



**Technical Guidance for assessing the Current Use
of Lands and Resources for Traditional Purposes
under the
*Canadian Environmental Assessment Act, 2012***

December 2015

Draft for public comment

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Disclaimer

This technical guidance is for information purposes only. It is not a substitute for the [Canadian Environmental Assessment Act, 2012](#) (CEAA 2012) or any of its regulations. In the event of any inconsistency between this technical guidance and CEAA 2012 or its regulations, CEAA 2012 or its regulations, as the case may be, would prevail.

For the most up-to-date versions of CEAA 2012 and its regulations, please consult the Department of Justice website at: <http://laws-lois.justice.gc.ca/eng/>

The list of examples provided in this guidance document is not exhaustive or prescriptive but rather provides examples of the kinds of information that may be relevant and sought in an environmental assessment.

Draft Version: Public Comments Invited

Environmental assessment practitioners, the public and Aboriginal groups are invited to provide comments on this draft technical guidance document. Any feedback on this document should be submitted to the Agency at CEAA.guidance-orientation.ACEE@ceaa-acee.gc.ca by June 16th, 2016. All comments will be reviewed and considered for integration in the document for release in its finalized form. The document will be considered an 'evergreen' resource and will be subject to periodic updates as appropriate.

Updates

This document may be reviewed and updated periodically by the Canadian Environmental Assessment Agency. For the most up-to-date version, please consult the [Policy and Guidance](#) page of the Canadian Environmental Assessment Agency's website.

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Alternative formats may be requested by contacting: info@ceaa-acee.gc.ca.

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Context

The *Canadian Environmental Assessment Act, 2012* (CEAA 2012) aims to protect components of the environment that are within federal legislative authority from significant adverse environmental effects caused by a designated project, including cumulative environmental effects.

In addition, CEAA 2012 ensures that a designated project is considered in a careful and precautionary manner to avoid significant adverse environmental effects, when the exercise of a power or performance of a duty or function by a federal authority under any Act of Parliament is required for the designated project to be carried out.

Throughout the technical guidance document, the term "environmental effects" refers to environmental effects as described in section 5 of CEAA 2012. Under CEAA 2012, the "environmental effects" to be considered are those in areas of federal jurisdiction as described in section 5, and include:

- effects on fish and fish habitat, shellfish and their habitat, crustaceans and their habitat, marine animals and their habitat, marine plants, and migratory birds;
- effects on federal lands;
- effects that cross provincial or international boundaries;
- effects of any changes to the environment on Aboriginal peoples related to health and socio-economic conditions; physical and cultural heritage; current use of lands and resources for traditional purposes; or any structure, site or thing that is of historical, archeological, paleontological or architectural significance; and
- changes to the environment that might result from the federal decisions as well as any associated effects on health and socio-economic conditions, matters of historical, archaeological, paleontological or architectural interest, or other matters of physical or cultural heritage.

Purpose

This technical guidance document supports the implementation of CEAA 2012 provisions related to the effects of any changes to the environment on the current use of lands and resources for traditional purposes by Aboriginal peoples. It provides guidance on how to conduct the environmental assessment (EA) of a designated project when the Canadian Environmental Assessment Agency (the Agency) is the responsible authority or supports an EA conducted by a review panel.

The technical guidance informs the preparation of Agency directives and key EA documents and serves as core guidance to proponents who propose the carrying out of a designated project. It also provides direction to Agency employees throughout the EA of a designated project in their interactions with those engaged in the EA process, such as proponents, federal authorities, other jurisdictions, review panel members, Aboriginal groups and the public.

In combination with Agency directives and key EA documents, the technical guidance aims to ensure that CEAA 2012 requirements related to the current use of lands and resources for traditional purposes are met in order to achieve a high quality EA of a designated project.

Application

The technical guidance is intended for use in the EA of a designated project. This technical guidance should be used in conjunction with other Agency policy and guidance instruments. For an EA by a review panel, additional guidance and direction may be provided in the Terms of Reference and/or Joint Review Panel Agreement.

In this technical guidance, the term “designated projects” refers to projects initiated under CEAA 2012, and “EA” refers to the EA of designated projects initiated under CEAA 2012 for which the Agency is the responsible authority or for an EA conducted by a review panel.

This technical guidance is applicable to designated projects which fall under sections 1-30 of the schedule in the Regulations Designating Physical Activities. ([Schedule – Physical Activities](#))

In this technical guidance, Aboriginal refers to First Nations, Inuit and Metis.

Agency directives and key EA documents include Project Description, Environmental Impact Statement Guidelines, Environmental Impact Statement, Information Requests, and EA Report.

Relevant Provisions of CEAA 2012

This technical guidance addresses subparagraph 5(1)(c)(iii) of CEAA 2012 “with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on the current use of lands and resources for traditional purposes”.

The technical guidance supports paragraph 4(1)(d) in promoting communication and cooperation with Aboriginal peoples with respect to EAs as one of the purposes of CEAA 2012.

Subsection 19(1) of CEAA 2012 identifies the factors that are to be taken into account in an EA, including the significance of environmental effects, mitigation measures and the requirements of a follow-up program. This subsection also indicates the environmental effects to be taken into account in the EA include cumulative environmental effects and the environmental effects of malfunctions or accidents. In examining these factors, the EA may take into account community knowledge and Aboriginal traditional knowledge, in accordance with subsection 19(3).

