

It's easier to plead forgiveness than ask for permission

02 December 2010 | News - News story

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The provincial Government of Ontario in Canada recently passed the Far North Act, a piece of legislation setting the framework for the protection of half of the Far North region of Ontario through community-based land use plans integrated within a comprehensive Land Use Strategy. As presented in the fall CEESP newsletter, this bill was supported by conservation organizations but opposed and rejected by Nishnawbe Aski Nation (NAN). NAN is the political treaty organization that represents the 49 First Nations of the James Bay Treaty 9 territory, and the Treaty 5 First Nations located in Ontario's "Far North" planning region that lies approximately north of the 50 th parallel. This was the latest in a series of decisions that are influencing the traditional territories of Indigenous peoples living in the boreal forests of Canada and Ontario, where we carry out research

What we have noticed in the last ten years is a pattern in which conservation organizations have partnered with industry to influence forest policy. In and of itself, this is not necessarily a bad thing given the demonstrated importance of civil society participation in policy making. However, what is significant in the Ontario case is that, first, political and economic power is held in the highly populated southern urban regions where interest groups reside. Indigenous populations living throughout the province constitute the northern majority, but smaller numbers afford them less political influence. Secondly, resident First Nations of the Far North walked away from early discussions regarding conservation targets and policy as their concerns regarding the centrality of First Nation territorial planning were being made subservient to a regional planning framework. Early discussion between NAN and the government were sidestepped by the introduction of the Far North Act, and consultation occurred with regards to implementation details, rather than the purpose and goals of the Far North Act. The main objective of the Act is the " protection of ecological systems in the Far North by including at least 225,000 square kilometres of the Far North in an interconnected network of protected areas designated in community based land use plans ." As a result, First Nations have to contend with fixed targets and a regional planning framework that constrains First Nation community-based planning. ***This raises the question: Which actors should pay attention to the principle of free, prior and informed consent when undertaking policy making, planning and implementing projects in First Nation traditional territories?*** We consider this question for Ontario due to our familiarity with the context.

The Ontario Forest Accord, signed in 1999 by the forestry industry, conservation organizations and the Ontario government was the first process to attempt to settle tensions between lands set aside for protected areas and industrial development, mainly forestry in this case. In what was then called the "Lands for Life" planning region of Ontario (roughly the area south of the 50 th parallel and north of main zones of agriculture and urbanization), there had been ongoing conflict between conservation organizations and industry. In spite of conservation organizations stated support for Aboriginal concerns with the planning process, a weekend deal struck by the three main parties went forward with no Aboriginal participants. Conservation participants at the time contended that they addressed Aboriginal interests by including a provision that "orderly development" of the north (now known as the "Far North") would not take place without First Nations' consent. According to this principle, still followed by conservation organizations, industry and government, one makes oneself contrite and then consent is sought after policies are legislated or agreements are signed — a strategy well

known to instrumental planners.

Less than five years later in 2003 a new framework, the Boreal Forest Conservation Framework (BFCF), was negotiated and initially signed by the Boreal Leadership Council made up of conservation organizations, industrial interests and five First Nation councils representing 59 individual communities. Since 2003, several other organizations have endorsed the BFCF, including an additional four First Nation councils representing a further 23 communities. The agreement committed to “preserve at least half of the Boreal Forest [in Canada] in a network of large interconnected protected areas and support sustainable communities, world-leading ecosystem-based resource management practices and state-of-the-art stewardship practices in the remaining landscape.” Significantly, none of the initial First Nations were located in Ontario. One Ontario First Nation—Moose Cree—and the Mushkegowuk Environmental Research Centre were later signatories. One of the most salient messages and widespread legacy of this framework was the call for a 50/50 target that balanced lands set aside for protected areas and industrial development.

