



Oral presentation

Exposé oral

**Written submission from
Mi'gmawe'l Tplu'taqnn Incorporated**

**Mémoire de
Mi'gmawe'l Tplu'taqnn Incorporated**

In the Matter of the

À l'égard de la

**New Brunswick Power Corporation,
Point Lepreau Nuclear Generating Station**

**Société d'Énergie du Nouveau-Brunswick,
centrale nucléaire de Point Lepreau**

Application for the renewal of NB Power's
licence for the Point Lepreau Nuclear
Generating Station

Demande de renouvellement du permis
d'Énergie NB pour la centrale nucléaire de
Point Lepreau

**Commission Public Hearing
Part 2**

**Audience publique de la Commission
Partie 2**

May 11 and 12, 2022

11 et 12 mai 2022

Written Submissions to the Canadian Nuclear Safety Commission (CNSC)

**New Brunswick Power's Point Lepreau Nuclear Generating Station
(PLNGS) Re-Licensing Application Hearing**

Mi'gmawe'l Tplu'taqnn Incorporated

March 28, 2022



Mi'gmawe'l Tplu'taqnn: Our Land, Our Rights

1. The Mi'gmaq are the original inhabitants of our territory of Mi'gma'qi, which includes the areas currently known as Nova Scotia, New Brunswick, PEI, and parts of Quebec, Newfoundland and Maine. Oral history affirms that Mi'gmaq have occupied and cared for our lands and waters since time immemorial.
2. Beginning in 1726, the Mi'gmaq entered into sacred, constitutionally protected Treaties of Peace and Friendship with the British Crown, which recognized Mi'gmaq Nationhood, title and rights, including the right to hunt, fish and gather.
3. We continue to exercise our Aboriginal and Treaty rights throughout Mi'gma'qi. Our Treaties have been upheld, and our rights have been repeatedly proven and affirmed by the Supreme Court of Canada and the Courts of New Brunswick. The Mi'gmaq have never ceded our Aboriginal Title of ownership and stewardship over the lands and waters of our territory to the Crown.
4. Mi'gmawe'l Tplu'taqnn means "Mi'gmaq People's Laws" or "how we govern ourselves." MTI is a not for profit, Mi'gmaq rights organization, which was established in November 2015 to advance the interests of our member First Nations. MTI's members consist of nine Mi'gmaq First Nation communities located in New Brunswick: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Elsipogtog First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipögtötjg (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and Metepenagiag Mi'kmaq Nation.
5. MTI's mandate is to promote and support the Aboriginal and Treaty Rights of our member First Nations, which includes ensuring that Mi'gmaq rights are recognized, affirmed and protected.
6. MTI also promotes the political, cultural, economic, educational and social development of our member First Nations; wider respect, understanding, and awareness of our member First Nations and their rights, values, customs, practices, culture and traditions; and justice and equity for our member First Nations.
7. MTI is governed by a board made up of the Nine Mi'gmaq Chiefs (the Mi'gmaq Sagamaq Mawiomi), who are advised by a council of Elders and a youth council. The organization is staffed by several technicians, including an Energy and Mines Coordinator, a Forestry and Natural Resources Coordinator, and a

Fisheries Coordinator. Also within the organization is an integrated Indigenous Knowledge and Science Research Department, and several Community Liaisons representing each Mi'gmaq community, who facilitate community engagement along with respective staff and leadership.

8. MTI is the representative organization for the Mi'gmaq of New Brunswick on matters pertaining to Mi'gmaq rights and has been appointed to conduct consultation and accommodation with the Crown on behalf of 8 of our 9 members. While Elsipogtog First Nation is a member of MTI, they continue to consult through their consultation delegation, Kopit Lodge. As such, MTI is not representing Elsipogtog in this proceeding.

MTI's Submissions to CNSC's Public Commission Hearings

9. MTI participated in the CNSC's Public Hearing relating to NB Power's Renewal Application for PLNGS in 2017. MTI's written submissions focused on the following issues:
 - a. The Crown's duty to consult and accommodate Mi'gmaq on actions that may infringe upon their rights;
 - b. The impact that PLNGS may have on the rights of the Mi'gmaq; and
 - c. The need for an Indigenous Knowledge study and other conditions that address Mi'gmaq rights as part of licence renewal.
10. MTI recognizes that efforts have been made by NB Power and CNSC since 2017 to consult and engage with Mi'gmaq rights holders regarding PLNGS. For example, on March 12, 2018, NB Power and MTI entered into a "Relationship and Consultation Agreement" ("the Agreement") to "outline the principles and process for engaging and consulting with the MTI member communities with respect to NB Power Projects." The Agreement sets out the responsibilities of Consultation Leads for each party, and the approach to consultation that will be adopted by the parties regarding "any project or activity proposed by NB Power that may trigger consultation with the Mi'gmaq or with which NB Power would like to engage with the Mi'gmaq." A copy of the Agreement is enclosed with this submission. Although a document has not been formalized, MTI and CNSC have discussed "Terms of Reference" for relationship building between the two organizations. MTI understands that both parties remain open to further discussions on the matter.

11. Nonetheless, an Indigenous Knowledge (IK) study for PLNGS has not yet been conducted, which is essential for allowing us to determine the potential impact on Mi'gmaq rights from PLNGS.
12. MTI maintains the position that NB Power's commitment to funding and conducting an Indigenous Knowledge study should be a condition of licence renewal approval, given that the decision to renew is one that impacts Mi'gmaq rights. MTI seeks to have an IK study conducted for PLNGS, in accordance with the processes developed by Mi'gmaq researchers and elders.
13. Although NB Power has operated PLNGS pursuant to a series of five-year licences, it is now requesting renewal of its Nuclear Power Operating Licence for a term of 25 years, until June 2047. MTI submits that the proposed 25-year licence renewal period is unnecessarily long, and a five- to ten-year licence would be appropriate.

Indigenous Knowledge and IK Studies

14. The term Indigenous knowledge (IK), sometimes referred to as traditional ecological knowledge (TEK), is defined in the *New Brunswick Mi'gmaq Indigenous Knowledge Study Process Guide* (the "Guide", a copy of which is enclosed with this submission) as: "a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission."
15. More specifically, Mi'gmaq Knowledge is described in the Guide as follows:

"Mi'gmaq knowledge is a collection of shared and layered experiences of Mi'gmaq observations over millennia. These collections of observations on the lands and waters continue to develop with every new generation of Mi'gmaq. [...] Mi'gmaq collective experience is a living body of knowledge known as Indigenous Knowledge (we prefer the use of Indigenous Knowledge (IK) over TK or TEK). It is an evolving knowledge system that is scrutinized and tested in accordance with the techniques that have been passed down by our Elders, as well as in conjunction with new systems of information and knowledge gathering."
16. An IK study is the process whereby information is gathered on Mi'gmaq land use and occupancy of a given area. This information can inform a project proponent of Mi'gmaq presence on the land, and the possible effects of development on Mi'gmaq land use and treaty rights. An IK study strengthens the consultation process by ensuring the parties are fully informed of the

impacts of proposed development or initiatives, such as the renewal of a licence for a nuclear facility like PLNGS.

17. The enclosed Guide outlines a process for the research, gathering, verification and sharing of the Indigenous Knowledge of the Mi'gmaq through an IK study. This process was developed by our Researchers, with the support of our Elders and knowledge holders, and approved by the Mi'gmaq Sagamaq Mawiomi.¹ It is the process that we expect to be followed when gathering Indigenous Knowledge from our member communities.
18. It is our expectation that Mi'gmaq Indigenous Knowledge be used in all natural resource management and environmental decision-making, particularly any decisions that impact Mi'gmaq Rights. We further expect that Indigenous Knowledge be considered from the outset of any decision-making processes wherever possible.
19. PLNGS is located on the shore of the Bay of Fundy. The Bay of Fundy coasts, islands, and waters were of great importance to the Mi'gmaq in maintaining both subsistence lifestyle and trade due to its geographic accessibility to rich aquatic food sources and trading activities. Early European contact included trade with Portuguese, French, and Basque fishermen, who had documented the Mi'gmaq skillful use of Basque shallops (boats) to travel to trade in New England.
20. There is documentary and physical evidence that several locations in the Bay of Fundy were important gathering points for the Mi'gmaq and other First Nations for purposes of trade, as well as larger collective endeavours such as the harvesting of large marine mammals, including porpoises, walrus, and whales. Such locations likely included present-day Saint John, Point Lepreau, and the Fundy Isles. What is missing from the record is Mi'gmaq knowledge and information regarding historic and present-day land use, and how PLNGS may affect the area and its usage.
21. Today, our communities exercise a variety of harvesting activities in and around the Bay of Fundy, including but not limited to food fishing activities, commercial fishing, and harvesting of plants and wildlife. In addition, our communities, and particularly Fort Folly, have been involved with efforts to restore salmon and other species in the Bay of Fundy. An IK study would assist

¹ Mi'gmaq Sagamaq Mawiomi (MSM), means Gathering of the Mi'gmaq Chiefs. These Gatherings enable the Chiefs to work collaboratively on issues of serious concern for the Mi'gmaq of New Brunswick. It represents all of the Mi'gmaq Chiefs in New Brunswick.

us in identifying these activities, and the possible impact of PLNGS on these activities, in more detail.

22. An IK Study would also assist in identifying actions that can be taken to mitigate or accommodate impacts on rights-based activities through its integration with the Mi'gmaq Rights Impact Assessment ("MRIA") framework (a copy of which is enclosed with this submission).
23. The MRIA is a Mi'gmaq-led process that assesses potential impacts of proposed activities on Mi'gmaq Aboriginal and Treaty Rights and Title, and establishes a process by which the Crown shall consult and cooperate with the Mi'gmaq to obtain their free and informed consent.² The MRIA is a flexible tool, meant to encourage collaboration between parties. The MRIA Framework was adopted in late 2020, and MTI began implementing the MRIA Framework as of January 1, 2021. Since that time, MTI has received positive feedback and willingness to participate from most project proponents, including NB Power.
24. An IK Study would provide MTI and NB Power with details of land use, fishing activities, and harvesting activities in the PLNGS area, and this information in turn is incorporated into the MRIA framework to determine the potential impacts of NB Power's proposed activities.
25. MTI submits that the PLNGS licence needs mechanisms in place that identify mitigation measures based on identified impacts on rights-based activities. An MRIA assessment has been initiated for PLNGS, and will serve to help identify these measures. MTI submits that a condition of licence renewal should be that NB Power commit to working with MTI to address impacts that may arise from the MRIA process. MTI understands that NB Power is committed to evaluating the MRIA and IK Study, and to working with MTI to address impacts. MTI hopes that reasonable recommendations arising from the MRIA process are addressed and adopted by NB Power.

Recognition of the Importance of Indigenous Knowledge

26. In its final written decision as part of PLNGS's 2017 licence renewal, the Commission recognized MTI's participation and commented on its expectations for NB Power's engagement with MTI and Indigenous rights-holders going forward. In particular, the Commission commented on the value

² As a Crown corporation, NB Power can engage directly with MTI on consultation.

of Indigenous knowledge and its expectations that NB Power would incorporate Indigenous knowledge into its activities.

27. The decision included the following comments from the Commission:

- a. The Commission encouraged a study of First Nations historical context for PLNGS (para 405);
- b. The Commission noted its satisfaction with MTI's *New Brunswick Mi'gmaq Indigenous Knowledge Study Process Guide* and the information contained therein (para 409);
- c. While recognizing NB Power's efforts to engage Mi'gmaq rights holders, MTI noted that more was needed to increase First Nations' confidence in the PLNGS project. MTI recommended 1) environmental monitoring by Indigenous peoples, and 2) the inclusion of Indigenous knowledge in research studies. The Commission encouraged the "continued establishment of internal capacity for the inclusion of Indigenous knowledge" for NB Power, as described by MTI (para 409);
- d. The Commission anticipated that NB Power would continue to expand its engagement with First Nations (para 411);
- e. The Commission expected NB Power to implement REGDOC-3.2.2, *Indigenous Engagement*, during the 2017-2022 registration period (para 413). With respect to Indigenous knowledge, that document states as follows:

"Early engagement provides the opportunity to start or further develop relationships with Indigenous communities and can help build trust and respect. For example, it may provide Indigenous groups the necessary time to gather and share information on local and Indigenous knowledge (IK). IK may help to identify potential impacts from the activity described in the licence application on traditional land use, treaty rights, Indigenous rights, and culturally important sites, including archeological sites. Gathering of IK must be approached respectfully, in collaboration with the Indigenous group, and with the understanding that the IK may be sensitive or proprietary. IK must be understood in the context of the Indigenous group's world view."

And;

- f. The Commission expected NB Power to establish mechanisms to include Indigenous knowledge in its environmental protection and monitoring (para 426).
28. In 2017, NB Power expressed its willingness to incorporate Indigenous knowledge into its research. More recently, NB Power has told MTI that it is willing to take part in an IK study for PLNGS. In its written submissions for the hearing on January 26, 2022, NB Power stated that it is “compliant with *REGDOC 3.2.2, Aboriginal Engagement.*”
 29. To date, however, no Indigenous Knowledge Study has been conducted. An MRIA assessment has been initiated for PLNGS, and MTI understands this to have been a pre-requisite for an IK Study to be initiated.
 30. MTI remains open to working with NB Power to incorporate an IK Study into PLNGS’s existing environmental monitoring activities, and/or to establish Terms of Reference for incorporating an IK Study into PLNGS’s regulatory framework.
 31. MTI is pleased that its recommendation of environmental monitoring by Indigenous peoples was adopted by NB Power during the current licensing period. MTI submits that the continued employment of Indigenous monitors be a condition of PLNGS’s relicensing, and that their work be considered in discussions arising from the MRIA process.

Length of Licence Period – Response to Submissions of January 26, 2022

32. In its submissions to the Commission on January 26, 2022, the CNSC Staff stated that “the proposed operating licence would authorize the same activities as the current operating licence and does not include any new licence conditions.” However, Staff noted that the key difference in the proposed licence is the licence duration: NB Power is seeking a 25-year licence, rather than a 5-year licence.
33. In its submissions to the Commission on January 26, 2022, CNSC Staff recommended a licence duration of 20 years. Staff stated that the Commission has “historically granted a power reactor operating licence for a duration of 10 years or less,” and while there is “widespread international experience” in the area of long-term licences, there is no Canadian precedent for a 20- or 25-year licence.

34. CNSC Staff also stated that PLNGS was returned to service after refurbishment in 2012, which extended its lifetime for up to 30 years (to approximately 2042, being 20 years from now). Further, CNSC Staff estimate that NB Power would be required to refurbish or commence end of commercial operations for PLNGS in approximately 20 years. A 25-year licence duration would outlive the anticipated lifespan of the power plant.
35. MTI submits that a licence duration term of 25, or even 20, years is unnecessarily long, and a five- to ten-year licence would be appropriate. We note that Periodic Safety Reviews (PSRs) are completed every ten years, and the anticipated 20-year lifespan of the PLNGS can easily accommodate two licence renewal processes. It appears from NB Power's submissions that their Environmental Risk Assessment is updated on a five-year frequency.
36. NB Power was unable to articulate the clear advantage of securing a 20 or 25-year licence rather than a ten-year licence. In fact, in its submissions on January 26, 2022, NB Power stated "we certainly could do licence renewal every 10 years, there's certainly not an issue with that at all with going through the process."
37. MTI shares the Commission Members' concerns that a longer licence duration may negatively affect both public perception of the Commission's oversight, and opportunities for meaningful engagement with First Nations and other communities. Commission Member Dr. Demeter noted on January 26, 2022, that the annual Regulatory Oversight Reports (RORs) do not provide for oral submissions by interveners, but the licence renewal process allows for public hearings. MTI submits that a 5- or 10-year licence will promote open discussion between PLNGS and community stakeholders, while a 20 or 25-year licence unnecessarily curtails public engagement.
38. MTI agrees with Commission Member Kahgee's comments on January 26, 2022, that NB Power has yet to fully explain how it will engage with First Nations, "particularly in reference to historical, ongoing and future operations, especially in relation to any planned projects." MTI submits that meaningful engagement on behalf of NB power should include ensuring that an IK study for Point Lepreau and the Bay of Fundy is a condition of PLNGS's licence renewal. Further, regulatory reporting requirements already in place present excellent opportunities for engagement; these include RORs, Periodic Safety Reviews, and updates to the Station's Licence Conditions Handbook.

Conclusions and Recommendations

39. In summary, MTI recommends that an Indigenous Knowledge Study for Point Lepreau and the Bay of Fundy, through the perspective of a Mi'gmaq land user, be completed and integrated into the NB Power Ecological Risk Assessment. An Indigenous Knowledge Study should be a condition of PLNGS's licence renewal, and a five- to ten-year licence would be appropriate.
40. The *New Brunswick Mi'gmaq Indigenous Knowledge Study Process Guide*, enclosed with these submissions, outlines the process that is most appropriate to carry out the work of an Indigenous Knowledge Study. MTI is prepared to present a proposal and budget for such a study to CNSC and NB Power.
41. As a not-for-profit organization representing nine Mi'gmaq First Nation communities across New Brunswick, MTI is grateful to have been granted funding and standing to participate in the Stage 2 Hearing for the PLNGS in both 2017 and 2022. MTI is thankful for the efforts made by NB Power and CNSC to date, and hopes that its recommendations for an Indigenous Knowledge Study are carried out promptly.

Dated this 12 day of March, 2018

RELATIONSHIP AND CONSULTATION AGREEMENT

BETWEEN

**NEW BRUNSWICK POWER CORPORATION (“NB Power”)
AND**

MI'GMAWE'L TPLU'TAQNN Inc (“MTI”)

WHEREAS:

NB Power is a Crown corporation that is responsible for providing electricity to New Brunswickers at low and stable rates in a safe and sustainable way in accordance with its enabling statute, the *Electricity Act*;

MTI is a not for profit, rights-based Mi'gmaq organization whose members are the 9 Mi'gmaq First Nation communities located throughout their territory in the Province of New Brunswick: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Elsipogtog First Nation (Big Cove), Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipōgtōtjg (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and Metepenagiag Mi'gmaq Nation.

MTI has a mandate to promote and support the Aboriginal and Treaty Rights of its member First Nations, which includes ensuring that Mi'gmaq Rights are recognized, affirmed and protected under s. 35 of the Constitution Act, 1982 and to engage directly with proponents and the Crown to facilitate consultation;

Eight of the Nine MTI member communities have entered into an Interim Consultation Protocol Agreement with the Government of New Brunswick, as amended or replaced from time to time (the “Consultation Protocol”) which gives MTI the authority to enter into consultations and to bind and make commitments on behalf of those member communities.

While Elsipogtog First Nation is a member of MTI, it is not a signatory to the Consultation Protocol and as such, MTI is not acting on their behalf with respect to this Agreement. Notwithstanding same, MTI will, where possible, endeavour to facilitate information sharing and coordination of any environmental, traditional or ecological knowledge or other studies conducted pursuant to an agreed upon work plan with Elsipogtog.

NB Power wishes to enter into this Relationship and Consultation Agreement to build upon their existing relationship and outline the principles and process for engaging and consulting with the MTI member communities with respect to NB Power Projects.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Definitions

Agreement means this Relationship and Consultation Agreement and all attached Schedules.

Capacity Funding means the funds required to support MTI to engage in consultation for Projects.

Communities means the 8 Mi'gmaq communities in New Brunswick as represented, for the purposes of consultation, by MTI.

Community Liaisons means those individuals, chosen by MTI, who under the direction of the Consultation Lead, provide information back to the Communities.

Consultation Leads means those people appointed as lead by MTI for the purpose of consultation with NB Power.

Crown means either or both of the governments of Canada and New Brunswick.

Mi'gmaq Rights means the established or asserted Peace and Friendship Treaty rights and Aboriginal rights and title of the Mi'gmaq as same are recognized and respected under section 35 of the *Constitution Act, 1982*.

Projects refers to any project or activity proposed by NB Power that may trigger consultation with the Mi'gmaq or with which NB Power would like to engage with the Mi'gmaq.

