal peoples’ involvement in allocation of licenses
- Total allocation of forest areas on “evergreen” basis—no “unoccupied” Crown land left
- Ineffective consultation by provinces: no proper consideration of how forest management may potentially infringe Aboriginal & treaty rights
Culprit #3: Mill Requirement

- An historical necessity to develop Canadian industry & economy
- Evolution to over-capacity in mill production; foreign ownership; dependence on commodity production (pulp & dimensional lumber)
- Limited opportunities for new businesses, value added & innovative licensing, notably for Aboriginal communities
Tentative Explorations

Some provinces exploring new approaches:

- Newfoundland: Co-management with Innu Nation
- New Brunswick: 5% allocation
- Quebec: 1) Algonquins of Barriere Lake, Trilateral Agreement Cultural information factored into AAC determination & 2) James Bay Cree, La Paix des Braves
- Ontario: Aboriginal values in forest management planning
- Saskatchewan: Provincial tenures to First Nations
- Alberta: Aboriginal policy framework on consultation
- British Columbia: 8% allocation in allocation clawback
Some forest companies exploring new ways of doing business:

- Tembec, Domtar and Al-Pac seeking Forest Stewardship Council certification, attempting to implement Principle 3, Indigenous Rights based on regional standards in BC, Maritimes, and recently approved national boreal standard

- Iisaak—joint venture Weyerhaeuser/Nuu-chah-nulth Tribal Council, Vancouver Island—allowable cut incorporates Aboriginal values and uses, environmental standards recommended by Clayoquot Science Panel
More is Needed: Proposed Solutions

- An Aboriginal forest tenure
- Negotiated framework agreements with State (provincial & federal governments)
- Joint decision-making (co-management)
- Assertion of right to self-determination & self-regulation: logging without a provincial license, exercising customary laws & practices
- Integrated resource management planning by Aboriginal communities
- Revenue-sharing from timber royalties
- Implementation of FSC’s Principle 3—Indigenous Rights
A Renewed Relationship (RCAP 1996)

Recognition of Aboriginal & treaty rights
  + tenure reform
  + incorporation of Aboriginal values
  + equitable share of benefits

= joint management and sustainable forest management
References

