



Mi'kmaq Ecological Knowledge Study Protocol

2nd Edition

Assembly of Nova Scotia Mi'kmaq Chiefs

The Assembly of Nova Scotia Mi'kmaq Chiefs would like to thank those who offered feedback and advice in the review of the Mi'kmaq Ecological Knowledge Study Protocol, and extend special recognition to the Mi'kmaq organizations and their technical representatives for their ongoing support and expertise.

Special recognition is given to Rosalie Francis for her undertaking to review and revise the Mi'kmaq Ecological Knowledge Study Protocol, helping us to all further our goals of ensuring that our Mi'kmaq cultural practices, values and traditions are acknowledged, respected and preserved.

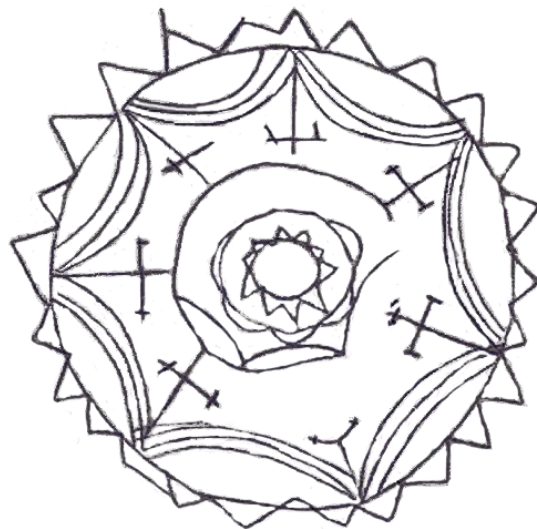


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IMPORTANCE OF MI'KMAQ ECOLOGICAL KNOWLEDGE

Since time immemorial, the Mi'kmaq have relied on the natural world for many aspects of their daily life. There were very few resources which the Mi'kmaq did not utilize in some way. Mi'kmaq subsistence and spiritual practices encompassed the natural world in a manner distinct from that of the non-Native world. The Mi'kmaq did not view themselves as distinct from the natural world, but rather saw themselves as merely one life being within a natural world of many life beings. This Mi'kmaq spiritual belief or "World View" is the foundation for their interdependence and interconnection with all aspects of the natural world.

Today, the Mi'kmaq continue to use and occupy Mi'kma'ki based on their Mi'kmaq World View. They maintain a deep and profound relationship with their traditional lands, waters and resources. This longstanding relationship has given rise to Mi'kmaq Ecological Knowledge (MEK) - a body of knowledge that the Mi'kmaq maintain regarding the natural environment. Specifically, MEK is unique information that Mi'kmaq possess in regards to the lands, waters, plants and various animal species. Most simply, MEK is about the interaction that Mi'kmaq have had, and continue to have, with the environment which has provided them with an understanding that may not be found in Western science knowledge systems.

MEK is a cumulative body of knowledge that is passed on from generation to generation, Elder to child and is dynamic. MEK draws upon the ever changing natural world – as ecological knowledge changes over time, and new experiences bring forward new understandings regarding the Earth's ecology, the Mi'kmaq will continue to learn, grow and share, just as they have done for over ten thousand years.

PREFACE

In 2007, the Assembly of Nova Scotia Mi'kmaq Chiefs (the Assembly) developed the Mi'kmaq Ecological Knowledge Study Protocol (MEKSP) for the purpose of providing guidance in the development of MEK Studies. The Assembly recognized the significance of MEK Studies with respect to land and water development and their potential effects on Mi'kmaq Rights, and identified the need to ensure that MEK Studies were being developed in a professional and accountable manner.

This need was furthered when in 2010 Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples which, at Article 31, states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Since the release of the first edition of the MEKSP, the Assembly has conducted a review to identify successful practices and to further determine if changes were necessary to ensure successful application. This undertaking identified that the MEKSP is viewed as a key document to be utilized in the development of MEK Studies.

