

Public and Stakeholder Consultations on Old-Growth Forest Policy for Nova Scotia



Executive Summary

Natural Resources and Renewables sought to conduct public and stakeholder consultations to inform the development of an **Old-Growth Forest Policy (OGF)**. This would be a provincial policy with the goal of protecting and conserving Nova Scotia's old-growth forests. Overall, the public, right holders and other stakeholders care very deeply about the forests and particularly the old-growth forests of Nova Scotia. There was generally overall support for the need for strong policies to conserve this uncommon ecosystem, although there were some differing views on how to achieve this.

To inform the development of this policy, consultations were conducted with targeted stakeholders, staff, and the Mi'kmaq prior to the development of a draft policy. After a new draft policy was developed, the department then conducted public, targeted, stakeholder input through the Minister's Advisory Committee and through Mi'kmaq consultation. The overall goal of the consultations was to increase government transparency in environmental decision-making, and to ensure that the new policy would take into consideration the thoughts, ideas, and concerns of Nova Scotians.

The **Independent Evaluation of Implementation of the Forest Practices Report for Nova Scotia (Lahey, 2021)** also provided some feedback on the draft OGF policy.

Feedback from Mi'kmaq and public stakeholders focused primarily on 10 central themes. In this report we identify these 10 themes and offer some response and identification of any changes made to the policy within that theme:

- 1) Removal of OGF areas and public input into removal decisions
- 2) Biodiversity goal
- 3) Area target amounts
- 4) OGF definition (ages, recent harvest, min. size)
- 5) Mi'kmaq input and values
- 6) Law vs. Policy
- 7) Activities near OGF
- 8) Private land
- 9) Accounting in protected areas
- 10) Penalties

Overall, the department has made several changes to the Old-Growth Forest Policy as a result of the valuable consultation feedback. We feel that the new old-growth policy is the leading example of old-growth forest conservation in North America, which will lead to real protection of this valuable ecosystem for Nova Scotians.

Introduction

Background

In 1999, the Nova Scotia Department of Natural Resources published an **Interim Old Forest Policy** (NSDNR, 1999), intended to clarify and consolidate the department's initiatives to identify and increase the representation and protection of the best old-growth on Crown land in support of long-term restoration in the province. This policy had an objective to protect a minimum of 8% of Crown land in each of the 39 ecodistricts defined by the Ecological Land Classification for Nova Scotia (Neily et al., 2013).

In 2012, the Department of Natural Resources created the **Old Forest Policy** (NSDNR, 2012), to build upon the initiatives of the Interim Old Forest Policy of 1999. This policy provided the province with a scientific foundation and approach for the conservation of old-growth forest. By 2020, the department had identified over 400,000 hectares (ha) of the best old-forest restoration opportunities in legally protected areas and set aside over 30,000 ha on Crown land for long-term protection.

In 2018, the president of the University of King's College, Dr. William Lahey, led **An Independent Review of Forest Practices in Nova Scotia**. He recommended that a new policy would strengthen the Government's commitment under an ecological

forestry approach that prioritizes the protection of biodiversity and enhancement of old-growth forest ecosystems.

Under the direction of the Old Forest Coordinator, the department is responsible for conducting continuous research to ensure the best management recommendations are supporting the policy and scoring old-growth forest plots.

About the Consultation

Consultation for the **Old-Growth Forest Policy (2022)** started with gathering proactive feedback and changes required for the 2012 Old Forest Policy from Natural Resources and Renewables staff. The next step consisted of engaging in targeted consultation with academic, advisory, and environmental non-government organizations (ENGOs), and industry to solicit meaningful input into the new policy and its application. Consultation with partner departments (Nova Scotia Environment, Transportation, and Energy and Mines), targeted stakeholders and broad public consultation took place between November 8th and December 9th, 2021. During the consultation phase, there were 128 emails received, with 35 of those emails having attachments with additional feedback.

