



First Nations Major Projects Coalition

Response to the BC EA Revitalization Discussion Paper

July 30, 2018

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Mr. Toledo,

On behalf of the First Nations Major Projects Coalition (the Coalition), I am pleased to submit our technical commentary in response to the BC Environmental Assessment *Discussion Paper*.

This submission captures feedback received directly from Coalition's member First Nations located in British Columbia and includes technical analysis from the Coalition's environmental stewardship team.

I hope your Ministry finds our response, and in particular, the comments from Coalition members useful during the policy development process.

Should you have any questions, please do not hesitate to get in touch with us.

Sincerely,



Niilo Edwards
Executive Director

- > GITSEGUKLA CHIEFS (2 CHIEFS)
- > LAKE BABINE NATION
- > CHESLATA CARRIER NATION
- > NADLEH WHUT'EN
- > NAK'AZDLI WHUT'EN
- > STELLAT'EN FIRST NATION
- > TAKLA LAKE FIRST NATION
- > KITSSELAS FIRST NATION
- > SKIN TYEE FIRST NATION
- > GITSEGUKLA FIRST NATION
- > SUSKWA CHIEFS (8 CHIEFS)
- > WET'SUWET'EN MATRILINEAL COALITION (5 CHIEFS)
- > BURNS LAKE BAND
- > YEKOCHE FIRST NATION
- > TAHLTAN CENTRAL GOVERNMENT
- > NAZKO FIRST NATION
- > LHEIDLIT'ENNEH FIRST NATION
- > CHEE XIAL TAAIKOU
- > FORT NELSON FIRST NATION
- > GITANYOW BAND COUNCIL
- > SAIK'UZ FIRST NATION
- > GITXSAN GOVT COMMISSION
- > T'KEMLUPS FIRST NATION
- > ISKUT BAND COUNCIL
- > KASKA DENE COUNCIL
- > ISKUT FIRST NATION
- > CONSEIL DAYLU DENA
- > KISPIOX BAND COUNCIL
- > CHIPPEWAS OF THE THAMES FIRST NATION
- > OKANAGAN INDIAN BAND

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Introduction

With this submission, the First Nations Major Projects Coalition (“the Coalition”) is providing its response to the proposed changes to the BC Environmental Assessment process outlined in the *Environmental Assessment Revitalization Discussion Paper* (“Discussion Paper”). The Coalition shares the Province’s commitment to transforming the practice of environmental assessment (“EA”) in British Columbia in a manner that advances the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (“UN Declaration”) and the Truth and Reconciliation (“TRC”) Calls to Action relevant to our member Nations’ inherent rights and jurisdictional authority to manage and benefit from the lands, waters and resources within our traditional territories.

The Coalition is a group of over 40 indigenous groups who have chosen to work together in relation to major resource projects proposed for their territories, to promote economic benefits maximization and minimize negative effects on lands and resources. The Coalition has created an Environmental Stewardship Framework (the Framework), based upon a broad Stewardship Vision, developed by member Nations to support each other in accessing the tools they may need in ways that make a difference in protecting lands, waters and way of life. The Coalition is also developing a Major Project Assessment Standard to assist our members in exercise their jurisdiction in the area of project assessment. The approach being taken by the Coalition for major project assessment is based on nine principles:

1. *First Nations Rights will be respected, maintained, and promoted.*
2. *First Nations will be fully engaged in assessment and decision-making for major projects, integrating their laws, norms and values.*
3. *First Nations stewardship and governance rights and responsibilities will be respected and adhered to throughout the major project life cycle.*
4. *Ecological values and services will be maintained and if necessary, restored.*
5. *Impacts to indigenous culture, socio-economic conditions, health, rights, title and traditional use will be properly assessed and managed to the satisfaction of the affected First Nations.*
6. *First Nations will have access to adequate resources, information, and time in order to inform their engagement and consent decisions.*
7. *The major project assessment scope and process will adhere to best practice and reflect First Nations values.*
8. *All projects will be assessed using a focus on total cumulative effects loading and best practice of cumulative effects assessment.*
9. *Adequate information will be provided to inform consent decisions made through First Nations’ “Lenses.”*

Our review of the Discussion Paper is grounded in these principles.

Overview

The response is built upon both the input of our membership through ongoing dialogue and feedback at a June 2018 Caucus meeting, and the knowledge and expertise of the Coalition's Environmental Stewardship Technical Team (ESTT).¹ We have organized our response to the Discussion Paper around over-arching themes condensed from the 20 themes (and approximately 50 related issues) that were contained in the Coalition's initial paper on "*Themes and Issues List for the BC EA Revitalization Process*", submitted to the EA in late April 2018. To that extent, this document builds from a summary of our initial recommendations, condensed into 10 over-arching themes:

1. EA requirements to be set out in legislation
2. Collaborative decision-making processes
3. BC - First Nations inter-jurisdictional cooperation
4. Criteria for reviewable projects
5. Capacity funding
6. Authority and relevance of Technical Working Group
7. Management of timelines
8. EA methodology
9. Monitoring, follow-up, enforcement and compliance
10. Independence and transparency of EA process

The focus of the Coalition's Response is on the extent to which our initial proposals have been incorporated into the Discussion Paper, and where gaps still exist, what additional legislative, regulation or policy measures are required to fully address these limitations. To avoid repetition, we have sought to avoid re-stating the full extent of the initial concerns, issues and proposed solutions contained in our previous submission of April 2018. For example, in the previous document, specific, detailed proposals related to methodology were put forth and have not been repeated herein.

Given the complementary nature of our two submissions, we request that they both be considered equally relevant to the current review of the BC EA process and for your consideration during the drafting of the Province's proposed forthcoming *Intentions Paper*.