Under section 52 of CEAA 2012, the Minister of the Environment must decide if, taking into account the implementation of mitigation measures the Minister considers appropriate, the designated project is likely to cause significant adverse environmental effects

When the Minister of the Environment determines that the designated project is not likely to cause significant adverse environmental effects referred to in subsections 5(1) and/or 5(2) of CEAA 2012, or if the Governor in Council determines any significant adverse environmental effects identified by the Minister are justified in the circumstances, the Minister, in accordance with section 53 of CEAA 2012, will identify, in the EA decision statement, the conditions with which the proponent must meet with respect to mitigation measures and follow-up program requirements.

Aboriginal Rights Information – Interface with Paragraph 5(1)(c)

The subject areas included in paragraph 5(1)(c) and in particular the term “current use of lands and resources” by Aboriginal peoples is often expressed by Aboriginal groups as rights, namely “aboriginal rights”, “treaty rights” and “aboriginal title”. This Guidance document is not intended to create, deny, limit or define any potential legal rights of any Aboriginal groups. Rather, this guidance document is provided to assist the public, Aboriginal groups, proponents and EA practitioners to understand the kinds of information that is to be collected and considered under paragraph 5(1)(c) and when implementing CEAA 2012.

The information gathered under paragraph 5(1)(c) may also assist other kinds of assessments needed to meet other kinds of obligations that may arise in the course of implementing CEAA 2012. For example, the information collected may overlap with the information needed to assess potential adverse impacts on Aboriginal or Treaty rights which in turn may inform any consultation or treaty implementation requirements that may arise. However, this Guidance document is not directed at informing these other kinds of assessments or obligations that may arise in relation to the implementation of CEAA 2012.

Understanding subparagraph 5(1)(c)(iii)

The current use of lands and resources for traditional purposes by Aboriginal peoples is determined on a case-by-case basis over a defined area and period of time. Under subparagraph 5(1)(c)(iii), effects from a designated project on the current use of lands and resources for traditional purposes are considered through a change in the environment.

The current use of lands and resources for traditional purposes, as well as the exercise of treaty rights, is associated with an Aboriginal group's practices, traditions or customs, which are part of an Aboriginal group's distinctive culture and fundamental to their social organization and the sustainment of present and future generations. Practices, traditions and customs are generally defined as follows:

- Practice: a way of doing something that is common, habitual or expected;
- Tradition: a custom, opinion or belief handed down primarily orally or by practice; and
- Custom: a particular, established way of behaving.

Understanding "Current use"

In the context of an EA, "current use" refers to how the use of lands and resources may be affected throughout the proposed project's lifecycle (pre-construction, construction, operation, decommissioning and abandonment).

This includes uses by Aboriginal peoples that are actively being carried out at the time of the assessment and uses that are likely to occur in a reasonably foreseeable future provided that they have continuity with traditional practices, traditions or customs. Some uses may be more difficult to identify at the time of the assessment because they occur at long time intervals or with low frequency.

Furthermore, uses that may have ceased due to external factors should also be considered if they can reasonably be expected to resume once conditions change.

Examples: The recovery plan for a species may preclude its harvesting by Aboriginal peoples within a geographic area until the species population rebounds.

Land disturbance from a previous project or natural causes such as forest fires may have affected the habitat and abundance of a bird species, resulting in a reduction of traditional hunting on that land. Remediation of the land may lead to a recovery of the bird population and enable hunting by Aboriginal peoples to resume.

The availability of information on patterns of use of lands and resources across a range of time can assist in considering "current use" in relation to a specific timeframe. An expansion or contraction of that time period may be considered as new information becomes available during the course of an EA.

The following questions may assist in determining how the lands and resources are currently being used for traditional purposes by Aboriginal peoples:

- What is the frequency, duration, spatial and seasonal aspects of the use?
- Does the timing of the use correspond to the biophysical cycles of migration or growth of the resource?
- Does the timing relate to a spiritual or cultural consideration of the resource or land use?
- Are there any external factors that may have temporarily altered or halted traditional practices?
- Are Aboriginal peoples permanently or temporarily residing on the lands?

Understanding “Use”

The term “use” may refer to activities involving the harvest of resources, such as hunting, trapping, fishing, gathering of medicinal plants, berry picking, and travelling to engage in these or other kinds of activities.

In addition, use may also refer to particular connections and uses of the lands and resources related to ceremonies, customs, cultural practices, traditional governance, trade or stories. For any given Aboriginal group, use occurs over a specific geographic area; however, several groups may use portions of that same area.

The use of the lands and resources by Aboriginal peoples may have tangible values (e.g., wildlife species or traditional plants) and/or intangible values (e.g., quiet enjoyment of the landscape or sites used for teachings). Intangible values are often linked with spiritual, artistic, aesthetic and educational elements that are often associated with the identity of Aboriginal groups.

In relation to use, “occupancy” may be viewed as a distinct way of viewing an Aboriginal group’s presence in an area. Occupancy may refer to a defined area that an Aboriginal group regards as its own by virtue of continuing use, habitation, naming, knowledge and control. Transmittal of legends, oral histories and ecological knowledge about places, in addition to indigenous place names and habitation sites, are often used to substantiate Aboriginal groups’ claims of occupancy. The geographic boundaries of occupancy are generally smaller than those that represent use and could be shared by two or more groups.

