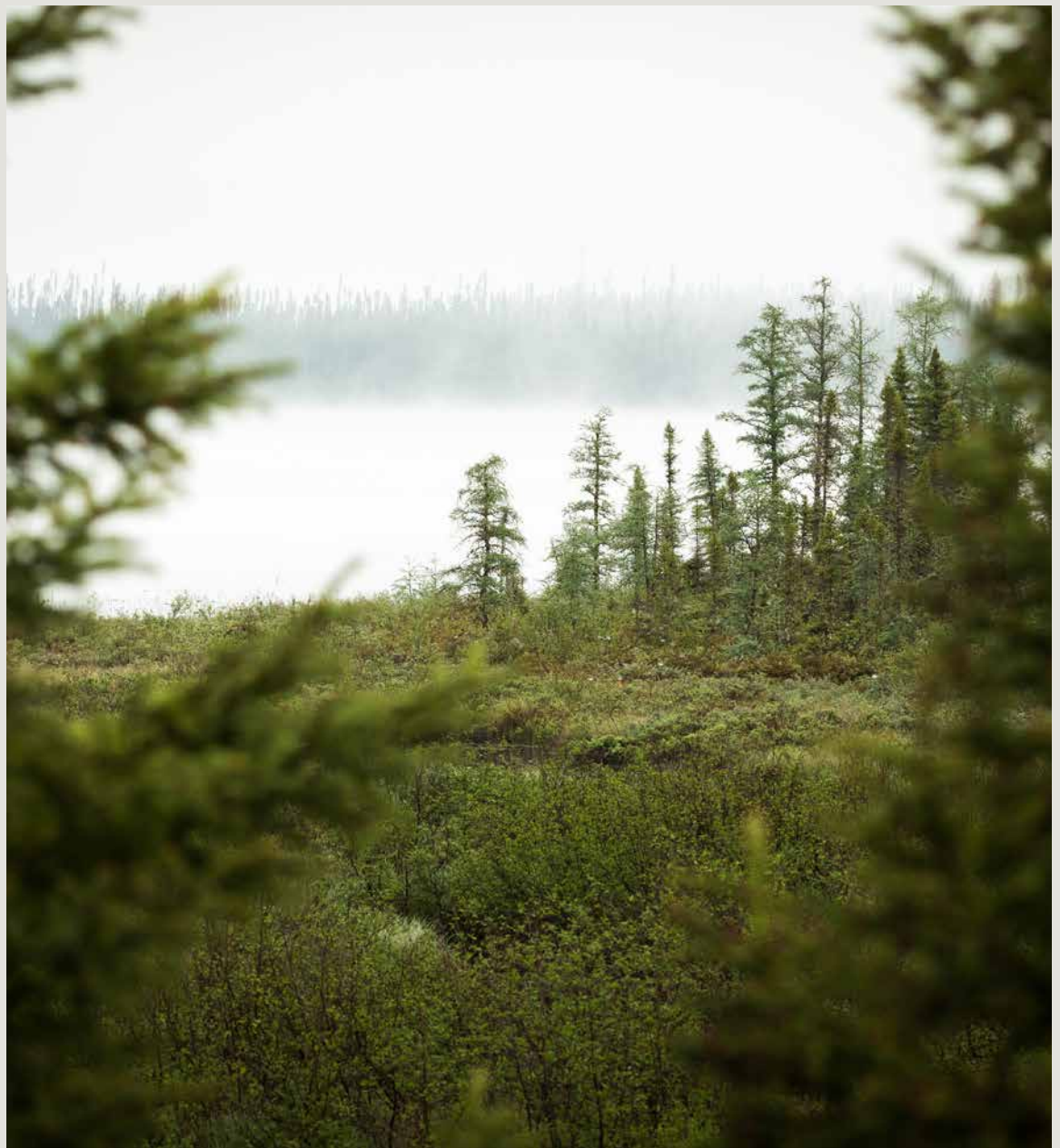


# Traditional Knowledge and Environmental Assessments Module

02



**AT A GLANCE**

## What is in the Traditional Knowledge and Environmental Assessments Module

This Module assists in decision making regarding a determination of if and under what conditions Traditional Knowledge (TK) should be shared as part of a public impact assessment process. This module emphasizes self-determination and governance over your own knowledge. You are caretakers of the knowledge that has been passed on from generation to generation to support the well-being of your Nation, your community and future generations. It is important to employ strategies to ensure you maintain sovereignty over your own knowledge, data, information, maps, etc. that will be generated from your participation in impact assessment processes. The impact assessment is a public process, which means the information generated from it becomes accessible to the public, proponents, governments and others. It is advisable to be cautious when deliberating about what knowledge you will share, when it will be shared, and under what conditions.

The first part of this Module is focused on assisting you in conceptualizing TK on your own terms and assessing the value of sharing your knowledge for the purposes of an environmental assessment (EA). This section offers key considerations to assist with your decision to share and/or protect TK based on a risk assessment.