In addition, we read with great interest the 33 recommendations made by the Environmental Assessment Advisory Committee ("EAAC") and note that not all of their recommendations have been clearly or fully adopted into the high-level revisioning in the Discussion Paper (to the EAO's credit, many have been adopted). We strongly recommend that the drafters of the *Intentions Paper* and subsequent legislation closely examine those EAAC recommendations, along with our own.

Our reading of the Discussion Paper has identified both multiple strengths and remaining gaps, which we turn our attentions to below.

¹ The ESTT provides support for member Nations in reviews and revisions to federal and provincial EA processes, policy and legislation.

Building on Strengths Identified in the Discussion Paper

At a high level, the Discussion Paper represents real potential for effective change that, if adopted and implemented, will advance reconciliation and result in increased certainty for all parties in future EA processes. Specifically, the Coalition strongly supports the adoption of a collaborative, shared decision-making approach, characterized by some of the following proposed elements of change:

- A focus on reconciliation with Indigenous Nations, and increased emphasis on assessing and protecting Indigenous human and legal rights and title
- A formally structured early engagement phase
- New approach and criteria for Reviewable Projects Regulation
- Requirement for an Assessment Plan prior to Application development
- Consensus-based decision gates (see below)
- Dispute resolution mechanism to resolve disagreement at decision gates
- Technical Working Group with decision-making authority at technical decision gates
- Iterative, collaborative approach to Application development
- Early review of the draft Application to ensure adequacy prior to review
- EA-specific (or overarching EA) Government-to-Government Agreements
- Provisions for cooperative EAs with recognized Indigenous jurisdictions

In particular, we see the decision-gate structure recommended both in the Environmental Assessment Advisory Committee’s (“EAAC”) report and the Discussion Paper as potentially a highly effective means for adapting the EA process to deliver on the promise of implementing the UN Declaration, and to ensure that First Nations’ values and appropriate methodologies are applied in provincial EAs going forward. That being said, we believe that the proposed model should be expanded to include all of the key milestones in the EA process. Furthermore, a distinction should be made between technical decisions that would be addressed at the Technical Working Group level, (such as Application Completeness) and political decisions at the leadership level (such as Readiness of a Project to proceed to an EA). With this in mind, we reiterate our support for the adoption of the decision-gate system, with the following minor modifications to the proposed structure:

Decision Gate	Timing/ Primary Decision Makers	Decision Elements and Key Documents
Readiness	At end of Early Engagement phase, before EA commencement; primarily a leadership level decision	Enough information to start EA? Should project go to EA? Is project “clearly irreconcilable with law or policy objectives” and should not proceed to assessment? Key documents: Initial and Full Project Description; Agreed upon summary of key issues raised during engagement.
Planning	End of Process Planning phase; primarily a technical level decision	Are all relevant issues scoped into the EA and is there agreement on the AIR scope? Before Application Development & Review is started. Key documents: Assessment Plan and AIR.

Decision Gate	Timing/ Primary Decision Makers	Decision Elements and Key Documents
Application Completeness	End of Application Development; primarily a technical level decision	Application "Readiness for Review". Key document: Application.
Application Sufficiency	End of Application Review; primarily a technical level decision	Have all critical EA/Rights questions been answered to proceed to assessment conclusions? Key documents: Proponent supplementary submissions; IR responses.
Effects Assessment Conclusions & Recommendation to Decision-Makers	End of drafting of assessment report, rights impact assessment and conditions; primarily a technical level decision	Do all members of the technical working group agree on the conclusions, conditions and recommendation to decision-makers? Key documents: Assessment Report, Rights Impact Assessment Report(s), Table of Conditions.
EA Decision	End of EA; leadership level decision	Should project be given EA Certificate, and under what conditions? Key documents: Final Recommendations Package for Decision-Makers
<i>Amendment of EA Certificate (as and when required)</i>	<i>Post-Certificate; leadership or technical level decision</i>	<i>Should Proponent be permitted to amend the Project Certificate, and if so, under what conditions?</i>

In this modified decision-gate structure, we have set out seven (7) decision gates in total, all of which are critical to ensuring that truly collaborative EA process that ensures a meaningful role for First Nations in decision-making. All gates must be subject to a time-bound alternative dispute resolution process as envisioned in the Discussion Paper.

Overall, the Coalition strongly supports the proposals in the Discussion Paper that facilitate the shift towards a collaborative model that advances the implementation of the UN Declaration by providing First Nations with a formal decision-making role at key decision gates throughout the EA process.

[Closing Gaps Identified from the Discussion Paper](#)

Our review of the Discussion Paper also has revealed areas where many of our questions and concerns about the existing BC EA process remain unanswered and/or where our proposed solutions do not appear to have been considered or incorporated. A summary list of priority remaining gaps includes but is not limited to:

- Criteria and measures for designating sub-threshold projects, Including authority of First Nations to elevate projects for consideration of whether they should be referred to EA
- Lack of clarity on an acceptable approach for cumulative effects assessments undertaken within Project-specific EA
- Timing, criteria and levels of capacity funding
- How the independence and impartiality of decision-making will be secured

- How adequacy of Proponent responsiveness to information requirements and information requests will be managed during the Application Review phase
- The management of timelines on a project-by-project basis
- The role and authority of the Technical Working Group
- The relationship between the Assessment Plan and the Application Information Requirements
- Collaborative development and drafting of EA guidance documents relevant to Indigenous nations
- How the critical dispute resolution process will function
- Role of First Nations in co-management of EA timelines
- How the Reviewable Projects Regulation will be revised and implemented on a co-management basis
- New enforcement measures to improve compliance to EA conditions
- Supplementary expert capacity within the process for assessing areas outside competency of supporting Ministries (e.g., socio-economic assessment, indigenous knowledge)

In the discussion that follows below, we have provided more details relevant to these gaps and, where applicable, have proposed measures needed for addressing them.

