

Mi'qmaq Saqamaq Mawiomi

**New Brunswick Mi'qmaq Indigenous Knowledge
Study (NBMIKS) Process Guide**

January 30, 2016

Map of Mi'gmaq'i

Archaeology of Southern Gespegewagig

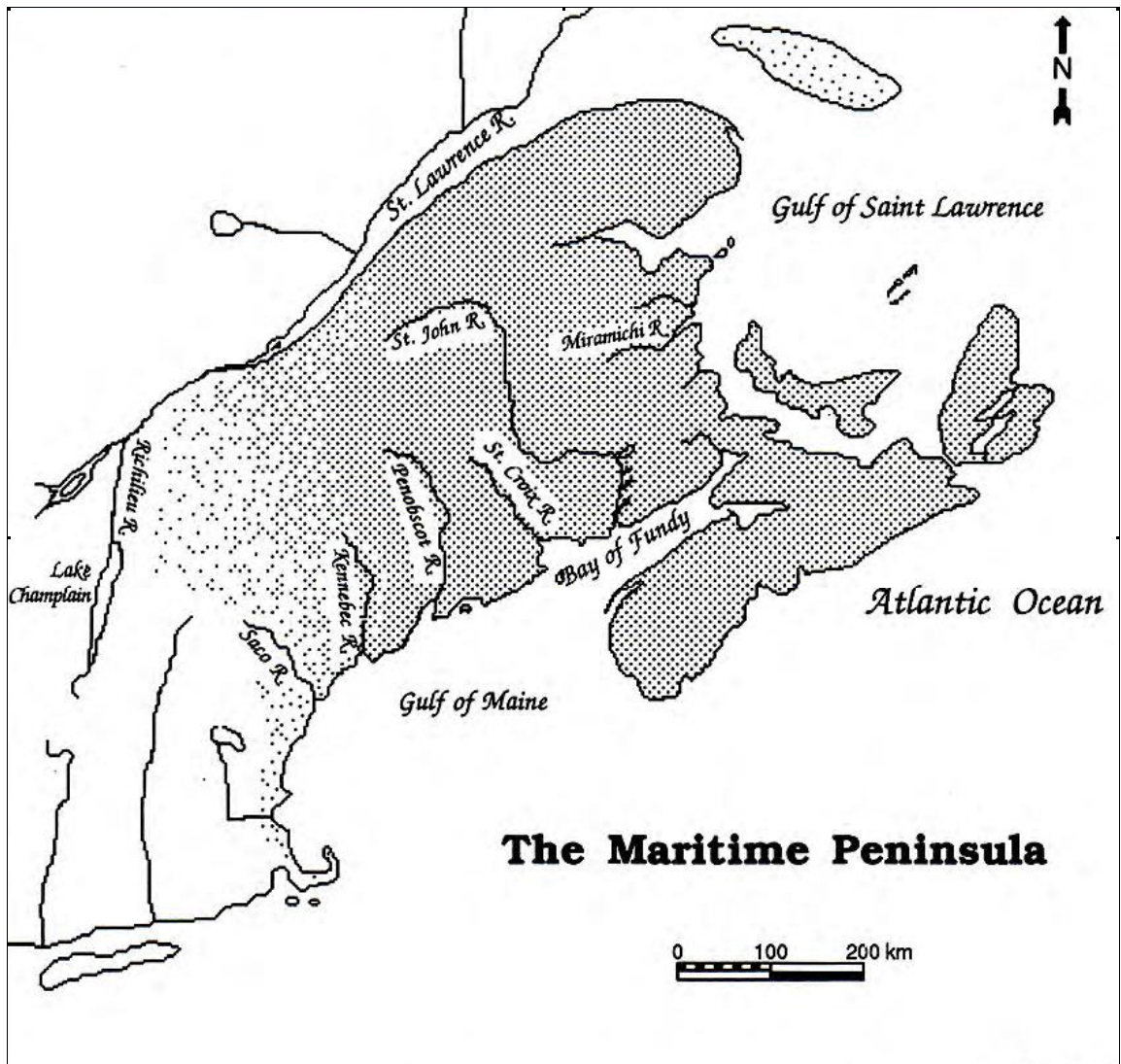


Figure 1. The Maritime peninsula of northeastern North America (Leonard 1995:20). The shading is a cartographic representation of a fluid and diff use boundary.

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

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Forward

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 People in New Brunswick.

