

A TEMPLATE FOR THE DEVELOPMENT OF TRADITIONAL KNOWLEDGE POLICIES

This paper is intended to help guide the development of policies that allow Traditional Knowledge to be used for the benefit of <First Nations>, but will empower the <First Nation> to assert its ownership of, and management responsibility for, Traditional Knowledge.

This draft was developed in the context of land planning. It includes a number of Principles for consideration, as well as suggestions for policy development as it pertains to, (a) the approval of projects involving Traditional Knowledge, (b) collection procedures, (c) data management, (d) rules for disclosure of Traditional Knowledge, and (e) benefits for the sharing of Traditional Knowledge.

Note that the collection and use of Traditional Knowledge is a delicate matter due to its inextricable link to <First Nation> culture, and its affinity to the language in which it was developed. The very question of isolating Traditional Knowledge from its cultural context, and incorporating it into processes and applications that are borne out of science-based, English-speaking, "foreign" governance institutions, does not resonate well with many aboriginal people. It is important that the <First Nation> and its citizens understand the value of using Traditional Knowledge in land planning and management to protect <First Nation> rights and interests. However, there should be a level of comfort that the policies will allow for the respectful use of Traditional Knowledge without compromising its fundamental role in preserving <First Nation> culture, anchored around customary and sacred laws.

1.0 INTRODUCTION

1.1 WHY DO WE NEED TRADITIONAL KNOWLEDGE POLICIES?

There is an increasing interest in the inclusion of Traditional Knowledge (TK) in land planning and management. Environmental assessment legislation across most of Canada includes an obligation on Territorial and Provincial governments to consider the knowledge and experience of aboriginal people. Yet there are no clearly described methods for collecting TK, and no rules for disclosure. Therefore there is no certainty that confidential and proprietary information will be protected, or that TK will be managed respectfully. This situation is in contrast to science, which is guided by an accepted methodology, and protected through Intellectual Property Rights (IPR) legislation.

1.2 WHY SHOULD FIRST NATIONS CONSIDER DISCLOSING TK

One of the principle purposes of land use planning is to guide land use decisions, so as to avoid or minimize impacts to cultural and ecological values. TK can reveal the location of cultural sites and interests, as well information about animal range use and movement patterns, the location of key habitats, and patterns of abundance. Without this information there is a risk that development will impact these values.

1.3 WHY SHOULD LAND MANAGERS BE INTERESTED IN TK?

The advantage of using TK is that (a) it is an holistic data base, based on events that have occurred over centuries, (b) it is obtained through recall methods and can therefore generate results immediately and at relatively low cost, and (c) it does not employ methods that are intrusive or biased. TK can also work with science to (d) provide baseline data against which current assessments can be compared (e.g. climate change), and (e) provide insights that can guide further scientific. In short, it makes good sense to use TK to guide land management decisions.

1.4 PURPOSE OF A TK POLICY

A policy is simply an accepted course of action. The purposes of adopting TK policies are to; (a) establish rules for engagement in a TK Project, and in particular empower the <First Nation> or its agents with the authority to manage and share TK; (b) establish methods for collecting TK consistent with <First Nation> culture; (c) adopt rules for disclosing TK, that re-affirm the ownership of TK, and the obligation to protect TK; and (d) provide some assurance that TK will not be isolated from its cultural context.

1.5 WHAT IS TRADITIONAL KNOWLEDGE?

Traditional Knowledge has evolved within specific cultures. Therefore, there is no one definition of Traditional Knowledge. Because the definition of TK will influence the types

of information that will be collected and shared, and therefore covered under the policy, it is important to give careful consideration of your definition of TK. In defining TK, particular attention might be given to the types of information a <First Nation> is willing to disclose. Some Nations have chosen to narrow the definition of TK for the purposes of land planning by describing as Traditional Ecological Knowledge (TEK), or considering only Traditional Land Use and Occupancy information.

One of the more comprehensive and widely held definitions of TK was developed through the Royal Commission on Aboriginal Peoples, as follows:

Traditional knowledge means the accumulated body of knowledge, observations, and understanding about the environment, and about the relationship of living beings with one another and the environment, that is rooted in the traditional way of life of first nations.

2.0 SOME IMPORTANT PRINCIPLES TO CONSIDER

Below are set of principles to consider which may provide a foundation for the development of TK policies.

2.1 <First Nation> must be directly and genuinely engaged in planning and decision-making with respect to land and resources within their traditional territory, to retain their responsibility as traditional land-stewards and joint landlords.

