

Heidi Wiebe

From: Joel Holder [Joel_Holder@gov.nt.ca]
Sent: Wednesday, December 02, 2009 4:59 PM
To: Heidi Wiebe; Arthur Boutilier
Cc: Matt Bender; Joel Holder; Greg Yeoman; Tom Nesbitt
Subject: GNWT Comments: GBLWMP into SLUP
Attachments: GNWT REVIEW OF GREAT BEAR LAKE WATERSHED MANAGEMENT PLAN (2).docx;
MTM ABS amended CCRM BSG Recommendation July 27wMP.DOC

Follow Up Flag: Follow up
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Heidi/Arthur

Please find attached the GNWT's review comments concerning the Great Bear Lake Watershed Management Plan and the Sahtu Land Use Plan. I hope you find the comments useful.

Please share with others as you see fit.

I have reserved January 11 to the 15th in my calendar for a possible meeting in Deline.

Also Heidi, Section 2.5.2 Forestry of the SLUP talks about "Transfer permits", for taking wood from Private Lands. I believe this should say "Transport Permits".

Thank you all for your patience.

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GOVERNMENT OF THE NORTHWEST TERRITORIES REVIEW OF GREAT BEAR LAKE WATERSHED MANAGEMENT PLAN AND ITS INCORPORATION INTO THE DRAFT SAHTU LAND USE PLAN

December 2, 2009

BACKGROUND

The GNWT supports incorporating those parts of the Great Bear Lake Watershed Management Plan (GBLWMP) from Chapters 4 and 5 which are relevant and enforceable into the Sahtu Land Use Plan (SLUP). There is a concern that by having a portion of the Sahtu region fall under a separate planning regime as opposed to under the SLUP, with potentially different conformity and implementation mechanisms, this would greatly increase the complexity of the overall land management/regulatory regime in the NWT as a whole. In an effort to combine the documents, the GNWT is prepared to work with the Board in redrafting the specifics from the GBLWMP for inclusion in Draft 3 of the SLUP.

GENERAL COMMENTS

According to the Sahtu Dene and Metis Comprehensive Land Claim Agreement there should only be one seamless land use plan representing the entire Sahtu Settlement Area. Without being incorporated into the SLUP there remains no mechanism for enforcing the GBLWMP.

There is still some concern by the GNWT that the wording of certain conditions, objectives and policies are too prescriptive and should be redrafted to be more goal orientated. By being less prescriptive this would allow developers the opportunity to demonstrate the uniqueness of their proposed activity and allow regulators to determine conformity with the plan on a case by case basis.

The concept of ecological integrity is introduced in the Executive Summary but there does not seem to be a well defined understanding of what the concept means. The term needs to be better defined with an agreed to framework that identifies what aspects of an ecosystem would be measured to determine integrity. There is also a large gap in identifying how ecosystem integrity would be measured. Without ecological integrity indicators and a defined process for measuring and monitoring those indicators it remains vague as to how applicants, regulators or the Planning Board would be able to determine possible negative impacts.

MUNICIPAL LANDS

Section 4.5.4, part h, activities in the lakebed of GBL, including any building or drilling in the lakebed and any trawling which results in the physical disturbance of the lakebed. Subject to the approval of the appropriate Déline authorities and to existing legislative requirements, including requirements in the *Fisheries Act* and the *Navigable Waters Protection Act*, the following are excepted from this prohibition:

- i. the installation of private, commercial or community wharves and docks;
- ii. the installation of other similar inert structures within the boundaries of the community of Déline;
- iii. environmental monitoring equipment.

Recommendation

Caution should be used when the GBLWMP speaks to lands within a municipal boundary. Section 34 of the *Mackenzie Valley Resource Management Act* states that land use planning does not apply in respect of lands situated within the boundaries of a local government.

ARCHEOLOGICAL SITES

Section 5.5.3, part h, states, The *Mackenzie Valley Land Use Regulations* and the *Northwest Territories Archaeological Sites Regulations* protect historical and archaeological sites and burial grounds throughout the GBLW. Government inspectors shall make every reasonable effort to ensure that all activities in Conservation Zones comply with both sets of regulations. In the event that the DLC or the Déline First Nation Government acquires the capacity and authority to inspect settlement lands, its inspectors shall do likewise.

Recommendation

Section 5.5.3, part h, should be removed and replaced with:

“The *Mackenzie Valley Land Use Regulations* protect known monuments and known or suspected historical and archaeological sites and burial grounds throughout the GBLW. The *Northwest Territories Archaeological Site Regulations* also provide legislative protection to archaeological sites. Government inspectors shall make every reasonable effort to ensure that all activities in Conservation Zones comply with both sets of regulations. In the event that the DLC or the Déline First Nation Government acquires the capacity and authority to inspect settlement lands, its inspectors shall do likewise.”

