Implementation Guide

for the **Spirit of the Land** Indigenous Cultural Rights and Interests Toolkit

FIRST NATIONS MAJOR PROJECTS COALITION

Spirit of the Land

Acknowledgement

The Indigenous Cultural Rights and Interests Toolkit has been developed by the First Nations Major Projects Coalition (FNMPC) with support from Firelight and its First Nation partners, the Anishinabek Nation, Stellat'en First Nation, Nadleh Whut'en First Nation, Saik'uz First Nation, and Cheslatta Carrier Nation ("Carrier First Nations").

Thanks, and acknowledgements go to the Anishinabek and Carrier First Nations elders, knowledge holders, staff, and leadership who contributed to this project. We also extend our appreciation to Lheidli T'enneh First Nation for their participation in the workshops and for sharing perspectives that informed the development of this work. This project could not have been completed without the support and expert knowledge of all who contributed.

Prepared by:

FIRST NATIONS MAJOR PROJECTS COALITION

With support from:

firelight

Submitted to:

First Nations Major Project Coalition

Artist Statement

Johnny Ketlo, *Nadleh Whut'en First Nation*

" The Owl Guardian piece was created with deep intention and carries teachings from my own family lines. The owl stands as the main guardian, watching over the Keyoh (our ancestral territory) with clarity and protection. Within the piece, I included both the frog and the salmon. My father is of the Owl clan and my mother is Frog clan, so their presence symbolizes lineage, balance, and the joining of two worlds. The salmon represents Nadleh itself "where the salmon return" and speaks to renewal, strength, and the spirit of coming home. Together, these elements watch over the land in a way that honours our Dakelh teachings and the responsibilities we carry to our territory and our people."

Title of work: ***Turtle Island***

Artist Statement

Michael Cywink, *Whitefish River First Nation*

"For this piece I thought about our connection to land, water, original teachings and our responsibilities to Turtle Island. The middle section is Turtle Island; this beautiful land we call home. Our creation stories tell us that this land rests on the back of a giant turtle. This land provides everything we could ever ask for, so we have a responsibility to take care of her. The orbs around the turtle represent the spirits. The spiritual connection between the physical world we live in and everything within it. They are always there and we are always connected. And the flowers represent the beauty this world has to offer and a reminder of how we need to protect that beauty. This land, this water, the plants and spirit are always connected. They always have been and always will be."

Editor's Note

Dated: September 5, 2025

We are honored to present the First Nations Major Projects Coalition's (FNMPC) Primer for the Spirit of the Land Indigenous Cultural Rights and Interests Toolkit with deep gratitude to the communities, organizations, and individuals who helped bring this important resource to life.

This toolkit was developed through workshops convened by FNMPC in partnership with the Anishinabek Nation (Ontario) and the Carrier Nations—Nadleh Whut'en First Nation, Saik'uz First Nation, and Stellat'en First Nation (Northern British Columbia)—with support from The Firelight Group and Lheidli T'enneh First Nation. These sessions were a vital step in strengthening a community-driven approach to cultural assessment in the context of major project development.

Each gathering began with a reflection on the enduring relationship between First Nations—both treaty and non-treaty—and their lands, cultures, and Aboriginal rights. A presentation of the Toolkit set the stage for world café-style breakout discussions, where participants explored foundational elements of cultural assessments: cultural inventories, baseline and current conditions, and cumulative effects. These dialogues generated valuable, community-aligned insights and practical next steps, affirming the significance of culturally grounded, community-led approaches.

We are deeply thankful to all workshop participants for sharing their time, knowledge, and experience. Special thanks to our guest speakers for their generous contributions.

The original vision for this initiative was shaped by key thought leaders, including:

- The late Niilo Edwards (Former CEO, FNMPC)
- Regional Chief Joe Miskokomon (Anishinabek Nation, Southwest Regional Chief (Chippewas of the Thames First Nation)
- David Luggi (Advisor, Stellat'en First Nation Member)
- Angel Ransom (FNMPC, Nak'azdli Whut'en First Nation Member)
- Trefor Smith and Kimberley Keller (Formerly at Firelight)

Their early leadership and insight provided the foundation on which this toolkit was built.

We extend a heartfelt thank you to the FNMPC Environmental Stewardship Technical Team (ESTT)—then comprised of Jasmine Thomas, Jesse McCormick; and Indigenous Technical Advisors—Albertina Erickson and Betty Patrick; Firelight; and Aaron Bruce Law—for their dedication throughout the planning, development and review phases.

Valuable support and guidance were provided by Carrier First Nations Leadership, including:

Retired Chief Leween (Cheslatta), Chief Michelle (Stella), Chief Mueller (Saik'uz), Chief Ketlo, Former Chief Louie and Councillor Eleanor Nooski (Nadleh), and the committed community technicians: Douglas Casimel, Isaiah Reynolds, Nicole Wheel, James Rakochey, Cora McIntosh, Kasandra Turbide, and many others.

We acknowledge that the term “Carrier Nations” in this context refers solely to the four First Nations involved in the project and does not imply representation of all Carrier communities.

We also wish to acknowledge the Anishinabek Nation Leadership, including Regional Chief Melvin Hardy (Biinjitiwaabik Zaaging Anishinaabek)and team members: Jason Laronde, Rhonda Gagnon, Alyssa Ray, Brandon Manuel, Darlene Solomon, and Dawn Lambe, for their key support and leadership throughout the process.

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The technical and facilitation support from Firelight and Four Directions Management Services was instrumental in the success of the workshops and resource development.

Finally, our deepest thanks go to all community members who participated. Your voices ensured that this Toolkit reflects authentic perspectives, community values, and cultural integrity.

In unity and collaboration, we are reminded that meaningful progress is achieved not through perfection, but through shared purpose and partnership.

Musi Cho, Angel Ransom, Spirit of the Land Project Lead

Spirit of the Land

Disclaimer

The Indigenous Cultural Rights and Interests Toolkit (the "Toolkit") has been developed by the First Nations Major Projects Coalition (FNMPC) and does not represent the perspectives of the federal, provincial or territorial governments, nor of proponents. It also does not represent the specific perspectives of individual Indigenous Nations, as each may have their own approach to assessing impacts on Cultural Rights based on the laws, methodologies, protocols, and processes of that Indigenous Nation. The Toolkit is meant as a guide, not a prescriptive tool. Legal advice is recommended prior to engaging with either the Crown and/or proponents.

The Toolkit acknowledges systemic barriers in impact assessment (IA) processes, which often result in the exclusion of Indigenous Nation decision-making. This has led to proponents underestimating impacts on Cultural Rights and the significance of such impacts on Indigenous Nations. While this Toolkit acknowledges the deficiencies in Cultural Rights protections, it does not challenge the relative distribution of power between Indigenous Nations and other jurisdictions. However, by presenting options throughout the Tools, this Toolkit seeks to enhance the technical capacity of Indigenous Nations when exercising self-determination. The Toolkit is designed to be led by Indigenous Nations. Industry and non-Indigenous governments must not unilaterally apply the Toolkit without the express written agreement of the affected Indigenous Nation.

Cultural Rights and values must be treated as sensitive information. The Toolkit references the principles of Indigenous Nations Ownership, Control, Access, and Possession (OCAP®), which are not recognized in law or policy by other governments. While Indigenous Nations may assert that OCAP® protects their sensitive cultural information from public disclosure, information shared with governments may not remain confidential due to privacy laws and procedural fairness. Therefore, Indigenous Nations are advised to exercise caution when sharing information in such processes.

In this Toolkit, the term "Cultural Rights" is used as a working term to describe the full extent of Indigenous Rights as recognized under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While "Cultural Rights" in international law generally refer to the universal right of all peoples to participate in and benefit from cultural life, this document adopts the term more broadly and specifically in relation to Indigenous Nations.

For the purposes of this Toolkit, **"Cultural Rights"** includes—but is not limited to—the rights of **Indigenous peoples**. The use of this term is not intended to limit or narrow the scope of Indigenous Rights, but rather to provide a consistent reference point throughout the Toolkit. This Toolkit looks to each individual Indigenous Nation to articulate their own understanding of their Cultural Rights, rather than attempting to characterize the legal dimensions of Cultural Rights overall.

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Introduction

This Spirit of the Land Implementation Guide (referred to as 'the Guide') is designed to help Indigenous Nations assess and respond to impacts on their Cultural Rights that may result from major natural resource or infrastructure projects in their territory. The Guide is part of the Spirit of the Land Indigenous Cultural Rights and Interests Toolkit (the "Toolkit"), a series of integrated policy and technical guidance ("Tools") aimed at supporting Indigenous Nations with impact assessment (IA) related to Cultural Rights, developed by the First Nations Major Projects Coalition (FNMPC). This Guide is meant to be the 'how to' of the Primer, a complimentary, condensed version of the more comprehensive Toolkit that provides the foundational principles and definitions for using this Guide.

Cultural Rights are defined in the Toolkit as the rights of Indigenous Nations to practice, access, transmit, protect, and revitalize their culture. This includes both tangible culture (e.g., objects, physical resources, cultural sites) and intangible culture (e.g., language, spirituality, knowledge).
Part 1 of the Guide introduces and outlines some considerations for Nations considering undergoing a Cultural Rights assessment (CRA), including some general resources that may be necessary or helpful in conducting a CRA. Part 2 outlines each Tool and some of the methods and options available to Nations when conducting a CRA and responding to Cultural Rights impacts. These methods are provided as a summary table for quick reference in Appendix A.

Your Nation's Cultural Rights may be impacted by a project in different ways depending on the historical context, the current state of your Nation's rights, and by the project itself. For example, a project's activities may include fencing or landscape alteration that could impact a Nation's ability to practice ceremonies, maintain cultural sites, pass down language, or transfer knowledge about plant or animal harvesting. Impacts can occur for reasons related to the project itself, including environmental disruption; restricted access to the Nation's territory; or limits on the ability for the Nation to decide whether a project should proceed. Furthermore, if a Nation's Cultural Rights have been impacted in the past by other projects and activities, these rights may be more vulnerable to future change, making a new project's potential impacts even more significant. The goal of CRA is to identify and characterize how your Nation's rights may be impacted by a project so that your Nation can respond accordingly.[1]

[1] In this Guide, we use the term "Cultural Rights Assessment" or CRA to refer to all or any of the activities described in the five Tools: identifying Cultural Rights, assessing impacts, and responding to impacts through offsetting, restoration, or compensation.

The Guide does not attempt to identify or define specific Cultural Rights for Nations. Rather, the Guide presents practical options to help Nations identify Cultural Rights and which of those rights may be impacted by an existing or proposed project in their territory. It then presents options for Nations to assess and respond to potential project impacts on their rights. The Guide also outlines resources, tools, and other elements that may be necessary to conduct a CRA, such as well-trained staff, clear roles and responsibilities, financing, and communications.

In the process of creating this Guide and the accompanying Toolkit Primer, FNMPC undertook three methodology workshops (the workshops). Two were with the Nechako Nations (November 6, 2024, and February 13 to 14, 2025 in Prince George, British Columbia) and one was with the Anishinabek Nations (March 5 to 6, 2025 in Rama, Ontario). The purpose of these workshops was to provide a space for participants to be able to provide feedback, input, and ideas to FNMPC related to the first three Tools in the Toolkit. Additionally, the workshops provided the opportunity for FNMPC to gather feedback from participants to help support the development of the Guide to support the implementation of the Toolkit. Excerpts from the notes and quotes taken during these workshops were used to align the Toolkit with Indigenous priorities and ways of knowing and being.

The workshops acknowledged and amplified the urgency of implementing the Toolkit and the importance of this implementation guide for Nations undertaking CRAs. The major themes heard at the workshops solidified the importance of creating this implementation guide to support Nations undertaking CRA's within their territories:

Cultural loss and impacts: Participants emphasized ongoing loss of land use and Cultural Rights due to development pressures. Past impacts must be documented and understood to properly assess and mitigate new impacts.

Indigenous-led and governance: Nations need to lead and own their research, understand present and future impacts, and ground decisions in their own laws and governance systems. Self-determination should guide the process.

Capacity and resources: Limited capacity, unrealistic timelines, and the fast pace of development strain Nations, adding to impacts and stress.

Overall message: Change is needed in how projects are developed and assessed; implementing the Toolkit is a path toward that change.

As articulated in the Primer, the Toolkit consists of five Tools, each of which discusses different steps in the process of assessing and responding to project impacts and impact pathways:

- **Impacts** = the outcomes we see or measure.
- **Impact pathways** = the story of how project activities lead to those outcomes.

The five Tools are:

Tool 1

Inventory of Cultural Rights: How to take stock of your Nation's Cultural Rights and identify which ones to assess in relation to a project in your Nation's territory;

Tool 2

Characterizing cumulative effects on Cultural Rights: How to identify and characterize past, present, and future effects on Cultural Rights, which a specific project may add to;

Tool 3

Identifying impacts and evaluating their severity: How to identify impact pathways, conduct effects characterization, and evaluate the severity of potential impacts. This involves considering cumulative effects, implementing community-focused criteria, and drawing on community-focused thresholds in such determinations;

Tool 4

Addressing residual impacts to Cultural Rights: How to identify potential accommodations (e.g., restoration or offsetting) for impacts to Cultural Rights and/or address "non-compensable impacts"; and

Tool 5

Considering financial compensation for residual effects to Cultural Rights: How to determine when financial compensation is desired for potential impacts to Cultural Rights associated with proposed major projects.

Things to Consider Before Proceeding with a Cultural Rights Assessment

This section describes elements of the CRA process that Nations may consider before proceeding. The first section below describes some of the steps involved in conducting a CRA. The second section describes some resources that may be necessary or helpful in conducting a CRA. Taking these steps and having these resources in place may equip your Nation to carry out a CRA more effectively and efficiently.

Steps in the Cultural Rights Assessment Process

When deciding to undergo a CRA, there are many steps and decisions to make before beginning the assessment phase. Figure 2 below outlines some general steps and decision points that your Nation may consider when conducting a CRA. Note that these steps are not intended to be prescriptive, your Nation may develop your own process for assessing and responding to project impacts. However, the more planning and work that your Nation does beforehand, the better position your Nation will be in to get the most benefit out of a CRA.

The first step, once your Nation has decided to conduct a CRA, is to plan for the CRA. This includes outlining the team, accessing initial funding, understanding the project, and starting to understand the Cultural Rights that may be impacted. The next step is to identify the assessment scope or the "what" of the study, including the geographic area, timeframe, values to be assessed, and what potential issues may factor into the assessment. Then, the "how" of the assessment should be established. This includes identifying the assessment framework and how to measure the values and impacts. Your team may gather existing information and determine if this baseline[2] data is adequate to undergo an assessment, or if you need to conduct additional studies during the assessment. Communication and confidentiality parameters need to be established with the proponent and the Crown, and funding for the required assessment and associated studies will need to be secured.

With these elements in place, your team will be ready to begin the CRA process. This includes setting up the information management plan, community engagement plan, and methods of analysis, as well as organizing existing data and conducting any additional studies that will support the CRA (see Tool #1: Inventory of Cultural Rights).

The next step is the **characterization phase**, where a cumulative effects review is conducted (see Tool #2: Characterizing Existing Cumulative Effects on Indigenous Cultural Rights). This step documents how the exercise of Indigenous Cultural Rights has changed over time compared to a "baseline" in the proposed project area, providing a picture of existing conditions and pressures.

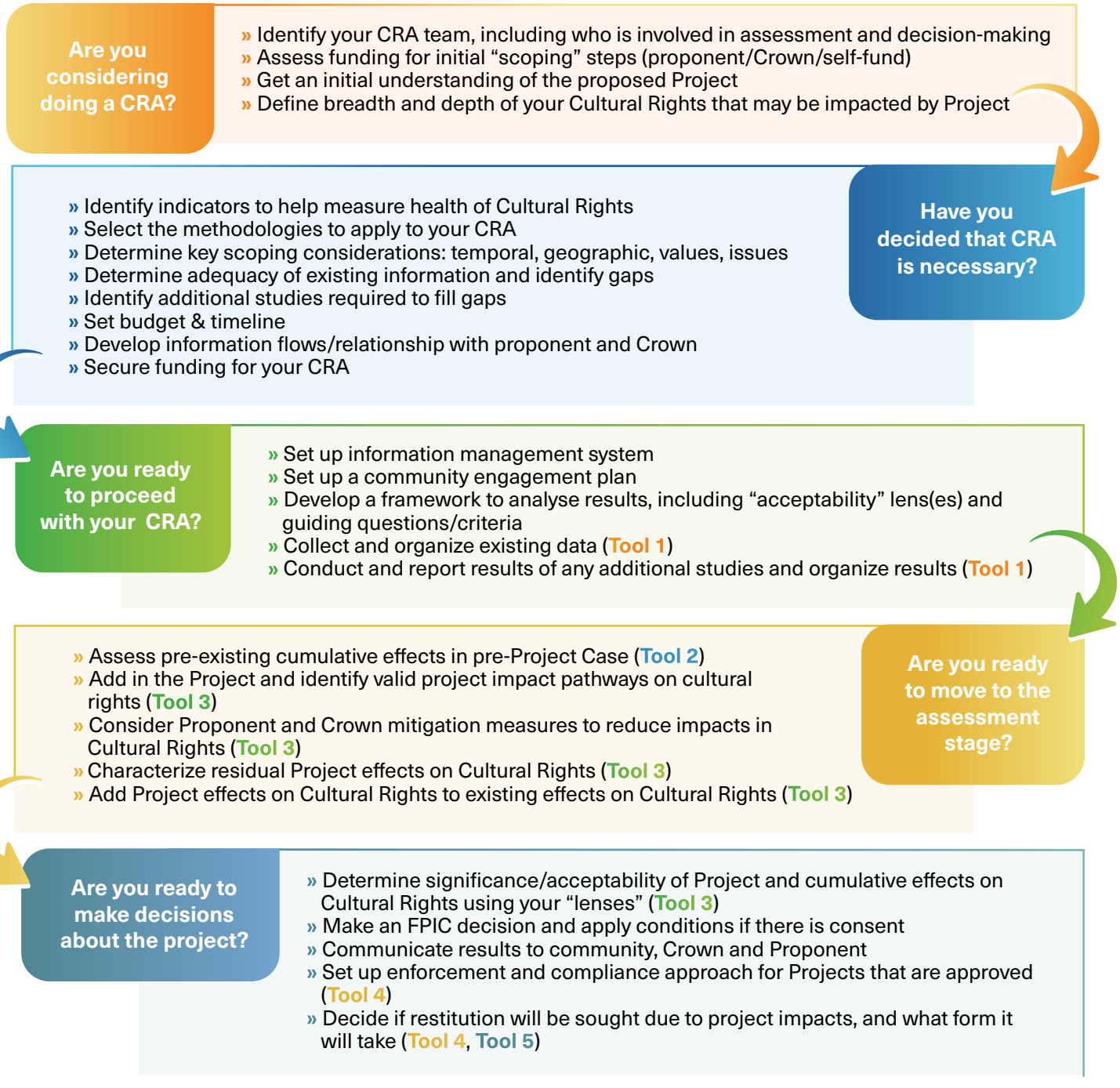
Following characterization, **the assessment phase** considers potential future project impacts. This involves identifying impact pathways, conducting an effects characterization, and evaluating the severity of potential impacts (see Tool #3: Identifying Impact Pathways, Conducting an Effects Characterization and Evaluating the Severity of Potential Impacts). Once potential impacts are identified, proposed mitigations from the proponent and Crown should be reviewed and assessed for adequacy. Your Nation may also wish to propose additional or alternative mitigations.

