



# **Reference Guide Considering Aboriginal Traditional Knowledge in Environmental Assessments Conducted under the *Canadian Environmental Assessment Act, 2012***

**March 2015**



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This reference guide is for information purposes only. It is not a substitute for the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) or its regulations. In the event of any inconsistency between this technical guidance and CEAA 2012 or its regulations, CEAA 2012 or its regulations would prevail.

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

## Updates

This document may be reviewed and updated periodically by the Canadian Environmental Assessment Agency (the Agency). For the most up-to-date version, please consult the Policy and Guidance page of the Agency website at: [www.ceaa.gc.ca](http://www.ceaa.gc.ca)

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## I. Introduction

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There is recognition, both in Canada and abroad, that Aboriginal peoples have unique knowledge about the local environment, how it functions, and its characteristic ecological relationships. This Aboriginal traditional knowledge (ATK) is recognized as an important part of project planning, resource management, and environmental assessment (EA).

### Aboriginal traditional knowledge under CEAA 2012

Subsection 19(3) of CEAA 2012 gives responsible authorities the discretion to consider Aboriginal traditional knowledge in any EA: "*The environmental assessment of a designated project may take into account community knowledge and Aboriginal traditional knowledge.*"

### Purpose of these principles

These principles are intended to provide general guidance on the consideration of ATK.

This document has been written specifically for EA practitioners. The principles are not intended to replace any existing legislative process or requirements. They are intended to provide a framework for the consideration of ATK, where it has been determined that the provision of ATK is both desirable and appropriate.

### What is Aboriginal traditional knowledge?

All cultures have traditional knowledge. In this broad context, ATK can be viewed as knowledge that is held by, and unique to, Aboriginal peoples. Although there are many different definitions of ATK in the literature, there is no one universally accepted definition. For this reason, no official definition of ATK has been provided in this document.

Generally, ATK is considered as a body of knowledge built up by a group of people through generations of living in close contact with nature. ATK is cumulative and dynamic. It builds upon the historic experiences of a people and adapts to social, economic, environmental, spiritual and political change.

While those involved in EA will likely be most interested in traditional knowledge about the environment (or, traditional ecological knowledge), it must be understood to form a part of a larger body of knowledge which encompasses knowledge about cultural, environmental, economic, political and spiritual inter-relationships.



Note: the term traditional ecological knowledge (TEK) is often used interchangeably with ATK. For the purposes of this document, TEK can be considered a subset of ATK that is primarily concerned with the environment.

### **Why consider Aboriginal traditional knowledge in an environmental assessment?**

ATK is held by the Aboriginal people who live in the area of a proposed project, and who have a long relationship with the lands and resources likely to be affected. As such, the input of ATK into the EA process can assist in an EA in many ways. For instance, ATK can:

- provide relevant biophysical information, including historical information, that may otherwise have been unavailable;
- help identify potential environmental effects;
- lead to improved project design;
- strengthen mitigation measures;
- contribute to the building of enhanced long-term relationships between proponents, Aboriginal groups, and/or the responsible authority;
- lead to better decisions; and
- contribute to the building of EA and ATK capacity within Aboriginal communities and build an awareness of, and appreciation for, ATK in non-Aboriginal communities.

### **When can Aboriginal traditional knowledge be brought into environmental assessments?**

ATK can be brought into an EA at any time.

ATK can be used throughout the EA process. For instance, in an EA, ATK can assist with:

- scoping of the assessment;
- the collection of baseline information;
- the identification or analysis of alternative means of carrying out a designated project;
- consideration of the environmental effects of a designated project;
- evaluation of environmental effects and the determination of their significance;
- evaluation of any cumulative environmental effects of the designated project;
- evaluation of the effects of the environment on the designated project;
- identification or modification of mitigation measures; and
- design and implementation of any follow-up programs.



## II. General Principles

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No two EAs are the same; therefore, a one-size-fits-all approach to considering ATK in EA is not possible. However, a number of general principles have been identified with respect to the use of ATK in EAs conducted under CEAA 2012. These are presented below.

Note: EA practitioners should be aware that while the Crown's duty to consult may include the consideration of ATK, the consideration of ATK, in and of itself, will not discharge any duties of consultation that may arise. Legal advice may be appropriate.

### Work with the community

ATK research should be planned and conducted with communities, who are the holders of the traditional knowledge.

Since the ATK held by each Aboriginal group is unique to that group, consideration of ATK in a particular EA will need to be developed with the holders of the ATK. It is suggested that:

- communities be contacted early in the EA process and informed that their input is being sought;
- communities be provided with the opportunity to determine whether or not they wish to provide ATK to the EA;
- community members be provided with clear and accurate information about the designated project, the EA, the EA process, which kinds of ATK may be sought, and how any ATK provided may be incorporated into the EA process;
- practitioners be prepared for unforeseen delays and make extra efforts for ongoing and extensive communications with communities;
- practitioners place their ATK collection efforts in the context of broader long-term relationship-building, thus, the establishment of a relationship of trust with the community, its leaders, and ATK holders is crucial; and
- where language may be an issue, translation may be necessary.