Understanding “Lands and Resources”

The term “lands” may refer to terrestrial, riverine, lake and marine ecosystems. Land can have spiritual, economic and political significance for Aboriginal peoples. Aboriginal peoples often have a long and complex relationship with the land, which results in strongly held views about the cultural, biophysical and spiritual connectedness between the lands, waters, the peoples and their societies. Aboriginal peoples’ traditional territory, both the lands occupied and those used historically, can be integral to their identity as a distinct nation.

The use of the land may be defined by the resources harvested, the activities undertaken to procure the resource and the locations where the activities have taken place. More specifically, the use of the land can be expressed in the following terms:

- subsistence practices (e.g., hunting, fishing, gathering);
- places where transmission of cultural knowledge occurs, including language, sense of self and place within the community;

- ceremonies/events (e.g., harvest feasts, solstice, annual gatherings);
- traditional routes (e.g., trails, waterways, landmarks, portages);
- sacred sites (e.g., burial grounds, cultural landscapes); and
- habitation sites.

The importance placed on the uses of the land by Aboriginal groups may vary from group to group based on the values, practices, traditions and geographic location of each group. Lands and resources may be utilized by one or more Aboriginal groups. Those groups that give prominence to certain resources (e.g., caribou) also tend to give prominence to the area where the resource is extracted (e.g., preferred harvesting area where teachings about hunting and cultural history occur).

Understanding “Traditional Purposes”

Traditional purposes typically relates to activities that are integral to a community’s way of life and culture, and have continuity with historic practices, customs and traditions of the community.

Although these practices may be considered traditional and as having a strong historic link, these activities are not static. They evolve over time to reflect contemporary views, knowledge and practices. The practices, traditions and customs of Aboriginal peoples often change as a result of evolving trends occurring within society as whole (e.g., technological innovations). For example, hunting and fishing practices may have evolved from using dog sleds and canoes to snowmobiles and power boats.

For the purpose of an EA, the expressions “pre-contact or post-contact with European society or colonization” are frequently used to measure the number of years, decades, generations and centuries that an Aboriginal group’s current use of lands and resources for traditional purposes can be traced. Pre-contact evidence and information such as archaeological sites are frequently presented to quantify how far back the use of specific lands and resources may extend. Practices, customs and traditions that are resumed after an interruption may still be considered in the EA, despite the interruption. Practices, traditions or customs do not have to be connected to a potential or established Aboriginal right, or to an area of historic occupancy, for them to be considered in an EA.

The concept of “within living memory” generally refers to a period of time within a person’s life and may include childhood recollections. It can be recorded using a number of qualitative research methods (e.g., map biography), often derived from interviews. These initiatives can present comprehensive information regarding the use of lands and resources by one or more groups for a given period of time (e.g., years, decades or centuries).

Linkages with other provisions of section 5

A land or resource that is part of the current use of lands and resources for traditional purposes may also fit under other provisions of section 5.

Example: Fish and fish habitat, aquatic species, migratory birds and any other components of the environment set out in Schedule 2 fall within paragraph 5(1)(a). These components are very often part of an Aboriginal group's current use of the lands and resources for traditional purposes.

Furthermore, any one of these components under paragraph 5(1)(a), or other components not specifically listed in subsection 5(1) (e.g., caribou, deer) may be used by an Aboriginal group for more than one purpose.

Example: Fishing and hunting might be part of an Aboriginal group's economy and therefore may also be considered as part of their health and socio-economic conditions identified under subparagraph (5)(1)(c)(iii).

In addition to being currently used for traditional purposes, a land or resource may be valued or hold value that may link it to other provisions of section 5.

Example: Aboriginal fishing cabins, and/or the lands on which fishing activities take place, may also have heritage value and be considered as physical and cultural heritage identified under subparagraph (5)(1)(c)(ii) or any site, structure or thing of historical, archeological, paleontological or architectural significance identified under subparagraph (5)(1)(c)(iv).

Introducing the Environmental Assessment Framework

An EA examines any changes to the environment that may be caused by a designated project, and pursuant to subparagraph 5(1)(c)(iii) considers how these changes to the environment may affect the current use of lands and resources for traditional purposes with respect to Aboriginal peoples.

The approach and level of effort applied to assessing effects of any changes to the environment on the current use of lands and resources for traditional purposes in an EA are established on a case-by-case basis taking into consideration the:

- characteristics of the designated project;
- potential environmental effects;
- state (health, status or condition), nature and extent of the valued components (VCs) that may be affected by a change in the environment;
- potential for mitigation and the extent to which mitigation measures may address potential environmental effects;
- potential for cumulative environmental effects; and
- level of concern expressed by Aboriginal groups.

The EA framework should include the following five steps:

- Step 1: scoping;
- Step 2: analysis;
- Step 3: mitigation;
- Step 4: significance; and
- Step 5: follow-up.

The steps are iterative; circumstances (e.g., information or analysis) commonly arise during the course of an assessment that requires one step or several steps to be revisited. EA documentation must clearly explain and justify the methodologies used to assess the effects of any changes to the environment on the current use of lands and resources for traditional purposes.

Once the potential effects of the designated project on the current use of lands and resources for traditional purposes have been identified, mitigation measures are considered. The implementation of mitigation measures is taken into account by the Minister of the Environment when determining whether a project is likely to cause significant adverse environmental effects.