AIR QUALITY

Sections 4.3.4 and 4.8.1 discuss: i) the air quality monitoring program in the NT and identify the consideration of expanding the network to monitoring in Déline, ii) the existence of NWT Ambient Air Quality Standards but lacking enforceable air quality regulations across the territory, and iii) the need for better dissemination of information on ambient air quality in communities such as Déline.

Air Quality Monitoring in Déline

Rationale

ENR operates four (4) air quality monitoring stations across the territory, situated in areas of key industrial development (i.e. Inuvik, Norman Wells, Fort Liard) to meet a siting criteria of the GNWT, and in areas of larger population bases (i.e. Yellowknife) to meet a siting criteria of Environment Canada. The stations provide valuable data, and as such, ENR assesses the potential for network expansion on a regular basis. The expansion considerations are conducted for the whole territory, not on a region by region basis, and are measured against the established siting criteria for the program and available resources.

Recommendation

The GNWT recommends that Section 4.8.1, part b, regarding the establishment of an air quality monitoring station in Déline, be removed and replaced with:

“ENR will continue to study the feasibility and advisability of expanding the air quality monitoring network in the NWT. This will be based primarily on industrial development, population growth, and available resources.”

Enforceable Air Quality Regulations in the NWT

Rationale

Air quality is a valued component of environmental protection within ENR and as such, legislation and guidance documents have been developed for its management and protection. This includes the Guideline for Ambient Air Quality Standards in the NWT, a position paper on Open Burning, Used Oil and Waste Fuel Management Regulations, Asphalt Paving Industry Emission Regulations, and Environmental Guideline for Ozone Depleting Substances (ODS's) and Halocarbon Alternatives. However, by policy and practice, ENR develops and delivers environmental management programs directly on Commissioner's Lands (essentially communities and highways), where the GNWT has direct responsibilities and indirectly on all other lands by encouraging other regulatory authorities, including land and Water Boards/INAC and in the case of the oil and gas industry, the National Energy Board, to follow the spirit and intent of the EPA.

The current sources of emissions in the Great Bear Lake area are minimal, including the operations of fishing/tourist lodges, seasonal seismic activity, and the general functions of the community of Déline. Previous industrial emission-related activities, such as Sawmill Bay and Port Radium, have ceased. Essentially, air quality concerns in the Great Bear Lake area are minimal at this time.

For the control of future activities, ENR will provide recommendations to the SLWB at the proposal phase relating to air quality management with the objective of protecting the environment. This is consistent with ENR's practice across the NWT which is important since managing the quality of airsheds is as important as managing localized emission sources.

Recommendations:

The GNWT recommends the following:

- Remove the first 2 sentences of Section 4.3.4 and replace with:

“Air Quality is a valued component of environmental protection in the GBLW. There are several aspects of managing this component, including:”

- Remove Section 4.3.4, part a.
- Remove Section 4.3.4, part c.
- Remove Section 4.8.1, part c, relating to the development of Air Quality Regulations between the ENR and appropriate federal departments, and replace with:

“ENR will continue to develop air quality related regulations, guidelines and/or standards, as appropriate, for territorial application within GNWT's jurisdiction through the NWT Environmental Protection Act. ENR will continue to work with the Land and Water Boards and applicable federal agencies to encourage our air quality objectives for new and existing developments, territory-wide.”

- To the end of Section 4.8.1, part d, remove reference to “the Texas Commission on Environmental Quality's Short-Term and Long-Term Effects Screening Levels”, and add:

“and other applicable federal or territorial regulations, guidelines or standards as they are developed.”.

Dissemination of Annual Air Quality Reports to Communities

Rationale

ENR produces an Annual Air Quality Report in June of each year, which discusses the results and trends obtained from the air quality monitoring network. This publication, as well as previous years', is available on ENR's website.

If the report findings were to ever indicate possible concerns with air quality, compared to applicable standards, ENR would work to identify the sources and mitigate the

effects. In extreme cases, ENR would ensure that the Department of Health and Social Services were consulted and appropriate measures would be followed to inform the public.

Individuals who are interested in or concerned with air quality, and who do not have access to the internet, are invited to visit their local ENR office where a paper copy of the Annual Air Quality Report can be provided. ENR's Air Quality Program's Coordinator can also be contacted to address specific questions that individuals may have.

Recommendation

The GNWT recommends that Section 4.8.1, part a, regarding informing communities of GNWT's ambient air quality monitoring program, be removed and replaced with: "ENR will ensure that interested parties are provided with a paper copy of the Annual Air Quality Report, and directed to ENR's Air Quality Programs Coordinator as necessary."

FOREST MANAGEMENT

Section 4.5.4, part d, speaks to the following as being prohibited. "activities which result in the introduction of non-native plant and wildlife species or subspecies, or of domestic animal species or subspecies into the Special Management Zone;"

Rationale

This prohibition is too restrictive. Unsure if this prohibition was put in place to help deal with foreign disease. If so, there may be a better way to deal with this (e.g. animal quarantine for a time period) . Regardless, there should be a screening process to allow for unique situations.

