



FREE, PRIOR AND INFORMED CONSENT GUIDANCE FOR AUSTRALIAN ORGANISATIONS

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Artist Introduction

"Ngai Cobble Cobble Warra, ngai Boobargan Nguumunge, ngai Gujus, ngaiCabool, ngai Barrungam, Budin Yadgie Ngeum."

"I am a descendant of the Cobble Cobble people from Warra. I am kinnected to Bunya Mountains, I am kinnected to carpet snake. I am Barrungam language speaking. I am called Big Sister."

Tolita Davis-Angeles

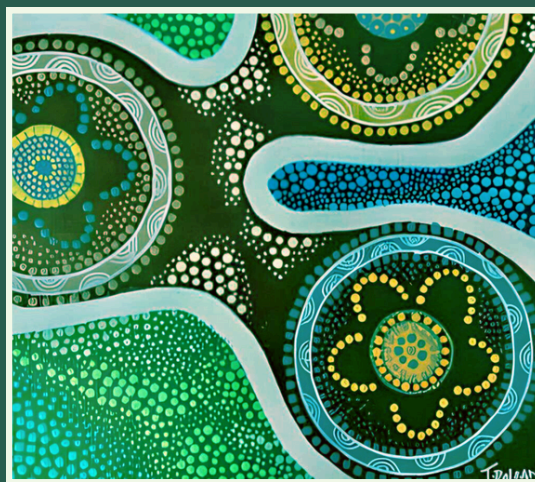
Artwork Explanation

This artwork symbolises a continuous flow of communication when setting circle on Country.

Elements of the artwork depict the layers of Country, land, water, air and spirit, which represent the interconnection between Country and people.

Each circle is surrounded by Cabool (Barrungam language for carpet snake), which represents a safe circle. These safe circles are for learning and sharing. They are created for the transfer of knowledge through Wanjau (Barrungam language for sharing, balance, mutual respect). These elements are the foundation of Free, Prior and Informed Consent.

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**GANDAN
YARNINGS**

CROSS-CULTURE COMMUNICATION & CONNECTIONS

A Acknowledgements

FSC® Australia and New Zealand (FSC ANZ) would like to thank Tolita Davis–Angeles as the primary writer of this guidance. We also extend our thanks to FSC ANZ's Indigenous Working Group (IWG) and Standards Development Group, who guided the development of this guidance.

Thank you also to Patrick Anderson who peer-reviewed the guidance and all FSC members and stakeholders who contributed to the guidance in the public consultation. Your comments and insights were critical to the refinement of the guidance.

The IWG members who contributed to this document, included David Collard and Anthony Czygan.

Tolita Davis–Angeles is a member of the IWG and the Standards Development Group but undertook this work in her capacity as an independent consultant.

B A working document

This document may be periodically updated based on the application of this Guidance and an increased understanding of implementing Free, Prior, and Informed Consent (FPIC) based on further testing and experience gained in the field. FSC ANZ will monitor the application of this Guidance document and continue to seek input and feedback from members, interested stakeholders, and First Nation's Peoples¹ to improve its benefits to the broader FSC community.

C Summary

The "Free, Prior, and Informed Consent (FPIC) Guidance for Australian Organisations" document provides a structured methodology for organisations seeking to uphold the rights of First Nations Peoples in forest management and to incorporate their consent into business plans. This document aligns with the Forest Stewardship Council® (FSC®) certification standards in Australia, specifically Principles 3 and 9, which address Indigenous Peoples' rights and cultural landscapes.

C.1 Overview of the FPIC Process

The FPIC process ensures that organisations engage with First Nations communities respectfully and transparently, allowing them to consent or reject a proposed development freely at each planning stage up to and including final consent for the development to go ahead. The methodology outlined in the guidance is divided into four key phases, each with specific steps:

1. **Gathering Information and Building Understanding:** This initial phase involves identifying affected First Nations groups, understanding their legal and traditional rights, and consulting legitimate representatives. Organisations should document rights, resources, and the scope of potential impacts.
2. **Building Relationships and Capacity:** Focuses on establishing trust through culturally sensitive engagement, where organisations support the First Nations Peoples' decision-making processes. This phase includes participatory mapping and impact assessments to understand the potential effects on First Nation's land and resources.

¹ FSC ANZ understands that the term First Nations refers to both Aboriginal and Torres Strait Islander peoples. For this document 'First Nations' will be used as a collective term and pays respect to both Nations.

3. **Making Agreements and Monitoring Progress:** This phase requires formalising agreements that reflect First Nations' Peoples consent, considering mutual benefits and continuous monitoring. Agreements should include mechanisms for benefit sharing, addressing grievances, and ongoing dialogue.
4. **Evaluating the FPIC Process:** The final phase assesses the FPIC process's effectiveness, enabling adjustments based on new information or evolving standards to maintain alignment with FSC requirements.

C.2 Practical Considerations for FSC Certification

The guidance advises adopting culturally appropriate engagement practices, ensuring the process aligns with FSC standards, and using an adaptive approach to fit Australia's evolving legal and cultural landscape. This FPIC process is crucial for organisations pursuing FSC certification, as it helps them meet social responsibility criteria while fostering sustainable relationships with First Nations communities.

By following these guidelines, organisations can improve their compliance with FSC standards, reduce operational risks, and promote sustainable land management that respects First Nations Peoples' rights and cultural heritage.

D Acknowledgment of Country

I am honoured to have the opportunity to write and Acknowledge Country for this document.

The words 'Acknowledge Country' hold such significance to me. When I define the word acknowledgement, I define it as acceptance of the truth, accepting the existence of something.

To put that concept together with Country, speaks volumes.

For a First Nations person, Country is more than the land we walk on. It is more than geographical features that define a place or space. Country is the waters that run from the ground up and the sky down. It is the trees from an individual species to a forest that create living landscapes. Within those landscapes each individual grass type, plant, rock formation, big and small, connected to soil types from sand to stone. Country incorporates the animals and their life seasons that complements our own.

When we speak of seasons, First Nations seasons are far more interconnected.

On Country, our seasons are governed and guided by all that Country speaks for. Our seasons are a pillar of our existence, a guide for our living forms, they create who we are, where we are, and why we are. This undivided truth is what Country Connection is to us.

Country is us, our community, our past, our present and our future seen and unseen Country and its unmistakable, continuous connection with us as First Nations people.

It is something to honour, protect and respect.

When we acknowledge Country, we are acknowledging it as an acceptance of truth, an acceptance in the existence of seen and unseen Country and its unmistakable, continuous connection with us as First Nations people.

It is something to honour, protect and respect.

As Australians we all hold the oldest living culture in the world. That is something we all can celebrate and feel a sense of pride in.

“Ngai Cobble Cobble Warra, ngai Boobargun Nguumunge, ngai Gujus, ngai Cabool, ngai Barrungam, Budin
Yadgie, Ngeum”

“I am a descendant of the Cobble Cobble people from Warra. I am kinconnected to Bunya Mountains, I am kinconnected to carpet snake. I am Barrangum language speaking. I am called Big Sister.”

Tolita Davis-Angeles

E Contents

A	Acknowledgements	2
B	A working document	2
C	Summary	2
C.1	Overview of the FPIC Process	2
C.2	Practical Considerations for FSC Certification	3
D	Acknowledgment of Country	4
E	Contents	5
F	Introduction	6
F.1	Why do we Need FPIC Guidance?	6
F.2	Guidance Development	7
G	Background	7
G.1	History of Free, Prior and Informed Consent	8
G.2	FPIC in Australia	9
G.3	Consultation vs. FPIC	12
H	Four elements of Free, Prior and Informed Consent	14
H.1	Free	14
H.2	Prior	15
H.3	Informed	15
H.4	Consent	15
I	Implementation of an FPIC Process	16
I.1	Process Overview	17
	Phase I: Gather Information and Build Understanding	17
	Phase II: Build Relationships and Capacity	21
	Phase III: Make Agreements and Monitor Progress	27
	Phase IV - Evaluate the FPIC Process	31
Annex A	UNDRIP and ILO Articles Relevant to FSC Standards	33
Annex B	Glossary of Terms Used in this Guidance	39
Annex C	References	42

F Introduction

Respecting the right to FPIC is, by definition, a locally and culturally specific process in which the affected communities themselves determine the steps involved. It is, therefore, not possible to produce a universally applicable “how to” guideline. (Anderson 2011: 3)

FSC’s International Generic Indicators (IGIs) for Principle 3 were adapted in the Australian Forest Stewardship Standard (in this document referred to as the FSS) to reflect the current context of First Nations Peoples in Australia. Principle 3 supports the recognition and protection of the “legal and traditional rights” of First Nations Peoples.

The processes presented in this document are not requirements for certification (i.e. they are non-normative). However, the information contained in this document aims to improve the outcome of efforts by The Organisation to address the requirement of recognising and upholding the rights of First Nations Peoples in the context of the Australian FSS.

This document was developed to:

- Support certificate holders, governments, interested stakeholders, and First Nations Peoples as “rights holders” to understand the origin of Principle 3 First Nations Peoples requirements;
- Support existing relationships between The Organisation and First Nations Peoples as they prepare for addressing new requirements in the FSS’s Principle 3 and 9 indicators;
- Identify a standard to which organisations should aspire in their dealings with native title groups; and
- Provide a resource that organisations can use to support, in good faith, Native Title Representative Bodies (NTRBs) and Prescribed Body Corporations (PBCs) throughout the FPIC process.

A successful FPIC process involves building and maintaining trust, which includes asking the communities what FPIC means to them and allowing them to develop their capacities. It is important to recognise and respect the protocols and values of the affected First Nations community in the FPIC process. FPIC is a two-way dialogue and learning process that requires an investment of time, resources and continuous improvement.

F.1 Why do we Need FPIC Guidance?

