

**BC Environmental Stewardship Initiative and Collaborative Stewardship Framework Forums:
Advisory Working Group Draft Recommendations
for the Renewal of the Provincial Mandate**

September 17, 2021

Background and Context

The BC Environmental Stewardship Initiative and Collaborative Stewardship Framework Forums (“the Forums”) are nearing the end of the current provincial term, which was extended for one year during the COVID19 pandemic. First Nations partners have been advocating for the renewal of the provincial mandate, either permanently or long-term in duration, and with both accompanying financial resources and expanded mandates for translating the shared and trusted data outcomes from the first phase to informing provincial and shared decision-making in the next phase.

Collaborative stewardship between the provincial government and Indigenous peoples is needed now more than ever. From the recent British Columbia (BC) Supreme Court decision for the Blueberry River First Nation, to the challenges around climate change, forestry management and old growth, emergent but incremental change is being called for in how lands, waters, and resources are co-managed in BC. The BC Environmental Stewardship Initiative and Collaborative Stewardship Framework are a proven model for collaborative stewardship supporting reconciliation and advancement of the *United Nations Declaration on the Rights of Indigenous Peoples*, and require a refreshed and expanded provincial mandate to achieve the full intended outcomes of shared and trusted data to inform decision-making and integrated collaborative co-management.

Early Forums (such as the Skeena Environmental Stewardship Initiative (ESI) established in 2015) were supported by an Enabling Agreement that focused primarily on gathering trusted data and building capacity, while later-established Forums (such as the S’ólh Téméxw Stewardship Alliance (STSA) Collaborative Stewardship Framework (CSF) Forum established in 2018) have shared decision-making objectives in their founding documents and agreements with the provincial government. Further, each of the ~65 First Nations in the Forums has varying degrees of shared decision-making through individual government-to-government agreements, or in some cases are just approaching the development of a shared decision-making framework.

With a broad range of governance structures, approaches, activities and outcomes within and being produced by each of the Forums, developing common objectives to inform a mandate renewal is a complex task. Thus, **the recommendations contained herein represent only those which are common enough to all Forums, without undermining or detracting from each Forum’s distinctiveness and the inherent sovereignty of each partner First Nation¹**. Inserting environmental data gathered in a new

¹ Where Forums have provided specific examples, they have been included in the sub-recommendations. Those examples may be applicable to other Forums, but not necessarily all of them. Further more detailed discussion at the Forum level may be required once a renewed mandate has been achieved.

more collaborative way with Indigenous peoples, into existing colonial provincial decision-making requires bold vision combined with practical solutions-orientated thinking.

Therefore, as the Advisory Working Group looks to make broad recommendations for fiscal year 2022/23 that may apply to all Forums on moving from data to decision-making, continued recognition of the spectrum of existing shared decision-making arrangements is required.

Draft Recommendations

1. **ESTABLISH LONG-TERM, COST-EFFECTIVE, EQUITABLY DISTRIBUTED FUNDING:** Establish secure, long-term, sustainable and cost-efficient funding to support the environmental stewardship initiative and collaborative stewardship forums.
 - a. Jointly develop funding levels with participating First Nations based on agreed upon criteria, including relevant factors such as number of First Nations participating in each Forum, size of land base/study area, level of activity or development, and complexity of outputs for the Forum. Ensure relative equitable distribution of funds amongst the Forums, while respecting unique structure and function of each Forum.
 - b. Explore the feasibility of linking incremental increased annual funding to updated revenue sharing policies, to ensure greater connection between shared and consent-based decision-making using ESI/CSF data and outputs and revenues generated from the land base. Broaden revenue sharing beyond forestry and major projects, explore other jurisdictions' approaches including new changes in Ontario² over the longer term depending on findings from the feasibility analysis.
 - c. Initiate and support more formal tri-lateral discussions with the federal government to continue to explore long-term federal support of ESI/CSF with stronger linkages to related federal initiatives, including Species at Risk Act, Fisheries and Oceans Act, Canadian Environmental Assessment Act, and Biodiversity, Protected Areas and Climate Change Targets.
2. **ENABLING AND INFORMING DECISION-MAKING:** Explore expanding existing mandates of each Forum (where required) to remove barriers to provide ESI/CSF data and Forum outputs into decision-making processes / models at the operational, strategic, and legislative levels. Support and commit to continued incremental and adaptive change aimed at improving provincial decision-making with trusted data gathered through the Forums.
 - a. Consider the BC Supreme Court decision *Yahey v. British Columbia* (2021 BCSC 128), and subsequent negotiations, with specific attention to:

² <https://www.ontario.ca/page/resource-revenue-sharing>

- i. Preventing ‘infringement [that] can be brought about from the whole of a regulatory regime’.³
 - ii. Support legally and publicly the data and methods of the ESI/CSF Forums as now recognized as “reliable and given weight by the court”.
 - iii. Ensure government legal counsel recognize the ‘soundness of the data assembled’ through RSEA and ESI/CSF as a whole.⁴
 - iv. Over the long-term and in consultation with First Nations leadership, establish meaningful and consensus-based thresholds for environmental values, incorporate ESI/CSF data and threshold analysis into provincial and shared decision-making, including at tenuring stages, strategic and land use planning, and policy.⁵
 - v. “Embed and appropriately use cumulative effects assessment methods in a land management framework that is designed to meet the objectives society has for values on the land.”⁶ This includes ensuring timely deadlines for completion, interim protection measures, and legally enforceable thresholds.⁷
- b. Engage with Chief Forester to remove any barriers and determine how best to incorporate ESI/CSF outcomes into Timber Supply Review processes. Draw from the Carrier Sekani First Nations (CSFN) experience in linking ESI/CSF data to Timber Supply Review processes in the Prince George and Mackenzie Timber Supply Areas, address barriers and legal change requirements, then share learnings more broadly with other Forums.
- c. Strengthen ‘immediate’ or ‘interim’ protection measures, where they exist in ESI/CSF Forums. Empower statutory decision-makers and operational referral staff to go beyond standard responses and legislative restrictions by developing a toolbox for staff when cumulative thresholds are being approached and/or there is a question about the ability to meaningfully practice a First Nations right. Provide statutory decision-makers with ESI/CSF outcomes, for consideration where relevant, into rationales for decisions and move beyond the current ‘transactional’ consultation.
- d. Consider re-alignment of jurisdictional boundaries to support improved decision making based on ESI/CSF assessment units (e.g. Timber Supply Areas). Ensure greater consistency between neighboring jurisdictions within the same ESI/CSF forum study area.

³ *Yahey v. British Columbia* (2021 BCSC 1287), para 521.

⁴ *Ibid* paras 899, 903, 913, 926.

⁵ *Ibid* paras 1779, 1780, 1783.

⁶ *Ibid* para 1595.

⁷ *Ibid* paras 1770, 1774.

- e. In line with the *Yahey v. British Columbia* decision, consider aligning landscape units (in land use planning and elsewhere) with territorial boundaries of First Nations. Where thresholds and biodiversity targets are being established, they may create significant imbalances between First Nations and hereditary-based clan territories, where some territories are completely degraded and at high risk, creating greater impacts to Aboriginal rights and title, yet the larger provincial landscape unit may be deemed lower risk overall.
 - f. Support and utilize ESI/CSF data platforms or online portals, where they exist and ensure staff and decision-makers have access to utilize portals in relevant decision-making within ESI/CSF study areas, and incorporate ESI/CSF data and guidance in their decision rationales. Build on knowledge gathered through COVID19 data management experience, and other natural resource portals within government to encourage continued use, maintenance, and effective data protocols for use of ESI/CSF data in provincial and shared/joint decision-making.
 - g. Adhere to highest levels of shared and joint decision-making, respecting the unique nature of each of the Forums, and each participating nations' individual autonomy and sovereignty. Where individual Forums achieve advancements in shared and joint decision-making, share those broadly with others and scale out and up where requested by participating nations.
 - h. Sanction and enable provincial staff involved in decision-making such as referral staff to participate in the development of ESI/CSF cumulative effects reporting tools and to strengthen quality and use of provincial data sets. Examples include integration of a human development layer in referrals, development of a highway-rail corridors risk assessment management implementation plan and establishment of real-time accidents and spills tracking systems.
 - i. Scope and strengthen regionally relevant co-governance structures to support the implementation of management actions identified by the ESI/CSF forums.
3. **UNDRIP & DRIPA IMPLEMENTATION:** Ensure ESI/CSF are aligning and evolving over time towards the objectives of implementing UNDRIP and to the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). Where appropriate, linking outcomes, priorities and workplans of the Forums to *DRIPA* Action Plans and reporting out annually.
- a. Ensure provincial recognition of each participating nation's vision of and position on *UNDRIP* implementation as equally important as *DRIPA* commitments.
 - b. Continue to ensure provincial recognition of both elected and hereditary leaders in the Forums, and support shared learnings between the Forums on ways to work collaboratively between different types of Indigenous governments.