One of the most important remaining gaps relates to the question of what the Crown means when it says “decisions”, and who makes decisions that have power and meaning. Both Indigenous Nations’ decisions and those of the Minister are referred to in the Discussion Paper, but lack of clarity on the weight and finality of different “decisions” leaves open the possibility that Indigenous Nations’ decisions will not be afforded the same legal weight as that of the Minister. Indigenous Nations already have the right to file “independent conclusions” to the Minister in the existing system; any “decisions” for Indigenous Nations adopted into the new system must go far beyond this provision of what has often been treated as refusable advice by the Crown. Decisions are only decisions when they have power – i.e., they can be enforced; have ramifications. “Recognition of” Indigenous Nations’ decisions (pg. 26 of Discussion Paper) is not synonymous with what is required – respect for and adherence to Indigenous Nations’ decisions. This uncertainty needs to be dealt with prior to the drafting of the *Intentions Paper* and subsequent legislation.

Conclusion

It is our hope that the recommendations included in our detailed response below will meaningfully inform both the *Intentions Paper* and related consultations processes leading up to the drafting of new EA legislation, regulations and policies. We seek to continue the constructive dialogue undertaken to date with the Province towards building a new EA process reflective of the current shift towards Crown-First Nations co-management and collaboration.

For further information or clarification, please contact Niilo Edwards, Executive Director at (778) 875-0169 or email executivedirector@fnmpc.ca.

Detailed Coalition Response to Elements of BC’s EA Revitalization Discussion Paper

1. EA requirements to be set out in legislation

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>In consultation with First Nations and the public, develop a front end section of the legislation that identifies the purpose and objectives of the Act.</p>	<p>Partially; no details have been provided regarding the specific content of the “Purpose Statement”.</p> <p>It is possible that elements of the content requested by the Coalition for the Purpose Statement could be derived from the Introduction and Reconciliation sections of the Discussion Paper.</p>	<p>We reiterate our previous recommendation for a Purpose Statement that addresses the five commitments/intentions related to:</p> <ol style="list-style-type: none"> 1. Fostering environmental sustainability 2. Using project impact assessment to advance reconciliation, including full implementation of the UN Declaration (“UNDRIP”) 3. Supporting and cooperating with indigenous-led impact assessments, and integrating results of such assessments 4. Incorporation of Indigenous Knowledge together with scientific knowledge into assessments and decision-making 5. Meaningful participation of First Nations and public in EA.
<p>Joint decision-making – between the EAO and affected First Nations – must be enshrined in legislation, in the following areas:</p> <ol style="list-style-type: none"> 1. whether an EA is conducted; 	<p>Partially, through the proposed system of decision-gates with associated dispute resolution processes. However, no reference is made to how this would be included in legislation.</p>	<p>Legislation must set out the requirement for a decision-gate system to function, as per regulation, as part of the EA process. In addition, legislation should indicate the objective of reaching consensus on final project EA certificate.</p> <p>Details on the function of the expanded system of</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>2. how the EA process is conducted; and</p> <p>3. whether a proposed project is allowed to proceed and under what conditions.</p>		<p>decision-gates during an EA is proposed to be set out in regulation.</p>
<p>The Province should adopt a model similar to the new draft federal Impact Assessment Act, which sets out the kinds of environmental effects and factors that must be reviewed in a federal impact assessment (See IAA <i>Section 22(1), Factors to be Considered</i>; and <i>Section 2 Definitions, “effects within federal jurisdiction”</i>).</p>	<p>Partially; there is a very brief reference to including “key elements of the EA process” and “factors that must be considered in each EA”. However, no details are provided.</p>	<p>New legislation should specify all key components, decision-making processes and phases of the EA process, as well as factors that must be considered in each EA.</p> <p>The specific authority and function of the technical working group and decision-gates should be specified by regulation.</p>
<p>Regulations should be co-developed at the G2G level that set out standard minimum information requirements required across all impact assessments, but leave process flexibility to customize individual Project information requirements.</p> <p>The Coalition’s Major Project Assessment Standard will identify minimum expectations of Coalition members, and these expectations need to be adhered to in any EAs in our members’ territories.</p>	<p>No.</p>	<p>If regulations are to be developed specifying standard information requirements to apply across all impact assessments, the following conditions should apply:</p> <ol style="list-style-type: none"> 1. Standard information requirements will be co-developed with First Nations; 2. Standard information requirements constitute a starting point (i.e., the floor) of collaborative development of project-specific Application Information Requirements; 3. The Province will respect and require Proponents to adhere to any supplemental indigenous information requirements.
<p>There should be a legislative requirement for guidance to be</p>	<p>No.</p>	<p>New legislation should require the timely development of new guidance regarding the</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>developed that specifies the appropriate methodologies that must be followed for studies and assessment of effects that are considered in a final decision on a project.</p>	<p>There is reference to the development of guidance by the EAO, however, there is no reference to a legislative requirement. Further, it is unclear how the guidance would be developed, i.e., would it be developed unilaterally by EAO, or collaboratively with First Nations' organizations?</p>	<p>appropriate methodologies related to the assessment of effects.</p> <p>New guidance relevant to the First Nations should be developed collaboratively by EAO and First Nations to ensure appropriate methodologies are adopted (see discussion in Table #8 below).</p>
<p>A revised beneficitation assessment framework is critical for BC environmental assessment.</p> <p>The legislation itself needs to require consideration of impact equity and inter-generational equity as critical factors to be included in decision-making on reviewable projects.</p>	<p>No specific reference is made to a framework for assessing distribution of project benefits across societal groups and generations.</p>	<p>Legislation should refer to sustainability criteria, including impact equity and inter-generational equity as critical factors of consideration.</p> <p>Regulations should set out how the Minister should weigh each of the criteria/factors when making a decision; this must include heightened weight for indigenous rights-related criteria/factors; current process allows for excessive Ministerial discretion re: "public interest".</p> <p>Guidance documents on how impact equity and inter-generational equity will be assessed prior to decision-making are also required.</p>