Information that is gathered from Aboriginal groups by practitioners throughout the five steps needs to be assessed and presented in a manner that reflects each group's individual concerns, issues and interests in relation to the current use of lands and resources for traditional purposes.

Note that each Aboriginal group is unique and the current use of lands and resources for traditional purposes should be discussed and collected with each Aboriginal group identified in the Environmental Impact Statement (EIS) guidelines.

Aboriginal Traditional Knowledge (ATK) should be used as sources of information during all five steps. For more information on how to integrate ATK in the assessment see [Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act, 2012](#)

Step 1: Scoping

Scoping is an iterative process that focuses the assessment on relevant issues and concerns and establishes the spatial and temporal boundaries of the EA. Scoping should cover the following aspects:

- identifying VCs;
- listing potential effects; and
- determining spatial and temporal boundaries.

Scoping for the EA is made in relation to section 5 of CEAA 2012 and takes into account direction provided by the Agency (e.g., in the EIS Guidelines). As scoping is iterative, information gained throughout the EA, such as information on potential or confirmed current use of lands and resources for traditional purposes, may help clarify what needs to be considered and to what extent.

Identifying valued components

A VC represents an environmental element of an ecosystem that is identified as having scientific, social, cultural, economic, historical, archaeological or aesthetic importance. The value of an ecosystem component may be determined on the basis of cultural ideals or scientific concern. For the purposes of CEAA 2012, VCs are selected to assist in predicting and assessing environmental effects as described under section 5 and taking into account direction provided by the Agency or, in the case of an EA by review panel, the Minister.

Identifying VCs may involve making an inventory of the current use of lands and resources for traditional purposes that may be affected by the designated project.

Examples of questions that should be considered in identifying VCs include:

- Are there any lands and resources that are known to be currently used by Aboriginal peoples for traditional purposes?
- Are there any traditional activities, cultural and spiritual practices, intergenerational transfer of culture and knowledge, or traditional values taking place?
- Has any work been previously undertaken to identify lands and resources that are currently being used by Aboriginal peoples for traditional purposes, such as land use studies?
- What lands and resources are valued by an Aboriginal group?

The current use of lands and resources for traditional purposes generally consists of a combination of three elements: activities, resources and locations, as shown in Table 1.

Table 1: Elements associated with the current use of lands and resources for traditional purposes.

Elements	Examples
Activity	<ul style="list-style-type: none"> • Hunting • Fishing • Trapping • Berry picking • Plant gathering • Teaching • Gathering of people (e.g., for spiritual/ceremonial reasons, to share/teach skills, etc.) • Forestry
Resource	<ul style="list-style-type: none"> • Big game mammals: moose, deer, mountain goat, caribou, elk and muskox • Fur bearing mammals: marten, mink, beaver, otter, muskrat hare, lynx, wolverine, red and arctic fox, grizzly bear, polar bear and black bear • Other land mammals: squirrel, skunk and porcupine • Aquatic mammals: ringed seal, bearded seal, walrus, narwhal and beluga whale • Fish: lake whitefish, northern pike, sturgeon, arctic char and salmon • Waterfowl: eider, duck, Canada goose and swan • Seabirds: birds and eggs • Other birds: ruffed grouse and wild chicken • Plants, shrubs, and trees: berries, herbs, moss, medicinal plants, tobacco, bearberry, Canada yew, Lodgepole pine, Douglas fir, spruce, birch, silverberry, false dogbane bush, juniper and Saskatoon berries • Drinking/cooking water
Location	<ul style="list-style-type: none"> • Cabins/camps • Resource harvesting areas (e.g., plant gathering, fishing, hunting, trapline) • Trails • Ceremonial/sacred sites • Graves/burial sites • Cultural landscapes • Habitation sites

When identifying VCs, it may be useful to consider that in most cases all three of these elements form an integral part of any given current use of the lands and resources by Aboriginal peoples.

Example: A mine may have potential effects on an Aboriginal fishing site. Contamination or disturbance to the fishing site (location) could affect the fish (resource), which would in turn affect aboriginal fishing (activity).

During scoping, a VC may be identified at a broad level (e.g., hunting) or at a more specific level (e.g., hunting of migratory birds). The consideration of the effects of the designated project will generally involve an examination of the specific features of the VC.

Gathering data and information on VCs of interest

Identifying VCs may be achieved through a combination of researching existing sources of information, engagement with Aboriginal groups, Traditional Land Use Studies, or other methods.

Existing sources of information

Aboriginal groups, experts, stakeholders, government and non-government organizations, as well as existing literature, can be important sources of information in identifying and evaluating lands and resources currently used by Aboriginal peoples for traditional purposes.

Possible sources of information may include the following:

- Aboriginal groups (communities and organizations)
- Aboriginal consultation records from other provincial or federal activities
- Aboriginal treaties and land claims
- existing Traditional Land Use Studies
- provincial or federal EAs conducted for other projects
- court cases and decisions
- professional societies and organizations
- academic and research institutions
- cultural environmental setting report
- registered fur management areas (traplines)
- federal, provincial and municipal archives and libraries
- federal and provincial Archaeological records
- land and marine use plans
- Canadian Registry of Historic Places
- federal and provincial government departments
- federal, provincial and territorial guidance documents and legislations
- photographs and maps
- Aboriginal Treaty and Rights Information System

Professional judgment should be exercised in evaluating the credibility, applicability and validity of any sources for the purpose of an EA. The identification of VCs of interest should also be informed by engaging Aboriginal groups and conducting Traditional Land Use Studies.