The Mi'gmaq Sagamaq Mawiomi established Mi'gmawe'l Tplu'taqnn Incorporated in November, 2015 to assist it protect and advance Mi'gmaq rights and interests.

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

M'st No'gmaq ¹

¹ Mi'gmaq people end a prayer with the words "M'st No'gmaq" as an acknowledgement to our ancestors and to all creation for 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 is 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.

Introduction²

Throughout Canada and, indeed, around the world, Indigenous Peoples are both demanding and being asked to participate in a variety of land use planning and environmental or natural resource³ management decisions and projects which are affecting Indigenous Peoples' use and occupancy of their lands and waters.

New Brunswick is no exception to this trend. The Mi'gmaq have a comprehensive knowledge of the use and occupancy of the lands and waters by Mi'gmaq peoples, in pre-contact, historic and contemporary time frames. 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 First Nations and non-First Nation 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 more than twelve thousand years of indigenous occupation of what is now known as New Brunswick (New Brunswick Archeological Services, March 2013). 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 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)⁴ 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. 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 as well as their rightful place as a legitimate knowledge system.

² This is a working document and is subject to amendment. Mi'gmaq Sagamaq Mawiomi is engaging Elders, knowledge holders, those practicing 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.

³ The Mi'gmaq conception of nature is different than Western 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.

⁴ 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).

Background

The past three or more decades have seen a dramatic rise in the use of Indigenous Knowledge (IK) in development, natural resource management and environmental decision-making. 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. Indigenous Knowledge is defined, under the rubric 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).

In Canada, IK research was developed in response to Aboriginal "land claim"⁵ processes as well as to major development projects such as the McKenzie Valley Pipeline in British Columbia. 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 (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 1997, oral history testimony was not always considered as evidence. 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 research methods, and can support Indigenous groups in upholding their Aboriginal and Treaty Rights⁶ within the self-governance, natural resource development, co-management and "land claims" processes.

⁵ The term "land claim" is a western concept, adopted by governments in particular. In our view the Mi'gmaq do not have "land claims" we have Indigenous Title to our Territory.

⁶ In addition to court affirmed rights, Mi'gmaq People have inherent rights bestowed upon them by the Creator.

Glossary of Terms

Within this MTI Mi'gmaq Knowledge Study Process Guide:

“**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.

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

“**Consultant/Researcher**” means a company, group or individual that has primary responsibility to undertake and deliver a Mi'gmaq Indigenous Knowledge Study within the province of New Brunswick or in relation to those parts of Mi'gmaq Traditional Lands or waters within or adjacent to New Brunswick.

“**Consultation**” is a legal and constitutional term developed by the courts that sets 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 proven Aboriginal rights, Treaty rights, Aboriginal title or Aboriginal interests.

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

“**Groundtruthing**” means traveling to a site that was discussed in an NBMIKS interview to confirm the information shared about that site.

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

“**Mi'gmaq Community Researcher**” is an individual approved by the Chief and Council of a given New Brunswick Mi'gmaq community to conduct research interviews and document MIK as part of a NBMIKS.

“**Mi'gmaq Participant**” means any Mi'gmaq who has agreed to participate in a NBMIKS.

“**NBNIK**” or “**MIK**” refers 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'st 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 Elder Advisory Committee.

“**NBMIKS Process Guide**” means the New Brunswick Mi'gmaq Indigenous Knowledge Study Process 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 Process Guide.

“Project” means any legislative or policy change, undertaking, process or research that has triggered a NBMIKS.

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

Interpretation

Nothing in this New Brunswick Mi'gmaq Indigenous Knowledge Study Process 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 People individually and collectively hold throughout New Brunswick.

For greater certainty nothing in this document shall be interpreted as Consultation.

This New Brunswick Mi'gmaq Indigenous Knowledge Study Process Guide shall be read to work in conjunction with the established Mi'gmaq processes and protocols that pertain to Mi'gmaq Knowledge data collection, where they exist, otherwise the protocols outlined in this Study Process Guide will be followed.

NBMIKS 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 under international law of the Mi'gmaq in New Brunswick. The MTI and other relevant First Nation organizations will be contacted at this point, pursuant to the Interim Consultation Protocol between MTI, the federal Crown and provincial Crown, and pursuant to the Crown's legal obligations.

The NBMIKS Committee will review correspondence relating to the potential Project. Subsequent meetings with the Proponent may be requested if additional information is required. Based on its understanding of the proposed Project, the NBMIKS Committee will determine the scale of MIKS needed to effectively assess potential impacts to Mi'gmaq Rights within New Brunswick, and the relevant resources needed to complete this work.