Recommendation

Please add at the end of Section 4.5.4, part d:

"except by special approval by ENR."

Section 4.5.4, part e, speaks to the following as being prohibited. "activities which result in or contribute to the loss of any wildlife or plant species in the Special Management Zone;"

Rationale

It would be very difficult to measure how an activity contributed to the loss of wildlife or a plant species. Scale would have to be considered in this determination (e.g. immediate area/regionally). If taken literally, even the local trapper could not cut wood because they'd be contributing to the loss of tree species. Enforcement would also be difficult. Good baseline and strongly linked evidence would be needed to prove an activity was directly responsible for the loss of a species.

Recommendation

Remove Section 4.5.4, part e.

Section 4.5.4, part f, speaks to the following being prohibited. “activities which result in or contribute to the loss of genetic diversity (the loss of genetically unique populations of aquatic or terrestrial plants or wildlife);”

Rationale

As worded the prohibition is too difficult to measure for compliance or word for putting in a license.

Recommendation

Section 4.5.4, part f, should be removed and replaced with:

“Exploration of genetic resources is prohibited unless activities meet conditions under the *Canadian Counsel of Resource Ministers, Managing Bioprospecting in the 21st Century, Policy Framework Recommendation for Access to Genetic Resources and the Sharing of the Benefits Arising from Their Use* (revised July 27 2009).”

A copy of the CCRM document was included in GNWT’s email.

CONCLUSION

The GNWT would like to thank the Sahtu Land Use Planning Board for the opportunity to provide comments and we look forward to discussing our suggested recommendations and supporting rationale at an upcoming meeting with you in Déline. It is believed that by all parties working together to resolve this issue we can come to a mutually agreeable conclusion.

CCRM BSG Recommendation (revised July 27 2009)

FEDERAL PROVINCIAL AND TERRITORIAL TASK GROUP

MANAGING BIOPROSPECTING IN THE 21st CENTURY

POLICY FRAMEWORK RECOMMENDATION FOR ACCESS TO GENETIC
RESOURCES AND THE SHARING OF THE BENEFITS ARISING FROM
THEIR USE (ABS):

Version 5
July 27, 2009

INTRODUCTION

Genetic resources are described as any plant, animal, or microbial material that contains functioning genes that could be of actual or potential value. Genetic resources can be found in nature or in places such as collections or botanical gardens. One way to think about a genetic resource is that it is different than a biological resource because of the way you use it - if you use the genes then you are using a genetic resource. For example, if you use a fish to eat, you are using it for its biological rather than its genetic resource properties. If you use a gene from a fish to insert into a plant to improve the plant's resistance to cold, you are using the fish for its genetic resource properties.

Federal, Provincial and Territorial governments in Canada have recognized the need to develop policy in order to facilitate sustainable access to genetic resources and to provide for the fair and equitable sharing of the benefits arising from their use, referred to as access and benefit sharing (ABS) policy. ABS policies also address the access to and use of traditional knowledge associated with genetic resources. The development of ABS policy in Canada is a challenge that touches on important goals of Canadians – conserving biodiversity, rural and northern development, increasing scientific knowledge, as well as supporting research and innovation in biodiversity and biotechnology. ABS policy also touches on some of our most important economic sectors – such as agriculture, forestry, fishing, biotechnology, and health care. Many benefits from ABS in Canada will also come in the form of scientific knowledge of genetic resources, which will support the conservation and sustainable use of the components of biodiversity in Canada. ABS policy in Canada will also support scientific and technical collaboration and assist in achieving Canada's objectives for biodiversity conservation and sustainable development.

The following represents a preliminary draft of a policy framework for access to genetic resources, and for sharing the benefits from their use, as well as the benefits from the use of traditional knowledge associated with genetic resources. The policy recommendation can be found in Annex 1.

BACKGROUND

International context

On the international level, Canada is a Party to the Convention on Biological Diversity of 1992, which has 191 countries as Parties. The objectives of this Convention are the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from their use. The 9th meeting of the Conference of the Parties to the Convention met in Bonn, Germany in 2008 and set out a framework for negotiating an *international regime* on access to genetic resources and sharing of benefits arising from their use by 2010. The development of domestic ABS policy will help to inform Canada's perspective on the international regime.

Domestic Context

Domestically, the federal, provincial and territorial governments; private land owners; other private entities; and Aboriginal peoples are all managers of genetic resources. Aboriginal people are also holders of traditional knowledge associated with genetic resources. Canadian interests include support for innovation, benefits for Canadians, flexibility in implementation, facilitated access to foreign genetic resources and a commitment to increase the amount of biodiversity conserved.

