BACKGROUND

First Nations have been harvesting trees for tools, shelter, fuel, medicine, and ceremonial and social uses, for centuries. Culturally modified trees are found throughout the province, and reflect the modifications of tree trunks during the collection of bark or core wood for use in building homes, canoes, sleds, tools, or for food uses (preparation and gathering).\footnote{In treaty, First Nations may have the right to gather plants for food social and ceremonial purposes in provincial protected areas, if MoE gives approval. Note that the gathering of plants as a treaty right includes all flora and fungi but does not include aquatic plants or timber resources except for the bark, boughs, burls and roots of timber resources.}

Trees are also used in a variety of more intricate ways that include using roots for making baskets, bark for clothing and wood for smoking and preserving fish.

BC Parks is committed to maintaining and protecting the natural, cultural and recreational values of protected areas, while recognizing and reconciling the potential for the exercise of aboriginal and treaty rights of First Nations, to gather and harvest on their traditional lands in a sustainable manner within the protected areas.

This reconciliation of uses by BC Parks is sought in all B.C. protected areas. However, in relation to conservancies, the reconciliation is specifically set out in the Park Act section 5(3.1).\footnote{The Park Act, section 5(3.1).}

There may be instances where the First Nations’ tree harvesting activities cannot be supported as an exercise of their aboriginal or treaty rights. For example, where the right is not recognized by the Douglas Treaty, identified by the Supreme Court of Canada (SCC), and protected under section 35 of the Constitution Act, 1982. Or, where such a right may exist, it may be justifiably infringed upon should the harvesting of the tree or trees create an unsafe situation.
BC Parks may be justified in denying tree harvesting activities in certain protected areas notwithstanding the potential for infringement of aboriginal or treaty rights, based on BC Parks’ concerns for conservation, public health and public safety.

Provided that BC Parks is in a position to justify that there is no exercise of an aboriginal or treaty right at issue, or that there are conservation, public health or public safety concerns of a magnitude to justify BC Parks’ potential infringement of an aboriginal or treaty right, in accordance with the principles developed by the Supreme Court of Canada, then these BC Parks decisions may be supported by the courts.

PURPOSE

This guideline was developed to provide guidance to BC Parks staff and to inform First Nations and other protected area users, on the BC Parks management objectives surrounding the harvesting of trees by First Nations, for cultural purposes, in protected areas.

SCOPE

This guideline applies to all protected areas in pre- and post-treaty situations and may be complemented by additional information pertaining to a specific protected area, when there is one or more of: an existing approved protected area management plan, higher level plan, approved management agreement, or specific legislation that addresses First Nations tree harvest for cultural purposes in a particular protected area.

DEFINITIONS

Harvest – means the removal and consumption or use of the tree and any portion of the tree, whether alive or dead, and whether standing or fallen.

Protected areas – means, for the purposes of this guideline, parks (Classes A, B and C), recreation areas, and conservancies as defined in the Park Act, ecological reserves as defined in the Ecological Reserve Act and protected areas established under the Environment and Land Use Act.

POLICY

Policy guidance is also provided in the Vegetation Management chapter of the BC Parks Conservation Program Policies (1999).

Vegetation Removal or Modification (p. VM-13)

- BC Parks recognizes the role that dead and/or downed vegetative material plays in ecosystem structural diversity, microclimatic habitat characteristics, and
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*Guideline: Harvest of Trees in Protected Areas for Cultural Purposes*

- *BC Parks recognizes that removal or modification of vegetation may be necessary in order to restore natural ecosystem processes/functioning.*

- *Under certain conditions, removal or modification of vegetation may be necessary to:*  
  1. enhance visitor safety, facility security, or rare plant and animal habitat,  
  2. preserve or maintain recreational values in intensive use zones within parks,  
  3. combat insect or disease conditions when other controls are ineffective,  
  4. undertake site development in pre-determined areas, and  
  5. accommodate pre-existing rights (within the terms of existing provincial standards).*

- *Proposals for large-scale vegetation removal will be submitted to BC Parks’ Park Executive Committee or a public process for consideration prior to any actions being taken.*

