*Peace in the forest or smouldering conflict? Reclaiming the “Right to Negotiate for Ourselves” in the Canadian boreal*

Catie Burlando1  Peggy Smith2,3 and Iain Davidson-Hunt1,2

1 University of Manitoba

2Co-Vice Chairs, North America, CEESP, IUCN

3 Lakehead University

For two issues (CEESP [September](http://www.iucn.org/about/union/commissions/ceesp/ceesp_news/?5968/When-a-Bill-Passes-in-the-Wilderness-Does-Anyone-Hear) 2010 and [December](http://www.iucn.org/about/union/commissions/ceesp/ceesp_news/?6618/Its-easier-to-plead-forgiveness-than-ask-for-permission-the-tension-between-instrumental-conservation-based-planning-and-emerging-principles-of-free-prior-and-informed-consent-in-the-boreal-forest) 2010), we have raised attention to how an international network of environmental organizations and the forest industry have been shaping forest policy in the Canadian boreal region. We specifically focused on the Far North Act in Ontario and the Canadian Boreal Forest Agreement, both of which were signed in 2010. The Far North Act committed 50% of Ontario’s Far North region to protection through a process of both regional planning and community-based land use planning. The Canadian Boreal Forest Agreement (CBFA) was signed in May of 2010 by nine environmental non-government organizations (ENGOs) and 21 forestry companies, members of the Forest Products Association of Canada (FPAC) to bring “peace in the forest” in areas allocated by provincial governments to logging companies.[[1]](#footnote-1) Proponents have hailed both models as successful.[[2]](#footnote-2) However, the Indigenous people impacted by such policies tell a different story. In this update we provide some of the voices from both sides of what is becoming a protracted and multi-fractured debate.

Global actors have chosen to position the boreal as a “battleground” between conservation and development with the classic justification that the end justifies the means. However, what is lost when conservation and development are moved forward without adequate participation of First Nations in decision-making? Many First Nation leaders view the Far North Act and CBFA as contemporary examples of colonial policy-making processes, often seen as good “for them,” yet made without their participation. Given that the debate among First Nation leaders, and now some ENGOs and forest companies, about the merits of the top-down deal-making appears to be intensifying, perhaps it is time for some of the actors to ask a new question: What might post-colonial conservation look like in the boreal forest? How do we reconcile Aboriginal goals for self-determination and sustainable northern communities with those of internationally-funded conservation actors and their campaigns and forest companies engaged in a highly competitive global marketplace? Are the goals of ENGOs and forest companies, reflected in the CBFA, compatible with Aboriginal goals?

A positive outcome to this debate would be for a space to open up for First Nations to lead a broader dialogue about self-determination, conservation and development in the boreal forest. For example, First Nation organizations from BC proposed a draft Indigenous Boreal Declaration in November 2010.[[3]](#footnote-3) However, as First Nation leaders have been emphasizing, this requires global actors to first stop implementing their strategies of “divide and conquer” through the conscription of First Nation clients in their global campaigns.[[4]](#footnote-4) An encouraging step taken by a majority of First Nation leadership was to pass a unanimous resolution against the CBFA in December, and call for a national First Nation meeting to discuss the boreal forest, scheduled for March 29–30, 2011. As stated by Chief Ovide Mercredi of Misipawistik Cree Nation, Manitoba, it is important that First Nations begin to discuss what is happening in the boreal and insist upon the “Right to Negotiate for Ourselves”.

Since the outcomes of this meeting will not be known when this newsletter appears, it is important to provide background to what led First Nations to undertake this important step in convening a national meeting. To that end, we provide a synopsis of some of the recent voices regarding how decisions will be made and who participates in the governance of boreal conservation and development. This includes the Resolution passed by the Assembly of First Nations (AFN) Special Chief’s Assembly, and correspondence between different actors, including Nishnawbe Aski Nation and what is now the Boreal Forest Agreement Secretariat.

The AFN Chiefs Special Assembly held in Gatineau, Quebec on December 14-16, 2010 passed Resolution #21/2010 to “condemn the disrespectful manner in which the CBFA was negotiated,” and declared the Agreement void unless “a First Nation expressly indicates whether or not and to what extent the Agreement may apply.” It stated the importance of Free, Prior and Informed Consent (FPIC) ahead of any decisions that would influence policy, planning or development initiatives in the boreal, including,

… any interests the parties may express in relation to the boreal forest are subject to the free, prior and informed consent of First Nations, to the terms of Treaties and Agreements, to First Nation resource management authorities and to government-to-government processes (AFN 2010).

It also called on the AFN to monitor any initiatives in the boreal and complete a review of the CBFA.