2. Purpose and Principles

2.1 The purpose of this Agreement is to:

(a) foster a long term meaningful relationship between the Mi'gmaq and NB Power;

(b) build upon the relationship established;

(c) facilitate engagement and consultation and, where appropriate, accommodation discussions between NB Power and the Mi'gmaq; and

(d) provide funding to assist the Mi'gmaq to promote and ensure an effective approach to engagement and consultation and where appropriate, accommodation so as to foster meaningful, good faith and cost effective consultation and accommodation measures between the Parties about Projects.

2.2 The following principles will guide the Parties' consultations and relationship under this Agreement:

(a) Seek to understand and respect one another's values, interests, constraints, and aspirations, at all times.

(b) Engage with each other in good faith, honestly, and with as much transparency as possible.

(c) Strive to avoid adversarial positions and strive to reach agreement on the nature of any potential impacts on Mi'gmaq Rights associated with each Project and any appropriate mitigation and accommodation measures to address such potential impacts; and

(d) Acknowledgment of the importance of, and the need for NB Power to provide energy in a sustainable, safe, reliable way at low and stable rates for all residents of New Brunswick.

3. Consultation Leads

3.1 In order to foster an efficient consultation and engagement process, the Parties will each appoint a Consultation Lead to coordinate engagement and consultation. It is agreed that the Consultation Leads shall not be the Chief of any of the Communities.

3.2 The responsibilities of Consultation Leads will include but not necessarily be limited to providing or receiving any notices required under the Agreement, scheduling meetings, setting meeting agendas, attending meetings (unless the Parties decide to conduct a meeting with representatives other than the Leads), keeping all Communities informed of the progress of consultations, ensuring any concerns identified by any community is brought forward in a timely manner and seeking all necessary direction

from the Communities to keep consultation under this Agreement moving forward in a timely and productive way.

3.3 For greater certainty, where communications concern a Project for which they have appointed Consultation Leads, the Parties will always communicate with each other through their Consultation Leads. Where there is no Consultation Lead appointed, the Party shall refer any such matter to the Director responsible for Aboriginal Relations in the case of New Brunswick Power, and the Executive Director in the case of MTI.

3.4 In discharging their responsibilities, the Consultation Lead will engage with all of the other Community Liaisons within each community in a regular and timely way to ensure that all of the communities remain informed of the progress of the consultations and involved as appropriate.

3.5 For greater clarity, while the Consultation Leads shall be the main point of contact for consultation and engagement, each party may involve such other staff or contractors from their respective organization in the consultation process as that party deems necessary.

4. Approach to Consultation

4.1 In order to foster a meaningful and productive dialogue, a greater understanding of each other's perspectives, and opportunities for reaching shared understandings, the Parties will always engage with each other in a good faith, respectful, open, honest, and responsive manner.

4.2 The Parties will strive to reach agreement on the nature of any potential impact on Mi'gmaq Rights associated with each Project. Where the Mi'gmaq identify reasonable concerns with respect to impacts on Mi'gmaq Rights caused by a Project, the Parties will strive to develop mitigation and accommodations aimed at substantially addressing those concerns. The Parties will strive to reach agreement on the mitigation measures and where appropriate, any other accommodation measures relating to Mi'gmaq Rights to be adopted in carrying out each Project.

4.3 The Parties will strive to reach agreement on mutually agreeable timelines for consultation consistent with the Project timelines.

4.4 Should the Parties reach a point of fundamental disagreement in their substantive discussions about anticipated or potential impacts on Mi'gmaq Rights or how to mitigate and /or accommodate such impacts, they will actively seek to resolve

that issue in accordance with the Dispute Resolution provisions set out in section 13. However, nothing herein prevents the MTI from raising with the Crown any concerns with respect to impact on Mi'gmaq Rights which have not been addressed by NB Power to its satisfaction.

4.5 NB Power covenants and agrees to:

- (a) provide to the Mi'gmaq, in a timely manner, all relevant information that the Mi'gmaq reasonably require to understand Projects and their potential to impact Mi'gmaq Rights;
- (b) consider and respond to Mi'gmaq information, concerns, mitigation and accommodation proposals in a timely manner.

4.6 MTI covenants and agrees to:

- (a) inform themselves about the Project as fully as possible given available information;
- (b) share all the information and concerns relating to Projects, including view and concerns with respect to potential new adverse impacts of Projects on traditional land uses and rights that the Mi'gmaq want NB Power to understand and address in as timely a manner as possible and in accordance with applicable Work Plan timelines, including studies and reports prepared with any consultation and capacity funding;
- (c) make reasonable efforts to articulate concerns, and to reach internal consensus on mitigation and accommodation proposals for all the Communities and present same to NB Power in a timely manner;
- (d) manage any consultation and capacity funding provided by NB Power pursuant to this Agreement in an accountable and transparent manner; and
- (e) endeavour, where possible, to facilitate information sharing and gathering as contemplated under this agreement with the Consultation Lead for Elsipogtog First Nation, as if they were a signatory to the Consultation Protocol.

5. Consultation Format

5.1 The format for the consultations will be flexible and developed by mutual agreement of the Parties.

5.2 The Parties expect consultations to occur by all of the following means:

- (a) phone communications;
- (b) written communications, which at the request of MTI may include materials prepared by NB Power for distribution to the Mi'gmaq membership;

- (c) in-person meetings between the Consultation Leads or, as appropriate, additional/other Party representatives; and
- (d) community meetings attended by NB Power by invitation of MTI.

5.3 The Parties agree that in-person dialogue is preferable for substantive or potentially difficult discussions, and thus where one Party requests an in-person meeting, the other Party will make reasonable efforts to accommodate that request.

5.4 Subject to Section 5.1, where possible consultation and engagement should adhere to the following:

- (a) When NB Power wishes to undertake a Project which has the potential to impact Mi'gmaq Rights or otherwise wishes to engage with the MTI communities, it shall provide such information on the Project to the MTI on its initial assessment on the scope of Project activities, potential new adverse impacts, and those First Nation communities to be consulted.
- (b) In the case of Projects which are subject to EIA registration, the parties shall attempt to conduct early engagement prior to EIA registration. This may include discussion on the items in 6.4(a), sharing information with respect to the Project and beginning discussions to inform and understand potential adverse impacts as well as discussions around whether further research or Indigenous Knowledge studies are required. Where the Parties agree, Indigenous Knowledge studies shall be conducted prior to project registration, so that they can inform the Environmental Impact Statement ("EIS") and the work of the Technical Review Committee.
- (c) The process should be flexible and adaptive to new circumstances and new information with a view to understanding potential adverse impacts and potential accommodation measures as is reasonable and appropriate in the circumstances. MTI or NB Power may decide to invite the Crown to be involved in the process, attend key meetings or be copied on key correspondence.
- (d) NB Power will engage and consult directly with MTI, unless any Communities have provided notice in writing that they wish to be consulted with directly. In the event any Community elects to proceed in a manner separate from the MTI, NB Power shall notify the MTI of the request and the parties shall discuss any appropriate adjustment to this

Agreement or funding to account for the Community withdrawal.

- (e) Should at any time either of the Parties determine that additional involvement of the Government of New Brunswick through the consultation process is necessary or beneficial to advancing their work under this Agreement, the Parties will work collaboratively to seek to secure that involvement on terms that respect the principles and process set out in this Agreement.

6. Consultation and Capacity Funding

6.1 NB Power agrees to provide MTI with consultation and capacity funding to support MTI in participating in meaningful engagement and consultation for all the Mi'gmaq Communities on Projects with NB Power.

6.2 Consultation and capacity funding shall include base annual funding to support ongoing consultation activities, including meeting costs, and, where not funded by the province, a contribution toward the costs of maintain the Consultation Lead and the Community Liaisons, and other technical capacity required by MTI. This funding shall be governed by a five year Work Plan agreed by the parties which sets out expenditures, timelines, deliverables and regular consultation meetings.

6.3 The Parties acknowledge that Work Plan development is subject to the availability of Project information, including information concerning the scope, nature and extent of each Project, including NB Power's application materials, the regulatory processes, timelines and key decision points for NB Power. NB Power agrees to share this information with the Mi'gmaq promptly as it becomes available and the Parties agree to meet to discuss and expand the Work Plan as necessary.

6.4 The Parties agree that the Work Plan will need to be revised over time to account for matters such as new proposed Projects, any abandoned Projects, and any material changes to Projects or their timelines. NB Power will promptly notify the Mi'gmaq of any changes that may affect the contents of the Work Plan, and the Parties will meet as needed to discuss and revise the Work Plan.

6.5 Nothing in this Agreement precludes MTI or the Mi'gmaq from seeking additional capacity funding to support their consultation efforts on Projects from external sources. Should MTI secure funding from the Crown or other developers or proponents, MTI will advise NB Power of the amounts of such additional funding and appropriate adjustments may be made to the funding provided in the Work Plan to the extent of duplication.

6.6 Project specific Consultation and Capacity Funding will be payable by NB Power within 30 days following receipt of an invoice with supporting documentation for the expense incurred. Invoicing by MTI shall be done monthly with all costs, fixed and variable, to be based on actual expenditures. The format of appropriate supporting documents will be mutually agreed by the Parties.

6.7 Payment of annual amounts as set out in Schedule "A" shall be divided in four and payable quarterly as follows: on April 1st, June 30th, October 1st and January 1st of each year. Documentation will be provided at the end of each quarter to show actual expenditures and allocation of the annual baseline funding amount for that quarter. At the end of the fourth quarter, if expenses are below the amounts paid and budgeted, the parties shall review the variances and discuss adjustments to the annual amount for the following year.

6.8 NB Power reserves the right to audit any and all expenses funded through the Agreement.

7. Advisors and Technical Expertise

7.1 MTI agrees that NB Power may share with Government of New Brunswick, its consultants and other regulatory bodies, any studies and research commissioned through the Agreement or shared as a result of consultation, provided that any information of a proprietary nature may be released subject to confidentiality obligations on the party receiving same.

7.2 The Parties agree to avoid duplication of work and will rely on existing studies completed by or for the Mi'gmaq to the extent that they are relevant. If funding is available from other sources to conduct studies required under this Agreement, MTI shall seek to obtain such funding and advise NB Power of such.

7.3 Where the Parties agree Indigenous Knowledge Studies are required, the Studies shall be conducted in accordance with the New Brunswick Mi'gmaq Indigenous Knowledge Study (NBMIKS) Process Guide, as updated from time to time. The interview data gathered for Mi'gmaq land use studies or Indigenous Knowledge Studies and that are funded by NB Power will be the property of MTI and MTI is only obliged to share with NB Power the completed studies that are based on this data. MTI further agrees that NB Power shall be entitled to rely upon the information collected and shared for other Projects involving members of the MTI and shall be entitled to share it with the provincial government of New Brunswick.

7.4 It is agreed the requirement for any study to be undertaken shall be agreed by both Parties and the scope of the study shall be as agreed upon review of initial Project information.

8. General Provisions

8.1 Term

This Agreement will be in effect for five (5) years from the date of its execution by both Parties, unless the Parties terminate the Agreement or unless the date is extended by mutual agreement.

8.2. Termination

8.2.1 This Agreement may be terminated by either Party on thirty (30) days advance written notice provided by registered mail. The notice period will begin to run on the date of actual receipt of notice. For the purpose of this Agreement, Party shall refer to either NB Power or a majority of MTI signatories to this Agreement. In the event one member of MTI withdraws from this Agreement, the Agreement shall survive notwithstanding the withdrawal and the funding provided for herein shall be proportionately reduced after the date of withdrawal.

8.2.2 MTI will provide to NB Power, within thirty (30) days of the termination date, all outstanding invoices for work completed under the Work Plan as well as supporting documentation for any funds expended up to the Agreement termination date and agreed to reimbursed by NB Power. NB Power will reimburse MTI for these expenses within thirty (30) days of receipt and acceptance of this documentation.

8.2.3 If NB Power has advanced funding that MTI have not expended by the date of the Agreement's termination, MTI will return these funds to NB Power within thirty (30) days of the termination date.

9. Amendments

9.1 This Agreement may only be amended by written agreement of the Parties.

10. Confidentiality

10.1 Subject to provisions which follow, this Agreement is not confidential.

10.2 Consultations under this Agreement – including records of the Parties' communications as well as information and documents exchanged – will not be confidential unless both Parties agree otherwise.

10.3 The Parties acknowledge that they will each have a legitimate interest in keeping certain types of information confidential. These types of information include, in the case of MTI, sensitive traditional ecological, traditional land use, or cultural knowledge and, in the case of NB Power, sensitive business information. In the event such information is relevant and necessary for the purpose of consulting with the other Party, the receiving party agrees to only share such information with those that need to know and will obtain the appropriate confidentiality agreements prior to disclosure. Despite the foregoing, the intent of section 10.3 is not to limit the ability of NB Power to disclose relevant information to the Crown.

10.4 The Parties also acknowledge that NB Power's confidentiality and disclosure obligations are subject to the New Brunswick *Right to Information and Protection of Privacy Act* SNB 2009 c.R-10.6.

10.5 Despite any agreement between the Parties to keep a matter confidential, Parties are not required to keep information confidential where:

- (a) they are under a legal obligation to disclose the information;
- (b) disclosure to a party providing dispute resolution services pursuant to section 13 is reasonably required to facilitate dispute resolution;
- (c) the information becomes generally known or available in the public domain through no fault of the Party who has committed to maintaining its confidentiality; or
- (d) the Party who disclosed the confidential information has consented to its disclosure.

11. Dispute Resolution

11.1 The Parties agree to use all reasonable efforts to address any disagreement or concern with respect to any matter addressed in this Agreement as a matter of first course of conduct.

11.2 The Parties will use reasonable efforts to resolve any of the following Disputes, should they arise:

- (a) a disagreement over the scope and extent of mitigation and accommodation measures ;
- (b) a disagreement on the interpretation of the Agreement; or
- (c) a view by one Party that the other Party is in breach of the Agreement.

11.3 Where a Dispute arises, the Consultation Leads, if any, will use all reasonable efforts to resolve it. Should this fail, the Parties will involve higher level representatives in their discussions in a timely fashion to try to overcome the Dispute.

11.4 Where the Dispute is not resolved by the Consultation Leads or other Party representatives, either Party may provide the other Party with a written notice setting out the nature of the Dispute and proposing a dispute resolution process.

11.5 Where the Dispute concerns the interpretation of the Agreement or an allegation of breach of the Agreement, the Parties will pursue dispute resolution via at least one of the following means: facilitated discussions, mediation, and/or arbitration. If facilitated discussions or mediation fails to resolve the dispute, the Parties may jointly agree to retain the services of a single arbitrator pursuant to New Brunswick's *Arbitration Act*, and the Parties agree that:

(a) the arbitration will be governed by the *Arbitration Act*;

(b) the place of arbitration will be Fredericton, New Brunswick, unless the Parties otherwise agree in writing; and

(c) the Parties will use reasonable efforts to agree on the arbitrator within 14 days, failing which the arbitrator will be appointed pursuant to the rules set out in the *Arbitration Act*.

11.6 Where the Dispute concerns a mitigation measure, the Parties may agree to pursue dispute resolution via facilitated discussions or mediation. For greater certainty, a dispute concerning a mitigation measure shall not be referred to arbitration.

11.7 Once a Party issues a notice of dispute under this Article, the Parties will keep all dispute resolution efforts and materials confidential unless they agree otherwise in writing or must disclose the materials in order to pursue an appeal of the arbitrator's decision. Unless the Parties agree otherwise or an arbitrator orders otherwise, the Parties will each bear their own costs in any dispute resolution and will share in equal amounts the cost of the facilitated dispute resolution process.

12. No Prejudice or Derogation

12.1 Nothing in this Agreement shall limit the position that either Party may take with each other, third parties or in litigation in respect of a Project.

12.2 Nothing in this Agreement shall be construed so as to abrogate or derogate from Mi'gmaq Rights.

12.3 Nothing in this Agreement shall be construed so as to limit any fiduciary duties, consultation or accommodation obligations owed to the Mi'gmaq by the Crown in right of New Brunswick or the Crown in right of Canada.

12.4 Nothing in this Agreement shall be construed so as to limit or detract from NB Power's existing legal and statutory rights and powers.

13. Indemnity

13.1 MTI agrees to indemnify and save harmless NB Power from any claim by third parties retained by MTI for breach of intellectual property rights related to studies, reports and any other data, mapping or information shared with NB Power pursuant to this Agreement.

14. Counterparts

14.1 This Agreement, when executed in counterparts by the Parties, will be as effective as if one or more originals were executed by the Parties to this Agreement.

REPRESENTATIVES SIGNATURES

Date: _____

Mi'gmawe'l Tplu'taqnn Incorporated

Mi'gmawe'l Tplu'taqnn Incorporated



New Brunswick Power Corporation
Sherry Thomson, Chief Human
Resources Officer



New Brunswick Power Corporation
Wanda Harrison, Chief Legal Officer

SERVICES JURIDIQUES

LEGAL 

14. Counterparts

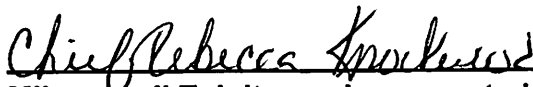
14.1 This Agreement, when executed in counterparts by the Parties, will be as effective as if one or more originals were executed by the Parties to this Agreement.

REPRESENTATIVES SIGNATURES

Date: _____



Mi'gmawe'l Tplu'taqnn Incorporated



Mi'gmawe'l Tplu'taqnn Incorporated

New Brunswick Power Corporation
Sherry Thomson, Chief Human
Resources Officer

New Brunswick Power Corporation
Wanda Harrison, Chief Legal Officer

Schedule "A"

Annual

Contribution to the salary of MTI's Energy Coordinator	\$50,000
Travel and expenses associated with On-going consultation with NB Power	\$20,000
Community meetings	\$20,000
Cultural/Ceremonial Events/Training	\$8,500
Legal	\$25,000
Administration	\$13,500

Projects

EIA review	\$20,000*
IK study	\$80,000*
Field Monitoring	\$15,000*

Note: * Estimate based on a typical project but may be more or less depending on project scope

Mi'gmaq Sagamaq Mawiomi¹

**New Brunswick Mi'gmaq Indigenous Knowledge
Study (NBMIKS) Guide v. 4.0**

March 2019 ²

¹ Mi'gmaq Sagamaq Mawiomi (MSM), means Gathering of the Mi'gmaq Chiefs. These Gatherings enable the Chiefs to work collaboratively on issues of serious concern for the Mi'gmaq of New Brunswick. It represents all of the Mi'gmaq Chiefs in New Brunswick.

² This document was ratified by the MSM member Chiefs on February 10th, 2016. It is a living document and will be updated on an ongoing basis. This version was updated in March 2019.

