

Preliminary Interim Guidelines on Traditional Knowledge

Traditional Knowledge Governance Project

February 13, 2013

**Foundations**

Without prejudice to the beliefs of any particular tribe,

1. Every tribe has its own ways of being and thinking about their traditional knowledge, and has sovereignty over the traditional knowledge held by their citizens;
2. It is common among the Coast Salish and indigenous peoples to believe that all knowledge is sacred and ultimately comes as a gift from the Creator;
3. It is common that the division of the world into the tangible and intangible, and causes and effects can move between worlds;
4. It is common to believe that all things are alive, and infused with spirit, and that the world can be communicated with;
5. Although all knowledge is sacred, there may be distinctions drawn between different kinds of knowledge, from those things which are sacrilegious to speak about with outsiders, to knowledge that can be shared if cultural beliefs are respected, to knowledge that may be shared freely;
6. Any knowledge or information exchange with tribes should take these issues into full account, and respect each tribes' authority to specify how they should be approached, how they classify different kinds of knowledge, and how they wish to engage or decline to engage with others on different kinds of knowledge;
7. All negotiations must include space for tribes to express their spiritual practices, values, and beliefs;
8. Tribes have the right of continuing involvement in all decisions concerning the use or change in use of any exchanged knowledge unless they have explicitly provided for specified uses for have waived this right;

**Free, Prior and Informed Consent (FPIC)**

7. Any exchange of traditional knowledge should be based on the principle of free, prior and informed consent (FPIC):
  - a. Free: emphasizes that the choice must be unbiased and un-coerced
    - a1. There should be procedural safeguards to prevent any threats or inappropriate inducements to bias or pressure a decision

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a2. Tribe should be allowed to define appropriate time scales and internal processes for making decisions

b. Prior: Consent should be obtained before

b1. Accessing undisclosed TK

b2. Use of already disclosed TK

c. Informed: Tribes should be informed of all relevant benefits, costs and risks for all requests for sharing traditional knowledge and tribal information.

c1. Tribes should be informed of all legal protections and lack of legal protection for any shared knowledge under all relevant laws, including but not limited to relevant Federal Indian law, FOIA, Constitutional law, civil law, international treaties to which the United States has acceded

c2. Tribes should be informed of all intended uses, and of mechanisms to ensure that the exchanged knowledge is only used on mutually agreed terms

c3. Tribes should have a clear understanding of the confidentiality or lack of confidentiality of any shared TK or information

c4. Given the inextricable links between traditional knowledge and cultural resources, tribes should receive sufficient information to evaluate:

c4.1 Benefits, risks and costs in terms of their control and use of traditional knowledge both by themselves and by outsiders

c4.2 Benefits, risks and costs in terms of the cultural resources to which traditional knowledge is linked

c5. The form, levels and duration of any expected benefits from sharing traditional knowledge or information

c6. Alternatives to sharing traditional knowledge or information for achieving desired goals, particularly co-management agreements or in camera review

c7. All relevant information should be provided in terms understood by traditional knowledge holders and other tribal members and authorities

8. Recognizing that Coast Salish tribes share traditional knowledge through common heritage, and that knowledge disclosed by one is disclose by all, support should be given to tribes to explore means to resolve disputes over sharing traditional knowledge held in common.

9. In the absence of any explicit statutes recognizing and respecting tribal sovereign authority over shared traditional knowledge or information or trustee obligations to protect or keep such shared

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knowledge or information confidential, it should be assumed that anything shared will be publicly accessible and in the public domain

10. The TK Governance project will urge participating tribes to submit non-sensitive information on adaptive management from participating tribes to guide decisions on the priorities identified by the NPLCC. Any knowledge will be supplied on a voluntary basis and following the interim measures for free, prior and informed consent.