[2] Baseline: What the environment is like before the proposed project. This is used to compare with what the area might be like after the project and help determine the project impacts. First Nations typically push for a "pre-industrial baseline", meaning assessment of change since before major industrial activities started occurring in their territory. The current EA system more typically requires a "present day" or "damaged" baseline, which can hide effects from the past.(First Nations Major Projects Coalition, "Major Projects Assessment Standards", (FNMPC: Canada, 2019), 37.)

Finally, with baseline conditions, existing impacts, potential project impacts, and mitigation measures all considered, your team can determine the residual impacts — the impacts likely to remain after all measures have been applied.

Once this information is assessed, your Nation may be better positioned to determine if the project will have unacceptable impacts to your Cultural Rights, and you will be able to provide your consent, consent with conditions, or non-consent to the project. If you have determined that the impacts are unacceptable and mitigations are inadequate, you may also decide to pursue restoration or offsetting (See *Tool #4: Addressing Residual Impacts to Cultural Rights*) or even monetary compensation (See *Tool #5: Considering Financial Compensation for Residual Effects to Cultural Rights*).

Figure 1. Steps to conducting a Cultural Rights Assessment



Resources

This section describes resources that may be necessary or helpful in carrying out a CRA. This includes funding, staff roles and responsibilities, training, risk assessment, planning, evaluation and monitoring, and the use of case studies and templates.

Funding

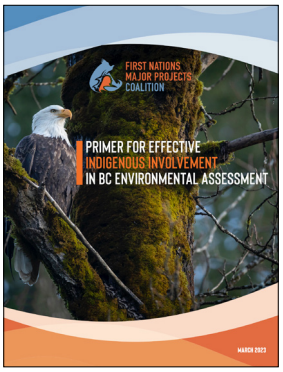
Indigenous Nations rarely fund their own assessments. Instead, project proponents are generally responsible for providing financial support when projects may affect Indigenous Cultural Rights. However, limited guidance from federal and provincial governments means Nations often need to secure funding directly from proponents or other sources.

Once notified of a project, potentially affected Nations can negotiate funding with proponents. Support may be secured for the scoping phase (to decide whether to undertake a CRA, its scope, and cost) as well as for data collection, assessment, and potential compensation-seeking. Funding agreements commonly take the form of a Capacity Funding Agreement, Project Assessment Agreement (PAA), or similar arrangement.

As with any government-to-government process, a "push and pull" dynamic can be expected. Nations should be prepared from the outset of the EA process to advance their concerns and interests. Additional resources are available on preparing for funding, best practice tips, and examples of existing government funding programs:

FNMPC

- Primer for Indigenous Involvement in the BC Environmental Assessment Process (pg. 51-54).



Government of Canada

- Indigenous Capacity Support Program (ICSP) - Funding for ongoing capacity development (staff, training, tools, systems development, etc.) outside of project work.
- Participant Funding Program (PFP) - Funding for participation in projects under the jurisdiction of the Impact Assessment Agency of Canada.

Government of BC

- Indigenous Engagement Requirements Funding Program - The Indigenous Engagement Requirements Funding Program (IERFP) provides funding for the implementation of the Indigenous Engagement Requirements within the Emergency and Disaster Management Act (EDMA).
- Aboriginal Participation Fund – Funding for supporting Indigenous communities to participate in regulatory processes under the Mining Act.

Roles & Responsibilities

Carrying out a CRA is a lot of work and requires dedicated personnel. Identifying project roles and responsibilities will help your Nation conduct effective assessments and determine where additional experts or staff may be needed. Below are some common roles and responsibilities that Nations often require when conducting a CRA. Your Nation or community will have different needs and capacities, so the roles and responsibilities outlined below are designed to be flexible and can be combined or divided as necessary.

Project Scoping:

- Community readiness assessment (assess human, financial, administrative capacity)
- Budget, workplan, schedule
- Assignment of roles and responsibilities (often by way of a terms of reference)

Project Management:

- Define project scope and assemble the research team.
- Coordinate team activities and timelines.
- Track milestones and overall progress.
- Communicate with team, community, leadership, proponent, and contractors.
- Monitor budget and expenditures.
- Report progress and results to leadership and funders.

Research:

- Guide the development and implementation of the assessment methods (framework, scope, data collection methods, report structure, etc.);
- Gather background information from community sources, published articles, grey literature, etc.;
- Gather community information through interviews, workshops, and/or focus groups with Elders, knowledge holders, and other community members; and
- Draft and finalize reports.

Community Knowledge Holder(s):

- Help to guide the development of the assessment methods; and
- Provide information for the assessment, including values, cumulative effects, impact pathways, mitigation measure effectiveness, and impact significance.

Communications and/or Community Engagement:

- Communicate with community members and bring information and questions back to the rest of the team; and
- Set up interviews, focus groups, and open houses (booking spaces, catering, sending out notices, etc.)

Subject Matter Experts (as needed):

- Provides specific expertise on a certain subject (e.g. hydrology, biology, Mapping/GIS); and
- Recommended if your assessment will be focused on a particular impact concern such as water or caribou.
- Industry experts for different sectors and particular subject matters

Legal Advisors:

- Provides legal advice and reviews of documents prior to submission and may support Nations involved in regulatory or consultation processes (for example, if the CRA will be used in a regulatory hearing or to support agreement negotiations, mediation and any dispute resolution processes).

Training and Support

To get the most out of a CRA, a Nation's staff should be well-trained in community research and impact assessment methods. Training and support programs are available to help Nations understand and use the CRA framework effectively. In addition to this Guide, the following resources may be useful for your Nation to build these skills. Note this is not an exhaustive list.

- Royal Roads University course in IA for Indigenous territories;
- Firelight training in IA and mapping;
- IAAC training in IA;
- IAAC guidance and resources on Indigenous IA;
- International Association for Impact Assessment (IAIA) training and events, including topics specific Indigenous to Indigenous communities;
- FNMPC's resources, events, and trainings, including the Primer and Guide to Effective Indigenous Involvement in federal and BC Environmental Assessment;
- BC Environmental Assessment Office EA Resources;
- BC EAO EA Indigenous Nation Guidance;
- Indigenous Nations of Quebec and Labrador Sustainable Development Institute training and support for Indigenous IA

Case studies of completed CRAs offer valuable context, inspiration, and practical insights into methods for conducting a CRA. A number of Indigenous Nations are currently working with FNMPC to carry out a real-time CRA, which will serve as real-world test cases for this Toolkit. Findings on the lessons learned, successes, and challenges from these reviews will be shared at a later date.

Other examples of CRAs include:

- Wîyôw'tan'kitaskino (Our Land is Rich), a Mikisew Cree Culture and Rights Assessment of the Proposed Teck Frontier Project Update. September 2015.
- The Squamish Nation Process for the Woodfibre Liquified Natural Gas Plant and Export Terminal Proposal (note: the reports are not public, so this is a general overview)
- The Stk'emlu'psemc te Secwepemc Nation Assessment Process and the Ajax Mine Proposal
- The Tsleil-Waututh Nation Assessment for the Trans Mountain Pipeline and Tanker Expansion Proposal
- The Ktunaxa Nation Rights and Interests Assessment and the Fording River Operations Swift Coal Mine Expansion
- IAAC Report: Operationalizing Indigenous Impact Assessment (2023 report using case studies)

A good way to reduce administrative and research efforts is to use templates whenever possible. While your community will need to refine and develop methods to suit your needs, templates provide a great starting place to lay the groundwork. Some templates include:

- Research templates, including:
  - Interview/ focus group guidelines and trackers;
  - Data trackers;
  - Work plan, role, and action items sheets; and
  - Responsibilities Tables.
- Mapping templates; and
- Report templates.
- FNMPC Resource: See pages 94-98 of Appendix A in FNMPC's Guide to Effective Indigenous Involvement in Federal Impact Assessment

Community Risk Assessment and Mitigation

This section highlights some risks, gaps, and solutions regarding resource capacity and needs that your Nation may consider before conducting a CRA. The analysis of these risks will help to guide your Nation in prioritizing funding and resourcing before you begin your CRA.

Table 1 outlines some of the risks you may face, and the following sections provide further guidance on possible solutions.

Table 1. Some Risks and Solutions to undergoing a CRA

Risk	Possible Solution(s)
The proponent does not understand or value the CRA process.	» Federal and Provincial legislation can provide proponent guidance and support communities in their requests for the completion of a CRA. » IAAC Guidance for proponents: https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance-assessment-potential-impacts-rights-indigenous-peoples.html
Knowledge confidentiality concerns.	» Your Nation should discuss with the proponent and regulator on the confidentiality of the information you are providing and develop an agreement on how confidential information will be protected while completing a CRA.
Your Nation not being appropriately engaged during a IA.	» Develop robust communication and engagement plans with both the proponent and regulator. » IAAC draft Collaboration Agreement: https://open.canada.ca/data/en/info/2766b33f-9d7f-401e-84e2-5327375112b0/resource/a219b88a-b73b-4775-9863-3788cb33d93c

Risk	Possible Solution(s)
Community Readiness: Consultation Fatigue and Capacity Constraints.	» Proceed with a CRA only when the community is ready—by ensuring the timing is right, accounting for competing projects, and confirming the availability of knowledge holders and leadership. Increasingly, large components of a CRA can also be applied across multiple proposed projects. Exploring these efficiencies can reduce duplication and strengthen assessment processes.
Inadequate mitigation of impacts, reduced Indigenous participation, and potential for unresolved cultural or environmental concerns	» Engage early with proponents to shape mitigation plans, request clear commitments from government where needed, and secure adequate funding and capacity supports to ensure your Nation's priorities and cultural values are fully addressed.

Communication and Engagement Plans

Communication and engagement processes are often subject to timelines set by proponents or regulators, which can be rigid, expedited, and outside of a Nation's control. While these timelines prioritize efficiency, they rarely align with the pace at which Indigenous communities make decisions. This misalignment can compromise effectiveness. Nations should anticipate this challenge, and where possible, plan how to balance external pressures with internal processes. Practical steps include identifying core representatives who can respond quickly, setting clear expectations for realistic timelines, and communicating early if additional time is needed to ensure meaningful engagement.

Without a strong understanding of a project and its impacts, developing appropriate conditions of consent is nearly impossible. Communication and engagement planning is therefore essential—not only between your Nation, the proponent, and the regulator, but also within your community. In many cases, information from the proponent or regulator may need to be translated into accessible language or explained by technical experts.

Engagement planning is often constrained by rigid or short timelines, and in some instances, led primarily through leadership channels without broad community involvement. These challenges can reduce transparency, limit input, and create pressure on Nations to respond faster than their processes allow.

Advice and Steps Forward

- Plan early: Develop a communication and engagement strategy before any project arises so your Nation is prepared.
- Define expectations: Work with proponents and regulators to set clear parameters for information exchange, milestones, and meeting frequency.

- Build flexibility: Establish a mechanism for quickly adapting plans when timelines are expedited.
- Engage your community: Share information in multiple formats—such as community meetings, newsletters, or online portals—to ensure broad participation.
- Assert your needs: Communicate upfront that meaningful participation requires adequate time, and request extensions or additional support where needed.

Resources:

- Indigenous Nations Communications Toolkit
- UBC templates: Communication Plan, Engagement Plan, Briefing Note, Memo
- Communication Strategy Template
- Indigenous Business Toolkit Project: The Basics of Communications for Indigenous Businesses

Evaluating and Monitoring

Projects requiring a CRA are long and complex, and they demand ongoing monitoring to measure the effectiveness of implementation. Flexibility is essential adjusting the CRA as new information emerges allows Nations to manage scope changes and respond to unplanned events.

A robust evaluation and monitoring plan should be tailored to the specific project, with input from your Nation or community, the proponent, and the regulator. Critically, effective monitoring and evaluation also require the involvement of individuals who bring both technical expertise and an Indigenous lens—grounded in historical knowledge, lived experience, and cultural perspective. Without this lens, important issues may be overlooked or misinterpreted.

Evaluation should begin at project start-up, with community goals guiding the framework for monitoring. Depending on the project, milestone evaluations can be scheduled to assess methods and adjust course as needed. At the project's conclusion, a community review session to solicit feedback on both process and outcomes can help strengthen transparency, accountability, and community engagement.

Tool 1

Inventory of Cultural Rights

This Tool is designed to bring Indigenous voices, stories, knowledge, and experiences to the forefront to help understand the value of the potentially impacted Cultural Rights from the perspective of the rights holders. In an IA process, this Tool can be used to provide information about what is important and what is at stake for your Nation. A checklist summarizing key steps for undertaking an inventory of Cultural Rights is also provided in Appendix B.

This section provides options and methods to help your Nation identify and inventory their Cultural Rights. The methods detailed below provide a base of information that a community can then use for project-specific assessments or in future assessments, studies, regulatory processes, and negotiations. The methods described in this Tool include:

Direct Community Engagement and Surveys;

Use and Occupancy Studies;

Density of Use Maps and Mapping of High Priority Areas;

Identification of Cultural Landscapes;

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

Codification of Laws and Norms.

Multiple methods of identifying Cultural Rights can be used together. This allows for various findings to be compared. Where there is agreement on the findings, this kind of “triangulation” or multi-method validation can increase confidence in the 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.

The identification of Cultural Rights should include both past and present considerations of Cultural Rights, as well as document how members have adapted their practice of Cultural Rights over time in

response to external impacts. The identification of Cultural Rights should include:

- Tangible Cultural Rights are typically understood as physical in nature and connected to places and practices. These may include burial sites, important harvesting grounds, hunting camps, as well as harvesting activities and technologies, and the processing of fish, wildlife, and plants using traditional methods and tools.
- Identification of the spaces, areas, activities, resources, environments, plants, animals, and any other component that is important and currently or historically located or practiced within your Nation's territory. Including those that may no longer be accessible or practicable.

As part of the identification of your Nation's Cultural Rights, there should be an identification of what Cultural Rights and practices are no longer accessible and or practicable. There are many reasons why a cultural practice may no longer be viable, including but not limited to:

- Reluctance to practice due to real or perceived risks to emotional, physical, spiritual, and mental health;
- Loss of wildlife and plants for harvesting and medicine use in an area;
- Change in environmental conditions such as low water levels restricting water navigation;
- Fears of contamination from industrial activities; and
- Direct physical blockage, such as fences, restricting access to a cultural use area.

In addition to documenting the reasons why a Cultural Right and/or practice is no longer accessible, it is important to consider how Cultural Rights and practices have changed over time. For example, understanding how youth and urban/displaced community members adapt their cultural practices when traditional spaces are unavailable.

When identifying Cultural Rights, the geographic extent of each Cultural Right should be carefully considered. Some Cultural Rights are tied to specific locations (e.g., a specific site necessary for ceremony), while others are more flexible in their location (e.g., a ceremonial structure that can be relocated). In some cases, Cultural Rights that are less tied to or dependent upon continued access to, or the integrity of the specific geographic location, can still be impacted by a major project. For example, a fishery may be a necessary location for cultural practice and knowledge transmission, but the specific location of the fishery is less important.

The selection of which methods should be used to identify Cultural Rights should be done by your Nation, who should also determine who leads the process; preferably it is led by your Nation's knowledge holders. Contextual factors should inform the selection of an appropriate approach, such as:

- The extent to which access to and use of your 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, Indigenous Nations that have had significant alterations to their ability to access traditional territories may derive substantive value from a Traditional and Current Land Use Study which illustrates

how their ability to engage in cultural practices has changed over time.

