

*Tool 1*

# Inventory of Cultural Rights

Step 1 of Undertaking an Assessment  
of Impacts to Cultural Rights and Values



THE INDIGENOUS CULTURAL RIGHTS AND INTERESTS TOOLKIT



FIRST NATIONS  
MAJOR PROJECTS  
COALITION

*Spirit of the Land*

# Spirit of the Land



**The Indigenous Cultural Rights and Interests Toolkit** has been co-developed by the First Nations Major Projects Coalition (FNMPC) and its First Nation partners, the Anishinabek Nation, and Stelat'en First Nation, Nadleh Whut'en First Nation, Saik'uz First Nation, and Cheslatta Carrier Nation ("Carrier First Nations").

Cover artwork is created by Indigenous artist, Johnny Ketlo III who is a member Nadleh Whut'en located in north central BC. The Nadleh Whut'en community is a member of the FNMP.

# Purpose

The first step in assessing the potential cultural impacts of a proposed major project is to develop an inventory of cultural rights. By identifying and documenting what matters most to the community, including cultural rights that are most at risk and priorities for revitalization, a First Nation can best allocate time and resources towards their protection and resurgence. The process of determining at-risk rights and community priorities includes looking at potential impacts from the new project as well as combined effects of multiple developments that have occurred, are occurring, or are likely in the future to occur<sup>1</sup> within the same culturally important areas.

This Tool is designed to bring Indigenous voices, stories, knowledge, and experiences to the forefront to help understand the value and use of the potentially impacted territory from the perspective of the cultural rights holders. Within an Environmental Assessment (EA) process, this Tool seeks to inform the government and/or Proponent about what is important and what is at stake from an Indigenous lens.

## Terminology

The following terminology is used throughout this Tool. Definitions for each term are provided below.

- » **Cultural Landscape:** large areas that are culturally known and connected to cultural use in ways passed down between generations; also known as the lived landscape.
- » **Cultural Keystone Places:** areas of exceptional high cultural importance, often associated with areas of regional biodiversity.
- » **Cultural Keystone Species:** species that “shape in a major way the cultural identity of a people, as reflected in the fundamental roles these species have in diet, materials, medicine, and/or spiritual practices”<sup>2</sup>.

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<sup>1</sup> These non-project specific effects are called “cumulative effects”.

<sup>2</sup> Garibaldi and Turner, “Cultural Keystone Species,” 4.

# Principles

In the development of its *Guidance Appendices to the Major Projects Assessment Standard (2020)*, the First Nations Major Projects Coalition (FNMPC) identifies some key principles associated with the practice of cultural impact assessment in relation to Indigenous peoples during major project assessment. These principles include:

- » Recognition that Indigenous cultures have different ways of knowing and communicating that should be incorporated into the cultural impact assessment.
- » Cultural knowledge and information is the property of culture holders and must be protected and respected.
- » Recognition that cultural impacts can only be understood in context – from the perspective of the culture holders themselves.
- » Recognition of culture as multi-dimensional, and that impacts can occur on a variety of cultural resources

Building on these principles, some further considerations for conducting an inventory of cultural rights may include:

- » The identification of cultural rights should be done by the Nation and led by the Nation's Knowledge holders.
- » The identification of cultural rights should include both past and present considerations (for example, some cultural spaces may no longer be accessible, yet should still be considered in this assessment).
- » The identification of cultural rights should include the spaces, areas, activities, resources, environments, plants, animals, etc., that are important and currently located or practiced within the Nation's territory, as well as those that may no longer be accessible or practicable.
- » When identifying cultural rights, both tangible (material) and intangible (immaterial) rights should be identified. Tangible cultural rights are typically understood as physical and may include things such as burial sites, important harvesting grounds, and hunting camps. Intangible cultural rights and values are generally considered non-physical and may include things such as sense of place, spirituality, way of life, stories, and cultural identity.
- » When identifying cultural rights, take into consideration the geographic extent of the right. Some cultural rights may not be as geographically situated as others (e.g., a specific site necessary for ceremony as opposed to a building necessary for ceremony that can be relocated). Some cultural rights may be less tied to or dependent upon continued access to, or the integrity of a specific geographic setting, but could still be impacted by a major project (e.g., a fishery may be a necessary location for cultural practice and knowledge transmission, but the specific location of the fishery is less important).