Stakeholder perspectives

ABS policy in Canada could have significant impacts on how researchers in the public and private sectors, especially in areas such as pharmaceuticals, biotechnology, agriculture, marine and forestry, get access to genetic resources. Central to the perspectives of many of these sectors are that: a) some of these sectors have existing practices for accessing genetic resources and sharing the benefits arising from their use which should be maintained as far as possible within ABS policy in Canada, b) transactions involving genetic resources in Canada should have an element of legal certainty and should not be subject to overly burdensome transactions costs or regulations and c) that penalties for non-compliance should be appropriate. Industry stakeholders are also strongly opposed to establishing any linkages between ABS policy in Canada and the intellectual property rights system. In addition, many cited the need to maintain access to foreign genetic resources, and many have expressed support for approaches similar to those described above to be reflected in the development of an international regime.

Aboriginal peoples' perspectives

Aboriginal people in Canada have a keen interest in the development of ABS policy in Canada. Many Aboriginal people in Canada have stressed their concerns about what they perceive to be inappropriate access or misappropriation of traditional knowledge. Some have called for a moratorium on any research involving traditional knowledge until stronger mechanisms addressing the accessing and use of traditional knowledge have been developed and put in place.

Objectives, guiding principles and core elements of ABS

In 2004, the Federal/Provincial/Territorial Ministers of Forests, Wildlife, Endangered Species and Fisheries and Aquaculture (today known as the CCRM) launched a process to develop a policy on access to genetic resources in Canada, and the sharing of benefits from their use. The CCRM Ministers created the Federal/Provincial/Territorial Task Group on Access and Benefit-Sharing (FPTABSWG) and instructed it to address policy development on this cross-cutting issue.

In November 2005, the CCRM endorsed six primary objectives for the development of ABS policy in Canada:

- Promote the conservation and sustainable use of Canada's biodiversity;

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- Improve Canada's Economic Competitiveness in the bio-based economy;
- Support ethical scientific research and development;
- Foster regional and aboriginal development;
- Support Canada's foreign policy objectives; and
- Contribute to the improvement of the health of Canadians.

In addition to the primary objectives identified by CCRM, in October 2006, the CCRM adopted the following guiding principles to direct the policy development process.

ABS policy in any Canadian jurisdiction should be:

- *Environment-focused* - contributing to the conservation and sustainable use of biodiversity;
- *Practical and Economically Supportive* - generating and sharing economic benefits of the utilization of genetic resources among both providers and users as a means of contributing to sustainable development;
- *Simple, Efficient and Adaptable* - taking into account different sectors and allowing for different approaches in different jurisdictions;
- *Supportive of current governmental policies*, and building on and respecting Canada's existing international commitments;
- *Balanced, equitable and transparent* - balancing responsibilities between users and providers of genetic resources in a manner that is clear and whose rationale makes sense to all concerned; and
- *Inclusive*, developed and implemented with the appropriate involvement of Aboriginal groups and communities.

Governments have also agreed that while these elements can be implemented in many different ways, the three core elements of ABS policy in Canada are:

- Prior informed consent (PIC)
- Mutually agreed terms (which include benefit sharing agreements/arrangements) (MAT)
- Traditional knowledge associated with genetic resources (ATK)

The policy options are also based on the premise that access to genetic resources is provided by the entity that is legally entitled to grant access to the location where the genetic resource is found, land, water or facility such as a collection. This establishes a wide range of providers in Canada from the federal government to Provincial and Territorial governments, to private landowners

ANALYSIS

The analysis of the options is based on how the options addressed the following criteria:

- 1) The objectives for ABS policy in Canada, laid out by CCRM in 2005
- 2) The 2006 principles laid out to guide the policy development process

- 3) The core elements of ABS policy – PIC, MAT (including benefit sharing agreements/arrangements) and traditional knowledge associated with genetic resources.

A) Policy Approach – *What should the approach be to ABS policy in Canada?*

Three possible options for how ABS policy in Canada could be approached were identified in the document *Policy Options for a Canadian Policy Framework on Access and Benefit Sharing of Genetic Resources*, presented to the CCRM BSG in November, 2008:

- 1) Nationally consistent approach including agreed-upon core elements
- 2) Independent Federal, Provincial and Territorial policies
- 3) Single national policy developed by the federal Government.

Policy recommendation: Option A1 - Nationally consistent approach including agreed-upon core elements.

Rationale

In considering the options, certain options were identified as infeasible or unrealistic, as they did not adequately account for the jurisdictional and practical aspects of managing access to natural resources in Canada. As such, the notion that the federal government would develop a policy for the entire country could be discounted.

Equally infeasible was the option that each jurisdiction move forward with developing their own ABS systems in isolation from the others, and isolated from a nationally consistent approach. This kind of approach could create overlaps and contradictions between systems developed by the individual provinces and the federal government, which would generate undue confusion and heightened uncertainty, thereby presenting unacceptable barriers to accessing genetic resources.