FSC ANZ seeks to develop a common understanding of the right to FPIC and its impacts on management decisions, and address issues related to the implementation of FPIC in Australia among participants in the FSC system (i.e. The Organisation, affected First Nations Peoples, and interested stakeholders). However, several factors pose a challenge to the implementation of Principle 3 and Principal 9:

- First Nations Peoples may not be aware that they have a right to FPIC.
- Application of FPIC occurs at a local (Management Unit) scale within a voluntary certification context; generalised international requirements require local adaptation.
- The Organisation and First Nations Peoples may not be aware of the differences between government consultation requirements and FSC requirements related to FPIC.
- There is uncertainty about existing First Nations community engagement processes led by governments and whether they adequately respect the right to FPIC.

- There is an evolving legal framework around the application of FPIC to private lands.
- A complex forest management planning environment requires further clarification on the scope of an FSC FPIC process.
- New concepts are arising through the FSC Standards, including a new requirement in the FSS to identify and protect Indigenous Cultural Landscapes (ICLs).
- Navigating a constantly evolving Native Title Act.
- FPIC is globally recognised but locally misunderstood.

F.2 Guidance Development

The FPIC Guidance document was developed through a consultative process that involved the IWG and First Nations Peoples from across the country, primarily from Queensland and the Northern Territory. The consultation was performed through face-to-face meetings or, when unavailable, through video calls. The First Nations groups consulted either had direct links to forestry or an aspiration to become involved in forestry. Furthermore, consultation sessions with interested stakeholders at various meetings and conferences across the country contributed to the relevance of the document. Finally, the document guidance was peer-reviewed before being approved by the Australian Standards Development Group and the FSC ANZ's Board of Directors.

The information contained in this Guidance document reflects FSC's commitment to human rights and corporate social responsibility in the context of a voluntary, third-party standard for sustainable forest management. FSC ANZ recognises that Australian jurisprudence regarding First Nations Peoples' rights and best practices is continuously evolving, and it is hoped that this guidance will help strengthen the understanding of the right to FPIC.

The legal and human rights framework of this FPIC guidance document is based on the 2021 FSC-GUI-30-003 V(2-0) *FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC)*. It was a seminal document at the time providing a methodology for the application of FPIC in the context of forest management certification. The guidance document has also drawn inspiration from FSC Canada's 2019 "FPIC Guidance for Organizations",

The structure of FSC Canada's FPIC document provided a pivotal foundation for the structure, consultation efforts, and historical information which has influenced this guidance; however, because of the intent to provide support for respectful relationship building and provide an FPIC process that can be used in practice to suit Australia's unique context, the content does diverge from other FPIC guidance documents in the FSC system.

G Background

The International Labour Organisation Convention 169 (ILO 169) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognise First Nations Peoples' right to self-determination. FPIC serves a critical role in supporting the exercise of this. This is reflected in the FSC forest management normative framework (FSC's Principles and Criteria and International Generic Indicators), which supports the implementation of international human rights standards, including the right to FPIC. In the revised FSS for Australia, the existing FPIC requirements in Principle 3 and Principle 9 have been further strengthened by the introduction of an additional FPIC requirement regarding the protection of Indigenous Cultural Landscapes.

G.1 History of Free, Prior and Informed Consent

The role and responsibilities of First Nations Peoples in achieving global sustainable development standards were recognised in 1987 with the publication of the UN World Commission on Environment and Development (WCED) report titled “Our Common Future” (or the Brundtland Report) and later in the Development Convention on Biological Diversity (CBD) and Article 8(j) (1993). The founding members of FSC upheld these same principles and entrenched Principle 3 (Indigenous Peoples’ Rights) in the first FSC Principles and Criteria published in 1994.

The concept of FPIC emerged in response to growing pressures faced by First Nations Peoples related to natural resource extraction on their Traditional Lands and Countries.

FPIC can be described as:

The right to participate in decision-making and to give, withhold or withdraw consent to an activity affecting the holder of this right. Consent must be freely given, obtained prior to implementation of such activities, and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation: free, prior and informed consent. (Colchester & MacKay, 2004).

FPIC is now acknowledged in several international agreements, including:

1989	International Labour Organisation (ILO) Convention No. 169
1992	The Convention on Biological Diversity (CBD)
1992	United Nations Framework Convention on Climate Control Change (UNFCCC)
2007	The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) endorsed by member Nations, except Canada, USA, Australia and New Zealand
2009	Australia endorses the principles of UNDRIP but has not yet implemented the Declaration

An important nuance in all the international instruments supporting FPIC is the connection made between use and ownership rights based on long-standing ties to lands and resources, participatory decision making and the elevation and support for basic human rights afforded to Indigenous Peoples. A list of relevant articles in both UNDRIP and ILO 169 can be found in Annex A.

i) UNDRIP

The UNDRIP was the product of 25 years of negotiation between United Nations member states and First Nations Peoples from around the world. The Declaration deals with a wide spectrum of First Nations Peoples and protects collective rights that may not be addressed in other human rights instruments. UNDRIP also safeguards the rights of individuals who identify as First Nations Peoples.

ii) ILO Convention No. 169

In addition to UNDRIP, FSS includes indicators related to International Labor Organisation (ILO) Convention No. 169 on Indigenous and Tribal Peoples. It is the only international legally binding instrument dedicated to the protection of First Nations Peoples’ rights. ILO 169 gives greater recognition to First Nations Peoples and calls for their participation in the decision-making processes that affect their lives. This Convention focuses on First Nations participation in political, social and economic matters controlled by national state governments and corporations, but it stops short of calling for First Nations Peoples to have the right to grant consent for resource development projects. Despite this, The Native Title Act (NTA) provides native title groups with a ‘right to

negotiate'. Therefore, FPIC is required in every case concerning First Nations Peoples, their lands, and their resources.

iii) UNDRIP, ILO and the FSS

The majority of the articles in both the UNDRIP and ILO 169 address the relationship between First Nations Peoples and the state. The requirements of the FSS under Criterion 3.4 include recognising and upholding not only the rights of First Nations Peoples, but also the social structures that support their customs and cultures. This requirement is intended to facilitate a wider discussion and dialogue between affected First Nations Peoples and The Organisation about the role forest management might have in bridging the relationship between governments, First Nations Peoples and forest managers within their territories.

Voluntary certification undertaken at the scale of a forest management unit by non-state forest managers is recognised as uniquely different than the relationship between First Nations Peoples and the Australian Government. First Nations Peoples may raise concerns related to the implementation of UNDRIP or ILO 169 that reach beyond the scope of The Organisation. Therefore, establishing an early understanding of limitations and expectations through open and transparent discussions will help to reduce confrontation or disappointment. However, keeping in mind that knowledge exchange is a two-way process, the parties to an FPIC process may engage in discussions about UNDRIP or ILO that may result in innovative and mutually beneficial agreements as a result of the thinking outside the “forest management box”.

Criterion 3.4

The Organisation shall recognise and uphold the rights, customs and culture of Indigenous Peoples as defined in the United Nations Declaration on the Rights of Indigenous Peoples (2007) and ILO Convention 169 (1989).

G.2 FPIC in Australia

Although FPIC is not legally binding in Australia, it is a requirement of the FSC ANZ standard and should be followed as a standard of best practice to support sustainable decision-making over First Nations occupied lands and waters. Australia has not legislated FPIC but is continuously engaging in the complexities of this area under the Native Title Act 1993 (NTA) (revised 12 June 2024). Australian laws and emerging jurisprudence emphasise the importance of First Nations Peoples’ knowledge about the land and reinforce that this knowledge matters in decision-making processes and their ability to participate in that decision-making process on an equal playing field (AITSIS, 2020).

Moreover, Australia’s Cultural Heritage Act 2003 (CHA) (revised 9 November 2018) establishes requirements for the protection of the cultural heritage of First Nations Peoples and recognition of their rights. This ultimately increased expectations that FPIC should be incorporated into project planning, development, and investment decisions that impact First Nations Peoples. A failure to ensure FPIC has been obtained has the potential to result in significant legal, operational and reputational risks as well as failure to obtain FSC certification.

i) First Nations Peoples in Australia

In recognition of the past dispossession and dispersal of Australia’s First Nations Peoples from their Country, kinship and culture, Australia has a range of laws and acts in place to protect the rights of First Nations Peoples and their heritage. This legislative framework recognises First Nations Peoples’ current disadvantaged position in Australian society due to past legislations enforced by the Australian government and strives to ensure maximum

participation of First Nations Peoples in decisions that affect them to promote self-determination, self-management and self-sufficiency.

Three critical Acts that uphold these values are the Native Title Act 1993, and Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003.

ii) Native Title Act 1993

The Native Title Act 1993 recognises the rights and interests of First Nations Peoples regarding land and waters according to their traditional laws and customs.

Native title was first recognised in Australian law following a claim lodged in 1982 with the High Court of Australia by a group of Meriam people from the Eastern Torres Strait. They sought recognition of their peoples' occupation and exclusive possession of Mer (Murray Island) according to their own customs and laws dating to a time before colonisation. Ten years after the claim was lodged, in 1992, the High Court upheld the claim and acknowledged the pre-existing native title rights and interests of the Meriam people in Murray Island and overturned the established legal fiction of *terra nullius* (land belonging to no one). This was a pivotal step towards the development of the Native Title Act which acknowledges that First Nations Peoples had complex legal systems in place prior to colonisation and possessed rights to their land according to their own laws and customs. The Court found that those rights survived colonisation in certain circumstances, and they are now recognised and protected by the Australian legal system through Native Title determination (AITSIS, n.d.).

iii) Aboriginal and Torres Strait Islander Cultural Heritage Act 2003

First Nation's cultural heritage is central to Australia's national identity and is the oldest continuing culture in the world. First Nations Peoples have passed down their culture through generations for more than 65,000 years. The Australian Government recognises that First Nations' heritage must be protected for generations to come to allow all Australians to recognise, experience and appreciate this unique and significant part of Australia's heritage identity. Considering this, the Australian Government developed the Cultural Heritage Act which provides effective recognition, protection and conservation of First Nation's cultural heritage. Since colonisation, First Nations Peoples' cultural heritage has been devastatingly impacted through the destruction, removal and environmental conditions of areas and objects of traditional, customary, and archaeological significance (Parliament of Australia, n.d.).