# Example Approaches to Identify and Inventory Cultural Rights



The following list represents a selection of example approaches available to First Nations to aid in identifying and inventorying cultural rights. These approaches can be used on their own, or in combination with one. Selection of the approach should be grounded in a First Nation's needs. Contextual factors should inform the selection of an appropriate approach, such as the extent to which access and use to a Nation's traditional territory has been constrained by existing development or settlement (i.e., it is "fenced off" from use), the existing extent of cumulative effects, and the type and location of the project. For example, First Nations that have had significant alterations to their ability to access traditional territories may derive substantive value from a Traditional and Current Use Study which illustrates how their ability to engage in cultural practices has changed over time. Other key factors to consider when selecting an approach to identifying and inventorying cultural rights include staffing capacity (e.g., the number of individuals able to participate in the approach), available funding, and the capacity of the community to engage in discussions and meetings.

It is important to note that the approaches to identifying and inventorying cultural rights presented below do not need to be implemented in isolation. A method of triangulation, where multiple methods of identifying cultural rights are applied, can be a useful tool. Triangulation allows for multiple findings to be compared. Where there is agreement on the findings, triangulation can serve as a way of "confirming" the study results and increases the confidence in effects assessment. Comparatively, if the findings disagree, this can initiate a transparent examination of the sources of difference. If differences cannot be reconciled, the confidence in the predictions will be reduced and a more precautionary approach is required. In general, it is always preferable to implement a triangulation approach so that data from multiple sources can be brought together to increase confidence in study results.

# Direct Community Engagement Sessions and Surveys



Direct community engagement is a useful way to collect data with community members. This approach includes methods like interviews, focus groups, and surveys, and you may choose one or more methods to address an issue. Interviews work well for detailed conversations with individual members about a topic and can be flexible depending on the person and the context. Focus groups are appropriate when discussion about a topic with a group of members would provide helpful information. Surveys are useful tools for reaching higher percentages of community membership to answer a fixed set of questions. All direct engagement methods are useful because they allow for community members' Knowledge, thoughts, and opinions to be communicated.

The principles of Free, Prior, and Informed Consent (FPIC) and ensuring anonymity are key components of ethical community engagement. FPIC ensures that community members have the right to understand and consent to their participation in research, empowering them as active participants in the process. Similarly, anonymity protects the privacy and confidentiality of participants, allowing for honest and open communication without fear of reprisal.

Benefits of direct community engagement include the ability to gather rich and detailed insights directly from community members, tailor approaches to specific community needs, empower community involvement in decision-making, and foster a sense of ownership and inclusion. It also fosters trust and transparency between community members and researchers as well as facilitates the identification of unique community strengths and resources. Potential drawbacks include resource intensiveness (e.g., time and money), potential bias in data collection, and difficulties in ensuring representation.

## **All of these engagement methods follow a general process:**

1. Plan the method: choose the method and design the questions to be asked
2. Plan the engagement: create a list of members for potential participation, contact them to see if they are interested, and make a participant list of people who say yes
3. Obtain consent: describe the process to participants and obtain their consent before proceeding
4. Conduct the engagement: proceed with the method and document the results (audio / video recording, note-taking, survey collection)
5. Manage information: process and store the data properly after the engagement (transcription, editing, survey cleaning)



6. Analyze data: conduct thematic analysis of the data based on the questions you are trying to answer
7. Communicate the results: this can be a written report, a map, a video, whatever is the best way to communicate with the intended audience

The following table summarizes some key strengths and limitations of the direct community engagement/survey approach:

## Strengths

- » Directly engages with community members and Knowledge holders, allowing for the collection of detailed and specific information
- » Engagement sessions and surveys can be modified based on community needs to provide specific information
- » Empowers community members to have their voices heard on what matters most to them

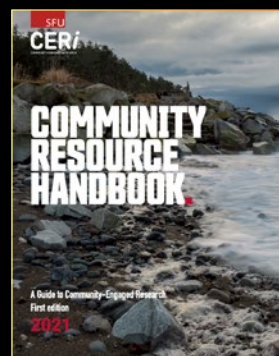
## Limitations

- » Collected information is often highly diverse and will need some form of coding/compilation
- » Engagement sessions can be time-intensive and expensive
- » There can be difficulty ensuring robust representation of diverse identity groups within a First Nation

**Some resources providing further information on direct community engagement/survey approaches include:**

[Community Resource Handbook 2021: A Guide to Community Engaged Research](#)

[Indigenous Community Engagement Methods](#)



# Use and Occupancy Studies



Use and Occupancy Studies are often included as an aspect of Impact Assessment. Other names for this type of study include Knowledge and Use Study, Traditional Use Study (TUS), Traditional Land Use (TLU) Study, Traditional Land Use and Occupancy Study (TLUOS), Traditional Knowledge and Use Study (TKUS). These studies refer to a category of research that uses mapping interviews to document where and how community members practice their rights and culture throughout their territory. The intention of such studies is to document knowledge and experience from members within their living memory. This includes knowledge that has been passed down to them by previous generations and can also include historical and ethnographic data.