The option of a nationally consistent approach with agreed-upon core elements became clear as the most appropriate for the Canadian context. This option would go the furthest of the possible options in ensuring simplicity, transparency and efficiency for those accessing genetic resources in Canada, as having a measure of national consistency would ensure that there were no gaps or confusions when accessing or using genetic resources in different regions in Canada. Though the approach would be nationally consistent, this consistency would only apply to certain agreed upon core elements, and jurisdictions would have flexibility to tailor their approaches to these elements to their particular situations.

ABS policy in Canada should facilitate access to genetic resources through the establishment of clear, practical cost efficient, and where appropriate, harmonized procedures for obtaining access. Such procedures should embody certainty, clarity, predictability, probity and transparency, non-discrimination and national treatment of all entities seeking access to the genetic resources, and minimal administration, regulatory burden and transaction costs.

B) Implementing ABS policy in Canada - What are the choices for implementing ABS policy in Canada.

Three possible options for implementing ABS policy in Canada were identified in the the document *Policy Options for a Canadian Policy Framework on Access and Benefit Sharing of Genetic Resources*, presented to the CCRM BSG in November, 2008:

- 1) Enhance existing mechanisms with non-regulatory measures
- 2) Existing mechanisms supplemented by regulatory and non-regulatory measures
- 3) Create new ABS legislations or regulatory measures in all jurisdictions

Recommendation: Option B2 - using existing mechanisms supplemented by regulatory and non-regulatory measures.

Rationale:

The development of ABS policy needs to strike a delicate balance between facilitating access for research while also achieving the conservation and benefit sharing objectives set out for the policy. It also needs to be implemented in an adaptive manner, taking into account its applicability for public lands, private lands, and collections. Although there are some sectors where ABS practices are already established, there are many where these are not present. As such, enhancing existing mechanisms with non-regulatory measures (as identified in the above option 1) would not go far enough in ensuring that the mechanisms for accessing genetic resources in Canada and, crucially, for sharing the benefits arising from the use of those genetic resources, are adequately clear, legally certain, and transparent.

Legal certainty, which has been identified by stakeholders as a key concern, can best provided through some form of requirement to comply with ABS policies. This ensures that the compliance, conservation and legal certainty goals for the ABS system can be met. A regulatory approach needs to be flexible enough to ensure continued and relatively unburdened access for research purposes, yet robust enough to acknowledge and share in the benefits that would accrue from research. An entirely new system which involved the development and implementation of entirely new laws or regulations would likely prove too onerous as it would present too much regulatory burden for those interested in accessing the genetic resources. Additionally, the timelines for developing and implementing entirely new regulations would not address the immediacy of the ABS issue.

Thus, the most appropriate choice for implementation is an approach which would work within the parameters of existing regulations regarding access (e.g. permitting policy in national parks) but would amend these slightly in areas where they were not an ideal fit. Pursuing this option goes the furthest in meeting several of the objectives in particular – the objective of certainty, especially legal certainty, the promotion of conservation and sustainable use of Canada’s biodiversity and would be supportive of and complementary to governmental legislation and policies.

Implementing the approach by using existing mechanisms wherever possible also means that jurisdictions retain maximum flexibility with respect to maintaining or adjusting their existing practices, while still ensuring consistency with the national approach.

C) Traditional Knowledge – *Should traditional knowledge associated with genetic resources be addressed by ABS policy in Canada? If so, how?*

There were three possible options for addressing traditional knowledge associated with genetic resources presented in the document *Policy Options for a Canadian Policy Framework on Access and Benefit Sharing of Genetic Resources*, presented to the CCRM BSG in November, 2008, should it be determined that it should be addressed by ABS policy in Canada:

- 1) Traditional knowledge associated with genetic resources is addressed through voluntary mechanisms and tools
- 2) Traditional knowledge associated with genetic resources is addressed through existing regulatory measures supported by new regulatory and voluntary measures
- 3) Traditional knowledge associated with genetic resources is addressed by new ABS-specific legislation and regulations

Rationale:

It is important that ABS policy in Canada address traditional knowledge associated with genetic resources in some fashion. This is most in keeping with the objectives and principles established by CCRM, particularly those that stress the inclusion and involvement of Aboriginal peoples. It is also important as, to date, traditional knowledge has emerged as a key ABS issue in discussion with Aboriginal peoples in Canada.

There are also several other issues which are important to address regarding traditional knowledge associated to genetic resources.

- a) Any mechanisms for accessing traditional knowledge associated with genetic resources are to be dealt with in separate provisions from those for accessing genetic resources (e.g. prior informed consent).
- b) Aboriginal peoples should be entitled to determine whether and how to share their traditional knowledge associated with genetic resources. Access to and benefit sharing from the use of traditional knowledge associated with genetic resources should be subject to mutually agreed terms (MAT) between the provider (e.g. Aboriginal community/holders of traditional knowledge associated with genetic resources) and the user.
- c) The development of ABS policies is not the appropriate forum in which to discuss the development of new rights pertaining to traditional knowledge.