The second part of this Module guides you through a flexible process for leading and con-

ducting your own TK study. It is important to maintain authority and jurisdiction over your own knowledge, just as you do of your lands and territories.

The third part of the Module assists you with developing your own TK protocol to guide decision making. First Nations are increasingly developing their TK policies, protocols and guidelines to assist them in maintaining governance and management over their own knowledge. These guidelines are intended to not only protect your knowledge but your knowledge holders. This TK Module includes the following topics:

- Considerations in Indigenous/Traditional Knowledge and EAs;
- Conducting an Indigenous/Traditional study for the purposes of EAs; and
- Developing your own TK protocol.

## Introduction

For thousands of years, Indigenous Peoples all over the world developed complex and sophisticated knowledge systems that facilitated sustainable relationships with the environment and natural world. While Indigenous nations are highly diverse, they share certain common philosophical foundations. Integral to Traditional Knowledge (TK) – often referred to as Indigenous Knowledge – is a responsibility to maintain and enhance relationships with the natural world to support the continuance of all life. A foundational core of TK is spirituality. Spirit and ceremony are not “add ons” to the “real” knowledge, but lay the groundwork for appropriate, responsible and reciprocal obligations with the natural world. Another aspect of TK that requires the utmost respect is the recognition that TK is long-standing knowledge and can stand on its own – as it always has – to inform and guide environmental decision making.

TK has existed, been transformed and been practised for countless generations,

and is certainly not new. What *is* new is the interest in and recognition of these systems by governments, proponents, academics, environmental non-governmental organizations (ENGOS) and others. This interest has emerged in part due to recognition of the fact that western science and technology alone has been unable to effectively address global, regional and local environmental challenges. Canada’s interest and recognition is more recent, and TK has found expression in environmental legislation. More importantly, Indigenous Peoples themselves have been calling for the recognition of TK in the decision-making processes that affect their lives, lands and waters.

It is essential that governments and project proponents understand and are open to learning from Indigenous Peoples about history, treaties, worldview and philosophies, as well as the ongoing policy and practice of colonialism and its continued impacts on Indigenous societies and communities. It is inappropriate,

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### Terminology

**This Toolkit primarily utilizes the term *Traditional Knowledge* (TK), although other terms are regarded as acceptable in the EA context. “Traditional Knowledge” is the term utilized in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). “Indigenous Knowledge” is the term now utilized in the federal *Impact Assessment Act* as well as other federal legislation (e.g., *Fisheries Act*). Some First Nations prefer to use the term “Traditional Ecological Knowledge” or “Ancestral Knowledge.” It is important to utilize whichever term the First Nation feels best expresses their knowledge.**

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unreasonable and disrespectful to expect Indigenous Peoples to share knowledge with governments and project proponents who remain ignorant of the past and ongoing colonialism and the lived realities of Indigenous Peoples. Indigenous Peoples continue to emphasize the requirement for governments and project proponents to know and respect Indigenous Peoples' different nations and distinct histories.

TK has formed an integral role in understanding changes to the environment. For First Nation communities, TK continues to serve as an important basis to determine environmental impacts of particular activities, including both contemporary and traditional activities (hunting, fishing, gathering, etc.). Environmental assessment in the broadest sense is not new to First Nations. First Nations had their own ways of deciding which activities to proceed with or not proceed with, depending on each activity's impact on the natural world and well-being of future generations.

Over time, formalized, highly regulated processes for EAs have been introduced and applied by governments to First Nations and their territories. For decades, both federal and provincial governments have formulated impact assessment processes through regulatory decision

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### More on Terminology

**The term “Indigenous Peoples” has been defined as follows by the Office of the United Nations High Commissioner for Human Rights: “Indigenous peoples live on all continents, from the Arctic to the Pacific, via Asia, Africa and the Americas. There is no singularly authoritative definition of indigenous peoples under international law and policy, and the Indigenous Declaration does not set out any definition. This decision was taken intentionally by the drafters based on the rationale that the identification of an indigenous people is the right of the people itself – the right of self-identification – and a fundamental element of the right to self-determination. Indigenous peoples’ situations and contexts are highly variable.” (United Nations Office of Human Rights, 2023; <https://www.ohchr.org/en/indigenous-peoples/about-indigenous-peoples-and-human-rights>).**

**In the Canadian context, the term “Indigenous Peoples” has come to replace the constitutionally recognized term “Aboriginal Peoples,” particularly since the *United Nations Declaration on the Rights of Indigenous Peoples* was accepted. See <https://www.ohchr.org/en/indigenous-peoples/about-indigenous-peoples-and-human-rights>.**

**For the purposes of this Toolkit, the term “Indigenous Peoples” will be used generally when referring to legislation (e.g., *Impact Assessment Act*), the literature or broader policy initiatives (e.g., *Indigenous Knowledge Policy Framework*). However, this Toolkit is intended for and designed for First Nations.**

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making and project reviews. It should be noted that various jurisdictions have different impact assessment legislation and processes. These often change over time

due to politics, change in governments, industry advocacy and advancement of Indigenous rights through court decisions.