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Sample Map of Mi'gmaq Land Use³

Archaeology of Southern Gespegewagig

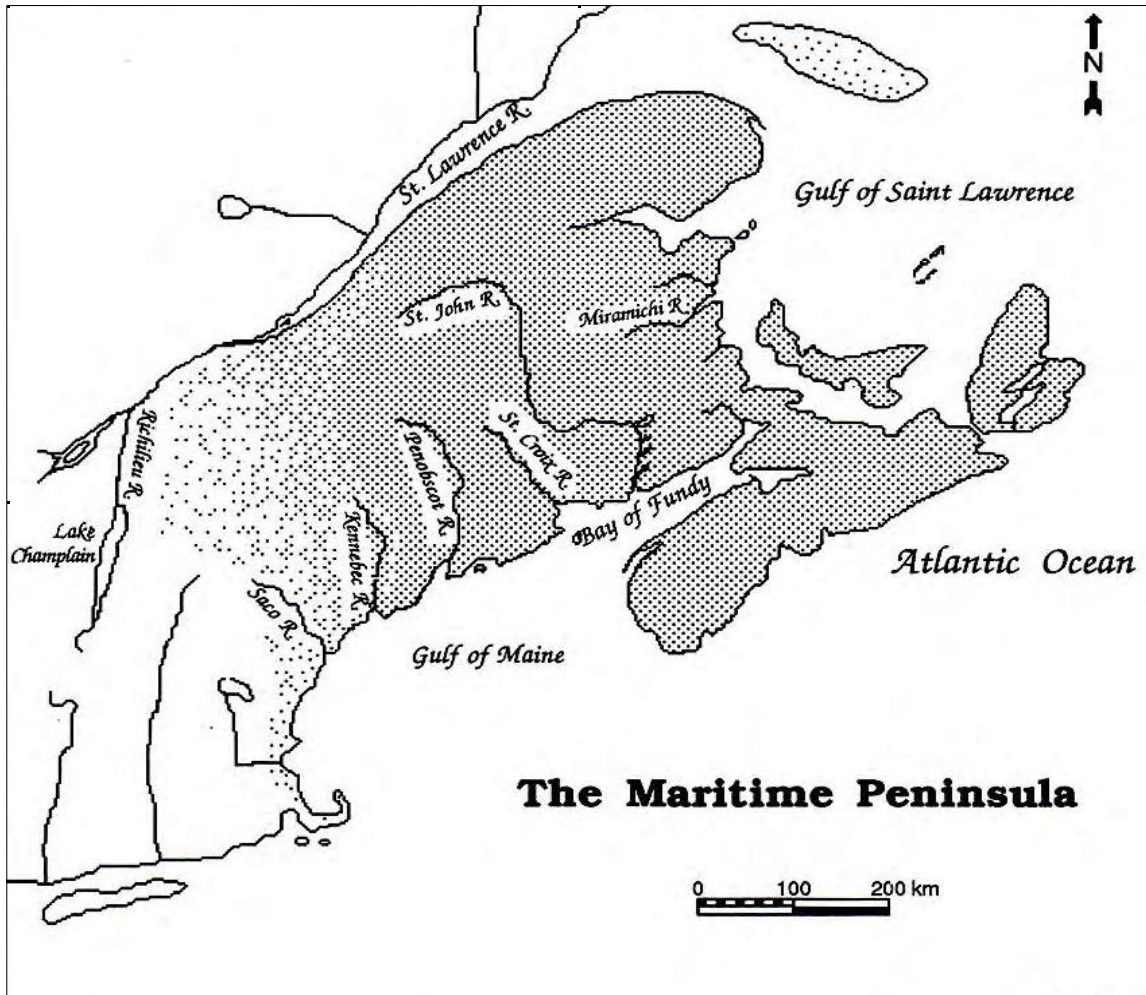


Figure 1. The Maritime peninsula of northeastern North America (Leonard 1995:20). The shading is a cartographic representation of a fluid and diff use boundary.

³ Figure 1: Leonard, K. (1995). *Woodland or Ceramic Period: A Theoretical Problem*. *Northeast Anthropology* 50, 19-30.

Foreword

Mi'gmaq Sagamaq Mawiomi [Gathering of Mi'gmaq Chiefs] was formed in September 2015 in order to promote a strong unified voice for the Mi'gmaq in New Brunswick.

The Mi'gmaq Sagamaq Mawiomi established Mi'gmawe'l Tplu'taqnn Incorporated in November 2015 to assist in protecting and advancing Mi'gmaq rights and interests.

This New Brunswick Mi'gmaq Indigenous Knowledge Study Guide ("Study Guide" or "NBMIKSG") was developed with the valuable support of Mi'gmaq and Wolastoqiyik Elders and Knowledge Holders⁴. This Study Guide is intended to provide guidance in the initiation, timing and execution of Indigenous Knowledge Studies within New Brunswick.

M'st No'gmaq ⁵

⁴ Knowledge Holders may be Elders or Mi'gmaq of any age group who are land and or waters users and understand and utilize Mi'gmaq culture and traditions.

⁵ The Mi'gmaq end a prayer with the words "M'st No'gmaq" as an acknowledgement to our ancestors and to all creation for giving us the lives we have. Translated into "All Our Relations" these words express our social/spiritual concept of understanding that each and every life depends on all other beings (animate and inanimate) for survival here on Mother Earth. Embedded within this concept is the reality that all creation, and all it encompasses, are interconnected and interdependent upon one another as a collective. The collective includes future generations as well as the present and past so this concept of M'st No'gmaq has relevance throughout the temporal and spatial dimensions of our spirituality.

Glossary of Terms

Within this New Brunswick Mi'gmaq Indigenous Knowledge Study Guide:

“Consultation” and the **“Duty to Consult”** are a legal and constitutional terms developed by the courts that set rules and standards that the Crown must meet in order to uphold its honour when dealing with First Nations, whenever the Crown considers any decision or action that might impact asserted or (in part) court affirmed Aboriginal rights, Treaty rights, Aboriginal title or Aboriginal interests. See for example: *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69.

“Crown” means any federal or provincial ministry, department, agency or representative.

“Ground-truthing” is a process of traveling to a land or water use site that was discussed in an NBMIKS interview to confirm and expand upon the information shared about that site. A more detailed explanation of ground-truthing can be found in Appendix (B).

“Interim Consultation Protocol” is a working agreement between the First Nation members of Mi'gmawe'l Tplu'taqnn, the Government of Canada and the Government of New Brunswick, which guides the procedural aspects of consultation in New Brunswick.

“Justification” and **“Duty to Justify”** legal and constitutional terms developed by the courts that set rules and standards that the Crown must meet in order to uphold its honour when dealing with First Nations, whenever the Crown considers any decision or action that might impact court affirmed Aboriginal rights, Treaty rights, Aboriginal title or Aboriginal interests. See for example: *R. v. Sparrow* 1990, SCR 1 1075; *R. v. Badger*, [1996] 1 S.C.R. 771; *R. v. Marshall*, [1999] 3 S.C.R. 456; *R. v. Sappier*; *R. v. Gray*, [2006] 2 S.C.R. 686, 2006 SCC 54.

“Kepmite'tmnej ta'n wettapeksulti'k” translates to “Let us greatly respect our Mi'gmaq roots” and references that Mi'gmaq acknowledge themselves as being born from and rooted in the traditional lands of Mi'gma'qi (See Appendix E).

“Knowledge Holder” may be Elders or Mi'gmaq of any age group who are land and or waterway users and understand and utilize Mi'gmaq culture and traditions.

“Mi'gmaq Community” means any one of the Mi'gmaq communities in New Brunswick.

“Mi'gmaq Community Researcher” and **“Community Researcher”** mean an individual with appropriate qualifications designated by a Mi'gmaq Community to work with the Mi'gmawe'l Tplu'taqnn Research Team on an Indigenous Knowledge Study.

“Mi'gmaq Participant” means any Mi'gmaq who has agreed to participate in a NBMIKS and often as an interviewee.

“Mi'gmawe'l Tplu'taqnn” means Mi'gmawe'l Tplu'taqnn Inc., the not-for-profit company that assists, reports to and takes direction from Mi'gmaq Sagamaq Mawiomi.

“MSM” means Mi'gmaq Sagamaq Mawiomi, an institution focusing on rights issues which provides policy and governance assistance to the Mi'gmaq of New Brunswick.

“**NBMIK**” and “**MIK**” refer to Indigenous Knowledge of the New Brunswick Mi’gmaq. This includes the collection and adaptation of knowledge that Mi’gmaq hold in accord with all components of the natural environment and the interrelationships that exist between all Creation (animate and inanimate matter); therefore, m’s’t no’gmaq (all my relations).

“**NBMIKS**” and “**New Brunswick Mi’gmaq Indigenous Knowledge Study**” mean all components of a study, which includes the planning, collection, analysis, protection, reporting and distribution of Mi’gmaq Knowledge in New Brunswick.

“**NBMIKS Committee**” means the New Brunswick Mi’gmaq Indigenous Knowledge Study Committee, which will review all matters related to Mi’gmaq Knowledge Studies in New Brunswick. This Committee will report to the Mi’gmaq Chiefs & the Mi’gmaq Elders Advisory Committee.

“**NBMIKS Guide**” or “**NBMIKSG**” means the New Brunswick Mi’gmaq Indigenous Knowledge Study Guide and includes all attachments, schedules, appendices and amendments that may be developed from time to time, because this is a living document.

“**NBMIKS Report**” means any document that considers NBMIKS data pursuant to any Project defined in this NBMIKS Guide.

“**Nekutulimk**” is a Mi’gmaq concept that precedes the Western idea of sustainability. The Unama’ki Institute of Natural Resources defines nekutulimk as “the use of natural bounty provided by the Creator for self-support and well-being of the individual and community. Nekutulimk is achieving adequate standards of community nutrition and economic well-being without jeopardizing the integrity, diversity, or productivity of our environment”.

“**Project**” includes any legislative or policy change, undertaking, or development activity, process or research that has triggered a NBMIKS.

“**Proponent**” includes the Crown, a company, group or person proposing a Project.

“**Research Team**” means the group of Community Researchers and members of the Mi’gmawe’l Tplu’taqnn research department working on a given NBMIKS under the direction of the NBMIKS Committee.

“**Response Burden**” is the effort required by an interviewee to answer questions.

“**Scouting**” is time spent on the land or water looking in search of plants, animals or other natural materials for harvesting.

“Vicarious trauma” is the stress experienced by professionals and individuals who witness traumatic stress in others such as Indigenous Knowledge researchers and interviewees during an Indigenous Knowledge study (See Appendix D).

Introduction⁶

Throughout Canada and, indeed, around the world, Indigenous Peoples are both demanding and being asked to participate in a variety of land use planning, environmental or natural resource⁷ management decisions, projects and most importantly government policy and legislation, which are affecting Indigenous Peoples' use, occupancy and management of their lands and waters.

New Brunswick must not be an exception to this movement.

Mi'gmaq ways of knowing include the principles of *Kepmite'tmnej ta'n wettapeksulti'k*⁸ and *netukulimk*⁹, which are the foundation of the need for incorporating Mi'gmaq guiding principles into all government and industry decisions.

The Mi'gmaq have a comprehensive knowledge of our use and occupancy of the lands and waters by Mi'gmaq in pre-contact, historic and contemporary times. However, there is an absence of a comprehensive catalogue of Mi'gmaq activities which can have varied negative results, from non-participation in important decisions affecting our lives and our constitutionally protected rights; to potential destruction of sites of sacred, spiritual, practical or archaeological significance; to increasing levels of mistrust and conflict between Indigenous and non-Indigenous parties.

The Mi'gmaq have continuously used and occupied our Territory, part of which is now known as New Brunswick, since time immemorial. Furthermore, there is physical evidence of some thirteen thousand years of Indigenous occupation of Mi'gma'qi (Nicholas, 2010). Mi'gmaq cultural values are grounded in a spirituality and appreciation of the interconnection of all beings, animate and inanimate. Mi'gmaq knowledge is a collection of shared and layered experiences of Mi'gmaq observations over millennia. These collections of observations on the lands and waters continue to be passed down and developed with every new generation of Mi'gmaq. A NBMIKS completed in 2016 by Mi'gmawe'l Tplu'taqnn clearly demonstrated that Mi'gmaq Indigenous Knowledge is at least 10,000 years old. A recent "discovery" of a lake and a river system submerged beneath the Northumberland Strait using the Western science & engineering tools of Lidar and Bathymetry affirmed what we have known for millennia.

The Mi'gmaq collective experience is a living body of knowledge known as Indigenous

⁶ This is a working document and is subject to amendment and updating. Mi'gmaq Sagamaq Mawiomis is engaging Elders, Knowledge Holders, those exercising Aboriginal and Treaty rights, community members and the leadership of the Mi'gmaq in development of this process guide. The exercise is not time limited but rather it is a permanent and ongoing process. A study process guide, concerning Indigenous Knowledge, is a living and adaptable document, and thus will be updated from time to time as needed.

⁷ The Mi'gmaq conception of nature is different than Western (European) conceptions of nature. Nature is not simply a resource for exploitation. Nature is alive and anything taken from nature must be done with appreciation and respect.

⁸ "**Nekutulimk**" is a Mi'gmaq concept that parallels the Western idea of sustainability. Full definition in glossary of terms.

⁹ "**Kepmite'tmnej ta'n wettapeksulti'k**" translates to "Let us greatly respect our Mi'gmaq roots". Full definition in glossary of terms and Appendix E.

Knowledge (we prefer the use of Indigenous Knowledge (IK) over TK or TEK).¹⁰ It is an evolving knowledge system that is scrutinized and tested in accordance with the techniques that have been passed down by our Elders, in conjunction with new systems of information and knowledge gathering. We assert that Mi'gmaq cultural values and practices shall be given the respect they deserve as mechanisms of democratic governance and sustainable resource management. Ours is a venerated and legitimate knowledge system with at least the equal value of Western scientific knowledge as evidenced by the growing body of knowledge where Indigenous Knowledge corroborates scientific knowledge.

Background

The past three or more decades have seen a dramatic rise in the use of Indigenous Knowledge (IK) in development, natural resource management, environmental decision-making, legislation and government policy. This is true throughout the world, with recent increases in uptake of this approach following the United Nations' adoption of the Declaration on the Rights of Indigenous Peoples in 2006. Furthermore, in Canada the Royal Commission on Aboriginal Peoples (RCAP) and the Truth and Reconciliation Commission (TRC), with its calls to action, provide a strong foundation for the use of Indigenous Knowledge throughout this country.

Indigenous Knowledge is defined, under the rubric of traditional environmental knowledge, as "a cumulative body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission (Berkes, 1998). Indigenous Knowledge is also an integral part of Indigenous Peoples' laws, which are a foundation of their societies.

In Canada, IK research was developed in response to Aboriginal "land claim" processes as well as to major development projects such as the McKenzie Valley Pipeline in the Northwest Territories. A significant amount of IK research has taken place in Northern Canada, with more recent projects throughout the rest of the country. Initially, IK research in Northern Canada relied on the testimony of one key traditional Knowledge Holder for one or more projects (Usher 2000). The methodology has since been refined substantially as a result of poor outcomes in resource development, co-management and "land claims" processes (Tobias 2009; 2000).

Preceding the Supreme Court of Canada decision in *Delgamuukw* in 1997¹¹, oral history testimony was not always considered as evidence in Canadian courts. Since the *Delgamuukw* decision, Indigenous Peoples and their oral traditions, in the form of Indigenous Knowledge, have been given equal recognition to other forms of common law evidence such as archival documents or expert witnesses.

According to Tobias (2009; 2000), effective IK research is best carried out within the parameters of a land use and occupancy study, which examines the Indigenous Peoples' use and occupancy of a given territory. Use and occupancy studies rely on robust social scientific

¹⁰ Mi'gmaq Sagamaq Mawiomi favours the nomenclature Indigenous Knowledge (IK) over traditional knowledge because IK is a living term which recognizes the past, present and future manifestations of specific Indigenous culture(s). Traditional knowledge and traditional ecological knowledge have been used by governments and industry to confine that knowledge to specific time periods, areas or project sites based on misconceptions that Indigenous cultures and practices are static and "frozen" in the past.

¹¹ *R. v. Delgamuukw*, [1998] 1 C.N.L.R. 14 (S.C.C.), rev'g [1993] 5 C.N.L.R. 1 (B.C.C.A.), rev'g [1991] 5 C.N.L.R. (B.C.S.C.).

research methods and can support Indigenous Peoples in upholding their inherent rights, international legal rights, and their Aboriginal and Treaty rights.¹² They can affirm self-determination and self-governance. IK research can also provide support for fundamentally important issues such as the implementation of the Treaties of Peace and Friendship concept of shared stewardship, which must guide natural resource development.

¹²In addition to court affirmed rights in Canada and rights under International Law, the inherent rights of the Mi'gmaq include corresponding responsibilities bestowed upon them by the Creator.

INTERPRETATION

Research Principles – OCAP®¹³

The NBMIKS Research Principles are based on the OCAP® Research Principles of Ownership, Control, Access and Possession (see Appendix A). The OCAP® Principles provide a prescribed approval process for the collection, analysis and reporting of research data generated from Indigenous communities and in this case Mi'gmaq communities throughout the Province of New Brunswick.

Nothing in this New Brunswick Mi'gmaq Indigenous Knowledge Study Guide or any related discussions, communications or documentation shall be interpreted as to abrogate, derogate, define, or in any way affect, limit or detract from the inherent, Aboriginal and Treaty rights that the Mi'gmaq individually and collectively hold.

For greater certainty nothing in this document shall be interpreted as Consultation, as it is described by the Supreme Court of Canada in a series of constitutionally significant decisions. The rights that Indigenous Peoples hold are fundamental to the constitution and the foundations of Canada. The Mi'gmaq as an Indigenous People, who hold constitutional and legal rights, are clearly distinguishable from stakeholders.

This Study Guide is intended to complement the established Mi'gmaq processes and protocols that pertain to Mi'gmaq Indigenous Knowledge data collection.

Study Triggers

The requirement for a NBMIKS is triggered the moment the Crown contemplates a decision that may impact the inherent, Aboriginal and Treaty rights, Title or rights of the Mi'gmaq in New Brunswick under domestic and international law. Mi'gmawe'l Tplu'taqnn and other relevant Mi'gmaq organizations, that have been formally delegated by individual New Brunswick Mi'gmaq First Nations to consult on their behalf, will be contacted at this point pursuant to the Interim Consultation Protocol (ICP).¹⁴

For example, when the Crown contemplates any decision regarding a potential natural resource project Mi'gmawe'l Tplu'taqnn will review correspondence relating to such a potential project. Mi'gmawe'l Tplu'taqnn may determine that subsequent meetings with both the Crown and the potential project proponent are necessary. Based on its understanding of a proposed project, Mi'gmawe'l Tplu'taqnn will determine the scale and scope of the NBMIKS needed to effectively assess potential impacts to Mi'gmaq Rights.

The Crown or a formally delegated proponent or entity are responsible for funding each NBMIKS. Mi'gmawe'l Tplu'taqnn will be fully responsible for the administration of funding and financial oversight of the NBMIKS, unless collaboration is requested with Mi'gmawe'l Tplu'taqnn

¹³ OCAP® is a registered trademark of the First Nations Information Governance Centre (FNIGC). See: www.FNIGC.ca/OCAP

¹⁴ Although it is not dealt with in this document in any detail, the Crown owes specific constitutional duties to the Mi'gmaq. For example, should the Crown infringe a court affirmed Mi'gmaq right, the Crown is held to a very strict legal and constitutional duty to justify any infringement of Mi'gmaq rights. This fact is well established by the Supreme Court of Canada. As one part of the duty of justification, Consultation must be meaningful and therefore must include a Study that meets the standard set out in this document.

or the Crown by specific Mi'gmaq First Nations who have chosen to individually conduct consultation as described under the terms of the ICP and wish to jointly manage funding responsibilities.

NBMIKS Phases & Format

The suggested phases and format of a NBMIKS are:

- Phase I: Study Scoping & Study Description
- Phase II: Desktop Literature Review
- Phase III: Mi'gmaq Community Information Sharing
- Phase IV: Knowledge Holder Engagement & Community Cultural Values Mapping
- Phase V: Individual Interviews and Biographical Mapping
- Phase VI: Interim Report to Community
- Phase VII: Follow-up interviews
- Phase VIII: Groundtruthing
- Phase IX: Data Analysis & Community Review of Draft Final Report
- Phase X: Final Report

Phase I NBMIKS Scoping & NBMIKS Description

Depending on the issues giving rise to the duty to consult, the Crown or formally delegated proponent or entity will provide Mi'gmawe'l Tplu'taqnn with a description of a proposed project. Mi'gmawe'l Tplu'taqnn will in turn subsequently provide a full description of the NBMIKS to the relevant body.

NBMIKS Area Scoping

NBMIKS scoping will be informed and made possible as a result of the knowledge garnered through the desktop literature review. When determining a study's geographical area, Mi'gmawe'l Tplu'taqnn shall consider the nature of NBMIK data, which demands the following:

- NBMIK data is continuously evolving and therefore any NBMIKS will require use of the most recently approved version of the NBMIKS Guide;
- Collection of NBMIK data will cover an area beyond the proposed Project footprint as determined in the initial research scoping of the NBMIKS Area;
- Collection of information about Mi'gmaq use and occupation of lands and waters must recognize and describe their importance to Mi'gmaq cultural and spiritual beliefs and practices;
- Describe the significance of the inclusion and recognition of Mi'gmaq historical, spiritual and cultural information in the proposed study;
- The final dimension of Project scoping is a very important step, the identification and employment of Mi'gmaq Community Researchers. In some cases, it will be necessary for Mi'gmawe'l Tplu'taqnn to train Mi'gmaq Community Researchers. If training of Mi'gmaq Community Researchers is required, the cost of this training will be included in the budget submitted for funding the NBMIKS.