The process for this type of study centers on interviews with members in which they map their use, occupancy, and rights-practice including tangible, bio-physical elements and activities, as well as more intangible aspects like knowledge transmission and connection to place. Use and occupancy data is valuable for demonstrating ongoing practice of rights and culture as well as documenting change over time in rights practice (cumulative effects) and anticipated impacts in the future (project-specific impact assessment).

Traditional and current use studies are the most common form of study conducted by and with First Nations in relation to a proposed project. This means that in some cases there is already readily available traditional and current use studies information for that First Nation in the proposed project-affected area. Great caution and deference to Nation requirements is critical to the choice of whether and how to use existing study data rather than conduct a new study, however. While using existing data can reduce consultation fatigue amongst community members, it is also possible that older data may have changed over time due to changing conditions and new community members engaging in cultural practices. Older studies may not appropriately match the geographic area of focus for a new project. And relying on older data may also remove the ability to engage community members on the critical question of how the new proposed project is likely to impact on their cultural rights. In the end, it is critical for First Nations to decide whether and how to use the results of older studies and whether new studies are required.

In addition, it is never appropriate to use traditional and current use data from one First Nation as a proxy/stand-in for another Nation, as use and occupancy and values differ from one group to another.

The following table summarizes some key strengths and limitations of the traditional and current use studies approach:



## Strengths

- » Draws on a variety of knowledge sources, including oral histories, input from Knowledge holders, and archival review
- » Captures Indigenous perspectives and Indigenous Knowledge, fostering cultural revitalization and community empowerment
- » Illustrates both past and present conditions, identifying changes over time
- » Existing information and studies can sometimes decrease the engagement burden on communities
- » Can provide detailed and relatively up to date Indigenous use and occupancy data for the Project-affected area

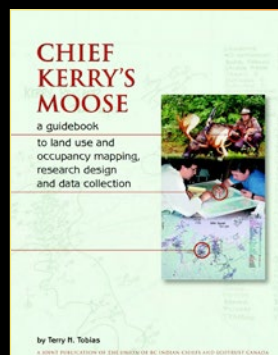
## Limitations

- » Where past information is not available, extensive community engagement is required which can contribute to consultation fatigue
- » Traditional/past use may be difficult to assess and under-reported due to loss of knowledge and access to culturally important locations, resources, and practices
- » Only a portion of the population is likely to be involved in any such study. Again, absence of recorded value is not to be confused for absence of value
- » Use of the data needs to have community-endorsed confidentiality provisions in place

### Some resources providing further information on Traditional Use and Knowledge Study approaches include:

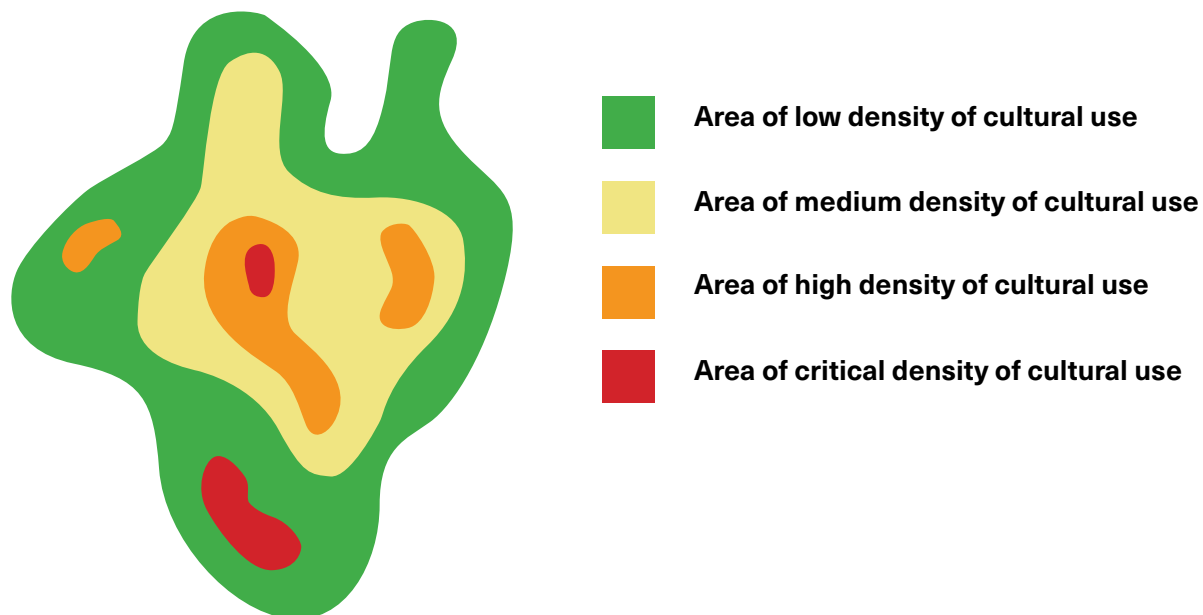
[Chief Kerry's Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design, and Data Collection](#)