In February 2011, Grand Chief Stan Beardy of Nishnawbe Aski Nation[[5]](#footnote-5) forwarded an open letter to the CBFA signatories, asking for the “immediate termination of the CBFA.” Beardy stated that the CBFA “violates their Aboriginal, Treaty and Inherent rights, as well as their long term social and economic interests, and land resource stewardship rights” and, in the case of Ontario, aggravates the effects of the Far North Act, which will set aside 50% of the region as protected areas. In the letter, Grand Chief Stan Beardy combated the secrecy of the agreement, as well as its lack of attention to the issue of Free, Prior and Informed Consent:

The CBFA purports to regulate the forests and expropriate massive protected areas without the free, prior and informed consent of First Nations. This makes a mockery of self-serving provisions in the CBFA, like section 8, that claims that the CBFA is “without prejudice” to Treaty and Aboriginal rights.

Grand Chief Stan Beardy called the CBFA,

… a fundamentally bad deal for most Canadians, but especially First Nations. It is a bold and radical attempt by private interests to force the hand of provincial and federal governments in critical policy areas such as resource development, environmental protection, species protection, and First Nations rights. The signatories to the CBFA are not government agencies with the public interest in mind. They are private interests with narrow and self-interested agendas.

Grand Chief Stan Beardy also argued that the CBFA “violates the domestic and international legal obligation to consult and accommodate First Nations when a proposed measure affects First Nation land, resource and other rights.” Significantly, they also contravened obligations that conservation organizations had adopted to guide their own behaviour. In 2010, Birdlife International, Conservation International, Fauna & Flora International, Wetlands International, The Nature Conservancy, Wildlife Conservation Society, WWF and IUCN signed the Conservation and Human Rights Framework (CIHR). The Nature Conservancy, for example, was a signatory to both the CBFA and the CIHR, a move NAN regarded as “appalling inconsistency.”

“Among other things, the framework commits conservation organizations to *“[r]espect internationally proclaimed human rights (i.e. the 2007 UN Declaration) and to “respect the rights of indigenous peoples…with customary rights to lands and resources to free, prior, informed consent to interventions directly affecting their lands, territories or resources*.”

The Boreal Forest Agreement Secretariat responded on March 21, 2011, explaining why First Nations had not been involved in initial discussions:

No one benefits from ongoing conflicts. Our signatories believed that we could, by ending the conflict between us [ENGOs and the forest industry], take positive steps towards meaningful progress in the boreal. We did not involved First Nations in our initial discussions for the same reason that we did not involve other governments. The CBFA signatories fully recognize that government, including aboriginal governments, are decision-makers,[[6]](#footnote-6) not mediators. We believed that as stakeholders, we needed to resolve our own conflicts, before we could work towards proposals that we could bring forward together to First Nations and other governments for consideration.

The CBFA has as its core a deep respect for the rights of First Nations and acknowledges the primacy of the government-to-government relationships. […] *We recognize that if we had communicated with First Nations in advance, misconceptions about he CBFA could have been avoided.* The AFN Special Chiefs Resolution acknowledges that individual First Nations may come to their own decisions about their engagement with the CBFA. We will work hard to earn the trust and confidence of First Nations (emphasis added).

The recognition of a process, which excluded First Nations, and which had led to apologies by David Suzuki of the David Suzuki Foundation and Larry Innes of the Canadian Boreal Initiative in July 2010, is consistent with what we had titled our previous issue: “It is easier to plead forgiveness than ask for permission.” The CBFA Secretariat reiterated what has been spelled out in the CBFA Agreement (CBFA, 2010, art. 8):

FPAC, FPAC Members, and ENGOs recognize that Aboriginal peoples have constitutionally protected Aboriginal and treaty rights and title as well as legitimate interests and aspirations. The CBFA is intended to be without prejudice to, and in accordance with, those rights and title. FPAC, FPAC Members, and ENGOs believe both successful forest conservation and business competitiveness require effective involvement of Aboriginal peoples and their governments. The signatories are committed to such involvement taking place in a manner that is respectful of and engages these Aboriginal rights, title, interests, and aspirations.

Thus, the CBFA Secretariat rejected the claim that the CBFA violated international agreements.

We do not believe that the CBFA is a violation of the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] or the International Convention on Biological Diversity. Those who signed the CBFA support aboriginal rights, are committed to biodiversity and support Canada in recent endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.