The second edition of the MEKSP builds upon earlier successes and provides clarity on issues identified as requiring further comment. Specifically, the second edition now includes language that indicates activities required when developing a Mi'kmaq Ecological Knowledge Study (MEKS), clarifies the expectation of the Assembly, and increases accountability through specific requirements for proponents/companies to provide.

This 2nd Edition also addresses the issue of “Consultation”, the Duty to Consult and the role that MEK Studies contribute to the “Consultation Process”.

Through the development of the MEKS Protocol 2nd Edition, it is the Assembly's hope that MEK Studies will continue to be developed in a professional and accountable manner, recognizing that the Mi'kmaq have a special role to play in the land, water, air and resource development in Nova Scotia.

It is important to be mindful that the Mi'kmaq Nation asserts rights to their cultural heritage, traditional knowledge and/or traditional cultural expressions. Information that is freely and voluntarily shared, with the prior informed consent of Mi'kmaq individuals, governments or organizations is, and shall remain, the sole and exclusive property of the individual, government or organization. Any unauthorized use or disclosure shall be subject to prosecution pursuant to Canada's protection of intellectual property legislation in force from time to time.



METHODOLOGY

The Methodology relied upon within the Review consisted of three components:

- **MEK Studies Review** - A review of all of the MEK Studies that have been completed to identify how they are being conducted, their format, and their content. This analysis provided insight into MEK Studies concurrence with the guidelines of the MEKSP;
- **MEKSP Quantitative Data Review** – A Review of seven National and International First Nation Traditional Ecological Knowledge (TEK) Best Practices. This analysis identified whether the MEKSP and Best Practices are consistent in their approach on TEK issues. This analysis also identified issues that have been addressed by other First Nations and should be addressed by the MEKSP in the future.
- **MEKSP Qualitative Data Review** – Twenty-two interviews with Government Officials, MEKS Consultants, Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) Staff, Mi'kmaq Organizations, Proponents and Mi'kmaq community leaders to gather opinions, concerns and relevant information regarding present practices for MEK Studies and the MEKSP. This analysis identified practices and other significant issues that should be addressed in the revision of the MEKSP.



DEFINITIONS

2.1 Within this Mi'kmaq Ecological Knowledge Study Protocol:

- a) "Assembly of Nova Scotia Mi'kmaq Chiefs" (the Assembly) - the institution of governance for the Mi'kmaq of Nova Scotia.
- b) "Consultant" - a company, group or individual that has primary responsibility to undertake and deliver a Mi'kmaq Ecological Study within the Province of Nova Scotia; the Consultant can include any individual (e.g. interviewer, researcher, fieldworker, etc.) contracted or employed to undertake work for the Study.
- c) "Consultation" - any Crown and Mi'kmaq government¹ discussion, negotiation or meeting used to justify Crown infringement of Aboriginal and Treaty Rights.
- d) "Government" - any federal, provincial or municipal department, agent or representative.
- e) "Mi'kmaq Ecological Knowledge" (MEK) - the collection of wisdom and experiences that the Mi'kmaq have with all components of the natural environment; the interrelationships that exist between all life forms from a unique historical, cultural and spiritual perspective.
- f) "Mi'kmaq Ecological Knowledge Study Protocol" (MEKSP) - a working document, developed by the Assembly of Nova Scotia Mi'kmaq Chiefs, to identify the essential components of a Mi'kmaq Ecological Knowledge Study.
- g) "Mi'kmaq Ecological Knowledge Study" (MEKS) - all components related to the planning, collection, analysis, reporting and distribution of Mi'kmaq traditional ecological knowledge in Nova Scotia.
- h) "MEK Report" - a document that considers MEK data pursuant to a Project defined in this MEKS Protocol.

¹ Mi'kmaq Government is intended to mean any of the thirteen Nova Scotia Mi'kmaq Bands in whole or in part.