The NBMIKS Committee will determine the scale and resources needed to complete the MIKS, based on the recommendations of the relevant NBMIKS Subcommittee.⁷

Depending on the scale and resources needed to complete a MIKS it may be determined necessary to engage a Consultant to carry out the MIKS. Regardless of the organization completing a MIKS, the Crown and or Proponent are responsible for funding said MIKS. A Project description, work plan, and budget to this effect will be developed with the relevant NBMIKS Subcommittee and submitted to the Proponent.

MTI will be solely responsible for the administration of funding and financial oversight of the MIKS process.

⁷ For example, The NBMIKS Subcommittee on Fisheries, would be made up of membership from the two AAROM bodies: Gespe'gewaq Marine Resource Council, Northshore Micmac District Council as well as Esgenoôpetitj First Nation and Fort Folly First Nation. These organizations would assess potential projects, policy or legislative changes relevant to fisheries Mi'gmaq Indigenous Knowledge.

NBMIKS Phases & Format

The suggested phases and format of a MIKS are:

- Phase I: MIKS Research Project Description
- Phase II: Desktop Review & Project Scoping
- Phase III: Mi'gmaq Knowledge Holder Engagement
- Phase IV: Data Collection Stage One – Individual and Group interviews
- Phase V: Interim Report and Review
- Phase VI: Data Collection Stage Two – Follow up interviews & Groundtruthing
- Phase VII: Data Analysis & Final Report

Phase I - Research Proposal:

Research Application

Depending on the issues giving rise to the duty to consult, the Crown, Proponent or Consultant, as may be the case, shall draft an application letter describing the proposal and outlining their intention regarding the proposed NBMIKS process. At a minimum, the letter shall:

- outline the nature of the proposed Project;
- outline the purpose of the NBMIKS;
- specify the proposed NBMIKS process and related activities;
- comment on the intended use of the NBMIKS;
- provide relevant contact information; and
- provide an opportunity for Mi'gmaq feedback/input.

In addition if the party submitting the letter is a Proponent or Consultant it shall submit background information on the Proponent or Consultant, including credentials and previous IKS undertaken.

The letter shall be sent to MTI and the Chief and Council of each Mi'gmaq community from which the relevant party intends to collect MIKS data.

Formal, written approval by MTI and the First Nation(s) involved is a prerequisite for any study to proceed.

A successful applicant is herein a “Consultant/Researcher”

Research Principles – OCAP

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. The Consultant must adhere to the OCAP Research Principles and Protocols as an additional research process

requirement in the earliest planning stages of each NBMIKS.

The NBMIKS Committee will assess all Research Applications and related issues to ensure OCAP Principles, respective protocols and this Study Process Guide are followed. A flow chart of the NBMIKS Guide Process is attached (Schedule C).

Phase II – Desktop Review and Project Scoping:

Desktop Review

The desktop review comprises a literature search in mainstream archives and First Nation archives that identify documented land use and occupation in the study area. Valuable information is derived from this process including current use and occupation of the land, such as hunting, fishing, gathering and sacred/ceremonial sites; as well as Mi'gmaq place names, former habitation sites, burial sites and portage routes. These include but are not limited to:

- Primary and secondary accounts of Mi'gmaq customs, practice and traditions and where and when they occurred;
- Relevant maps (including historical maps);
- Photographs;
- Petroglyphs;
- Pictographs; and
- Drawings and paintings.

Product(s) of the Desktop Review

- Temporally-explicit, comprehensive inventory of use and occupation;
- Searchable bibliography of reference materials;
- Historical narrative; and
- Historic contextualization of the information gathered.

Project Scoping

An exercise in Project scoping will be made possible as a result of the knowledge garnered through the desktop review. When determining a study's geographical area, the Consultant shall take into account the nature of NBMIK data, which demands the following:

- NBMIK data are Project and time specific and as such will require recent and updated NBMIK data to be included;
- Collection of NBMIK data will cover an area beyond the proposed Project footprint as determined in the initial research scoping of the Project;
- 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;
- Describing 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 the Consultant/Researcher to train Mi'gmaq Community Researchers.⁸ 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 III – Knowledge Holder Engagement

Once the Desktop Review and Project Scoping are complete, it is necessary to then inform the Mi'gmaq community members about the MIKS and to identify the knowledge holders in the community. A survey will be a part of the information process to assist the consultant/researcher(s) in identifying Mi'gmaq knowledge holders. There are various methods for achieving awareness about the MIKS that will need to be considered:

- Community Meetings;
- Community Newsletters and Websites;
- Information Brochures; and
- Social Media Postings

It is crucial that effective Mi'gmaq Community Researchers are selected in order to make as many community members aware of the MIKS as possible; and in turn ensure a broad and deep knowledge holder engagement. All Mi'gmaq Participants in the engagement process will be offered ceremonial tobacco.