Phase II Desktop Literature Review

The desktop literature review comprises a search of mainstream archives and Indigenous archives that document land use and occupation in the study area. Valuable information is derived from this process including documented or published:

- Archeological studies, sites and artifacts¹⁵ ;
- Audio and video recordings;
- Current use and occupation of the land such as scouting, hunting, fishing, gathering and sacred/ceremonial sites;
- Drawings, paintings, carvings and other art;
- Mi'gmaq place names, former habitation sites, burial sites and portage routes;
- Petroglyphs;
- Photographs;
- Pictographs;
- Primary and secondary accounts of Mi'gmaq customs, practice and traditions and where and when they occurred; and
- Relevant maps (including historical maps).

Product(s) of the Desktop Review

- Historic contextualization of the information gathered¹⁶;
- Historical narrative;
- Searchable bibliography of reference materials; and
- Temporally-based, comprehensive inventory¹⁷ of land and water use and occupation.

Phase III Knowledge Holder Engagement

When the Desktop Review and initial Project Scoping are completed, it is necessary to engage and inform Mi'gmaq community members about the NBMIKS and to identify Knowledge Holders. An initial community meeting is to be held in Mi'gmaq community by Mi'gmawe'l Tplu'taqnn staff or designate. The representative(s) shall:

- 1) Share information about the proposed project for which the NBMIKS has been triggered;
- 2) Describe all the steps of the NBMIKS and how the results will be used; ensuring the use will be in keeping with the NBMIKS Research principles described above;
- 3) Explain how the land use data will be gathered (e.g. interview process);
- 4) Describe how the data will be verified, stored and shared;
- 5) Collect concerns from community members about the project or the NBMIKS process;
- 6) Arrange for a second community session when Community Cultural Values Mapping (CCVM) will take place.

¹⁵ This list is in alphabetical order for ease of reading only. It does not in any way designate any priority or importance of the information.

¹⁶ This list is also in alphabetical order for ease of reading only. It does not in any way designate any priority or importance of the information.

¹⁷ This comprehensive inventory is limited by the materials we are able to access, which in turn is based on technical and financial capacity.

Phase IV Data Collection

Informed Consent of the Land User/Interviewee

Before NBMIKS data collection takes place, it is necessary to secure informed consent from each Mi'gmaq participant. Before informed consent is requested Mi'gmawe'l Tplu'taqnn will repeat steps 1 through 5 of the Knowledge Holder Engagement process to ensure each participant is fully aware of the proposed project and the NBMIKS process. This can be done in a group Community Cultural Values Mapping (CCVM) or individually prior to the biographical mapping session.¹⁸

A written Consent and Release form is explained and completed. A current example form is attached as Schedule C. However, it is a living document that will be updated from time to time.

Interview Process

The following key points will be included:

- Interviews shall be conducted in the Interviewee's language of preference:
 - A translator for the interviewer if requested; this determination will be made by the Community Researcher in advance of the interview date to ensure adequate time is given to schedule a translator.
 - The translator will be someone the interviewee recommends or deems appropriate.
- a central interview location will be designated for each community. Exceptions will be made for participants who prefer an alternate location of choice (for example: the interviewee's own home).
- Interviewees shall have the right to be accompanied by a friend, personal advisor or witness(es) of their choice;
- The Research Team shall provide appropriate materials including a Project description, in terms understandable to the interviewee, any relevant maps and appropriate recording devices that have been approved by the NBMIKS Committee;
- Interviewees will be provided with an honourarium (This is financial compensation for their time, not their knowledge) and will also be offered ceremonial tobacco.¹⁹
- The Research Team shall be knowledgeable about and respectful of Mi'gmaq cultural norms and values.
- The Research Team shall consider "response burden" and "vicarious trauma" (see glossary)
 - Response burden is commonly addressed by limiting the length of an interview and giving adequate time for the interviewee to answer questions. To this end, an interview will last no longer than three hours in one day per interviewee (with an intermission during a natural break in the conversation every hour), based on the willingness of the interviewee to continue. A timer will be set at the beginning of the interview and reset after each break to prevent fatigue in both the interviewee and

¹⁸ Community Cultural Values Mapping is a process tool to identify and engage key community land users while collecting preliminary land use data.

¹⁹ The NBMIKS Committee will determine an appropriate rate of compensation based on the scale of the project and the study.

- researchers.
- Secondary traumatic stress (Vicarious Trauma) is a concern for researchers who are interviewing residential school survivors, intergenerational survivors and others who have experienced traumatic events in their life. Mental and spiritual health support for interviewees and the Research Team is needed to mitigate the effects of working with victims of trauma in the interview setting. Interviewees may require support as a result of revisiting past trauma through the interview process. Funding needs to be provided to cover the honourarium for a traditional Practitioner to conduct healing/talking circles and ceremonies as required
 - The interview process may be spread out over two days or more in the case of Elders or the infirmed. This determination will be made by a Community Researcher prior to the interview or during the interview process as may be needed, so scheduling the extra time can be made.
- The direct experience of an interviewee (first-hand accounts) will be captured during the land use mapping interview and the experiences of persons they know (second hand accounts) shall be captured during the oral history interview.
- Once the interview is complete the participant will be reminded of the transcript review process and a tentative date for the review will be scheduled between the Community Researcher and the participant
- Representatives of the NBMIKS Committee may be present during interviews with the consent of the person being interviewed.

NBMIKS Research Standards

Indigenous land use and occupancy mapping research methods, as discussed further in this Study Guide, have become the international norm for completing Indigenous Knowledge studies. Within the Indigenous land use and occupancy study process biographical mapping is one of the key methodological techniques. Biographical mapping is a process whereby an interviewer sits down with a given Indigenous land user and maps the person's land use or occupancy throughout their lifetime. The biographical mapping session includes an Oral History interview where second-hand information²⁰ is documented along with first-hand Indigenous Knowledge data. The digitization and subsequent compilations of these biographical maps creates a data set, or composite. These composite maps create a pattern of resource use and land occupancy, which is a crucial component in the development of a comprehensive knowledge set for a given Indigenous group, and, that group's territory and resources. The comprehensive knowledge set will cover areas such as plant and animal harvesting areas, scouting areas, campsites, and places of spiritual and cultural importance.

Phase V Interim Report and Review

Once an initial round of interviews has been conducted there will be an interim report in which findings are presented and shall include preliminary maps. The NBMIKS Committee will review any interim report to ensure compliance with the NBMIKS Guide and any related requirements. This is an opportunity to make necessary refinements of the research process for the second stage of data collection. This interim report is confidential as among the Mi'gmaq and proponent.

²⁰ In this context, second hand information means information that has been handed down to the interviewee. This may be information from family members (such as grandparents), friends or those Knowledge Holders known to the interviewee.

Phase VI Data Collection Stage Two

Based on the findings of the interim report and the feedback of the Committee, it will be determined whether a second round of interviews is necessary. The collection of NBMIKS data is dependent on a number of factors including those used to determine the amount of data outlined in the scoping of the study. When conducting a NBMIKS, the Research Team shall make every effort to obtain relevant information from as many community members as possible. Proper scoping of the study will ensure that appropriate time, funding and resources are available to enable the collection of sufficient NBMIK data. Ideally the number of Knowledge Holders interviewed would be 100% but this is methodologically difficult. The study will involve all genders and all age groups.

Mi'gmaq communities in New Brunswick range in size from about 150 members to more than 3,000. Sample design in these communities will therefore vary. In smaller communities a larger percentage of land users will most likely be engaged in the study whereas the number of land users in a larger community may lead to a lower percentage of the population being interviewed. The community information session, Community Cultural Values Mapping session and referrals from land use interviewees will all serve to identify as many Knowledge Holders as possible.

In the event that an insufficient amount of NBMIK data is collected the circumstances must be fully explained in both the interim and final reporting processes. Additional research therefore may be necessary following each reporting stage.

NBMIKS Groundtruthing²¹

Groundtruthing sessions will include the use of land and waters with interviewee(s) traveling to the study area to confirm land and waters use data collected during the interviews and to further elicit the memories of Knowledge Holders. The Knowledge Holder may request to be accompanied by an assistant of their choice.

Phase VII Analysis & Final Report

This Phase includes all work specific to the analysis of NBMIKS data, reporting and disclosure of NBMIK information. It is recommended that a NBMIKS both consider and address, at a minimum, the following two key elements:

MIKS Data Analysis

When reporting NBMIKS data a Geographic Information System (GIS) software or equivalent technology will be utilized and data will be presented in a general coded form that reflects overall knowledge, use and occupancy of the land and waters (a composite map). The identity of individual interviewees will be protected by a corresponding PIN.

The following factors will be used to determine the significance of NBMIKS data:

- the uniqueness and nature of the land or waters resource use/occupation; and

²¹ See Appendix B for full description of the Groundtruthing Methodology

- the cultural use or spiritual meaning of the land or resource use/occupation.

Disclosure and Reporting of NBMIKS Data

NBMIKS Report findings shall contain NBMIKS baseline information such as the type of use and species harvested or observed.

NBMIK data shall be represented in the report through a variety of means including the use of GIS.

Confidentiality of a Mi'gmaq Participant's NBMIKS data shall be protected as described elsewhere in this Study Guide.

The NBMIKS Report shall provide recommendations on the avoidance, mitigation or remediation of potential impacts of the Project in a manner that reflects Mi'gmaq cultural perspectives.

Mi'gmawe'l Tplu'taqnn and any partner(s) shall have a reasonable period of time to review and comment on the report and propose amendments and then determine when and how it is to be forwarded to the Proponent and or Crown.

The NBMIKS Report must protect the intellectual property rights that the Mi'gmaq individually and collectively hold to all information provided for each study. An approved statement to that effect is appended to this document as Schedule B.

Phase VIII Data Management

Data management for Mi'gmawe'l Tplu'taqnn Mi'gmaq Knowledge guidelines, beyond or in addition to this Study Guide, will be based on the NBMIKS Research principles. A comprehensive set of data management protocols will be developed and implemented, which will include data documentation, harmonization, storage, retrieval, cataloging, and dissemination policies, to be periodically reviewed and amended by Mi'gmawe'l Tplu'taqnn.

Data sets will include records of archival resources, which will be stored using a bibliographic software package. Additional data will include standard academic bibliographies, classified according to keywords; shape files and resultant maps created in geographic information systems; a keyword searchable database of Knowledge Holders (identified only by PIN); digital video files, catalogued by keyword and timeframe; and oral histories that are culturally appropriate and comply with Mi'gmaq law. Mi'gmawe'l Tplu'taqnn will serve as custodian of this data until such time as a directed otherwise by MSM. Mi'gmawe'l Tplu'taqnn will store the data in a secure setting and back it up regularly.

Amendments

This NBMIKS Guide may be amended at any time as deemed necessary by the MSM.

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Appendices

Appendix A: OCAP® Research Principles and Protocols

Reference

National Aboriginal Health Organization (NAHO) 2005 Report: Ownership, Control, Access and Possession (OCAP®) or Self-Determination Applied to Research: A Critical Analysis of Contemporary First Nation Research and Some Options for First Nations' Communities. Ottawa: NAHO. Accessed on May 12, 2012.

http://www.naho.ca/documents/fnc/english/FNC_OCAP®CriticalAnalysis.pdf

Abstract

The principles of ownership, control, access and possession (OCAP®) crystallize themes long advocated by First Nations in Canada. Coined by the Steering Committee of the First Nations' Regional Longitudinal Health Survey, the principles are discussed as an expression of self-determination in research. The key notions outlined in this paper relate to the collective ownership of group information; First Nations' control over research and information; First Nations' management of access to their data and physical possession of the data.

Following a critical review of colonial research practices and recent institutional efforts to improve ethics in Aboriginal research, this paper highlights policies and strategies adopted by First Nations' organizations – approaches which offer a way out of the muddle of contemporary Aboriginal research and the ethical dilemmas that characterize it. The benefits of OCAP® are described including the rebuilding of trust, improved research quality and relevance, decreased bias, meaningful capacity development, and community empowerment to make change.

Introduction

Ownership, control, access, and possession, or OCAP®, is self-determination applied to research. It is a political response to tenacious colonial approaches to research and to information management. OCAP® has become a rallying cry to many First Nations and should be a wakeup call for researchers. It offers a way out of the muddle of contemporary Aboriginal research by non-Aboriginals and the ethical dilemmas that characterize it. The principles of OCAP® apply to research, monitoring and surveillance, surveys, statistics, cultural knowledge, storage and archiving, dissemination and so on. OCAP® is broadly concerned with all aspects of information, including its creation and management.

Ownership

Ownership refers to the relationship of a First Nation community to its cultural knowledge/data/information. The principle states that a community or group owns information collectively, in the same way that an individual owns their personal information.

Control

The aspirations and rights of First Nation Peoples to maintain and regain control of all aspects of their lives and institutions extends to research, information and data. The principle of control asserts that First Nation Peoples, their communities, and representative bodies are within their rights to control all aspects of research and information management processes which impact

them. First Nations' control of research should include all stages of a particular research Project – from conception to completion. The principle extends to the control of resources and review processes, the formulation of conceptual frameworks, data management and so on.

Access

First Nation Peoples must have access to information and data about themselves and their communities, regardless of where it is currently held. The principle also refers to the right of First Nations' communities and organizations to manage and make decisions regarding access to their collective information. This may be achieved, in practice, through standardized, formal protocols developed by the Peoples themselves.

Possession

While ownership identifies the relationship between a People and their data in principle, possession or stewardship is more literal. Although not a condition of ownership, per se, possession (of data) is a mechanism by which ownership can be asserted and protected. When data owned by one party is in the possession of another, there is a risk of misappropriation, breach of understandings and agreements or misuse of the data. This is particularly important when trust is lacking between the owner and possessor.

Most importantly, OCAP® is forward-looking and pro-active. It opens up new avenues for the expression of self-determination and self-governance in the areas of research and information and provides a measure of hope for positive change. Before looking at the way forward, a review of the challenges posed by past practices in First Nations as well as Inuit and Métis research is in order.

Appendix B: Groundtruthing

Groundtruthing is a mapping process of going out on the land with Knowledge Holders to confirm and further the data that was recorded during individual biographical mapping interviews.

A visit to land use area(s) is scheduled with the land user, their companion, an interviewer and a Research Team member to operate the GPS device and to take notes as needed. A video and audio recording of the groundtruthing activity can be used to back-up data collected. The process of groundtruthing begins with a review with an interviewee of their individual land use map produced from a biographical mapping session.

The site visit begins with the verification of points or areas identified by the land user as areas previously or currently used. Typically this exercise expands and extends the areas identified by the land user as they travel on the land. As noted anthropologist Julia Cruikshank found in her work with indigenous Yukon Knowledge Holders, memories of the land that were relayed during sit-down interviews were very much enhanced once she travelled with the Knowledge Holder to the place described in the story (Cruikshank 2000, 2005). Terry Tobias (2009)²² describes groundtruthing as a process of verifying base maps with a GPS unit during field excursions. Tobias suggests groundtruthing take place on an ongoing basis in order to record changes to land use and impacts from industrial development.

Waypoints (the digital measure of latitude and longitude) for are recorded with a GPS unit. These points are then uploaded into ArcGIS in order to create a composite (multi-user) land use and occupancy map. The groundtruthing map data is then incorporated into the composite land use maps from the primary IK Study.

²²Tobias, T. (2009). Living proof. *Ecotrust Canada, Vancouver*.

Appendix C: Community Cultural Values Mapping

Community Cultural Values Mapping Sessions (“CCVM”) has four defined purposes within the full scope of an NBMIKS:

- 1) to identify land-users for the individual mapping sessions
- 2) to introduce communities to the process of IK Studies
- 3) to verify biographical map data and to prompt the memory of potentially forgotten land use activities
- 4) to gather land use data from individuals who may not be candidates for individual biographical mapping due to time and funding constraints.

The CCVM sessions are conducted prior to the individual (biographical) land use and occupancy interviews/mapping.

At the beginning of the CCVM session, the Research Team will brief the participants on the Project, the NBMIKS objectives and how the data would be used. The Research Team then reviews the permission form with the participants and, if they agreed, invite them to sign consent to being audio and video recorded and to allow their information to be used for the purposes of this NBMIKS. To identify which participant mapped which feature, each participant was given a PIN.

During the session, respondents are primarily asked about their Mi’gmaq Indigenous Knowledge, their knowledge of cultural sites as well as commercial harvesting activities. Some participants may map additional themes outside of these prioritized categories such as their personal harvesting locations or personal recreational areas.

One interviewer asks the participants’ questions from the interview guide and records the mapped information in a notebook. The other interviewer marks features (points, lines, and polygons) identified by participants on an ArcGIS map. A map is projected onto the wall screen for all participants to see. The participants are instructed to use a laser pointer to determine the precise location of the features they identify. The ArcGIS computer screen is video recorded to allow for post-interview verification as required.

A separate audio file of the interview is also made to provide back-up. A series of oral history questions are posed to the participants. These questions may be related to the participants’ perspectives on the proposed Project or general land use information. The participants are audio and video recorded for this portion of the session.

The structure of each session can vary depending on the size of the group. When the group is smaller (10 or fewer participants) the structure can be less formal, and the participants have the ability to have the most amount of dialogue. Although questions are asked from the interview Guide, there is no order in which the questions are asked, and the flow of the interview is very fluid.

A formal structure may be followed for a larger group (more than 10 participants) in which the interviewer asks questions following the order of the interview guide. In a larger group the talking circle method may be utilized in order to encourage optimal participation from each member of the group. The talking circle has long been used by the Mi’gmaq to better facilitate group discussions, providing many benefits to participants including energy sharing and support. The participants’ sit in a circle and share their knowledge and map features one-by-

one. Although there may be little back and forth dialogue between participants, the objective of prompting memory is still achieved in the large group mapping setting.

All participants receive an honorarium for their time to take part in the CCVM sessions. Quality assurance measures are taken in data gathering, back-up and analysis. Interviewers are provided with training on the CCVM toolkit and methodologies in advance of the field interviews to ensure consistency. Senior Mi'gmawe'l Tplu'taqnn Research staff review all tools and deliverables. A formal post-interview verification process does not occur for the Community Cultural Values Mapping sessions; rather, the group setting in itself is a form of verification in which participants are able to comment on the accuracy of one another's data collected as part of the Study.

Geographic data are processed to create maps that depict the knowledge and land use of the respondents. The maps should be viewed as supplementary to the composite maps from the individual biographical maps and interviews.

Appendix D: Vicarious Trauma

VICARIOUS TRAUMA: A REFLECTIVE PRACTICE APPROACH^{© 23}

What is Vicarious Trauma?

The term Vicarious Trauma was first used in 1990 by McCann and Pearlman from Traumatic Stress Institute / Centre for Adult and Adolescent Psychotherapy. It recognised that working with survivors of trauma carries impacts for workers.

VT is the impact on a worker after exposure to trauma work with clients and it reflects the impacts and the changes, or transformations, of the worker over time.

VT Definitions:

The transformation of the therapist's or helper's inner experience as a result of empathetic engagement with survivor clients and their trauma material. Simply put, when we open our hearts to hear someone's story of devastation or betrayal, our cherished beliefs are challenged and we are changed. (Saakvitne & Pearlman, 1996)

The issue is not whether or not workers experience VT, the issue is how aware we are and how active we are in dealing with and attending to these issues.

If experiences of VT are not dealt with well, or at all, negative impacts can be overwhelming and detrimental to the worker's quality of life.

This is a lovely (but quite long) quote from Jan I. Richardson 2001 Guidebook on Vicarious Trauma:

Vicarious trauma is the experience of bearing witness to the atrocities committed against another. It is the result of absorbing the sight, smell, sound, touch and feel of the stories told in detail by victims searching for a way to release their own pain. It is the instant physical reaction that occurs when a particularly horrific story is told or an event is uncovered. It is the insidious way that the experiences slip under the door, finding ways to permeate the counsellor's life, accumulating in different ways, creating changes that are both subtle and pronounced.

Vicarious trauma is the energy that comes from being in the presence of trauma and it is how our bodies and psyche react to the profound despair, rage and pain. Personal balance can be lost for a moment or for a long time. The invasive and intrusive horrors infiltrate and make their mark. The waves of agony and pain bombard the spirit and seep in, draining strength, confidence, desire, friendship, calmness, laughter and good health. Confusion, apathy, isolation, anxiety, sadness and illness are often the result.