QUOTES FROM MEMBERS:

"An assessment of the economic benefits and where they are going is important. Nothing is really benefiting the community members as a whole. The money and the jobs trickle down to the community members. It is important to understand the benefits as well, not just the environmental impacts."

“Need to understand the economic leakage so much of the money leaves the community, region and even the province.”

“Economic activity from major projects can really drive up the costs of living for lower middle class families, so we need to think about impacts on those people.”

“Indigenous language could be added to the “Culture” pillar and included in all assessments.”

“First Nations people should decide if a project needs to go through”.

“Joint decision making [is required]; we have to coexist”

“Decisions should be based on our traditional values”.

“Take direction from elders on decisions”.

“There needs to be a recognition of First Nation lawmaking jurisdiction...whose laws apply and whose standards are used?”

2. Collaborative Assessment and Decision-Making

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>Free, Prior and Informed Consent (“FPIC”) to be the new standard against which adequacy of consultation and accommodation are measured.</p> <p>The Province’s legislation needs to be in line with all requirements under all relevant clauses of the UN Declaration.</p>	<p>Partially, through the proposed system of decision-gates with associated ADR processes. Reference to assessing effects on indigenous human rights is helpful.</p> <p>However, few details are provided regarding implementation and no reference is made to the applicability of specific clauses from UNDRIP and how they will be integrated into BC EA.</p>	<p>The system of decision-gates should be entrenched in new legislation. Accompanying regulations should be developed in collaboration with First Nations to set out the implementation of this system.</p> <p>Regulations on what clauses of UNDRIP must be subject to assessment and guidance on how to assess impacts on indigenous human and legal rights.</p>
<p>During a legislated Early Engagement phase (prior to commencement of the EA), the province should work collaboratively with affected indigenous groups to identify the potential severity of impacts to Aboriginal or treaty rights and develop an appropriate process for meeting the Crown’s consultation and accommodation. This work will inform the activities that would be described in the Crown-First Nation consultation plan, also to be developed prior to commencement of the EA.</p>	<p>Yes.</p>	<p>Additional information is required on how the Early Engagement process will be triggered in legislation, how participation funding will be managed and how information-shared and decision-making will be coordinated between First Nations and the Province.</p>
<p>First Nations and the Province should collaborate in a joint review of the Application for evaluation purposes; right now it is largely a paper exchange in most cases. This would require some form of co-managed Indigenous-Crown</p>	<p>Partially; the Discussion Paper cites the recommendation of the EAAC to include a decision-gate related to the adequacy of the draft Application to proceed to the Application review phase.</p>	<p>As noted above, the decision-gate system should be set out in legislation and accompanying regulations. See comments in “decision gate” table above.</p> <p>This decision gate is the ideal point for a determination to be made about the adequacy of integration of TK</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>decision table on application completeness and adequacy, with actual First Nations decision-making powers alongside Crown.</p>		<p>into the Application; this should be one of the decision parameters set in regulation.</p>
<p>First Nations should have the authority to ‘stop the clock’ on the EA to ensure that sufficient time is provided to address important substantive issues related to project impacts, mitigations, monitoring and follow-up - <u>prior</u> to the submission of the final EA report to the Minister for decision.</p>	<p>Not directly, but if an adequate system of decision-gates is adopted into new legislation and regulations, disagreements over substantive issues would prevent the process from proceeding (in this case, to final decision on the EA Certificate) until they are resolved.</p>	<p>As noted above, the decision-gate system should be set out in legislation and accompanying regulations. The legislation and/or regulations need to clearly enshrine joint powers to “stop the EA clock”.</p>
<p>Collaborative impact assessments of impacts to Aboriginal and treaty rights by the Crown and individual affected First Nations should be made a standard requirement of all provincial EAs.</p>	<p>Yes, but as an option, not a requirement.</p>	<p>Legislation should indicate that the EAO should seek to collaborate with affected First Nations on project impacts to Aboriginal and treaty rights, and the process by which this occurs be subject to the Project-specific Collaboration Agreement agreed to by the parties. Water rights need to be recognized and integrated into this assessment.</p>
<p>Provisions should be made in the Act or associated regulations/policy that impact assessments on culture and traditional use will be “indigenous-driven”, and that Proponents are not to unilaterally assess the significance of their Projects on culture and traditional use.</p>	<p>Yes, but as an option, not a requirement.</p>	<p>Regulations specific to the assessment of effects on First Nations should be developed in collaboration with technical teams from First Nations organizations.</p>
<p>First Nations groups need direct engagement opportunities with Minister in cases where provincial officials and First Nations do not agree on the EA process outcome.</p>	<p>Not directly. However, reference to G2G agreements as a new “building block” of provincial EA holds the potential for G2G-level</p>	<p>A new regulation specific to the function of the decision-gate system should set out potential discussions at the G2G-level for resolving disagreement during the EA decision phase. This regulation could be</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
	discussions at the EA Decision phase.	aligned to work with negotiated G2G agreements that include provisions to address decision-making. Additional information on whether and how Indigenous nations can engage directly with the Minister should be integrated into legislation and regulation.

