



Government
of Canada

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du Canada

DRAFT

INDIGENOUS KNOWLEDGE POLICY FRAMEWORK

**FOR PROJECT REVIEWS AND
REGULATORY DECISIONS**

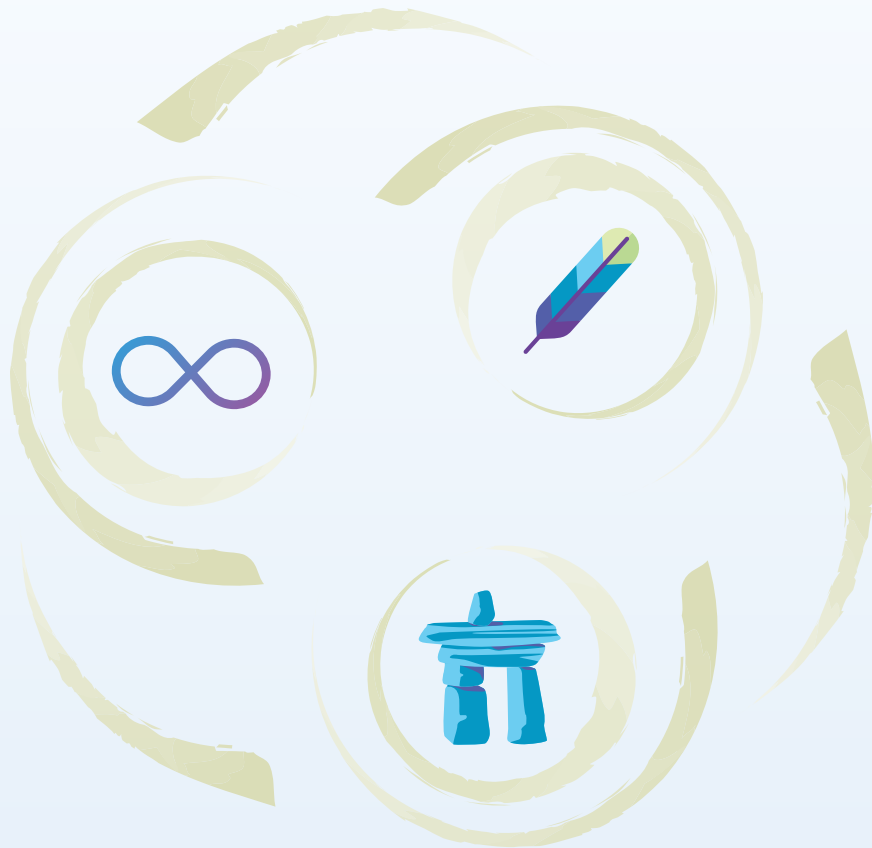


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1. Introduction

The Government of Canada passed legislation on June 21, 2019 relating to the *Impact Assessment Act*, the *Canadian Energy Regulator Act*, the *Fisheries Act* and the *Canadian Navigable Waters Act* (together, the Acts). These legislative changes now require Indigenous knowledge be considered, when provided, alongside other factors, in project reviews and regulatory decisions.

1.1 Purpose of the Framework

The purpose of this Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions (Framework) is to support the consistent application of provisions dealing with Indigenous knowledge in the Acts. The Framework articulates overarching principles that guide the work of federal officials when applying the provisions under the Acts and provides a basis for departments and agencies to develop policies and guidance tailored to each department and agency's specific operational requirements.

1.2 Application of the Framework

This Framework applies to project reviews and certain regulatory decisions by the Impact Assessment Agency of Canada, the Canada Energy Regulator, the Fish and Fish Habitat Protection Program at Fisheries and Oceans Canada and Transport Canada, when applying the Acts.

For greater clarity, the Framework applies to reviews led by the Impact Assessment Agency of Canada, including designated project reviews (i.e., impact assessments) and regional and strategic assessments conducted under the *Impact Assessment Act*. While it provides relevant guidance with respect to Indigenous knowledge, the Framework does not apply to federal departments and agencies making decisions on non-designated projects on federal lands and outside Canada under sections 82 and 83 of the *Impact Assessment Act*.