- *Prior to any approved removal of vegetation, an assessment of the impact of the action on the integrity of the ecosystem will be completed.*

- *The use of chemical herbicides in parks and ecological reserves will be eliminated where possible in favour of biological, mechanical, or design methods for vegetation control.*

**ENGAGEMENT WITH THE FIRST NATION AND THE MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS**

1. Determine whether the proposed tree harvest is being undertaken as an integral component of the distinctive culture of the First Nation for tools, shelter, fuel, medicine, ceremonial or social uses. This information could come from the Band, Nation, Chief and Council, elders, and/or ethno-historical and archaeological research. Depending upon the First Nation’s planned use for the wood, an assessment may be necessary to determine whether the use is an exercise of a treaty right or is a “practice, culture or tradition integral to the First Nation claiming the aboriginal right.” If you have questions you may want to check with legal counsel.

2. Check to see if there is existing direction available:
   
   a. in a park management plan or other higher level plan, providing specific direction on First Nation timber harvesting in protected areas and other
more general information regarding sensitive ecosystems or other conservation direction.

b. from MOE staff, including the First Nations Manager or Planner, and legal counsel, if necessary.

3. Based on the information received in steps 1 and 2, make a recommendation based on the facts of the case and provide a written rationale. Obtain sign off from your Regional Director. If the decision is to allow tree harvest, proceed with Step 4.

4. Develop a cooperative understanding with the First Nation recognizing the following priorities:

   a. **Alternative Location Outside of a Protected Area:** If possible, facilitate the tree harvest at a suitable site outside of a protected area and within the asserted traditional territory of the First Nation. BC Parks will assist the First Nation and Ministry of Forests, Lands and Natural Resource Operations (MFLNRO) to locate a suitable harvest site outside of protected areas. BC Parks will also assist First Nations to secure appropriate tenures or permits for harvest where required. In the case of tree harvest outside of a protected area, a Free Use Permit issued by the MFLNRO may be a requirement.

   b. **Location Inside Protected Area:** If it is determined that no suitable sites for cultural tree harvest within the asserted territory of the First Nation exist outside of protected areas, BC Parks will work with the First Nation to identify a suitable site or sites within a protected area and attempt to reach agreement on the nature, scope and extent of the harvest, to ensure the least impact to protected area values, while facilitating the exercise of the Aboriginal right. See Checklist for Site Selection at the end of this guideline.

   c. **Alternative Species:** In cases where all of the protected area and adjacent timber harvesting areas outside the protected area are classified as having species at risk, sensitive ecological values or sensitive wildlife habitats, then BC Parks will encourage the First Nation to consider the harvest of an alternative species of wood, at less sensitive sites.

5. Seek legal advice from the Ministry of Justice and Attorney General, if you have any concerns that the First Nation’s proposal or the previously harvested wood from the protected area may be for commercial or private use, as opposed to the communal use by the First Nation, for a cultural purpose.
6. Consider whether the harvested wood requires timber marks from MFLNRO staff if the harvested wood is to be transported.

7. If all options for a solution have been exhausted at the regional level including raising the issue with the Regional Director, then the issue should be raised through the appropriate channels to the BC Parks’ Park Executive Committee.

CHECKLIST FOR SITE SELECTION

Considerations for site selection should include:

- No impact to species at risk, sensitive ecological values or sensitive wildlife habitats;

- Minimal impact to recreation and viewscape values;

- No (or transient) impact on a business or other activity within the protected area that has been authorized by MoE. This may include activities associated with park facility operator agreements, park use permits or other requirements for the operation and maintenance of the values within the protected area.

- Utilizing trees where tree removal supports park management goals such as removal of hazard trees, removal of fuel hazards or removal of wind throw in campgrounds;

- Utilizing a variety of sites to spread the harvest over a larger area over the course of time to avoid a large impact on a small area;

- Site clean up and remediation and/or planting and monitoring to maintain protected area aesthetics and sustainability; and

- Proximity and reasonable access for the First Nations to undertake any such harvest.

TREE HARVEST MANAGEMENT

See the BC Parks Tree Removal Policy for specific direction on tree harvest management.