Engaging Aboriginal groups

Engaging all potentially affected Aboriginal groups during the scoping phase will assist practitioners in identifying VCs that appropriately represent the current use of lands and resources for traditional purposes that may be affected by the designated project. Early engagement with Aboriginal groups and making effective use of ATK are strongly encouraged in order to achieve a more complete EA, manage risks of costs and delays later in the process, and be aware of any issues surrounding the capacity of Aboriginal groups to participate in the EA.

Information on the current use of lands and resources for traditional purposes is often conveyed through ATK. ATK is also known by other names such as Traditional Ecological Knowledge, Traditional Knowledge and Indigenous Knowledge. In general terms, ATK refers to a body of knowledge built up by a group of people through generations of living in close contact with nature. ATK is often unwritten and transmitted orally, and includes beliefs, wisdom, activities, traditions and skills derived from extended observations of the land and its creatures, weather, seasonality and other cycles, and spiritual associations. Prominent across Aboriginal beliefs is the seventh generation principle, which holds that the decisions made today should result in a sustainable world seven generations into the future.

Engagement could involve visiting communities, hosting workshops, or attending meetings to build relationships and discuss current use with Aboriginal groups. Such initiatives can increase the credibility of the EA and minimize the risk of the information being misunderstood, misinterpreted and/or taken out of context. Engaging a cross-section of the Aboriginal group, including leadership, harvesters, elders, women and youth, may help to make interactions more inclusive and the information obtained more representative of the community as a whole. Interactions with Aboriginal peoples should be in keeping with appropriate ethical standards. Confidentiality procedures can assist in avoiding any potential inadvertent disclosures (e.g., disclosure of traditional knowledge to a band member which the community restricts to its elders).

Consent forms can be used to establish agreements between practitioners and communities as to the confidentiality and intellectual property rights for information collected. These agreements provide authorization to publish relevant information in EA documents. It is important to understand the particular governance structure of each Aboriginal group so as to ensure compliance with desired protocols, and to maintain respectful working relationships.

It is important to note that all records submitted for the EA are considered part of the Canadian Environmental Assessment Registry (the Registry). The Registry consists of an *Internet site* of basic project information and *project files*, accessible to the public, which contain the records produced or obtained for the purpose of conducting an EA. When requested, copies of records in the project file must be provided to the public in a timely manner. The project file does not, however, include records that would not have been released if a request had been made under the *Access to Information Act*.

Participants submitting information or documents in the EA by review panel can make a request in writing to the panel for confidentiality prior to or concurrent with the submission of the information if disclosure would cause harm to a witness or harm to the environment.

Traditional Land Use Studies

Traditional Land Use Studies seek to determine the extent of past and present use of the land for traditional purposes important to Aboriginal peoples including, but not limited to, hunting, fishing, trapping, ceremonial pursuits and the gathering of plants including berries and herbal medicines.

These studies can assist in documenting each Aboriginal group's use and habitation of the territory at any time during the groups' existence, or within living memory. They are typically completed either by the Aboriginal communities, by practitioners, collaboratively between both parties, or by a consultant hired by either the community or practitioner. Methods to complete these studies may include historical research, interviews, community meetings, geographic information systems and other mapping exercises, and field studies. These documents should be viewed as "living" and should be updated over time to reflect the changing land and resource uses of an Aboriginal group.

Traditional Land Use Studies cover the types of practices, activities, sites, and/or areas frequented by the respective groups, including:

- important travel sites and routes (e.g., trail systems, waterways, and landmarks);
- harvesting (e.g., registered traplines, resource use and harvesting areas, special-use sites such as fish camps, berry-picking areas, and medicinal plant collection areas);
- occupied areas (e.g., residential areas, meeting areas, gathering places, cabins, and campsites); and
- spiritual sites and sacred landscapes (e.g., burial sites and cultural landscapes).

Studies conducted to document land and resource use by Aboriginal peoples may be named as land use studies, traditional use studies, and traditional land use and occupancy studies. The practitioners should work with each Aboriginal group to determine what terminology and methods are most appropriate and respectful for that community.

If, instead of conducting a new Traditional Land Use Study as part of the EA, the EA relies on previous studies, their original purpose should be transparent and they should reflect the views and knowledge of the Aboriginal group. It is best practice to seek the permission of Aboriginal groups prior to using existing studies and that these studies be validated in the current context. If significant time has elapsed since the study was completed, consideration should be given to conducting new research to update the previous study.

Considerations for identifying VCs

In determining potential current use of lands and resources for traditional purposes that may be affected by a designated project, the following considerations may be of assistance:

- **Context:** A particular resource or parcel of land may not appear important on its own. However, considering the historical and physical context and information content (such as cultural significance) may provide insight into its value. For example, places that are sacred to Aboriginal peoples may show no signs of physical activity, but may be associated with the creation of legends, ceremonial functions, personal vision quests, puberty rites, etc.