The transformation or changes that occur in the anti-violence worker are not all negative; it is the negative components of the change that are the focus of vicarious trauma. The transformation also brings about positive changes. Anti-violence workers describe the deep satisfaction of their

²³© Jenny Gilmore 2015

work and recognize the strength, dedication and courage that women have to begin a new day of renewed hope. Rose-coloured glasses are removed and the world becomes clearer, more vivid. The layers of mirage are stripped away and the world is exposed in both its beauty and horror.

Related Terms:

Burnout – this refers to extreme circumstances where the worker is suffering personally, and professionally from their work; it is usually accompanied by a high degree of negativity

Primary traumatization – this refers to the impact of trauma on the actual victim of the traumatic event. This may be applicable to workers if they have experienced their own trauma

Secondary traumatization – this is usually about family members or close friends who witness a loved one's traumatic event. It can also refer to workers who actually witness a client's trauma. This is not a vicarious experience, it is when the worker directly witnesses the incident.

Compassion fatigue – came from Figley who used it to refer to people who suffer from being in a helping capacity for a long time

Countertransference - refers to the unconscious feelings that arise in the worker while in therapy. Some refer to it as the total of the worker's response and reaction to the client. Mostly though, countertransference refers to our baggage that we take into the counseling process.

Empathy:

Empathy is both central to our work in a positive way but also one of the critical issues in workers who develop VT. Again, the most crucial factors in preventing the negative effects of this are self-awareness and self-care. Rothschild talks about a form of conscious empathy. Empathy in this form leads to compassion. However, when we are not conscious it can have quite detrimental effects on us. Rothschild talks about unconscious empathy as being a form of emotional infection where we 'catch' the client's feelings. We need to learn to choose when this is necessary for us effectively doing our jobs and when it is detrimental for us.

General Points:

- It happens over time; it is a process not an event;
- It can affect any workers not just those doing long term intensive therapeutic work;
- It can happen for workers doing both short term and long-term work;
- It is specifically a result of work with survivors of trauma, regardless of the nature of this work;
- It affects most of us at some time although workers who have been doing this work for a long time have usually developed sufficient coping strategies that they are only minimally affected;
- Our own personal experiences, especially of trauma will impact on our susceptibility to VT;
- The organizations we work in can have a massive impact on either enhancing or inhibiting our ability to cope with the work we do;
- VT is not just an individual worker issue or even an organizational or sector issue, it is also a social issue and a feature of the way in

which we live in our society;

- We are all greatly and profoundly changed through doing this work.

The following information is taken, virtually word for word from Yassen, J. "Preventing secondary traumatic stress disorder." In *Compassion Fatigue: Coping with Secondary Traumatic Stress Disorder in Those Who Treat the Traumatized*. C. R. Figley (ed.). New York: Brunner/Mazel, 1995.

Risk Factors – Personal:

- Our personal make-up
- How we deal with things (avoid or not, especially our emotions)
- Own experiences of trauma but also if they are not resolved
- Our own therapy
- Current life circumstances
- Supports
- Spirituality
- Work style, boundaries, etc.
- Training and professional history
- Supervision
- Balance in our lives generally

Risk Factors - Situational:

- The nature of our work (work with survivors, level of intensity of our work, cumulative exposure)
- Support in workplace
- Overall organizational culture

Risk Factors – Cultural Context:

- If as workers we have a sense of powerlessness about social responses to the issues we are working with.

Signs and Symptoms

The Personal Impact of Secondary Traumatic Stress:

Cognitive

- Diminished concentration
- Confusion
- Spaciness
- Loss of meaning
- Decreased self-esteem
- Preoccupation with trauma
- Trauma imagery
- Apathy
- Rigidity
- Disorientation
- Whirling thoughts
- Thoughts of self-harm or harm toward others
- Self-doubt
- Perfectionism
- Minimization

Emotional

- Powerlessness
- Anxiety
- Guilt
- Survivor guilt
- Shutdown
- Numbness
- Fear
- Helplessness
- Sadness
- Depression
- Hypersensitivity
- Emotional roller coaster
- Overwhelmed
- Depleted

Behavioural

- Clingy
- Impatient
- Irritable
- Withdrawn
- Moody
- Regression
- Sleep disturbances
- Appetite changes
- Nightmares
- Hypervigilance
- Elevated startle response
- Use of negative coping (smoking, alcohol or other substance misuse)
- Accident proneness
- Losing things
- Self-harm behaviours

Spiritual

- Questioning the meaning of life
- Loss of purpose
- Lack of self- satisfaction
- Pervasive hopelessness
- Ennui
- Anger at God
- Questioning of prior religious beliefs

Interpersonal

- Withdrawn
- Decreased interest in intimacy or sex
- Mistrust
- Isolation from friends
- Impact on parenting (protectiveness, concern about aggression)
- Projection of anger or blame
- Intolerance
- Loneliness

Physical

- Shock
- Sweating
- Rapid heartbeat
- Breathing difficulties
- Somatic reactions
- Aches and pains
- Dizziness
- Impaired immune system

Impact of Secondary Traumatic Stress on Professional Functioning Morale

- Decrease in confidence
- Loss of interest
- Dissatisfaction
- Negative attitude
- Apathy
- Demoralization
- Lack of appreciation
- Detachment
- Feelings of incompleteness

Behavioural

- Absenteeism
- Exhaustion
- Faulty judgement
- Irritability
- Tardiness
- Irresponsibility
- Overwork
- Frequent job changes

Performance of Job Tasks

- Decrease in quality
- Decrease in quantity
- Low motivation
- Avoidance of job tasks
- Increase in mistakes
- Setting perfectionist standards
- Obsession about detail

The Gifts – Transforming VT

We need both good quality strategies and self-care processes to help us deal with VT.

We can also limit the extent to which we are affected by transforming the meanings that we make.

Whilst difficult and demanding, there are gifts in this work for us all:

- Our sense of hope;
- Our admiration for human resiliency;
- Our recognition of the difference one relationship can have in someone's healing and life.

Reflective Practice

It is widely acknowledged that the most effective tool in the prevention of VT is awareness.

Awareness is the essence of reflective practice.

Research shows that when the possibility of vicarious trauma is not recognised or acknowledged, people may be more detrimentally affected because there are few if any efforts to prevent or reduce this harm. (Morrison)

The essence of reflective practice is being conscious of what we are doing and why. Being conscious is terribly important because it is the only way that we can guarantee growth and change. If we are not conscious of what we are doing and why we are doing it, then the opportunities for change are drastically limited.

The awareness we are looking for is multifaceted – it includes awareness of our behaviours, language, thoughts and feelings, our bodies, others around us and their energy and language.

In very simple terms and in many areas of our lives, if we are more aware we are less vulnerable and we have greater capacity to live our lives as we choose – and in relation to our practice, we are more solid as practitioners.

3 Steps to Developing Reflective Practice:

1. A dynamic and relevant framework for practice which leads to consistency and integrity in our practice;
2. A clear knowledge of our role, purpose and boundaries;
3. A good and reflective relationship with self.

1. Framework for Practice:

In order to reflect on our practice, we need a base to work from - a well developed and evolving practice framework.

The purpose of a practice framework is to guide our practice by ensuring that we are conscious of what we do and why. Through a process of conscious reflection we ensure integrity and consistency in our practice.

The emphasis here is on being conscious of what we are doing and why.

Elements of a framework for practice:

- Values and Principles
- Theories and Understandings
- Actions and Strategies
- Reflection

The most important aspect of any framework is to ensure that there is consistency between the different elements.

When there is a consistency between our values and actions, we tend to feel content.

When there is inconsistency between our values and actions, tension usually results and it may become a significant issue in our work and how we feel about ourselves.

2. Purpose and Boundaries:

Workers need to know their role, purpose and boundaries.

There are some things that we as workers are responsible for in this work and some things that we have no control over. It is extremely important that we

are able to tell the difference.

Our role is not to do the work for the other person, it is to provide the space for the work to be done and at times to provide some compassionate guidance if obstacles present themselves.

3. Relationship with Self

We need to ensure that we are looking after ourselves and attending to our own issues. Relationship with Self:

So, what do we mean by a good relationship with self?

- We come to know ourselves, value ourselves and accept who we are, our strengths and challenges, without judgement or inflating / deflating ourselves;
- We know our tender points and we know how to care for ourselves and keep ourselves safe;
- We prioritise ourselves and are prepared to put the time and energy into us and maintaining our own self.

Therefore, a good and conscious relationship with self is characterised by:

- an independent sense of self;
- a capacity for agency; to be free to make choices and carry them out;
- a capacity to advocate for yourself and the values and principles you believe in;
- a capacity to advocate for others;
- a positive and realistic sense of your own power;
- no judgement of yourself and others;
- good boundaries - knowing what is yours and what isn't;
- no defensiveness but an openness to learning new things and to being challenged and challenging;
- kindness and generosity of spirit combined with a compassionate heart.

In order to do this, we have to make sure that we achieve a balance between the different parts of our personal lives (Saakvitne & Pearlman, 1996)

including:

- Spiritual
- Physical
- Emotional
- Relational
- Psychological
- Creative
- Sensual

Self-Care

The Headington Institute suggest 3 categories of self-care:

Physical - regular exercise, sleep, healthy eating, water, humour, limited alcohol, yoga, relaxation techniques, massage, repetitive activities;

Emotional and relational - nurturing relationships, contact with friends, talking, humour, reflection in all forms, creative activities, movies, books, music, balanced priorities, realistic expectations, counselling;

Spiritual - knowing your values, participating in a community, regular meditation, meaningful conversations, singing or music, contact with inspiring adults, being in nature, solitude.

Self-Care Strategies:

Morrison gives examples of self-care strategies:

- Socio-political involvement
- Interests which are separate from work
- Taking breaks at and from work
- Debriefing opportunities
- Maintaining professional connections
- Maintaining connections with people outside the sector
- Accepting support
- Giving support
- Treating ourselves well
- Physical activity and bodily self-care
- Spiritual engagement
- Humour
- Identifying successes

Self-care is not just a yearly or monthly occurrence but is an integrated and consistent process of attending to ourselves and keeping ourselves well and happy.

Self-care needs to be both proactive and reactive.

Self-care happens at work as well as at home.

It is just as important to take the time to do nothing and give ourselves some space to just be. Our aim is to be a human being not a human doing.

On a very practical level:

We need to be checking in with ourselves often throughout the day and you need to establish your own routine.

Time to become conscious of the day at the beginning and end of the day. Look at the day and what it holds and what your hopes are for the day. Then review the day at the end and see how you feel and how intact you are now.

At the end of the day do something that will help you move into a new space that is about you and the other parts of your life.

Explore and express the other parts of you when you're not at work.

In addition to this we need to ask ourselves the question about how we can sustain our commitment to a higher level of self-care.

- Making appointments with ourselves and treating them as seriously as appointments with other people;
- Regular professional supervision appointments (internal, external, peer support);
- Regular checking times throughout the day to ensuring we are being mindful of how we are;
- Always something in the diary to look forward to; something for you, not for work.

Self-Care Homework!!

So, your homework is to make 5 appointments with yourself before you leave here today:

Think of 5 things you would like to do. They may be things you used to do or totally new things. Then make a realistic date with yourself to do them and mark them in your diary as appointments. Try to include some activity that involves contact with the earth. These appointments that you make with yourself are as important as ones you make with others.

The Context of Trauma Work

Basically, everything that a worker might do to try to prevent or deal with VT, can be made harder or easier depending on the organizational context.

There are a few points that I would like to make about the organisation's responsibility to workers in relation to dealing with and preventing VT.

- In the first instance I think that there is a responsibility on all organizations to review the extent to which their core business exposes workers to VT.
 - All staff at management level and in the case of NGOs, all Management Committees, need to be actively interested and concerned with staff well being.
 - Organizations need to have a well-developed understanding of VT and how it impacts on workers who work with survivors of trauma.
 - Worker's professional identity and value is tied in remuneration, in wages and conditions. Organizations have a responsibility to ensure that workers are compensated for their work at a level that clearly demonstrates its value.
 - Workers should be provided with consistent opportunities for supervision, support, debriefing, ongoing education and training, team building, etc. and a culture of openness and transparency when it comes to processing all client and staff related issues. These opportunities should always be provided in a way to maximize worker safety.
 - Workplaces should encourage peer support and supervision processes.
 - Workplaces can ensure that the physical space is conducive to the work that occurs there and that staff have spaces to both work effectively and to relax together.
 - Diversity of work, including caseloads, is a significant factor in reducing VT.
 - High caseloads and long waiting lists make significant contributions to worker stress.
 - Part of a worker's satisfaction is in knowing that they have made a difference and have made a significant contribution to their client's life and well-being. Restricting the number of sessions that a worker is allowed to have with each client is not only ineffective but also inherently damaging for workers.
 - Organisations should prioritise worker health and well-being by encouraging workers to do their own work and feel supported in their personal lives
- The broader social context is also very important:
- Inability to create large scale social change;
 - Devaluing of this work;
 - Our sense of powerlessness.

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Stedmon, Jacqui & Dallos, Rudei (eds.), 2009, Reflective Practice in Psychotherapy and Counselling, New York: Open University Press.

Yassen, Janet 1995 "Preventing secondary traumatic stress disorder." In Compassion Fatigue: Coping with Secondary Traumatic Stress Disorder in Those Who Treat the Traumatized. C. R. Figley (ed.). New York: Brunner/Mazel, 1995.

Web Sites

International society for Traumatic Stress Studies www.istss.org

The Australasian Society for Traumatic Stress Studies - www.astss.org.au/

The Headington Institute - www.headingtoninstitute.org

Traumatic Stress Institute / Centre For Adult and Adolescent Psychotherapy – <http://tsicaap.com/>

Appendix E: Mi'gmaq Honour Song

Mi'gmaq Honour Song by George Paul ©

Mi'gmaq Phonetic
(English Translation)

Kepmite'tmnej ta'n teli l'nuwulti'kw Geb-mee-day-d'm'nedge dawn deli ul'new-ul-dee-k
(Let us honor the people that we are)

Nikma'jtut mawita'nej Neeg-mahj-dewt Ma-wee-dah-nedge
(My people let us gather)

Kepmite'tmnej ta', wettapeksulti'k Geb-mee-day-d'm'nej dawn wetta-beg-sul-deeg
(Let us greatly respect our Mi'gmaq roots)

Nikma'jtut apoqnmaltineg Neeg-mahj-dewt abohn-maw-dul-din-edge
(My people let us help one another)

Aponqnmaltineg ta'n kisu'lk teli ikaluksi'kw wla wksitqamu way ya heyo Abohn-maw-dul-din-
nedge dawn gee-suelk deli-gah-lug-seeek wulla-wug-seet-gah-moo
way yah hey oh
(Let us help one another according to Creator's intention for putting us here on Mother Earth)

Chorus

Way oh way hi yah
Ha way oh hey oh hey hi yah
Way oh hey hi yah
Ha way oh hey hi yah
Way oh hey hi yah
Way oh hey hi yah
Ha way oh hey hi ya hey yo

Way oh way hi yah
Ha way oh hey oh hey hi yah
Way oh hey hi yah
Ha way oh hey hi yah
Way oh hey hi yah
Way oh hey hi yah
Ha way oh hey hi ya hey yo

Repeat entire song 4 times...once for each direction North, South, East & West and repeat the chorus in the final verse

Schedules
Schedule A
Consent Form

Title and description of the research project.

Include the name of the funding sources of the research Project, the name of the organization or name of the individual(s) involved.

Team

The survey is a joint initiative of the following organizations or people.

(If there are more than one).

Objective of the study

In a few points, description of the “goal” of the study and why it should be carried out.

Duration of the study and method(s) used

The Mi'gmaq Participant will take part in research (number of sessions, length of sessions) during which he /she will answer to either: questionnaires, directed or semi-directed interview, etc. The sessions anticipated (date and time of sessions).

Advantages/Disadvantages

Enumeration of the middle and long-term advantages and disadvantages for the individual and the community as well as a complete explanation of the use of this study for the community.

Protection of personal information

The data obtained from the study will be strictly used for the purposes of said research. Mention how the information gathered will be used. The names of the Mi'gmaq Participants will not appear in any report, except if they so choose. Moreover, confidentiality of the answers must be ensured according to the mandate of the Research Team; the answers will not be made public under any circumstances.

Duration of the conservation of personal information

The data gathered will be kept for X days/weeks/months/years then destroyed (means of destruction).

Mi'gmaq Participant Initials _____

Language used

The language used during the research proceedings must be chosen by the Mi'gmaq Participant. If the occasion arises, translation services will be included in the NBMIKS budget proposal

Right to refuse or withdraw

The Mi'gmaq Participant will be able to withdraw from the research Project at any time, without having to give a reason and will not suffer any kind of prejudice.

All questions concerning the project can be addressed to the Research Team at:

I the undersigned, _____
(Name in capital letters)

freely consent to participate in the research project entitled:

« Insert title of the research project ».

I have signed two copies of this form and will keep one.

Signature of the Mi'gmaq Participant

Date

Signature of the Research Team Leader

Date

Note: For research with an UNDERAGE individual a specific Mi'gmawe'l Tplu'taqnn form must be completed. A parent or guardian must co-sign the form and be present for both the explanation and interview.

Schedule B

Intellectual Property Rights

The MSM and Mi'gmawe'l Tplu'taqnn support The United Nations General Assembly decision to adopt the ***United Nations Declaration on the Rights of Indigenous Peoples*** (UNDRIP) in 2007. The Declaration recognizes the equal human rights of Indigenous Peoples to all other peoples against any form of discrimination and seeks to promote mutual respect and harmonious relations between the Indigenous Peoples and a State. The UNDRIP is clear about the importance of Indigenous Intellectual Property Rights (IIPRs).

Article 31 states that Indigenous peoples “have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.”²⁴

Indigenous people maintain both individual expressions of IIPRs through their life experiences and creations as well as communal IIPRs through enveloping and ongoing cultural knowledge and practices.

MSM and Mi'gmawe'l Tplu'taqnn support the UNDRIP's principle of individual and communal IIPRs. Mi'gmaq IIPRs in their many manifestations must be recognized and respected by all persons and organizations wishing to operate in the territory of the Mi'gmaq in New Brunswick.

²⁴ Note: The MSM and Mi'gmawe'l Tplu'taqnn favour the nomenclature Indigenous Knowledge (IK) over traditional knowledge because IK is a living term; which recognizes the past, present and future manifestations of Indigenous cultures.

Schedule C

Steps in the NBMIKS Process

NBMIKS Trigger (Earliest contemplation of an effect on Aboriginal and Treaty Rights)

Phase I: Study Scoping & Study Description

Phase II: Desktop Literature Review

Phase III: Mi'gmaq Community Information Sharing

Phase IV: Knowledge Holder Engagement & Community Cultural Values Mapping

Phase V: Individual Interviews and Biographical Mapping

Phase VI: Community Report & Review

Phase VII: Follow-up interviews

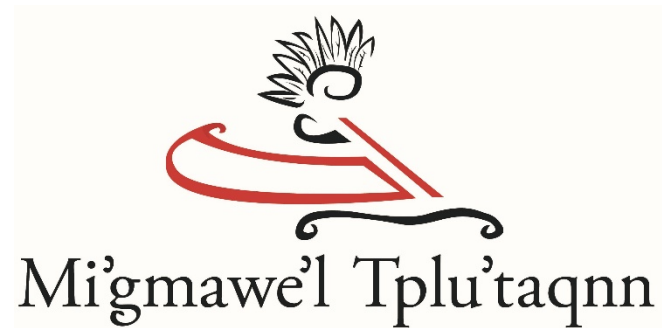
Phase VIII: Groundtruthing

Phase IX: Data Analysis & Community Review

Phase X: Final Report to determine effects on Mi'gmaq Aboriginal and Treaty Rights)

MI'GMAQ RIGHTS IMPACT ASSESSMENT FRAMEWORK¹

Version 1.0



¹ This document was ratified by the Mi'gmaq Chiefs on November 24, 2020. It is a living document and will be updated on an ongoing basis.

Statement of Purpose and Introduction

The ultimate purpose of this Mi'gmaq Rights Impact Assessment ("MRIA") Framework is for the Mi'gmaq to have a self-determining, Mi'gmaq-led process for assessing the potential impacts of proposed activities on Mi'gmaq Aboriginal and Treaty Rights and Title, and for determining if Mi'gmaq consent for a project will be granted.

