

**Briefing Document
First Nations Forestry Council**

BC Forestry Roundtable

**Non-timber Forest Resources
For First Nations in BC**

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Non-timber Forest Resources Briefing Note

Introduction	2
The Issue	2
Non-timber Forest Resources and Products.....	3
Case Study: Damage to timber from evergreen bough harvesting.....	5
The Concern	7
The Solution	8

Introduction

As First Nations, we believe there exists inseparable and eternal relationships between the cultural, social, spiritual, ceremonial, language and economical trade rights of our peoples, communities and families to the forests and lands. These relationships of place and forest resource utilization are distinctly unique among the culturally diverse mosaic of the First Nations in British Columbia.

A vibrant and healthy bio-diverse abundance of non-timber forest resources is necessary for the current and future vitality of First Nations. Aboriginal rights and title jurisdiction, shared decision making, and co-management of these resources must be extended into forest practices for the continued existence of First Nations unique historical and contemporary relationships and needs in forest management and utilization.

The Issue

First Nations have utilized forests for a variety of purposes that in contemporary times have been defined as non-timber forest resources (NTFR), non-timber forest products (NTFP) and/or cultural heritage resources (CHR) by forest resource managers, researchers and forest practitioners^{1, 2}.

The absence of legislative and policy direction that incorporates First Nations values and priorities and reflects our continuing rights regarding NTFR has resulted in a situation in which the cumulative impacts of timber management practices, industrial land use development, climate change, and promotion of NTFP as an economic diversification tool threatens resources within First Nation's traditional territories.

The neglect in conducting the due diligence required in recognizing aboriginal rights and title for the development of appropriate resource management instruments as it relates to NTFRs is exacerbated by the BC Provincial and Canadian Federal Government's investment into developing NTFPs as economic development drivers to meet increasing domestic and global marketplaces of natural health products, bio-chemicals, bio-fuels, carbon sequestration, pharmaceuticals, floral products, and wild foods.

By making investments into developing a forest industry sector economy that engages in a global market economies of scale, without working with First Nations in developing adequate management controls that incorporate Aboriginal interests and being mindful of cultural and governmental relationship protocols, the result has been the deliberate expansion of an unmanaged commercial industry sector in which the irreversible adverse impacts escalate and affects First Nations well-being and reliance upon these traditional foods, medicines and economic resources while also threatening the vibrant bio-diversity of the forest landscape.

More pointedly, it is our opinion that the Provincial and Federal Governments are failing in their duty to consult, accommodate and obtain our consent in the development of its policies. In the end, this circumstance will create a legal and regulatory uncertainty for flawed policies.

¹ BC *Forest Act* define these broad categories as "special forest products" and/or "botanical".

² Duchesne, L. and Wetzel, S. 2002. Managing timber and non-timber forest product resources in Canada's forests: Needs for integration and research. *Forestry Chronicle* 78(6):837-842; Turner, N and Cocksedge, W. 2001. Aboriginal Use of Non-Timber Forest Products in Northwestern North America: Applications and Issues. *Journal of Sustainable Forestry* 13(3/4): 31-57.

Non-timber Forest Resources and Products

Challenges of Definition

Non-timber Forest Resources and Products have been defined by various researchers, resource managers, and by domestic and global economic development initiatives. Originally intended to distinguish fibre or wood based products, from “non wood”, “non-fibre” or “non-timber” products, these definitions do not embody the context of First Nations’ communities nor the evolving industry and forest community economies. First Nations have had little to no involvement in defining these terms and, as a result, they do not reflect the integrity of our cultures, practices and traditions.

The distinction, for the purposes of this Briefing Note, between non-timber forest resources (NTFRs) and non-timber forest products (NTFPs) is that the “resources” are perceived to exist in the forest and the “products” are the derived benefits from forest resource management practices.

Further complicating the definition of what is a non-timber resource or product is that under current Ministry of Forests and Range interpretations such resources are considered cultural heritage resources if there is not a commercial utilization of the resource and that are of continuing importance to a First Nation. The management of these cultural resources are required in Forest Stewardship Plan (FSP) submissions for referral yet do not require a long term management objective beyond the FSP management strategies and outcomes.