- **Disturbances:** The degree of intactness of the lands or resources is evaluated, including the level to which they have been disturbed or are preserved. Such an evaluation requires data on the previous condition of the lands or resources, which may not always be available or documented.
- **Evidence:** Some types of sites, such as burial sites, are not visible. It is therefore important to take the necessary steps to identify where these sites may be present in order to avoid or mitigate any adverse effects on them. Engaging Aboriginal groups may help in locating these sites.
- **Access:** Aboriginal groups rely on access to lands and resources to pursue traditional uses, such as access to quality hunting areas, preferred fishing sites, established trails and ceremonial sites. The environmental effects of a designated project may result in a change in access to the area and/or changes to the resources themselves. A decrease in access for Aboriginal peoples or an increase in access for non-Aboriginal peoples (e.g., increased hunting pressures) could have a negative effect on the current use of lands and resources for traditional purposes. Consideration should be given on how land tenures (e.g., crown lands) in the area may affect access to and availability of lands and resources.
- **Evolution:** The current use of lands and resources for traditional purposes by Aboriginal peoples is constantly evolving over time. Traditional practices may also change over specific intervals of time, for example, when they are dependent or associated with seasons or cultural/ceremonial traditions. When considering traditional uses, “traditional” should be viewed as something that, while rooted in historical practices, remains very much a part of the contemporary culture.

Listing potential effects

Under CEAA 2012, the “environmental effects” to be considered are those described in section 5, including:

- With respect to Aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on the current use of lands and resources for traditional purposes.

The following questions could be considered to help identify potential effects on the current use of lands and resources for traditional purposes:

- What are the changes to the environment that may be caused by a designated project?
- How will these changes to the environment affect Aboriginal groups’ current use of lands and resources for traditional purposes?
- What are some of the characteristics associated with the use of lands and resources, such as the location, frequency, duration or timing of the traditional practices?
- Are there cumulative effects that will affect the identified current use of lands and resources for traditional purposes?
- What are the Aboriginal groups’ concerns associated with the potential effects?

There may be a relationship between the effects on the biophysical components of the environment and the effects on the current use of lands and resources for traditional purposes. Such relationships will exist when the use is related to a particular component (e.g., fish). The assessment of a biophysical VC may inform the assessment of a current use VC. However,

effects to current use cannot always be entirely captured solely on an independent assessment of biophysical components.

Example: Effects of the designated project may alter the migration patterns of a migratory bird that is hunted by an Aboriginal group. From a biophysical standpoint, this may have a minimal effect on the viability of the migratory bird population; however, this alteration may have a greater effect on the Aboriginal group's ability to hunt the migratory birds in a preferred area.

Therefore, assessing potential effects on current use VCs could involve first identifying those which are specific to current use of lands and resources for traditional purposes (e.g., fishing) and then identifying biophysical parameters which may inform the assessment (e.g., fish and fish habitat). In some cases, the biophysical parameter will also be a VC (e.g., salmon).

Determining spatial and temporal boundaries

Defining the spatial and temporal boundaries for the assessment of effects on VCs establishes a frame of reference for identifying and assessing the environmental effects associated with the designated project. These boundaries are set to provide some structure for the analysis of potential environmental effects, selection of mitigation measures and determination of significance. The spatial and temporal boundaries used in the EA may vary depending on the VC.

Spatial boundaries will be defined taking into account the appropriate scale and spatial extent of potential environmental effects, community knowledge and ATK, current land and resource use by Aboriginal groups, ecological, technical and social and cultural considerations.

Temporal boundaries should span all phases of the designated project (e.g., construction, operation, decommissioning and abandonment). Each project phase is expressed in terms of the amount of time, in years or months, needed to complete each phase. Community knowledge and ATK should factor into decisions around temporal boundaries.

For information on establishing boundaries associated with cumulative environmental effects, please refer to the [Technical Guidance for Assessing Cumulative Environmental Effects under CEAA 2012](#).

Step 2: Analysis

The objective of the analysis step is to describe how the potential changes to the environment caused by a designated project may affect the current use of lands and resources for traditional purposes. The analysis of a particular VC may be applicable or used to support more than one subparagraph of section 5.

Examples: The analysis of fish assessed under 5(1)(a)(i) can provide information relevant to the analysis on the ability of Aboriginal peoples to practice fishing under 5(1)(c)(iii).

An Aboriginal practice such as trapping may be assessed both as a current use of lands and resources for traditional purposes under 5(1)(c)(iii) and as being part of socio-economic conditions under 5(1)(c)(i).

Building on the information gathered from the scoping, this step of the assessment should include:

- A description of baseline conditions for the current use of lands and resources for traditional purposes;
- An assessment of how the potential changes to the environment caused by a designated project may affect the current use of lands and resources for traditional purposes;
- An assessment of how malfunctions or accidents related to the designated project may affect the current use of lands and resources for traditional purposes; and
- The consideration of potential cumulative effects.

Establishing baseline

Baseline conditions refer to present-day conditions, prior to implementation of the designated project. These conditions may not be fully representative of the variations in natural conditions, due to natural variability, historical shifts, or effects from other human activity.

Spatial and temporal boundaries inform the establishment of baseline environmental conditions. Baseline conditions should be provided for each VC potentially affected in sufficient detail to enable the identification of how the designated project could affect the VCs and an analysis of those effects. Aboriginal groups may request to be involved in the gathering of baseline information. Practitioners should indicate how input from Aboriginal groups was used in establishing the baseline conditions.

Based on the scope of the assessment, some of the baseline information that may be described and characterized includes:

- access and travel routes for conducting traditional practices;
- location of hunting camps, cabins and traplines;
- traditional uses currently practiced or practiced in recent history;
- presence of cultural or spiritual sites;
- frequency, duration or timing of traditional practices;
- geographic areas where fish, wildlife, birds, plants or other natural resources are harvested; and
- historic context about the state of the factors above.