[Living Proof by Tobias and Associates](#)



# Density of Use Maps and Mapping of High Priority Areas

Developing maps that depict traditional use areas, occupancy on the land, spiritual, learning and gathering sites, cultural landscape values, and travel routes, etc., can produce a visual representation of cultural rights. A density use map shows how different places are used and how crowded they are. They can show us things like where people most frequently use the land, areas that people are avoiding, and can locate areas where people have noticed a lot of negative environmental impacts from industry. These maps are useful because they help us understand how land is being used (or not used) and help to make decisions about things like where to avoid putting a road.



Density use maps are especially useful during cumulative effect assessments because they provide spatial data on land uses and activities. By overlaying these maps with other datasets like habitat maps and pollution sources, researchers can identify areas vulnerable to cumulative impacts.

There are, however, some important limitations of this mapping process:

- » While mapping can represent both tangible and intangible cultural rights and values, the process relies heavily on cultural values that can be identified on a map. This means that some cultural rights and values which are not tied to a specific geographic location may not be identified in the mapping process.

- » Culture holders may be reluctant to share sensitive information about important places and spaces. In addition, only a subset of culture holders will be involved in any such data collection exercise. As a result, any lack of data should not be taken to reflect absence of value. With mapping processes there is always the chance that data may be misrepresented. Confidentiality is critical and must be assured through the methods used to collect, analyze, and represent cultural information.
- » Cultural values mapping can be converted to show areas with higher density of reported cultural use and values. That said, they tend to be focused on quantity of reported uses and values; it is much harder to map quality of use and values, which may be of equal or greater importance depending on the valued embodied in the location.

The following table summarizes some key strengths and limitations of the cultural values density mapping approach:

## Strengths

- » Provides a visual representation of areas of higher reported cultural values
- » Allow for the representation of raw data (e.g., number of moose) and also rates and ratios (e.g., how often something happens in one place compared to another place)
- » Serves as a method for compiling and organizing diverse data
- » Community members may feel at home physically and visually representing how and where their rights are practiced, allowing them to share knowledge in a way that is valuable to them

## Limitations

- » Requires extensive community engagement and surveying
- » Can be costly and resource intensive
- » Heavily reliant on geographic locations and may exclude cultural rights and values that are not tied to a specific place
- » Lack of data appears as “non-importance” meaning that some locations are undervalued when in fact absence of evidence is not “evidence of absence” of value
- » Communities may not want to share either areas of higher value, or distinguish between higher and lower value areas, which suggests some areas are “open”



**Some resources providing further information on cultural values density mapping approaches include:**

[Density Mapping with GIS](#)  
[Dot Density Maps](#)

# Identification of Cultural Landscapes



The identification of cultural landscapes represents another method for identifying and inventorying cultural rights and values. Defined as “any geographical area that has been modified, influenced, or given special cultural meaning by people”<sup>3</sup>, cultural landscapes represent the intersection of landscape with the impressions, beliefs, and rituals (culture) associated with the place. The significance of cultural landscapes is determined by the “spiritual, cultural, economic, social and environmental aspects of the group’s association with the identified place, including continuity and traditions”<sup>4</sup>. The identification of cultural landscapes therefore represents a unique way of protecting cultural rights and values that are tied to the land.