First Nations have experienced massive social, political, cultural, legal, environmental and spiritual upheaval due to historical and ongoing colonial processes. Over the centuries, First Nations have sought to protect their way of life, lands/environment and lives through various means. First Nations continue to experience violation of their human rights, as evidenced through the ongoing water, housing and child welfare crises in many communities. First Nations continually seek avenues to continue to protect their way of life, future generations and the environment. EAs are one such avenue, and over the decades First Nations have strongly advocated for robust EA processes that respect constitutionally protected rights, TK and protection of the environment. First Nations also participate in these broader EA processes so that their views will be considered in decisions that will affect their lives, livelihoods, lands and future generations.

This Module provides advice on how TK can be considered in these broader, external EA processes on your terms and to your benefit. If your community has chosen to engage in an EA process, it may be important to include aspects of TK. The Module discusses the following topics:

- What is TK?
- Importance of language;
- Ways of sharing and protecting TK outside the community;
- TK decision making and governance;
- The rights and value of TK;
- Why use TK in an EA;
- Risk assessment;
- Protecting TK in EAs;
- Considerations in conducting a TK study;
- Legal and policy considerations;
- Using existing information for a TK study;
- Gathering new information for a TK study;
- Funding sources; and
- Benefits of conducting a TK study.

The ideal situation is that you **govern your own knowledge and decide** what TK you wish to share under what circumstances. TK has been utilized by your community and nation for countless generations; the process for sharing with external interests (governments, proponents, academics) is only recently being formalized in First Nation-led **TK protocols**. These protocols facilitate the governance of your knowledge in situations when external interests request it.

The purpose of this Module is to ensure you can make informed decisions about

your own knowledge when external interests request or seek it. It is much better to be prepared and to respond in the way you would like rather than react or find yourself scrambling to meet unreasonable deadlines. This Module will also include guidance for how to develop your own TK protocol. It is important to realize that, although environmental impact assessment is a highly regulated process by federal, provincial and territorial governments, the TK aspects of environmental assessment are under the control of your community. TK comes from your community. You decide what will be shared, who will share it and when.

Guidance provided in this chapter can be applied to decisions regarding sharing TK with governments, proponents or any external interest seeking your knowledge.

## What is TK?

“Traditional Knowledge” (TK) is used in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). It is knowledge that is an integral, inseparable feature of Indigenous societies. It is important to define what you and your community mean by TK. Terminology evolves over time. First Nations across the province define TK in many different ways. Many

First Nations have their own concepts of TK that do not necessarily conform to academic, legislative or policy definitions. Some communities have indicated that community or ancestral knowledge is also TK. Other communities choose to define TK more narrowly. Some communities may choose to use different TK terminology altogether. For example, the Mohawks of Akwesasne use the term “Naturalized Knowledge System” to emphasize that

knowledge systems of Indigenous people are not homogeneous. Other First Nation communities may be comfortable with the term “Aboriginal Traditional Knowledge” (ATK), as referred to in the *Species At Risk Act* (SARA 2002) legislation. In 2006, the Chiefs of Ontario used the term “Aboriginal Traditional Knowledge,” and in later years used “Traditional Knowledge.” For many years, the term “Traditional Ecological Knowledge” (TEK) was used.

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**The Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments define TK as follows:**

**Traditional knowledge – refers to the traditional knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.**

**Source:** Secretariat of the Convention on Biological Diversity, 2004. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

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**The United Nations Declaration on the Rights of Indigenous Peoples refers to TK in Article 31:**

- 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.**
  - 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.**
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“Indigenous Knowledge” (IK) has gained general acceptance; it is defined as “the Indigenous knowledge of the Indigenous peoples of Canada” in the *Impact Assessment Act* (sec 2, 2019). Governments, proponents and other non-Indigenous agencies use the term “Indigenous Knowledge” but they are generally referring to a much more limited concept.

It is not appropriate to impose a definition of TK on First Nation communities. It is reasonable to expect proponents, governments and others involved in an EA process to respect the decision and preferences of a given community.

It is very important for each First Nation community to develop your own view/concept of what Indigenous or traditional knowledge means in your community. Your definition helps set the limits of what you are willing to share externally and what knowledge remains in the community. In recent years, some First Nations have decided to use their own ancestral language in expressing their knowledge.