The Framework applies in all parts of Canada where these processes and regulatory decisions apply; for clarity, while *the Impact Assessment Act* has limited application in the territories, the Framework applies to the relevant processes under the *Canadian Navigable Waters Act*, *Fisheries Act*, and *Canada Energy Regulator Act* in the territories.

Review panels under the *Impact Assessment Act*, integrated review panels under the *Impact Assessment Act* and the *Canadian Energy Regulator Act*, and commission panels under the *Canadian Energy Regulator Act* will set their own processes related to Indigenous knowledge. These independent review panels will take into consideration this Framework, as well as any federal department or agency-specific procedures and guidance on Indigenous knowledge.

Specific to the *Fisheries Act*, the Framework only applies to the mandatory consideration of Indigenous knowledge provided for decisions made under the fish and fish habitat protection provisions of the *Fisheries Act*¹. This Framework does not apply to the consideration of Indigenous knowledge under section 2.5 of the *Fisheries Act*, as Fisheries and Oceans Canada has developed separate guidance for officials on the implementation of that provision.

Each Act is unique in its scope and application. This means that the process for considering Indigenous knowledge may vary from one process and one Act to the next, depending on the situation. Flexibility has been built into the Framework's guiding principles to respond to these operational realities.

2. Context

The Government of Canada is committed to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government, and Inuit-Crown relationship based on the recognition of rights, respect, co-operation, and partnership. The Government of Canada exercises its powers and performs its duties and functions in a manner that is consistent with the rights of the Indigenous peoples of Canada recognized and affirmed in section 35 of the *Constitution Act, 1982*. The *United Nations Declaration on the Rights of Indigenous Peoples* (the UN Declaration) and the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* (the Principles) inform how the Government of Canada approaches the implementation of its legal duties. They also provide the context for engaging with Indigenous peoples, including applying the Indigenous knowledge provisions in the Acts. Engaging with Indigenous peoples to consider Indigenous knowledge provided for project reviews and regulatory decisions is part of the relationship between the Government of Canada and Indigenous peoples, and should be undertaken in a manner that is consistent with respect for the rights of Indigenous peoples.

Indigenous knowledge has made, and continues to make, valuable contributions to environmental, regulatory, and other processes across the country. Indigenous knowledge has also been the focus of growing international discourse. In recognition of the unique perspectives and value of Indigenous knowledge, governments across the world have integrated Indigenous knowledge into their processes. Article 31 of the UN Declaration recognizes “that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.” The Government of Canada is a full supporter, without qualification, of the UN Declaration.²

1 Subsection 34.1(1) of the *Fisheries Act* lists several factors that the Minister of Fisheries and Oceans (the Minister) must consider when making certain decisions (e.g., *Fisheries Act* authorization decisions), including Indigenous knowledge that has been provided, measures to avoid, mitigate and offset impacts, and fisheries management objectives. Section 2.5 of the *Fisheries Act* in contrast provides nine considerations that may be considered when making a decision under the *Fisheries Act*, including Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister.

2 On December 3, 2020, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, was introduced in the House of Commons. This Bill affirms the UN Declaration as a universal international human rights instrument with application in Canadian law and provides a framework for the Government of Canada's implementation of the UN Declaration.

The Principles that the Government of Canada adopted in 2018 are rooted in section 35 of the *Constitution Act, 1982*, guided by the UN Declaration, and informed by the *Truth and Reconciliation Commission Calls to Action* (2015), and the Report of the Royal Commission on Aboriginal Peoples (1996). They reflect a commitment to good faith, the rule of law, democracy, equality, non-discrimination, and respect for human rights. The Principles guide federal departments and agencies in fulfilling the Government's commitment to renewed nation-to-nation, government-to-government, and Inuit-Crown relationships, including in their work to consider Indigenous knowledge provided for project reviews and regulatory decisions.