This method can be used as a management tool for efforts such as cultural heritage preservation/revitalization, environmental impact assessment, land use planning, cumulative effects management, monitoring programs, decision-making processes, and others. Methodologies used to delineate cultural landscapes may be diverse and rooted in the values and worldviews of local Indigenous people; approaches often require working with Indigenous Knowledge Holders, land users and community members to:

1. Define the ICL through multiple lenses and multi-faceted values, including environmental, economic, ecological, physical, social, cultural, spiritual, historical and/or other key ways of understanding the importance of the landscape;
2. Characterizing relationships with the land, including the interface between the landscape and the traditional way of life on the land; and
3. Articulating the Indigenous rights and responsibilities associated with stewardship of the land.

Delineation of cultural landscapes may also involve further documentation and characterization of the landscape in the form of mapping, photography/video, archival research, collection of traditional stories and oral histories, and/or supplemental gathering of place-based Indigenous Knowledge regarding key areas within the landscape. Using these methods to identify, recognize and safeguard Indigenous Cultural Landscapes (ICLs) can help protect Indigenous cultural heritage for generations to come while also contributing to decolonization, reconciliation, self-determination and revitalization of Indigenous governments and Nations.

A number of organizations have implemented the concept of cultural landscapes to support the protection of ecological areas. For example, the Northwest Territories’ Protect Areas Strategy (PAS) has implemented the use of cultural landscapes to “protect special natural and cultural areas,” and “protect core representative areas within each ecoregion”. This PAS further works to reinforce the leadership role of communities, regional organizations and/or land claim bodies in land and water use management<sup>5</sup>. To determine the boundaries of a distinct cultural landscape, the PAS requires a series

<sup>3</sup> Parks Canada, “Parks Canada Guiding Principles and Operational Policies,” 119.

<sup>4</sup> Susan Buggay, “An Approach to Aboriginal Cultural Landscapes” (Historic Sites and Monuments Board of Canada, March 1999), 32.

<sup>5</sup> The Northwest Territories Protected Areas Strategy Advisory Committee, “Northwest Territories Protected Areas Strategy,” September 27, 1999, 3, [https://www.gov.nt.ca/sites/ecc/files/resources/pas\\_1999.pdf](https://www.gov.nt.ca/sites/ecc/files/resources/pas_1999.pdf).

of studies including ecological and socio-cultural studies, the examination of place names, on-territory. Boundary delineation, and the examination of historical records and harvesting patterns. These studies are conducted in a community-driven setting where there is an Indigenous community that is the “sponsor” of the area subject to cultural landscape delineation.

Similarly, the identification of Tribal Parks, such as the K’ih Tsaa’dze Tribal Park in British Columbia is a way to protect and manage cultural landscapes under using ecosystem-based conservation planning methods for the purpose of maintain Indigenous traditional and contemporary cultural uses while restoring and maintaining ecological integrity and biological diversity<sup>6</sup>.

It is worth noting that cultural landscape delineation is only applicable to geographically situated cultural sites. This means that cultural landscapes are generally “mappable” and have boundaries that are clearly definable. However, as previously noted, many cultural rights are intangible and may not be connected to a single definable location. In these situations, cultural landscape delineation may fail to accurately identify a Nation’s breadth of cultural rights.

The following table summarizes some key strengths and limitations of the cultural landscape delineation approach:

## Strengths

- » Can lead to physical recognition and associated protection of an important landscape (e.g., Tribal Park, cultural landscape under the Historic Sites and Monuments Board of Canada, or other delineation)
- » Identifies culturally important locations – including both tangible and intangible factors

## Limitations

- » Because it is based on identified geography, there must be clearly identified boundaries
- » Only represents cultural rights and values tied to specific locations
- » Can take an extensive amount of time and resources



### **Some resources providing further information on Cultural Landscape approaches include:**

[Doig River First Nation Cultural Spaces Plan](#)

[Indigenous Cultural Landscapes Final Report by The Wahkohtowin Development Group Inc.](#)

[A cultural landscape approach to community-based conservation in Solomon Islands by Richard K. Walter and Richard J. Hamilton.](#)

<sup>6</sup> K’ih Tsaa’dze Tribal Park,” Doig River First Nation, accessed June 29, 2022, <https://doigriverfn.com/our-lands/kiht-saadze-tribal-park/>.

# Indigenous Knowledge and Ecological Studies, and the Identification of Cultural Keystone Places/Species



By combining Indigenous Knowledge with Western scientific ecological studies, places, species, and resources of cultural importance can be identified. Ecological studies that identify habitat suitability data and the distribution of biophysical resources can provide an initial layer of information regarding the relative value and productivity of certain areas and species to the exercise of rights. When appropriately combined with Indigenous Knowledge, the cultural importance of these areas and species can be identified.