Given the above recommendations for approach and implementation of ABS policy, the creation of entirely new legislation for the traditional knowledge associated with genetic resources aspects of ABS policy would be infeasible. Taking this into account, as well as the additional considerations presented above, there are a number of ways in which this could be operationalized, two of which are considered below.

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One way to address traditional knowledge associated with genetic resources corresponds to Option C1 and addresses traditional knowledge associated with genetic resources through voluntary mechanisms and tools. This allows for voluntary and/or incentivizing measures which encouraged the development of mutually agreed terms, but there would be no regulatory requirement or oversight ensuring that these had been negotiated.

Another way to address traditional knowledge associated with genetic resources corresponds to Option C2, where there would be some form of regulatory measures which would ensure that MAT had been established for the use of traditional knowledge associated with genetic resources. Any measures requiring MAT to be established through negotiation between the user and provider of the traditional knowledge associated with genetic resources would not be prescriptive as to the terms or content of the benefit sharing agreement.

It is important that ABS policy in Canada does not establish any new intellectual property rights for traditional knowledge associated with genetic resources. These aspects of traditional knowledge are not appropriately dealt with under an ABS policy and would, if deemed to be necessary, be dealt with under the appropriate legislation and international fora. For this reason it is not recommended that Prior Informed Consent should be explicitly required with respect to associated traditional knowledge, but that the conditions for sharing associated traditional knowledge would be established in contract under mutually agreed terms including benefit sharing

Further development of the approach to traditional knowledge associated with genetic resources will be informed by the results of the upcoming engagement with Aboriginal peoples and key stakeholders.

Annex 1 – Policy Recommendation

1) Scope

ABS policy in Canada should address all genetic resources in Canada, both ex situ and in situ. Human genetic resources; resources beyond national jurisdiction, e.g. high seas; genetic resources acquired for personal use or consumption or genetic resources purchased or traded as commodities should not be subject to any requirements developed under the policy. ABS policy in Canada should also recognize and treat appropriately internationally recognized agreements or arrangements dealing with the subject matter that are relevant to Canada and are in harmony with ABS policy in Canada.

ABS policy in Canada should also address traditional knowledge associated with genetic resources, except traditional knowledge associated with genetic resources which is in the public domain.

2) Approach

Should be a nationally consistent approach including agreed-upon core elements. The approach developed would include the core elements central to all jurisdictions:

- Prior Informed Consent for access to genetic resources
- Mutually Agreed Terms including benefit sharing arrangements/agreements
- Traditional knowledge associated with genetic resources.

Jurisdictions will have flexibility in how they achieve consistency with the nationally consistent approach to the core elements, in order to account for specific jurisdictional and sectoral considerations.

The policy is consistent with the objectives and principles established by CCRM in that ABS policy in Canada should contain provisions for minimum requirements on legal certainty, clarity and transparency of national rules governing access to genetic resources, ensure national treatment of all entities seeking access to the genetic resources, and facilitate access to genetic resources through the establishment of clear, practical cost efficient, and where appropriate, harmonized mechanisms for obtaining access to genetic resources.

3) Implementation

Should be undertaken using existing mechanisms supplemented by regulatory and non-regulatory measures.

The policy would be implemented in an adaptive manner, taking into account its applicability for public lands, private lands, and collections. It would utilize where possible existing mechanisms supplemented by regulatory and/or non regulatory measures (legislation, administrative, policy and /or regulatory elements) to achieve consistency with the core elements and the approach to traditional knowledge associated with genetic resources. Any

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approach to implementation should be mindful of not contributing to undue administrative and/or regulatory burden.

The policy should contain provisions that establish the requirement to obtain Prior Informed Consent of the owner/competent authority prior to accessing genetic resources, unless otherwise determined by the provider of the genetic resources.

Ex situ genetic resources would not be subject to measures for prior informed consent, but should be subject to mutually agreed terms, including benefit sharing agreements or arrangements, established between the provider and the user of the GR or, as appropriate, established at the international level where Canada has agreed to a relevant intergovernmental agreement (e.g. the *International Treaty on Plant Genetic Resources for Food and Agriculture*).

ABS policy in Canada should provide for fair and equitable sharing of benefits through mutually agreed terms between the user and the provider or, as appropriate, established at the international level where Canada has agreed to a relevant intergovernmental agreement, for example the *International Treaty on Plant Genetic Resources for Food and Agriculture* under the FAO regarding government managed collections of crop plant germplasm. The policy would not be prescriptive as to the exact type of benefit-sharing agreement or minimum requirements on monetary or non-monetary benefits, and would provide for the freedom of contract and the ongoing use of contracts as the vehicle for benefit-sharing.

ABS policy in Canada should utilize, to the extent necessary, non-legally binding model clauses and standardized benefits for optional inclusion in mutually agreed terms in order to assist in the effective and cost efficient implementation of ABS policy in Canada.