Stakeholder, Mi'kmaq, and Public Feedback

This section summarizes feedback received from public submissions, stakeholder, and Mi'kmaq consultations, and has been organized into the following sections:

Removal of OGF areas

and public input into removal decisions

Feedback

We received a number of comments about removal provisions in the policy. There was concern that the Minister had too much discretion to remove many old-growth sites. There was concern about a perceived lack of public transparency, and requests for public consultation or an independent group to assess any proposed removal. Some were asking for more ease in trading or “swap out” parcels of old-forest restoration areas in zones with a large number of protected areas. There was also expressed concern that the policy create less or more opportunity to remove forest from the policy project because of natural disturbance or pest invasions.

Response and Change

This level of decision making for removal of old-growth areas in this new policy changed from regional resource managers (in the 2012 Policy) to the Minister. Given that all legislation for protected areas has removal clauses at just one level higher at Government in Council, the department feels that Ministerial approval for any removals is a high threshold for a policy. We agreed with the comments to add more public transparency for any removal of old-growth areas, and included language to require a 30-day public consultation period before their removal. We also clarified that removals are a rare and exceptional occurrence and are limited to provincial public interest. The department feels that defining this public interest in consultation will be an important part of transparency. We also added clarifying language about compensation if there were any removals. We feel this is one of the strongest compensation statements for ecosystem replacement in the country.

Biodiversity goals

Feedback

We heard a number of comments about needing a clear statement on biodiversity conservation as a key objective in the policy.

Response and Change

We revised the policy goal to now read, “To provide for the conservation of forest biodiversity and associated ecosystem services through the protection and restoration of old-growth forests in Nova Scotia.”

Area target goals

Feedback

We heard a few comments concerning the area-based and percentage-based target goals—some comments calling for an increase in the 8% target established in the 2012 policy, and others calling for the target to be a maximum numerical value. We also heard numerous comments calling for a list of ecodistricts that have not met the target and would require further restoration opportunities.

Response and Change

The initial area-based target (initiated over 20 years ago) was implemented to secure the conservation of old-growth forest restoration areas in ecodistricts that had poor protected area representation. Mossler et. al. (2003), recommended that old forest conservation include both protected areas and Crown land. Nova Scotia has committed to increasing protected areas to 20%. This could mean that up to 50% of the provincial land forest will be protected and will include old-growth and old-growth restoration forest areas. This policy commits to protecting 100% of the old-growth forest areas (known and unknown).

The department does provide an accounting of the old-forest policy outside of the policy in the **State of the Forest, Ecological Landscape Analysis** and on the **Old Forest Story Map**, and is committed in the new policy to improved monitoring and accounting, including biennial reporting on implementation of this Policy.

Old-growth forest definition

(ages, recent harvest, minimum size)

Feedback

We heard from commentors that 140 years is too old for Nova Scotia's deciduous forest types because of the province's ecological history and conditions, with most thinking the threshold age for some forest types was arbitrarily raised to 140. There were comments suggesting that all forests over 100 years old be classified as old-growth because Nova Scotia's forest resource inventories suggest that only 1–5% of forests in Nova Scotia meet the 100-year threshold. We also heard others questioning the amount of old-growth in the province.

We heard concerns about the exclusions of stands with recent forest harvest. Some addressed concerns that the definition of *recent* (i.e., 30-year time frame) was not long enough for the new ecological forestry prescriptions, while others felt that stands with some timber harvesting should still be considered old-growth. Regarding the minimal size for a forest area to be considered old-growth under the definition, we heard concerns that the minimum size was chosen arbitrarily, and it should be smaller than 1 ha to provide policy protection for smaller patches of OGF.

Response and Change

Only tolerant hardwood and hemlock dominated forest types were set at 140 years. All other forest types were set at 100, 110 or 125 years. These age-of-onset ages are based on scientific literature

and approaches used in other jurisdictions. Mossler et. al. (2003) definition of old-growth forest in Acadian forest region of Nova Scotia is 150 years.

Our current forest inventories are inadequate to make a confident calculation of the total old-growth forests in the province. The department is investing in research with LiDAR and other geospatial datasets and collaborating with Saint Mary's University to better estimate the amount of old-growth or primal forest remotely.