There are many descriptions of TK based on international agreements, scholars, scientists, governments, agencies and Indigenous organizations. In this document, we will use the term TK, while recognizing it is by no means a perfect term, nor accept-

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**In a project with the Chiefs of Ontario related to water, Elders involved in the project were asked to describe “traditional knowledge.” The following is their brief description:**

**Aboriginal Traditional Knowledge includes the rules and guidelines passed down through generations that guide us in our behavior in relation to the land, to the animals and to each other (p. 14).**

**Source:** Lavalley, Giselle. 2006. *Aboriginal Traditional Knowledge and Source Water Protection: First Nations’ Views on Taking Care of Water*. Toronto: Chiefs of Ontario.

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able to all First Nations (as noted above). First Nations should decide which term and definitions they are comfortable using.

### **Importance of Language**

First Nations continue to emphasize the importance of language in generating, innovating and sharing TK. The Arctic Council Permanent Participants for

Use in the Arctic developed the *Ottawa Traditional Knowledge Principles*. These principles emphasize the relationships between TK and languages, and defines TK as follows:

Traditional Knowledge is a systematic way of thinking and knowing that is elaborated and applied to phenomena across biological, physical, cultural and linguistic systems. Traditional Knowledge is owned by the holders of that knowledge, often collectively, and is *uniquely expressed and transmitted through indigenous languages*. It is a body of knowledge generated through cultural practices, lived experiences including extensive and multigenerational observations, lessons and skills. It has been developed and verified over millennia and is still developing in a living process, including knowledge acquired today and in the future, and it is passed on from generation to generation. (Arctic Council, undated; [https://static1.squarespace.com/static/58b6de9e414fb54d6c50134e/t/5dd4097576d4226b2a894337/1574177142813/Ottawa\\_TK\\_Principles.pdf](https://static1.squarespace.com/static/58b6de9e414fb54d6c50134e/t/5dd4097576d4226b2a894337/1574177142813/Ottawa_TK_Principles.pdf)).

Support for language revitalization and retention is thus critical for the maintenance and sharing of TK.

It is also important to consider ways in which TK will be shared in your community. The Chiefs of Ontario prepared a TK primer and has offered the following ideas for your consideration.

### Ways of Sharing and Protecting TK Outside the Community

It is important to determine what you mean by “community” and to be aware that “First Nation” often means “beyond the reserve” boundary in terms of lands/

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*The Canadian Encyclopedia defines Indigenous territory as “Indigenous territory – also referred to as traditional territory – describes the ancestral and contemporary connections of [Indigenous peoples](#) to a geographical area. Territories may be defined by kinship ties, occupation, seasonal travel routes, trade networks, management of resources, and cultural and linguistic connections to place.”*

**Source:** <https://www.thecanadianencyclopedia.ca/en/article/indigenous-territory>.

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### Ways of Sharing and Protecting TK in the Community

**The development and implementation of protocols to share and protect TK within First Nation communities is a priority. We are aware of the historical impact of colonization and our communities need to be pro-active by reconnecting and taking up our responsibility to adapt to the changes and move forward in protecting our future. TK promotes balance and harmony; this harmony includes integrating TK and practices of western society. What our ancestors have passed down to this generation will still work today, and in the future.**

**The following are examples of sharing and protecting TK in the community:**

- Education on the role of TK in the community.
- Community programs that promote TK sharing and protection, [e.g.,] TK apprenticeship programs, language programs.
- Leadership to listen to the Elders.
- Sharing stories and knowledge with each other in the community, [e.g.,] Elders, Band Council, community members, health staff.
- Understand the role of TK in protecting the land for future generations.
- Children need to receive teachings, [e.g.,] school visits.
- Community promotion of ceremonies, [e.g.,] fasts, etc.
- Younger generations must learn their inherent rights and treaty rights.
- Incorporate TK in the community decision-making process and governance.
- Communities must work together to protect their TK.

**Source:** Chiefs of Ontario. 2010. *Traditional Knowledge Primer*. Toronto: Chiefs of Ontario.

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territories and resources. First Nations are specific legal entities defined and governed by the *Indian Act* (1876). Jurisdiction is determined by the *Constitution Act* (1982). Often the term “community” is used synonymously with First Nation (or bands or reserves).

The *Indian Act* does not govern all First Nations; some have opted for various other negotiated agreements, such as self-government agreements. Some First Nations have also maintained their traditional governments over time, and continue to assert authority and jurisdiction through these governments. It is important to consider who or what the decision-making authority will be for your EA and TK study.