QUOTES FROM MEMBERS:

“Article 32 of the UNDRIP needs to be the legal standard”

“FPIC needs to be legislated so there is the backstop of the courts and existing legal cases.”

“The [indigenous] owners of the land should be doing the work to assess the impacts”.

“The community should set the engagement terms, and it should be more than one meeting / opportunity to provide input. “

“It is better when community members lead the engagement, not the proponent.”

“Water should be a pillar; Indigenous water laws and rights need to be incorporated.”

“Needs to be [full and proper assessment of] what are the actual impacts on rights and title.”

“The band office is often rushed. It [the EA process] needs to be slowed down and allow for the people who know and are responsible for the lands/areas in question to weigh in on the potential impacts and lay of the land.”

“How will First Nations Decision Making Framework(s) link into EA process decisions? BC Needs to look at an amalgamation of law making frameworks across BC”

“Haida Nation – BC reconciliation protocol is an example of provincial legislation that allows for joint decision making”

3. BC- First Nations inter-jurisdiction cooperation

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
Existing provisions in the BC EA Act related to treaty nations should be replaced with new provisions that recognize all First Nations as jurisdictions with whom the Minister may enter into agreements for the purposes of cooperative EAs.	No.	All indigenous governance organizations (hereditary and elected), not just Nations with comprehensive claims agreement and self-government agreements, to have ability to negotiate G2G agreements to function as jurisdictions.
Instead of assuming responsibility for federal EAs through a substituted process, the Province should focus on its own areas of expertise and jurisdiction (i.e., terrestrial environment, health, social and economic effects) during the conduct of cooperative EAs with other jurisdictions, such as Canada and First Nations, to ensure that complementary assessments are conducted in timely and efficient manner. Bringing in the expertise of other jurisdictions into a single, cooperative EA process results in better assessments, as well as better integrated planning and implementation of mitigation, monitoring and follow-up measures.	No.	If BC intends to pursue substitution, rather than cooperation, as a model for achieving ‘one project, one process’ assessments, the existing MOU between Canada and BC must be opened up to include meaningful opportunity for First Nations to provide consent.

QUOTES FROM MEMBERS:

“Substitution process is an issue because BC is in a conflict of interest as they don’t represent Indigenous interests.”

“There is a need for an EA, prior to an official EA to conduct preliminary assessments of cumulative impacts, trade-offs...how much is too much (thresholds)? Need resources for things like salmon habitat rehabilitation at a minimum ratio of 1:10 (impact: restoration)”

“When a project doesn’t get First Nation consent but goes ahead anyways, this is a violation of FPIC which has its consequences”

“What happens when a region is faced with cumulative impacts and research shows the proposed impacts exceed thresholds? What if impacts are contributing to species being added to the Federal Species at Risk Act i.e. Sockeye Salmon? Do the Federal and Provincial EA processes decide that no more projects can proceed?”

4. Criteria for Reviewable Projects

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>Revise the BC EA Act and Reviewable Projects Regulation to provide opportunities for affected First Nations to identify projects that merit direct Crown-First Nations consultation prior to a decision on whether to send a Project to EA, and identify factors beyond size metrics that should be considered (e.g., location, cultural values, complexity, public concern, degree of cumulative effects in area).</p>	<p>Partially; details on new criteria have not been clearly identified.</p>	<p>First Nations (including the Coalition) should be included in the drafting of new criteria for the Reviewable Projects Regulation. The regulation should include factors related to a project’s potential to contribute to cumulative effects under the five effects assessment pillars, plus indigenous (aboriginal and Treaty) rights. Provisions need to be in place for First Nations to “graduate” below threshold projects into the Early Planning Phase, for closer examination.</p>
<p>In consultation with First Nations, the Reviewable Projects Regulation should be reviewed to identify potential options for tiered levels of assessment (including model class screening assessments), that in consultation with affected First Nations, could be utilized for projects that are identified as not requiring a full EA.</p>	<p>No, the “tiering” of assessment types is not included.</p>	<p>See initial Coalition proposal at left; this needs to be addressed in legislation and/or regulation.</p>
<p>The criteria for exempting a project must place the onus upon the Proponent to provide adequate evidence that the proposed project does not have the <u>potential</u> to cause <i>adverse environmental, social, economic, cultural and health effects after mitigation</i>.</p>	<p>Not directly, but the question is partially addressed implicitly by requirement for First Nations’ consent at the Readiness Gate.</p>	<p>Provincial legislation and/or regulations should require any exemption decision to be at the G2G-level.</p>

QUOTES FROM MEMBERS:

“Many companies piece meal their projects so they do not have to go through an EA process”.

“Non-EA trigger projects vs. EA trigger projects...all activities and projects that contribute to cumulative impacts should be assessed regardless if they trigger the EA process or not i.e. Forestry activity impacts on the land base”

“In Indigenous led EA’s, there are reasons when and why we say no....we may be saying no to the proposed project as is, not necessarily no to the project; there is a need for a broader conversation about why we say no”

“Need a public hearing process for controversial projects – public and Indigenous interests could be increased if it didn’t just follow a paper process (i.e. inclusion of oral histories)”

“Currently no links to existing and/or proposed Territorial Land Use Planning processes...how to First Nation LUPs, the ESI and other initiatives play a role into the EA?”