When Proponents are considering activities in New Brunswick, such as resource development projects, the proposed activity will be required to undergo a MRIA. To achieve the objective of this MRIA Framework, all proposed projects and expansions of existing projects will be subject to the Mi'gmaq-led process and methodology as set out in Steps 1 through 8 of this document. A MRIA will be carried out whether or not a provincial Environmental Impact Assessment ("EIA") or federal Impact Assessment ("IA") is required for the proposed project.

A MRIA may be undertaken in conjunction with, concurrently, or separately, from a provincial EIA or federal IA, but will always be Mi'gmaq-led. If Proponents wish to obtain consent for their project to proceed, the Proponent must adhere to its obligations as set out in Steps 1 through 8 of this document. To ensure the MRIA for a project is not delayed, the Proponent should ensure that it meets its obligations set out in Step 1 as early as possible.

This Framework lays out the steps in the MRIA process, so that other governments and proponents can better understand the process. However, Proponents and the Crown must understand that the Steps set out in this MRIA Framework are not a 'tick-the-box' process, and that the completion of Steps 1 through 6 of this MRIA does not guarantee Mi'gmaq consent will be granted for a project. An overarching objective of this MRIA Framework is to ensure that Mi'gmaq Aboriginal and Treaty Rights and Title are respected and protected for future generations.

Mi'gmawe'l Tplu'taqnn

Mi'gmawe'l Tplu'taqnn is an Indigenous rights organization that exists to promote and support the recognition, affirmation, exercise and implementation of the inherent Aboriginal and Treaty Rights of its member First Nations, including the right of self-determination. For the purposes of this MRIA framework and its application, Mi'gmawe'l Tplu'taqnn represents eight Mi'gmaq communities in New Brunswick: Amlamgog (Fort Folly) First Nation, Natoagaeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipôgtôtjg (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and Metepenagiag Mi'kmaq Nation (collectively, the "Mi'gmaq in New Brunswick").

Context for this Mi'gmaq Rights Impact Assessment Framework

The Wabanaki Nations (the Mi'gmaq, Wolastoqiyik and Peskotomuhkati) are the original inhabitants of what is now known as the Province of New Brunswick. Long before Europeans settled in New Brunswick, the Wabanaki Nations occupied these lands and waters, and for that reason they have a unique legal status. The Wabanaki Nations have never ceded their Aboriginal Title of control and ownership over the lands of New Brunswick to the Crown. All of New Brunswick is part of unceded Wabanaki territory.

Along with their Wabanaki brothers and sisters, the Mi'gmaq entered into sacred, constitutionally protected Treaties of Peace and Friendship with the Crown, on a Nation-to-Nation basis.¹ The Peace and Friendship Treaties are commonly referred to as the Covenant Chain of Treaties. The Peace and Friendship Treaties were a recognition of the Wabanaki Nations Aboriginal Title, and the Treaties placed limitations on Crown settlement on their Territory. The Peace and Friendship Treaties were not Treaties of surrender or cession of land, but were drafted in broad language intended to facilitate non-conflictual interactions between the Crown and the Wabanaki Nations in their Territories.

These various Treaties which were signed, beginning in 1726 and ending in 1779 define the relationship between the Wabanaki Nations and the Crown, including that the nations would co-exist in a peaceful manner, that the Crown would not interfere with the Mi'gmaq, Wolastoqiyik and Peskotomuhkati way of life, that the Mi'gmaq, Wolastoqiyik and Peskotomuhkati would continue to exercise all of their hunting, fishing, gathering, and other inherent rights of their nations, and that the Crown would not unlawfully occupy or possess Mi'gmaq, Wolastoqiyik or Peskotomuhkati Territory without their agreement.

The Mi'gmaq have occupied and cared for the lands and waters in their Territory since time immemorial and entered into the Treaties with the Crown by which they agreed to *share* the lands, waters and resources within their Territories. The Supreme Court of Canada has upheld the continuing validity of the Treaties. The Treaties are the foundation of the relationship between the Mi'gmaq, the Crown (provincial and federal governments) and settlers (non-Indigenous inhabitants of New Brunswick).

The Treaty rights of the Mi'gmaq are quite broad, and include, amongst others, the right to hunt, fish and gather natural resources for food, social and ceremonial purposes, as well as for trade. The Mi'gmaq continue to exercise Aboriginal and Treaty rights, including the rights to hunt, fish and gather throughout their Territory up to the present day. These Rights have been repeatedly proven and affirmed by the Supreme Court of Canada and the Courts of New Brunswick. Section 35 of the *Constitution Act, 1982*, recognizes and affirms the Aboriginal and Treaty rights of the Mi'gmaq.

Consultation and accommodation is only one facet of the Treaty relationship between the Mi'gmaq and the Crown. The Mi'gmaq of New Brunswick are self-determining peoples and have the right to be fully involved in decisions that affect the lands and waters in New Brunswick. The Mi'gmaq have the responsibility as stewards of their lands and waters to ensure that they take no more than they need, and that enough is left for future generations to live and prosper.

All proponents in New Brunswick should make a good faith effort to educate themselves on who the Mi'gmaq are and the importance of their Rights. Mi'gmawe'l Tplu'taqnn is willing to provide such educational sessions to proponents. Proponents are required to adequately fund for any education session.

The Crown should also be educated on who the Mi'gmaq are and the importance of their Rights; and the Crown should ensure that all Crown employees involved in EIAs are adequately educated. Such education must come from the Mi'gmaq.

Any proposed activity taking place in Mi'gmaq Territory that has the potential to infringe or impact Mi'gmaq Aboriginal or Treaty rights requires the consent of the Mi'gmaq. This requirement of consent is rooted in the Peace and Friendship Treaties, the Supreme Court of Canada's decision in *Tsilhqot'in Nation*ⁱⁱ and the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP").ⁱⁱⁱ

The UNDRIP is a comprehensive instrument that clarifies the nature and scope of Indigenous peoples' rights regarding their lands and resources. Article 26 of the UNDRIP states that Indigenous peoples, including the Mi'gmaq, have the right to the lands and resources which they have traditionally occupied, used or owned; and that they have the right to use, develop and control their territories and its resources. Further, Article 37(1) of the UNDRIP speaks in language similar to the Crown promises made in the Treaties to not interfere with the Mi'gmaq way of life and decision-making:

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

Canada has accepted the UNDRIP, without qualification, and the Prime Minister has called for its implementation.^{iv}

The Mi'gmaq in New Brunswick will require a MRIA to be conducted for activities whether or not a provincial Environmental Impact Assessment ("EIA") or federal Impact Assessment ("IA") is required for the proposed project. A MRIA may be undertaken in conjunction with, or separately, from a provincial EIA or federal IA, but will always be Mi'gmaq-led. If the Proponent and the Mi'gmaq both perform separate effects assessments, then both must be included in the provincial EIA or federal IA process. A MRIA will also be required for a proposed project even if a regional assessment carried out pursuant to the federal *Impact Assessment Act* has concluded that the project can, where pre-specified mitigation and monitoring conditions are in place, avoid going through an IA.

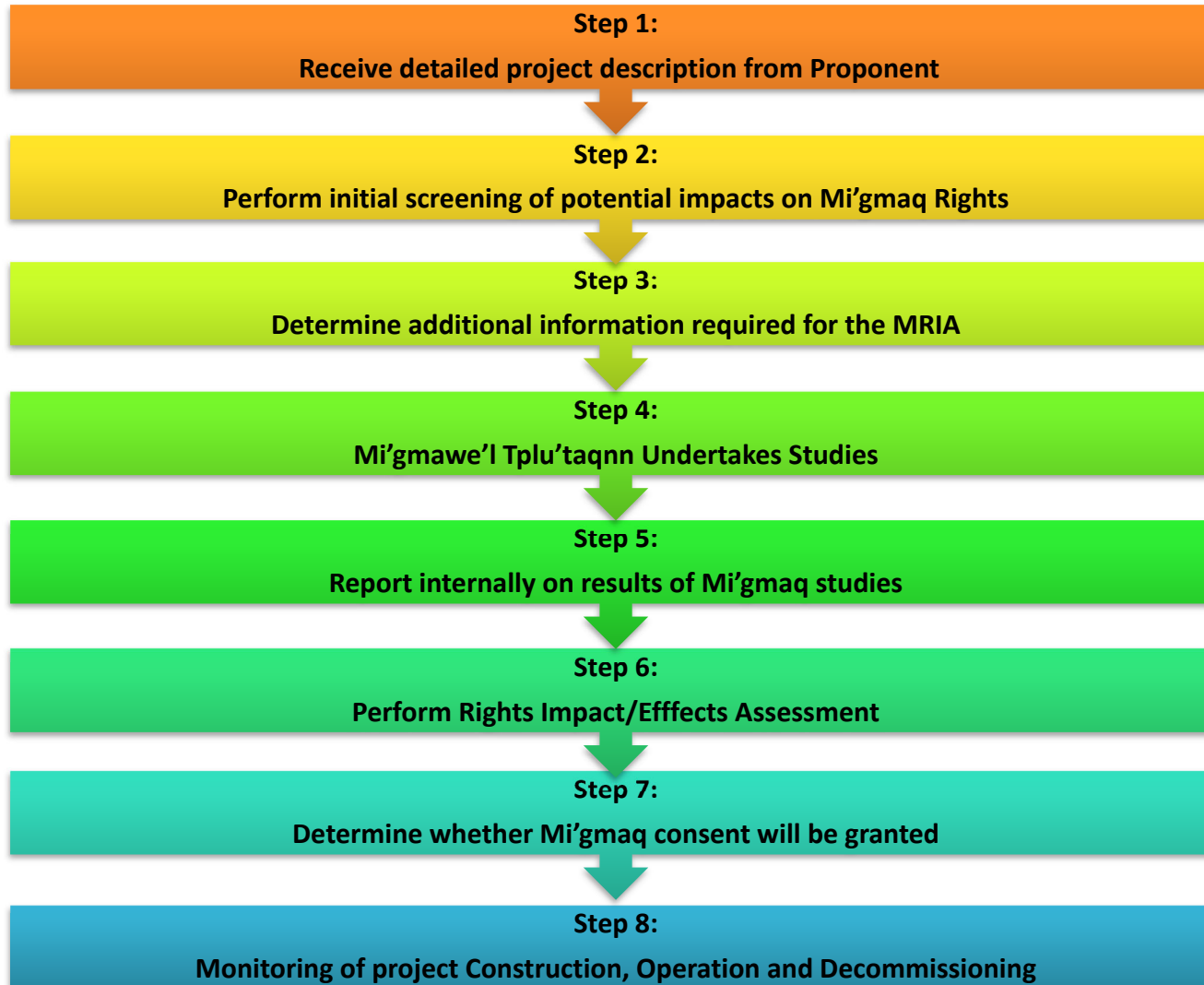
Fundamental Principles

A MRIA will be conducted in accordance with the Engagement Principles set out in Schedule "A".

Process and Methodology: Mi'gmaq Rights Impact Assessment

The Mi'gmaq have the responsibility as stewards of their lands and waters to ensure that they take no more than they need, and that enough is left for future generations to live and prosper. The objective of the process set out in this MRIA framework document is to ensure Mi'gmaq Rights are protected, and to provide the next seven generations with healthy lands, waters and resources in order to maintain their culture and our Mi'gmaq way of life. For all proposed activities in or near Mi'gmaq Territory that may potentially impact or infringe Mi'gmaq Aboriginal or Treaty Rights or Title, the following process will apply for assessing the potential impacts on the exercise of Mi'gmaq Rights and to assist in determining whether Mi'gmaq consent will be granted for the activity:

Overview of the MRIA Methodology



STEP 1: Mi'gmawe'l Tplu'taqnn receives detailed project description from Proponent

- a. Early/Timely Information*: as early as possible, the Proponent must provide Mi'gmawe'l Tplu'taqnn with the detailed project description, inclusive of the information requirements set out in this Step 1.
- i. If the proposed activity is a “designated project” under the federal *Impact Assessment Act*, then the Proponent must provide Mi'gmawe'l Tplu'taqnn with the initial project description at the same time as submitting it to the Impact Assessment Agency. Ideally, the Proponent will provide Mi'gmawe'l Tplu'taqnn with the initial project description in advance of submitting it to the Agency, even if it's not in the final form that will be submitted to the Agency.
 - ii. If the proposed activity is listed as an Undertaking in Schedule A of the New Brunswick *Environmental Impact Assessment Regulation*, then the Proponent must provide Mi'gmawe'l Tplu'taqnn with the initial project description at the same time as submitting the registration document to the provincial EIA branch. Ideally, the Proponent will provide Mi'gmawe'l Tplu'taqnn with the initial project description well in advance of submitting its registration document to the EIA branch.
 - iii. When submitting an application for any Crown regulatory approval, licence or permit, the Proponent is to provide a copy of the application to Mi'gmawe'l Tplu'taqnn Inc. as well. This applies even if no EIA or IA are contemplated. This form of early engagement will benefit all parties involved by building relationships with the Mi'gmaq and will assist with streamlining any provincial or federal regulatory review process of the project.
- b. If the proposed project is not required to be registered for review under an EIA or IA process, Mi'gmawe'l Tplu'taqnn may submit a request to the relevant Minister and assessment agency, to have the proposed project listed / designated as a project and be subject to an EIA or IA. Mi'gmawe'l Tplu'taqnn will make such a request if the proposed project:
- i. is near or in an environmentally, cultural, spiritual or otherwise sensitive location, as determined by the Mi'gmaq;
 - ii. involves new technology or a new type of activity not readily understood;
 - iii. has the potential to have adverse effects on the Mi'gmaq and/or their Rights.
- c. If the Crown is contemplating any activity or conduct that has the potential to impact or infringe Mi'gmaq Aboriginal or Treaty rights or Title (whether or not an EIA or IA is contemplated), a MRIA will be required and the Crown is to engage with Mi'gmawe'l Tplu'taqnn early in the planning process, well before a decision has been made. Such Crown activity or conduct includes but is not limited to:

* In project assessment processes, one of the past problems that have been a common experience and complaint of Indigenous peoples throughout Canada has been the continued involvement of Indigenous people in a manner inconsistent with their constitutional Rights. This includes Consultation that occurs so late in a project assessment that it is almost impossible for the concerns of Indigenous peoples to be considered, implemented or accommodated. Early engagement at the beginning of the process and continued engagement throughout the process can begin to address this flaw.

- The creation, amendment or implementation of regulations, policies, procedures or operating plans that may adversely impact Mi'gmaq Rights;
- Change in access to Crown land(s) and resources;
- Disposal / sale of Crown lands;
- Approval / issuance of a license, lease or permit providing access to forests, minerals, wildlife, fish, or the development of a project that may adversely impact natural resources.

d. The initial project description letter from the Proponent must include the following:

- The name(s) of the Proponent and key contacts along with their contact information;
- The name of the project and the type of industry;
- Details on the purpose / rationale and need for the project;
- Clear and concise details of the project, including its size, scope, location, and projected environmental impacts;
- Description of all direct and ancillary physical works and activities related to the project, including transportation routes into and out of the project area;
- Available project plans, designs and site maps (even if in draft form);
- Any known archeological sites within the proposed project area;
- Any federal, provincial, and municipal involvement;
- Any known project and Crown regulatory timelines;
- Geographic Information System ("GIS") data;
- Available data, reports and studies that have been prepared for the proposed project, even if in draft form (if any studies have been carried out, identify the Indigenous experts / participation used in the conduct of data collection and effects estimation);
- A brief overview of alternatives to the project that could fulfill the same purpose / objective of the project, including the potential environmental impacts of the alternative (i.e., a windfarm instead of a hydroelectric project);
- A brief overview of the technically and economically feasible alternative means of carrying out the project, including the potential impacts of carrying out the project by the alternative means (i.e., a windfarm could be located onshore, offshore, and/or could have more small structures or few larger structures to generate the same amount of electricity);
- Information on any known or potential cumulative effects that may result from the proposed project: this includes information regarding any other projects / activities, existing or planned, in or near the proposed project area. If the proposed project is part of a larger plan, or is linked to other projects whether already existing or contemplated for the future, that information is to be included in the initial letter.

All of this information should be summarized in plain English.

e. Mi'gmawe'l Tplu'taqnn will acknowledge that it has received the detailed project description and advise whether the letter contains sufficient information to perform an initial screening of the project. Proponents and the Crown must understand that the MRIA will not

proceed to Step 2 until Mi'gmawe'l Tplu'taqnn has received a detailed project description sufficient to perform an initial screening / assessment.

- f. Proponents and the Crown should be proactive and share new information with Mi'gmawe'l Tplu'taqnn as it becomes available. Proponents should make it a best practice to establish a positive working relationship with the Mi'gmaq, well ahead of filing any required project plans or approval requests with the Crown. As a best practice, Proponents should be prepared to discuss and enter into a Relationship Agreement, to guide the engagement that is required for the MRIA process. A Relationship Agreement may include funding and protocols for achieving the steps outlined in this MRIA process.

STEP 2: Perform initial screening / assessment of potential impacts on Mi'gmaq Rights*

- a. The initial screening / assessment of potential impacts will be guided by the information provided under Step 1, and the following:
 - i. The historical context, assisted by any historical records, of the project area and the exercise of Mi'gmaq Rights in and around the project area;
 - ii. Readily available Mi'gmaq Indigenous Knowledge, including existing Indigenous Knowledge Land Use and Occupancy Studies (IKLUOS), relevant to the project and Mi'gmaq land use and occupancy in the project area;
 - iii. The current environmental condition of the project area and the surrounding area.

In New Brunswick, because the Mi'gmaq have never ceded Title to their Territory, and because the courts have repeatedly affirmed Mi'gmaq Aboriginal and Treaty rights, Proponents should always assume that any Aboriginal or Treaty rights at issue are proven.

- b. After receiving the project description, the first task under this Step is to develop a preliminary understanding of the project and its potential impacts on Mi'gmaq Rights. This initial assessment will include, but is not limited to:
 - i. Ensuring there is an accurate and adequate understanding of the project, including: its operations, the current condition of the geographic area in and around the project, the duration (temporal aspect of the project), the purpose of the project, and how the project will likely interact with the human, social, economic, physical and biophysical environment. This requires a preliminary understanding of:
 - The project footprint: the geographical area covered by all physical works and activities required to carry out the project; and
 - The local study area: the area where direct and indirect environmental effects might be expected to occur from the project.

* The initial screening / assessment is based on available information and is necessarily limited due to the absence of a baseline Indigenous Knowledge ("IK") study for our Territory. Mi'gmawe'l Tplu'taqnn has been calling on the Crown to provide capacity funding to carry out a province-wide baseline study, but that has yet to happen. Until then, any initial screening of potential impacts of a project will be limited; as such, under Step 3 it will likely be determined that an Indigenous Knowledge Land Use and Occupancy Study, and possibly other studies, will be required. Mi'gmawe'l Tplu'taqnn has the capacity to use a GIS to document land use information provided by its community members. A baseline IK study for our Territory would facilitate a streamlined process of project reviews and regulatory processes moving forward, as the Mi'gmaq would have a solid IK database from which to work.