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### Protection of Indigenous/Traditional Knowledge

**Although treaties outline the relationships between communities (nations) and Canada (nation), further rights to protect TK are required to limit First Nations’ cultural erosion and economic exploitation. First Nation communities also require the opportunity to proactively respond: this includes working in collaboration with governments on a nation-to-nation basis. Developing TK processes that include intellectual property rights is one step toward ensuring TK sustainability.**

**In addition, the Chiefs of Ontario suggested other ways to share and protect TK outside the community:**

- **First Nations TK holders’ inclusion in external decision-making processes;**
- **Equal recognition of TK to western science;**
- **Positive working relationships with non-Aboriginal people;**
- **Education to encourage non-Aboriginal people to see and work with the natural world from a TK perspective;**
- **First Nation consultation on issues affecting their communities;**
- **First Nations resources for accessing lawyers, engineers, scientists to assist them in full participation;**
- **First Nations approval on decisions that impact their communities;**
- **TK must be consistent in decision making;**
- **External decisions need to consider the long-term impacts and survival of the people;**
- **TK [is] not for sale;**
- **Much TK has been forgotten, so it must be protected;**
- **TK sharing of what is relevant, not ‘everything’; and**
- **TK must be shared directly, not someone else conveying it on behalf of the community.**

**Source:** Chiefs of Ontario. 2010. *Traditional Knowledge Primer*. Toronto: Chiefs of Ontario.

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UNDRIP articles 25 and 26 explain Indigenous conceptions of territories.

### Article 25

**Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.**

### Article 26

- 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.**
- 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.**
- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.**

**Source:** United Nations. 2007. *United Nation Declaration on the Rights of Indigenous Peoples*. [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

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## **TK Decision Making and Governance: Caretaking and Stewardship**

As noted above, First Nations peoples had their own diplomatic, political, legal and governance systems for thousands of years. This means that First Nations peoples had their own laws, processes, protocols, codes of conducts, and ethical and moral codes relating to the generation, innovation, sharing and protection of their own knowledge. It is important to maintain the governance and guardianship over your own knowledge.

Indigenous knowledge supported Indigenous environmental decision making for thousands of years and continues to do so. It is important to exercise your governance authority over your own knowledge

Indigenous Peoples are increasingly asserting sovereignty and governance over their own TK systems. In Canada, a consideration of TK in various environmental regimes is more than two decades old, and includes legislation such as the *Canadian Environmental Protection Act, Impact Assessment Act* (formally *Canadian Environmental Assessment Act*), *Species at Risk Act* and, more recently, the *Fisheries Act*. However, concerns remain regarding how knowledge is shared and for what purposes. Usually, it was proponents rather

than the affected First Nations that conducted TK studies. In effect, the TK studies consisted of “extracting” knowledge from communities and TK holders. To counter this long-standing practice, Indigenous communities are developing their own TK protocols, guidance documents and processes to maintain governance over their own knowledge. This TK Module will provide resources for you to develop your own TK protocol, thus ensuring you remain the decision maker over your own knowledge.

### The Rights and Value of TK

The recognition of TK is closely tied to the recognition of Aboriginal and treaty rights and the ability to exercise such rights. As noted above, UNDRIP, to an extent, offers a framework for how external interests can support TK, through laying out what is required to support Indigenous self-determination from political, economic, social, health, legal, cultural and spiritual perspectives.

This means that Canada and its various governments and agencies have an obligation to support Indigenous Peoples in developing their “measures” to protect TK. TK is part of the recognition of Indigenous rights, treaties and self-determination.

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### Example Protocol

***Mi’kmaw Ethics Watch: The Research Principles and Protocols provides a prescribed approval process to the collection, analysis and reporting of research data generated from Mi’kmaq First Nation communities throughout the province of Nova Scotia.***

#### Roles and Responsibilities:

- a. **“Any research, study or inquiry into collective Mi’kmaw knowledge, culture, arts or spirituality which involves partnerships in research shall be reviewed by the Mi’kmaw Ethics Watch” (p. 17).**
- b. **“The Mi’kmaq Ethics Watch (Committee, etc.) shall conduct a fair and timely review of all research conducted among Mi’kmaq people and shall maintain control over all research processes” (p. 17).**
- c. **“List of Mi’kmaw Ethics Watch Obligations found on page 20.”**

**Source:** Mi’kmaw Ethics Watch. Undated. <https://www.cbu.ca/wp-content/uploads/2019/08/MEW-Principles-and-Protocols.pdf>

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An important aspect of rights and TK includes intellectual property. Unfortunately, First Nations cannot fully protect TK under current intellectual property regimes in Canada. Therefore, it is important to be explicit about how TK will be protected through the development of your own protocols and processes.

## CASE STUDY

## LHOOSK'UZ DENÉ NATION AND ULKATCHO FIRST NATION

The Lhoosk'uz Dené Nation and Ulkatcho First Nation jointly conducted a TK study, and it resulted in information that they used to protect both their land and religious rights.

The TK study was part of the consultation process for the Blackwater Gold Mine Project. Lhoosk'uz Dené Nation and Ulkatcho First Nation hired Keefer Ecological Services Ltd. to compile and write the information. The proponent made accommodations.

The proposed site for the mine was Mount Davidson, which was important due to its sacred sites, healing powers, and hunting and berry-picking grounds.

To design the study, meetings were held with the Indigenous Nations, federal and provincial governments, Elders, Band members and staff to develop a methodology. The methodology they designed was to gather information about the types of potential risks to the environment and human health. They did so by holding community meetings and information sessions, conducting community interviews, circulating newsletters to inform the community, and meeting with Chiefs and Councils multiple times.