Instead, they described the CBFA as a,

…solution space, where parties can work together to resolve conflicts and propose innovative strategies to decision-makers. These strategies, which include better on-the-ground forest practices, and the identification of critical habitat for species at risk within existing forest tenures, have yet to be developed, in large part because we are committed to meaningful consultation and engagement. We know we need direction and leadership from First Nation governments on the goals that we are working to advance through the CBFA.

They further stated that they were encouraged by the participation of First Nations in the CBFA.

 This dialogue is occurring in diverse ways. As we respond to the priorities of individual First Nations. *In some jurisdictions we are working under formal letters of understanding. In others, First Nations are choosing to participate in our Regional Working Groups to advance mutual goals*” concluding that “we once again express our resolve to work in a spirit of respect, openness, transparency and accountability *with any First Nation that chooses to establish a relationship with us, and we will respect the decisions of those who decline to do so* (emphasis added).

An example of the kind of approach that this envisions was expressed in an interview to the Earth Island Journal, where Project Director of the Pew Charitable Trusts’ International Boreal Conservation Campaign Steve Kallick stated:

The goal is for the loggers and us, working with scientists, to figure out exactly which areas need to be preserved for the caribou and then go to the aboriginal and civil governments and ask that these areas be taken out of the commercial logging rolls forever.[[7]](#footnote-7)

This could mean that First Nations could become rubber stampers for decisions already approved by conservationists, loggers, and scientists. This is not, however, the position in which many First Nations want to find themselves, a pattern witnessed too many times in the past. Chief Ovide Mercredi stated in an open e-mail (November 1, 2010) that:

We have learned a painful lesson from our relationship with Canadians and their governments that they will always put their interests ahead of ours.  This is the main reason why we have to protect our Right to Negotiate for Ourselves (as Distinct Self-Determining Peoples).  We are humans not "ghosts." We live on our traditional lands and territories, as our ancestors did for thousands and thousands of years.  Our Life is not for sale.  Our Life is too precious to allow OTHERS to bargain and trade about THINGS like permitted uses or protected areas.  We will use "free, prior and informed consent" for ISSUES that really matter to our people; and most certainly NOT for misplaced motives like "peace" on boreal lands between ENGOs and Forestry Companies.

In conclusion, the CBFA is still open for debate among First Nation communities. Some express serious reservations, doubting that the decision to avoid seeking the Free, Prior and Informed Consent of First Nations before the CBFA was signed will translate into a better deal for First Nations in the present and future developments in the boreal. Others think that a common framework can be developed within the parameters set by the CBFA and are working with CBFA members to this end. What seems to be emerging, however, is that while there is a stated recognition of Aboriginal and treaty rights, as per the Canadian Constitution and UNDRIP, the CBFA does not understand that, in practice, this means that First Nations have a decision-making voice in how their lands are cared for.

While this debate will continue, as we suggested at the outset, perhaps a more constructive way forward would be a First Nation space to allow for the emergence of a First Nation vision for self-determination, boreal conservation and development.

1. The Agreement can be accessed at: http://www.canadianborealforestagreement.com/index.php/en/the-canadian-boreal-agreement/ [↑](#footnote-ref-1)
2. Pala, Christopher. 2010. Dispatches: Forests forever. *Earth Island Journal*, 25(3):26-30. [online]<http://www.earthisland.org/journal/index.php/eij/article/forests_forever/>.

Boychuk, Rick. 2011. The Boreal Handshake: What caused the combatants to finally call a truce in Canada’s bitter war in the woods? Canadian Geographic, Jan- Feb 2011. [↑](#footnote-ref-2)
3. The Declaration can be accessed from the website of the Carrier Sekani Tribal Council [online] http://www.cstc.bc.ca/cstc. [↑](#footnote-ref-3)
4. Lukacs, Martin. Leak reveals push to win First Nations on controversial boreal forest pact. *The Dominion*. 27 October 2010. [online] http://www.dominionpaper.ca/articles/3711 [↑](#footnote-ref-4)
5. Grand Chief Stan Beardy of Nishnawbe Aski Nation traveled to the “Sharing Power” conference in New Zealand in January 2011 to raise awareness about the issues that underlie these much-heralded policies. Representatives of several communities presented wide range of First Nation initiatives, which are occurring beneath the radar. [↑](#footnote-ref-5)
6. If only provincial governments, who make the decisions about allocation of forest resources, agreed that First Nations were decision-makers. Instead, provincial governments continue to assert sole authority over lands that underlain by Aboriginal and treaty rights. [↑](#footnote-ref-6)
7. Pala, Christopher. 2010. Dispatches: Forests forever. *Earth Island Journal*, 25(3):26-30. [online] <http://www.earthisland.org/journal/index.php/eij/article/forests_forever/>. [↑](#footnote-ref-7)