- ii. With the information / data available, identify potentially impacted Mi'gmaq Rights;
- iii. Compile a list of Value Components (VCs) that will need to be considered in the assessment of the potential impacts on Mi'gmaq Rights;
 - For each VC, identify the past, present and desired future use for the Mi'gmaq;
 - Identify whether the project area holds traditional, cultural or other importance for the Mi'gmaq;
 - Identify the priority VCs that the Mi'gmaq want to protect (in other words, what matters most to the Mi'gmaq communities. Priority VCs for communities may change from project to project). Community scoping meetings can be held in order to identify what matters most;
 - The key combination here is that for a VC to be included in the MRIA, the issue or VC must: 1) be of importance to the Mi'gmaq or ecosystem function; and 2) have some plausible interaction with a change that could be caused by the proposed project.
- iv. Some questions that can be posed to determine what matters most / priority VCs, includes but are not limited to:
 - What are the most important values for Mi'gmaq community well-being?
 - What do communities and individual members want to protect the most?
 - Are there key VCs that need protection? (such as key animals, plants or other valuable resources, preferred places where fish, game or birds are harvested from)
 - What changes have been seen on the land in the project area already?
 - What are the most important concerns about potential impacts from the project on Mi'gmaq way of life?
- v. Identify baseline conditions that support, or do not support, the exercise of the Rights identified. This involves an initial overview of the current baseline condition of the environment (in and near the project area), and the health, social and economic condition of the Mi'gmaq communities that stand to be impacted. Identifying baseline conditions includes assessing the pre-industrial baseline of the area, to have an understanding of what the area was like prior to any resource / development projects. Determining the baseline conditions also involves conducting a preliminary assessment of the cumulative effects research to date, to develop an understanding of the existing impacts on Mi'gmaq communities and the ability to exercise Mi'gmaq Rights. Information sources that may assist in describing the baseline conditions, includes:
 - field studies, including site-specific survey methods
 - Mi'gmaq, Crown and Municipal database searches;
 - protected areas, watershed and coastal management plans;
 - natural resource management plans (i.e., forestry management strategies);
 - species recovery and restoration plans;
 - published literature;
 - EIA / IA documentation, including monitoring reports, from prior projects in or near the proposed project area;
 - Existing regional studies and strategic assessments carried out under the *Impact Assessment Act*;
 - Mi'gmaq Indigenous knowledge;
 - community engagement, including workshops, meetings and surveys;
 - census data;
 - community and regional economic profiles; and

- statistical surveys, as applicable

Depending on the nature and location of the project, separate baselines may be required for individual Mi'gmaq communities.

- vi. Identify trends from the past to understand the current state of VCs, and then compare a future with the proposed project (including cumulative effects from other projects) to a future without the proposed project.
 - vii. Thresholds: If the proposed project would put too much risk / harm on the ability to exercise a certain Right, or if the project would put a culturally important area, sacred site or a valuable VC at risk of exceeding an identified impact threshold, then it may not be necessary to continue with the MRIA if there are no mitigation measures that can be implemented to avoid impacts surpassing the permitted threshold (Proponents must understand that there may be existing impacts, and infringements, on Mi'gmaq Rights that are significant even without considering the impacts of the proposed project).
 - viii. Consider alternative means of carrying out the project: The Proponent must provide Mi'gmawe'l Tplu'taqnn with information regarding alternative means for carrying out the project, so that it can be determined what the effects on Rights would be under an alternative approach.
- c. The actual decision-makers within Proponent organizations, including the Crown, must be willing to meet and discuss the project and any concerns or questions raised by Mi'gmawe'l Tplu'taqnn or its member communities. If requested by Mi'gmawe'l Tplu'taqnn, the Proponent must meet with Mi'gmawe'l Tplu'taqnn and/or attend community meetings to discuss any community concerns.
- i. Respect for Mi'gmaq Territory and Culture: any meetings between the Mi'gmaq and the Proponent must happen in a spirit of respect. Wherever possible, meetings should take place in Mi'gmaq Territory, in Mi'gmaq communities, to put the discussions in the appropriate social and cultural context. Mi'gmawe'l Tplu'taqnn will organize and attend meetings and information sessions with Proponents.
- d. If required, Mi'gmawe'l Tplu'taqnn will request funding from the Proponent to assist with the initial assessment of the technical details for the project. In order to carry out the steps in the MRIA process, the Mi'gmaq may require Proponents to enter into a Relationship Agreement, to guide the relationship between the parties during the assessment process. Mi'gmawe'l Tplu'taqnn will notify the Proponent as soon as possible if it is determined that a Relationship Agreement is required. A Relationship Agreement should include funding and protocols for achieving the steps outlined in the MRIA process, and a Relationship Agreement can assist with facilitating the following:
- i. Mi'gmawe'l Tplu'taqnn consulting with its member communities;
 - ii. Scientific, technical and legal review of the proposed project; and
 - iii. Identification and understanding of the potential impacts of the project on Mi'gmaq Rights and appropriate measures for minimizing or avoiding those impacts.
- e. Identify and compile a list missing information / details that would assist in providing a further understanding of the nature and scope of the project and to adequately carry out an assessment of the potential impact on Mi'gmaq Rights.

- f. It is important for private industry Proponents to understand that even when they have been delegated procedural aspects of Consultation from the Crown, it is inappropriate for the Proponent to try and unilaterally determine whether the proposed project has the potential to adversely impact Mi'gmaq Rights. The same applies if the Proponent is the Crown; as the Crown is ill-equipped to make an assessment as to whether and to what extent the proposed project may adversely impact Mi'gmaq Rights.
- g. Where it is determined by Mi'gmawe'l Tplu'taqnn that the project will have a negligible impact on Mi'gmaq rights, the MRIA may not need to continue beyond this point.

STEP 3: Determination of additional information required for performing a Rights Impact Assessment

- a. When performing the initial screening / assessment of potential impacts under Step 2, a lack of or absence of necessary information to carry out a MRIA will be identified. At this Step of the MRIA process, Mi'gmawe'l Tplu'taqnn will determine what further information / details is required to fully understanding the proposed project and assess the potential impacts on Mi'gmaq communities and their ability to exercise their Rights.
- b. This Step may involve identifying studies that would assist in providing a further understanding of the nature and scope of the project and to adequately carry out an assessment of the potential impact on Mi'gmaq Rights.
- c. As part of its ongoing engagement requirement, the Proponent is to notify Mi'gmawe'l Tplu'taqnn of any new/updated information for the project and any studies / reports that have been conducted since providing the initial project description.

STEP 4: Mi'gmawe'l Tplu'taqnn Undertakes Studies

- a. The main goal of this Step is to gather important information, data, Indigenous Knowledge, and other evidence needed in order to fully understand the impacts of the project, which is required for determining whether Mi'gmaq consent will be granted.
- b. Identify to the Agency and the Proponent the studies that the Mi'gmaq require for assessing the impacts of the project. This will involve determining the role the Mi'gmaq want to play in carrying out those studies, including whether the Mi'gmaq will lead or co-lead a study, as well as the costs required to undertake the studies. The required studies will depend on the project.
- c. Depending on the nature of the project, any of the following studies may be required (which may be in addition to any similar study or report prepared by the Proponent):
 - i. Indigenous Knowledge Land Use and Occupancy Study (IKLUOS)
 - ii. Ecological Study
 - iii. Harvest and Food Security Study
 - iv. Archaeological and Heritage Study

- v. Health Impact Study (examines the direct and indirect human health effects tied to the impacts of the project);
- vi. Socio-Economic Impact Study (examines the direct and indirect community, housing, social, and economic effects tied to the impacts of the project);
- vii. Cumulative Effects Study (examines how past, present and likely future activities/projects have and will combine to impact an area and/or specific VCs);
- viii. Gender Based Study (includes a detailed examination of any vulnerable sub-population within Mi'gmaq communities. This includes an examination of any differential impacts that may occur to women, 2SLGBTQQIA, and other potentially vulnerable sub-populations);
- ix. Accident and Malfunctions Study (includes an examination of the potential risks for project accidents, spills, and malfunctions, and the impact of these on the Mi'gmaq and their Rights. This involves an analysis of all possible kinds of accidents/malfunctions, including worst-case scenarios).

Except for an IKLUOS, any of these studies may be carried out by Mi'gmawe'l Tplu'taqnn in partnership with the Proponent, Crown or other party. Mi'gmawe'l Tplu'taqnn may, in its discretion, decide that it is necessary to retain a third party to carry out or assist with any of these studies.

- d. If an IKLUOS is required, the Proponent will be required to enter into an Indigenous Knowledge Study Agreement with Mi'gmawe'l Tplu'taqnn, which outlines the terms and conditions for completing the IKLUOS, including:

- i. Funding the Proponent will be required to provide Mi'gmawe'l Tplu'taqnn to complete the IKLUOS;
- ii. The timing, process and execution for the IKLUOS;
- iii. How the Mi'gmaq Indigenous Knowledge gathered as part of the study may be used, shared and applied to assessing the impacts of the project.

Proponents should review and be familiar with the [New Brunswick Mi'gmaq Indigenous Knowledge Study Guide](#), which guides the timing, process and execution of a Mi'gmaq Indigenous Knowledge Land Use and Occupancy Study in New Brunswick.

- e. The process for an IKLUOS is spelled out in detail in the [New Brunswick Mi'gmaq Indigenous Knowledge Study Guide](#) ("NBMIKS Guide"). Mi'gmawe'l Tplu'taqnn is responsible for the administration of funding and financial oversight of an IKLUOS.
- f. An IKLUOS will be required the moment the Crown contemplates a decision that may impact the Rights of the Mi'gmaq under domestic and international law. Prior to submitting applications to the Crown for approvals, permits, licences or leases, the Mi'gmaq may require the Proponent to undertake an IKLUOS. For every new project and / or regulatory decision, Mi'gmaq Indigenous Knowledge must be included and meaningfully considered. Similarly, if there is a proposed expansion or addition to an existing project, the Mi'gmaq must be given the opportunity to review the changes and provide any new or updated Indigenous Knowledge. Crown and Proponents must not rely on previous Indigenous Knowledge submitted or considered in prior projects or review processes, unless the Mi'gmaq thinks it appropriate and consents in writing.

- g. It is likely that an IKLUOS will be required to commence before other studies, so that Mi'gmaq Indigenous Knowledge can inform the other required studies. Indigenous Knowledge supports a more comprehensive understanding of the potential impact of a project on the environment and provides Indigenous people with the ability to understand the potential impacts of a project on their Rights, lands and resources.
- h. When undertaking an IKLUOS or any other required study:
 - i. Reasonable Timeframes: The Mi'gmaq require adequate time to gather necessary information, respond to the information received regarding the proposed project, and to undertake any necessary studies identified by the Mi'gmaq;
 - ii. The OCAP® Principles of ownership, control, access and possession apply, which are discussed further in the NBMIKS Guide.OCAP® provides a prescribed approval process for the collection, analysis and reporting of research data generated from Indigenous communities. The principles of OCAP® apply to research, monitoring and surveillance, surveys, statistics, cultural knowledge, storage and archiving, and dissemination. The Crown and Proponents must respect and adhere to these principles.
- i. Adequate Resources: The Mi'gmaq must be given adequate resources in order to obtain the input of their communities, to properly study and review the plans, and to gather Indigenous Knowledge with respect to the Rights impacted.

STEP 5: Report internally on results of Mi'gmaq studies

- a. After undertaking the studies identified in Step 4, the relevant Mi'gmawe'l Tplu'taqnn staff members(s) and/or consultant will internally report to Mi'gmawe'l Tplu'taqnn and its member communities on the results of the studies. This will provide an opportunity for questions to further understand the nature and scope of the project, as well as the Mi'gmaq Rights and VCs that should be considered in the impact assessment.
- b. At this Step of the MRIA, Mi'gmawe'l Tplu'taqnn will decide if further information is required to adequately assess the level and scope of impact the project would have on the Mi'gmaq and their Rights. This may require engaging with the Crown or Proponent to exchange information to further inform / understand the results of the Mi'gmaq studies carried out under Step 4.

STEP 6: Perform Rights Impact Assessment

- a. This critical step of the MRIA process involves assessing the project's positive and negative effects and the severity of these effects, on the Mi'gmaq, identified VCs, and the exercise of Mi'gmaq Rights. A combination of quantitative and qualitative methods may be necessary for a comprehensive and meaningful assessment of potential impacts; this will include considering and applying the results and recommendations of the studies carried out under Step 4. The impact assessment (prediction) is informed by the baseline and trend over

time conditions identified in previous Steps in the MRIA process. The impact assessment is achieved through determining the ways in which the project, including its operations and various components, may impact the human, social, economic, physical and biophysical environment.

- b. Except for assisting with performing the initial screening / assessment, previous Indigenous Knowledge Land Use and Occupancy Studies, or any other study undertaken for a previous activity / project, will not be relied on in assessing the impacts of a new activity / project, unless it is determined by the Mi'gmaq that doing so is appropriate.
 - i. Complete information: The Mi'gmaq require complete and timely disclosure to the Mi'gmaq of all information required to understand the impacts of a project on the Mi'gmaq and their Rights.
- c. The assessment of impacts on Mi'gmaq Rights must be informed by Mi'gmaq Indigenous Knowledge gathered as part of the project-specific MRIA. The assessment of the effects of each project component on each VC is based upon a comparison of the baseline conditions and the predicted future conditions with the project.
- d. Identify the importance of the proposed project's location in relation to the exercise of Mi'gmaq Rights, while being very careful about assumptions as to whether those Rights could be practiced elsewhere. In other words, the 'go elsewhere' argument for exercising Rights must not be considered or included in the assessment of cumulative effects, or the MRIA in general.
- c. The effects assessment for each VC will include an analysis of the magnitude/severity, geographic extent, temporal, frequency, and whether the effects are reversible or irreversible. The assessment of the effects of each project component on each VC is based upon a comparison of the baseline conditions and the predicted future conditions with the project. Key factors (VCs) that will be considered in assessing the impacts of the project, includes but is not limited assessing the impacts on the following:
 - i. Physical environment, including: land, water, fish, vegetation, wildlife, birds, etc.;
 - ii. Human health;
 - iii. Economy;
 - iv. Climate change (including the greenhouse gas emissions);
 - v. Sustainability (lands, waters and other natural resources are integral to the well-being of the Mi'gmaq, their culture and Rights. Natural resources must be managed carefully to provide benefits today, while guaranteeing the Rights and needs of future generations. The needs of future generals must be placed on equal footing with present needs).

Cumulative Effects

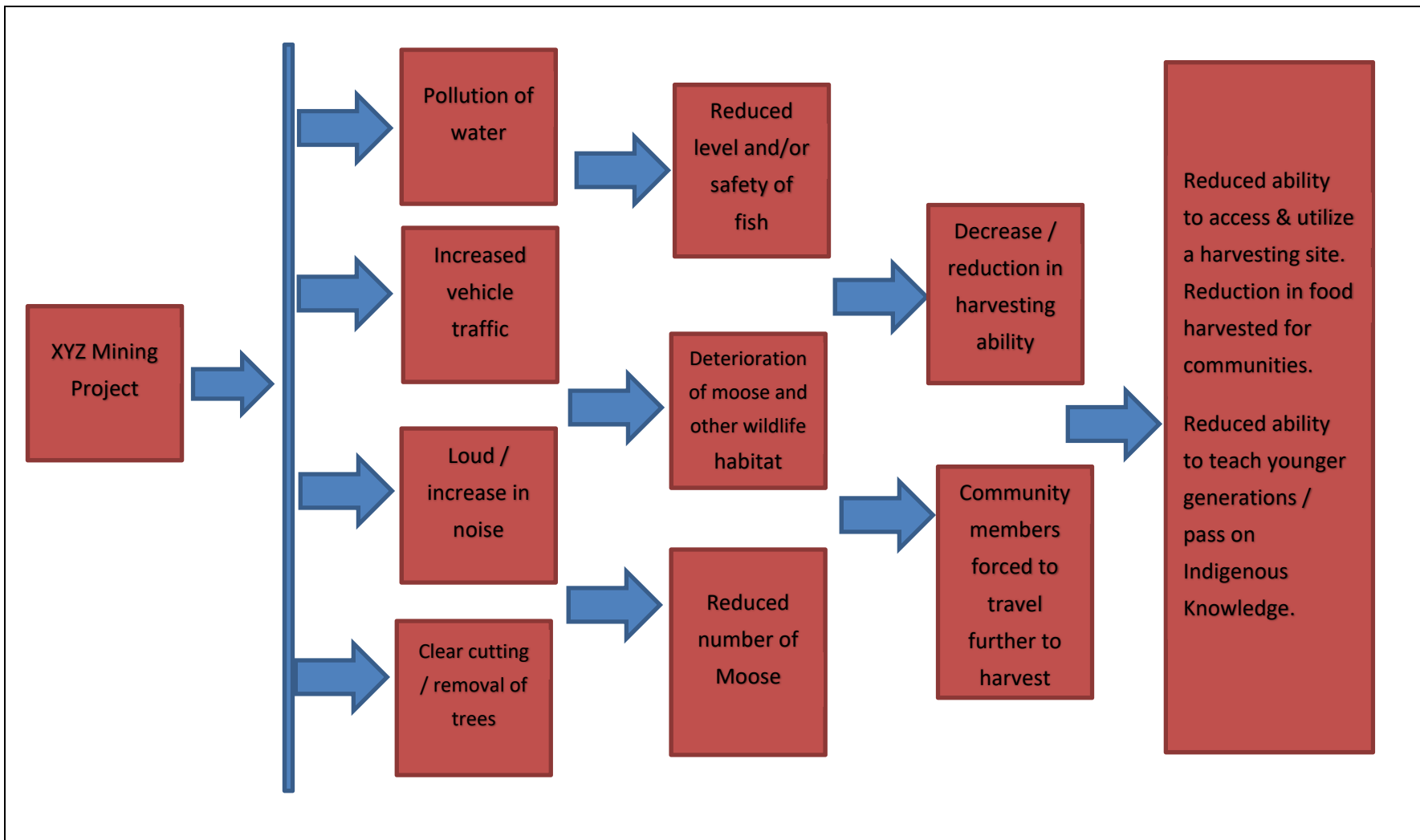
- e. Establish the degree of cumulative effects to date that have occurred for each VC. A cumulative effect on an environmental, health, social or economic VC may be important even if the project's effects to a VC by themselves are minor. VCs important to the Mi'gmaq, even if

only marginally effected by the project, will included in the assessment of cumulative effects. There will be a heavy focus on establishing a realistic portrait of total cumulative effects influencing Rights, prior to the consideration of project-specific effects.

- f. Include a consideration of the potential for project-specific and future cumulative effects on future generations' ability to meaningfully exercise their Aboriginal and Treaty rights.

Impact Pathway

- d. Identify and describe the Pathways by which the project may affect the Mi'gmaq and the exercise of the Rights. When developing impact Pathways, tangible and intangibles VCs will be considered. This includes an understanding of the effects from the project that may be expected to interact with other cumulative effects on the same VCs. For example, the following flow-chart identifies potential impacts on Mi'gmaq Rights flowing from a mining project:



- e. Assess the level / severity of the impacts: when assessing the overall level/severity of impacts, the highest degree of severity will be used. This means that if the adverse impact on one identified VC, or aspect of a Right, is determined to be high/severe, then the overall impact on the exercise of Mi'gmaq Rights will be deemed to be high / severe. A series of 'low severity' impacts from the project, when considered as a whole, may also result in a high/severe level of impact on Mi'gmaq Rights. A list of questions and criteria to assist with determining whether an impact is low, moderate or high is in Schedule "B".
- f. Consider alternative means of carrying out the project: The Proponent must provide Mi'gmawe'l Tplu'taqnn with information regarding alternative means for carrying out the project, so that it can be determined what the effects on Rights would be under an alternative approach.
- g. Determine the likelihood of an infringement of or impact on a Mi'gmaq Right.

Identify necessary accommodation measures

- a. The Supreme Court of Canada has confirmed that where First Nations have proven their rights the Crown has a further obligation to take steps to minimize impacts on Aboriginal and Treaty Rights and ensure that the benefits of a project outweigh the negative impacts on Aboriginal and Treaty Rights. This applies to the Mi'gmaq and the MRIA process.
- b. The Duty to Consult may also trigger a duty to accommodate.
- c. Meaningful accommodation measures are those that mitigate, minimize or avoid any impacts on Mi'gmaq Aboriginal and Treaty rights and Title, and compensate for any impacts that cannot be minimized. Proponents may be required to accommodate Mi'gmaq rights and interests. As the Proponent usually knows the proposed project best, the Proponent will be best suited to work with the Mi'gmaq to mitigate and/or avoid potential adverse impacts on Mi'gmaq Rights.
- d. Accommodation can take many forms, and within the provincial EIA or federal IA process may include the Crown placing terms and conditions in licences, permits, or other Crown authorizations, as well as other avoidance, minimizing or mitigation measures. Mitigation measures should be specific to the impacts of the proposed project and linked to thresholds identified earlier in the MRIA process. Mitigation should avoid compensation-focused measures in favor of measures that avoid or greatly reduce project impacts.
- e. After carrying out the assessment of impacts under this Step 6, Mi'gmawe'l Tplu'taqnn will then identify any necessary accommodation measures required. Any required accommodation measures will be determined by the Mi'gmaq, in consultation with the Proponent and/or Crown. The objective here is to work towards mutually agreeable measures to address adverse impacts that would allow for the continued exercise of Rights, should the project proceed. Such accommodation measures may include, for example:

The Treaty rights of the Mi'gmaq are quite broad, and include, amongst others, the right to hunt, fish and gather natural resources for food, social and ceremonial purposes, as well as for trade. The Mi'gmaq continue to exercise Aboriginal and Treaty rights, including the rights to hunt, fish and gather throughout their territory up to the present day. These Rights have been repeatedly proven and affirmed by the Supreme Court of Canada and the Courts of New Brunswick. Section 35 of the *Constitution Act, 1982*, recognizes and affirms the Aboriginal and Treaty rights of the Mi'gmaq.