Because Indigenous Knowledge is developed through long-term observation of natural phenomena and relationships within specific environments over time, there are many ways in which this Knowledge can be incorporated into Environmental Assessments. For example:

- » Indigenous Knowledge can provide insight into biodiversity, local ecosystems, ecological processes, and ecological health that may otherwise not be documented through western science knowledge. This may include distributions and populations of species, habitat preferences, animal health, and information on migration corridors and seasonal movements. This can also include changes in species population numbers and fluctuations in the abundance of keystone species.
- » Indigenous Knowledge can contribute to the gathering of critically important information on changing climate systems, including changes to weather and climate patterns and associated impacts on wildlife movements and behaviours.
- » Indigenous Knowledge may provide information on threshold levels related to animal, fish, plant, and other resource harvesting (i.e., to identify boundaries between acceptable and unacceptable levels of impact or change), which can inform monitoring strategies.
- » Indigenous Knowledge may provide information on important cultural and social values including traditional stories and oral histories, ceremonies, medicinal practices, sacred-sites, cultural heritage and traditional practices, archaeological sites, travel routes, traditional camps, timelines, identity, sense of place and other land-based social, cultural, or spiritual practices or historical information.

One way to incorporate Indigenous Knowledge into EA processes is through the identification of Cultural Keystone Places and Species.

Defined as “particular places of high cultural importance – places that are also generally high in regional biological diversity”<sup>7</sup>, Cultural Keystone Places (CKPs) are one method of identifying “places of

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<sup>7</sup> Cuerrier et al., “Cultural Keystone Places: Conservation and Restoration in Cultural Landscapes,” 430.



exceptional and cultural value so that the depth of their roles in a people's cultural fabric can be more widely appreciated"<sup>8</sup>. Similarly, Cultural Keystone Species (CKSs) represent species that "shape in a major way the cultural identity of a people, as reflected in the fundamental roles these species have in diet, materials, medicine, and/or spiritual practices"<sup>9</sup>. CKPs and CKSs therefore represent another means of identifying cultural rights and values.

There are a variety of ways in which a cultural keystone place can be identified. The following questions can be used to help guide the identification of a cultural keystone place:<sup>10</sup>

1. Is there agreement within a cultural group about the importance of the place?
2. Does this place occur in language and discourse (i.e., does the place have a particular name or associated vocabulary)?
3. To what degree and extent is the place visited, occupied, or involved in cultural activities?
4. What types of cultural activities are carried out at the place?
5. How is the place reflected in archaeological resources, in cultural narratives, origin stories, songs and/or ceremonies, etc.?
6. To what extent is the landscape, habitats, or plant and animal species managed or tended at a place?
7. To what extent is the given place unique in its role of supporting cultural identity and survival?
8. What is the degree of diversity (of both species and habitats) represented at the place?
9. Is the place important as a meeting location where groups come together for economic and social exchange?
10. What role does the place play in cultural protocols?

Similarly, the following elements can be considered when identifying a cultural keystone species<sup>11</sup>:

1. The intensity, type, and various forms of use of the species;
2. The naming and terminology of the species in a language;
3. The role of the species in narratives, ceremonies, or symbolism;
4. The persistence and memory of use of the species in relationship to cultural change;
5. The level of unique position the species has in culture;
6. The extent to which the species provides opportunities for resources acquisition from beyond the territory.

By asking these questions and engaging directly with community members to determine which places and species they feel are key to their identity and survival, cultural keystone places and species represent methods of identifying cultural rights which may allow for the identification of more intangible elements of cultural rights and may better include cultural rights that are not easily delineated geographically.

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<sup>8</sup> Cuerrier et al., "Cultural Keystone Places: Conservation and Restoration in Cultural Landscapes," 440.

<sup>9</sup> Garibaldi and Turner, "Cultural Keystone Species," 4.

<sup>10</sup> Based on the ten general indicators for assessing the overall importance of a place as provided by Cuerrier et al., "Cultural Keystone Places", 432.

<sup>11</sup> Ann Garibaldi and Nancy Turner, "Cultural Keystone Species: Implications for Ecological Conservation and Restoration," *Ecology and Society* 9, no. 3 (2004): 5, <https://doi.org/10.5751/ES-00669-090301>.