- i) “Mi'kmaq Community” - any of the thirteen Mi'kmaq Bands, as represented by the Assembly of Nova Scotia Mi'kmaq Chiefs, or their affiliated communities that exist throughout Nova Scotia.
- j) “Mi'kmaq Participant” (Participant)- a person of Mi'kmaq descent who has agreed to participate in a MEKS.
- k) “Netukulimk” - the Mi'kmaq use of the Creator's natural bounty for self-support and well-being and the interplay of collective and individual responsibilities that the Mi'kmaq have to the natural world.
- l) “Project” - any undertaking that has triggered a MEKS to occur.
- m) “Proponent” - a company, group or person responsible for undertaking a Project.



INTRODUCTION

In 2007, the Assembly of Nova Scotia Mi'kmaq Chiefs (Assembly) developed the 1st Edition of the Mi'kmaq Ecological Knowledge Study Protocol (MEKSP) to provide guidance to proponents and consultants undertaking MEK Studies in Nova Scotia. The Assembly recognized the relevance of ecological knowledge when considering project development in Nova Scotia, particularly regarding the possible effects of resource and land development on Mi'kmaq Aboriginal and Treaty Rights and Aboriginal Title.

MEK is about the interaction that Mi'kmaq have had, and continue to have, with the environment which has provided them with an understanding that may not be found in Western science knowledge systems.

*Kwilnu'kw Maw-klusuaqn
Negotiations Office*

The MEKSP has successfully provided guidance to Government, Proponents and Consultants in the development of MEK Studies to date. Through experience it was realized that as the data contained in MEK Studies is relied upon by the Assembly, Government and Proponents when making decisions, ensuring that the Studies are carefully prepared and contain all relevant data has been crucial.

This 2nd edition of the MEKSP builds on the 1st edition and incorporates recommendations for improvement and observations from Mi'kmaq, Consultants, Proponents and Government on how to clarify the MEKS process to ensure that the highest quality and most relevant information is provided to decision makers and the Mi'kmaq of Nova Scotia.

MEK Studies provide insight on the Mi'kmaq relationship to lands, waters and/or resources and provides essential information that must be considered by the Crown and Proponents when identifying the potential adverse effects of projects and developments.

These studies are not "Consultation"² and the production of a MEKS cannot be used as proof that the Crown fulfilled its Duty to Consult.

It is the expectation of the Assembly that given the importance of MEK to the Mi'kmaq and the significance of the data in MEK Studies, the stipulations of the MEKSP will be strictly adhered to by those developing and undertaking MEK Studies.

² See page 3 for further details regarding Duty to Consult.

This MEKSP shall be read to complement any Mi'kmaq community, regional or provincial processes pertaining to MEK data collection and, in the event of a conflict between said processes and this Protocol, this Protocol shall take precedence and prevail.

MISSION STATEMENT

In recognition of the uniqueness of MEK and its importance to the Mi'kmaq Nation, this MEKSP has been developed to ensure that MEK Studies are conducted in a manner that recognizes respects and upholds Mi'kmaq cultural practices, values and understandings, including the Mi'kmaq language. The Mi'kmaq of Nova Scotia recognize the significance of their traditional knowledge as a means of gaining a holistic environmental understanding. This MEKSP will ensure that MEK Studies are completed in a transparent and accountable process, all the while protecting the integrity of traditional Mi'kmaq knowledge.

CONSULTATION AND THE DUTY TO CONSULT

The Duty to Consult

In 2004, the Supreme Court of Canada, in the *Haida Nation* case, affirmed the Crown has a duty to consult with Aboriginal peoples.³ The Court stated the duty to consult arises when the Crown has knowledge, whether real or constructive, of the potential existence of an Aboriginal Right or Title and contemplates conduct that might adversely affect it.⁴ Further, when the Crown undertakes Consultation they must do so with the “*intention of substantially addressing [Aboriginal] concerns as they are raised through a meaningful process of consultation.*”⁵

³ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511.

⁴ *Ibid*, para 35.

⁵ *Delgamuukw v British Columbia*, [1997] 3 S.C.R. 1010, par.168 as cited in *Haida, Supra*, at note 1, para 42.