Dr. Malcolm Hunter, Jr. of the University of Maine, a top expert in conservation of forest biodiversity, conceptualizes OGF as relatively old and relatively undisturbed. The human signature in a forest area usually disintegrates over time, and for this policy 30 years was determined to be sufficient for most evidence of a silvicultural treatment to be difficult to discern.

Any recent forest harvesting—however light-touch or partial treatment—does not meet the conceptual definition of *relatively undisturbed*. However, old-growth forest on Crown land is in short supply, so although these areas are not by definition OGF, the policy now clarifies that recent partial harvests may be added to protection as old-growth forest restoration opportunities.

The 1 ha minimum forest area aligns with the minimum mapped unit in the provincial forest inventory. This is a reduction of the minimum area from 2 ha previously practiced by the department. Individual old trees (or groups of old trees) are encouraged to be left in forest harvest design and layout as part of prioritizing biodiversity as the site prescription management. Although these individual trees are important for biodiversity, the Old-Growth Forest Policy focuses on forests as compared to individual trees.

Note: The 1 ha minimum forest area aligns with the minimum mapped unit in the provincial forest inventory, and is a function of operational constraints. (*The area of 1 ha = circle with 57 m radius*)

Mi'kmaq input and values

Feedback

We heard public concerns around the need for mandatory discussions with the Mi'kmaq and the Office of L'nu Affairs on the proposed OGF policy, and the lack of a mandate in the policy to consult with Mi'kmaw communities on removing old-growth forest areas from the Policy Layer. We also heard from the public that the definition of old-growth forest should be using relevant components in *L'nui'suti* and how Mi'kmaw communities have participated in the policy with a *Two-eyed Seeing* (*Etuaptmumk*) approach.

Response and Change

The Government of Nova Scotia has consulted with Mi'kmaq on the Old-Growth Forest Policy.

Law vs. Policy

Feedback

From the public consultation, one of the concerns addressed the absence of regulations for protecting old-growth forest for private landowners. We also heard concerns that the policy should be made into law to provide stronger protection, as well as concerns on the extent to which provisions for protected areas are legally binding in the province.

Response and Change

There are no regulations listed in the policy for private land. The department is committed to working with private landowners to engage in voluntary initiatives to conserve their old-growth forest. This voluntary approach to conservation is consistent with the provincial **Biodiversity Act**.

The Independent Review of Forest Practices in Nova Scotia did not recommend that the department proceed with developing legislation to protect OGF in the province. The department feels that the Old-Growth Forest Policy works along with **Protected Areas** (and their legislation*) to effectively

conserve old-growth forest across Nova Scotia. For example, a number of areas over the last 15 years have been set aside as old-growth forest areas initially and then later designated as protected areas (e.g. Blue-Mountain Birch Cove Wilderness Area).

Having a policy for old-growth forests has several benefits. These include: being more adaptable to new science; having the ability to conserve small forest areas not typically considered for protected areas; serving more educational or recreational values; and focusing on inclusive and voluntarily work with private landowners.

Moreover, it is within the purview of the Minister of Natural Resources and Renewables, in the context of the Governor in Council for Nova Scotia, to revoke the status of a designated provincial park, so putting old-growth forest protection in law rather than policy does not, by itself, greatly increase the strength of protection.

Activities near OGF

Feedback

There were comments related to the activities that might take place near old-growth forest areas. Some respondents said that a 100 m buffer was too large, while others felt 100 m was too small. We also heard questions around how this number was chosen. Comments also included the need for clarification on what activities could take place in and around old-growth forest areas.

Response and Change

All activities that have a large footprint or ecological impacts on forests legally require a Crown approval or permit. The Policy now clarifies that commercial, industrial, and infrastructure-building activities (e.g., timber harvests, new road building, powerline construction, mine construction), are not permitted in old-growth forest areas or old-growth forest restoration areas.