The following table summarizes some key strengths and limitations of joint Indigenous Knowledge/ Ecological Studies approaches:

## Strengths

- » Helps to identify areas and species of cultural and ecological importance
- » Uses “two eyed seeing”, combining Western scientific data and Indigenous Knowledge, adding the temporal depth and location-specific knowledge of Indigenous Knowledge holders to the quantitative data of scientists

## Limitations

- » Focuses on “pinpointing” key species, resources, and areas, and may fail to represent the holistic nature of culture and the environment
- » Requires extensive community engagement
- » The focus on ecological study means that some cultural values may be missed if they do not have a tangible “use value” (i.e., use as a food source, as medicine, as a resource, etc.)
- » There are potential risks of Indigenous Knowledge component being “tokenized” in comparison to Western science



### **Some resources providing further information on Joint Indigenous Knowledge/ Ecological approaches include:**

[Enacting and Operationalizing Ethical Space and Two-Eyed Seeing in Indigenous Protected and Conserved Areas and Crown Protected and Conserved Areas by Danika Littlechild and Colin Sutherland.](#)

[Decolonizing Research Paradigms in the Context of Settler Colonialism: An Unsettling, Mutual, and Collaborative Effort by Mirjam B.E. Held](#)

# Codification of Laws and Norms



Many of the Nation's laws and norms represent both cultural values and intangible cultural resources. These laws and norms can therefore be used as guide to identify cultural rights and what may be considered an adverse impact on those cultural rights.

For example, the enactment of the water management regime by the Yinka Dene 'Uza'hné from Nadleh Whut'en, Stelat'en and later Saik'uz First Nation (including both the *Yinka Dene 'Uza'hné Surface Water Management Policy* and *Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards*) represents an expression of living governance and laws. The Policy and Standards are designed to recognize that importance of surface waters and water quality in Aboriginal title and rights. In doing so, the Policy and Standards highlight the centrality of water as a cultural right and value. By codifying existing laws and norms held by the Nation, important cultural rights and values can be identified and inventoried.

In addition, if laws and norms are codified, they may actually be used as a foundation or "lens" for the assessment of effects from a project on culture and other Indigenous values.

It is important to note that the "translation" of Indigenous laws and norms into forms that can be compared and applied to Western legal and policy traditions has been critiqued as trivializing Indigenous lifeworlds<sup>12</sup> and governance<sup>13</sup>. By codifying laws and norms, there is a potential risk of "open[ing] up Indigenous legal orders to further colonization"<sup>14</sup>, as this codification may mold, or reshape, Indigenous legal traditions into forms which are unable to accurately reflect the complex and holistic nature of Indigenous ways of life. To avoid such risks, one possible approach could be working to make Indigenous laws "accessible" to non-Indigenous others, while simultaneously ensuring that these laws remain grounded solely within the Nation's way of knowing. Such a process may help ensure Indigenous laws and norms are not generalized and are not seen as static and either aligned with, or contrary to, Western legal traditions. One way to help make Indigenous laws accessible is draw on community processes and procedures to illustrate how legitimate collective decisions have been reached for specific issues.<sup>15</sup> Overarchingly, individual Indigenous Nations will need to assess what works best for them and how they wish to operationalize their systems in relation to western systems of EA. Some examples of First Nations that have used some aspect of their laws and norms as lenses through which to assess the acceptability of effects of specific projects include the Okanagan Indian Band (Revelstoke Unit 6 Generating Station) and Tsleil-Waututh Nation (Trans Mountain Expansion (TMX) tanker and pipeline project).

<sup>12</sup> Aaron Mills describes a lifeworld as the nature, origin, and way of knowing that defines an Indigenous way of life, "which situate us in creation and thus allow us to orient ourselves in all our relationships in a good way" (Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today," *McGill Law Journal* 61, no. 4 (December 22, 2016): 852, <https://doi.org/10.7202/1038490ar>).

<sup>13</sup> Mills, "The Lifeworlds of Law," 847-84.

<sup>14</sup> Mills, "The Lifeworlds of Law," 883.

<sup>15</sup> Hadley Friedland, "Practical Engagement with Indigenous Legal Traditions on Environmental Issues: Some Questions," in *Environment in the Courtroom*. Allan Ingelson (Calgary: University of Calgary Press, 2019), 82-91.