From there, baseline information on the at-risk parts of the environment was collected from community interviews, Traditional Knowledge, traditional use studies, and pre-existing information from sources such as Statistics Canada, Indian and Northern Affairs Canada, and North-

ern Health Authority. Additional Traditional Knowledge from past land use studies was also used. This baseline information was collected over a period of three years. These risks were then rated based on the inherent risk level and the potential for mitigation measures.

In response to the potential impacts, the proponent proposed mitigation measures. These were “generally incorporated” into the provincial and federal conditions for project approval. For example, the development plan was adjusted to minimize the impact on Mount Davidson, treat polluted water, store fuel and refuel outside of riparian areas, etc.

**Source:** Lhoosk'uz Dené Nation and Ulkatcho First Nation Part C Blackwater Gold Mine Project (Blackwater). May 10, 2019. Peoples. <https://ceaa-acee.gc.ca/050/documents/p80017/130537E.pdf>

## Why use TK in an EA?

Most First Nations are located in rich, biologically diverse areas where there is an abundance of forests, water, wildlife, etc. They have lived in balance with their surroundings or in a “sustainable” way for thousands of years. The people in these communities possess knowledge of how to continue to live in this “sustainable” manner. However, proponents, governments and others often view First Nation territories as natural resources to be exploited for economic gain. It has become an important challenge for all peoples to seek a balance that will allow for prosperity (as defined by the First Nation) and ensure a sustainable planet for future generations. The collective knowledge systems or TK of the community will assist in achieving well-being for the community.

First Nations have treaty and inherent rights to access their territories for hunting, gathering, fishing, medicine-gathering and spiritual activities. Often, when industries and governments enter the First Nations’ territories to take resources, the damage to the territory is immense and it will take hundreds of years for the earth to repair itself. Some change are irreversible. The people, land and waters are often harmed. Thus, First Nations must

be involved in the decisions that impact the lands, waters, wildlife, forests, etc., that they rely on.

Therefore, it is not a question of “*why* use TK” but rather a question of “*how* to use TK” in EAs to ensure that Indigenous Peoples maintain governance and control over decision making regarding their own knowledge. It also becomes important to protect TK from misuse or appropriation. First Nations peoples often feel an enormous responsibility to share TK so better decisions can be made regarding the environment. First Nations are highly motivated to protect the environment for future generations, and thus feel compelled to become involved in processes that might offer opportunities for better, more sustainable decision making by others.

It becomes very important for Indigenous Peoples to maintain decision-making authority over their own knowledge and to self-determine the terms and conditions by which TK will be shared by external interests.

## Risk Assessment

Due to the heightened interest in TK, it is important to be cautious about who is seeking TK from your community and why. In the past, when Indigenous Peoples have

shared TK in EAs, their TK was not always considered or used, despite numerous studies being undertaken (usually by the proponent and external consultants). In some cases, First Nations have reported that their TK was used against them in legal proceedings. It is important to assess the risks of sharing your knowledge in EAs, as it is very difficult to ensure your knowledge will be protected (or even considered in decision making). You must assess the risk against the benefit of contributing your knowledge to an EA, and the degree of control you will have over your knowledge once it leaves your community.

## Protecting TK in EAs

EAs are a public process and information submitted as part of the process is typically available to governments, the public and proponents. It is, therefore, important that First Nation communities have a process in place to protect their knowledge from misrepresentation and misuse. (See the References & Resources Module for samples of TK protocols.)

## Considerations in Conducting a TK Study

If your First Nation wishes to include TK as part of an EA, there are several challenges to consider. These include:

- TK studies can be expensive, as they can require significant time and resources. However, if your community is interested in conducting a TK study and the project is fairly large, it is likely that the proponent will provide funding for the project. Request funding from the proponent to conduct your own study or hire your own expertise to engage in your TK work.
- Conducting a TK study is broader in scope than EAs that rely exclusively on scientific knowledge. A TK study will be based on the holistic-ecosystem approach and will, therefore, include information that the community believes is important to include in an EA. Proponents may not agree that the scope should be broader; however, First Nations should include knowledge and perspectives they feel are necessary for the decision that will best protect their community and rights.
- If your community wishes to include TK as part of smaller EA projects, it may be a challenge to acquire funds to do so. Persist in seeking funding.
- Gender-based analysis: It is important to consider gender in your EA and TK study. Men, women and other genders often hold different TK or have different responsibilities, so it is important to consider gender in your TK work.
- In some cases, a community may want to conduct a TK study but may not have people within the community who are trained to conduct the formal TK studies that are required as part of EA processes. Ensuring that the TK study can undergo the rigour of a community, consent, peer and public review is an important consideration.
- An EA requires many concurrent activities, such as reviewing the proponent's information, meeting and negotiating with the proponent, and providing written submissions to the government. There is considerable work involved in participating in an EA process effectively. Assigning EA work to staff who already have other work responsibilities may place a heavy workload on some staff. Communities may need to consider getting help from outside the community. If you choose to retain outside assistance, you must govern and manage the EA and subsequent TK process. (For more information on this topic, see the Conducting a First Nations Traditional Knowledge [TK] Study for the Purpose of Environmental Assessment.)
- Smaller First Nation communities can request assistance from regional organizations, such as Tribal Councils, provincial/territorial organizations and technical institutes, should their own capacity require this. Depending on the scope of the EA, it may be ideal that TK is coordinated on a large scale. Some First Nation communities may request assistance from other communities with more experience and expertise in EAs and TK studies.
- Often the schedule is tight in an EA process. The time from a project's announcement to the filing of the EA application can vary from as little as a few months to as much as a few years. Typically, though, the process is less than a year. If the proponent has initiated communications with your community early in the process, there is a better chance that there will be time to do a TK study. There is also some opportunity to negotiate schedules with the proponent and the government agency if you can make a strong case for needing the time to provide your input. In some cases, the proponent will commit to ongoing TK work after the EA has been submitted.
- As an EA may take a long time to complete, sustaining effective community input can be a challenge. Ideally, the TK study should occur before or alongside the EA study.
- One of the most challenging aspects of conducting a TK study for the purposes of EA is deciding what information is appropriate to share with external agencies (proponents, governments and the public). Protecting intellectual property relating to TK is likely one of the most important decisions a community must make.

- First Nations not familiar with the formal government-developed EA processes need to gain adequate knowledge of these EA processes to be able to influence the process with their collective TK.
- It is important to distinguish a TK study for the purposes of an EA from other types of TK-related research, such as land use and occupancy studies and cultural heritage studies. All of these studies are nonetheless useful for TK studies, as they will have already gathered information that may be relevant for a TK study for the purposes of an EA.

Many of these considerations can be managed in the development of a TK protocol or process for your community. It will assist you in determining risks/benefits and build transparency and accountability into the TK and EA processes.

## Legal and Policy Considerations

The Government of Canada has created an *Indigenous Knowledge Policy Framework* for project reviews and regulatory decisions. This document creates the broader policy framework for the consideration of TK in various legislation. See <https://www.canada.ca/en/impact-assessment-agency/programs/aboriginal-consultation-federal-environmental-assessment/indigenous-knowledge-policy-framework-initiative.html>.

<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/protecting-confidential-indigenous-knowledge-under-the-impact-assessment-act.html>. The broad TK policy framework will enable relevant federal departments to develop their own specific policy and guidance for their federal officials. This guidance document is intended for federal officials, not proponents. The Impact Assessment Agency will also prepare general proponents' guidelines.

Various government agencies have developed their own guidelines for the consideration of TK in their processes. For example, the Government of Canada's Impact Assessment Agency has developed a practitioner's guide. See <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act.html>. This guidance also contains a section on how to engage and partner with Indigenous communities. See <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/overview-indigenous-engagement-partnership-plan.html>.

More specifically in relation to the consideration of TK, see <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/indigenous-knowledge-under-the-impact-assessment-act.html>. Furthermore, relating to the protection of confidential knowledge under

the *Impact Assessment Act*, see <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/protecting-confidential-indigenous-knowledge-under-the-impact-assessment-act.html>.

In Ontario, the way TK is incorporated into EA processes is as varied as each project is different, and communities hold varying views on whether they wish to share TK more broadly. The provincial EA legislative and policy framework changes over time, and thus advocacy become very important in advancing your concerns and interests.

In addition to the TK policy framework, there is legislative recognition of TK in Canada, and TK is assuming a more prominent role in environmental decision making. Therefore, it is increasingly recognized by government agencies and proponents that TK is an important part of EAs. Regulatory processes (such as impact assessments, project reviews and regulatory decisions) increasingly require TK, and thus external interests wish to access this knowledge for these processes. More recently at the federal level, the following acts have TK provisions:

- The *Impact Assessment Act*
- The *Canadian Navigable Waters Act*

- The *Canadian Energy Regulator Act*
- The fish and fish habitat protection provisions of the *Fisheries Act*

In your discussions with federal officials or the proponent about the project, you can indicate your interest in including TK. You can do this either by conducting a new TK study or using the TK your community may have already gathered. If you need to conduct a TK study, insist that it be funded by the proponent or government agency. A TK study should be formal in that it is a **transparent, accountable and open process** so that the community knows why the study is being conducted and what TK is going to be shared with the proponent.

It is important to realize that the TK study is your community's property. Therefore, protection mechanisms need to be developed and decisions need to be made on what your community is willing to provide to the EA process. It is also important to note that what your community does share with the proponent will become public information.