- c. Explore, enable and strengthen cross-cultural learning and expression of First Nation worldviews in resource management and stewardship (e.g. respect and responsibility, balance and interconnectedness, intergenerational knowledge, giving and receiving).
- 4. JOINT PERFORMANCE EVALUATION:** Jointly develop with First Nation partners clear and comprehensive performance measures and targets to accurately assess success of the Forums in a collaborative and on-going manner.
- a. Incorporate First Nation objectives into performance measures, including the numbers of First Nation members who are trained and working in ESI/CSF. Support continued capacity building and preventing over-reliance on consultants.
 - b. Prevent and avoid 'perfunctory' and 'vanity' metrics in evaluating the success of ESI/CSF. Initial recommendations on Indigenous metrics include, but are not limited to: knowledge transfer, culture, languages, joint decision-making, economic justice, ecological restoration, and anti-racism advancements.
 - c. Co-develop performance measures at the individual Forum level and at the broader ESI/CSF level. Ensure broader level measures of success, as well as more operational and on-the-ground measures.
- 5. RELATIONSHIP SYNERGIES:** Direct and encourage provincial staff to continue to work across government ministries and with First Nations in a collaborative manner, while reducing duplication and encouraging harmonization and integration between similar provincial stewardship initiatives. Improve two-way education and understanding between agencies and First Nations, harmonizing Indigenous and Western knowledge.
- a. Engage with elected provincial leadership to support public education and awareness-raising within their constituencies.
 - b. Link new and continued funding requests to the federal government to on-going tri-lateral relationship building on key issues such as fisheries, species-at-risk, and climate change.
 - c. Renew and refresh ESI/CSF Governance Working Group (GWG) and Governance Working Group Executive (GWGE) Terms of Reference and membership to more accurately reflect and support a renewed provincial mandate.

Appendix One:

List of Advisory Working Group Participants

Alanya Smith, MIRR
Bruce Watkinson, Gitxaala (alternate Maya Paul)
Carley Coccola, EMLI
Dave Schaepe, Stó:lō/S'ólh Téméxw Stewardship Alliance (STSA)
David de Wit, Office of the Wet'suwet'en
Glen Williams, Gitanyow Hereditary Chiefs
Nathan Prince, McLeod Lake Indian Band
Ryan McKay, Saulteau First Nations
Lisa Helmer, FLNRO
Mark Graham, EMLI
Monica Perry, ENV
Sukh Kaeley, MIRR
Tara Marsden, Hlimoo Sustainable Solutions

Appendix Two:

Reference Documents

ESI: Investing in the Future (2018). Four Directions Management Services.
The ESI Progress Report (2019). Tom Lee et al.
Why is a Review of ESI and CSF Required? (2021). Doug Konkin.
ESI CSF Forum Engagement: Summary Report (2021). Four Directions Management Services.
Yahey v. British Columbia (2021 BCSC 128)

Appendix Three:

Process to Develop Draft Recommendations