4) Traditional Knowledge Associated with Genetic Resources

Traditional knowledge associated with genetic resources should be addressed by ABS policy in Canada. Traditional knowledge not associated with genetic resources, as well as traditional knowledge associated with genetic resources that is in the public domain would not be addressed by ABS policy in Canada.

Any mechanisms for accessing traditional knowledge associated with genetic resources would be dealt with in separate provisions from those for accessing genetic resources (e.g. prior informed consent).

Access to traditional knowledge associated with genetic resources would not be subject to provisions for prior informed consent, but would require awareness building and guidelines to promote informed decisions on access.

Aboriginal peoples should be entitled to determine whether and how to share their traditional knowledge associated with genetic resources. Access to and benefit sharing from the use of traditional knowledge associated with genetic resources should be subject to mutually agreed terms (MAT) between the provider (e.g. Aboriginal community/holders of traditional knowledge associated with genetic resources) and the user.

ABS policy in Canada should provide for a legal requirement that MAT, in the form of a private contract, had been established between the provider and the user of the traditional knowledge associated with genetic resources. A legal requirement refers to legislative, policy and/or administrative measures. The regulatory oversight provided would not extend to the content of mutually-agreed contracts/protocols or benefit-sharing agreements/ arrangements.

In addition, a legal requirement could be supplemented by voluntary measures such as guidelines, best practices, menus of model contract clauses, awareness-raising and/or capacity-building which would facilitate the negotiation of mutually agreed terms including benefit sharing agreements or arrangements when users access and use traditional knowledge associated with genetic resources.

5) Tools

The Task Group considered the development and adoption of tools to aid in implementation of the policy, and recommends the development of the following tools in ABS policy in Canada:

Facilitated access

- *Single window entry*: A single point of entry (i.e. a website) for those seeking access to GRs in Canada. The single window would direct the access seeker to the relevant competent authority for the jurisdiction they intend to collect in.
- *Simplified procedures*: The development of a simplified procedure to facilitate access with non-commercial intent.

Administrative measures

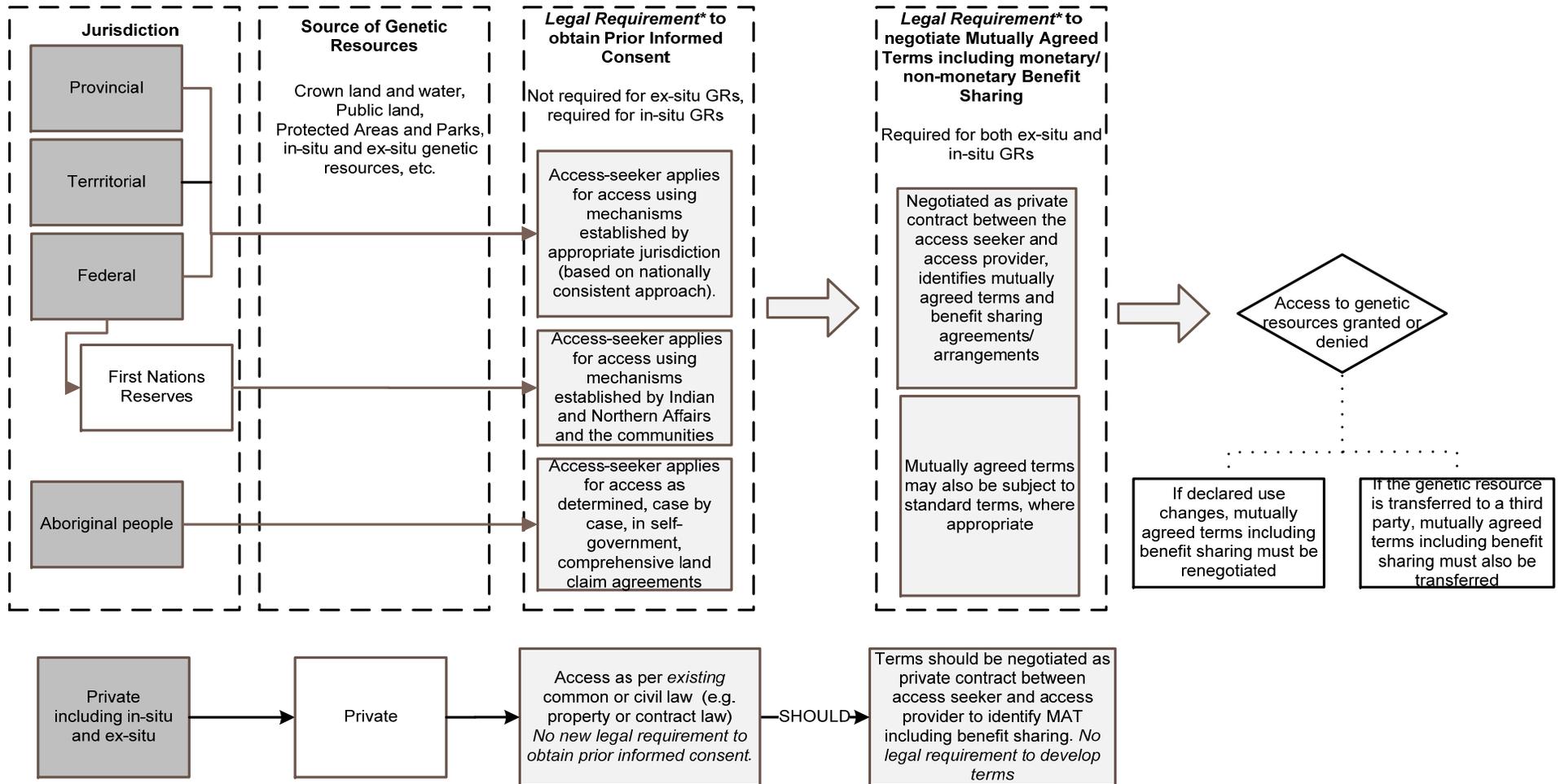
- *Certificate of compliance*: A voluntary certificate of compliance that would provide entities seeking access with evidence that access to GRs was in compliance with the relevant aspects of ABS policy in Canada.
- *Registry*: A registry of access to GRs in each jurisdiction and nationally in Canada.
- *Model contracts and best practice*: Develop contracts and model clauses as well as other tools such as best practice handbooks.