When activities are proposed to take place *near* identified old-growth forest areas, a Regional Integrated Resources Management (IRM) Team

* Wilderness Protection Act, Special Places Protection Act, Provincial Parks Act

(i.e., biologists, foresters, other professionals) together with the Old Forest Coordinator will apply professional judgement and knowledge of local ecological circumstances to assess the expected consequences of the proposed activity on the Crown land ecosystems in question.

The nearer an activity is proposed to take place to an old-growth forest area—particularly within 100 m of its edge—the greater the level of scrutiny given by the IRM Team to its potential significant adverse effects. The IRM Team will make recommendations as part of the review process for activities near old-growth forest areas that are consistent with sustaining their ecological integrity.

Private land

Feedback

Regarding private land, we heard questions surrounding financial benefits/tax credits for private landowners conserving old-growth forest. We also received requests that the province should monitor and set targets for old-growth forest on private land. We heard questions surrounding whether old-growth forest on private land will be counted toward conservation targets.

Response and Change

The department is committed to working with private landowners to explore mechanisms of support and encouragement for the conservation of old-growth forest on private land (including, but not limited to, financial benefits)

In terms of targets for private land, the department believes it would be best to work with all willing landowners to conserve old-growth forest, instead of focusing on private-land conservation targets. Since the majority of forest land in Nova Scotia is private forest land, the department does believe that some form of accounting of the existence of old-growth forest on that land has merit. The department will work first on the incentives and mechanisms for protection of old-growth forest, and then explore the best way to account for conservation on private land.

Accounting in protected areas

Feedback

In the consultation we heard a number of concerns about the practice of counting old-growth forest restoration opportunities in protected areas. We also heard some concern about specific sites in protected areas that are considered old-growth forests.

Response and Change

The practice of accounting for biodiversity or ecosystems in and outside of protected areas is a common approach, and an internationally accepted practice for conservation Gap analysis. This is also the approach recommended by Mossler et. al. (2003) for old-growth conservation for Acadian forests. The new policy now takes a more conservative approach to forests in protected areas, including only stands that are of old-growth forest vegetation types (meaning late-successional forests). We have removed all known mapped tree farms or early successional forests. Compared to the accounting approach used under the 2012 Old Forest Policy, the 2022 policy accounts for 100,000 fewer hectares in protected areas. Accounting of old-growth restoration opportunities will continue with the best available GIS data at the time. For this accounting part of the policy, the department will work with Parks Canada, and Nova Scotia Environment and Climate Change to identify any forest areas on the ground that do not meet the criteria for old-growth forest restoration opportunities outlined in the policy.

Penalties

Feedback

Regarding implementing the Old-Growth Forest Policy, we heard many concerns about the lack of repercussions/fines.

Response and Change

The policy now better describes its authority under the **Crown Lands Act**. It is against the law (Crown Lands Act) to undertake forest operations or other development activities in areas where they are not permitted. The Policy does not need to create new enforcements.

References

- Lahey, W. 2018. An Independent Review of Forest Practices in Nova Scotia. Report to NS Department of Lands and Forestry, Halifax, NS. 70 pp.
- Lahey, W. 2021. Independent Evaluation of Implementation of the Forest Practices Report for Nova Scotia. Report to NS Department of Natural Resources and Renewables, Halifax, NS. 73 pp.
- Mosseler, A., Lynds, JA., and Major, JE. 2003. Old-growth forest of the Acadian Forest Region Environmental Reviews (Suppl. 1): S47–S77.
- NSDNR. 1999. Interim Old Forest Policy. NS Department of Natural Resources, Halifax, NS.
- Neily, P., Basquill, S., Quigley, E., Stewart, B., Keys, K. 2013. Forest Ecosystem Classification for Nova Scotia (2010). Part I: Vegetation Types, Part II: Soil Types, Part III: Ecosites. NS Department of Natural Resources, Renewable Resources Branch, Halifax, NS. Report FOR 2013–1. 452 pp.
novascotia.ca/natr/forestry/veg-types/
- NSDNR. 2012. Nova Scotia's Old Forest Policy. Report FOR 2012-4, NS Department of Natural Resources, Halifax, NS.