The Cultural Heritage Act seeks to provide effective recognition, protection and conservation of First Nations Peoples' cultural heritage by providing a blanket protection of areas and objects of traditional, customary, and archaeological significance. It seeks to uphold the core elements of FPIC by recognising the key role of Traditional Owners in cultural heritage matters and their integral position in co-designing and implementing practical processes for dealing with cultural heritage.

iv) FSC's Fundamental Concepts of Rights - Legal and/or Traditional

Ultimately, the scope of rights considered by the Australian Government may or may not reflect all the principles and values included in the FSS or the traditional practices of affected First Nations communities. Indicators within the FSS (Indicators found outside of Principle 3 and 9) that call for culturally appropriate engagement with First Nations Peoples do not focus on a rights-based approach to development. Criteria 6.5 and 9.1, for example, recognise the inherent value of Indigenous knowledge systems to the development of Conservation Areas Networks and identification of High Conservation Values. Therefore, while government-developed legislation, policies and procedures may provide a useful framework for organisational engagement with First Nations communities, adaptations may be required to ensure conformance with Principle 3, 9 and other Criteria requiring engagement with First Nations Peoples.

Examples of traditional rights

- Access to resources used for culturally based craft and commerce – grass trees for basket making; bunya pine for canoe making
- Access to and use of healthy, undeveloped environments that contain important herbs and medicines used in ceremony and healing - cedar, gumbi gumbi, sage, and others
- Access to forest resources - firewood; wild plant food sources such as nut trees, berries and herbs
- Access to forested areas to carry out traditional management practices that encourage culturally important species abundance and diversity
- Access to and protection of ceremonial sites

Throughout the FSC normative framework, and more specifically in Principles 3 and 4, there is a reference to “legal and customary rights” (In this document, the term ‘customary rights’ is replaced with ‘Traditional rights’ to suit the Australian context). These terms are defined in the FSC Glossary of Terms (FSC-STD-AUS-02-202x).

FSC-GUI-30-033 (V2.0) EN provides the following additional information regarding Traditional and Legal rights:

v) Traditional Rights

Traditional rights are defined in FSC-GUI-30-033 (V2.0) as “rights which result from a long series of habitual or customary actions, constantly repeated, which have by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.” They can be understood as a traditional behaviour sanctioned by the community through years of socially approved practice. These rights may be unwritten, subject to variations in interpretation, and they often evolve. The application and interpretation of traditional rights may be situation-specific, including community-specific and therefore, these rights may stand alone and be unique.

Interrelated sets of traditional rights may be recognised as traditional law. In some national contexts, traditional law is equivalent to statutory law within its defined area of competence and may replace the statutory law for defined ethnic or other social groups. Traditional law may also complement statutory law and is applied in specified circumstances. Principles 3 and 4 address traditional law and rights not organised into a system of law. In countries where traditional law is recognised by the government to have parallel legal status alongside statutory and common law or civil law, such traditional laws have the same status as statutory law in Principle 1 of the FSC Principles and Criteria in their areas of legal competence. For example, traditional law may be used to settle territorial disputes between First Nations Peoples, or to settle arguments over resource rights between First Nations and non-indigenous land users.

It is critical to note that the resources required to document, negotiate and/or litigate traditional rights are prohibitive for most First Nations communities. Therefore, many communities will not be able to supply The Organisation with ready-made lists of the application of legal and traditional rights to forest management. FPIC may be an even newer concept for some First Nations Peoples and forest managers. Therefore, it is encouraged that all parties be proactive but patient when initiating conversations about FPIC and, when necessary, seek guidance from experts and trusted advisors to First Nations Peoples and The Organisation.

vi) Legal Rights

FSC-GUI-30-033 (V2.0) defines legal rights as those rights that exist under the rules of national or local laws or subsidiary regulations, decrees, orders, etc. “Legal” also includes rule-based decisions made by legally competent agencies where such decisions flow directly and logically from the laws and regulations.

An affected First Nations community may not legally own the land (i.e. possess legal title or ownership), however, a rights holder may have maintained access to these lands and associated resources through the use and local recognition of traditional practice. This establishes a connection with land and resources.

The right to FPIC is not a stand-alone right but one that is considered essential to the recognition and protection of other legal and/or traditional rights. It also establishes a framework for the participation of rights holders in decision-making on management activities that affect their rights.

G.3 Consultation vs. FPIC

There is a substantial legal history available regarding the evolution of consultation requirements to acknowledge and ‘right the wrongs’ of past violations against First Nations Peoples and communities.

“Meaningful Consultation” is recognised by some governments as a legal requirement of their fiduciary obligation and has been defined as “engagement between First Nations Peoples, governments and proponents to determine where and when development projects may infringe on First Nations Peoples and whether that infringement is justified” (Minister of Aboriginal Affairs and Northern Development Canada, 2011).

FPIC is not merely informing and getting consent, it is about effective and meaningful participation to ensure the best decision making for sustainable outcomes – especially where intergenerational decisions are involved (AITSIS, 2020).

A consultation process may be deemed meaningful when it incorporates both procedural and substantive aspects, including some or all the following actions:

Procedural:

- Consultation initiated at the earliest development stage possible;
- All aspects of the consultation process are open, transparent and timely;
- Information exchange processes are timely and reasonable (including delegation of this responsibility to proponents); and
- Assistance is provided to the affected First Nations Peoples to help develop a reasonable understanding of the information provided, where necessary.

Substantive:

- The affected First Nation Peoples must have an opportunity to express their interests and concerns;
- The government must ensure the interests and concerns of First Nations Peoples are seriously considered in development plans (e.g. engage in problem solving or negotiation); and
- The government must, wherever possible, demonstrably integrate the interests and concerns of First Nation Peoples into the proposed plan of action (e.g. modification of plans, mitigation, compensation or some other form of accommodation).

It is important to understand that **meaningful consultation is not the equivalent to FPIC**, but it is a necessary process to reach an FPIC agreement. While the procedural aspects of meaningful consultation complement the principle of FPIC, the substantive aspects related to the decision-making power of First Nations Peoples for planned management activities stop short of authorising consent. Specifically, under current regulations, the Government determines the strength of a rights claim and associated requirements of consultation. There is no obligation to reach an agreement. The Government and the courts have focused on the participatory aspects of decision-making processes, not the right to self-determination, which is the foundation of the right to FPIC. Furthermore, a pivotal element of FPIC is genuine inclusion, disclosure, and respect for First Nations Peoples' decision-making processes. The three elements (free, prior and informed) qualify and set the conditions of consent as a decision-making process. In the Australian context, consent refers to the decisions made by the First Nations Peoples being reached through their traditional decision-making processes (AITSIS, 2020). Furthermore, the affected First Nations Peoples are the ultimate judges on whether the consultation process has been meaningful (AITSIS, 2020).

H FOUR ELEMENTS OF FREE, PRIOR AND INFORMED CONSENT



H.1 Free

‘Free’ refers to a decision-making process that is voluntary and self-directed by the affected First Nations group. It is an action unencumbered by coercion, manipulation, or externally imposed timelines that limit or hinder self-government processes. The First Nations group is free to use their preferred methods of engagement (i.e., institutions and representative structures) to indicate their agreement with the proposed engagement and decision-making process. Additionally, the affected First Nations group is fully informed of their right to grant, withhold or withdraw their consent to proposed management activities that affect their legal and/or traditional rights. The Organisation clearly expresses its commitment to obtain consent before undertaking any management activity where FPIC is required (FSC, 2021).

H.2 Prior

The element of ‘prior’ introduces an important time-based aspect of decision-making. It means that a decision is sought far enough in advance of any authorisation or commencement of management activities, at the early stages of management planning. ‘Prior’ implies that time is provided for the First Nations group to understand, access, and analyse information on proposed management activities before any decisions are taken. The Organisation seeking consent may not be the same authority that initially granted the land tenure or forest concession. In some regions, the historical use of the lands, territories, and resources may be in dispute, or there may be ongoing negotiations between the state and First Nations group (FSC, 2021).

H.3 Informed

To be ‘informed’ refers to the type and format of information provided by The Organisation to support the decision-making processes of the affected First Nations group. With a clear and transparent objective to seek consent, it is vital that The Organisation confirms that the information provided is in a form that can be shared and distributed widely among members of the First Nations group, including those in remote areas, men and women, the young and elderly, and marginalised groups, according to their internal processes. Access to and communication with a First Nations group always happens through their legitimate institutions. All information is delivered in languages and formats that are acceptable to the legitimate institutions of the affected First Nations group. New information regarding proposed management activities or the position of the First Nations group on such activities is shared among the parties as soon as it becomes available and to their mutual satisfaction.

H.4 Consent

Consent refers to the decisions made by Traditional Owners and are reached through their traditional decision-making processes. FPIC is not merely informing and getting consent, it is about effective, meaningful participation to ensure the best decision-making process to achieve outcomes that have an enduring impact, especially where intergenerational decisions are involved.

The final and distinguishing element of FPIC is the decision to exercise the right to grant, withhold, or withdraw consent to proposed management activities that affect legal and/or traditional rights. Consent is not a one-off decision that gives an everlasting social license to The Organisation, but part of an iterative process that requires continual monitoring, maintenance, and reaffirmation. A decision reached through a self-determined process of dialogue and decision-making that fulfils the elements of “free”, “prior”, and “informed” implies that the affected First Nations group is aware of the option to apply conditions to their decision. These conditions are considered and recorded in a culturally appropriate manner according to mutually agreed information-sharing protocols. Once consent is granted to the final management plan and recorded in a consent agreement (binding agreement) that demonstrates good faith and a culturally appropriate engagement process was adopted to obtain the decision, it cannot be withdrawn arbitrarily by either party. However, if changes are proposed to management activities already subject to an agreement or if new information becomes available, the First Nations group may reconsider their decision to grant or withhold consent.