Before choosing which method is right for your Nation, consider the financial, administrative, and human resources needed to undertake them properly. There may need to be pre-study groundwork for increasing permanent capacity first. These include identifying and/or securing:

- Staffing capacity and expertise (e.g., the number of individuals available to participate, their skills and credentials, and whether consultant support may be required. While staff or consultants often bring technical expertise, they may lack the Indigenous lens or perspective needed to recognize and understand sacred elements—making it essential to include Indigenous knowledge holders in the process);
- Costs for community engagements and honoraria;
- Available funding; and
- The emotional and spiritual capacity of the community to engage in discussions and meetings.

Methods to Identify Cultural Rights

The following section outlines various approaches and methodologies through which a community may identify and document its Cultural Rights. These approaches are not prescriptive but instead provide options that can be tailored to the unique needs, values, and capacity of each Nation. By combining direct engagement with community members, mapping and landscape-based methods, Indigenous knowledge systems, and the codification of laws and norms, Nations can build a comprehensive picture of their Cultural Rights and the ways in which those rights are exercised. The subsections below describe each method in more detail.

Direct Community Engagement Sessions and Surveys

Direct community engagement is the gold standard to collect knowledge, stories, opinions, and concerns from community members. This approach includes methods like interviews, focus groups, and surveys, and you may choose one or more methods to address any potential issues. Interviews work well for detailed conversations with individual members about a topic and can be flexible depending on the person and the context. Typically, community engagements should use culturally appropriate media, such as storytelling, graphics, and videos, to support participant involvement. When possible, community engagement should be conducted on the traditional territory or another culturally relevant location. 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.

Direct engagement methods are useful because they collect information in the exact way that community members want to share and ensures that community knowledge informs all processes afterwards. Engagements need to consider accessibility, such as virtual meetings, mental health protocols, meeting spaces that are accessible, and include a diversity of community members, such as elders, youth, knowledge holders, staff, and those who are gender diverse. Cultivating internal community connections help to reduce engagement fatigue.

The principles of anonymity and Free, Prior, and Informed Consent (FPIC) are key components of ethical community engagement. While FPIC typically refers to an Indigenous Nation's right to decide what projects will occur on their territory, the principles can also be applied to the research process.[3] In this context, 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.

Some suggestions for conducting community engagement from the SOTL Workshops[4] include:

- Providing resources to incentivize community members to attend and participate in interviews and workshops, such as honoraria or compensation for travel;
- Providing resources to incentivize community members to attend and participate in the Nation's cultural activities;
- Being flexible, adaptive, and communicative to allow as many members to be involved, such as virtual engagements, surveys, door-to-door outreach, and accessible meeting locations.;
- Employing community members to carry out the engagement work in their community;
- Conducting interviews or focus groups on the territory whenever possible, as this can help prompt memories and storytelling; and
- Involving a broad range of community members, including elders, youth, and off-reserve members.

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).

[3] https://whatis.fpic.info/
[4] FNMPC, Nechako Nations, and Anishinabek Nations. Spirit of the Land methodology workshops. November 6, 2024 and February 13 to 14, 2025 in Prince George, British Columbia, and March 5 to 6, 2025 in Rama, Ontario.

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.

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.

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 an Indigenous Nation

RESOURCES

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 to inform Impact Assessments. 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 of the territory 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 Indigenous 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 Indigenous Nation in the proposed project-affected area. Great caution and deference to your Nation's requirements is critical to the choice of whether and how to use existing study data rather than conduct a new study. While using existing data can reduce consultation fatigue amongst community members, it may have changed over time due to changing conditions, as well as 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 questions or concerns of how the new proposed project is likely to impact on their Cultural Rights. In the end, it is essential for Indigenous Nations to decide whether and how to use the results of older studies and whether new studies are required.

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.

RESOURCES

Chief Kerry's Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design, and Data Collection

Living Proof by Tobias and Associate

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 close together 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. Figure 2 shows an example of heat mapping of cultural use.

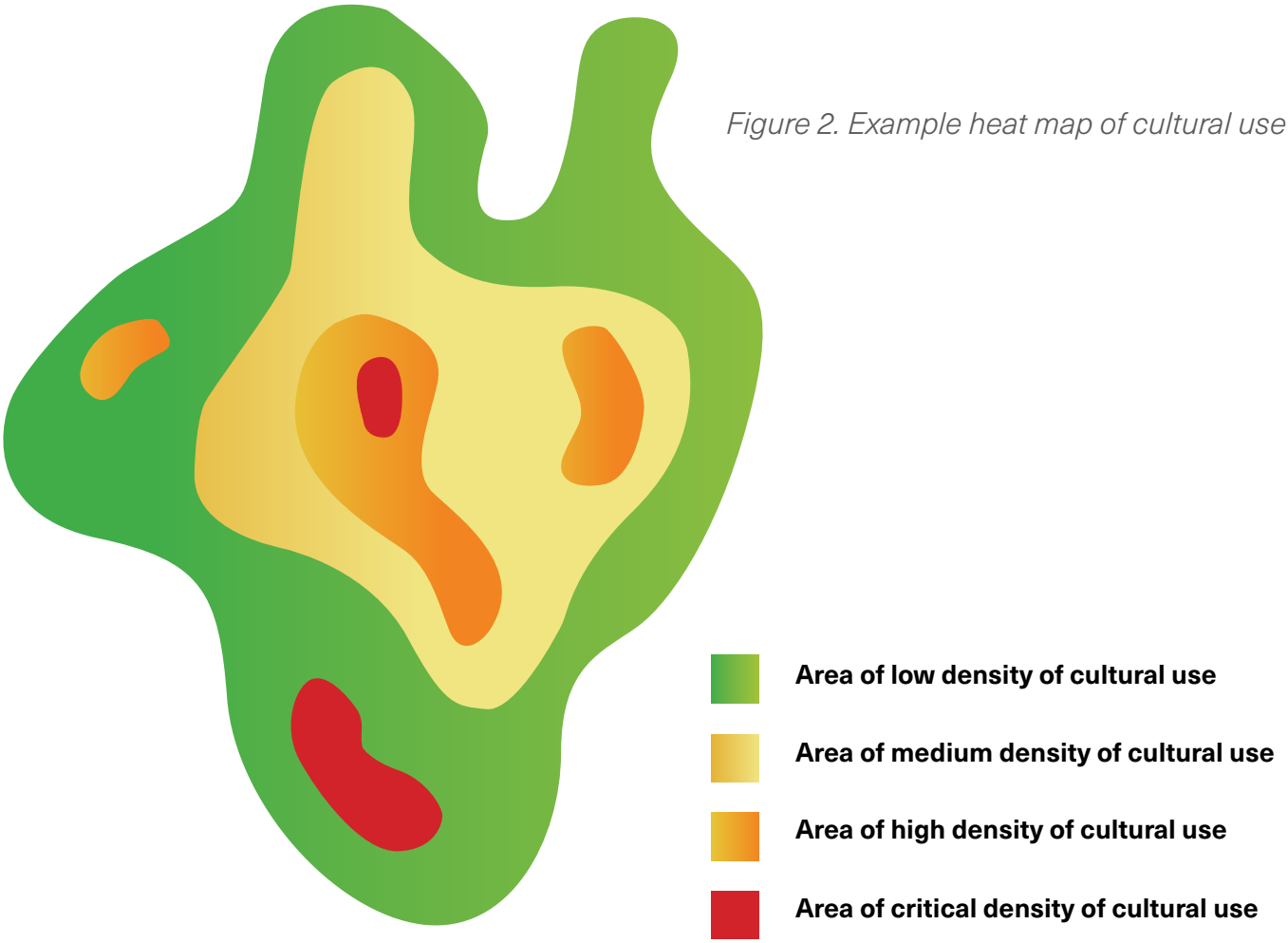


Figure 2. Example heat map of cultural use

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.

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.

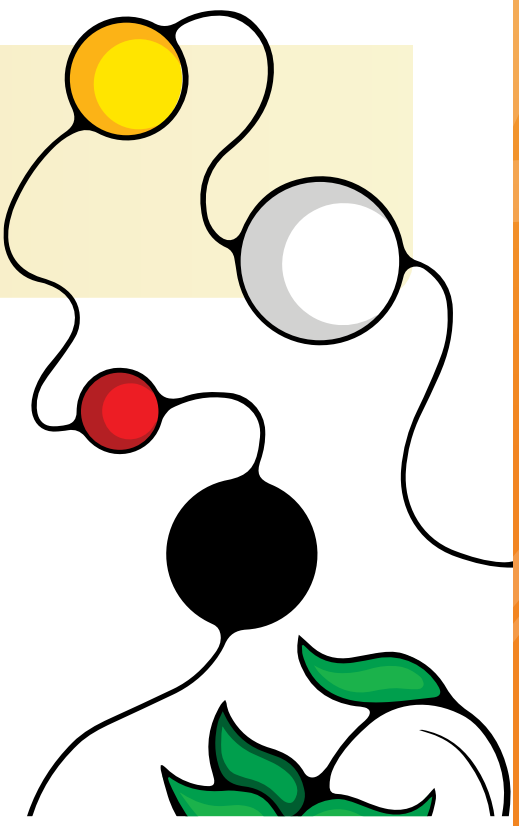
Limitations

- Requires extensive community engagement and surveying, and usually cannot meet with every land user.
- 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 (i.e. “intangible”).
- 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”.

RESOURCES

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"[5], 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"[6]. 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 and revitalization, environmental impact assessment, land use planning, cumulative effects management, monitoring programs, decision-making processes, and others. Methodologies used to outline 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 cultural landscape 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 connection 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.

Describing 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' Protected 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[7]. To determine the boundaries of a distinct cultural landscape, the PAS requires a series 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

[5] Parks Canada, "Parks Canada Guiding Principles and Operational Policies," 119.
[6] Susan Buggey, "An Approach to Aboriginal Cultural Landscapes" (Historic Sites and Monuments Board of Canada, March 1999), 32.
[7] 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.

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 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[8].

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 your Nation's breadth of Cultural Rights.

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).
- Identify 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.

RESOURCES

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.

Northwest Territories' Protect Areas Strategy (PAS)

Doig River First Nation K'ih Tsaa?dze Tribal Park

[8] 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 ecological studies, culturally important places, species, and resources 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 IAs. For example:

- Ecosystem insights: Knowledge about biodiversity, local ecosystems, ecological processes, and overall ecological health that may not be captured through western science.
- Species information: Observations on species distributions and populations, habitat preferences, animal health, migration corridors, and seasonal movements.
- Population changes: Tracking of changes in species numbers, including 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.
- Sacred sites and cultural records: Insights into systems and processes that may be difficult to document—such as pictographs depicting movement of people, seasonal activities, and cultural messages. Many sacred sites and records have been lost or destroyed due to colonization, forced settlement, enfranchisement, and restrictions on cultural practices.
- Limits of documentation: Much sacred knowledge was intentionally not recorded—elders often restricted cameras or recording devices in cultural settings such as feast halls, reflecting a lack of trust in outsiders and the need to protect cultural practices.

One way to incorporate Indigenous Knowledge into IA 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"[9], Cultural Keystone Places (CKPs) are one method of identifying "places of exceptional and cultural value so that the depth of their roles in a people's cultural fabric can be more widely appreciated"[10]. 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"[11]. 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:[12]

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[13]:

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;

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[9] Cuerrier et al., "Cultural Keystone Places: Conservation and Restoration in Cultural Landscapes," 430.
[10] Cuerrier et al., "Cultural Keystone Places: Conservation and Restoration in Cultural Landscapes," 440.
[11] Garibaldi and Turner, "Cultural Keystone Species," 4.
[12] Based on the ten general indicators for assessing the overall importance of a place as provided by Cuerrier et al., "Cultural Keystone Places", 432.
[13] 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.

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.

Example: Moose (Keystone Species)

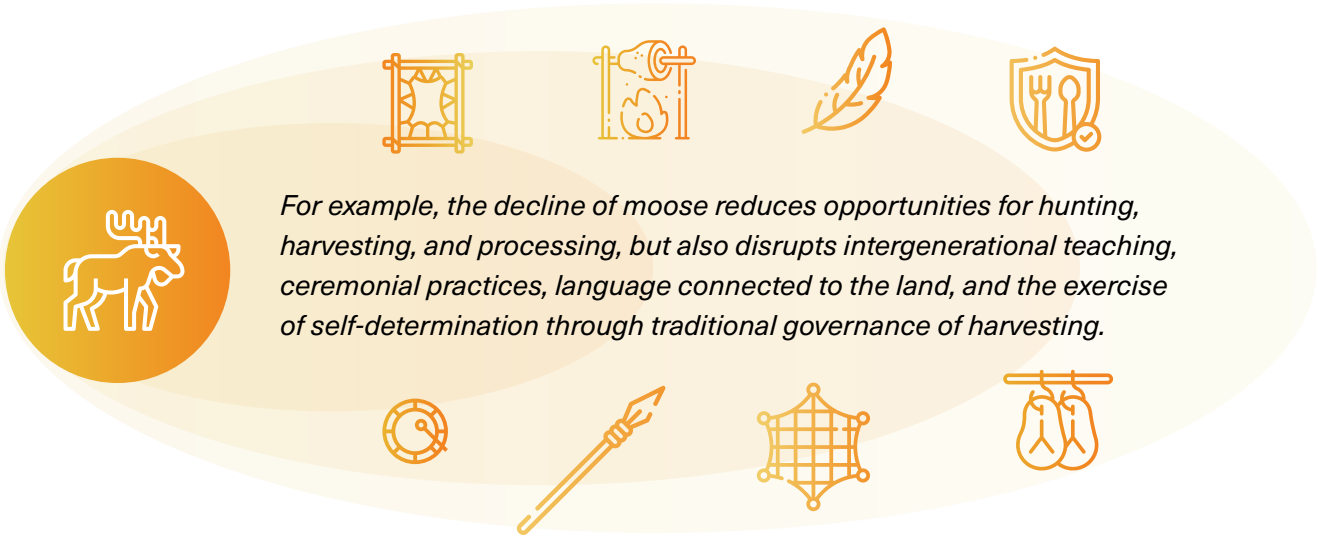
Tangible Cultural Rights:

- Harvesting (meat, hides, bones, antlers)
- Processing activities and technologies (drying, tanning, tool-making)
- Use of hunting camps and harvesting sites

Intangible Cultural Rights:

- Oral histories and teachings
- Ceremonial practices and protocols
- Language (place names, terms, and expressions tied to moose)
- Community identity and intergenerational knowledge transfer

When a keystone species such as moose is diminished or removed, the loss extends beyond physical sustenance. It leads to the erosion of the activities, practices, and knowledge systems tied to managing that species. For example, the decline of moose reduces opportunities for hunting, harvesting, and processing, but also disrupts intergenerational teaching, ceremonial practices, language connected to the land, and the exercise of self-determination through traditional governance of harvesting. In this way, the loss of a single species can cascade into a broader loss of both tangible and intangible Cultural Rights, weakening the relationship between community and territory.



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.

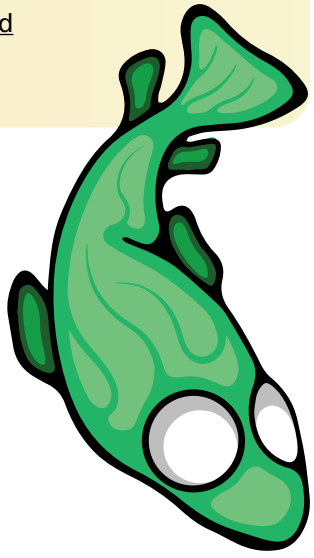
Limitations

- 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.

RESOURCES

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

Most Indigenous Nations laws and norms represent both cultural values and intangible Cultural Rights. 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 First Nation, Stellat’en First Nation 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 your Nation, important Cultural Rights and values can be identified and inventoried.

In addition, if laws and norms are codified, they will better inform assessment and can 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 downplaying Indigenous lifeworlds[14] and governance[15]. By doing so, there is a potential risk of “open[ing] up Indigenous legal orders to further colonization”[16], as this codification may reshape Indigenous legal traditions in ways that are unable to accurately reflect their complex, evolving, and holistic nature. To avoid such risks, one possible approach could be working to make Indigenous laws “accessible” to non-Indigenous others, while at the same time ensuring that these laws remain grounded solely within your Nation’s way of knowing. One way to help make Indigenous laws accessible is to draw on community processes to illustrate how collective decisions have been reached for specific issues.[17] Some examples of Indigenous 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).

[14] 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

[15] Mills, “The Lifeworlds of Law,” 847–84.

[16] Mills, “The Lifeworlds of Law,” 883.

[17] 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.

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 Indigenous Nation when converting laws and norms into any sort of assessment "lens"; this cannot be done by any outside party.

RESOURCES

Yinka Dene 'Uza'hné Surface Water Management Policy

Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards

Okanagan Indian Band Revelstoke Unit 6 Generating Station

Tsleil-Waututh Nation Trans Mountain Expansion (TMX)

Tool 2

Characterizing Existing Cumulative Effects on Indigenous Cultural Rights

This Tool is designed to provide an understanding of past and ongoing changes in an Indigenous Nation's ability to practice their Cultural Rights. Due to the existing effects of past and present activities and industrial processes, Cultural Rights may already be diminished and would be vulnerable to impacts from new projects. Cumulative effects assessments provide information about how your Nation's opportunities to practice their Cultural Rights may have diminished (or may be diminished) due to past, present, and future activities. If the context of cumulative effects is not understood, then the extent of your Nation's vulnerability to further change cannot be properly understood. As a result, the impacts from a specific project may be under-estimated.