Community Forest Tenures provide a cursory nod at non-timber resource management objectives but provide no specific long-term management outcomes to meet the generational needs of First Nations. Nor does this tenure option account for the management of the abundance of species (biodiversity) deemed to be of a potentially higher management concern to affected First Nations. This tenure is also inadequate for the protection of Aboriginal rights and title interests in non-timber resources as not every First Nation has access to this option. Those that do must work in partnership with stakeholders with varying interests and capacities and the license does not cover the entire traditional territory in which First Nations members continue their cultural practices, including economic development. Further to this, traditional land-use systems are not addressed in any existing legislation.

Neither the forest planning processes nor Community Forest License provides a mechanism to prohibit commercial exploitation of these resources should such development conflict with aboriginal rights and title. As decision-making models, the existing forest development practice does not accommodate for an appropriate range of management options such as culturally appropriate development strategies and landscape distribution sensitivities (e.g. local scarcity).

Cultural competency related to the definition of non-timber forest resources and products outside of a First Nations context can be seen when applying the existing definitions to the example of a First Nations carved cedar mask. On one hand the mask can be viewed as a forest product and on the other as a non-timber forest product and/or cultural heritage resource. A cedar block when used to make the mask, is defined in the *BC Forest Act* as a “special forest product.” This example illustrates that the existing definitional challenge exacerbates complexities when trying to manage forest resource options for multiple generations of First Nations individuals and communities, whether for cultural use or engagement in historical and/or contemporary trade economies.

Emerging interests in bio-energy and/or bio-chemical processes utilizing wood derivatives further expand the scope of non-timber resource utilization. A case in point is the distillation of wood chips and/or conifer needles for making essential oils. This product is viewed as non-timber, although the relationship between timber management (in situ resource) and fibre utilization is clearly linked. The non wood or non-timber construct makes it difficult to distinguish between other uses of aboriginal traditional territories such as wilderness retreats, campgrounds, hiking, hunting, fishing, bird watching or other forest utilizations captured under the broader term of eco-tourism.

The cultural context of non-timber resources may include values such as spiritual sites, medicinal and traditional foods gathering areas or social health aspects of recreation or physical fitness. Traditional foods and medicines subjugated to a cultural resource management objective may also be subject to a NTFP development initiative that creates a market for raw products therefore increasing the likelihood of exploitation of certain species for the natural health foods or health products markets.

A conceptual framework must be developed that adequately addresses the unique values and cultural relationships for each First Nation. This framework must incorporate First Nations' self-determined definitions of non-timber forest resources that are understood and acknowledged in the management practices in the context of the First Nations meaning and relationship. Science based methodologies and standards, although useful to the extent these sciences are compatible with community values, goals, decision making and traditional ecological knowledge, have limited impact on informing policy and practice that incorporates multiple resource values with societal relationships and functions that enable communities to co-exist and depend upon forested lands.

The continued assertion that the complexity of defining non-timber forest resources, and thus management, create institutional bias and reluctance to work with First Nations to develop an appropriate policy framework that provides for resource shared decision making and co-management planning that includes resources that have both a cultural and/or economic basis.

Non-timber Forest Resource Management

The absence of a shared decision-making framework that incorporates a wide range of forest resources has resulted in the development of industry sectors that have the benefit of commercial use of traditional territories without adequate consultation and accommodation. First Nations are therefore not fully informed of the extent of the non-timber commercial development. This not only deprives the First Nations of the ability to meaningfully and knowledgeably manage resources to meet continuing and future cultural resource needs, but also deprives the First Nations of being able to make informed decisions regarding potential adverse impacts in their lands or to be able to make informed decisions as to the economic viability of developing socio-economic benefits for First Nations communities.

By refusing to recognize and acknowledge through legislation and regulatory regimes that aboriginal rights and title intersect with non-timber resource extraction and management the Crown has enabled the non-timber industry to escape the referral processes required of all other resource sectors.. It is in this way that provincial forestry legislation fails to prevent infringement on Aboriginal rights and in some cases deny the exercise of those rights in relation to the use of non-timber forest resources, Concomitantly, the lack of reconciliation on this important issue limits the ability of First Nations' businesses to benefit from market opportunities and to potentially co-manage resources for the higher values derived from long-term strategic forest resource management.

Case Study: Damage to timber from evergreen bough harvesting

In 2005 the Compliance and Enforcement Branch of the Ministry of Forests and Range's South Island Forest District (SIFD) on Vancouver Island documented damage to young standing trees from the harvesting of Christmas season evergreen boughs for the floral industry. This problem had been identified in other forest districts and was unsuccessfully addressed at various times in the past ten years via trial permit systems.