Consent is not the same as engagement or consultation, although these are necessary precursors to achieving consent. It is the expression of rights (e.g., to self-determination, lands, resources, territories, and culture) and may be given or withheld in phases, over specific periods of time, and for distinct phases of management activities. Therefore, it is possible that consent may be withdrawn for a specific management activity but not for the entire agreement.

I IMPLEMENTATION OF AN FPIC PROCESS

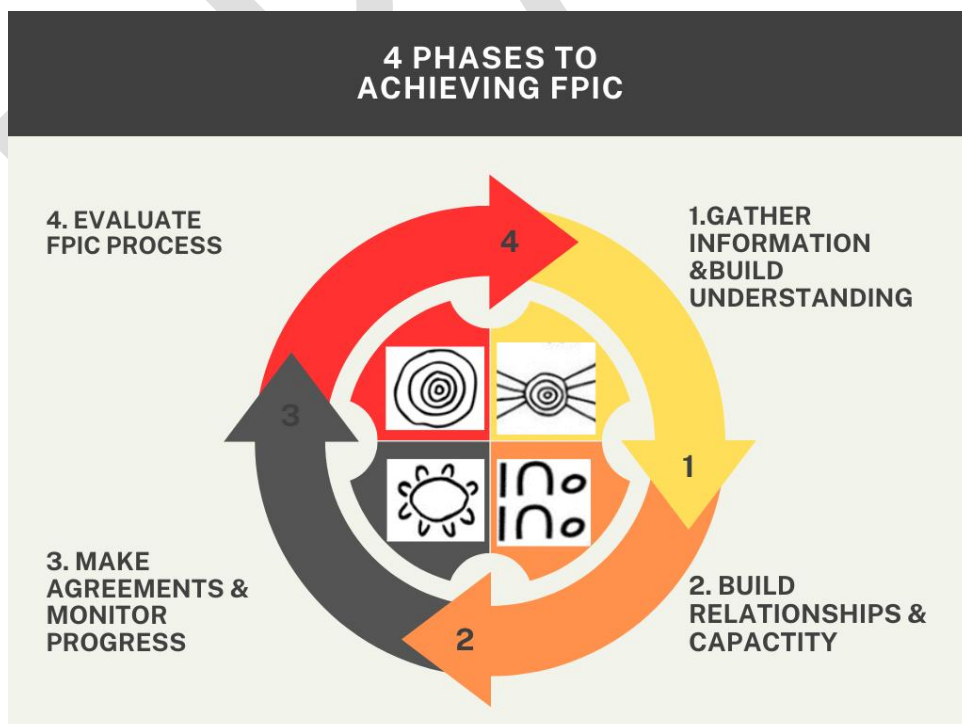
Respecting the right to FPIC cannot be a process with boxes that can be ‘ticked’ as they are completed. The right of indigenous peoples to give or withhold their consent to development that affects their territory is part of their collective right to self-determination, which includes the right to determine what type of process of consultation and decision-making is appropriate for them.
(Anderson 2011: 11)

Upholding the right to FPIC involves a series of actions taken by The Organisation to achieve a binding agreement with affected First Nations Peoples. This is referred to as an “FPIC process”. There are numerous factors that will influence the design and implementation of an FPIC process, and no two FPIC processes will be the same.

A key component of a successful FPIC process is the willingness and ability of The Organisation and First Nations People to respect and support each other’s interests and visions regarding the forest and their ways of making decisions. An FPIC process developed in collaboration will more likely reveal challenges and contentious issues in advance of a significant investment in management planning.

This Guidance will assist in the development of engagement processes based on the objective of obtaining consent as per the requirements of Principles 3 and 9. This section introduces a four-phase process that can be broadly applied in the context of FSC certification. Each phase requires consent before it is undertaken:

- 1) Gathering information and building understanding,
- 2) Building relationships and capacity,
- 3) Making agreements and monitoring progress, and
- 4) Evaluating the FPIC process.



I.1 Process Overview

Table 1 breaks down the four-phase process into eight steps that have been adapted from the FSC-GUI-30-003 (V2-0). Each step is cross-referenced with relevant Principle 3 Indicators from the FSS and other relevant Indicators that may not be rights-based but interest-based.

It is important to note that while the process is presented here as a linear or sequential, 8-step process culminating in a binding agreement, it is not always possible to implement the steps sequentially, nor will it always be necessary to fulfil all the steps identified.

FPIC process phases and steps	Principle 3 Indicators	Other relevant Indicators
Phase 1: Gather information and build understanding		
Step 1- Identify rights holders and their rights through engagement	3.1.1, 3.1.2	1.3.1, 4.1.1, 6.1.1
Phase 2: Build relationships and capacity		
Step 2 - Prepare for further engagement and agree on the scope of the FPIC process	3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.4.1, 3.4.2, 3.5.1, 3.5.2	4.1.2, 4.2.4, 4.5.3, 6.1.1, 7.1.1, 8.1.1, 9.1.2, 9.2.3
Step 3 - Undertake participatory mapping and impact assessments	3.1.2, 3.5.1, 3.5.2	4.7.1, 6.1.2, 6.2.2, 6.4.2, 6.4.3, 6.5.1, 10.9.1
Phase 3: Make agreements and implement		
Step 4 - Management activities revised, and affected First Nation's community/communities informed	3.2.1, 3.2.4, 3.5.2, 3.5.3	6.3.3, 9.2.3, 10.9.4
Step 5 - Negotiate an agreement with rights holders on FPIC proposal	3.2.1, 3.2.4, 3.3.1, 3.6.1, 3.6.2	
Step 6 - Verify and formalise the FPIC agreement	3.1.2, 3.2.1, 3.3.1, 3.3.2, 3.6.1	
Step 7- Implement and monitor the FPIC agreement	3.3.1, 3.3.2	
Phase 4: Evaluate FPIC process		
Step 8 – Evaluate and review the FPIC process	3.3.3, 3.5.3, 3.6.1	8.1.1, 8.2.1, 8.2.2, 9.4.1,

Table 1: Eight-step FPIC process and related indicators (Adapted from FSC International Guidelines on FPIC)

Detailed guidance concerning the four phases and the associated steps of the FPIC process is provided below. Each phase provides an overview followed by guiding steps on what needs to be accomplished throughout the phase. Where warranted, there are suggested actions for considerations that support the implementation of each step.

Phase I: Gather Information and Build Understanding

This first phase of the FPIC process is focused on determining who has the right to FPIC and what rights may be affected by management activities. The following questions may be used to guide preparations for Step 1:

- Who are the First Nations Peoples with Country, claimed rights, interests and concerns that overlap, or are adjacent to, the Management Unit?

- What are the claimed rights, interests and concerns, and where are they located in the Management Unit?
- Can the identified rights, interests and concerns be addressed by The Organisation through a forest management planning activity? For example, through information sharing, collaborative decision-making, technical support, or the development of an MOU? These are examples of “means” by which The Organisation may recognise and uphold an identified right.

Step 1: Identify Rights Holders and Their Rights Through Engagement

Based on the boundaries of the Management Unit and proposed management plan, The Organisation identifies First Nations Peoples with legal and traditional rights, including their rights to resources, lands or territories in and around the Management Unit. This may be accomplished through consultation with specialists, governments, and/or territorial organisations that represent groups of communities, such as:

Relevant Indicators:
3.1.1, 3.1.2, 1.3.

- Prescribed Bodies Corporate
- Aboriginal Land Councils
- Native title representative bodies and service providers
- National Native Title Council
- National Aboriginal Community Controlled Health Organisation
- Aboriginal and Torres Strait Islander community-controlled organisations

At this early stage of consultation and engagement, The Organisation may begin to define the scope of the FPIC process by:

- Identifying First Nations Peoples within and around the Management Unit that may be affected by management activities,**
- Identifying fair and legitimate claims to rights,**

ACTIONS FOR CONSIDERATION²

- Consider engaging local experts, regional organisations and secondary information sources (e.g., census data research and grey literature)
- Prepare a preliminary overview of all First Nations communities within the Management Unit or those that may be affected by management activities.

The Organisation will need to determine which communities of First Nations Peoples are affected by the proposed management activities. Those affected may then be identified as an “affected First Nation’s community” (also referred to as “rights holders”) in the context of the FSS and will, therefore, have the right to grant, withhold and/or withdraw FPIC.

The Organisation should identify all rights holders that live and assert their legal or customary rights within and near the Management Unit. These efforts begin with the identification and engagement of

² The actions for consideration in this and the following sections and the associated text below are relevant to the action immediately above (“b. Identifying fair and legitimate claims to rights” in this case)

legitimate representatives of the rights holder. Local experts (interpreters/facilitators/consultants) who are recognised as legitimate representatives of the First Nations Peoples may facilitate engagement processes and provide critical background information. The local experts may also provide guidance on cultural norms and protocols of the rights holders, support engagement, assist with negotiations, and act as facilitators and interpreters throughout the FPIC process.

When multiple rights have been asserted from different First Nations communities on the same land base (i.e., overlapping claims), The Organisation should use the precautionary approach and treat each claim equally until those with recognised legal and traditional rights related to the proposed management activities are distinguished from those with interests on the Management Unit. In any community, it is likely that there are multiple points of view on forest management activities. The Organisation should establish early in the relationship-building process whether community members, other than those identified as legal representatives, should be included in the FPIC process to include this diversity of opinions.

c) Identifying aspirations and goals of affected First Nations Peoples related to forest management, traditional knowledge and engagement,

d) Examining how First Nations Peoples make decisions,

e) Inform First Nations Peoples and/or their representative institutions about planned management activities, and

ACTIONS FOR CONSIDERATION

- Identify and document decision-making institutions of all affected First Nations communities.
- Document the type of governance system used, e.g., traditional/customary, state legislated/imposed, or other.
- Document the role of women, youth and elders, keeping in mind UNDRIP (Articles 21 and 22) and ILO 169
- Provide information on the FSC system, including:
 - Status as a voluntary system that in most cases goes beyond legislation for forest management and stakeholder engagement.
 - Inclusion of Traditional rights as legitimate rights claims.
 - Provide information that is a fair reflection of what can be expected from the proposed management activity; do not exaggerate the potential benefits or hide the risks.
 - Provide information in a language and format that is clear and appropriate to the context and provide resources for expert assistance, if required.
 - Verify that the information was understood.