Data collection and/or generation are important components of an analysis of environmental effects. At times, it may be challenging to obtain or generate data to support the analysis. Potential environmental effects should be considered in the analysis even when there is little supporting data or there is predictive uncertainty so that the EIS can present the most complete picture of the potential environmental effects. In all cases, uncertainties and assumptions underpinning an analysis should be described and information sources clearly documented.

Interviews and questionnaires can be used to collect baseline data. Regardless of the methods used or the level of the Aboriginal community's involvement in the gathering of baseline information, cultural sensitivities should be taken into account.

When dealing with confidential information, some considerations to take into account include:

- sharing only information relevant to environmental effects;
- summarizing specific information into general conclusions;
- describing specific sites (e.g., harvesting and hunting locations) in a more general way so that specific locations are not revealed (e.g., highest concentration of use is within X kilometers of designated project); and
- when mapping sensitive locations, sharing information only with necessary and appropriate parties.

As indicated in table 1, activities, resources and locations are three elements that form an integral part of the current use of lands and resources for traditional purposes. When analysing potential effects, it may be useful to consider the interaction between all three elements in selecting appropriate VCs and assessing potential effects of changes to the environment on these VCs.

Table 2 provides examples of how changes to the environment may affect the current use of lands and resources for traditional purposes, as well as examples of measures that may be used to mitigate these effects.

Table 2: Examples of how changes to the environment may affect the current use of lands and resources for traditional purposes, as well as measures to mitigate these effects.

Change in the Environment	Potential effects on the Current Use of Lands and Resources for Traditional Purposes	Mitigation measures
Introduction of herbicides or pesticides along a transmission line.	<ul style="list-style-type: none"> • Reluctance to pick berries and gather food plants from areas where herbicides or pesticides have been used. 	<ul style="list-style-type: none"> • Avoiding or minimizing the use of herbicides and pesticides near locations of plants of importance to Aboriginal groups.
Influx of project workers in designated project area.	<ul style="list-style-type: none"> • Greater pressure on species used by Aboriginal groups. 	<ul style="list-style-type: none"> • Instituting a hunting ban for employees to prevent additional hunting pressures. • Prohibiting workers and contractors from fishing in Aboriginal preferred fishing sites.
Road construction creates new rights of way, increasing access and traffic to previously remote area.	<ul style="list-style-type: none"> • Increased mortality of ungulates, which may affect hunting. 	<ul style="list-style-type: none"> • Setting speed limits for vehicles that reduce the potential for vehicle-wildlife collisions.

Destruction of wetlands supporting moose and migratory birds.	<ul style="list-style-type: none"> Reduced harvest of meat for food, and increased travel due to changes in moose and migratory bird abundance and distribution. 	<ul style="list-style-type: none"> Requiring selection and design of wetland compensation sites to take into account opportunities to provide for current use activities.
Loss of land due to project footprint.	<ul style="list-style-type: none"> Loss of ceremonial/sacred sites for transmittal of culture through teachings and storytelling. 	<ul style="list-style-type: none"> Adjustment of the designated project footprint (or parts of it) to avoid sensitive areas such as those which are known to be used for ceremonial purposes by Aboriginal peoples.
Decline in water quality from leaching of tailing storage facility.	<ul style="list-style-type: none"> Permanent loss of area traditionally used as a source of drinking water around trails, cabins and camps. 	<ul style="list-style-type: none"> Maintain water quality in a given area by capturing runoff, using mitigation measures for seepage and using collection wells.
Increased noise levels due to mine operation.	<ul style="list-style-type: none"> Disturbance of waterfowl hunted by Aboriginal peoples, requiring Aboriginal peoples to change their hunting practices. 	<ul style="list-style-type: none"> Reducing noise (e.g., helicopter and all-terrain vehicle travel) on certain parts of the land during waterfowl hunting seasons.
Construction of a hydro-electric dam.	<ul style="list-style-type: none"> Loss of access to an Aboriginal fishery. 	<ul style="list-style-type: none"> Developing a fish habitat compensation plan for Aboriginal fisheries that includes: fish passage restoration, enhancement of tributaries through barrier removal, riparian planting and upgrading of a hatchery.
Destruction of land.	<ul style="list-style-type: none"> Loss of forage areas compromises ability to raise domesticated animals for food (livestock) and travel (horses). 	<ul style="list-style-type: none"> Restore the designated project site in such a way as to re-establish forage areas.
Increased marine traffic.	<ul style="list-style-type: none"> Disruption of traditional navigation routes used for recreation, travel to other communities and marine harvesting. 	<ul style="list-style-type: none"> Adjust the timing, speed and routing of marine traffic to minimize disturbance to Aboriginal peoples.

The methodologies and methods used to predict environmental effects must be clearly described. With this information, reviewers will be able to examine the analysis and the rationale

supporting the conclusions reached. Any assumptions or conclusions based on professional judgment should be clearly identified and described.

The assessment of cumulative effects on the current use of lands and resources for traditional purposes must consider how other physical activities act cumulatively to affect an Aboriginal group's ability to use the lands and resources for various purposes such as fishing, hunting and trapping, and spiritual and cultural practices.