Although pruning of young trees is considered a best practice standard for stand tending, the pruning techniques utilized by the NTFP industry documented by the SIFD damaged the value of future timber in that stand. In this particular case, the pruning techniques employed killed some of trees that had been harvested for the Christmas greenery bough market.

When viewed through the lens of integrative management, the intentional management for non-timber resources works in conjunction with forest management best practices, i.e. the pruning of trees (and eventual spacing of these free growth stands) provides outcomes not only for economic opportunity but also works towards a longer term goal of managing stands that are more productive while increasing the abundance of additional non-timber resources such as berries, mushrooms, medicinals, and other traditional foods.

By recognizing non timber management as a forest management practice the benefits beyond timber value enhancement would also include the potentials for meeting future cultural resource needs, such as providing better cedar trees for cultural uses such as cedar bark and a clear wood cedar supply for canoes and carvings.

The policy and legislative frameworks for integrating such management regimes to meet long term objectives that would directly benefit current and future First Nations needs are lacking.

The SIFD, in collaboration with a Tseshaht tribal member owned business First Nations Wildcrafters, BC, is moving forward with a pilot project that attempts to integrate multiple-use management practices. This project also works towards developing best practice standards for training NTFP harvesters in proper pruning techniques.

This pilot, although moving a step towards integrating non-timber management, does not address the underlying issues associated with the shared decision making and/or co-management of lands and resources at the scale of traditional territories and begs the larger question to be answered as to whether or not First Nations have an affirmative right to pro-actively manage non-timber forest resources to meet current and future community needs.

Forest Practices

Integrating NTFR objectives into forest practices would increase the economic yield per hectare of forest lands in sites suitable for intensive non-timber resource management. This integrated management outcome would have ancillary benefits for not only economic diversification of First Nations forest communities but also provide for local food and medicinal security, a continuum for language and cultural practices, and enhancing forest health and biodiversity. This type of management is extremely compatible with Ecosystem Based Management models and would provide for the application of aboriginal rights and title interests to land as relates to co-management of forests for future generations needs.

NTFR and NTFP Research

There has, and continues to be, strong support of NTFR and NTFP research in BC. A case in point is the support of the BC Forest Investment Account (FIA) Forest Sciences Program (FSP) for research on NTFRs. However, the majority of the research funding on the topic of NTFR and NTFPs under this program has been allocated to one institution through a competitive proposal process. As First Nation and First Nation organizations work towards collaborative policy development frameworks on topics of mutual interest, there is a need to strive for a balanced view approach to research informing these processes.

In order to achieve balance, space must be created for Aboriginal researchers to develop and implement methodologies that 1) recognize and are respectful of the relationship First Nations have with NTFRs and 2) meet the needs of First Nation businesses and organizations working with government and industry to resolve the existing policy/regulatory gap that exists in BC legislation.

The Non-timber Forest Product Economy

First Nations have always engaged in a NTFP economy. The harvesting of forest resources for edibles, medicinals, structural, transportation, and cultural integrity uses has existed as part of the trade economy prior to contact and continued to be exercised and utilized to the current day. What has changed, and is termed as the “emerging” non-timber economic development tool, is the awareness of the non First Nations communities of the wealth of resources in the First Nations traditional territories that have found a domestic and global market.

The result of Crown investment into research directed towards creating economic diversification has to a large degree contributed to expansion of competition for forest resources to meet these market demands. Research focused on sustainable yields and/or market development of NTFPs has not taken into account the cumulative impacts of the bio-system as a whole nor the potentials for adverse socio-economic impacts upon First Nations communities whom depend upon these same resources for sustaining their livelihoods and traditional protocols.

By creating a “cart before the horse” approach our nations interests have not been addressed nor protected when research and feasibility studies have fuelled the fire for market demands upon our resources without a clear consent and demonstrable benefit to the First Nations themselves or acknowledgement of the aboriginal rights and title, shared decision making, and co-management interests.

Economic benefit and market opportunities exist and may be particularly well suited for First Nations communities who choose to engage in such economic diversification and/or choose to integrate such considerations into land use plans and/or economic development strategies. First Nations, in the current policy and practice scenario, are excluded from the ability to be represent their own rights, interests, hopes, aspirations and concerns at the planning and regulatory level where higher level policy development and/or land use planning takes place.