The graph below (Figure 3) is an example of how to visualize change over time to a single Cultural Right. Community knowledge and other information sources can be used to determine how a right (the orange line) was practiced in the past and how this has been affected by projects and processes over time. Based on the current trajectory of the right and what we know about likely future projects and processes, future scenarios can be predicted both with and without the specific project being assessed. All this can be measured against a threshold of acceptable change that is determined by your Nation (the blue line).

Future Cultural Rights Conditions with and without the Project

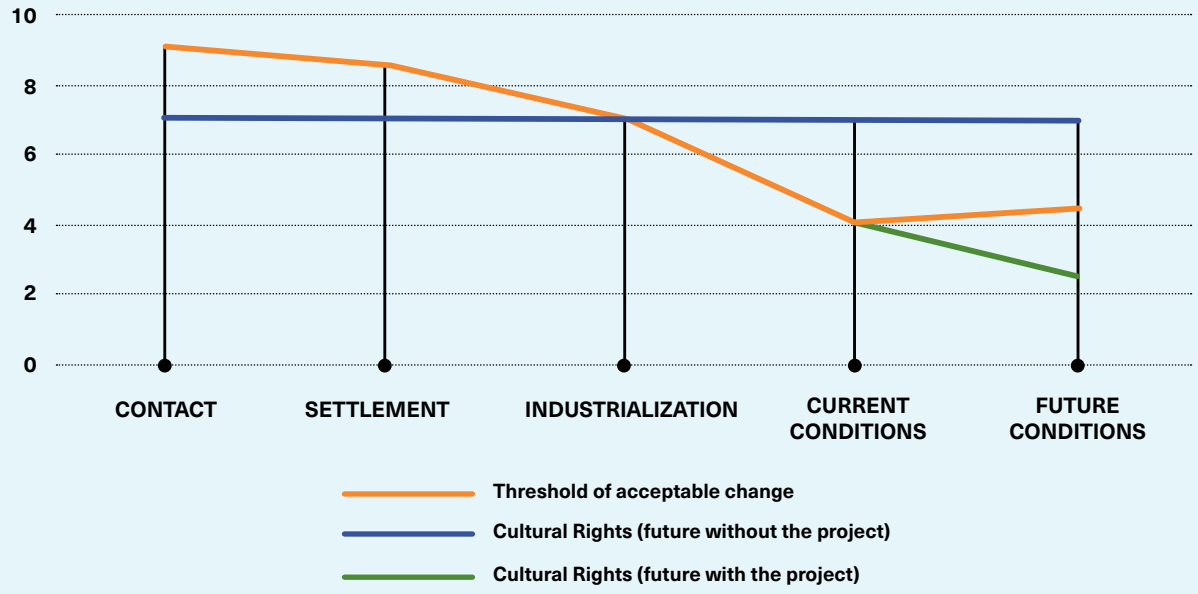


Figure 3.
Impact Prediction based on existing and predicted impacts, compared to an "acceptable" level of ability to practice Cultural Rights. (Firelight Group and FNMPC, "An Introduction to Indigenous Led Assessment Key Considerations and Guidance for Indigenous Governments", (Canada, 2025.)

Communities should be aware that conducting a cumulative effects assessment is extremely resource intensive. It often requires multiple technical experts and budgets that require funding agreements with government and/or proponents. Cumulative effects assessments can take between one and three years to complete. However, having the community information outlined in Tool #1 already on hand is likely to reduce these intensive resource requirements. The following list represents a selection of common approaches and methods available to Indigenous Nations to aid in the characterization of cumulative effects on Cultural Rights. These approaches can be used on their own or, preferably, in combination with one another. The selection of an approach should be grounded in your Nation's worldview, community processes, needs, and available capacity and time. Tool #2 provides an overview of a few methods that may be useful to your Nation:

1. **Direct Community Engagement Sessions and Surveys:** This approach uses methods like interviews, focus groups, and surveys to collect data with community members.

2. **On-Territory Data Collection:** This approach sees collaboration with Indigenous community members to walk the territory together and share knowledge of the land and insights into its significance, usage, and evolving dynamics.

3. **Mapping Data Showing Changes over Time in Land Use:** This approach compiles cartographic and other land cover and use data to show changes in habitat availability and suitability over time.

4. **Ecological Stock and Trend Data:** This approach uses ecological stock and trend data to understand how wildlife, fish, and plant population numbers have changed over time.

5. **Compiled Community Data and Records:** This approach uses community data and records to establish the historical context within your Nation and identify any changes over time.

6. **Ethnographic Data and Oral History:** This approach uses past narratives and cultural insights to highlight the historical and contemporary significance of the lands and waters that Indigenous peoples occupy.

7. **Past Project Data and Records:** This approach uses the data and records collected for past major project IA to understand how biophysical baseline conditions have changed over time.

Methods to Characterize Cumulative Effects on Indigenous Cultural Rights:

Often, cumulative effects are determined through three steps:

1. Characterization of *current conditions* (see *Tool #1: Identifying and inventorying Cultural Rights*).

2. Establish a baseline for what *conditions were historically*, which will be compared to the current and future conditions to track changes over time. Indigenous communities tend to see the baseline as conditions pre-industrialization, and proponents and regulators are more likely to set the baseline as pre-project. It is important to keep in mind that figuring out a baseline is a challenging process requiring the collection of large amounts of information that is not always readily available or easily accessed; this may require substantial time and resources.

3. Determination of *potential project-specific impacts* to Cultural Rights, including consideration of likely future impacts and changes (see T*ool #3 Identifying Impact Pathways, Conducting Effects Characterization, and Evaluating the Severity of Potential Impacts*).

The following list represents a selection of common approaches and methods available to Indigenous Nations to aid in the characterization of cumulative effects on Cultural Rights. These approaches can be used on their own or, preferably, in combination with one another (see the description of triangulation in *Tool #1: Identifying and inventorying Cultural Rights*). Strengths and limitations of each are provided, but the selection of an approach should be grounded in an Indigenous Nation's worldview, community processes, needs, and available capacity and time. Contextual factors such as your Nation's degree of alienation from the land and the type and location of the project should inform the selection of an appropriate approach.

General steps for characterizing existing cumulative effects on Indigenous Cultural Rights are also provided as a checklist in Appendix B.

Direct Community Engagement Sessions and Surveys

Direct community engagement is the gold standard to collect knowledge, stories, opinions, and concerns from community members. This approach includes methods like interviews, focus groups, and surveys, and you may choose one or more methods to address any potential issues. Interviews work well for detailed conversations with individual members about a topic and can be flexible depending on the person and the context. Typically, community engagements should use culturally

appropriate media, such as storytelling, graphics, and videos, to support participant involvement. When possible, community engagement should be conducted on the traditional territory or another culturally relevant location. 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.

Strengths

- Meaningful Community Input.
- Can supplement gaps in other methods.

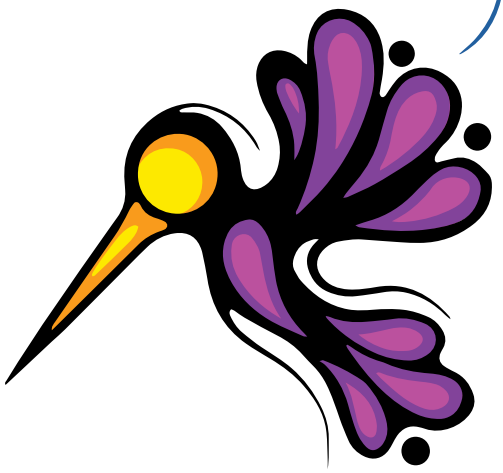
Limitations

- Can be time intensive.
- Can overwhelm the community if there are too many engagement sessions over time for proposed projects, or if other factors are limiting the capacity for participation.

RESOURCES

Virtual Community Engagement Guide: A Toolkit for Hosting Online CommunityEngagement and Meetings in Rural, Remote, and Indigenous Communities

Developing Methodologies for First Nations Community Surveys: Considerations for the External Researcher by Celina Willis



On-Territory Data Collection

On-territory data collection, conducted in collaboration with Indigenous community members, offers a unique opportunity to draw out firsthand observations, values, and changes over time. By traversing the territory together, community members can share their intimate knowledge of the land, revealing valuable insights into its significance, usage, and evolving dynamics. This approach ensures that their perspectives and experiences are accurately represented in research and decision-making processes.

On-territory data collection can take the form of a map. Unlike digital mapping methods, this approach uses paper maps, GPS devices, or smartphones/tables for mapping, rather than relying solely on digital tools such as Google Earth or ArcGIS. During the interviews, participants survey the area and discuss important cultural or environmental features, past and present community uses, oral histories associated with particular sites, and potential future uses of the area. Additionally, these interviews are typically recorded, and participants may collect additional media such as photos or videos to add to the database.

Strengths

- Represents a deep understanding of a community's connection to their territory.
- Data can be used qualitatively or quantitatively, and can be buffered, anonymized, or redacted if certain information is sensitive.
- Collection can be targeted to certain activities and subpopulations to fill in specific data gaps (e.g. hunters, plant harvesters, or youth).

Limitations

- Land users can be difficult to schedule in (e.g. seasonally), particularly if data collection is time sensitive.
- Community members may be unwilling to document specific locations if they are sensitive or for example are particularly good for harvesting.
- As the information collected ages, it can be misused and misinterpreted by non-Indigenous peoples.

RESOURCES

Come take a walk with me: The "Go-Along" interview as a novel method for studying the implications of place for health and well-being by Richard M. Carpiano

Mapping Data Showing Changes over Time in Land Use

The compilation of cartographic and other data about land cover and use is valuable in establishing changes in habitat availability and suitability over time, and both aerial and linear disturbance levels where industrial, municipal, agricultural or infrastructure developments have been introduced to an Indigenous Nation's territory. The calculation of the amount of territory that is still available for "quiet enjoyment" of the natural environment can be critical to understanding the degree to which Cultural Rights are still practicable. And the presentation of these changes is inherently a visual exercise, allowing your Nations' members and other decision makers to see what has been lost and what remains in a way that the written word struggles to convey.

Strengths

- A strong visual communication of cumulative effects.

Limitations

- Can be time and resource intensive to create mapped data if it does not already exist.non-Indigenous peoples.

RESOURCES

Producing Land Cover Change Maps and Statistics: Step by Step Guide on the use of QGIS and RStudio

Ecological Stock and Trend Data

Stock and trend data may be available both qualitatively from Indigenous Nation members through recall, and from scientific studies that have been conducted over time. Understanding if the number of fish and wildlife in your Nation's traditional territory has gone up, down or stayed in similar population numbers over time is important, as is understanding factors influencing changes in these stocks over time.

Strengths

- Provide information about important ecosystems, including their vulnerability.

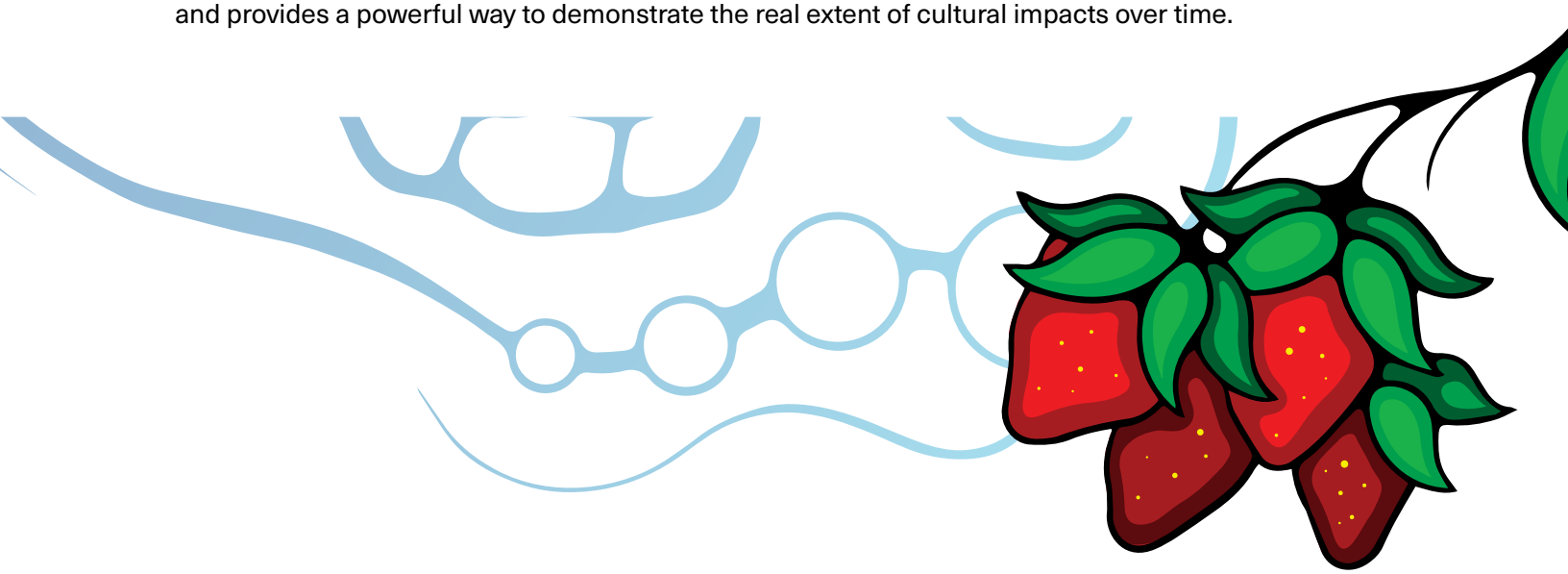
Limitations

- Can be time and resource intensive to create mapped data if it does not already exist.non-Indigenous peoples.

RESOURCES

A Guide to Using Wildlife Cameras for Ecological Monitoring in a Community-based Context by Claire Kemp, Kathryn Yarchuk, Allyson Menzies, and Jesse Popp

By bringing these two methods together—ecological stock and trend data with cartographic and habitat disturbance analysis—Nations can build a more complete picture of both population health and the cumulative impacts on the ecosystems that sustain Cultural Rights. This integrated approach highlights not only whether key species are declining, but also why those declines may be occurring, by connecting changes in population with pressures on habitat and land use. Linking these perspectives strengthens the evidence base for decision-making, reinforces Indigenous knowledge with visual and scientific tools, and provides a powerful way to demonstrate the real extent of cultural impacts over time.



Compiled Community Data and Records

Community data and records may be useful in the establishment of historical context and changes over time. Reviewing records of things such as traditional territories, camping sites, trapping lines and hunting grounds supports the determination of whether and how these cultural practices have changed over time and as a result of past developments.

Strengths

- Does not overwhelm community members.
- Can be time and resource efficient if information is readily available.

Limitations

- Gaps can remain and may be strongest paired with more current information such as through community engagement or on-territory data collection.

RESOURCES

Community Archives as Community Building Tools by Danielle Barraza, Alan Garcia, and Rachael Zipperer

Ethnographic Data and Oral History

Ethnographic data refers to qualitative information collected through ethnographic research methods (e.g., field notes, interviews, observations, photographs, videos, artifacts, etc.). Oral histories are traditional narratives and stories that preserve cultural knowledge, traditions, and histories that are passed down through generations within communities. They provide rich narratives and cultural insights that highlight the historical and contemporary significance of the lands and waters that Indigenous peoples occupy. By documenting traditional practices, land uses, and knowledge transmission over time, this information enables researchers to identify things such as cumulative effects on the territory, for example changes in biodiversity, cultural landscapes, or resource availability.

For strengths and limitations of this approach of using existing information, see above for Compiled Community Data and Records.

RESOURCES

Dr. Jo-ann Archibald on Indigenous Storytelling

Analysis and Interpretation of Ethnographic Data: A Mixed Methods Approach By Margaret D. LeCompte and Jean J. Schensul

Past Project Data and Records

As major project IA requires the determination of baseline conditions, past project assessments may provide insight to how baseline conditions have changed over time because of project construction, operation, and decommissioning. It is important to note that many of these reports rely heavily on biophysical indicators (such as fish populations, toxicology, water flows, etc.) and have rarely included intangible cultural values (such as sense of place, identity, knowledge transmission, etc.).

For strengths and limitations of this approach of using existing information, see above for Compiled Community Data and Records.

RESOURCES

Canadian Impact Assessment Registry

Tool 3

Identifying Impact Pathways, Conducting Effects Characterization, and Evaluating the Severity of Potential Impacts

This tool is designed to assist Nations in identifying and characterizing impacts and evaluating the potential effectiveness of a proponent's proposed mitigation measures for a specific project. This allows for an accurate assessment of impacts and identifies whether mitigation measures will reduce the project's impacts on Cultural Rights. This in turn identifies whether residual impacts would remain after mitigations measures are implemented, and what the implications of those residual impacts will be for your Nation's Cultural Rights.

A checklist to accompany this tool is provided in Appendix B.

First, identifying project-specific impact pathways will support a clear picture of how anticipated project impacts will affect relevant Cultural Rights and practices by mapping the direct and indirect relationships between them. This step also helps visualize the complex relationships between impacts and the diverse aspects (access, availability, preference, etc.) of Cultural Rights and practices. Once these pathways have been established, they can then be used to determine how, how effectively, and to what extent proposed mitigations measures will interact with pathway components and relationships to lessen potential project impacts. After this, residual impacts (i.e., those impacts which remain after taking mitigations measures into account) can be evaluated for severity by conducting an effects characterisation.