Some interests and concerns may be brought forward by First Nations Peoples that do not fall within the scope of Principle 3 (e.g. business-to-business agreements) or within the right to FPIC. The Organisation may want to ensure that affected First Nations Peoples are aware of other principles within the FSS (such as Principles 5, 6, 7 or 9) that may be more relevant to address specific interests and concerns. During this phase of the process, The Organisation is asked to provide a “summary of means”, or strategies available within its sphere of influence, to uphold legal and customary rights in relation to proposed management activities. This exercise, when done early in the process, will help The Organisation and affected First Nations Peoples to determine their understanding of “rights” and “sphere of influence”.

An FPIC process should be used for those rights that may be directly affected by management activities. The processes used to reach this initial decision should establish the terms of engagement around who is giving consent and how consent will be given, including a shared understanding of terms used in FSS of Australia, such as “mutually agreed”, “customary rights”, “culturally appropriate”, “rights and responsibilities”, “consent”, “good faith”, “best efforts”, and “binding agreement”. It is important to note that First Nations Peoples are entitled to use their own language and terminology to express these ideas.

Organisations are required to adopt a culturally appropriate approach to engagement, one that is in harmony with the customs, values, sensitivities and ways of life of the affected First Nations community. This is particularly important when identifying representatives and decision-making institutions. In the case of First Nations Peoples, representative and decision-making institutions in current use may differ from customary law because of state-imposed structures. Some institutions may also have been established by First Nations Peoples to deal specifically with non-Indigenous organisations, businesses and stakeholders. The Organisation respects the choice of First Nations Peoples on how and who represents their rights and interests in negotiations of an FPIC process, including the decision to be represented by more than one institution (UNDRIP, 2007).

The Organisation informs all identified rights holders about the main features of the FSC system and their proposed management activities. This information is presented in a format that is accessible by the rights holder and includes information sufficient for representatives to identify whether management activities violate their legal and/or customary rights.

f) Identifying whether the affected First Nations Peoples will consider entering further discussions about the planned management activities.

ACTIONS FOR CONSIDERATION

- Communicate an understanding of the decision to continue engagement, or not, in a full FPIC process.
- Alternative engagement processes may be discussed.
- Continue to make available all relevant management activity information requested by the rights holder, to the extent necessary to protect their rights.
- If the First Nations community has not decided, indicate whether the process is ongoing.
- Demonstrate that the ongoing process is satisfactory to the First Nations Community.
- Consider the use of a facilitator and / or interpreter that is respected by the First Nations Community to gain a better understanding of the context and expectations, including the role of CBs.

Time is needed for the rights holder to conduct internal and independent reviews of information to decide if they are willing to engage in an FPIC process. Expect questions regarding the potential direct and indirect impacts of management activities on their legal and/or customary rights, including livelihoods, knowledge, social cohesion, governance and culture. These questions require consideration by both The Organisation and the rights holder. If both parties are prepared to continue building a relationship, preparations for further engagement and negotiations may begin.

Phase II: Build Relationships and Capacity

Forest management planning will involve people and institutions external to The Organisation. This represents the network and sphere of influence of The Organisation. In this phase of development, supporting relationships are established or confirmed within this network and may include people/resources from government, academia, and non-governmental organisations. This phase of development is based on best practices from case studies in various resource development sectors around the world (e.g. mining and energy). Some of the process steps may not directly reference the requirements of specific Indicators; however, these steps support building and maintaining a setting for dialogue and relationship building that is necessary for upholding the right to FPIC. The following questions will help The Organisation relate the FPIC process steps to Indicators in Criterion 3.2:

- Is the affected First Nations community able to participate, in a meaningful way, in strategic discussions (e.g. Conservation Area Network planning (Principle 6), High Conservation Values (Principle 9) and operational planning (Principle 7)?
- Is there a common understanding of what constitutes a “violation” of a right (e.g. destruction of a sacred site) between the affected First Nations community and The Organisation?
- Is there an effective complaint and dispute resolution process available where any violation of rights can be claimed?
- Is there a clear understanding of rights that are subject to consent-based agreements through an FPIC process and those that may exist but are not affected by management activities and, therefore, not subject to an FPIC process?
- Are there existing land use and resource management plans that have been accepted by the affected First Nations community?

Step 2: Prepare For Further Engagement and Agree on the Scope of the FPIC Process

The intent of this step is to determine the scope of rights to be covered by an FPIC process, establish support (i.e. timelines and budgets) and refine the draft forest management plan, where possible. The Organisation may want to consider the following actions:

- a) Establish a relationship with stakeholders that can support engagement with affected First Nations communities,**

Relevant indicators

3.2.1, 3.2.2, 3.2.3, 3.2.4,
3.4.1, 3.4.2, 3.5.1, 3.5.2,
4.1.2, 4.2.4, 4.5.3, 6.1.1,
7.1.1, 8.1.1, 9.1.2, 9.2.3

ACTIONS FOR CONSIDERATION

- Appropriate to scale, intensity and risk (SIR), establish an internal structure to deal explicitly with the First Nations community engagement process
- Receive comprehensive orientation on the culture of the First Nations community
- Be trained in recognising and respecting the protocols and values of the First Nations community
- Be trained in effective communication and translation of complex legal issues
- Be encouraged to seek additional expertise when needed
- Ensure the certification team can intervene directly in the decision-making bodies of The Organisation with strong internal communication (e.g., Board, management, council)
- Ensure the team has dedicated materials and equipment

While the rights holder themselves, and their delegated representatives, are the primary parties to the engagement process, other mutually agreed experts and stakeholders might be asked for support. They include government institutions, NGOs, First Nations Peoples organisations, and scientific institutions that may have a critical role in the implementation of the FPIC process and the FPIC agreement.

The Organisation is expected to understand, articulate and uphold the legal and traditional rights of affected First Nations communities. This will take time and effort from a variety of stakeholders. Governments and non-governmental organisations familiar with the socio-political landscape of the FMU may help The Organisation to scope out the extent of work already done that would support management planning and culturally appropriate engagement. Depending on the region, some FMUs may overlap with a significant number of First Nations communities. In this case, both parties might consider using a collaborative management planning approach among neighbouring communities and Organisations to reduce workload and costs for all participants. Recognising that the workload for First Nation's communities and an Organisation may already be high, the parties are encouraged to work collaboratively to harmonise FSC requirements with the existing regulatory framework where possible.

- b) Establish how affected First Nations communities make decisions regarding forestry activities,**
- c) Establish a clear structure within The Organisation to implement engagement processes,**
- d) Identifying communication and information-sharing needs,**

ACTIONS FOR CONSIDERATION

- Consider prioritising direct communication (face-to-face) as the default method, unless high levels of literacy are apparent, or circumstances dictate otherwise.
- Consider developing a formal plan specific to the FPIC process to ensure that all aspects are communicated to the First Nations community and CB.
- Ensure culturally appropriate methods for sharing information.
- Present complete information as early as possible.

Further guidance:

Open and effective communication is essential for building and maintaining relationships. Therefore, it is advisable that The Organisation develop communication and information sharing strategies that can be used as part of the agreement-building process. This is particularly important for an organisation that is entering a new relationship with First Nations Peoples or attempting to amend past conflicts. If affected First Nations communities have delegated forest management planning responsibilities to a representative organisation (e.g. a Land Council), The Organisation should confirm who the decision makers are when negotiating final agreements.

Communication is an essential aspect of relationship building. It is also the tool used to facilitate the 'informed' element of FPIC. The required mode, content, and intensity of the communication depends on local circumstances. The fundamental objective of all communication is to establish a relationship that will facilitate dialogue and capacity building among all parties. This can be achieved through iterative discussions and dialogue that result in an exchange of information and views on an ongoing basis. It is preferable that communication with all rights holders be in the language they speak, using a medium they understand. It is essential to limit the use of highly technical language or jargon that can otherwise be explained in clear, simple language.

- e) Engage with affected First Nations communities and agree on an approach to agreement making, including the scope of rights and activities covered by the agreement,**
- f) Agree on the approach to FPIC process verification and monitoring,**
- g) Establish realistic and flexible timelines and budgets for engagement,**
- h) Further define management activities likely to affect affected First Nations communities, and**

ACTIONS FOR CONSIDERATION

- Establish a mutual understanding and agreement on the need for a Process Agreement, or protocol, to support the FPIC process.
- Consider hiring a community facilitator/interpreter. It is important to distinguish between issues that can be dealt with and those that cannot through an FSC dispute resolution process.
- At this early stage, consider the involvement of an independent verifier or observer to the FPIC process and discuss it with the affected First Nations community.
- Describe each of the steps that require engagement and, potentially, a decision from representatives.
- Identify representatives chosen by the First Nations community to participate in various steps of the FPIC process.
- Confirm the internal decision-making process to address FSC FPIC requirements and identify indicators of its successful implementation.

The FPIC process itself can be a product of an earlier agreement, referred to in this guidance as a Process Agreement or a protocol. If established early, a Process Agreement will help facilitate the multiple stages of decision-making involved in an FPIC process.

A Process Agreement may include overarching principles such as respecting the governance protocols of the rights holder and striving for mutual understanding and good faith engagement that is transparent.