The following table summarizes some key strengths and limitations of the codification of laws and norms approach:

## Strengths

- » Draws on existing Nation-specific laws and norms
- » Ties cultural rights and values to broader Nation sovereignty and rights
- » Can be used to attribute value to both tangible and intangible cultural rights and values, including both practices and identity
- » Can provide an Indigenous “lens” through which effects of a project may be assessed

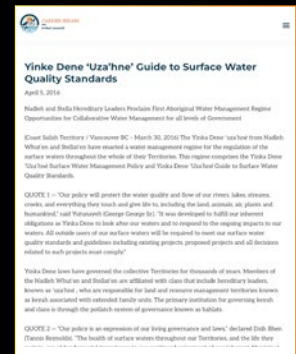
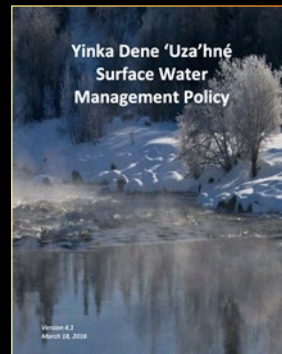
## Limitations

- » Limited by the availability of laws and norms; if laws and norms are not already codified, this can take many years to complete
- » May require the sharing of sensitive information
- » Must be under the control of the First Nation when converting laws and norms into any sort of assessment “lens”; this cannot be done by any outside party

### Some resources providing further information on the Codification of Laws and Norms approaches include:

[Yinka Dene 'Uza'hné Surface Water Management Policy](#)

[Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards](#)



## Summary

Tool #1 is designed to help identify inventory cultural rights and the related cultural resources necessary to uphold those rights, within a First Nations' territory. The identification of these rights should be grounded in the voices, stories, knowledge, and experiences of community members. The information collected through this Tool may be used to inform the government and/or Proponent about what is important to the Nation, and what is at stake. This identification and inventorying may also take into consideration past and present conditions (e.g., spaces and resources that are currently practiced as well as those that are no longer accessible), both tangible and intangible cultural rights, and the geographic extent of the right. There are a variety of different ways to identify and inventory cultural rights, each with their own strengths and weaknesses. These methods include direct community engagement, density of use and heat maps, traditional and current use studies, the identification of Cultural Landscapes, Indigenous Knowledge/Ecological studies and the identification of cultural keystone places/species, the codification of laws and norms, and the important role that “triangulation” of results from multiple sources and approaches to the inventorying of cultural rights can have in the confidence we have that cultural rights have been properly inventoried.

## DISCLAIMER

This Toolkit has been developed from the perspective of the First Nations Major Projects Coalition (FNMPC) and does not represent the perspectives of the federal government, provincial governments, and territories, or industry. Although it represents a general First Nations perspective, it does not represent the specific perspective any First Nation as every First Nation will have its own distinct perspective.

The Toolkit is designed to provide support to First Nations that are engaging with project proponents in discussions about offsetting residual cumulative effects affecting cultural rights and values within their territories. The Toolkit is not to be viewed as prescriptive on how to assess impacts on cultural rights and each First Nation should determine its own method and process for assessing impacts on its cultural rights in accordance with its laws, methodologies, protocols, and processes. A First Nation that chooses to engage with a project proponent or the Crown in discussions regarding impacts on cultural rights may want to obtain legal advice prior to using this Toolkit in those discussions.

The Toolkit has not been agreed to or endorsed by the federal government, provincial or territorial governments, or by industry. Therefore, if a First Nation chooses to use any of the methodologies or processes in the Toolkit to assess impacts of a major project on its cultural rights, the results of the assessment are not legally binding on the other levels of government or project proponent. The First Nation will need to seek agreement with other levels of government and/or a project proponent on how to apply the results of the First Nation's assessment.

The Toolkit is designed to be a collaborative and led by Indigenous Groups. While collaborative implementation, coupled with capacity support, is an option to help foster relationships between proponents/government and Indigenous Nations, this Toolkit should not be unilaterally applied by industry or government. First and foremost, this Toolkit must be understood to be an Indigenous-led process, grounded in a community's principles and leadership.

Cultural rights and values must be viewed as sensitive information. The principles of First Nations ownership, control, access, and possession (OCAP) is included in the Toolkit, but we wish to make clear that this concept is not recognized as law or policy by other levels of government. A First Nation may take the position that OCAP protects their sensitive cultural information from public disclosure, but any information shared with the federal government and provincial or territorial governments may not remain confidential due to federal and provincial privacy laws and procedural fairness in regulatory processes. Therefore, a First Nation must continue to exercise caution when sharing information in such processes.

*Spirit of the Land*