5. EA Implementation/Capacity Funding

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>Indigenous funding requirements need to be appropriately tied to project size, complexity, and the depth and breadth of First Nations issues, among other contextual factors.</p> <p>In order to fully implement FPIC requirements under the UN Declaration, a combination of Crown finances and user-fees should be relied upon to create a jointly Crown-First Nations managed funding system to support First Nations to engage meaningfully in Project planning, assessment and decision-making.</p>	<p>No.</p>	<p>Certainty of reasonable levels of funding, under a new funding system, should be set out in legislation. Criteria for funding, including, but not limited to, project size, complexity, and the depth and breadth of First Nations issues, should be set out in regulations.</p> <p>Funding for EA-specific work also needs to be supplemented by meaningful capacity funding, through G2G agreements or some other means, that would provide the building blocks to enable First Nations to build capacity, governance and maintain the human resources required to meaningfully administer the proposed system. Meaningful funding should provide First Nations with the opportunity to build internal capacity.</p>
<p>The Province should consult with First Nations to determine what levels of funding would be required to fully participate. Affected First Nations often require at least 10-20 times what is presently received from the Province (estimated currently at \$15,000 total) for participation in review of major projects, in addition to funding required for studies.</p>	<p>No, but the EAO has indicated a willingness to explore substantial increases in participation/capacity funding.</p>	<p>Additional work is required to identify reasonable costing estimates. The Coalition looks forward to collaborating with the EAO in fall discussions aimed at identifying costs required to support meaningful First Nations’ participation in the new EA process.</p>
<p>Funding to be provided to First Nations to undertake studies themselves via cultural impact assessments, traditional use studies, and rights and title assessments that require separate</p>	<p>Not directly. First Nations-led studies are identified as “options” but no reference is made to how they would be supported.</p>	<p>Additional work is required to identify reasonable costing estimates. The Coalition looks forward to collaborating with the EAO in fall discussions aimed at identifying costs required to support meaningful First Nations’ participation in the new EA process.</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
collaborative processes between Crown and individual First Nations.		

QUOTES FROM MEMBERS:

“Having trained individuals within the Nation is super important as it what actually makes a big difference for the Nation. Government should fund that capacity. So many resources coming out of our territories and so there should be funding for First Nations capacity [building].”

“Funding needs to be independent”.

“Management of the funds should include representation from Indigenous communities”.

“Be careful to not to create much bureaucracy. Keep a regional focus [to the funding decision-making].”

“Funding from the province has been woefully inadequate.”

“We did get funding from the company and also from the EA office, which was very minimal. We got about \$10,000.”

“Capacity funding resources for First Nations needs to increase for us to be involved and informed”

“Funding is needed in order for early Government to Government and Nation to Nation planning sessions and dialogue to occur to start identifying which EA path is preferred, who is/isn’t consulted and who/when are decisions made”

6. Authority and Relevance of Technical Working Group

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>The BC EA Act should include a provision that allows for the establishment of a <i>quasi-independent</i> Technical Working Group (TWG) during the pre-commencement stage of the EA, comprised of technical staff from all levels of government (indigenous, provincial, federal, and municipal), empowered to undertake technical review of all EA-related documentation and provide formal conclusions related to the EA. The TWG would be responsible for reaching consensus-based decisions at key milestones [i.e., “decision gates”] during the EA, including but not limited to the following:</p> <ul style="list-style-type: none"> ● the final scope of assessment (including a Valued Component Selection Document and Application Information Requirement) ● additional information from proponents, modification of EA timelines, as required, to ensure completeness and sufficiency of information required for the assessment; and ● conclusions on the significance and/or acceptability of adverse effects. 	<p>Unclear. Although the proposed system of decision-gates, and the general shift towards “collaborative assessment”, strongly suggests that the TWG would have decision-making authority at a technical level, this is not clearly stated in the Discussion Paper. Moreover, the Discussion Paper refers to the TWG as the “<i>Technical Advisory Group</i>”.</p> <p>Our recommendation is that the TWG’s role and authority extend beyond advising, and have a decision-making role throughout the EA process on technical matters.</p>	<p>In the implementation of the decision-gate system, we view the leadership role of a technical working group as critical, and linked to all the specific decision gates through the EA. It is strongly recommended that the establishment of the quasi-independent authority of the Technical Working Group be recognized in legislation and described in regulation and operational policy guidance. First Nations organizations should be involved in the development of the relevant regulations and guidance.</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>The agenda of TWG meetings needs to be actively determined through input from TWG members, with the Proponent invited to provide information and respond to questions, but not typically to drive the agenda.</p>		
<p>Technical Working Group to be tasked with Peer Review of all science/data collection for EA, including identification of external experts for studies, as required.</p>	<p>Not directly, but the Discussion Paper proposes an “Early Review” process during the Application Development phase, as well as referencing a decision-gate for determining the readiness of a draft Application for working group review. The “peer review” function proposed by the Coalition for the TWG would appear to align well with this proposed Early Review activity. The “Assessment Plan” proposed by the EAO would also be ideal for the development of terms of reference for a TWG.</p>	<p>Regulations should set out that the scope for the TWG would include responsibilities related to the development of the Application Information Requirements (as well as for other phases and decision-gates). The Regulation would also stipulate that the TWGs terms of reference is to be developed during the Process Planning phase of the EA, and would constitute a key component of the Assessment Plan.</p>
<p>Institute a formal Information Request process with quality control applied on Proponent responses, including a Motion to Compel step for inadequate responses.</p>	<p>No.</p>	<p>It is critical that new legislation and regulations assign the TWG (and/or individual affected indigenous groups and the EAO) the authority to compel the Proponent to provide all information reasonably necessary to formulate conclusions on the effects of a Project.</p>

QUOTES FROM MEMBERS:

“[We need] joint-decision making, we have to co-exist”

“Decisions should be based on our traditional values”