Thus, the Duty to Consult must be exercised by the Crown in a meaningful manner which upholds the honour of the Crown and respects the *Constitution Act* Section 35 Rights asserted by an Aboriginal group. Consultation may require an accommodation to address Aboriginal concerns, depending on the circumstances and the potential adverse effects of Crown decisions or actions on the asserted Rights or Title of the Aboriginal group.⁶

Consultation Terms of Reference

In 2010, the *Terms of Reference for a Mi'kmaq -Nova Scotia-Canada Consultation Process* was signed and established a formal process for whenever Canada or Nova Scotia wishes to conduct Consultation on the record, and with prejudice, with one or more Mi'kmaq Bands in Nova Scotia.

Within the consultation process discussions have, and will continue to, occur between the Assembly and Provincial and Federal Governments, to discuss proposed Crown activities. In these discussions, MEK Studies may be considered and referenced, primarily as data sources to identify Mi'kmaw activities or knowledge involving lands, waters and natural resources. A MEKS provides an exceptional snapshot of understanding the Mi'kmaq, past and current, relationship to an area of land and/or water and it can be a vital source of data for consideration.

However, within the “Consultation” dialogue, when a MEKS is considered a relevant source of data, its preparation and acceptance is not considered “Consultation” within itself, nor is it deemed to fulfill the Duty to Consult owed by the Crown to the Mi'kmaq. A MEKS and related discussions, communications or documentation cannot be used or interpreted as “Consultation” for purposes of justifying an infringement on section 35 Mi'kmaq Aboriginal or Treaty Rights that exist, or may be found to exist in the future.



⁶ *Haida, supra*, note 1 at para 47.

BEFORE YOU BEGIN A MEKS

As one begins to undertake a MEKS, a number of activities must be completed by the Consultant prior to gathering and documenting ecological knowledge. These activities are the required first steps for all MEK Studies.

When developing a MEKS proposal, the Proponent should pay particular attention to the following principles in relation to the scoping of its MEKS:

- The MEKS should be completed in an appropriate time manner that is consistent with the Environmental Assessment (EA) approval process for the Project. Proponents and Consultants should be cognizant that MEK Studies that are completed early in the EA approval process will decrease the likelihood of unforeseen project delays.
- A new MEKS is required where a previous MEKS for the same study area is more than five years old.
- If a MEKS has been completed for the same study area, and is less than five years old, the existing MEKS may be considered. However, the Assembly may consider the following factors, but not limited to;
 - the type of project proposed and its scope; and,
 - the amount and quality of MEK data previously documented.
- If a MEKS was previously completed covering the same study area, a new MEKS may incorporate the historical component of the original Study with the consent in writing from the initial Consultant.

Letter to the Mi'kmaq

MEK is of significant importance and its documentation requires transparency and accountability. To ensure the Assembly and Nova Scotia Mi'kmaw communities are aware that a MEKS is being undertaken - and to ensure that those who are developing the MEKS have the required capacity and skills to do so - Letters of Intent shall be sent to the Assembly (via the Kwilmu'kw Mawklusuaqn Negotiation Office) and to the NS Mi'kmaw communities where the Consultant intends to gather MEK. The letters shall be sent as early as possible in the process and be copied to the Union of Nova Scotia Indians and the Confederacy of Mainland Mi'kmaq.

The letter shall contain the following information:

- ❖ *Proponent Project Information:*
 - Information regarding the Project Proponent ; and
 - Specific details regarding the nature of the proposed Project, such as the location of project, type of project, and any other relevant details.

❖ *Consultant Information:*

- Name and credentials of principal researcher; name and title of all other personnel who will take part in researching and preparing the MEKS;
- Background information regarding the Consultant, which shall include any prior experience in addressing Mi'kmaw issues;
- Consultant capacity regarding Mi'kmaw community engagement skills;
- Consultant capacity regarding Mi'kmaw cultural knowledge and Mi'kmaw language skills; and,
- Contact information (mailing address, fax, e-mail, telephone and contact person).