Phase IV – Data Collection

Informed Consent of the Interviewee

Before MIKS data collection takes place, it is necessary for the Consultant/Researcher to secure informed consent from each Mi'gmaq Participant. Ideally the Mi'gmaq Participant will have prior knowledge of the MIKS, in order to develop an overall understanding of the proposed Project and resulting MIKS. The Consultant/Researcher will begin the interview process by confirming that the interviewees are fully versed in the research process. The interviewee should be able to demonstrate a clear understanding of the following:

Background

- purpose of the MIKS;
- the Project that the MIKS will inform; and
- that the MIKS is not Consultation.

⁸ Consultants/Researchers must identify and work with Mi'gmaq Community Researchers to ensure community participants are comfortable with the research process and community research capacity continues to develop.

Agreement

- that participation is voluntary
 - A written Consent and Release form is explained and completed.

The informed consent form that a Consultant/Researcher intends to use shall be vetted and approved in advance by the NBMIKS Committee. A preferred example form is attached as Schedule A.

Interview Process

There are a number of points to consider when engaging a Mi'gmaq Participant in a MIKS interview. Some of the key points include:

- Interviews shall be conducted in the Interviewee's language of preference:
 - The consultant will provide a translator for the interviewer if requested;
 - The translator will be someone the interviewee recommends or deems appropriate.
- Interviews shall be conducted at the interviewee's place of preference;
- Interviewees shall have the right to be accompanied by a friend, personal advisor or witness of their choice;
- The interviewer 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 be offered ceremonial tobacco.⁹
- The interviewer shall be knowledgeable about and respectful of Mi'gmaq cultural norms and values.
- The interviewer shall take into account "response burden";
 - An interview will last no longer than three hours (with a ten minute break every hour)
 - The interviewee may request shorter periods for interview and that request shall be granted.
 - An interviewee will be asked to complete no more than one interview per day
- The direct experience of an interviewee (first-hand accounts) and the experiences of persons they know (second hand accounts) shall be considered in the collection of MIKS data.¹⁰
- The knowledge of an interviewee will be protected through a system of coded PINS (Mi'gmaq Participant Identification Numbers). The NBMIKS Committee shall be provided a list of names of interviewees and their corresponding PINS.
 - The NBMIKS Committee is required to keep that information confidential.
- All research materials (consent forms, transcripts, maps etc.) shall be stored in a secure location but made available to the NBMIKS Committee on reasonable notice.

⁹ The NBMIKS Committee will determine an appropriate rate of compensation based on the scale of the project and the study.

¹⁰ Participants will be asked about their land use and occupancy that has taken place within their own 'living memory' as well as land use and occupancy they are aware has taken place within their grandparents' lifetimes by Mi'gmaq individuals or groups (Tobias 2010, p.3).

- The Consultant/Researcher will provide an Interim Report to the NBMIKS Committee to ensure the research process is proceeding in a satisfactory manner.
- 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 research methods have become the international standard 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 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 of a given indigenous group, their territory and resources. The comprehensive knowledge set will cover areas such as plant and animal harvesting locations, campsites, and places of spiritual and cultural importance.

Phase V – Interim Report and Review

Once an initial round of interviews has been conducted, the Consultant/Researcher will be responsible for producing an interim report, in which they outline their findings. The NBMIKS Committee will review the interim report in order to ensure the Consultant/Researcher is conducting the research in an acceptable manner. This is an opportunity to refine the research approach for the second stage of data collection.

Phase VI – Data Collection: Stage Two

Based on the findings of the interim report and the feedback of the NBMIKS Committee, the Consultant/Researcher will determine whether a second round of interviews is necessary. The Consultant/Researcher will make every effort to collect a satisfactory amount of MK data within the proposed study area. The collection of MK data is dependent on a number of factors. When conducting a MIKS, the Consultant/Researcher shall make every effort to uncover MIK data from a target group of Mi'gmaq Participants. The target group, at a minimum, must include Mi'gmaq Participants who have specific MIK or have conducted land use activities in the proposed study area. It is recommended that the Consultant/Researcher ensure that appropriate time, funding and resources are available to allow for the collection of sufficient MK data. Ideally the number of knowledge holders interviewed would be 100% but this is methodologically difficult, due to changes in population size and composition.