Being left out of the loop on the higher level planning also creates a situation where funding for studies, pilot programs and/or industry development initiatives flows directly to entities not connected to BC First Nations. As a result, capacity building is accomplished outside of First Nation communities which are themselves the most impacted by and the least likely to derive the greatest benefit from industry sector development and research. This fuels the “genie out of the bottle” dynamics of exploitation of resources outpacing First Nations aboriginal rights and title and enjoyment of these resources and development opportunities.

The Concern

1. Provincial forestry legislation fails to prevent infringement on Aboriginal rights and title in relation to the use of non-timber forest resources,

British Columbia's timber orientated legislative regime is inadequate for ensuring that Aboriginal rights are not infringed upon or denied during the development of non-timber forest resources (*Tsilhqot'in Nation vs British Columbia*). A regulatory regime to address the procedural requirements associated with the management of NTFRs and NTFPs does not exist. This severely limits the ability of government and First Nations to negotiate appropriate accommodation measures and reconciliation processes. As long as these policy gaps exist questions remain about how the province intends to ensure that First Nations are meaningfully engaged in and benefiting from the emerging market of non-timber forest products while protecting the access to and abundance of cultural resources.

2. First Nations must be a part of Non-timber Forest Resource Management Discussions, Decision Making and Management Roles

As First Nations, we have been largely left out of the development of NTFR and NTFP discussions, decision-making and resource management roles. This is unacceptable and actionable. As First Nations, we have rights and entitlements to a significant portion of the land base in BC, as has been shown in precedent setting court cases such as *Tsilhqot'in Nation vs. British Columbia*. The BC Supreme Court affirmed that the Xeni Gwet'in have aboriginal rights, titles and interests to over half of their territory. We believe that this compels the province as it moves forward with its forest resource strategies to ensure that our nations are significant players in emerging non-timber forest product markets and active as partners in decision making of non-timber forest resource management.

3. Uncertainty from lack of and conflicting regulatory framework

To develop any resource based economy forest management tools must be in place to assess and monitor harvested yields of raw material as well as being able to manage for future yields. The absence of decision tools denies First Nations the ability to manage for commercial economies of scale on a long term basis. This prevents the due diligence of business management to be done that is required for determining investments, human and forest resources development, processing and manufacturing equipment investment needs, and marketing analysis and strategies that are needed for a successful economic and socially sustainable non-timber enterprise.

Crown policies that mandate the management of cultural heritage resources while making no provisions for the actual management of those same resources that are often also used for commercial purposes, creates conflict amongst interest parties. The management goals of one cannot be met without developing shared decision making and co-management mechanisms that encompass all commercial impacts upon these resources.

4. NTFR and NTFP monitoring and must be developed in a timely manner

As First Nations forest community economies are displaced by a variety of forces (e.g. the climate change seen in the Mountain Pine Beetle epidemic, the decline in fisheries, mills and logging), the need to assess and manage non-timber resources to and develop protective measures as well as marketable products is paramount for First Nations who may choose to engage in this economic forest diversification sector.

The continued structure of commercial utilization of non-timber resources in First Nations traditional lands and territories with no regulatory or policy framework to protect and affirmatively acknowledge aboriginal rights and title interests or that provides meaningful economic participation and demonstrable benefits for First Nations must be addressed.

The Solution

In the short-term (12 months):

- Recognition that First Nations retain rights, title and interests to one hundred percent of non timber resource values within our respective Traditional Territories.
- Provide funding for First Nations to lead the development of cross-cultural competencies regarding the use of NTFRs by First Nations people.
- Facilitate the inclusion of First Nations representatives in all provincially focused NTFR and NTFP research and regulatory discussions.
- Set aside research funding for the exclusive use of First Nations to self-determine research needs as they relate to the development of NTFRs.
- Expand the scope of resource based accommodation agreements to include the management of NTFRs and provide mechanisms for the inclusion of NTFR management in existing resource-based accommodation agreements.
- Assist First Nations with a provision of funds for the development of regional NTFR discussion forums that would facilitate extension and learning opportunities.
- Make long term, area-based forest tenures available to First Nations to create greater investment certainty in the non-timber forest product sector.

In the long-term (13-24 months):

- Facilitate the co-development of a regulatory regime between government and First Nations that recognizes, reconciles and prioritizes Aboriginal rights with respect to access and use of NTFRs within First Nation traditional territories.
- Create access and benefit sharing agreements based on shared decision making authority.
- Funds ought to be made available to First Nations to explore NTFR harvesting certification options and means of monitoring harvest impacts appropriate to First Nations management concerns.