Note: EA practitioners should be aware that different Aboriginal groups have different laws and customs regarding such things as who holds different aspects of a community's ATK, with whom and how ATK might be shared, and who has authority to pass on the ATK.

### Seek prior informed consent

Only the community can decide if they are willing to provide access to their ATK.



In the context of ATK, prior informed consent refers to consent—usually written—that is given by a community to EA practitioners to access and use a community's ATK. In seeking consent, EA practitioners should work closely with the community to:

- clearly set out how the information will be collected and how it will be used;
- clearly set out who owns the knowledge;
- provide community members with clear and accurate information about any relevant access to information legislation;
- identify the proponent of the designated project and any other key contact persons;
- identify potential benefits and possible problems associated with the research; and
- ensure that the party or parties granting consent on behalf of the community truly represent the concerns and interests of the community.

### **Access Aboriginal traditional knowledge with the support of the community**

Access to ATK is a privilege and must be respected.

Some communities may request that an ATK access agreement (also referred to as a protocol agreement, or memorandum of understanding) be negotiated, setting out how their ATK will be accessed and used in a given EA process. Access agreements are entered into voluntarily, and may set out:

- how and by whom the information will be collected;
- how and if specific community members will be paid for the provision of ATK-related services;
- who owns the ATK (intellectual property right issues may need to be addressed);
- how the community will be acknowledged and credited with any ATK that is provided to the process;
- how and when the community will be provided with any reports that incorporate their ATK so that they can review it; and
- if and how the confidentiality of specific ATK can be respected (see note below).

Note: Many Aboriginal groups have developed consultation and research protocols. Where these exist, EA practitioners are encouraged to follow the protocols that have been established, as appropriate.

### **Respect intellectual property rights**

Intellectual property can also include inventions, literary and artistic works, symbols, names, images, and designs.



Certain kinds of creative endeavors are considered intellectual property, and a country's intellectual property right (IPR) laws grant protection to the creators of these endeavors. The main types of IPRs are trade secrets, patents, and copyrights.

Generally speaking, conventional IPR laws offer very limited protection of ATK. In general, this is because conventional IPR instruments tend to grant protection to an individual. ATK tends to be held collectively by a community, rather than by an individual. However, communities are likely to seek some kind of protection for their ATK when it is provided during an EA. This is especially true for sensitive information, such as information about sacred or spiritual sites.

Note: If an Aboriginal group requests confidentiality, EA practitioners will have to determine if the information can be protected, given the provisions of Canada's *Access to Information Act*, and the relevant legal requirements of other involved jurisdictions (e.g., provincial access to information legislation).

### **Collect Aboriginal traditional knowledge in collaboration with the community**

All ATK research must respect the privacy, dignity, cultures, and traditions of Aboriginal people.

There are a number of methods and techniques in the literature for collecting and documenting ATK such as interviews, mapping and group discussions. The information could be collected during consultation efforts. However, a number of procedures can be identified, including:

- working closely with the community when developing methodologies for collecting ATK that respect the cultural identity of the community;
- preparing ATK research frameworks in collaboration with the holders of the ATK;
- ensuring that all research plans have met with the approval of the community;
- ensuring field data collection and analysis is done by or with members of the Aboriginal community;
- being aware that different types of ATK are held by different segments of the population depending on age, gender, and lifestyle;
- giving the community the opportunity to review and verify any ATK that is collected;
- giving the community the opportunity to review how ATK has been used in the EA, such as in the determination of environmental effects and any proposed mitigation, follow-up and monitoring that is proposed; and
- ensuring any ATK collected also stays in the community so that the community can also benefit from the ATK research.



## Bring Aboriginal traditional knowledge and Western knowledge together

ATK and Western knowledge can complement one another.

How ATK is integrated into an EA depends almost entirely on the type of knowledge that is collected. For instance, environmental information (such as ATK dealing with wildlife migration patterns) can be readily integrated with other environmental knowledge. Knowledge about, or based on, values and norms, is not as readily integrated with scientific data sets. Thus, the main role of EA practitioners is to collect and organize any ATK that is provided, and bring to the attention of decision makers that ATK has been considered and how it has been considered.

Note: In many situations, Western and traditional knowledge systems will be complementary in the insights that they can provide to EA practitioners, and thus they can be reconciled with one another in the EA. Where they cannot be reconciled, EA practitioners should juxtapose what is suggested by each knowledge system in their EA report and demonstrate how each type of knowledge has been considered in the EA.