3. Indigenous knowledge

There is no universally accepted definition of Indigenous knowledge. The term describes complex knowledge systems embedded in the unique cultures, languages, values, legal systems and worldviews of Indigenous peoples. First Nations, Inuit and Métis each have distinct knowledge systems but share certain common characteristics. While Indigenous knowledge comprises the knowledge systems of diverse Indigenous peoples, this Framework uses the term “**Indigenous knowledge**” rather than “Indigenous knowledge system” because that is the term used in the Acts. Other common terms for Indigenous knowledge systems include traditional knowledge, traditional ecological or environmental knowledge, Aboriginal traditional knowledge, Métis Traditional Knowledge, and Inuit Qaujimajatuqangit.

Indigenous knowledge tends to be Nation/community specific and place-based, arising from Indigenous peoples' intimate relationship with their natural world. It is generally understood to be collective knowledge that encompasses community values, teachings, relationships, ceremony and governance. It is cumulative and dynamic, building upon the experiences of earlier generations, and evolving in the context of contemporary society.

Spirituality, ceremony, reciprocity, relationships with and responsibilities towards the earth are an integral part of Indigenous knowledge. Indigenous peoples are inseparable from their knowledge. Indigenous knowledge is not limited to land-use, nor is it relegated to the past (as the term traditional may imply). Indigenous knowledge systems are diverse, living value systems that need to be considered alongside other knowledge, including western science. Indigenous women, gender diverse and Two-Spirit peoples often hold knowledge about specific subjects (for example, water).

3.1 Indigenous knowledge in the Acts

Under the *Impact Assessment Act*, the *Canadian Energy Regulator Act*, the fish and fish habitat protection provisions of the *Fisheries Act*, and the *Canadian Navigable Waters Act*, Indigenous knowledge must be considered, when provided, alongside other factors in project reviews and regulatory decisions. The Acts require that Indigenous knowledge be:

1. taken into account, or considered, in certain decisions or processes when provided;
2. treated as confidential when provided in confidence; and
3. protected from unauthorized disclosure when provided in confidence, subject to certain exceptions, including procedural fairness and natural justice or for use in legal proceedings.

In addition to common provisions regarding the mandatory consideration and confidentiality of Indigenous knowledge, the *Impact Assessment Act* also contains certain transparency provisions that require impact assessments of designated projects, strategic and regional assessments to describe how Indigenous knowledge provided has been taken into account and used.

The Government of Canada recognizes that Indigenous knowledge improves federal decision-making and strengthens project reviews and regulatory decisions. For example, Indigenous knowledge helps federal organizations to have a more complete understanding of Indigenous worldviews, Indigenous cultures, the environment, and the social, health and economic conditions of Indigenous peoples during impact assessments. Indigenous knowledge enhances the understanding of the potential environmental, social, health and economic impacts of projects, and potential impacts to the rights of Indigenous peoples—and its consideration has led to improved project design. Indigenous knowledge can also strengthen mitigation and accommodation measures, help develop the project conditions that proponents must meet, and contribute to more effective, long-term monitoring of project impacts on Indigenous peoples. Both Indigenous knowledge and western scientific knowledge systems should be equally valued and used in tandem to achieve these better outcomes. For project reviews and regulatory decisions, Indigenous peoples may share Indigenous knowledge through formal studies, or during the process of consultations. Note that the extent of the work done to include Indigenous knowledge in these processes may vary according to the scope and scale of the project review or regulatory decision.

4. Guiding principles

The sections below outline the principles, under five themes, that will guide federal officials from the Impact Assessment Agency of Canada, the Canada Energy Regulator, the Fish and Fish Habitat Protection Program at Fisheries and Oceans Canada and Transport Canada (the federal departments and agencies), when applying the Indigenous knowledge provisions in the Acts.

4.1 Respect for Indigenous peoples and their knowledge

The federal departments and agencies recognize that Indigenous knowledge can enhance the understanding of the potential impacts of projects and lead to improved outcomes, including better project design, construction, operations, decommissioning methods, strengthened mitigation and accommodation measures, and more effective monitoring. Indigenous knowledge that is provided, therefore, plays an important role in project reviews and regulatory decisions.