This Tool provides detailed guidance on a few possible approaches for your Nation to identify and evaluate potential impacts:

1. **Identifying Impact Pathways.**
2. **Considering Mitigations and Their Effectiveness.**
3. **Conducting Effects Characterization and Determining Severity:**
   a. **Standard EA Significance Criteria.**
4. **Community-Based Approaches and Alternative Methods:**
   a. Heat Mapping: This approach relies on mapping processes to represent areas that may be impacted by a proposed project, overlapped with spaces and places of Indigenous cultural value.
   b. Risk Matrix: This approach provides a visual depiction based on the standard EA significance criteria to predict the risk and severity of an impact.

Methods for Identifying Impact Pathways, Characterizing Effects, and Evaluating the Severity of Potential Impacts:

1 Identifying Impact Pathways

"Forestry has not only damaged the forest, but it's also damaged the lake, which then damages the culture and the health of the people."[18]

The structure provided below (Figure 4) outlines a generalized methodology for identifying impact pathways, as used in EA processes[19].

Figure 4. Simplified impact pathway

In an impact pathway, the source is the activity or event that threatens a Cultural Right. The source may be the project as a whole, or a specific project element (e.g., a specific project facility or an influx of project works in the area). The source reaches the receptor, the Cultural Right(s) that will be affected, through a pathway. The pathway is the mechanisms through which a change to a Cultural Right occurs and may be more than one step. Your Nation may also wish to develop an entirely different way of approaching impact pathways or modify what is offered here. There are often multiple layers of impact pathways that may lead to an effect on a Cultural Right rather than a straightforward scenario as above. An example of an impact pathway is provided below in Figure 5.

[18] FNMPC, Nechako Nations, and Anishinabek Nations. Spirit of the Land methodology workshops. November 6, 2024 and February 13 to 14, 2025 in Prince George, British Columbia, and March 5 to 6, 2025 in Rama, Ontario.
[19] Drawn from Canada, "Technical Guidance for Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act, 2012."

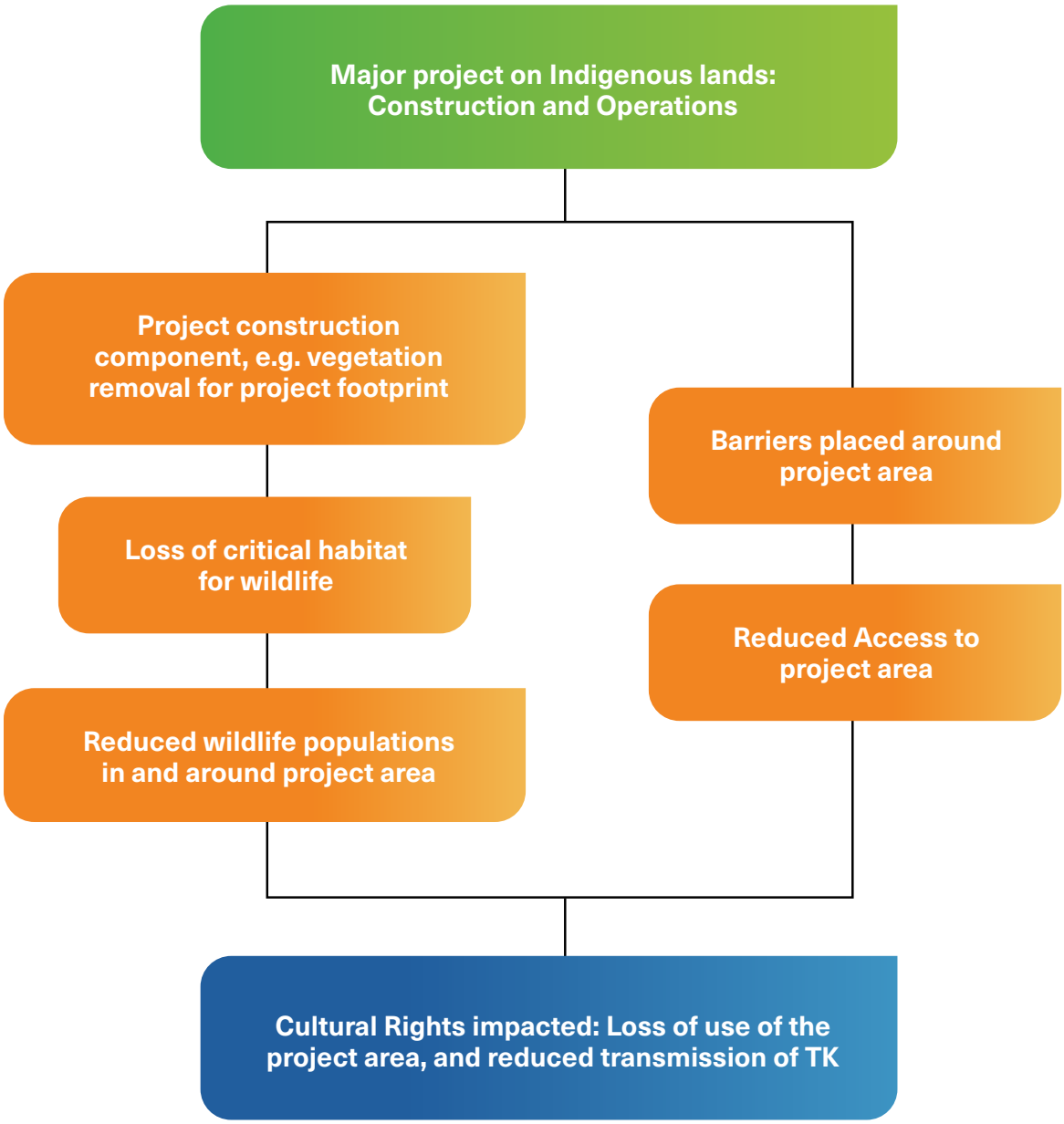


Figure 5. Example of two Impact Pathways tracking how a project may result in an impact to Cultural Rights.

The following list represents a selection of best practices available to Indigenous Nations to aid in identifying impact pathways, conducting effects characterization, and evaluating the severity of potential impacts on Cultural Rights.

1. Identifying project-specific impact pathways will support a clear picture of how anticipated project impacts will affect relevant Cultural Rights and practices by mapping the direct and indirect relationships between them. This step also helps visualize the complex relationships between impacts and the diverse aspects (access, availability, preference, etc.) of Cultural Rights and practices.

2. Once these pathways have been established, they can then be used to determine how effectively, and to what extent committed-to mitigations measures will interact with pathway components and relationships to address potential project impacts.

3. Then residual impacts, i.e., those impacts which remain after taking mitigations measures into account, can be evaluated for severity by conducting an effects characterization.

These approaches can be used on their own, or in combination with one another. Selection of the approach should be grounded in your Nation's worldview and needs. Contextual factors used to ground the identification of impact pathways, effects characterization, and evaluation of severity may include, but are not limited to, the Nation's values and policies concerning such things as:

- The vulnerability of Cultural Rights and practices;
- Existing threats to Cultural Rights and practices;
- The current geographic scope of Cultural Rights and practices;
- The size, type, and location of the proposed project;
- The Nation's prior experience with similar or related projects;
- Existing community policies and plans; and
- Cumulative changes being experienced by the Nation.

Grounding in an Indigenous group's worldview is important as impact pathways, effects characterization, and determinations of severity may not be conceptualized by your Nation in the same way as typically understood by proponents and the Crown in EA. As a result, impacts and their resulting severity, as understood by your Nation, may not be assessable using traditional EA processes and instead must be assessed through community deliberation.

2 Considering Mitigations and Their Effectiveness

After an impact pathway has been established, mitigation measures can be assessed to see if they will reduce impacts on receptors, or Cultural Rights. Mitigation measures generally focus on either changing the factors or triggers that lead to adverse impacts (i.e., change the pathway). Alternatively, mitigation measures can strengthen your Nation's own cultural pathways that nurture and strengthen Cultural Rights and values. For a mitigation measure to be considered effective, it should:

- Consider all possible alternatives;
- Include culture holders as partners in the identification of appropriate mitigation, implementation, monitoring, and feedback;
- Be transparent and specific;
- Be adequately funded, resourced, and staffed;
- Be precautionary;
- Deal with impacts regardless of where they may be located; and
- Have outcomes that are measurable against goals.

After taking into consideration mitigations and their effectiveness, residual impacts to rights can be determined through an effects characterization and severity determination.

3 Conducting Effects Characterization and Determining Severity

Standard EA Significance Criteria

One of the key factors used to determine the "acceptability" of a proposed project is the severity of its potential adverse effects. The CRA approach identifies whether a project causes, or adds to existing, significant infringements of asserted or recognized rights. In assessing infringement, it is not only the presence of an effect that matters, but whether it undermines the meaningful exercise of treaty or Aboriginal rights, as emphasized in Yahey v. British Columbia, 2021 BCSC 1287. "On June 29, 2021, the Court issued reasons for judgment in Yahey v. British Columbia, 2021 BCSC 1287 [Yahey]. In this decision, Madam Justice Burke held that the Province of British Columbia ("BC" or the "Crown") infringed the Blueberry River First Nation ("Blueberry River")'s rights held under Treaty 8, by allowing decades of industrial development in the Nation's traditional territory" (Gowling WLG, Web source).

In making a significance determination, it is also important to consider cumulative effects, particularly for First Nations in more densely populated parts of Canada where overlapping developments can magnify impacts. While EA has developed standard methods to evaluate significance, it may be more appropriate to develop community-specific metrics. The box below summarizes standard EA criteria and presents several options for developing community-specific metrics.

Standard EA significance criteria

- **Context:** The current and future vulnerability and resilience of the value to change (e.g. rarity of similar values in the territory, past industrial effects and change over time).
- **Magnitude:** The expected scale and/or severity of the effect (e.g. intensity of community concern, perceived risk, extent of change in use).
- **Extent:** The spatial area over which the effect is expected to occur (e.g. extent of affected water courses, movement patterns of wildlife and land users, boundaries of traditional/family use areas, zone of avoidance)
- **Duration:** The length of time the effect persists (e.g. generational effects, knowledge transmission, time to repair and re-establish relationships between people, animals).
- **Frequency:** How often the residual effect occurs (e.g. timing with respect to important seasons, animal movements, and cultural activities).
- **Reversibility:** Whether the residual effect on the value component (e.g. Cultural keystone places/species) can be reversed (e.g. permanent loss of Indigenous Knowledge for effects lasting longer than one generation).
- **Affected Populations:** The distribution of the effect amongst the population of affected people. Effects may be evenly distributed or be disproportionately experienced by certain subpopulations.

Criteria used by the Mackenzie Valley Environmental Impact Review Board (MVEIRB)

- The magnitude, or degree, of change of the impacts that might be caused.
- The geographical area that the impact might affect.
- The duration that the impact might have, i.e., how long will the effect occur.
- The reversibility of the impact that might occur.
- The nature of the impact, i.e., how important is the component that the impact will affect?
- The possibility that the impact could occur

4 Community Based Approaches and Alternative methods

There are several different ways to determine how severe an impact may be to your Nation. Some of the common ones you may consider include:

1. **The "Reasonable Person" Approach:** Setting thresholds for what is considered significant by asking whether a reasonable person would consider the change to be significant. For example — would a reasonable person consider a 20% drop in yearly fish catch significant? If yes, then that is significant.

2. **The "Qualitative, Value-Specific" Approach:** Adopting defined, yet still largely qualitative, significance thresholds. Each threshold has the benefit of a narrative and measurability specific to the value. For example:

    a. Water – a water management regime that lacks adherence to Indigenous water values and norms and does not support a pre-contact range of fish and fish habitat and other resource values.

    b. Fish – high level of reduction in the distribution, abundance, and population health of a culturally important fish species; reduction in habitat for critical life stages of any culturally important fish species.

3. **The "Deference to Most Sensitive Receptors" Approach:** This approach suggests that if the affected Indigenous Nation (the most sensitive receptors in the human environment) themselves deem the likely outcome significant, it is therefore significant. This relies heavily on subjective inputs of the most affected parties.

4. **The "Unacceptable Risk" Approach:** This approach holds that where there is a lack of confidence in predictions and/or the potential for extremely high magnitude outcomes is present, that a likelihood lower than 50% (in other words, where the impact outcome is less likely to occur than not occur) may still be an unacceptable risk, and likelihood greater than 50% is not critical to determining whether the effect is significant. This is particularly important for extremely high magnitude outcomes like loss of the use of a river or a critical cultural site due to project effects.

5. **The "Indigenous Laws and Norms" Approach:** This approach holds that changes to any value, and all values in combination, from a project and associated cumulative effects, may impact on the ability to adhere to the laws and norms of Indigenous peoples. If, for example, a natural law is that water should be allowed to run its natural course unimpeded, any changes to the hydrological regime through activities such as dams and impoundment of rivers, may be deemed significant, because the law is being "broken."

6. **The "Sufficiency of Resources" Approach:** This approach holds that the full practice of Indigenous rights reasonably includes access to sufficient lands, aquatic environments, and resources in which the rights can be exercised. "Sufficient" refers not only to quantity but quality and is evaluated from the perspective of what is required to fulfill not only subsistence requirements, but also cultural needs, of your Nation now and into the future.

Heat Mapping

Similar to the mapping processes identified as potential options for Tool #1 (Density of Use Maps and Mapping of High Priority Areas), Heat Mapping represents a visual expression of where areas that may be impacted by a proposed project overlap with spaces and places of heightened Indigenous cultural value. Cultural heat maps can illustrate geographic locations where project impacts are likely to occur in proximity to or in direct overlap with areas that have greater reported Cultural Rights practice and value. If areas of heightened overlay between project effects and cultural values are identified, more detailed, community-led qualitative analysis, including on-territory mapping among other activities, may be necessary to fully flesh out the severity of impacts.

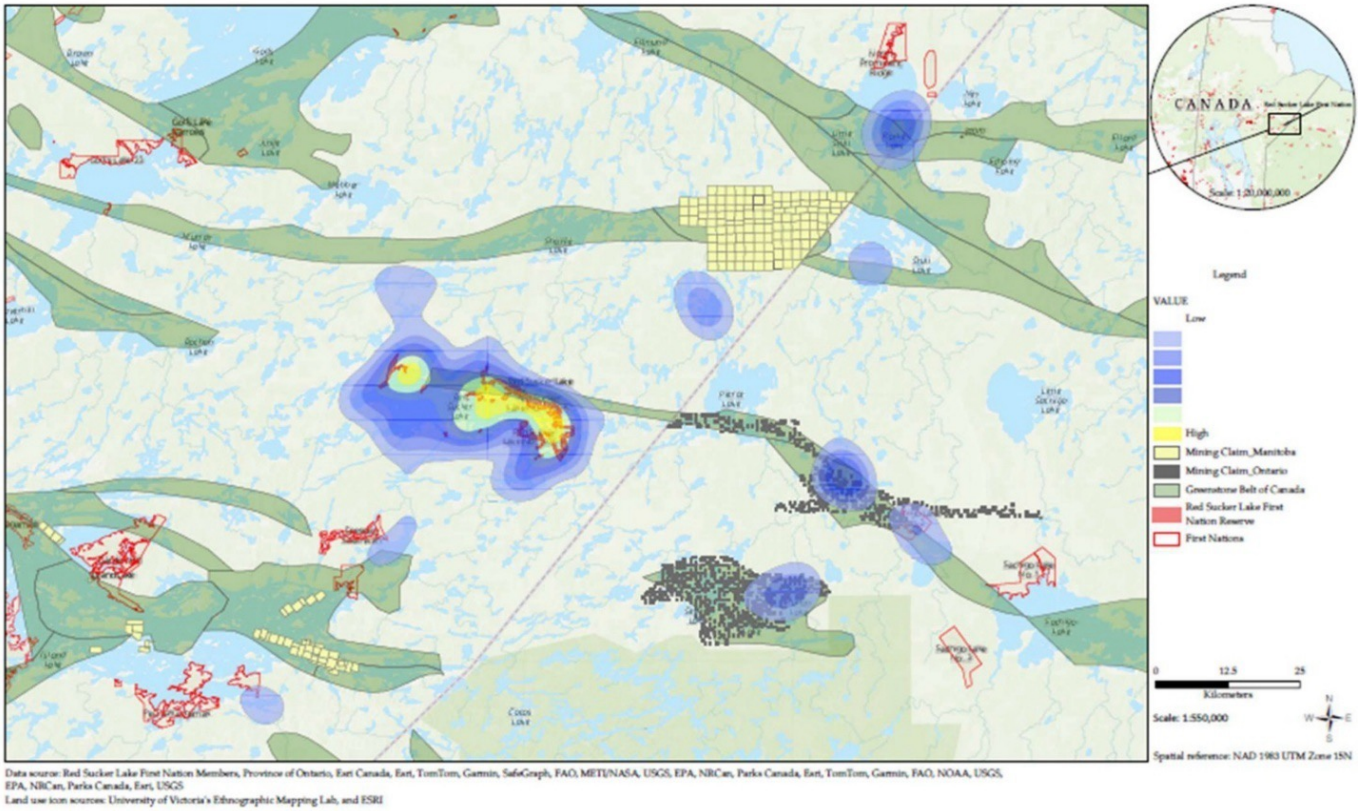


Figure 6. An example heat map of traditional use sites, from Onyeneke et al, 2024[20]

[20] Onyeneke, C.; Harper, B.; Thompson, S. Mining versus Indigenous Protected and Conserved Areas: Traditional Land Uses of the Anisininew in the Red Sucker Lake Indigenous Nation, Manitoba, Canada. Land 2024, 13, 830

Strengths

- A visual communication of specific impacts from a project on Cultural Rights.