Practically, these principles may translate into terms of an agreement such as:

- An agreed scope of the FPIC process;
- Protocols for negotiations and decision-making at all stages of the FPIC process;
- Timelines for implementation, noting that new applicants to FSC certification and current FSC certificate holders will likely differ;
- Representation in the FPIC process;
- Date of signing and expiry date, if applicable;
- Clear phasing of the FPIC process, in line with continuous and iterative decision-making;
- Terms of verification and observation of the FPIC process (Step 6);
- Terms of withdrawal from the FPIC process;
- Financial commitments of FPIC process;
- Acceptable use of advisors, facilitators, and observers;
- Capacity-building needs, if necessary;
- Agreement on the scope of mapping and impact assessments;
- Mechanism for monitoring the FPIC process;
- Mechanism to formalise the FPIC agreement (Step 6);
- Types of documents to be shared, such as results of impact assessments (Step 3 (3.4));
- Information-sharing processes;

- Treatment of intellectual property, such as mapping products (Step 3 (3.2));
- Mechanisms for dispute resolution; and
- Record of actions taken in the process.

i) Further define management activities likely to affect affected First Nation's communities.

The Organisation and the rights holder can define more precisely the management activities that are likely to affect the right holder's rights, thereby establishing the initial scope of the FPIC process. Effective participatory mapping and assessments will be needed to ensure that the affected First Nations community is fully engaged (Step 3). Mapping and assessments will provide further information and help The Organisation further define and amend the management activities before entering into negotiations.

Information on proposed management activities is shared, including:

- The purpose, scope, reversibility, size, nature, and duration of the forest operation;
- The areas that will be affected; and
- The costs and benefits resulting from the management activities for all parties, including potential effects on livelihoods, local economy, culture and legal and/or customary rights.

ACTIONS FOR CONSIDERATION

- Where possible, confirm that external advisors to the process are known, respected and trusted by the affected First Nations community;
- Provide full content of the proposed management activities to the affected First Nations community;
- Describe the resources proposed for harvesting (e.g. species, estimated volume, etc.) and the type of potential benefits flowing from The Organisation's management activities (e.g. management costs and value-added opportunities); and
- Determine the need for participatory mapping and impact assessment in cooperation with the affected First Nations community

Step 3: Undertake Participatory Mapping and Impact Assessments

First Nations communities may have various levels of knowledge of data collection processes for the purposes of management planning. Support for the participation of affected First Nations communities may be required and should be arranged by The Organisation in collaboration with other stakeholders in the Management Unit. This may include governments, NGOs and academic institutions. The Organisation may initiate and support this work by:

Relevant Indicators

3.1.2, 3.5.1, 3.5.2, 4.7.1, 6.1.2, 6.2.2, 6.4.2, 6.4.3, 6.5.1, 10.9.1

a) Assessing community and organisational capacity for mapping and assessments,

ACTIONS FOR CONSIDERATION

- Review the Process Agreement for expectations on mapping and assessments, including:
 - Required/requested scale of maps for mapping and assessment purposes.

- Support the building of community readiness, including:
 - Encouraging the First Nations community to identify individuals to carry out the mapping/assessments; and
 - Making resources available where they do not already exist.
- Recognise community mapping is an iterative and living process that will evolve.

Prior to the commencement of management activities, a capacity needs assessment, in general, and, more specifically, for mapping and impact assessments is recommended. The Organisation may make clear its intentions to assist the affected First Nations community in identifying financial resources, local experts and institutions to support capacity-building efforts proportionate to their needs. However, The Organisation avoids real or perceived coercive or manipulative activities that affect the ability of the affected First Nations community to make independent decisions.

b) Supporting a participatory mapping exercise to document rights and forest-based activities,

ACTIONS FOR CONSIDERATION

- Consider using “works in progress” on mapping and assessments (for other sectors of development or governance purposes) on lands and territories proposed for development in the FSC process.
- Make available a mechanism to enable the inclusion of all new information in maps and assessment reports as it becomes available.
 - Respect the choice of the affected First Nations community to share (or not), under specified conditions, information related to traditional knowledge, land, and territorial uses.
- Prepare a map or alternative overview showing all claims and land usage, all High Conservation Values relevant to the affected First Nations community, and the rights of the identified communities.
- Acknowledge cumulative development impacts on the First Nations community, their lands, resources, and Country.

Participatory mapping is the creation of maps by local resource users (i.e. ‘affected First Nations community’), often with the support of external partners, for decision-making. The maps provide a visual representation of the rights holder’s lands, territories, resources, and other significant features. Since claims based on customary laws are often not formally recognised in law, mapping provides a record of customary rights. The overview of legal and/or customary rights identified in Step 1 (1.5) gives a good indication of mapping needs. If the affected First Nations community already has maps identifying the location of their interests and values associated with their legal and/or customary rights to lands, resources and territories, these maps can serve as a starting point for the participatory mapping process.

Initial maps created through a participatory mapping exercise will establish a shared understanding of ecological, social, and cultural conditions of the lands, territories, and resources affected by management activities. This will allow for the monitoring of management activity impacts over time. Participatory mapping may also be integrated with impact assessments.

c) Facilitating and supporting dispute resolution processes,

ACTIONS FOR CONSIDERATION

- Develop an understanding of the land stewardship responsibilities of the affected rights holder.
- Make a dispute resolution support available for the affected First Nations community.
 - Review dispute resolution mechanisms agreed to in the Process Agreement.
 - Acknowledge the ability of First Nations community to seek resolutions independently.
- Consider mapping 'use zones', 'shared use areas', 'common areas', etc. rather than boundaries in the context of property rights.
- Observe and record boundary discrepancies for audits.
- Refer to claims identified in Step 1 as a preliminary baseline and refine when new information becomes available.
- Document informed objections to the FPIC process and planned forest activity.
 - Investigate the nature and scope of the dispute and the role of forest activities in the dispute.

The Organisation may be able to avoid disputed areas in the Management Unit or reduce the impact on an affected First Nations community through negotiations. There may also be circumstances where The Organisation provides support to the affected First Nations community to carry out an independent investigation. The Organisation is responsible for discussing the potential impacts of management activities with the elected First Nations representatives and rights holders.

Early discussions about the consequences of a stop-work request, management alternatives, or removal of harvest area from a Management Unit are encouraged. If a discussion is not possible, The Organisation may choose to withdraw from the disputed area until an agreed dispute resolution process is in place.

d) Engaging affected First Nations communities in impact assessments; and

e) Redefining proposed management activities to mitigate impacts on rights and address broader interests and concerns.

ACTIONS FOR CONSIDERATION

- Determine whether the affected First Nations community has protocols, laws and policies that address forest management.
- Respecting the legal boundaries of confidentiality, discuss the economic, social and environmental values of the forest resources extracted through management activities.
- Consider requirements for High Conservation Values in Principle 9.

The information used to assess impacts on identified First Nations Peoples should be made available in a format that is accessible to all members of the affected First Nations communities while still contributing to the management planning process of The Organisation. The draft forest management plan may be refined further based on mapping and assessment outcomes (see step 4).

An assessment of direct, indirect, and cumulative impacts of resource development activities, with full respect for traditional, cultural, and social aspects, is key. Impact assessments that are part of an FPIC process are participatory to facilitate early warning signs of potential impacts and to increase the likelihood that the assessments will include the affected First Nation's community issues of concern.

Phase III: Make Agreements and Monitor Progress

Certification to the FSS, including Principle 3, is the sole responsibility of The Organisation. However, First Nations Peoples, and more specifically, affected First Nations communities, play a central role when addressing the requirements of Principle 3. Agreements reached through an FPIC process are based on trust and will, therefore, require continuous monitoring and adjustment to build and maintain the required relationships. It is critical that The Organisation makes and implements agreements based on a shared understanding of FSC certification and applicable requirements of the Australian FSS.

Things to consider when making agreements are:

- Does the affected First Nations community feel able to make a decision that is free from coercion, manipulation or intimidation?
- Has all the necessary information on proposed management activities been provided to the affected First Nations community in a format that can be used for community-based decision making?
- Has the information been provided sufficiently in advance of scheduled meetings to allow the affected First Nations community to discuss the implications of the proposed management activities with community members, staff and/or consultants?
- Has considerations for the diversity within the community been addressed when delivering information (e.g. elders, non-residents, men and women etc.)
- Has information on FSC's dispute resolution processes been provided to First Nations Peoples with rights in the Management Unit?

This phase of the FPIC process outlined in Steps 4 to 7 connects the information-gathering and relationship-building process to formal agreement-making and monitoring. These steps outline best practices related to providing adequate time and support for community-based decisions and monitoring for continuous improvement. There is also a discussion of the potential of an ongoing FPIC process that has not yet resulted in a formal agreement with an affected First Nations community.

Step 4: Management Activities Revised and Affected First Nation's Communities Informed

Based on the outcomes of community engagement and research (e.g. mapping and impact assessments), The Organisation may decide to amend proposed management activities and inform communities how the proposed amendments ensure protection of their rights. It should be clear what, where and when forest management activities will take place and how they differ from the original plan presented in Step 1.

Relevant Indicators

3.2.1, 3.2.4, 3.5.2, 3.5.3, 6.3.3, 9.2.3, 10.9.4

Information to be shared may include, but is not limited to:

- The outcomes of the participatory assessments, such as mapping, social impact and High Conservation Value assessments;
- Safeguards and measures to identify, assess, analyse, prevent, avoid, mitigate, and remedy actual and potential negative social, human rights, economic, environmental, and heritage impacts, and a strategy to optimise positive impacts, including the sharing of benefits;

- Programmes and activities regarding workers' rights, occupational health and safety, gender equality, First Nations Peoples and local community relations, local economic and social development, land acquisition (if applicable), stakeholder engagement, and resolution of grievances, in line with The Organisation's policies and objectives for socially beneficial management;
- The existing regulatory framework (i.e., forestry laws), the rights of the community, and how these rights are affected by the planned forestry operation, such as surrendering of land rights;
- The different kinds of benefits and payments foreseen for the community;
- How the activities will be managed, i.e., who will make which decisions;
- The personnel likely to be involved in the execution of the proposed operation (including staff members of the Organisation, First Nation's People, private sector staff, research institutions, government employees, and others); and
- Social monitoring systems and other procedures.