“Take direction from elders on decisions”

“Joint planning is the way to go”

“There needs to be a strategic planning forum regarding all moving EA parts, phases and decision points”

“Need for Territorial Land Use Planning exercise (if non-existent) prior to EA to look at past, present and proposed impacts; need to look at the big picture; and link in cumulative impact assessments, threshold effects, ecosystem repairs to fix gaps”

“Government, proponents and First Nations have different perspectives on how you determine significant effects...collaboration on determining and agreeing on significant effects is needed”

“Need for Indigenous panel/ advisories to work through how First Nation information i.e. Traditional Knowledge is transmitted, received, used, integrated, weighed in the EA process...it needs to be done in a culturally appropriate way”

7. Management of Timelines

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>If timelines must remain, double length of Application Review phase to 360 days; alternatively, provide criteria-based mechanism whereby the Provincial agency will at the request of First Nations stop the EA clock.</p>	<p>Not directly, there is a lack of clarity on likely timelines for some elements of the new system (the Province has issued open questions to the public on this topic). However, there are strong indications that the Province will be looking to “bound” timelines for different phases of the assessment, a process that has been highly punitive to capacity-limited First Nations in the past and present.</p>	<p>Regulation or explicit legislative language is required for the expansion of legislated timelines and “stop the clock” mechanisms, expanded to include rights for affected indigenous nations to stop the process if information is too deficient.</p>
<p>In instances where multiple Project EA processes are proposed within the same timeframe and geographic area, the Crown should give special consideration to ensure that adequate time and resources are provided for meaningful involvement by affected First Nations.</p>	<p>No.</p>	<p>This is a critical concern that should be addressed in regulations.</p>
<p>Need greater involvement of Technical Working Group (“TWG”) in the selection of Valued Components (“VCs”). Each affected First Nation to be provided with opportunity and access to scoping sessions that provide for meaningful involvement in development of VCs. The actual mechanism for this may include seeking or requiring TWG consensus on VCs the Proponent must adopt, or where there is no consensus, making allowances for First Nations to issue their own supplemental information</p>	<p>Not directly, but the Discussion Paper proposes a collaborative approach to scoping where First Nations have a decision-making role in relation to the Assessment Plan.</p>	<p>Regulations pertaining to the role of the TWG in development of the scope of the EA are required. In addition, Regulations pertaining to the function of the decision-gates should include reference to scoping documentation as part of the Process Planning decision gate.</p> <p>Further, it is strongly recommended that the AIR constitute a component (i.e., an Annex) to the Assessment Plan.</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
requirements to gather information on VCs critical to their assessment needs.		

QUOTES FROM MEMBERS:

“The band office is often rushed. It [the EA process] needs to be slowed down and allow for the people who know and are responsible for the lands/areas in question to weigh in on the potential impacts and lay of the land.”

“There should be adequate notice and timelines, such as proposed in new system.”

“Adequate timelines are needed for getting the right, reliable baseline information”

8. EA Methodology

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>BC EAO should work with First Nations in the co- development of guidance for assessment of effects on Aboriginal peoples, including but not limited to the following areas:</p> <ul style="list-style-type: none"> i. Selection and assessment of indigenous-focused VCs and Indicators ii. Rights Impact Assessment iii. Disaggregation of Aboriginal vs. non-Aboriginal data and assessments iv. Mitigation methods, including terrestrial offsets and restoration v. Use a baseline and trend-over-time conditions assessment to establish vulnerability & resilience overall for affected First Nations vi. Assessment of semi-tangible and intangible culture vii. Assessment of cumulative effects related to mobile resources viii. multi-criteria “sufficiency of resources” for assessing effects on traditional use, culture, and rights 	<p>The Discussion Paper is largely quiet on the questions of EA methodology/best practice. However, from the perspective of the Coalition, methodological considerations play a defining role in determining the effectiveness of an EA process. The “devil is in the details”, and therefore it is of paramount importance that critical methodological gaps be addressed through a properly resourced and timeline process that revamps key operational policy guidance, and provided additional regulations where appropriate for ensuring the practice of high quality EA.</p>	<p>Create a legislative requirement for the EAO and First Nations organizations (e.g., through the establishment of an First Nations’ collaboration committee) to review and co-develop new guidance for the BC EA process.</p> <p>Legislation should expand scope of “most sensitive” human receptors to include women and girls, elders and people living on the socio-economic margins.</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<ul style="list-style-type: none"> ix. Assessment of impacts of ancillary aspects of the project that have yet to be geographically situated, including conditioning requirements in such instances x. Gender impact assessment xi. Benefits and impact equity xii. Alternatives assessment iii. Scope of project and scope of assessment (see further discussion below) iv. Incorporation of Indigenous Knowledge into assessments of biophysical VC, including in the development of thresholds and indicators xv. Cumulative effects assessment (see further discussion below) 		
<p>Scope of project to be subject to early scoping meetings with parties presenting their perspectives on what should be included in the scope, including upstream and downstream linked projects</p> <p>Scope of assessment to include direct, indirect and induced effects related to the proposed project</p>	No.	<p>Regulations related to the early planning phase should allow for scoping meetings upon request by affected indigenous groups or the TWG.</p> <p>Regulations on scope of project (built into early planning phase) should identify metrics to be used to determine whether projects are linked (e.g., dependence, linkage, proximity), and empower TWG or G2G structures to make this determination.</p> <p>The legislation should explicitly refer to assessment of direct, indirect and induced effects.</p>
<p>In relation to cumulative effects assessment, our primary</p>	<p>Not well developed. We are concerned the Discussion Paper is proposing to</p>	<p>Regulations and guidance should be developed to clearly indicate acceptable practice for cumulative</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>recommendation is that the Committee carefully consider the draft Principle (our Principle #8)² and associated Criteria developed by the Major Projects Coalition in relation to cumulative effects assessment during Project-specific EA, and find ways to integrate the spirit and intent of good cumulative effects assessment into the legislation, policy and guidance of the BC environmental assessment process.</p>	<p>substitute regional assessment work being conducted by FLNRO through CEF processes for project-specific CEA; this work will: 1. Not largely be complete in time to be well integrated into forthcoming Eas; 2. Not cover all areas of BC; and 3. May inform but cannot replace Proponents' responsibilities to assess the implications of their Project in the context of overall cumulative change.</p>	<p>effects assessment on a project-specific EA basis. Our Principle #8 lists a number of practitioner-accepted criteria for minimum required practices that have to date not been well integrated into BC EA.</p>