Limitations

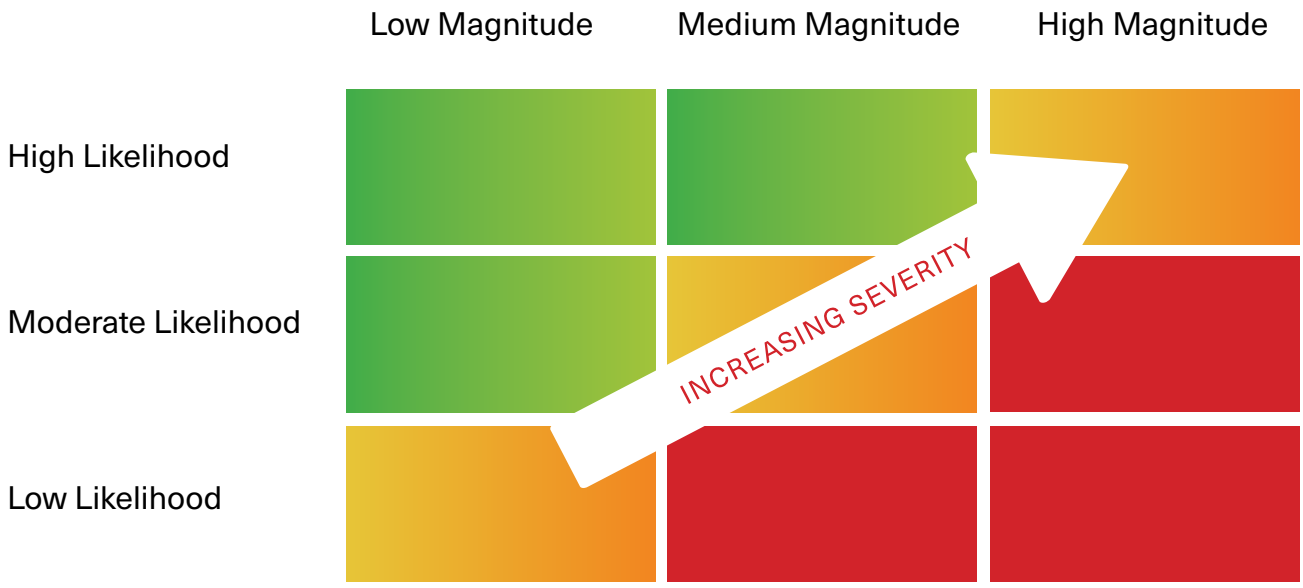
- Cannot accurately represent Cultural Rights which are not tied to a specific geographic location.
- As the information collected ages, it can be misused and misinterpreted by non-Indigenous peoples.

RESOURCES

Applying Density and Hotspot Analysis for Indigenous Traditional Land Use: Counter-Mapping with Wasagamack First Nation, Manitoba, Canada by Keshab https://www.scirp.org/journal/paperinformation?paperid=103884

Risk Matrix

A risk matrix is a visual depiction that draws on standard EA significance criteria. By cross comparing the likelihood of an impact occurring to the magnitude of predictable impact, the resulting risk and severity can be determined.



Strengths

- The matrix can be tailored to a community's risk tolerance.

Limitations

- An expert in the subject area may be necessary to support analysis of the data.
- As the information collected ages, it can be misused and misinterpreted by non-Indigenous peoples.

RESOURCES

Hazard and Risk - Risk Assessment

Tool 4

Addressing Residual Impacts to Cultural Rights

Restitution is a process in which to address residual adverse impacts on Cultural Rights. There are a variety of forms of restitution. This Tool identifies three primary forms of restitution for impacts to Cultural Rights: cultural restoration, cultural offsetting, and financial compensation.

This diagram illustrates three primary means of restitution: restoration, offsetting, or compensation. Assessing financial compensation for residual impacts to Cultural Rights is the subject of Tool #5.[21]

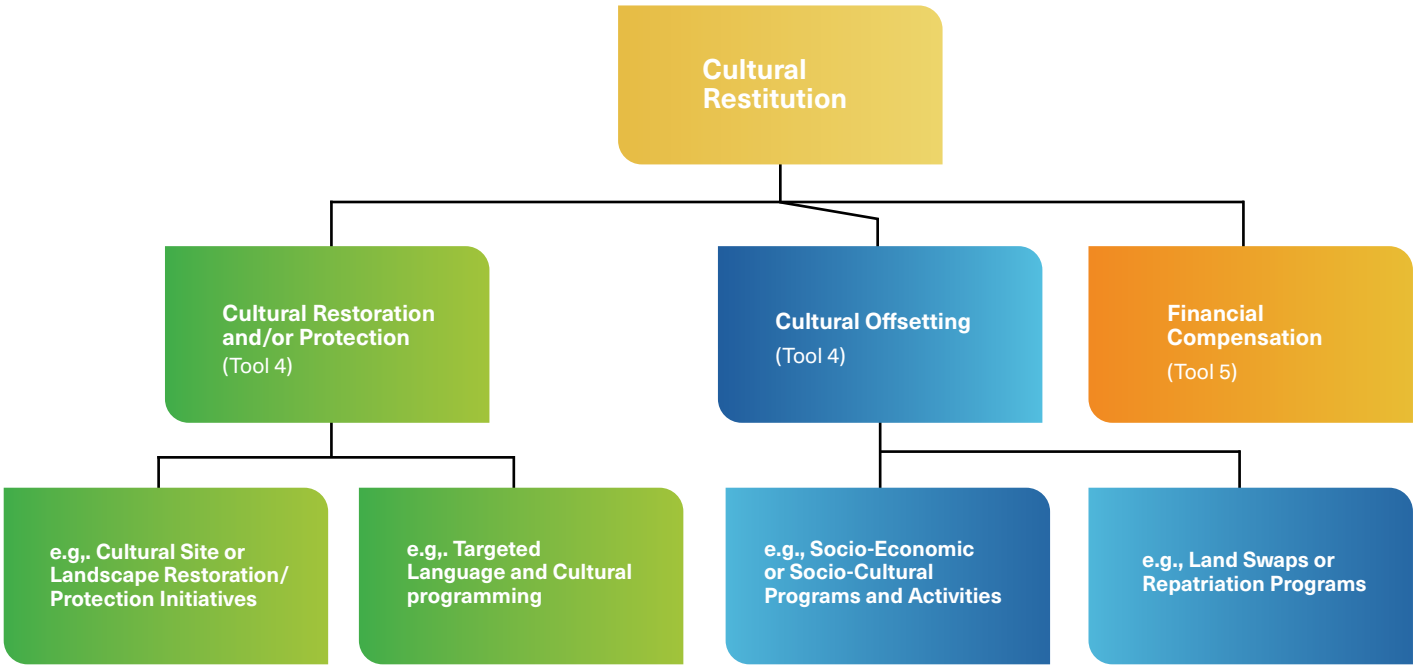


Figure 7. Overview of restitution options

Cultural Restoration is any action that works to *directly* restore or return an impacted Cultural Right, or aspects of the Cultural Right, back to a desired condition. Unlike offsetting, restoration involves actions or investments that are directly targeted at restoring the same specific cultural values (e.g., a sacred site, or degree of language use in a community) that have been impacted. Cultural restoration may be directed at both a geographically situated set of cultural values, such as a cultural landscape, or at a less geographically situated set of cultural values, such as language retention.

[21] For the purposes of this tool, compensation is defined as providing financial compensation based on an assigned monetary value, preferably as defined by the affected Indigenous Nation, for the lost or diminished opportunity to exercise a Cultural Right.

Restoration of a *geographically situated* set of cultural values

When, in response to a loss or degradation of a geographically situated set of cultural values, environmental and/or structural restoration investments are made to assist recovery of values important to the retention or practice of Cultural Rights in the same geographic vicinity.

Restoration of lost or infringed Cultural Right that is *not necessarily geographically situated*

When cultural loss is restored through programs, developments, projects, policies, etc. that seek to restore the same aspect of culture, e.g., language programs to address anticipated adverse effects on language transmission.

In contrast, the Tool defines Cultural Offsetting as a form of restitution that is **not** directly linked to the specific geographic location or specific kind of cultural value being impacted. In this Tool, the term of "offsetting" is used more generally than how the concept of habitat offsetting is used in biophysical Environmental Assessment. Rather, it is defined as an action that works indirectly to address the lost or diminished opportunity to receive benefit from, or to exercise, a Cultural Right.

Offsetting for a lost or infringed Cultural Right that may or may not be geographically situated

When a cultural loss is compensated through restoration investments, developments, programs, policies, etc. that are NOT directly tied to the impacted Cultural Right, e.g., development of a language centre as a form of offsetting loss of a trapline.

For our purposes, an offset is an action that is different in nature from the specific element of a Nation's culture that is being impacted. For example, project impacts to a fishing site may be "offset" by the establishment of protected area in a different part of your Nation's territory to support for other cultural values or activities, e.g., hunting and trapping. In this hypothetical case, while the protected area has a different kind of value from the fishing site, and while the protected area doesn't "restore" the impacts on the fishing site, it is deemed by your Nation to provide an acceptable degree of restitution.

Hence, the main distinction between how the concepts of *restoration* and *offsetting* are used in this Tool is that restoration is directly focused on restoring the specific Cultural Right that is being impacted, with "like for like", while offsetting provides a more general form of non-monetary restitution that while

deemed generally equivalent in compensatory value to what is being lost, it provides a different kind of cultural value or benefit from the Cultural Right being impacted.

It is important to note that in the area of intangible culture, there may be similar types of programs and activities to address both restoration/protection and offsetting initiatives (e.g., culture camps or language immersion). In one case they may be needed to address an immediate risk or impact posed by a specific project (restoration/protection initiatives). In other cases, it may not be directly related to the project but viewed as a preferred form of offsetting by your Nation.

Methods to Address Residual Impacts to Cultural Rights:

The selection of an approach to address residual impacts to Cultural Rights must be grounded in an Indigenous Group's context, history, and legal systems, as well as existing policies, protocols, norms, and laws. As previously identified, avoidance is the most preferred form of addressing residual cultural impacts. If avoidance is not possible, mitigation and/or restitution mechanisms can be implemented.

Mitigation Measures

Mitigation measures are often developed through collaboration and engagement with the proponent and/or relevant government agencies. This may occur both before and after your Nation has assessed potential impacts to your Cultural Rights and may include the development of conditions associated with the project's assessment certificate and/or permits.

Measures and conditions should include a heavy focus on the mitigation of Cultural Rights. While the focus of this Tool centers on determining opportunities for restitution, it is important to note that, at a minimum, mitigation measures should focus on either changing the actors or triggers that can lead to adverse impacts or, alternatively, strengthening your Nation's cultural resilience by supporting conditions that nurture and strengthen Cultural Rights. Refer to Tool #3 on the criteria for mitigation measures to be considered effective.

Restitution Measures

...better to be in a position to impose values and decisions, rather than having to explain ourselves and ask constantly.[22]

In general, the deliberation and decision-making about potentially appropriate and preferred restitution measures should be conducted internally within your Nation, prior to engagement with the proponent and/or government. For the sake of this Tool, we have identified three forms of restitution: cultural restoration, cultural offsetting, and financial compensation. These forms of restitution can overlap and the desired measure for restitution may be a combination of all three.

While each Nation will have different requirements for the purposes of restitution, informed by its own unique needs and priorities, the act of determining your Nation's preferred path to restitution might involve some or all of the following steps. The following decision tree (Figure 8) illustrates the key steps in one approach to determining a desirable restitution mechanism or mechanisms.

[22] FNMPC, Nechako Nations, and Anishinabek Nations. Spirit of the Land methodology workshops. November 6, 2024 and February 13 to 14, 2025 in Prince George, British Columbia, and March 5 to 6, 2025 in Rama, Ontario.

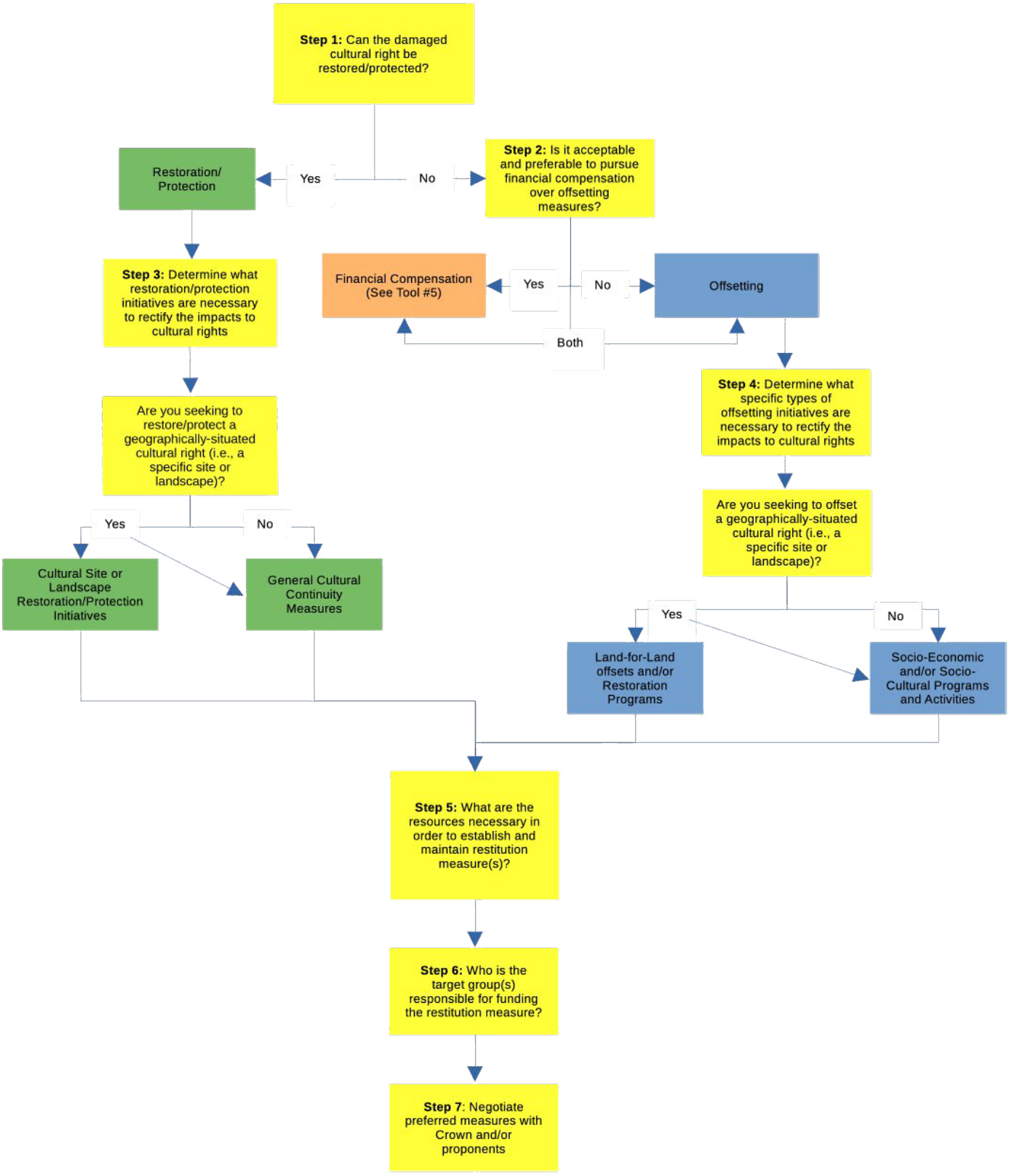


Figure 8. Form of Restitution Decision Tree

Step 1:

Can the damaged Cultural Right be restored/protected?

Yes – Restoration (see Step 3)

No – Offsetting or Financial Compensation (see Step 2)

Determine whether restoration and/or protection opportunities are feasible. The severity of potential impacts of the proposed major project on the Cultural Right(s) will be a factor in this determination. Restoration opportunities within the impacted area may not be feasible or practical in all contexts, and if so, offsetting may offer the best options for effective means of restitution. Where there is an opportunity to invest in the recovery and/or renewal of a cultural area or place, or a non-geographically situated Cultural Right, your Nation's own policies and laws can give direction. For example, where a project has the potential to adversely effects an area that a Nation has identified in its land-use plan for important cultural use, restoration and/or protection measures should be prioritized.

Step 2:

If it's not feasible to restore a cultural area, is it acceptable and preferrable to pursue financial compensation over offsetting measures? A Nation's policies and laws in this area can serve as guidance in making this decision.

Yes – Financial Compensation (see Tool #5)

No – Offsetting (see Step 4)

Determine whether financial compensation is possible and/or desired by the community. Financial compensation may be difficult to calculate for intangible cultural values and is not always applicable. In some instances, offsetting mechanisms may provide a greater benefit to the preservation and protection of cultural values than financial compensation. Further information on the complexities and limitations of financial compensation is provided in *Tool #5: Considering Financial Compensation for Residual Effects to Cultural Rights. .*

Step 3:

Are you seeking to *restore/protect* a geographically-situated Cultural Right (i.e., a specific site or landscape)?