### Using Existing Information for a TK study

Many First Nations have made substantial efforts over the years to collect information from their Elders, land users and other

knowledge holders for various reasons. Some First Nations have been involved in land claim negotiations, and related environmental management processes that require some form of TK (such as Native Values mapping in Forest Management Planning, or Species at Risk assessment and recovery work). Some communities may have completed TK studies and, therefore, relevant information may already exist. Start by examining the documented material already available in your community. It is very important to do your homework and ensure that Elders, knowledge holders and practitioners are not over-burdened with TK studies that repeatedly ask the same questions. Ensure that knowledge holders have granted consent for the use of the knowledge they provide and that your community maintains the intellectual property of the knowledge.

Other valuable sources of TK information are often interview tapes, transcripts, and maps produced through interviews with knowledge holders. Other documents, plans, surveys, photographs, studies and research papers may also be available and useful. Once you have compiled the information, examine the material to identify gaps in information, geographic coverage or the historical record, particularly for information that relates to the proposed projects.

### Gathering New Information for a TK Study

Consider conducting a new TK study if:

- There are information gaps (the existing information does not specifically address the area in question).
- Time has lapsed since the last TK study was completed.
- The geographic focus has changed since the last TK study was completed (e.g., larger geographic area).
- The study will be of benefit to your community in other contexts.
- The project is large and complex and will require continued engagement over time as plans change.
- There is the potential for the project to have significant effects on your community.
- The existing information is dated and there is a need to understand and compare current and traditional land use patterns. (Note: land use and occupancy studies are NOT TK studies, but they are very helpful.)
- There are likely to be more projects of a similar nature in future years.

### Funding Sources

Up until recently, in almost all cases where TK studies are conducted in EAs,

the proponent provides the funding (often by external consultants) to the community. Since the proponent may be required to consider TK in their EA, it is in their interest to fund any necessary TK studies.

As federal government officials are required to consider TK in regulatory deci-

sions and project reviews, they too will require TK. As such, they should fund TK studies. Funding associated with legislation is often limited. It is important to advocate for what you need to conduct your studies in order to make the best decisions possible. It will be important to advocate for funding beyond what is

available through existing provisions in legislation or policies.

### **Benefits of Conducting a TK Study**

Government officials and proponents stand to benefit a great deal from your decision to share TK in EAs. It is important to ensure that the sharing of TK in EAs will benefit your community beyond the life of the project assessment (and project). TK that you collect and document can also be utilized in educational activities, land-based programs with youth, and knowledge and revitalization initiatives. Give serious thought to how TK studies can provide co-benefits to your community and future generations in achieving their goals.

### **Summary**

The decision to participate in an EA and contribute TK is a profoundly important one, one that affects the well-being of your community, the environment and future generations. There are indeed risks, and the best way to manage risks is to maintain governance, authority, jurisdiction and sovereignty over your knowledge. Key considerations include:

- TK, in various forms, has existed for thousands of years. It is not new.

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### **The federal government, under the *Impact Assessment Act* (administered by the Impact Assessment Agency), may provide funding for the following activities:**

- **“Developing or supporting organizational capacity of Indigenous communities or organizations to participate in, direct and/or undertake assessments, as well as delivering information, data and studies to support the implementation of regional/strategic approaches or project impact assessments;**
- **Strengthening awareness of impact assessment (IA) issues within Indigenous communities through outreach activities; and**
- **Designing and delivering workshops; training programs or materials for Indigenous Peoples, communities or organizations related to IA, including activities to:**
  - » **document current use of the land or resources;**
  - » **identify environmental, health, social or economic impacts, impacts on rights, or document Indigenous knowledge;**
  - » **participate in, lead and/or direct a project IA process;**
  - » **lead community engagement and coordinate consultation; and**
  - » **participate and/or lead follow-up and monitoring activities.”**

**Source:** Impact Assessment Agency of Canada. 2022. *Indigenous Capacity Support Program*. <https://www.canada.ca/en/impact-assessment-agency/services/public-participation/funding-programs/indigenous-capacity-support-program.html>

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- Recognition of, and interest in, TK by external interests is relatively recent.
- TK is increasingly recognized at local through to international levels in agreements, conventions, legislation, policies, programs and practices.
- TK resides in the people, the community and the land (places). TK may not be tangible or quantifiable in ways inherent to other knowledge systems (e.g., western science).
- Resistance to accepting TK as being on par with other knowledge, such as western science, remains an ongoing challenge.
- Often the scope of an EA that is important to First Nations extends beyond “reserve lands,” and thus it is important to determine the territories that matter to you in the EA process. It is important to determine what territories and lands your Nation is responsible for, and seek to assert authority and jurisdiction over your lands and livelihood.

The next section of this TK Module outlines a TK process that you can consider and adapt to suit your needs should you decide to get involved in such studies.

## REFERENCES

See the References & Resources Module for a full list of references to this section.

*Note: All URLs listed below were active at the time of writing this publication. If a URL is no longer active, search the document's name online, or contact the organization directly.*