❖ *MEKS Information:*

- Purpose and use of the MEKS;
- Process for gathering MEK (i.e. interviews, site visits, etc.);
- Anticipated process for identifying Participants who will be interviewed;
- Details of the information to be provided to any Consultants (i.e. maps, photos, reports, etc.);
- Mi'kmaw communities where MEK will be gathered; and
- Expected time frame for developing the MEKS.



GATHERING MI'KMAW ECOLOGICAL KNOWLEDGE

Beginning the process of gathering MEK, the Consultant shall adhere to the following procedures.

Engaging a Mi'kmaq Community

The Consultant shall work with the Mi'kmaq communities to gather MEK. All Consultants, their employees and contractors, shall conduct themselves and their activities in a manner respectful of Mi'kmaq cultural norms and the values of the community. Consultants should remember that their activities are to be based on developing a positive relationship with the community, recognizing that the ability to document MEK within a community is a privilege. Trust building with community leaders and Participants should be the aspiration of the Consultant. Consultants should be mindful that Participants are sharing their traditional knowledge and personal/cultural experiences, much of which is often considered sacred.

Adequate Resources

It is recommended that the Consultant ensure that sufficient time, funding and resources are available to aid the collection of sufficient MEK data.

Scope of Mi'kmaq Ecological Knowledge

While collecting MEK data the Consultant shall remember that MEK is held by individuals who have acquired the information through personal experience and through Mi'kmaq cultural practices and traditions, which are distinct from Western science practices. Therefore, gathering MEK demands an approach which respects both the knowledge gathered and the manner in which it was transmitted and gained.

Type of Data - historic and current

The Mi'kmaq have acquired knowledge through subsistence and spiritual practices which have continued to take place over a long period of time. This information is relevant to a MEKS and where applicable, historic and current data shall be included.

“The concept of significance in the MEKS is distinct from the concept of significance under the Canadian Environmental Assessment Act or the Nova Scotia Environmental Assessment Regulations...potential project impacts on Mi'kmaq should be used by regulators to inform their determination of the significance of the environmental effects of the Project.”
Confederacy of Mainland Mi'kmaq

MEK is drawn from a wide range of traditional and cultural activities. When gathering MEK, the Consultant shall include information on all relevant Mi'kmaw harvesting and foraging practices, and data on species/resources exploited. In

addition, locational data shall be included listing all Mi'kmaw use and occupation sites, burial sites, hunting areas, fishing areas, spiritual sites, plant gathering areas and significant cultural areas.

Because both historic and current data is relevant to the MEKS, information gathered shall take into account both first and second-hand knowledge as provided by the Participant. Both historic and

current (generally defined as “within living memory”) data are relevant. Within living memory can include information transmitted to the informant by a parent or a grandparent. The knowledge passed down is relevant and, if credible, is to be included in the MEKS.

Historical research employs a combination of gathering oral history from Participants and written sources. It may document MEK of an area going back hundreds of years. As with any data, the written and oral history sources must be assessed for credibility before being included in the MEKS.

Study Area

When determining the study area for the MEKS, the Consultant shall take into account the nature of Mi'kmaw harvesting practices and the use and occupation which may extend over an area larger than the proposed Project footprint. For example, the project footprint may be limited to ½ hectare, but the harvesting activities which form part of the relevant MEK data, could take place, adjacent to, and including the project footprint. To ensure that MEK data is recorded in a manner consistent with the nature of the activity, the Consultant shall document MEK data in its entirety, which may require establishing a buffer and study area beyond the project footprint, allowing for a broader ecological understanding.

Adequacy of Data

It is important that the Consultant ensures that an adequate amount of data is collected within the proposed study area, and that such MEK data is credible and reliable. This will depend on a number of factors which can include, but may not be limited, to the identification of Participants who are relied upon for MEK, the geographic area where the proposed project is located, the extant historical data, and the current state of the geographic area (e.g. have the rivers been dammed, has there been a recent forest fire, etc.).

Interviews

The Consultant must confirm that the Participants interviewed are recognized by their Mi'kmaq community and acknowledged by their community as a credible provider of MEK data.

