


MINISTRY POLICY

Policy

Consultation Processes

POLICY SUBJECT		
<i>Aboriginal Rights and Title</i>		
EFFECTIVE	RESPONSIBLE BRANCH	NUMBER
<i>May 14, 2003</i>	<i>Aboriginal Affairs Branch</i>	<i>15.1</i>
APPROVED		
		

Aboriginal rights, including aboriginal title, are recognized and affirmed under Section 35 of the *Constitution Act, 1982*. The effect of this recognition is that existing aboriginal rights must not be unjustifiably infringed by the forest development decisions of the Crown or its licensees. The Ministry of Forests will meet its legal obligations with respect to aboriginal rights, while maintaining a timely approval process for forest business practices.

This document is consistent, and should be used in conjunction, with the Provincial Consultation Policy (2002). The term "aboriginal interests" is used throughout this document to refer to potentially existing but unproven aboriginal rights and/or title.

To address legal obligations, forest development decisions, including range decisions, will be the subject of consultation efforts between First Nations and government. An appropriate consultation process should be employed for each type of decision under the Ministry's mandate that is capable of affecting aboriginal interests. The consultation process will include considerations on the degree to which the forestry decision impacts the landbase; and the degree to which the First Nation likely has aboriginal interests within the area under decision

Ministry staff will keep an accurate record of all consultation discussions, including efforts to address aboriginal interests. Staff will advise First Nations that consultation and addressing aboriginal interests is being carried out in fulfillment of the Crown's legal obligations in respect of asserted aboriginal rights and/or title.

Consultation processes will:

- identify First Nations potentially affected by proposed forest development decisions,
- provide them with all relevant and reasonably available information regarding proposed forest development decisions,
- request information from First Nations that will assist in the identification of, and provide the basis for claims of, aboriginal interests that may be impacted by proposed forest development decisions,
- consider the degree to which the forestry decision impacts the landbase,
- consider whether the aboriginal interests described by the First Nation will potentially be infringed by the proposed development activity or decision, and
- consider the apparent strength of aboriginal interests in relation to forest development decisions, seeking to accommodate those interests where appropriate.

Components of the Consultation Process:**1. Identification of Relevant Aboriginal Groups**

Identify First Nation(s) that may be potentially affected by the proposed forest development decisions, including overlapping First Nations asserted territories.

2. Information Sharing

First Nations should receive all relevant and reasonably available information as early as possible regarding the type of decision to be made. Different ministry representatives (district, region, branch) may need to be involved in this step depending upon the type of forestry decision being made. As a practical matter, licensees will likely need to be involved in the consultation process in order to provide specific information.

For operational activities (such as forest development planning processes), information sharing may include technical and descriptive information, such as diagrams and mapping products to provide an understanding of the potential on-the-ground impact of the proposed activity. For administrative decisions (such as new or replacement tenures), information sharing may include an overview of the tenure terms/processes, explanation of the nature of the tenure and any legislated requirements, along with explanation of any conditions that may be attached to the tenure.

Sufficient explanation of the information should be provided. Staff should encourage the First Nation to raise any aboriginal interests in relation to the decision and to describe and provide evidence that shows the basis of their claim(s), if claims have been made. First Nations responses (related to aboriginal interests) from these discussions will guide the level and scope of any subsequent consultation processes.

The following forms of information should be sought from First Nations and other sources, and considered in the context of the particular situation (see the consultation guidelines for further information on these factors):

- Are the involved lands near or adjacent to a reserve or former settlement or village site?
- Is the land in areas of traditional use or archaeological sites? If a TUS was done, what does it indicate over the land in question?
- Is there any overlap with other First Nations?
- Is the First Nation asserting rights/title over the area? What is the nature of the assertion and on what information is it based?
- Is the land subject to a specific claim?
- Is the land close to known fishing, hunting, trapping, gathering or cultural sites?

Other line ministries may be contacted to determine if they have received internal advice regarding a particular First Nation. Consistency across government in responding to aboriginal interests is essential.

3. Addressing First Nations Issues

Where First Nations concerns of aboriginal interests are raised with regard to a forest activity or pending decision, consider the information gathered during the consultation process to date, along with possible practical adjustments or actions that may substantially address those concerns, if possible in conjunction with the licensee.

Practical adjustments or actions should not set precedents with regard to aboriginal interests (at this stage, practical solutions should not purport to recognize aboriginal rights or title, but should be put forward as a reasonable arrangement that seeks to address the asserted, but unproven, claims of aboriginal rights or title).

Also consider discussing possible practical adjustments or actions with region, Aboriginal Affairs Branch, and other relevant branch representatives. Where practical adjustments or actions are not possible, discuss with regional staff, Aboriginal Affairs Branch, and Ministry of Attorney General to determine whether any further opportunities should be offered to address the interests raised.

4. **Soundness of Claim Assessments**

Assessments regarding the soundness of an aboriginal right or title claim may be conducted in conjunction with internal advice from provincial authorities, including legal advice. Assessments may be relevant where:

- the information provided by the First Nation is inadequate,
- court action is likely or occurring, or
- the information does not directly support the strength of claim being raised.