2.2 In recognition of the extent and depth of <First Nations> experience on the land, and the valuable contribution of TK to land-use decisions, TK must be incorporated into planning, management and operational decisions in a manner consistent with these policies.

2.3 The requirement to consider TK includes the recognition that the <First Nation> has constitutionally protected aboriginal rights to ownership, protection and custody of their TK, and that TK is a heritage resource that includes <First Nation> archaeological objects related to <First Nation> culture.

2.4 The protection and custody of TK is the responsibility of the <First Nation>, and its citizens, families, clans and land stewards.

2.5 The <First Nation>, as a duly elected body to govern its citizens, has the authority to maintain TK Documents, and disclose TK, subject to this policy.

2.6 The <First Nation> in exercising its authority on behalf of its citizens will work to ensure that the knowledge is not extracted from its cultural context, and will to the extent possible protect and manage TK according to this policy.

- 2.7 This policy is not intended to impair the ongoing uses and exchange of TK between its citizens and families.
- 2.8 TK must be taken into consideration in land planning and management, as a legitimate and independent body of knowledge.
- 2.9 The design, collection, analysis, and reporting of any research involving TK, and any interpretations of TK into planning and management, must be conducted by persons deemed to be certified by the <First Nation>.
- 2.10 When TK is used in conjunction with science it must be held at least as equal to science, and integrated only with the direct involvement of persons deemed to be certified by the <First Nation> to discuss TK.
- 2.11 A proponent wanting to use TK must receive consent from the <First Nation> prior to initiating a project to collect and use TK. The <First Nation> must be satisfied with the purpose of the project, and satisfied that it is consistent with these principles.
- 2.12 Holders of TK participating in a TK project must give their consent to release their knowledge, once they are satisfied that they understand the scope and purpose of the TK project, and approve the intended use of TK.
- 2.13 Information that is of a proprietary nature or culturally sensitive, must be held in "confidence". This is because some information in the wrong hands may result in (a) the theft of heritage artifacts and fossils, (b) the direct or inadvertent destruction or disturbance of heritage sites by excavation and research, (c) the use of the knowledge for inappropriate purposes, or contrary to cultural laws, (d) the exploitation of sites, (e) the use of knowledge for illegal purposes, (f) drawing attention to knowledge that should be protected by sacred laws, or (g) other inappropriate uses of TK.
- 2.14 Elders play a pivotal role in the custody of TK. Their counsel should be sought in the development of specific policies, and in particular the rules that govern the disclosure of TK.
- 2.15 The <First Nation> and/or its citizens must be acknowledged and enjoy a fair share of the benefits associated with the disclosure of TK.

3.0 WHO OWNS TK AND CAN DISCLOSE TK?

TK is generally considered to be the property of a collective group of citizens, but is held by individuals or families within the nation. Typically a <First Nation> is directed by its citizens to authorize the management and custody of TK. Custody by the <First Nation> provides some assurance that the knowledge will be protected and not left at the

discretion of individuals to disclose. But without the support of the citizens or families within the nation, TK will remain withheld and perhaps lost to future generations. It is therefore important for the <First Nation> to work closely with its citizens and families to seek their support and advice for the management and custody of TK. The community of citizens within the nation should be instrumental in setting policy around TK, and in particular should determine who should have the authority to disclose or “release” TK. It is important to be clear on the role of the <First Nation>, its technical staff, the heads of families or land stewards, and the elders, in both the development and implementation of TK policy.

4.0 TK PROJECTS - PROJECTS THAT REQUIRE TK

TK policy should apply to all projects that require or seek TK, outside of internal processes that use TK. Projects that require TK include land and resource planning, land and resource disposition processes, environmental assessments, reclamation projects, archaeological studies, wildlife studies, fisheries studies, etc. A proponent could be government, industry, joint recommendation/decision bodies, academic researchers, writers, film-makers, etc. It should be made clear to all those requiring or interested in TK to understand that TK is owned by the <First Nation> and is managed and protected according to internal policies. Citizens and families within the <First Nation> should also understand the importance of protecting and managing TK, and should direct those interested in TK to follow due process in obtaining TK.

5.0 PRE-CONDITIONS FOR A TK PROJECT

The <First Nation> has an obligation on behalf of its constituents to protect and preserve TK, as a shared cultural heritage. Therefore the <First Nation> should be the point of contact for any requests involving TK, and projects that require TK will need the consent of the <First Nation>.

