



Subject: **Domestic timber harvest for Aboriginal/Treaty rights holders**

Policy No.: **B-13**

Blue Book No.:

Effective Date: October 4, 2010

Date Revised: October 1, 2010, May 2010, Jan 2010; Dec 2004; July 2003; Nov 2002

1. POLICY OBJECTIVE:

This policy is intended to maintain the Crown's obligation to manage provincial timber resources while facilitating Aboriginal and Treaty rights holders access to timber for domestic use at no charge. This relationship will continue to evolve as the rights of Aboriginal people are identified in treaties or as defined by law.

Application: This policy applies to all First Nation and Métis persons that are members of a rights-bearing community.

2. POLICY STATEMENT:

Aboriginal or treaty rights holders wishing to harvest timber for personal use can apply for a no-fee personal use timber permit from the province. Permits are limited to the amount of wood the applicant actually needs for their personal use and cannot exceed 100 m³ per household per year. Approved domestic uses for Crown timber include fuel wood, docks, fences, furniture, homes and communal shelters required for expeditionary hunting/fishing/gathering.

In remote locations where it is difficult for individuals to obtain Personal Use Timber Permits, a blanket permit or non-commercial Community Allocation Timber Sale Agreement (TSA) may be issued to the community or Band Council. The community or Band Council would then be responsible to distribute the allocation amongst the members of the community. Permits are not required in the remote areas of the province where timber harvest is not managed. A non-commercial Community Allocation TSA may also be issued to a community for community projects in which a larger volume of timber is required.

Timber cut under a Personal Use Timber Permit or a non-commercial Community Allocation TSA is NOT allowed to be sold, traded or used for commercial purposes at any time.

3. DEFINITIONS:

Personal Use Timber Permit is defined by subsection 43.1(1) and 43.1(2) of the Forest Use and Management Regulation (227/88R) as a permit authorizing the harvest of not more than 100m³ for personal use, and may not be sold.

4. PROCEDURE:

Issuance of the Permit:

A Personal Use Timber Permit shall be issued to a member of a First Nation band or rights-bearing Métis community free of permit fees, taxes, timber dues, forest renewal charges and forest protection charges.

To obtain the Timber Permit free of any charges, a First Nation person must provide:

- (a) proof of Registered Indian Status at the time of issuance; and
- (b) their treaty number for recording in the fee section of the timber permit;

A Métis person must:

- (a) produce a valid Métis Harvester identification card issued by the Manitoba Métis Federation; or
- (b) obtain prior recognition by the Province.

Completing the Permit:

The Permit is to be completed in the usual manner including the volume, species, product, wood condition and area authorized for cutting. The applicant's Treaty #, Métis Harvester Card # or other recognized identifier is to be inserted in the Cash # box on the Permit. These permits are to be distributed as usual: White copy to operator, yellow copy to Natural Resource Officer, blue copy to Regional Office and the pink copy to accompany the Money Remittance Order being sent to Head Office in Winnipeg. The entry on the Money Remittance Order should indicate the Treaty number/Métis Harvester Card number/other recognizable identifier and a "nil" entry for dues.

Volume of Crown Timber Available:

Permits are limited to the amount of wood the applicant actually needs for their personal use and cannot exceed 100 m³ per household per year (per regulation 227/88R). In addition, permits may be limited to less than 100 m³ in a particular area because of restrictions determined by the Integrated Resource Management Team (IRMT) to ensure conservation and proper management of the timber resource (see "Locations" below).

Requests by an individual for timber to construct a home on land within their community can be accommodated. For Example: a three bedroom "modest home" of up to 1100 sq. feet (as defined by Canada Mortgage and Housing Corporation) would require about 50 cubic metres of timber.

Where a Crown Land Permit has been issued to construct a communal hunting cabin, a free Timber Permit may be issued pursuant to this policy for the volume required to construct. A timber source near the Crown Land Permit location should be selected.

Requests for larger volumes of timber to facilitate community housing projects or to build community structures, such as a community hall or church, may be accommodated on a case-by-case basis with involvement of the community, the region and the Forestry Branch. This may be authorized through a non-commercial Community Allocation TSA which is issued through head office.

Locations for Domestic Harvesting

The location for harvesting Crown timber for personal use can be requested by the permittee, or if no area is preferred, it can be designated by the issuing office. Generally, the location for harvesting Crown wood for personal use shall be granted as requested by the permittee. However, free permits for Métis rights-based harvesters may only be issued within harvesting areas recognized by the Province. **An aboriginal right is a constitutional right and access to Crown timber for domestic purposes generally supersedes other uses of the resource.** Consideration will also be given to the sustainability of the forest in a particular area and any applicable socio-economic impacts.

If an issuing District has a resource conservation concern for an area selected for harvest then they should take a timber permit application from the individual and forward it to the Regional Forester for review with the IRMT. Despite the nature of an aboriginal harvesting right, in order to ensure that conservation and important resource management requirements are met, regional IRMTs may direct aboriginal domestic harvesters to alternate suitable locations. Factors that the IRMT may consider to determine the suitability of an area for own-use timber harvest would be:

- Protection of prior investment in plantations, experimental plots and immature wood;
- Habitat and riparian zone protection;
- Conflicts with conservation uses including sensitive areas, ecological reserves, protected areas, or other conflicts with Crown uses of the land;
- Effects of creating new access or need to provide seasonal protection for an area;
- Wildfire hazard;
- Safety considerations.

Other Conditions

The permittee is subject to all the other terms and conditions (such as not cutting elm for fuelwood) as outlined in the permit.

Other Traditional Uses

Certain uses of forest products used incidentally for hunting, fishing, spiritual and ceremonial purposes can generally be achieved outside the permit system. For example, low volume (<5 m³) of small diameter green wood to construct sweat lodges, teepee and tent frames; dry wood for campfires; etc., do not require a permit.

5. POLICY AND LEGISLATION CROSS REFERENCE:

Under *The Forest Act*, the Crown is responsible for the management and allocation of Crown timber resources within the Province of Manitoba. All users of provincial Crown timber are required to obtain an authority to harvest prior to harvesting any Crown timber.

This policy is intended to be consistent with the Supreme Court of Canada's decision in *R v. Sappier; R v. Gray*, 2006; *R. v. Sundown*; and *R. v. Goodon*, 2009. Although these Court decisions do not apply directly to the use of timber by Manitoba Aboriginal people, Manitoba Conservation has developed this policy to implement Aboriginal rights for domestic harvest of timber that reflect the principles considered in these and other decisions.