

## 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.*