5.1 Consent from the <First Nation>

Before commencing a TK project a proponent will require consent from the <First Nation>, or body that is authorized by the community or the <First Nation> to release TK. This is typically achieved through a TK Agreement. The TK Agreement, signed by the proponent and the <First Nation> or its agent, will confirm the ownership, acquisition process, and rules for disclosure. Before consenting the <First Nation> or its agent must be satisfied that they have been fully informed as to the scope and purpose for the use of TK.

5.2 Project management

It is important that the <First Nation> be engaged throughout the TK Project. In this regard, a person or persons authorized by the <First Nation> or community should

be directly involved in the development of a work plan and budget. The work plan and budget must be approved by the <First Nation> or its agent.

5.3 Oversight Committee

The <First Nation> may want to authorize a committee of elders or land stewards (Oversight Committee) to approve the work plan and budget. This will give families, clans, or land stewards a sense of ownership and authority for the TK Project.

6.0 PROJECT MANAGEMENT

It is important that TK be collected with respect and according to customary laws. TK is not simply a data set. Therefore it is important that the <First Nation> or its agent be directly involved in the management of a TK project, and supervise the collection of TK information.

6.1 The TK Agreement

TK should not be collected, or retrieved, until a TK Agreement and Project work plan are approved.

6.2 Project management

A TK Technical Expert/Coordinator (Project manager), authorized by the <First Nation> on the advice of its citizens and land stewards, should be involved throughout the process to oversee and manage the project, determine interview methods, and stop the project if terms are breached or problems arise.

7.0 COLLECTING TK

7.1 Existing TK data holdings

The <First Nation> or its agent will evaluate the request for TK to determine whether the information has previously been documented and is part of their data holdings, or whether collections are required from citizens. Existing TK documentation (maps, reports, etc.) should be subject to the same policies and rules for disclosure as new TK collections.

7.2 Who will collect TK?

TK, not previously documented, should be collected by a person authorized by the <First Nation> or its agent, and according to standard procedures adopted by the <First Nation>. A number of people may be involved in the collection of TK, including the Project Manager, a research assistant, a map recorder, and an elder assistant/translator. This involvement by <First Nation> citizens is important in that it

gives TK holders comfort that the community will retain ownership of, and management responsibility for, TK.

7.3 Types of information recorded, and methods used

The Project Manager, guided by the work plan and the advice of the elders, will determine the types of information requested, and the method of conducting the interviews.

Types of information include spatial (map) data, stories, legends, and descriptions, of culturally significant places (grave sites, trails, traditional hunting, fishing and gathering sites, etc.), as well as information about fish and wildlife distribution, movement patterns and key habitats. The <First Nation> may want an Oversight Committee of elders or land stewards (see 5.3) to provide advice and instruction as to what types of information are deemed inappropriate to record, under sacred or customary laws.

7.4 Methods for collecting TK

Methods should be developed by the <First Nation> or its agent on the advice of its citizens, and in particular its elders and land stewards. Collection methods should be respectful. Collection methods can include community workshops, one-on-one interviews, group interviews, or video filming sessions, with those who have given their consent.

7.5 Families, clans, land stewards

It is important to identify family or clan affiliations to different parts of the traditional territory so that those families or clans with ties to the project area will be guaranteed the opportunity to participate in the project.

A representative of the family or clan, often referred to as a Traditional Land Steward may be given a more significant role in the collection of TK where the project falls within their land "tenure".

7.6 Language translation

Where possible TK should be recorded in the language in which it was conveyed.

7.7 Remuneration

All participants should be remunerated for their contributions.

7.8 Prior-informed Consent

It is important that elders and land stewards participating in the TK Project be fully informed about the project. They must understand what the information is intended for, how the information will be presented, how they will be acknowledged (or how they will remain anonymous), and how they or the community will benefit from the project. Their consent can only be given if they fully understand the purpose and scope of the project; referred to as Prior-informed Consent. The person conducting the interviews will be required to read to the participant a testimonial or provide them with a

Consent Form to ensure participants fully understand the scope and purpose of the project. This will be the basis of consent to conduct the interview. In short, the elder will give permission to “release” their knowledge to the project for the purposes explained to them, but only if they agree to the purpose of the project and the intended use of TK.

7.9 How should information be recorded and formatted?

It is important that data be recorded carefully and systematically referenced. This is to ensure that data can be easily retrieved from data banks and filing systems, and so that mapped and other recorded information is easily interpreted.