In response to intensive pressure from protected area advocates, both the governments of Ontario and Quebec announced in 2008 that they would set aside as “protected areas” 50% of northern land within their provincial jurisdictions. Given that the majority of permanent residents of these two provincial northern areas are Indigenous people, it goes without saying that they were surprised to hear provincial governments make such promises without their input, especially at a time that the provincial government had committed to building better relationships with First Nations.

First Nation exclusion from “groundbreaking” agreements continued with the May 2010 announcement of the [Canadian Boreal Forest Agreement](#) (CBFA). The CBFA was signed by 21 representatives from the forestry industry and nine conservation organizations, covering 72 million hectares of public lands across the Canadian boreal, licensed for timber harvesting. The CBFA initially commits the industry to suspend logging in caribou habitat in exchange for ENGOs suspending boycotts of the signatory companies and outlines further commitments over a three-year period. The CBFA acknowledges that, “Canada's boreal forests are uniquely important to Aboriginal peoples and are a vital part of the cultural, spiritual,

economic and social relationships between Aboriginal communities and their traditional lands.” The agreement also recognizes constitutionally protected Aboriginal and treaty rights, calls for the protection of Aboriginal culture, continued Aboriginal traditional use in protected areas and the involvement of Aboriginal communities in decision-making. But, as with previous experiences, industry and ENGOs put the cart before the horse, making major policy decisions that will impact Indigenous communities and their lands without their input — the common ruse of speaking for First Nations before speaking with them. The controversial passing of the Far North Act by the Government of Ontario in September of 2010 further emphasizes the lack of First Nation involvement in agreements and policy making in the boreal forest, and the lack of understanding of First Nation goals and aspirations.

These processes show systematic pressure by civil society on provincial governments in Canada to move toward legislation that will set aside at least 50% of lands for protected areas. This may seem to be a benign influence on the policy making process in Canada given the past impacts of industrial development on Indigenous peoples. However, through these processes, northern Indigenous communities have been excluded from policy making and the setting of significant conservation targets. The refrain that has been heard from the organizations promoting these recent boreal policies and agreements is that it is up to governments to ensure that First Nations are consulted in the development and implementation of legislation.

We suggest that the responsibility of all actors attempting to influence policy change begins earlier in the process, be they private sector companies or ENGOs, and the governments that implement these changes. Canada recently agreed to endorse the United Nations Declaration on the Rights of

Indigenous Peoples (UNDRIP). In addition to acknowledging the rights of Indigenous peoples to self-determination and to “ *own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use* ” (Article 26) , UNDRIP recommends: “ *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them* ” (UNRIP, article 19). While UNDRIP focuses mainly on the responsibility of States to uphold the agreement, its principles of free, prior and informed consent should be upheld by any individual or group whose actions may affect the rights of Indigenous peoples.

It is clear that in the case of the Far North Act in Ontario the State did not live up to this requirement for free, prior and informed consent prior to passing this legislation. However, recent policy changes in the northern boreal forests of Ontario and Quebec also raise a more complex question regarding the responsibility of civil society to ensure their influence on policy making is consistent with the principles of UNDRIP. While a 50% target may seem like a laudable goal for the boreal forest, any such policy changes should emerge through the free, prior and informed consent of Indigenous peoples and not through their exclusion from arenas in which agreements are negotiated, targets set and policies made. Given the process that has unfolded in the boreal forest over the last ten years, the signing of the UNDRIP offers an opportunity for civil society and provinces to live up to a new standard for policy making, planning and projects in the boreal forest.

As CEESP moves towards the Sharing Power conference we suggest that an important topic moving forward will be to consider the principle of free, prior and informed consent, both for the state and other actors, as Indigenous lands are considered for the establishment of large protected area networks. We look forward to hearing from other CEESP members about how this principle is being applied in other contexts during the Sharing Power conference, and broadening this dialogue amongst North American members of CEESP.

There are over 600 First Nations in Canada, with about 2/3 located in the boreal forest.

CBFA website <http://www.canadianborealforestagreement.com/index.php/en/why-its-important/>