The affected First Nations community is then given time and, where necessary, support to incorporate the results of the FPIC process into its internal decision-making structures. At this point, the First Nations community freely decides whether it wants to enter a formal agreement concerning the proposed management activities.

ACTIONS FOR CONSIDERATION

- Ensure all members of the certification team understand the benefit of culturally appropriate engagement with the affected First Nations community in all aspects of implementing the FSS.
- Present draft final proposal for consideration and negotiation towards a final FPIC agreement.
- Acknowledge and support the affected First Nations community's decision-making process.
- If the affected First Nations community decides not to engage in further negotiations, The Organisation respect this decision and may attempt to:
 - Understand the risks of proceeding with proposed activities affecting their rights, resources, lands, or Country,
 - Modify or postpone activities to avoid any impacts on their rights, and/or
 - Continue engagement with the affected First Nations community.

Step 5: Negotiate an Agreement with the Affected First Nations Community on the FPIC Proposal

The purpose of this step is to negotiate an agreement subject to the affected First Nations community's capacity to engage in a decision-making process. Negotiations may include agreements on the mechanism for demonstrating consent (e.g. written or oral agreement), dispute resolution mechanisms, mitigation measures, avoidance requirements and benefit sharing, if applicable, and monitoring and process verification. Affected First Nations communities are then provided the space and time to decide freely on the binding agreement and associated proposed forest management plan (or annual operational plan). If the affected First Nations community decides to negotiate a binding agreement, it is the responsibility of both The Organisation and the First Nations community. Consider early discussions on the following topics (some discussed in more detail in the following sections):

Relevant Indicators

3.2.1, 3.2.4, 3.3.1, 3.6.1, 3.6.2

- a) Negotiate economic conditions that affect operating decisions

- b) Establish an arrangement for renegotiation, renewal, termination, and resolving complaints, disputes and conflicts;
- c) Set up a participatory monitoring model;
- d) Ensure the affected First Nations community's decision on the agreement is free from coercion, manipulation or intimidation;
 - Measures to mitigate the negative and optimise the positive impacts;
 - Compensation for past, current, or future losses or damages associated with the management activities of The Organisation;
 - Benefit sharing (e.g., revenue, job opportunities, and co-management options);
 - Dispute resolution process;
 - Conditions that trigger a dispute resolution process; and
 - Treatment of new ideas arising during negotiations.

Establishing a Participatory Monitoring Model during this step, with a focus on the development of a longer-term negotiated FPIC agreement, will assist both parties during the evaluation in step 8. Participatory monitoring of the implementation of the FPIC agreement allows the parties to make improvements over time and where necessary.

ACTIONS FOR CONSIDERATION

- Do not rush negotiations and ensure the Process Agreement is implemented.
 - Take the time needed to negotiate in good faith and to the satisfaction of those affected.
 - Confirm the process by which representatives will conclude the negotiation process.
- Ensure there is a complete set of records for the negotiation process (e.g., meeting minutes); these documents may be co-developed.
- Set up a Participatory Monitoring Process. This step focuses on the development of a longer-term participatory monitoring model for the implementation of the negotiated FPIC Agreement reached as a result of the FPIC process. Monitoring the implementation of the FPIC agreement allows the parties to make improvements over time and where necessary.
- Identify and communicate to the affected First Nations community who within The Organisation will be responsible for monitoring the FPIC agreement.
- Distinguish between monitoring established in the Process Agreement and monitoring the implementation of the FPIC Agreement

Step 6: Verify and Formalise the Agreement

Verification is used to ensure the FPIC process has been carried out according to the objectives set out by The Organisation and the affected First Nations community early in the process (see step 2). It is also an important step in the monitoring of social and environmental impacts of management activities (see Criterion 8.2 and Step 7). Verification is considered best practice in international literature because, by including it as part of the FPIC process, The Organisation can evaluate its performance. The scope and nature of the verification process should be mutually agreed upon in advance as it will involve direct engagement with individuals within affected First Nations communities.

Relevant Indicators

3.1.2, 3.2.1, 3.3.1, 3.3.2, 3.6.1

If the verification reveals flaws in the FPIC process, The Organisation and the affected First Nation's community may decide to return to previous steps in the process and, if possible, correct or repair any weaknesses. If the

FPIC process is verified with no flaws, the binding agreement may be formalised by a mutually agreed mechanism (e.g. cultural ceremony or a combination of activities). The outcome of the decision, but not necessarily the content of the agreement, is made publicly available.

When there is no agreement:

If an agreement has not been reached, but there is continued support from the affected First Nations community for the FPIC process, The Organisation should demonstrate best efforts and persistent and sincere attempts to address the requirements of the relevant Indicators. The relationship with the affected First Nations community should improve through the implementation of culturally appropriate engagement. However, setbacks may occur that affect the FPIC process. These setbacks should be documented, and a plan prepared for how to address issues/disputes and repair the relationship.

If the affected First Nations community decides that they are unable to enter further discussions about proposed management activities, The Organisation should respect this decision and consider the legal and social risks of carrying out management activities that may affect or infringe upon claimed rights. Prior to halting engagement with The Organisation, the First Nations community is encouraged to communicate the nature of its concern to The Organisation and, where possible, seek solutions. The parties are encouraged to maintain informal communication and, if desired, establish and use a dispute resolution process as a means of continuing dialogue between the parties.

ACTIONS FOR CONSIDERATION

- Discuss the use of independent verification with the affected First Nations community, particularly in complex operating environments.
 - Mutual agreement is an essential provision for the engagement of an independent observer.
- Document and share independent verification results with the affected First Nations community as per the Process Agreement.
- Work to reach mutual agreement on the content and format of the FPIC Agreement.
- Maintain appropriate records of all agreements, including written accounts and audio or film records.
 - Make records available to the parties of the agreement in their preferred language and media formats.

Step 7: Implement and Monitor the Agreement

Monitoring is used to ensure the FPIC process, like other social and environmental requirements, has been carried out in conformity with the FSS. The agreement records the series of consent decisions required and agreed to by the affected First Nations community throughout the FPIC process.

Relevant Indicators

3.3.1, 3.3.2

The agreement may include:

- Details on how decisions will be made;
- Plans for how to engage the community and establish a protocol;
- A consultation protocol that includes a shared understanding of what, how, where and when consultation should take place;

- The types of operational activities (e.g. harvesting plan, road building) and strategic decisions (e.g. protected areas recommendations, High Conservation Values designations that may restrict use or access by affected First Nations community) that require agreement because they pose a threat to claimed rights;
- A capacity-building plan to support community participation in management planning with agreed terms and conditions;
- Research and monitoring plans related to rights-based impacts;
- A dispute resolution procedure; and
- A review and amendment procedure for the agreement. Once the agreement is formalised, implementation and monitoring should occur according to the terms and conditions.

The Organisation and the First Nations community should implement and jointly monitor the FPIC Agreement together. By honouring the FPIC Agreement and applying the tools and knowledge acquired during the FPIC process, all parties continue to invest in maintaining a good relationship. Representatives of the involved parties respect each other and continue to be accessible, willing, and able to find solutions after the initial agreement is established. A joint monitoring plan between the parties to the FPIC Agreement will offer opportunities for continuous improvement.

However, when political, economic or social change affects the forestry sector and/or First Nations community, management planning and the operational activities of The Organisation may need to be revisited.

When changes are beyond the control of The Organisation (e.g. oil and gas development permitting or capacity-related funding reductions by the government), and there is a setback in the process, the affected First Nations community may wish to renegotiate or withdraw their consent.

A flexible FPIC process will accommodate minor setbacks and allow for minor pauses in operations with little to no disruption to forest management activities. Larger, more fundamental changes to the circumstances of the Management Unit or policy environment may lead to the suspension (perhaps temporarily) of an FPIC agreement and process to allow the community time to adjust and re-evaluate the terms of engagement and agreement. The implementation of an agreed dispute resolution process is particularly important to mitigate these circumstances, protect the relationship between the parties, and prevent an abrupt withdrawal of either party from an agreement.

ACTIONS FOR CONSIDERATION

- Ensure monitoring is participatory and focuses on whether the FPIC Agreement and the associated management plans are being implemented as agreed.
 - Monitor the FPIC Agreement and make records available to all parties to the Agreement.
- Maintain relationships in good faith, understanding that at any time an affected First Nations community may give reason for withdrawing consent, thereby triggering the dispute resolution process.

Phase IV - Evaluate the FPIC Process

The final phase of the FPIC process is monitoring and evaluating it. Continuous improvement through engagement is critical to building and maintaining mutually respectful relationships between The Organisation and the affected First Nations community. Monitoring and then evaluating the success of the FPIC agreement implemented provides a structure for systematic collection and analysis of data/information to track progress towards achieving the objectives of the binding agreement. It allows for early detection of issues related to implementation and provides an information base for continuous improvement of the FPIC process.

Step 8: Evaluate and Review the Implementation of the FPIC Process

Review and evaluation, in the context of the FPIC process review, is the analysis of evidence against Indicators that have been chosen and recorded throughout the process.

Relevant Indicators

3.3.3, 3.5.3, 3.6.1, 8.1.1,
8.2.1, 8.2.2, 9.4.1

The purpose of the evaluation is to provide information on progress during the FPIC agreement's life and to identify any new information that may impact both parties, either positively or negatively.

After the identification of potential impacts, modifications to the agreement can be made if necessary. This is particularly important in an FPIC process that might have multiple agreements (e.g., Process agreement and FPIC agreement) with different goals and objectives. The affected First Nations community is involved in deciding who will do the data collection and how and when the periodic evaluation will take place.