- i. Altering/changing the project location;
 - ii. Adjust timing of construction;
 - iii. Carrying out habitat restoration plans (commit to the rehabilitation of habitat and species that have been damaged by current and past natural resource extraction practices);
 - iv. Requiring the proponent to carry out a plan to protect certain resources
- f. Depending on the circumstances, where mitigation or avoidance is not possible, accommodation may take the form of compensation to the Mi'gmaq. The Mi'gmaq will assess whether proposed accommodation measures are adequate, including whether compensation is acceptable if it is not possible to avoid or minimize the impact of the project on Mi'gmaq Rights. Where it is not possible to avoid, minimize or mitigate the impacts on Mi'gmaq Rights, accommodation to the Mi'gmaq may be required in the form of one or more of the following:
- i. Direct financial payment;
 - ii. Profit / resource sharing;
 - iii. Scholarships;
 - iv. Skills training.

Residual Effects

- g. Identify any residual effects on Mi'gmaq Rights. Residual effects refer to the effects predicted to remain/subsist even after the application of accommodation measures. An analysis of the residual effects is performed for each identified VC as well as for the project's contribution to cumulative effects in the study area. The determination of the residual project-specific and cumulative effects is made by considering the following factors:
- i. Magnitude of the impacts
 - ii. geographic extent of the impacts
 - iii. reversibility of the impacts / harm
 - iv. frequency of the impacts
 - v. duration (time frame) of the impacts
 - vi. probability of impact occurrence

MRIA Report

- h. Mi'gmawe'l Tplu'taqnn will prepare a report that includes:
- i. A detailed description of the Mi'gmaq and their Rights in the project area;

- ii. An effects assessment, which includes:
 - a. an analysis of any potential positive effects of the project;
 - b. an analysis of the potential adverse effects on the Mi'gmaq and their Rights, as well as the severity of the impacts / how significant the effects are;
- iii. A description of how Mi'gmaq Indigenous Knowledge, and any other Mi'gmaq led studies undertaken for the project, have been included in the effects assessment;
- iv. A summary of required accommodation measures and the follow-up programs (as determined pursuant to Step 7);
- v. Whether Mi'gmaq consent is given for the proposed project (as determined pursuant to Step 7).

STEP 7: Determination of whether Mi'gmaq consent to the project will be granted

- a. The objective of this Step is to determine whether Mi'gmaq consent for the project will be granted, which is a decision that is based on whether the proposed project is in the best interest of the Mi'gmaq, including Title to their Territory, and their ability to exercise their constitutionally protected Aboriginal and Treaty Rights. Determining if consent will be granted for a project is a discretionary decision that will be made by the Mi'gmaq. Proponents and the Crown must understand that even if Steps 1 through 6 of the MRIA are completed, that does not necessarily mean that Mi'gmaq consent will be granted.
- b. If consent is granted, there may be conditions that the Proponent will have to adhere to in order. Any such conditions will be included in the report prepared by Mi'gmawé'l Tplu'taqnn.
- c. Accommodation commitments: if the Mi'gmaq determine that the impacts of the proposed activity / project can be appropriately addressed, Mi'gmawé'l Tplu'taqnn or its member communities may be prepared to enter into one or both of the following agreements with the Proponent, as a condition for granting consent of the project:
 - An **Environmental Protection Agreement**: which sets out the measures that will limit and mitigate any environmental impacts, and in particular, any impacts on Mi'gmaq Aboriginal and Treaty Rights and provide for Mi'gmaq involvement in environmental protection and monitoring;
 - An **Impact and Benefits Agreement**: which provide for Mi'gmaq community benefits to compensate for any impacts that cannot be mitigated. Benefits may include job/employment creation, ownership interest in the project, profit sharing, and other compensation measures. Impact and Benefits Agreements can establish good will and grow positive relationship between the Mi'gmaq and proponents.

The goal of these types of agreements is to ensure that Mi'gmaq Rights are respected and protected, and that the Mi'gmaq get an adequate share of the benefits of projects taking place in their Territory.

- d. Securing Mi'gmaq consent is more likely to result in the following benefits for proponents:
 - i. Build and strengthen relationships with the Mi'gmaq communities;
 - ii. Create certainty in the status of a project; and
 - iii. Simplify and speed up the provincial or federal regulatory review process of a project.
- e. There may be projects that the Mi'gmaq cannot consent to. This could occur for example, where a proposed project would result in irreversible harm on a Mi'gmaq Right. In such a case, no form of accommodation would likely be adequate for the Mi'gmaq to consent. The effects assessment carried out under Step 6 will determine the severity of the impact.
- f. Even if the provincial or federal Crown grants approval for a project, that does not mean that Mi'gmaq consent will be granted. Proponents, including the Crown, are required to adhere to this MRIA process, and are required to obtain Mi'gmaq consent before any project will be permitted to proceed in the unceded Territory of the Mi'gmaq.
- g. At the end of this Step, the following should have been completed:
 - i. Conducted, and reported on, the necessary studies identified in Step 4;
 - ii. Assessed the potential impacts of the project on the Mi'gmaq and their Rights;
 - iii. Identify any accommodation measures required to avoid, mitigate or minimize the project impacts (and enter into any required agreements with the Proponent, i.e., Environmental Protection Agreement, Impact and Benefits Agreement);
 - iv. Determine if Mi'gmaq consent for the project will be granted.

All of this information will be included in a report prepared by Mi'gmawe'l Tplu'taqnn.

STEP 8: Project Construction, Operation and Decommissioning (if Mi'gmaq consent is granted)

- a. If Mi'gmaq consent has been granted, subject to any necessary provincial or federal approvals that may also be necessary, the construction of the project may begin.
- b. If the proposed project would occur on one of the Mi'gmaq communities reserve land, the proponent will be required to comply with that community's laws, land codes, by-laws or administrative procedures that may be in effect.
- c. Mi'gmaq monitors will monitor the project during its construction. When project construction is completed, that does not end the potential impact on Mi'gmaq Rights, or Mi'gmaq involvement. As such, Mi'gmaq monitoring of the project / the environment, will likely be required to continue into the operation phase of the project. Depending on the nature of the project, Mi'gmaq monitors may also be required for the decommissioning of the project. Terms and funding for Mi'gmaq monitoring will be set out in either an Environmental Protection Agreement or an IKLUOS agreement.

d. The objectives of this Step in the MRIA process are to:

- i. Make sure the project / Proponent is meeting any conditions included as part of Mi'gmaq consent;
- ii. Verify whether the mitigation measures are working (in other words, confirm the effectiveness of the mitigation measures);
- iii. Make sure the project is being constructed and operating in accordance with the information provided by the Proponent (for which the MRIA is based on);
- iv. Provided follow-up information to Mi'gmaq communities on the status of the project and its impacts.

Mi'gmaq participation in monitoring, compliance and enforcement roles is critical, as it is the Mi'gmaq that often have to live with the adverse impacts of a project long after an EIA or IA is done, and long after the project is decommissioned

Appendix A: Glossary of Terms

“**Aboriginal peoples**” is a term used in the *Constitution Act, 1982*, that refers to the Indian (First Nation), Inuit and Métis peoples of Canada.

“**Aboriginal rights**” refers to the activities, practices, traditions and customs of Aboriginal peoples in Canada that are integral to their distinctive cultures. Aboriginal rights are inherent rights which Aboriginal peoples have practiced and enjoyed since before European contact. Asserted and proven Aboriginal rights are constitutionally protected, under section 35 of the *Constitution Act, 1982*.

“**Aboriginal Title**” is a form of Aboriginal right and is a unique and beneficial interest in the land. Aboriginal title confers ownership rights, including the rights of enjoyment and occupancy of the land and the right to decide how the land will be used and managed. Mi’gmaq Aboriginal Title to their Territories (New Brunswick) is unceded, and the Mi’gmaq have ever ceded Title to their Territory.

“**accommodation**” means avoiding, minimizing, offsetting and / or compensating Aboriginal peoples for adverse impacts to their Aboriginal and Treaty Rights. In some cases, reasonable accommodation may require rejection of a proposed project.

“**baseline**” refers to what the environment, or a specific VC, was like before the proposed project. The baseline condition is compared to what the area would be like after the project in order to help determine the project impacts.

“**Consultation**” and “**Consultation process**” refers to the consultation, engagement, dialogue and joint decision-making process required of the Crown to fulfill its constitutional obligation of the Duty to Consult. Consultation depends on the circumstances, but it must always be meaningful. Depending on the nature of the Right and potential impact on the Right, Consultation may include: involvement in the early planning stages of a proposed project; the opportunity of the Mi’gmaq to make formal submissions to the Crown and/or Proponent; Mi’gmaq formal participation in the Crown’s decision-making process.

“**Engagement Principles**” refers to the engagement principles developed by the Mi’gmaq, which are rooted in a vision of collaboration and consent based decision-making. In order for consultation to be adequate and meaningful, the Mi’gmaq require that consultation and accommodation adhere, at a minimum, to the Engagement Principles, a copy of which is attached as Schedule “A” to this MRIA framework document.

“**Crown**” refers to the provincial or federal government, including their departments, agencies, corporations, boards, Ministers, commissions and representatives.

“**engagement**” refers to the procedural aspects of Consultation, such as meaningful dialogue and interaction between the Proponent and the Mi’gmaq. Examples of engagement include discussion groups, in-person meetings, exchanging information, sharing knowledge, conducting studies, relationship building, and seeking input from each other on a project and its related impacts on Rights.

“**Duty to Consult**” means the Crowns constitutional obligation to adequately and meaningfully consult, and where required, accommodate, Aboriginal peoples when the Crown contemplates actions or decisions that have the potential to impact their asserted or proven Aboriginal

or Treaty rights or Aboriginal Title. The Duty to Consult requires the Crown to consult with Aboriginal peoples before the Crown makes a decision or takes any action that might adversely impact those rights.

“impacts” for the purposes of this Mi’gmaq Rights Impact Assessment framework, unless otherwise specified, refers to potential impacts that may result from a proposed project or physical activity. Impacts may be tangible and intangible.

“Indigenous Knowledge” is a living and continuously evolving cultural imperative. It is at the heart of and reflective of the Mi’gmaq as a people and embodies cultural and spiritual values, and Indigenous science. In part it encapsulates Mi’gmaq oral history, practices, customs, and traditions regarding a certain area of lands and waters, and it is not static.

“Indigenous Knowledge Land Use and Occupancy Study” or “IKLUOS” is a study carried out by a Mi’gmawe’l Tplu’taqnn that identifies areas of historical and current Mi’gmaq land use in a proposed project area pertaining to lands, water and natural resources.

“Indigenous peoples” is a term that refers to the original peoples / inhabitants of a territory or geographical area and their descendants. For the purpose of this MRIA framework document, Indigenous peoples refers to the collective Mi’gmaq peoples, who have occupied and cared for their Territory since time immemorial, long before the arrival of non-Indigenous settlers.

“Mi’gmaq” and **“Mi’gmaq in New Brunswick”** refers to the collective Mi’gmaq peoples and their communities in New Brunswick, as represented by Mi’gmawe’l Tplu’taqnn. For the purposes of this MRIA framework and its application, Mi’gmawe’l Tplu’taqnn represents eight Mi’gmaq communities in New Brunswick: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipôgtôtjig (Buctouche) First Nation, L’nui Menikuk (Indian Island) First Nation, Ugpi’ganjig (Eel River Bar) First Nation and Metepenagiag Mi’kmaq Nation.

“meaningful consultation” means carrying out consultation and accommodation in accordance with the Engagement Principles.

“Mi’gmawe’l Tplu’taqnn” means the Mi’gmaq organization that represents eight of the Mi’gmaq First Nation communities in New Brunswick in consultation matters that may affect the Aboriginal rights and Title and Treaty Rights of the Mi’gmaq.

“NBMIK” and **“MIK”** refer to Indigenous Knowledge of the New Brunswick Mi’gmaq. This includes the collection and adaptation of knowledge that Mi’gmaq hold in accord with all components of the natural environment and the interrelationships that exist between all Creation (animate and inanimate matter).

“NBMIKS” and **“New Brunswick Mi’gmaq Indigenous Knowledge Study”** mean all components of an Indigenous Knowledge Land Use and Occupancy Study, which includes the planning, collection, analysis, protection, reporting and distribution of Mi’gmaq Knowledge in New Brunswick.

“Pathway” is an impact pathway, which can be in the form of a flow-chart or diagram, of a linked set of cause-and-effect relationships between factors in the impact assessment analysis. A Pathway represents the relationship between the project or an aspect of the project, its effects, and the outcome or impact on Mi’gmaq Rights.

“Proponent” means a company, corporation, individual, or a Crown agency that is developing, proposing or contemplating a project in the Province of New Brunswick.

“Rights” refers to any and all Aboriginal rights, Aboriginal Title and Treaty Rights, whether asserted or proven.

“Territory” means the unceded land, water and air of the Mi’gmaq in what is now known as New Brunswick. The Mi’gmaq have used and occupied their Territory since time immemorial.

“Treaty rights” are rights that are defined by the terms of the historic Treaties of Peace and Friendship. In New Brunswick, Treaty rights include, amongst others, the right to hunt, fish and gather for food, social and ceremonial purposes, as well as for trade.

“Valued Components” or “VCs” are components or attributes of the physical / natural and human environment, that are determined by the Mi’gmaq to have intrinsic, legal, Indigenous, socio-cultural, economic, or scientific value, and which are considered in the Mi’gmaq Rights Impact Assessment to determine the potential impact of a project on Mi’gmaq Rights. VCs may include, but are not limited to, components of the environment such as: fish and fish habitat, species at risk, birds (including migratory) and their habitat, human health of Mi’gmaq community members, land and resource use, economic well-being of Mi’gmaq communities / members, and archaeological, historical and spiritual sites of importance to the Mi’gmaq. VCs, and the indicators that are used to measure them, are key things against which project-specific and cumulative effects are assessed during a MRIA.

Schedule “A”

Engagement Principles

The Mi’gmaq in New Brunswick have a vision of a collaborative process of consent-based decision-making within the context of projects in their Territory and the related Consultation process. This collaborative process based on consent-based decision-making requires the Crown, and the Proponent when having delegated Consultation responsibilities, to seek Mi’gmaq consent before making any decisions that have the potential negatively impact on their Aboriginal and Treaty Rights and Title.

The Crown must understand and work on the basis that Consultation with the Mi’gmaq is a government-to-government relationship and recognize that this relationship is based upon a shared stewardship of the land and its resources. In order for Consultation to be adequate and meaningful, the Mi’gmaq require that consultation and accommodation adhere, at a minimum, to the following principles:

Early/Timely Engagement: Consultation must be timely, and must take place at the earliest possible opportunity, and well before any final decisions are made regarding approval and implementation of a project;

Complete information: Consultation must involve full, complete and timely disclosure to the Mi’gmaq of all information required to understand the impacts of a project on the Mi’gmaq and their Rights;

Reasonable Timeframes: The Mi’gmaq must be given adequate time to respond to the information;

Transparency: Crown and Proponent decision-making must be transparent and understandable;

Clear Delegation: Where any procedural aspects of Consultation are delegated to the Proponent, this must be done clearly, in writing, and with notice to the Mi’gmaq;

Real Dialogue: Crown representatives must approach Consultation with open minds and in a spirit of two-way dialogue, which takes Mi’gmaq input seriously, and allows for real discussion and consideration of decisions, and not just an explanation of decisions which are already set in stone;

Access to decision-makers: The Mi’gmaq must have the opportunity to meet directly with those within the Crown and Proponent organizations who have the actual authority to make decisions;

Meaningful Accommodation: Consultation must result in meaningful accommodation measures to mitigate or minimize any impact on Aboriginal and Treaty rights and Title, and compensate for any impacts that cannot be minimized;

Adequate Resources: The Mi’gmaq must be given adequate resources in order to obtain the input of their communities, to properly study and review the plans, and to gather Indigenous Knowledge with respect to the Rights that could be impacted;

Respect for Mi'gmaq Territory and Culture: Consultation meetings must happen in a spirit of respect. Wherever possible, meetings should take place in Mi'gmaq Territory, and in their communities, to put the discussions in the appropriate social and cultural context; and

Consent: Mi'gmaq consent to projects in their Territory is required, and Consultation should be undertaken with that understanding.

Schedule “B”

Assessing the Severity of Impacts

Projects generally result in more than one impact (in other words, projects generally impact more than one VC or aspect of a Right). To rate the overall severity of impacts on Mi’gmaq Rights, the highest degree of severity is used. If one adverse impact is determined to be high in severity, then the overall impact of the project on Rights is determined to be high in severity. The evaluation of severity should include an assessment of the likely severity of impacts without any mitigation measures, as well as with proposed mitigation measures.

The following are some criteria and questions that can be considered when analyzing the severity of impacts on each VC and Right that is being assessed (Community scoping meetings may result in further criteria / questions to consider in the assessment of severity):

- Nature of impacts:
 - what is the spatial extent, likelihood, certainty, duration/frequency and reversibility of the project impacts on the exercise of Mi’gmaq Rights?
 - Consider the geographic extent of the impacts in relation to the geographic extent / exercise of a Right.
 - Health: consider impacts from the project on the health of the Mi’gmaq, or specific Mi’gmaq communities. Health includes considerations of physical, mental, emotional, and spiritual health.
- Cultural landscape:
 - will the project have an impact on the a Mi’gmaq community’s planning, management or stewardship of their lands and resources?
- Regional/Historic/Cumulative impacts:
 - is there an impact from past, existing, and future projects or activities on a VC and/or a Mi’gmaq Right?
- Thresholds:
 - are there applicable community thresholds that have already been crossed or that would be surpassed by the proposed project?
- Distribution of any benefits/ impacts:
 - does the project provide an acceptable level of mitigation and benefits from the Mi’gmaq perspective to justify the impacts on their Rights?
 - are the impacts disproportionately experienced by a sub-population within the Mi’gmaq, such as women, elders, 2SLGBTQQIA, and youth?
- Future generations:
 - do the project-specific mitigation measures and any benefits preserve the ability of future generations to exercise their Rights?

The severity of impacts on Mi'gmaq Rights may be low, moderate or high:

Low Severity	Moderate Severity	High Severity
<ul style="list-style-type: none"> • project impacts may be low, or minor in scale, if the impacts: <ul style="list-style-type: none"> ○ are short in duration ○ infrequent ○ easily reversible ○ do not affect the exercise of Rights 	<ul style="list-style-type: none"> • project impacts may be moderate in scale, if the impacts: <ul style="list-style-type: none"> ○ are moderate in duration ○ are partially reversible ○ disrupt the ability to exercise a Right, but which can be off-set by mitigation measures 	<ul style="list-style-type: none"> • project impacts will likely be high in scale, if they: <ul style="list-style-type: none"> ○ are permanent/long-term ○ possibly irreversible ○ are within a preferred area of exercise for a Right(s) ○ interact with existing impacts from past or existing projects (cumulative effects) ○ disproportionately impact sub-groups within the Mi'gmaq population



ⁱ A helpful background to the Treaties by Prof. William Wicken, PhD, found online: <https://www.rcaanc-cirnac.gc.ca/eng/1100100028599/1539609517566>; See also Francis, R. (2003) "The Mi'kmaq nation and the Embodiment of Political Ideologies: Ni'kmaq, Protocol and Treaty Negotiations in the Eighteenth Century," M.A. Thesis, Saint Mary's University.

ⁱⁱ *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

ⁱⁱⁱ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295.

^{iv} See Government of Canada website, found online at: <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958> [accessed October 15, 2019]

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