Advisory mechanisms (for possible consideration):

- *Panel(s) of experts*: Establishment of a panel of regional Aboriginal experts, and/or a panel of stakeholders, to provide advice on aspects of the implementation of ABS policy in Canada.

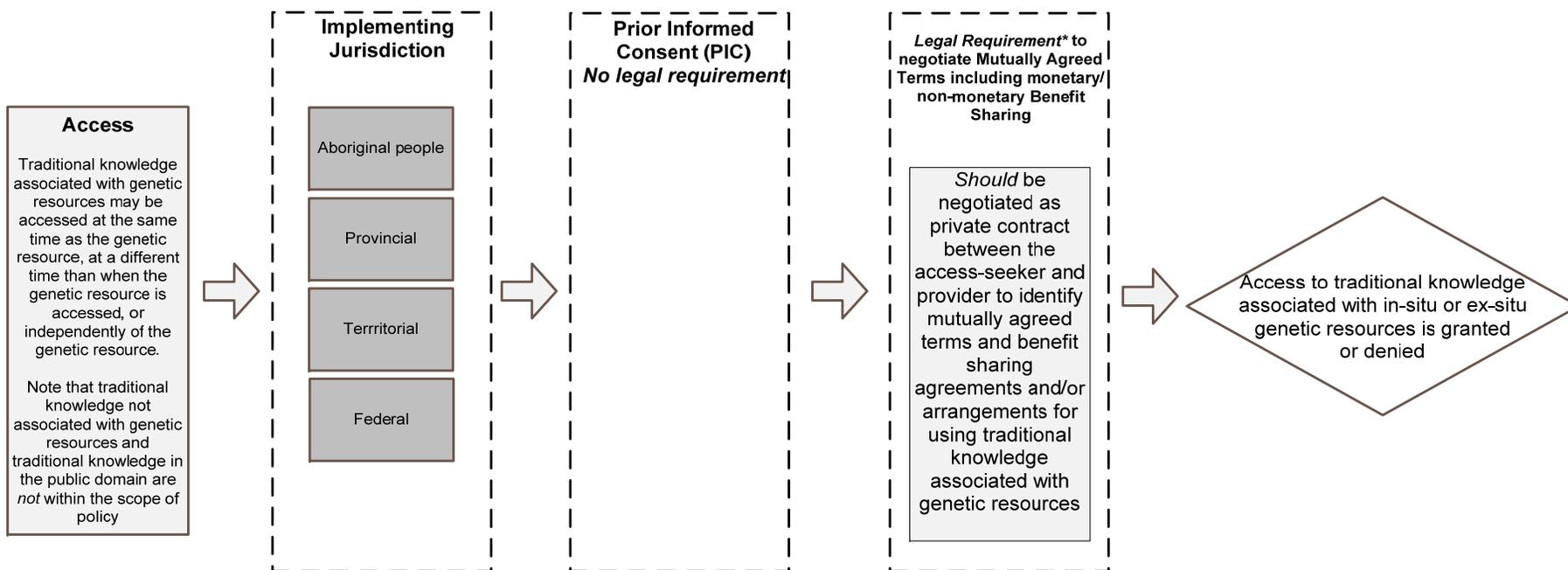
Annex 2 – Flowcharts to illustrate the draft policy recommendation

Flowchart 1: Access to Genetic Resources and Benefit Sharing



* Legal requirement refers to legislative, policy and/or administrative measures

Flowchart 2: Access to Traditional Knowledge (TK) associated with Genetic Resources and Benefit Sharing



* Legal requirement refers to legislative, policy and/or administrative measures