Yes – Determine preferred geographically situated restoration measure(s) (e.g., cultural site or landscape restoration/protection initiatives), then **continue to Step 5**

No – Determine preferred non-geographically situated restoration measure(s) (e.g., general cultural continuity measures), then **continue to Step 5**

Determine what specific restoration and protection initiatives (e.g., fish habitat restoration project, establishment of a cultural centre) are necessary to rectify the impacts to Cultural Rights. General examples of restoration and protection initiatives are provided below, and a listing of example initiatives undertaken by Nations across Canada are included in Appendix C.

Some examples of geographically situated restoration measures (e.g., Cultural Site or Landscape Restoration/Protection Initiatives) include:

- Revitalization of natural landscapes, local vegetation, and native fauna within the project-affected area with the same cultural values that support the continued or enhanced exercise of the same Cultural Right being impacted;
- Restoring the project area to a certain quality following project-closure; and
- Targeted cultural programs and activities within the project area, such as language programs and culture camps, aimed and designed at supporting and/ or restoring resilience in cultural dimensions that may be adversely affected.

Some examples of non-geographically situated restoration and protection initiatives include:

- Enhancing or protecting key cultural areas outside of the project affected area that are used for the exercise of the Cultural Right being impacted; and
- Targeted cultural programs and activities outside of the project area, such as language programs and culture camps, aimed and designed at supporting and/ or restoring resilience in cultural dimensions that may be adversely affected.

Step 4:

Are you seeking to *offset* a geographically situated Cultural Right (i.e., a specific site or landscape)?

Yes – Determine preferred geographically situated offsetting measure(s) (e.g., land-for-land offsets and/or restoration programs), then **continue to Step 5**

No – Determine preferred non-geographically situated offsetting measure(s) (e.g., socio-economic and/or socio-cultural programs and activities), then **continue to Step 5**

Determine what specific types of offsetting initiatives (e.g., activity/program, land swap) are necessary to rectify the impacts to Cultural Rights and bring the community back into balance. General examples of offsetting initiatives are provided below, and a listing of initiatives undertaken by Nations across Canada are included in **Appendix D**.

Some examples of geographically situated offsetting measures, such as Land-for-Land Offsets and Restoration Programs include:

- Legal administrative, land transfer and/or land-purchase financing to support preservation of an area/landscape/location within the project area with different cultural values that support the continued or enhanced exercise of Cultural Rights;
- Providing long-term funding to support ecological restoration and stewardship programs for areas that support different Cultural Rights; and
- Return of (off-reserve) lands to community control and jurisdiction.

Some examples of non-geographically situated offsetting programs and activities, such as Socio-Economic and/or Socio-Cultural Programs and Activities include:

- Funding community project and initiatives (including long-term funding to support programs such as cultural camps for elders and youth);
- Repatriation of cultural legacy objects and belongings;
- Long-term supports for language revitalization programs;
- Long-term supports for revitalization of cultural activities;
- Establishing a cultural “trust”.
- Providing socio-economic benefits to a community;
- Housing development and programs;
- Training and education programs;
- Establishment of mental health supports and infrastructure; and
- Construction of permanent infrastructure such as offices, medical sites, schools, etc.

Step 5:

Answer the question, what resources are necessary in order to establish and maintain the restitution measure? Then proceed to Step 6.

Once the desired form of restoration/protection or offsetting is determined, the Nation can determine the resources necessary in order to establish and maintain the program or activity. The resources required will be dependent on the form of restitution chosen, as well as the existing context of the Nation (i.e., existing resources, infrastructure, personnel, etc.). Some key factors to consider when determining the resources necessary for restitution mechanisms are provided below, subdivided by the type of measure chosen.

Restoration Measures

1. Geographically situated restoration/protection measures:
    a. Size: What is the size of the land to be protected/restored? Does this factor in cumulative effects and current and future context?
    b. Quality: What is the existing quality of the site or landscape?
    c. Degree of protection: What is being protected (i.e., a patch of land, a species, an ecosystem, etc.)? What is the degree of protection? What are the consequences for continued impacts to the protected area?
    d. What are the criteria for determining whether restoration/protection objectives have been achieved?

2. Non-geographically situated restoration/protection measures:
    a. Duration: Is the initiative a one-off event (i.e., the construction of a school), or a long-term program? If it is a long-term program, how long will the initiative take place? (i.e., months, years, in perpetuity, etc.)
    b. Target community group: Who is the restitution activity engaging with? (i.e., youth, elders, women, etc.)
    c. Staffing: What sort of staffing is required? (i.e., maintenance staff, administration, honoraria, etc.)
    d. Space/location: Where will the restitution activity or program take place? Is a new location required? Are there existing places that can be utilized?
    e. Trajectory of program: Will the program or activity remain the same size for its duration? Is this a pilot program that will be developed and will grow with time?
    f. What are the criteria for determining whether restoration/protection objectives have been achieved?

Offsetting Mechanisms

1. Geographically situated offsetting measures:
    a. Size: What is the size of the land to be offset? Does this factor in cumulative effects and current and future context?
    b. Quality: In the case of a land swap or return, what is the quality of the new land in comparison to that which was lost?
    c. What are the criteria for determining whether restoration/protection objectives have been achieved?

2. Non-geographically situated offsetting measures:
    a. Duration: Is the initiative a one-off event (i.e., the construction of a school), or a long-term program? If it is a long-term program, how long will the initiative take place? (i.e., months, years, in perpetuity, etc.)
    b. Target community group: Is the initiative engaging with a specific community demographic? (i.e., youth, elders, women, etc.)?
    c. Staffing/Employment: What sort of staffing needs will the offsetting activity require? (i.e., maintenance staff, administration, honoraria, etc.). Will there be a construction component (i.e., for infrastructure developments) that community members can participate in?
    d. Space/location: Where does the initiative take place? Is a new location/new infrastructure required? Are there existing places that can be utilized?
    e. What are the criteria for determining whether restoration or offsetting objectives have been achieved?

Step 6:

Seek to answer the question, who is the target group(s) responsible for funding the restitution measure(s)? Then proceed to Step 7.

Once the resources required for a restitution initiative are determined, the total cost of the initiative can be determined and communicated to the proponent/government. Indigenous Nations may wish full control over how cultural restitution activities and projects are planned and implemented.

Step 7:

Negotiate the desired restitution measure(s) with the proponent and/or Crown.

The Indigenous Nation may issue its own consent conditions or other requirements for measures associated with impacts on Cultural Right. However, in the Canadian EA system, this does not guarantee that those measures will be adopted. As such, they may need to be negotiated with the proponent and/ or Crown who will put forward their own expectations and limitations. To help in these negotiations, it is encouraged that the Nation draw on the past identification of priority Cultural Rights and the results of the effects characterization to clearly articulate their desired forms of restitution.

Tool 5

Considering Financial Compensation for Residual Effects to Cultural Rights

Because Tool #5 addresses financial compensation, it is important to emphasize the limits of this option and the context in which it applies.

Disclaimer

Financial compensation does not negate Indigenous Nations' concerns about mitigation or avoidance of impacts. While it can provide Nations with greater control in overseeing restitution, it must never replace avoidance or mitigation. Compensation should be understood only as one component of addressing impacts—not as a substitute for protecting Cultural Rights, lands, and ways of life. Proponents must not view it as an opportunity to opt out of project redesign, avoidance, or other mitigation measures. An Indigenous Nation may negotiate economic benefits with a project proponent in the form of an Impacts and Benefits Agreement, or similar form of agreement, or an equity partnership, and therefore the Indigenous Nation must seek legal and financial advice to determine where any such compensation for impacts on Cultural Rights fits within, or outside of, these other project agreements,

As Tool #4 discusses actions that either directly or indirectly restore and offset Cultural Rights, there remains a third option for cultural restitution: financial compensation. Financial compensation can offer the Indigenous Nation greater control in overseeing restitution but can also be ethically challenging. Tool 5 is relevant to an Indigenous Group's approach to restitution of impacts to Cultural Rights if the following three conditions are met:

1. The cultural impact assessment (undertaken in Tools #1 to #3) predicts a major project *will result in residual impacts on Cultural Rights that cannot be avoided/fully mitigated;*
2. The Indigenous Group recognizes that the major project *may proceed in spite of potential residual impacts on Cultural Rights* (with or without the Indigenous Group's FPIC), and the Indigenous Group has determined to seek restitution for the residual impacts to Cultural Rights; and
3. The conclusion of Tool #4 is that the preferred approach (or one of the preferred approaches) to restitution for residual impacts on Cultural Rights is *financial compensation.*

This Tool provides detailed approaches for your Nation to pursue two different types of compensation:

1. A market-based approach where a value is assigned to a Cultural Right based on what that right would cost "on the market"; or

2. A community-based values approach, where the community that may suffer (or have already suffered and will continue to suffer) the impacts on its collective Cultural Rights are asked to determine a hypothetical financial value for such losses (e.g., a community is asked to assign a monetary value to a Cultural Right based on what the right means to them in terms of quality of life, psycho-social well-being, and socio-cultural well-being).[23]

Assigning financial value to impacts on Cultural Rights presents significant challenges and must be approached with caution. Monetary amounts may never fully reflect the non-monetary value of exercising Cultural Rights, nor the spiritual, social, and intergenerational importance attached to them. There is also an ongoing concern that assigning a dollar figure could be misinterpreted by proponents or governments as simply a "price to be paid" or a cost of doing business, which may result in less investment in other, more appropriate forms of restitution, avoidance, or mitigation. For these reasons, financial compensation will likely remain one of the most controversial elements of this Toolkit, and Nations are encouraged to carefully consider these challenges when deciding whether and how to apply this tool.

Methods for Considering Financial Compensation for Residual Effects to Cultural Rights: Market- Based Approaches to Financial Compensation for Cultural Rights

Unlike the other Tools in this Toolkit, Tool #5 does not include a list of methods and options a Nation can implement to determine a financial value to compensate for impacts to Cultural Rights. This is purposeful for two reasons:

1. A satisfactory method for determining financial compensation for impacts to Cultural Rights, has yet to be developed. Examples of financial compensation for cultural losses from the take-up of Indigenous lands in Canada, Australia, and New Zealand all rely on a market-based values approach.

2. Our partner Indigenous Nations expressed a rejection with the idea of developing a method for assigning a financial value to impacts to Cultural Rights, stating that "you can't put a price tag on the sacred".

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[23] For more information on market-based approaches and community-based values approaches, see the works of Timothy L. McDaniels and William Trousdale, "Resource Compensation and Negotiation Support in an Aboriginal Context: Using Community-Based Multi-Attribute Analysis to Evaluate Non-Market Losses," *Ecological Economics* 55, no. 2 (November 1, 2005): 173–86, https://doi.org/10.1016/j.ecolecon.2005.07.027; Robin Gregory and William Trousdale, "Compensating Aboriginal Cultural Losses: An Alternative Approach to Assessing Environmental Damages," *Journal of Environmental Management* 90, no. 8 (June 2009): 2469–79, https://doi. org/10.1016/j.jenvman.2008.12.019; Philippe Hanna et al., "The Importance of Cultural Aspects in Impact Assessment and Project Development: Reflections from a Case Study of a Hydroelectric Dam in Brazil," *Impact Assessment and Project Appraisal* 34, no. 4 (October 1, 2016): 306–18, https://doi.org/10.1080/14615517.2016.11 84501; Tobias Plieninger et al., "Assessing, Mapping, and Quantifying Cultural Ecosystem Services at Community Level," *Land Use Policy* 33 (July 1, 2013): 118–29, https://doi.org/10.1016/j.landusepol.2012.12.013; Robin Gregory et al., "Compensating Indigenous Social and Cultural Losses: A Community-Based Multiple-Attribute Approach," *Ecology and Society* 25, no. 4 (2020): 1–13, https://doi.org/10.5751/ES-12038-250404.

That said, financial compensation remains a prominent means of compensative for project impacts and is oftentimes used by proponents and governments. However, the consideration of Cultural Rights in the determination of financial compensation for project impacts remains incredibly limited in Canada.

Australia and New Zealand have developed policies and legislation that take into consideration cultural losses when dealing with the uptake of Indigenous lands by the Crown, which are included below. While the case studies below rely on a market-based approach, where cultural elements and losses are connected to a comparative market-based value, they represent steps forward for the consideration of culture (and notably intangible culture) in determining compensation for impacts.

Canada

The Supreme Court of Canada's decision in the Southwind v. Canada 2021 case represents the most recent reference to cultural impacts arising from the expropriation, or take-up, of reserve lands. The case determined that "equitable compensation must reflect the "highest value" of the land taken – including:

- The land's value to any public project they were used for;
- The land's value from the Indigenous people's perspective; and
- Costs for impacts on the community.

This court ruling therefore supports the notion that compensation for reserve lands must include a "cultural component linked to the land's significance in the exercise of the culture."[24] *Southwind*, therefore, provides a legal model for compensation for impacts to Indigenous lands, taking into account cultural losses that are attached to the land. While the model does not deal specifically with cultural losses, it may point in a direction for restitution where a project's impacts to Indigenous lands are accompanied by impacts to Indigenous culture. It is also important to note that while this positive decision has the possibility to be applied generally and support negotiations for impacts to Cultural Rights arising from major projects, the legal precedent created by the decision is specific to reserve lands.

Some strengths and weaknesses of a market-based values approach are provided below.

Strengths

- Draws on readily available and pre-determined comparative market values.
- Has been adopted in policy and legislation and therefore represents a defendable and "tested" approach.

Limitations

- Intangible cultural losses are difficult to measure and compare to a market-based equivalent.
- Doesn't take into consideration associated factors such as spirituality and well-being.

[24] Williams, "The Right to Compensation for Cultural Damage," 2.

Australia

In 2022, the Australian government developed the *Policy for Compensation for Cultural Loss Arising from Compulsory Acquisition*. The policy states:[25]

> *Cultural loss is perhaps best approached by understanding the cultural value of country and what connection to the particular country impacted by the compensable activity means from a cultural perspective. A proper understanding of the laws and customs of the compensable group and how they are connected to country by those laws and customs is crucial to this.*
>
> *An appreciation of the cultural value of country and the cultural value of the particular parcel of land can then turn to the question of how the compensable activities have impacted on or would impact on that cultural value. That impact may take many different forms and may include feelings of spiritual and emotional loss or distress as well as such impacts as the ability to learn and teach cultural knowledge on country or damage to sites of significance.*

The Policy outlines categories of cultural loss including access, residence, activities, practices, ecology, sites, trauma, and progressive impairment which are used to derive a market-based means of evaluating financial compensation. The Policy includes novel principles for determining financial compensation, including:[26]

- Compensation must reflect that losses will be felt by future generations. Compensation must therefore include not only loss at a single moment of time, but also the perpetuity of the loss (i.e. cultural losses are not frozen in time).
- Compensation must consider the extent to which related and connected areas have been impacted (i.e., compensation must consider cumulative effects).
- The significance of the cultural losses must be identified through engagement with those suffering loss (i.e., Indigenous communities must be allowed to identify the loss and determine its significance).

While still limited and failing to address the controversial basis of compulsory land acquisition,[27] the Policy explicitly indicates that cultural losses are compensable and represents a more inclusive process for considering Cultural Rights when determining financial compensation.

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[25] Valuer General NSW, "Compensation for Cultural Loss Arising from Compulsory Acquisition" (NSW Government, 2022), 1.
[26] Valuer General NSW, 6–7.
[27] Compulsory acquisition is criticized as being fundamentally at odds with the right of Indigenous peoples to Free, Prior, and Informed Consent (Mia Stone, Dr Lisa Strelein, and Kieren Murray, "AIATSIS Submission: Review of Forms of Cultural Loss and the Process and Method for Quantifying Compensation for Compulsory Acquisition," n.d., 19.)

New Zealand

In New Zealand, a series of settlements called the Waitangi Claims of Whakatōhea have been either signed or in the process of being actively negotiated. These settlements provide redress for the losses suffered by the Whakatōhea as a result of Crown confiscation and seizure of lands prior to 1992. The seven most recent settlement packages (since 2021) include elements such as a Crown acknowledgement and apology, and financial, cultural, and commercial restitution. Of note, restitution/redress is "intended to recognise the cultural, historical and traditional associations of Whakatōhea within their area of interest"[28] and includes elements such as:

- the funding for cultural purposes (including education and revitalization funds),
- the transfer of land, natural resource arrangements, and
- geographic name changes.

The settlements include clear compensation for *cultural damages and losses* occurred as a result of the Crown breeching Māori rights and title. Unfortunately, the settlements provide no explanation as to how the compensation figures were calculated. It is assumed, based on past historical settlements, that the Government of New Zealand has continued to employ a market-based approach to calculating cultural compensation amounts whereby the redress is based on a historical assessment of past value and equivalent present financial value of land.

[28] New Zealand Government, "Deed of Settlement between the Crown and Whakotōhea," January 2022, 2.

Community-Based Approaches to Financial Compensation for Cultural Rights

As illustrated above, market-based approaches are the predominant method for determining financial compensation for cultural losses in Australia and New Zealand. Similarly, while *Southwind* represents a possible future avenue for the consideration of impacts to Cultural Rights, Canada has yet to fully implement a mechanism for compensating for cultural losses.