When gathering data, individual interviews with Participants are the most appropriate mechanism for gathering MEK and are required in the work plan. Group gatherings can also be utilized, but must be done in conjunction with one-on-one interviews as they will not be satisfactory on their own.

“...Interviews allowed the team to develop a collection of data that reflected the most recent Mi'kmaq traditional use in this area, as well as historic accounts.”

Membertou Geomatics Solutions

Target Group

When gathering MEK, the Consultant must ensure that the individual(s) selected to be interviewed have specific knowledge of the study area or have conducted land or water-based use activities in the proposed study area. Consultants are reminded that different types of MEK are held by different members of the Mi'kmaq Nation, varying by gender, age and lifestyle. Consultants must demonstrate that efforts were made to gather a variety of data from different Participants.

Cultural Appropriateness

When undertaking interviews, Consultants must possess sufficient understanding of the Mi'kmaq way of life to ensuring that interviews are conducted in a manner respectful of Mi'kmaq culture, traditions, and practices.

The interviews will include:

- language options, which may be in either Mi'kmaq or English;
- having the interview occur in the Participant's place of preference;
- respect for the Mi'kmaq spiritual and cultural beliefs; and,
- an appropriate gift, item, etc. as a thank you for participation and information.

Interview Materials

Consultants shall ensure that he or she has the appropriate materials required to document the MEK that is provided when conducting an interview. This shall include maps (either digital or paper copies) to provide a clear delineation of the project and buffer areas. If using a laptop for maps, ensure the batteries are charged and that the adapter is included in the field pack carried to all interviews. If using paper maps, ensure the field pack includes pens, markers, overlays, and paper to record all data provided by the knowledge holder.

While it is advisable to record all interviews to document the information provided, audio or visual recording may only be done with the prior, informed consent of the Participant.

Informed Consent – Education and Agreement

Before any data collection takes place, the Consultant must first secure the free, informed consent of the Participant. Two key elements to informed consent are education and agreement. The Consultant shall ensure all Participants are provided with detailed project information and MEKS information to allow them to make an informed decision whether or not to participate in the Study.

- **Agreement** - Consultants must ensure that the Mi'kmaq Participant's decision to participate in the MEKS is voluntary and that he/she clearly understands the use of the MEK.

The Participant must signify that she/he understands that:

- their participation is voluntary;
- he/she can end the interview or withdraw her/his participation at any time;
- she/he does not have to answer any question with which she/he is not comfortable;
- if desired, his/her identity will be kept confidential; and,
- that the MEK provided will be included in the MEKS, which may become public record.

A written Consent and Release Form explaining and identifying the above Agreement factors must be signed and completed.

- **Education** - Consultants must provide the relevant information to ensure that the Participants demonstrate a clear understanding of:
 - the type of Project proposed – its location, and goals (purpose of it' development);
 - the scope and purpose of the MEKS;
 - the use of the MEKS data in the applicable approval process(es); and,
 - that the MEKS is not Consultation for the purpose of justifying an infringement of Aboriginal and Treaty Rights.

Site Visits

The MEKS Consultant shall undertake a site visit(s) to the proposed project area with an appropriate Participant(s) who has knowledge or familiarity with the project area. If no Participants familiar with the area can be identified, this must be disclosed in the MEKS Report, together with a description of all efforts made to identify individuals with knowledge or familiarity with the proposed Project & study area.

The purpose of the site visit is to gather ecological knowledge regarding the availability of resources and the importance of the land to Mi'kmaq. Any MEK identified during the site visit may correspond to previous MEK provided in the interview process or may be newly acquired MEK.

During the site visit it is the responsibility of the Consultant to ensure the safety of the Participant and the Consultant themselves. The Consultant shall ensure all safety legislation, regulations, and policies are complied with by all members of the party during the site visit.