QUOTES FROM MEMBERS:

“Need to think about impacts on the most vulnerable: women and girls.”

“Historical effects: the polluted water and the trees, these things add up.”

“Develop a web based portal to make access to information easier”

“There is a need for information sharing, process requirements, and standards”

“First Nations expect to be involved in deciding what EA path is to be taken, the design of the assessment methodology, process standards/ expectations, information requirements, scope of project and scope of assessments”

“Come and talk to us (First Nations) first = provides efficiency, better planning and clarity on doing business in our Territory”

² See pgs. 19 and 20 of our April 26, 2018, “Initial Comments” document provided to the BC EAO.

9. Monitoring, Follow-up, Enforcement and Compliance

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
All BC EAO processes should include provisions/conditions/mechanisms for indigenous community environmental monitoring.	Yes, but few details provided.	Legislation at minimum should speak to the development of an appropriate mix of Proponent, Crown and indigenous community monitoring programs in each EA Certificate. The EAO should work with indigenous communities to set up appropriate minimum requirements for Project EA Certificates, including proponent funding requirements, authority (including stop work) of indigenous monitors, and adaptive management trigger development requirements.
Proponents should be required to demonstrate meaningful involvement of affected First Nations in development and implementation of all Environmental Management Plans, including environmental and compliance monitoring and follow-up programs.	Not specified.	This requirement should be hard-baked into Application Information Requirements.
First Nations' authorities should be empowered and funded to undertake compliance monitoring for projects within their territories.	Yes, but terminology used suggested a lesser role, without vested authority, i.e., "co-administer or participate in monitoring, compliance and enforcement programs".	Legislation and associated regulation should be co-developed with First Nations' organizations to authorize and empower First Nations governing authorities to operate as compliance officers within their territories.

QUOTES FROM MEMBERS:

"We are way too under-resourced on the compliance and enforcement side."

"[Currently], when there is a fine / penalty for noncompliance, the compensation goes to the Government, never to the First Nations who have to deal with the consequences."

"Post-certificate – who/how are we still involved? We should be leading the Environmental Monitoring, Compliance and Enforcement activities"

“Need rehabilitation measures at a 1:10 ratio at a minimum”

10. Independence and Transparency of EA Process

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>Adopt a 100% transparent and inclusive Public Registry where all EA documents filed by parties to the EA are accessible online and properly organized.</p> <p>Clear rules on the filing of confidential data should be included in EAO process; indigenous knowledge needs to be subject to proper protections, vetted fully with and agreed upon by the individual Nations.</p>	<p>Yes.</p>	<p>Regulations governing the management of the public registry should be developed in collaboration with First Nations.</p> <p>Regulations related to the integration of indigenous knowledge needs to include provisions that indigenous knowledge be subject to proper protections, vetted fully with and agreed upon by the individual Nations.</p>
<p>EAO should have mechanisms whereby large, complex or controversial Projects can have hearing processes.</p> <p>Require hearings for all major projects.</p>	<p>Yes, reference is made to potential for EAs to require public hearings as part of an Assessment Plan, but few details are provided.</p>	<p>During the Process Planning phase, First Nations should have the authority to incorporate public hearing requirements into the Assessment Plan.</p> <p>Regulations and guidance are required that ensure that Assessment Plans are consensus documents that secure EA process requirements through the entire course of the EA.</p> <p>Legislation needs to clarify who will constitute the panel at any “hearing”; who “hears” is critical. In addition, provisions for formal public hearings and less formal community hearings should be included in legislation or regulation.</p>

Initial Proposals by Coalition	Addressed by Discussion Paper?	Additional Information/Measures Required
<p>EAO to require the best available science and provide independent QA/QC. This may require adopting a model where the Provincial assessment agency (or the Technical Working Group, if so empowered) has the authority to hire independent science advisors whose responsibility is to report to all parties to the EA, including the Proponent, their independent findings. This non-allegiance lends credibility to their input.</p>	<p>Yes, but few details were provided. This is also a recommendation of the EAAC report.</p>	<p>New EA legislation and regulations should enable the Technical Working Group to hire independent science experts.</p>
<p>Provide adequate funding and staff to the Provincial assessment agency to ensure that the Crown has adequate in-house capacity to meaningfully participate in the evaluation of the environmental, social, economic, cultural and rights-related effects of a project.</p>	<p>No.</p>	<p>The EAO should examine potential funding models (i.e., cost recovery from proponents or through regional permitting costs) to ensure sufficient internal in-house expertise is on hand for evaluating the sufficiency of Proponent Applications, particularly in the areas of effects on the human environment.</p>

QUOTES FROM MEMBERS:

“There is also a confidential aspect to a lot of the data that is created by Indigenous communities. Protocols are required on how TK is handled and where the data is held.”