Mi'gmaq communities in New Brunswick range in size from about 135 members (Fort Folly) to more than 3,000 (Elsipogtog). Sample design in these communities will therefore vary. In small communities a 100% sample may be possible. In larger communities, time and resource constraints will likely limit the ability to capture a complete sample of indigenous knowledge. The community survey described in the Knowledge Holder Engagement phase of the MIKS will

be used to identify as many knowledge holders as possible. In the event that the Consultant/Researcher is not able to collect a sufficient amount of MK data, the reasons or potential causes for this circumstance must be outlined in the MIKS Report.

MIKS Ground Truthing

The MIKS will include Ground Truthing sessions, whereby the Consultant/Researcher and a selection of interviewee(s) travel to the potential Project area to confirm oral and written data, 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 MIKS data, reporting and disclosure of MIK information. It is recommended that a MIKS both consider and address, at a minimum, the following two key elements:

MIKS Data Analysis:

When reporting MIKS data, the Consultant/Researcher should use a GIS software and present the data in a general coded form that reflects overall knowledge, use and occupancy of the land (a composite map). The identity of individual interviewees will be protected by a corresponding PIN. Consultant/Researchers will be required, in writing as a term of their contract, to adhere to NBMIKS data management protocols, and to deliver the original and all copies of all data to the NBMIKS committee prior to final payment.

When determining the significance of MIK Data the Consultant/Researcher shall have due regard to both scientific and Mi'gmaq cultural practices.

The Consultant/Researcher will utilize the following factors when determining the significance of MIKS data:

- the uniqueness and nature of the land or resource use/occupation;
- the cultural use or spiritual meaning of the land or resource use/occupation; and
- the availability and the importance of the land or resource use/occupation.

Disclosure and Reporting of MIKS Data:

MIKS Report findings shall contain MIKS baseline information such as the type of use and species harvested, including numbers observed present.

Only MIK of significance shall be outlined in the report through the use of a GIS.

Consideration and due regard shall be granted to confidentiality of a Mi'gmaq Participant's MIKS data.

The MIKS shall provide recommendations on mitigation or remediation of potential

impacts in a manner that reflects Mi'gmaq cultural perspectives.

The MIKS Report shall be distributed in a timely manner to the relevant Mi'gmaq political organizations. The MTI shall have a reasonable period of time to review and comment on the report and propose reasonable amendments before it is forwarded to the Proponent.

The MIKS Report must protect the Intellectual Property Rights that the Mi'gmaq individually and collectively hold. An approved statement to that effect is appended to this document as Schedule B.

The Consultant/Researcher shall make explicit reference in the MIKS Report that it is not Consultation.

Phase VIII - Data Management:

Data management for the MTI Mi'gmaq Knowledge guidelines will be based on the OCAP 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 vetted by the MTI.

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; digital video files, catalogued by keyword and timeframe; and legally compliant oral histories. MTI will serve as custodian of these data until such time as a Mi'gmaq Research Institute in NB can assume this responsibility. Data will be stored in a secure setting and backed up regularly.

Amendments

This NBMIKS Guide may be amended at any time. Amendments will first need to be approved by the MSM Elders Advisory Council and MTI member Chiefs.

In the event that an amendment is made to this NBMIKS Guide, the said amendment shall be forwarded to and discussed with any Consultant/Researcher engaged in a Project or a MIKS, and other Aboriginal organizations conducting Indigenous Knowledge Studies.

References

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- WEGASMIG N'NUASIMIG (Mi'gmaq Traditional Knowledge Protocol). 2010.

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_OCAPCriticalAnalysis.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 People 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.

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).

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 paid by the Consultant/Researcher.

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.

Mi'gmaq Participant Initials _____

New Brunswick Mi'gmaq Indigenous Knowledge Study Process Guide.

All questions concerning the project can be addressed to the Consultant/Researcher at

(How and where to get in touch with the Consultant/Researcher and his/her director if need be).

I the undersigned, _____
(Name in capital letters)

freely consent to participate in the research project entitled:
« 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 Consultant/Researcher Date

Note: For research with an UNDERAGE individual a specific MTI 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 MTI 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.”¹¹

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 MTI 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.

¹¹ Note: the MTI favours 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