Historical Research

The MEKS must include a historical review of the Mi'kmaw relationship to the proposed study and surrounding area. The historical data shall include information obtained from primary and secondary⁷ written sources and can include Mi'kmaq oral history. Historical and ecological data that is broad in scope, not specific to the MEKS area, and of little relevance to an understanding of the Mi'kmaw relationship to the study area is not to be included in the MEKS.

⁷ Primary sources are original, first-hand information sources including diaries, letters, news film footage, official records, etc. Secondary sources interpret and analyze primary sources and can include textbooks, commentaries, magazine articles, encyclopedias, etc.

Mi'kmaq hunters, fishers and plant gatherers, have a relationship intrinsic to their natural environment. Knowledge, passed down from Elder to Child, provides a unique understanding of any Project Study Area.
Kwilmu'kw Man-klusuaqn
Negotiation Office

For a MEKS to provide a holistic understanding of the Mi'kmaw connection to a specific place, information must focus on the Project area. All historical information gathered must be relevant to the Project area and its close surrounding area.

If no primary or secondary records, relevant to MEK, in the study area are uncovered during the documentary review, this information is to

be disclosed in the MEKS Report together with a description of the research undertaken and a list of the sources consulted.

NOTE: In the event that the Consultant is unable to collect an adequate amount of MEK data, as provided for in the MEKSP, the Consultant must include the reasons or potential causes for such circumstances in the final MEKS.



WRITING THE MEKS

In the written format of the MEKS, the Consultant shall ensure that the following components are included and addressed in the following manner:

GIS Data

GIS software program shall be used to ensure that the presentation of the MEK data allows an easy comprehension. When identifying areas and resources for Mi'kmaq use and significance (including but not limited to spiritual sites, fishing sites, etc.) careful attention must be paid to the protection and privacy of hunting, fishing and gathering sites and areas, as provided by the Participant. Where a resource site location is considered sacred and/or is seen by the Participant or Mi'kmaq community as a site should be kept private, the data should be presented in general terms and not site specific.

Historical Data

The Consultant shall ensure that the historical information included within the MEKS is specific to the Project area, or the immediate surrounding area, and will lead to a greater understanding of MEK.

Consultation and Intellectual Property Rights

An explicit statement must be included in the MEKS that states that the Study is not intended to be interpreted as "Consultation" for the purpose of justifying an infringement on the existing Aboriginal and Treaty Rights of the Mi'kmaq of Nova Scotia.

The MEKS must include a provision acknowledging that the MEK contained within the Study is subject to the intellectual property rights of the Mi'kmaq of Nova Scotia, which they individually and collectively hold.

Mi'kmaq Significance Species Analysis

To ensure that the MEK gathered is presented in a manner allowing a clear understanding of the significance of wildlife, fish and plant species to the Mi'kmaq, the Consultant must include an analysis of any species, identified by the Participants and other research, to be present, harvested, or near the study area. Such an analysis shall include an adequate amount of base line information to acknowledge the significance of the species to the Mi'kmaq and the potential availability of these species within the project and immediate surrounding area.

When determining the significance of the MEK data, the Consultant must take into consideration both western scientific ecological perspectives and Mi'kmaw ecological practices and perspectives.

Confidential Data

The Consultant must give due regard to MEK data that is of a private or sacred nature, as indicated by a Participant or the Mi'kmaw community and use their discretion to ensure that such data is referenced in a manner that considers the integrity and privacy of the Mi'kmaq.

Mitigation and Recommendations

Where a MEKS identifies adverse effects on Mi'kmaw activities and/or the exercise of Section 35 Aboriginal and Treaty Rights, arising from proposed project activities, the final MEKS shall contain recommendations for the proponent to initiate a dialogue with the Assembly to further discuss.

Archaeological Site Protection

Archaeological data can provide significant understanding to Mi'kmaq past relationship to the land. As such, this information may at times be included in a MEKS. Archaeological data is important to the Mi'kmaq and the Consultant must take the appropriate steps to ensure that any archaeological site is not represented in a manner that could compromise the site or its artefacts.