The federal departments and agencies recognize that Indigenous Nations/communities may have established processes and protocols that govern matters related to Indigenous knowledge. These processes and protocols may come in many forms (e.g., formally documented, communicated orally, or through ceremony). Dialogue with Indigenous peoples is critical to understand Nation/community-specific instructions around Indigenous knowledge processes and protocols, to learn about potential effects of decisions, and inform outcomes. It is up to Indigenous peoples to decide whether to share their knowledge with federal departments and agencies.

The following principles will guide the work of the federal officials responsible for implementing the Indigenous knowledge provisions in the four Acts:

- Keep in mind the context of the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples affirmed in Section 35 of the *Constitution Act*, 1982, when working with Indigenous peoples to include Indigenous knowledge that is provided in project reviews and regulatory decisions.
- Respect the diverse interests, priorities and circumstances of First Nations, Inuit and Métis.
- Interactions with Indigenous Nations/communities are respectful of the guidance, protocols and processes of the relevant Indigenous Nation/community.
- Indigenous peoples will guide the understanding of the context and meaning of any Indigenous knowledge that they provide, the purpose for which it is being provided, and how their Indigenous knowledge, even when not provided in confidence, may be shared.

4.2 Establish and maintain collaborative relationships with Indigenous peoples

The federal departments and agencies recognize that building relationships with Indigenous peoples based on mutual respect and trust, and working in collaboration with Indigenous peoples, will facilitate the sharing, aid in the understanding, and support the mandatory consideration of Indigenous knowledge in project reviews and regulatory decisions.

A proper understanding of, and respect for, cultural context is needed for the appropriate consideration of Indigenous knowledge. This is normally acquired through ongoing relationships and dialogue with Indigenous Nations/communities, and not as a separate process.

The following principles will guide the work of the federal officials responsible for implementing the Indigenous knowledge provisions in the four Acts:

- Communication with Indigenous peoples about opportunities to participate in project reviews and regulatory decisions, what Indigenous knowledge may be considered, and any conditions for its consideration in project reviews and regulatory decisions, is critical for Indigenous peoples to decide whether and how to share their knowledge.
- Early engagement with Indigenous peoples promotes meaningful and ongoing dialogue and a better understanding of the context of any Indigenous knowledge that is provided.

- Respect the First Nations principles of ownership, control, access, and possession (OCAP) as they relate to Indigenous knowledge.
- Only Indigenous knowledge holders and Nations/communities are positioned to share their Indigenous knowledge.
- Processes to include Indigenous knowledge in project reviews and regulatory decisions are inclusive of Indigenous women, youth, Elders, gender diverse and Two-Spirit peoples.
- In addition to Indigenous knowledge protocols, if provisions of the Government of Canada's existing treaties and formal consultation agreements with Indigenous Nations/communities apply to the collection and consideration of Indigenous knowledge, these are respected.

4.3 Consideration of Indigenous knowledge

Indigenous knowledge enhances the understanding of the potential impacts of projects and its consideration can strengthen mitigation and accommodation measures, help develop project conditions, and contribute to more effective long-term monitoring of project impacts. Clear guidance, processes and policies for the consideration of Indigenous knowledge, developed by each of the four departments or agencies, is needed to support project reviews and regulatory decisions.

The following principles will guide the work of the federal officials responsible for implementing the Indigenous knowledge provisions in the four Acts:

- Communication with Indigenous Nations/communities about how Indigenous knowledge is understood, by validating or verifying how the Indigenous knowledge is described and how it was considered, promotes the accurate and respectful consideration of Indigenous knowledge.
- Inform Indigenous peoples of processes and policies associated with project reviews and regulatory decisions, as well as opportunities to share their knowledge, in a timely manner.
- Flexibility in processes and policies, subject to legislative and regulatory requirements, will help support the consideration of Indigenous knowledge; for example, accommodating knowledge provided in an Indigenous language and in forms other than written form.
- Indigenous knowledge needs to be understood and considered in the context within which it is provided; this includes considering the knowledge only for the purpose for which it is provided.
- Both Indigenous knowledge and western scientific knowledge systems are equally valued and the integrity of Indigenous knowledge needs to be maintained when it is considered alongside western science.
- Prior to providing Indigenous knowledge, Indigenous Nations/communities will decide who provides and, when appropriate, verifies Indigenous knowledge and how permissions to include Indigenous knowledge in these processes are obtained.