Data sheets are used to ensure that information is carefully recorded. In particular it is important to know (a) who provided the information (speaker), (b) what type of site or area the location refers to, that is, whether it’s a grave site, a mineral lick, traditional hunting area, etc., (c) what number on the map indicates the site (Polygon/Site #), and (d) on what map sheet the information is provided (Map sheet #). In addition it is important to record (e) whether the mapped number refers to an area (polygon), a specific site (site), or a line feature. These are called Feature Identifiers. It is also important to know (f) who mapped the information, (g) who recorded the information on the data sheets, and (h) what the scale of the map is. This systematic way of mapping avoids confusion later when the mapping technician has to link the many comments received to the correct location on the map.

Also it is important to indicate the level of sensitivity of specific sites and information that are recorded. A rating of sensitivity should be based on the advice of TK holders, an Oversight Committee, or the <First Nation> (see 8.5 below).

8.0 DATA MANAGEMENT

In order to ensure protection of confidential or sensitive information, affirm the ownership of TK, and accumulate and organize TK information, it is necessary that the <First Nation> or its agent store and control the use of TK.

8.1 Where will the data be stored?

All information will be recorded on digital format. This is important so that (a) there is a back-up copy of the material, (b) it can be easily organized and retrieved, (c) it is conveniently stored and protected, (d) maps can be easily reproduced, and (e) the information can be easily shared between communities or families. There is an advantage to centralizing the storage of TK, for ease of control and access, and to provide a duplicate in case original materials are accidentally destroyed. Original materials (maps & text), can remain with the community or family/clan from which the information came.

8.2 Data format

Data and information collected will be turned over to the mapping technician who will enter all the information onto a computer in a digital (electronic) format. It is

important to use a standard format and map projection so that information can be easily organized and shared. Map locations are typically recorded on Global Information System (GIS), using ArcView as the software and in a format referred to as Shape Files. Other user-friendly geo-spatial information platforms might be considered, including "Google Earth".

8.3 Conversion of stories to map locations and text files

Interviews may produce TK information that refers to a geographic location, but is not mapped. A map technician or researcher is required to review TK materials and convert geographic references to a map sheet. This information is then entered on GIS or other digital format.

All documents of recorded transcripts or archival material should be scanned into a computer and converted to a standardized word-processing software format so it can be easily "read" and shared as required. The standard format used by most is Microsoft Word. Once entered, these "files" should be organized through a filing system that makes it simple and sensible to find and retrieve.

8.4 Multiple data sets – Metadata

When data is collected from different sources it is important to index the data sources so that it can be easily retrieved, cross-referenced, and interpreted. This data about data is what we call *metadata*. The index should include who created the data, how it was created, when it was created, what format and projection was used, and where the original data is located.

8.5 How will confidential information be protected?

All original information (data) held in storage, in whatever form, will remain confidential and protected. Digital copies, including digital video, on the computer or on separate hard drives will be considered confidential and protected through firewalls that deny access to anyone other than those who hold the password.

An Oversight Committee, as a cross-section of citizens or families, or a group of TK experts, may be established to determine what data can be shared, with whom, and in what format. This can be achieved by requiring the Oversight Committee to consent to the work plan that will indicate what types of data are required, and also consent to the eventual release of information – including text, maps, videos, audio tapes, etc. (see section on Disclosure below).

The sensitivity of information will be determined by the TK holder, an Oversight Committee, or the <First Nation>, based on proprietary interests, customary or sacred laws, or the risk of exploitation. TK information should be classified, according to its sensitivity or risk of exploitation, as a guide to what information can be disclosed and in what format.

9.0 **DISCLOSING TRADITIONAL KNOWLEDGE**

Probably the most important aspect of the TK policy is to determine what types of information can be shared with a proponent, and in what format, and who will have the authority to determine the type of information and level of detail that can be disclosed. The concern is not simply that a proponent will inappropriately use or exploit sensitive information, but that the information will inadvertently fall into the wrong hands and be exploited by an independent 3rd party. Government, despite what may be honorable intentions, may be obligated to release information to the public because of federal and provincial Access To Information Policies (ATIP). Because of these public policies, it may be better to withhold information, or reveal it in a cryptic way that can serve the purposes for planning and management, yet keep the specific nature or location of the information confidential.

9.1 What criteria should be considered to allow for the release of TK?

There are many good reasons to protect some types of knowledge. Information in the wrong hands may result in (a) the theft of heritage artifacts and fossils, (b) the direct or inadvertent destruction or disturbance of heritage sites by excavation and research, (c) the use of the knowledge for inappropriate purposes, or contrary to cultural laws, such as the exploitation of medicine plants, (d) the exploitation of sites, such as the raiding of grave sites, (e) the use of knowledge for illegal purposes, (f) drawing attention to knowledge that should be protected by sacred laws, or (g) other inappropriate uses of TK. It would be helpful to make a list of sites and values and classify them according to their sensitivity or risk of exploitation. Also, consideration should be given to who should be entitled to have access to, and what kinds of conditions or limitations should be placed on, different types of information.