Such assessments can serve to help determine appropriate levels of subsequent consultation and point to possible steps that seek to accommodate aboriginal interests identified during consultation.

As issues associated with considering the soundness of claim (and recommendations on accommodation measures) are governmental in scope, field staff are not responsible to make this determination independently.

5. **Accommodation**

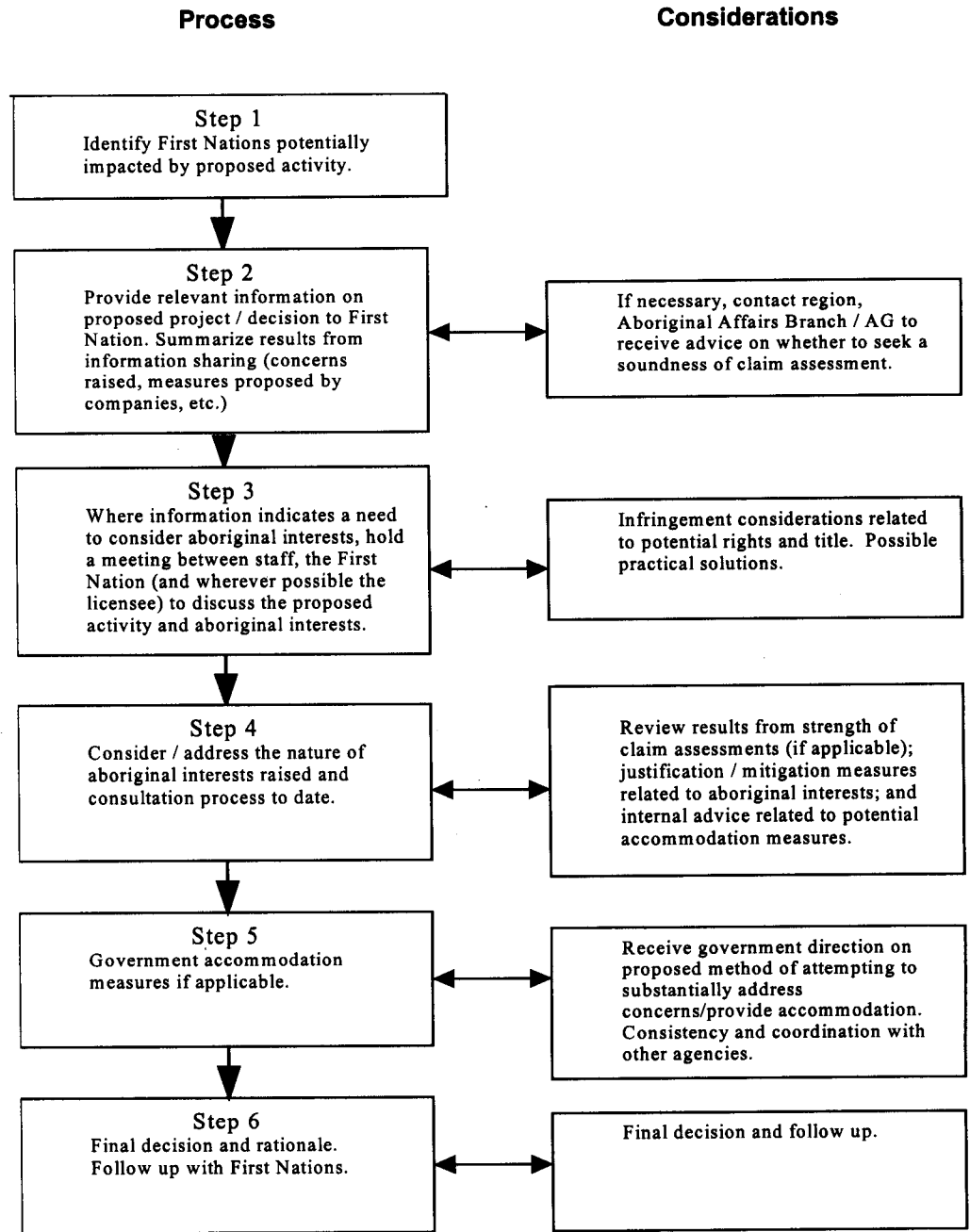
In some cases, government may determine that specific steps are needed to seek to accommodate aboriginal interests. It is critical that proposed measures be consistent across government, in the context of the particular aboriginal group in question. Any such measures will be developed from a corporate government perspective with internal direction/approval.

6. **Decision Making**

Information related to aboriginal interests will be considered and addressed in relation to forestry decisions. Decision makers will consider relevant information brought forward during consultation processes, this policy, the Provincial Consultation Guidelines, and any relevant advice from government sources related to aboriginal interests and efforts that seek to accommodate those interests.

As a final step in the consultation process, First Nations should be informed of forestry decisions taken, and how consideration was given to aboriginal interests identified.

Following is a chart that summarizes steps for consultation activities and considerations.



References

No applicable references.