When archaeological information, location especially, is included in the MEKS, references must be made in general terms. As well, when an archaeological site is referenced on a GIS map, its representation must also be presented as to not reveal the specific location of the site.



THE FINAL MEK STUDY

CONSULTANT'S ROLE

When a MEKS is completed, the Consultant must provide a copy to KMKNO, with correspondence indicating that it is completed and being submitted for the Assembly's consideration. The final MEKS must be provided within 14 days of completion.

KMKNO ROLE

In accordance with the goals of transparency and accountability, it is important that all MEK Studies that are developed are reviewed by KMKNO, on behalf of the Assembly, as a means to ensure the consistency with the MEKSP requirements. Upon receipt of the MEKS, KMKNO shall review the document in accordance with the requirements of the MEKSP. Within 20 calendar days of receipt of the MEKS, KMKNO shall advise the Consultant in writing whether or not the MEKS meets requirements and if necessary, indicate where the MEKS must be amended⁸.

MEK Study Distribution

Upon completion of a MEKS, it is important that all relevant Mi'kmaq parties receive a copy of the Study in a timely manner, to permit an understanding of its findings.

The MEKS must be provided to the Mi'kmaq communities that provided the MEK data and/or those that are in the immediate vicinity of the Project area; along with the Assembly of Nova Scotia Mi'kmaq Chiefs and any relevant Mi'kmaq organization.

The MEKS can be provided in either a digital format by e-mail, or in a hard copy format delivered by postal mail. The MEKS sent to a Mi'kmaq community or communities shall be directed to the attention of the Chief and Council of the respective community or communities.

Upon request, any Participant who provided MEK data shall be provided with either a digital or hard copy of the final MEKS.

⁸ Checklist of what is required can be found in the Appendices.

CLOSING

The development of the MEKSP was an important milestone for the Nova Scotia Mi'kmaq. Since the release of the 1st Edition, we have all learned a great deal; but what has not wavered, is the significance of including and respecting Mi'kmaq cultural practices, values, traditions and identity. The MEKSP has been a catalyst for all involved to be open-minded, transparent and accountable to a process that is receptive to the unique needs of the Mi'kmaq of Nova Scotia.

The goal of the Assembly of Nova Scotia Mi'kmaq Chiefs is that as time passes, and as relationships evolve, the MEKSP will enable us to share who we are, what teachings have been passed down from our ancestors, and how we can help shape Nova Scotia's future, together.



Appendix 1

Mi'kmaq Ecological Knowledge Study Protocol

Checklist

For the Proponent:

- MEKS should be completed early in EA process
- MEKS is required: (p. 11)
 - where a previous MEKS for same study area is more than 5 years old
 - if a MEKS has been completed for the same study area, and is less than 5 years old, the existing MEKS may be considered

For the Consultant:

The Consultant must:

- Provide a letter of intent to KMKNO and community where MEK will be gathered. (Copied to Union of Nova Scotia Indians and Confederacy of Mainland Mi'kmaq including the following information)
 - Project Information – nature, location, type of project, etc.
 - Consultant Information – name, credentials, capacity, experience, contact information, etc.
 - MEKS Information – purpose, use, process, details, names of Mi'kmaq communities where will be gathered, expected timeframe
- Work with the Mi'kmaw communities
- Allow sufficient time, funding, and resources
- Gather MEK in a respectful manner
- Provide information/data of all relevant harvesting and foraging practices and species/resources that are exploited
- Take into account both first and second hand knowledge. Both historic and current data are relevant.
- Ensure an adequate amount of data is collected within proposed study area.
- Ensure participants are recognized credible MEK providers.
- Ensure participants have knowledge of specific area.
- Ensure appropriate materials are present when conducting the interview.
- Ensure Secure the free, and informed consent of the Participant.
- Ensure a site visit(s) to the proposed project area.
- Ensure a historical review is included.
- Provide a copy to KMKNO, and Mi'kmaw Communities that provided MEK data.



Kwilmu'kw Maw-klusuaqn Negotiation Office
Mi'kmaq Rights Initiative

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