4.4 Respect the confidentiality of Indigenous knowledge

The federal departments and agencies are required to protect confidential Indigenous knowledge from unauthorized disclosure in accordance with the respective Acts. Provisions in each of the Acts afford protection to confidential Indigenous knowledge, subject to certain legislative exceptions, including procedural fairness and natural justice or for use in legal proceedings.

The federal departments and agencies also recognize the importance of establishing consent-based processes to prevent unauthorized disclosure of Indigenous knowledge. The federal departments and agencies acknowledge that Indigenous Nations/communities will determine whether to share their knowledge, and what aspects of that knowledge they wish to share in confidence. They also recognize the importance of procedures to prevent the unauthorized disclosure of Indigenous knowledge and acknowledge that consent must be explicit and not assumed.

The following principles will guide the work of the federal officials responsible for implementing the Indigenous knowledge provisions of the four Acts:

- Before receiving any Indigenous knowledge, federal officials will clearly communicate that there are exceptions under which Indigenous knowledge provided in confidence may be disclosed.
- Indigenous Nations/communities determine whether to share their knowledge, and what aspects of that knowledge are shared in confidence.
- If Indigenous knowledge provided in confidence is to be disclosed because of one of the exceptions for the purposes of procedural fairness and natural justice, federal officials must consult the person or Nation/community who provided the Indigenous knowledge and the person or organization to whom it is proposed to be disclosed about the scope of the proposed disclosure and the potential conditions under which the Indigenous knowledge will be disclosed, and implement measures to manage that disclosure.
- Federal departments or agencies will communicate to the Indigenous Nation/community how they will handle, store and treat Indigenous knowledge provided in confidence.

4.5 Support capacity building to facilitate the consideration of Indigenous knowledge

The federal departments and agencies recognize there is a need to support Indigenous peoples in building their capacity to participate fully in project reviews and regulatory decisions, as well as supporting the capacity of federal officials to engage with Indigenous peoples about Indigenous knowledge. Indigenous peoples may require support to facilitate the transmission and consideration of Indigenous knowledge in project review and regulatory decision processes.

The federal departments and agencies acknowledge that Indigenous peoples also require adequate time and resources to collect and manage Indigenous knowledge, including human resources, education,

training, research, translation, information storage and management, among other activities. Supporting Indigenous Nations/communities in these ways will better enable Indigenous peoples to participate in project reviews and regulatory decisions, and provide Indigenous knowledge for consideration in these processes.

The following principles will guide the work of the federal officials responsible for implementing the Indigenous knowledge provisions in the Acts:

- Where funding or other mechanisms are available to support Indigenous peoples' participation in project reviews and regulatory decisions, it is provided as early as possible.
- Capacity support for Indigenous peoples should address Nation/community needs to the extent possible. This may include development of Indigenous knowledge protocols and take into account limitations in Nation/community capacity, Indigenous language requirements, logistical requirements, and availability of knowledge holders or Nation/community representatives.
- Indigenous Nations/communities need to record and preserve their Indigenous knowledge; federal departments and agencies support this data access and gathering to the extent possible.
- Support building cultural competency and awareness of federal officials involved in project reviews and regulatory decisions, including about the history, heritage, cultures, rights and perspectives of First Nations, Inuit and Métis, and their relationships with the Crown.

5. Conclusion

This Framework supports the consistent application of the Indigenous knowledge provisions found in the Acts. The overarching principles herein guide the work of federal officials under the Acts. The federal departments and agencies will have policies and guidance that are consistent with this framework and are tailored to each department's specific operational requirements. The Framework will be reviewed and updated as federal departments and agencies gain more experience in the consideration of Indigenous knowledge in project reviews and regulatory decisions.