9.2 Types of disclosure

Information can be assigned a disclosure category. Some information should not be disclosed and available only to family/clans, or the <First Nation>. Other information may be used only for internal purposes, with restrictions on reproductions, electronic exchange, or with sections blacked out. Information released to a proponent might have terms and conditions on its release and therefore be partially disclosed, other types of information might be fully disclosed and therefore publicly accessible.

9.3 Displaying information so as not to reveal its confidential attributes

The dichotomy is that to protect some sites from the pressures of development may require that the confidential nature of these sites be revealed. One way to offset this risk is to present information (in particular mapped information) in a way that is cryptic to the reader. For example, placing a polygon around a grave site and prescribing no activities within the polygon may give the site the protection required without revealing the exact location of the specific site.

9.4 Who decides what information should be protected/released?

This is a very important role, one that should be entrusted to those that understand TK in its cultural context, and are willing to represent <First Nation> and community interests. This individual or body must remain vigilant in protecting confidential information and adhering to customary laws and practices. We suggest that a body of elders, clan or family heads, or land stewards, convene as an Oversight Committee to decide what information should be disclosed or protected. The advantage of using a committee of elders or family heads/clans/land stewards is that they are often closely connected to the culture, and tied to the land, where they are implicitly entrusted as stewards of the land and the knowledge. They also can provide broad representation of the community.

9.5 How do you prevent individual citizens from disclosing TK that is of a confidential nature?

Policies are not protected under law. Therefore there are no penalties or obvious disincentives to deviate from the policies. It is important, then, to seek broad support among the constituents for this policy. If the citizens understand the importance of protecting TK and managing it within the context of their culture, they will honour the policy. It is hoped that a proponent or individual that deliberately or otherwise bypasses the rules for engagement, approval and acquisition of TK, by going directly to the TK holders, will be directed by the TK holder to the <First Nation> so as to comply with these policies.

9.6 How will information be protected?

There are a number of simple ways to assure that confidential information will not be released to the proponent, the government, or the public. This can be done through a systematic classification system of sensitivity or risk (colour-coded to instruct an Oversight Committee to withhold or release the information), by displaying information in a way that does not reveal the exact location or precise nature of the site, or by deciding on a case-by-case basis whether specific information can be released.

Classes of information can be assigned passwords for access or protected through other digital-based "fire-walls", which provides access to some types of information, but not others, and prevents some information from being printed or exported.

The <First Nation> or its agent will be charged with managing TK information in its holdings, so that access to electronic data bases will be permitted only by authorized staff.

All information will be deemed to be confidential and with no disclosure, until authorization has been given through the <First Nation>, or its agent, such as an Oversight Committee.

9.7 Who can interpret TK in its application?

The sharing of information should be accompanied by <First Nation> involvement in any interpretations or analysis of this information. This stands to reason – science is analyzed and interpreted by scientists, similarly, TK should be analyzed and

interpreted by those certified to do so. Without the involvement of the <First Nation> or its agents, there is a risk that the information will be ignored, interpreted incorrectly, oversimplified, exaggerated, inappropriately integrated with science, subject to validation by those unqualified to validate TK, or extracted from its cultural context. Also, it is important (see Principles) that the <First Nation> be directly involved in the decision-making process that incorporates TK.

10.0 BENEFITS & AUTHORSHIP

Consistent with the Principles, TK has value and there should be compensation for its use.

10.1 Proponent should pay for collection and management of TK

Proponents should pay for the collection and management of TK, and honoraria and wages should be included for those participants.

10.2 Royalties & revenues

Any royalties or revenues associated with the product that includes TK should be shared with the <First Nation>.

10.3 Acknowledgement

Any publication using TK must acknowledge TK holders and their contribution and include TK holders as joint authors where appropriate.

10.4 Publication

The work plan and the TK agreement should include rules about publication of TK material. Only the <First Nation> should have the ability to publish or circulate TK information beyond those applications covered under the work plan. The <First Nation> may consider adopting Publication Policies or Guidelines that establish process and rules for the publication or release of information or DVD's.

10.5 Re-assignment of production rights

Production rights for Digital Video, audio, or written material, where it includes TK, should be assigned to or shared with the <First Nation>. Where previous work that has included TK has been produced, effort should be made to persuade the author/producer to re-assign the production/publication rights.