Conversations with our partner Indigenous Nations highlighted the importance of Indigenous Nations taking a leading role—if not the leading role—in deciding when, how, and to what extent compensation should be determined for impacts to their culture. In a community-based values approach, the values, beliefs, and experiences of those impacted by the loss are a central consideration. This approach can therefore be a more holistic, and arguably more accurate, method of costing Cultural Rights than that offered by a "market-based values" model. A community-based values approach allows an Indigenous Nation to apply their own values and forms of measurement when determining what constitutes a substitute of comparable cultural value. For example, an Indigenous Group may determine that adequate compensation for loss of access to a preferred fishing site is the cost amount needed to acquire alternative waterfront land for a new fishing site of equal or higher cultural value. A community-based approach is catered to a specific Indigenous Group's needs and grounded in your Nation's existing values, laws, and rights. As a result, each approach taken by an Indigenous Nation will be unique and will directly reflect what matters most to the community.

When Indigenous communities can implement their own method for determining the financial value of a Cultural Right, intangible cultural elements that are commonly excluded from financial compensation approaches may be included. Such approaches do not rely on an ever changing "market value" which does not consider the complexities associated with culture. Therefore, the use of a community-based values approach allows an Indigenous Nation to take control of this compensation process and determine a value that accurately encompasses the cultural practice. Such an approach also allows for the consideration of both cultural impacts as well as related biophysical and non-cultural impacts if desired, though your Nation may choose to assess these separately.

Some strengths and limitations of a community-based values approach are provided below:

Strengths

- Draws on community knowledge and experience to develop a robust understanding of the value of Cultural Rights.
- Results in a flexible and personalized approach to evaluating cultural losses that is grounded in the unique context of your Nation.
- Can allow for the joint consideration of cultural, biophysical, spiritual, social, and other impacts.

Limitations

- Has yet to be formalized in Canadian law and practice and may not be accepted by proponents and/or the government.
- Requires extensive community engagement, time, and resources.
- Assigning a financial value to Cultural Rights may be a traumatic and difficult process for community members.

Appendices

Considering Financial Appendix A: List of Methods for Impact Assessment (Tools #1 to #3)

Tool 1 Inventory of Cultural Rights

Method	Strengths	Limitations	Resources
Direct Community Engagement Sessions and Surveys	» 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.	» 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 an Indigenous Nation.	Community Resource Handbook 2021: A Guide to Community Engaged Research Indigenous Community Engagement Methods
Use and Occupancy Studies	» 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.	» 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.	Chief Kerry's Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design, and Data Collection Living Proof by Tobias and Associates

Method	Strengths	Limitations	Resources
	» 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.	» 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.	
Density of Use Maps and Mapping of High Priority Areas	» 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.	» Requires extensive community engagement and surveying, and usually cannot meet with every land user. » 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 (i.e. “intangible”). » 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”.	Density Mapping with GIS Dot Density Maps

Method	Strengths	Limitations	Resources
Identification of Cultural Landscapes	» 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.	» 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.	Doig River Indigenous 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.
Indigenous Knowledge and Ecological Studies, and the Identification of Cultural Keystone Places/Species	» 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.	» 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.	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

Method	Strengths	Limitations	Resources
Indigenous Laws and Norms	» 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.	» 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 Indigenous Nation when converting laws and norms into any sort of assessment "lens"; this cannot be done by any outside party.	Yinka Dene 'Uza'hné Surface Water Management Policy Yinka Dene 'Uza'hné Guide to Surface Water Quality Standards

Tool 2 Characterizing Existing Cumulative Effects on Indigenous Cultural Rights Methods

Method	Strengths	Limitations	Resources
Direct Community Engagement Sessions and Surveys (Cumulative Effects)	» Meaningful Community Input. » Can supplement gaps in other methods.	» Can be time intensive. » Can overwhelm the community if there are too many engagement sessions over time for proposed projects, or if other factors are limiting the capacity for participation.	Virtual Community Engagement Guide: A Toolkit for Hosting Online Community Engagement and Meetings in Rural, Remote, and Indigenous Communities Developing Methodologies for First Nations Community Surveys: Considerations for the External Researcher by Celina Willis
On-Territory Data Collection	» Represents a deep understanding of a community's connection to their territory. » Data can be used qualitatively or quantitatively, and can be buffered, anonymized, or redacted if certain information is sensitive. » Collection can be targeted to certain activities and subpopulations to fill in specific data gaps (e.g. hunters, plant harvesters, or youth).	» Land users can be difficult to schedule in (e.g. seasonally), particularly if data collection is time sensitive. » Community members may be unwilling to document specific locations if they are sensitive or for example are particularly good for harvesting. » As the information collected ages, it can be misused and misinterpreted by non-Indigenous peoples.	Come take a walk with me: The "Go-Along" interview as a novel method for studying the implications of place for health and well-being by Richard M. Carpiano
Mapping Data Showing Changes over Time in Land Use	» A strong visual communication of cumulative effects.	» Can be time and resource intensive to create mapped data if it does not already exist.	Producing Land Cover Change Maps and Statistics: Step by Step Guide on the use of QGIS and RStudio

Method	Strengths	Limitations	Resources
Ecological Stock and Trend Data	» Provide information about important ecosystems, including their vulnerability.	» If heavily relied on, Western scientific studies may not accurately reflect Indigenous lived experience. » An expert in the subject area may be necessary to support analysis of the data.	A Guide to Using Wildlife Cameras for Ecological Monitoring in a Community-based Context by Claire Kemp, Kathryn Yarchuk, Allyson Menzies, and Jesse Popp
Compiled Community Data and Records	» Does not overwhelm community members. » Can be time and resource efficient if information is readily available.	» Gaps can remain and may be strongest paired with more current information such as through community engagement or on-territory data collection.	Community Archives as Community Building Tools by Danielle Barraza, Alan Garcia, and Rachael Zipperer
Ethnographic Data and Oral History	For strengths and limitations of this approach of using existing information, see above for Compiled Community Data and Records.		Dr. Jo-ann Archibald on Indigenous Storytelling Analysis and Interpretation of Ethnographic Data: A Mixed Methods Approach By Margaret D. LeCompte and Jean J. Schensul
Past Project Data and Records	For strengths and limitations of this approach of using existing information, see above for Compiled Community Data and Records.		Canadian Impact Assessment Registry

Tool 3 Identifying Impact Pathways, Conducting an Effects Characterization, and Evaluating the Severity of Potential Impacts Methods

Method	Strengths	Limitations	Resources
Heat Mapping	» A visual communication of specific impacts from a project on Cultural Rights.	» Cannot accurately represent Cultural Rights which are not tied to a specific geographic location. » As the information collected ages, it can be misused and misinterpreted.	Applying Density and Hotspot Analysis for Indigenous Traditional Land Use: Counter-Mapping with Wasagamack First Nation, Manitoba, Canada by Keshab Thapa and Shirley Thompson
Risk Matrix	» The matrix can be tailored to a community's risk tolerance.	» An expert in the subject area may be necessary to support analysis of the data. » As the information collected ages, it can be misused and misinterpreted by non-Indigenous peoples.	Hazard and Risk - Risk Assessment

Appendix B: Checklist to Prepare for Cultural Rights Impact Assessment

Checklist to Prepare for Cultural Rights Impact Assessment

- ☐ Leadership support: Has leadership formally endorsed or approved undertaking the CRA?
- ☐ Decision-making process: Are governance structures in place to review, approve, and respond to CRA findings?
- ☐ Administrative systems: Does the Nation have policies, staff, and systems to manage records, correspondence, contracts, and reporting related to the CRA?
- ☐ Capacity for coordination: Is there a designated person or team to coordinate CRA activities across departments (lands, culture, health, etc.)?
- ☐ Workload management: Can existing staff absorb the additional CRA workload, or will extra hires/consultants be needed?
- ☐ Financial administration: Are financial systems ready to manage funding agreements, payments, and reporting requirements tied to the CRA?
- ☐ Information management: Is there a plan for storing, protecting, and controlling access to CRA data (including sensitive cultural information)?
- ☐ Community engagement readiness: Are mechanisms in place (e.g., newsletters, meetings, online platforms) to share updates with members throughout the process?

Tool 1 Inventory of Cultural Rights

- [ ] Determine what information is necessary and essential.
  - » Identify who is to be involved (elders, knowledge holders, land users, technicians) and how to collect their input (meetings, workshops, questionnaires).
- [ ] Research to determine what information is available.
- [ ] Identify what information is not available but is necessary.
- [ ] Scope and budget to obtain the necessary information that is not available.
- [ ] Secure budget to initiate research to collect necessary information.
- [ ] Compile and organize all inputs of information (is it in a format for use, are there restrictions for its use).

Tool 2 Characterizing Existing Cumulative Effects on Indigenous Cultural Rights Methods

- [ ] Determine the baseline (when are we measuring from. for example, pre-industrial, 10 years ago or today).
- [ ] Determine the geographical area (what area are we looking at: traditional territory, project regional study area, specific area of importance).
- [ ] Determine your Valued Components (what do you want to measure an impact on?).
- [ ] Identify the projects and activities that exist (utilize the baseline and study area to determine).
- [ ] Identify other potential sources of impacts (climate change, access, gov't policies and regulations).
- [ ] Identify existing impacts from identified projects/activities and other sources of impacts:
  - » Utilize Indigenous Knowledge; and
  - » Utilize existing studies and data (impact statements, regulatory or legal filings).
- [ ] Scope and budget to assess existing cumulative impacts.
- [ ] Secure budget to identify existing cumulative impacts.

Tool 3 Identifying Impact Pathways, Conducting an Effects Characterization, and Evaluating the Severity of Potential Impacts Methods

- ☐ Secure all necessary information about the proposed project/activity (impact assessments, data, GIS data, regulations, public notices).

- ☐ Identify Impact Pathways:
  - » Study to determine pathways.

- ☐ Identify significance of each impact (what is the methodology applied to measure):
  - » Study to measure impact to Valued Components;
    - In the context of cultural impact assessment, a valued component refers to an element of a Indigenous Nation's culture, rights, or way of life that the community identifies as important and requiring protection.
    - Disclaimer: Some cultural values are intangible or so significant that they cannot be meaningfully measured or assigned a value, and this must be recognized in any assessment of impacts.
  - » Determine which impacts are acceptable and which are not; and
  - » Determine if those unacceptable impacts can be mitigated.

- ☐ Engage with community and decision makers about the potential impacts (news bulletin, community meetings, social media/website).

- ☐ Scope and budget to assess potential impacts.

- ☐ Secure budget to identify and prepare response to potential impacts.

- ☐ Submit report on potential impacts to proponent and regulators.

Appendix C: Restoration/Protection Initiatives

The following examples of restoration/protection initiatives have been implemented by Indigenous Nations across Canada. While each program would be specifically designed to address a Nation's key requirements and cultural context, the following examples may serve as a starting point for the determination of possible restitution initiatives your Nation may wish to establish:

- Syilx Okanagan Nation, **Bringing the Salmon Home! Columbia River Salmon Restoration Initiative (CRSRI)**: A program that reintroduces salmon, a species of profound importance for Syilx Okanagan Nation, into their historical spawning grounds in the Canadian portion of the Columbia River. Part of an agreement to integrate Indigenous voices and needs into the existing Columbia River Treaty, the program addresses impacts to salmon populations due to hydroelectric dams, development, and habitat disruption. In recent years, the program has resulted in the return of annual runs of hundreds of thousands of sockeye salmon and has contributed to the restoration of the Nations' relationships with salmon.

- West Moberly First Nations and Saulteau First Nations, **Klinse-Za Mountain Caribou Protection Partnership Agreement**: A co-management program involving the direct participation of Nation members in the stewardship of the Klinse-Za caribou herd in the South Peace region of BC, where industrial development and other human activities have resulted in a drastic decline in caribou numbers over the past 50 years. The program protects a range of Klinse-Za caribou habitat and provides funding to the Nations to begin restoring habitat in the region and buying out private resource tenures in the designated area. Part of a partnership agreement between the First Nations, BC, and Canada, the program has resulted in an increase in the Klinse-Za caribou herd from a low of 38 individuals in 2013 to nearly 200 individuals as of 2024. The program is actively working to restore the Nations' ability to hunt caribou as they previously had for thousands of years.

- Kaska First Nations, **Dene K'éh Kusān Protected Area**: A large Indigenous Protected and Conserved Area (IPCA) in the core of Kaska traditional territory is designed to act as a buffer against climate change and biodiversity loss. The plan includes the development of relationships with land users currently operating in the proposed area. The Kaska Land Guardians will co-manage the protected area, creating jobs grounded in Kaska culture, legal principles, and value systems. The plan is part of ongoing co-management and planning agreements Kaska First Nations have with the BC government. It is designed to protect against further losses to land and culture for Kaska First Nations, to revive caribou populations, and to provide economic opportunities for Indigenous communities. The Dene K'éh Kusān plan will restore Kaska stewardship over traditional lands and empower communities to manage their territories.

» Coastal First Nations, **Coastal Guardian Watchmen Support**: A guardian program whereby the Watchmen uphold and enforce traditional and contemporary Indigenous laws passed down over countless generations, and work together to monitor, protect, and restore the cultural and natural resources of coastal territories. The Watchmen facilitate monthly conference calls and organize annual gatherings and learning exchanges that bring Guardians together to build relationships and share information and experiences. Although Coastal Guardian Watchmen programs provide ongoing monitoring across the Central and North Coasts and Haida Gwaii, each Nation is responsible for its own specific territory. The Costal Guardian Watchmen network safeguards Coastal Nations' territories by gathering and sharing detailed regional knowledge about lands and waters, animal populations and habitats, and impacts from human activities. This knowledge can then be used to inform Nations' decision-making regarding uses of lands and waters.

NOTE: while monitoring is not typically considered mitigation, the development of - or increased investment in an existing - evergreen, well-funded, strongly mandated monitoring program, can be considered mitigation, in part because it empowers the Indigenous Group above and beyond simply monitoring the project.

Appendix D: Offsetting Initiatives

The following examples of offsetting initiatives have been implemented by some Indigenous Nations across Canada. While each program will be specifically designed to address a Nation's key requirements and cultural context, the following examples may serve as a starting point for the determination of possible restitution initiatives your Nation may wish to establish:

- Inuit Tapiriit Kanatami, **ITK IlikKuset-Ilingannet! Culture Connect!**: Connecting youth and adult role models in order to facilitate knowledge transfer on hunting, trapping, sewing, art, carving, snowshoe making, music and wild food preparation. A pilot program took place in three communities in Nunatsiavut, Labrador, where the mental health of community members was found to be negatively affected by climate change and associated changes to wildlife, ice cover, and precipitation. By pairing youth with Elders to share knowledge about traditional activities, the program increased generational knowledge transfer, improved participants' mental health, and built pride in Inuit identity.

- Haida Gwaii First Nation, **Haida Rediscovery Camp**: A youth-based culture camp on the islands of Swan Bay and Mount Moresby, that reconnect youth to their culture. Young people gain a set of skills based in traditional values that will support them through their lives. The program bridges gaps created by family disruption and other effects of colonialism that have caused a loss in young people's ability to connect with their culture. Rediscovery Camps were founded in the 1970s and have since spread throughout Canada and the world.

- Tłįcho, **Įmbè Program**: An intensive cultural land-based learning program for senior high and post-secondary students that connects young people with Elders to help ensure that Tłįcho language and culture are passed onto future generations. Participants share and learn traditional skills such as fishing and fish preparation, sewing and beading, plant gathering, language learning, and storytelling. The program addresses the loss of culture due to youth departure for schooling and has been shown to improve participants' level of cultural knowledge, self-esteem, and sense of cultural identity.

- Singaqmiut, **Culture Committee**: A culture committee that engages the community with cultural/traditional activities and practices including ice fishing, seal hunting, polar bear hunting, whaling, harvesting wild onions, berries, etc., cooking traditional foods, cultural history lessons, skin sewing, storage of subsistence foods, et building and root gathering. There are several culture committees like this one across Nunavik, each of which is specific to the community it serves. The committees seek to strengthen Inuit culture and ensure Inuit traditions are maintained.

» Dehcho First Nations, **The Aboriginal Language Nest Program**: A program where Dene children (ages 0 to 5) are immersed in their traditional language to support language acquisition and generational transfer. Initiated as part of the Northwest Territories Aboriginal Languages Plan in 2010, the program aims to revitalize the Dene language, which has been declining in use over the past several decades. This early childhood program is based on the Maori language nest model. Funding is provided by the Northwest Territories government but is managed by Dehcho First Nations.

» Cheslatta Carrier Nation, **Cheslatta Carrier Nation and British Columbia Settlement Agreement**: Designed as a means of restitution for the impacts of the flooding of Cheslatta Territory and associated eviction of the Cheslatta t'en from their territory for the construction of the Nechako Reservoir. It was determined that 10,000 ha of Crown land would be transferred as Land Parcels to the Cheslatta Carrier Nation. Cheslatta had the opportunity to identify Crown lands within the Cheslatta Territory or Area of Interest for protection or for transfer as a tenure. This example is unique in that it involved restitution for past impacts, illustrating how the tools outlined above can be used in a variety of contexts. The Carrier Nation is a partner in the development of this Toolkit and their success in the Nechako Reservoir case demonstrates what can be achieved with such tools.

» White Bear First Nations, **White Bear Education Complex**: The White Bear Education Complex is located on White Bear First Nations in Carlyle, Saskatchewan, and offers land-based education services to the Four Nations living on White Bear: Cree, Saulteaux (Anishanabe), Nakota, and Dakota. Through the White Bear Education Complete, the Learning the Land model of education grounded in a vision of an Indigenous education system based in Inherent and Treaty Rights continues to be developed. Youth students explore Indigenous practices and traditions and gain school credit. Some of the skills the students are learning range from tipi-raising, canoeing, trapping, hunting, preparing the meat, tanning hides, picking berries, and harvesting traditional medicines.

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