An evaluation can be requested at any stage of the FPIC process so ideally, the monitoring plan discussed in phase 3 should be made in consideration of impromptu evaluations.

The benefits of an evaluation and review process include a record of the affected First Nations community's acceptance of the FPIC process (an important consideration in the FSS's Indicator 3.2.5), early identification of problems and solutions, maintenance of agreed standards of engagement, effective use of resources in a system that requires multiple monitoring activities (e.g. Principle 7), and identification of further opportunities for both parties.

During this step, The Organisation should expect that there may be a requirement to return to step 1 as new information arises to improve the agreement and adhere to the principles and criteria of the FSS.

ANNEX A UNDRIP AND ILO ARTICLES RELEVANT TO FSC STANDARDS

Relevant articles of the United Nations Declaration on the Rights of Indigenous Peoples (2007)

Relevant articles of the United Nations Declaration on the Rights of Indigenous Peoples (2007): Note: The following articles of the UN Declaration are related to the application of FPIC, but the UNDRIP should be read in its entirety to fully understand the meaning of FPIC.

Article 1: Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3: Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 7: (1) Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. (2) Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8: (1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the Free, Prior and Informed Consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11: (1) Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 12: (1) Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 17 (1) Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

(3) Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 20: (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. (2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21: (1) Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24: (1): Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26: (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

(2): Indigenous peoples have the right 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, as well as those which they have otherwise acquired.

Article 28: (1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their Free, Prior and Informed Consent.

(2): Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29: (1) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Article 31: (1) Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Article 32: (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources

Article 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 40: Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 45: Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46: (1) Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

Relevant articles of the ILO Convention 169 (1989)

Article 1: (1) This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

(2) Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Article 3: (1) Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

(2) No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4: (1) Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

(2) Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

Article 5: In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 7: (1) The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly.

Article 8: (1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

Article 14: (1) The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Article 15: (1) The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

Article 16: (1) Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

(2) Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

(3) Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

(4) When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

(5) Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17: (1) Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

(2) The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

(3) Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 20: (2) ('Governments') shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

(3) The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

Article 21: Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 23: (1) Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self reliance and development.

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ANNEX B GLOSSARY OF TERMS USED IN THIS GUIDANCE

Assessment: this term is not intended to refer to formal “environmental impact assessments” that are conducted under federal and provincial laws and regulations. “Assessment” is intended to mean technical assessments of the manner and extent to which proposed or undertaken management activities affect the environment or social condition of the community, directly and indirectly. The scope of the assessment is typically outlined at the start of the FPIC process so that the management activities have some well-defined boundaries.

Best Available Information: Data, facts, documents, expert opinions, traditional knowledge, and results of field surveys or consultations with stakeholders, including First Nations Peoples, that are most credible, accurate, complete, and/or pertinent and that can be obtained through reasonable effort and cost, subject to the scale and intensity of the management activities and the precautionary approach. [Source: Adapted from FSC-STD-60-004 V2-0]

Best Efforts: Persistent and sincere attempts by The Organisation to address a requirement. Best efforts are not always met with success, but to address the Indicators’ requirements for best efforts, evidence must be presented that continuing efforts by various means have been attempted. (Source: FSC Canada Technical Expert Panel)

Binding Agreement: A deal or pact, written or not, which is compulsory to its signatories and enforceable by law. Parties involved in the agreement do so freely and accept it voluntarily. (Source: (FSC-STD-60-004 V1-0)

Collective rights: Shared or joint rights held by a local community* that are not the mere aggregation of rights held individually by members of the group. (Source: Standard Development Group, based on Stanford Encyclopedia of Philosophy)

Complaint: The expression of dissatisfaction or concern by any person or Organisation presented to The Organisation relating to its management activities or its conformity with the FSC Principles and Criteria, where a response is expected. (Source: Adapted from FSC-STD-60-004 V1-0 definition of dispute and Merriam-Webster)

Culturally appropriate [mechanisms]: Means/approaches for outreach to target groups that are in harmony with the customs, values, sensitivities, and ways of life of the target audience (Source: FSC STD-60-004 V1-0)

Dispute: Represent a formal disagreement after the initial attempts to resolve a complaint have not been achieved. (Source: FSC Canada, based on Merriam-Webster)

Engagement: The process by which The Organisation communicates, consults and/or provides for the participation of interested and/or affected stakeholders and Indigenous Peoples, ensuring that their concerns, desires, expectations, needs, rights and opportunities are considered in the establishment, implementation and updating of the management plan. (Source: Adapted from FSC SDT-01-001 V5-0).

Expert: 1. An individual whose knowledge or skill is specialised and profound as the result of much practical or academic experience.

2. A recognised authority on a topic by virtue of the body of 35 relevant materials published on the topic, their stature within the professional community, and the broadly recognised accumulated related experience.

3. An individual who possesses a wealth of experience on a topic such as may be accumulated through practical means, including the accumulation of traditional knowledge. (Source: FSC Canada National Boreal Standard 2004)

First Nations Peoples/community: The following criteria may be used to identify First Nations Peoples:

- The key characteristics or criteria of self-identification as First Nations Person are that the individual identifies as a descendant of a First Nations group and they are acceptance by that group;
- Historical continuity with pre-colonial and/or pre-settler societies;
- Strong link to territories and surrounding natural resources;
- Distinct social, economic or political systems;
- Distinct language, culture and beliefs;
- Form non-dominant groups of society; and
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

Free, Prior, and Informed Consent (FPIC): a person or community can be said to have given consent to an action prior to its commencement, based upon a clear appreciation and understanding of the facts, implications and future consequences of that action, and the possession of all relevant facts at the time when consent is given. Free, prior and informed consent includes the right to grant, modify, withhold or withdraw approval. (Source: Based on the Preliminary working paper on the principle of Free, Prior and Informed Consent of Indigenous Peoples (...) (E/CN.4/Sub.2/AC.4/2004/4 8 July 2004) of the 22nd Session of the United Nations Commission on Human Rights, Sub-commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, 19–23 July 2004). (FSC-STD-60-004 V1-0)

Good Faith: The principle of good faith implies that the parties make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid delays in negotiations, respect concluded agreements, and give sufficient time to discuss and settle disputes. (Source: FSC Policy Motion 40/2017)

Lands and territories: For the purposes of the Principles and Criteria, these are lands or territories that Indigenous Peoples or local communities have traditionally owned or customarily used or occupied and where access to natural resources is vital to the sustainability of their cultures and livelihoods. (Source: Based on World Bank safeguard OP 4.10 Indigenous Peoples, section 16 (a). July 2005.) (FSC-STD-60-004 V1-0)

Legal: In accordance with primary legislation (national or local laws) or secondary legislation (subsidiary regulations, decrees, orders, etc.). 'Legal' also includes rule-based decisions made by legally competent agencies where such decisions flow directly and logically from the laws and regulations. Decisions made by legally competent agencies may not be legal if they do not flow directly and logically from the laws and regulations and if they are not rule-based but use administrative discretion.^[SEP] (Source: FSC-STD-01-001 V5-0).

Management activities: Any or all of the operations, processes or procedures associated with managing a forest, including, but not limited to: planning, consultation, harvesting, access construction and maintenance, silvicultural activities (planting, site preparation, tending), 36 monitoring, assessment, and reporting. (Source: FSC Canada National Boreal Standard 2004 - addition)

Management plan: The collection of documents, reports, records and maps that describe, justify and regulate the activities carried out by any manager, staff or Organisation within or in relation to the Management Unit, including statements of objectives and policies. (Source: FSC-STD-01-001 V5-0)

Management Unit: A spatial area or areas submitted for FSC certification with clearly defined boundaries managed to a set of explicit long-term management objectives that are expressed in a management plan. This area or areas include(s):

- all facilities and area(s) within or adjacent to this spatial area or areas under legal title or management control of, or operated by or on behalf of The Organisation, for the purpose of contributing to the management objectives; and
- all facilities and area(s) outside and not adjacent to this spatial area or areas and operated by or on behalf of The Organisation, solely for the purpose of contributing to the management objectives. (Source: FSC-STD-01-001 V5-0). (FSC-STD-60-004 V1-0)

Mutually Agreed: The parties undertake obligations to each other to do, or not to do, one or more actions to address legitimate concerns of individuals in a group decision-making process. Evidence of a mutual agreement can be oral or put in writing (and may be referred to as a contract). (Source: FSC Canada, based on <https://en.oxforddictionaries.com/definition/mutual> and <https://en.oxforddictionaries.com/definition/agree>)

The Organisation: The person or entity holding or applying for certification and therefore responsible for demonstrating compliance with the requirements upon which FSC certification is based. (Source: FSC-STD-01-001 V5-0).

Precautionary approach: An approach requiring that when the available information indicates that management activities pose a threat of severe or irreversible damage to the environment or a threat to human welfare, The Organisation will take explicit and effective measures to prevent the damage and avoid the risks to welfare, even when the scientific information is incomplete or inconclusive, and when the vulnerability and sensitivity of environmental values are uncertain. (Source: Based on Principle 15 of Rio Declaration on Environment and Development, 1992, and Wingspread Statement on the Precautionary Principle of the Wingspread Conference, 23–25 January 1998) (FSC-STD-60-004 V1-0)

Sphere of Influence: Professional associations with colleagues or businesses, agencies and Indigenous Peoples with whom individuals or businesses or agencies interact. When required by Indicators to work within one's sphere of influence, The Organisations and forest managers shall interact with their colleagues, other professionals, Indigenous Peoples, businesses and agencies, including government Ministries, Departments and other agencies, to achieve the Indicators' objectives. (Source: FSC Canada Species at Risk Technical Expert Panel)

Traditional Knowledge: Information, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. (Source: based on the definition by the World Intellectual Property Organisation (WIPO). Glossary definition as provided under Policy / Traditional Knowledge on the WIPO website). (FSC-STD-60-004 V1-0)

Traditional rights: Rights that result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit. (Source: FSC-STD-01-001 V4-0)

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