Step 3: Mitigation

Technically and economically feasible measures that would mitigate any significant adverse environmental effects must be identified. Mitigation of environmental effects can take two forms:

- Elimination, reduction or control of a designated project's environmental effects is preferred.
- Where this is not possible, restitution for any damage to the environment caused by the environmental effects should be considered (e.g., replacement, restoration, compensation).

Consultations and ATK can help inform the appropriate and desired measures to avoid or mitigate the adverse environmental effects.

Table 2 presents examples of measures that may be used to mitigate the effects of any changes to the environment on the current use of lands and resources for traditional purposes.

The views of affected Aboriginal groups on mitigation should be considered and included in the EIS. This could assist in ensuring that the environmental effects on the current use of land and resources for traditional purposes are at an acceptable level for the community.

Engaging Aboriginal groups is particularly important when practitioners are considering alternate sites as a form of mitigation. Aboriginal peoples have strong connections to specific lands, and therefore, even if similar lands and resources are located in a nearby region, their practices may not be adaptable or readily reproduced elsewhere.

Information on past, existing and future physical activities may help identify appropriate mitigation measures for the current use of lands and resources for traditional purposes.

Step 4: Significance

An EA must consider the significance of any adverse environmental effects that are likely to result from a designated project after taking into account the implementation of any mitigation measures, including a consideration of the level of effectiveness of mitigation measures and any uncertainties associated with them.

Significance predictions in relation to the effects of any changes to the environment on the current use of lands and resources for traditional purposes should be clearly presented and rationalized against defined criteria consistent with the Agency's Operational Policy Statement [Determining Whether a Designated Project is Likely to Cause Significant Adverse](#)

[Environmental Effects under the Canadian Environmental Assessment Act, 2012](#) (November 2015), or any future updates made to this document.

As shown in table 3, there are various considerations in the determination of the significance of potential adverse environmental effects on the current use of lands and resources for traditional purposes.

Table 3: Examples of considerations in determining significance for the current use of lands and resources for traditional purposes.

Criteria	Consideration
Magnitude	<p>What is the amount of change in a measurable parameter relative to baseline conditions or to other targets?</p> <ul style="list-style-type: none"> • What proportion of an Aboriginal group’s harvest will be affected if a flock of Canada geese migratory pattern is altered or relocate due to designated project activities?
Geographic extent	<p>What is the spatial area over which the environmental effect occurs?</p> <ul style="list-style-type: none"> • Will water pollutants only affect Aboriginal fishing sites proximal to the designated project area or will they affect sites further downstream?
Timing, Frequency and Duration	<p>When does the effect occur? How often will the effect occur? Will these occurrences be short or long term?</p> <ul style="list-style-type: none"> • Will project-related noise disturb caribou herds so that hunting by Aboriginal peoples is affected throughout the lifecycle of the designated project? Does the noise cause caribou to move from the area consistently or persistently? Or does the noise occur rarely so that caribou hunting is only affected once in a while?
Reversibility	<p>Will the VC recover from the effect?</p> <ul style="list-style-type: none"> • Are effects temporary, such as the loss of access during construction and operation to a plant gathering site (reversible) or permanent, such as the destruction of a culturally modified tree (irreversible)?

The context within which environmental effects occur should be taken into account when considering criteria in relation to the current of lands and resources for traditional purposes, as it may help better characterize whether adverse effects are significant.

Other criteria may also be considered provided that they are described and a rationale for their use is documented. The extent to which an individual criterion will influence the determination of

significance will vary depending on the VC under consideration, the nature of the project and its potential environmental effects, as well as the context.

As each Aboriginal group is unique, the circumstances which may cause a significant effect on the current use of lands and resources for traditional purposes should be examined on a case-by-case basis.

Example: A wildlife species may be a steady part of one Aboriginal group's diet, while for another Aboriginal group it is used far less frequently for ceremonial purposes.

Approaches and suggestions made by Aboriginal peoples concerning how the significance of environmental effects may be determined should be considered. In addition, early discussion about significance can assist in considering potential benchmarks for significance.

Determination of significance should consider project-specific environmental effects and cumulative environmental effects. Residual effects from past, present, and future physical activities, when assessed individually, can be seen as minimal. However, when assessed together, the incremental effects may be significant. Therefore, a determination of significance should assess how the practices and uses of the lands and resources have been and will be affected cumulatively.

Step 5: Follow-up

The objectives of a follow-up program are to verify the accuracy of the EA and determine the effectiveness of any mitigation measures that have been implemented.

The results of a follow-up program can help determine the need for adaptive management to respond to unforeseen adverse effects or to change existing measures if necessary.

The design of a follow-up program should identify the current use of lands and resources for traditional purposes of concern and specific indicators that will be used to measure whether the actual environmental effects resulting from the designated project occur as predicted in the EA and that mitigation measures are effective.

Examples: Indicators could include camp usage; wildlife presence or migration patterns, usage of hunting and navigation routes; hunting, trapping and fishing capture rates, and quantity of land and/or resources available for use for hunting, fishing or gathering.

Indicators can also be useful for planning follow-up programs for the assessment of cumulative effects.

Follow-up programs present an opportunity to make best use of the participation of Aboriginal groups on the affected territory during the implementation of the program.

To help determine the follow-up program, additional guidance is available through the Operational Policy Statement published by the Agency on [Follow-up Programs under the Canadian Environmental Assessment Act](#) (December 2011), or any future updates to this document.