

Consultation with the Mi'kmaq of Nova Scotia

NOVA SCOTIA OFFICE OF L'NU AFFAIRS
RATE BASED PROCUREMENT WEBINAR

NOVEMBER 30, 2021

Overview

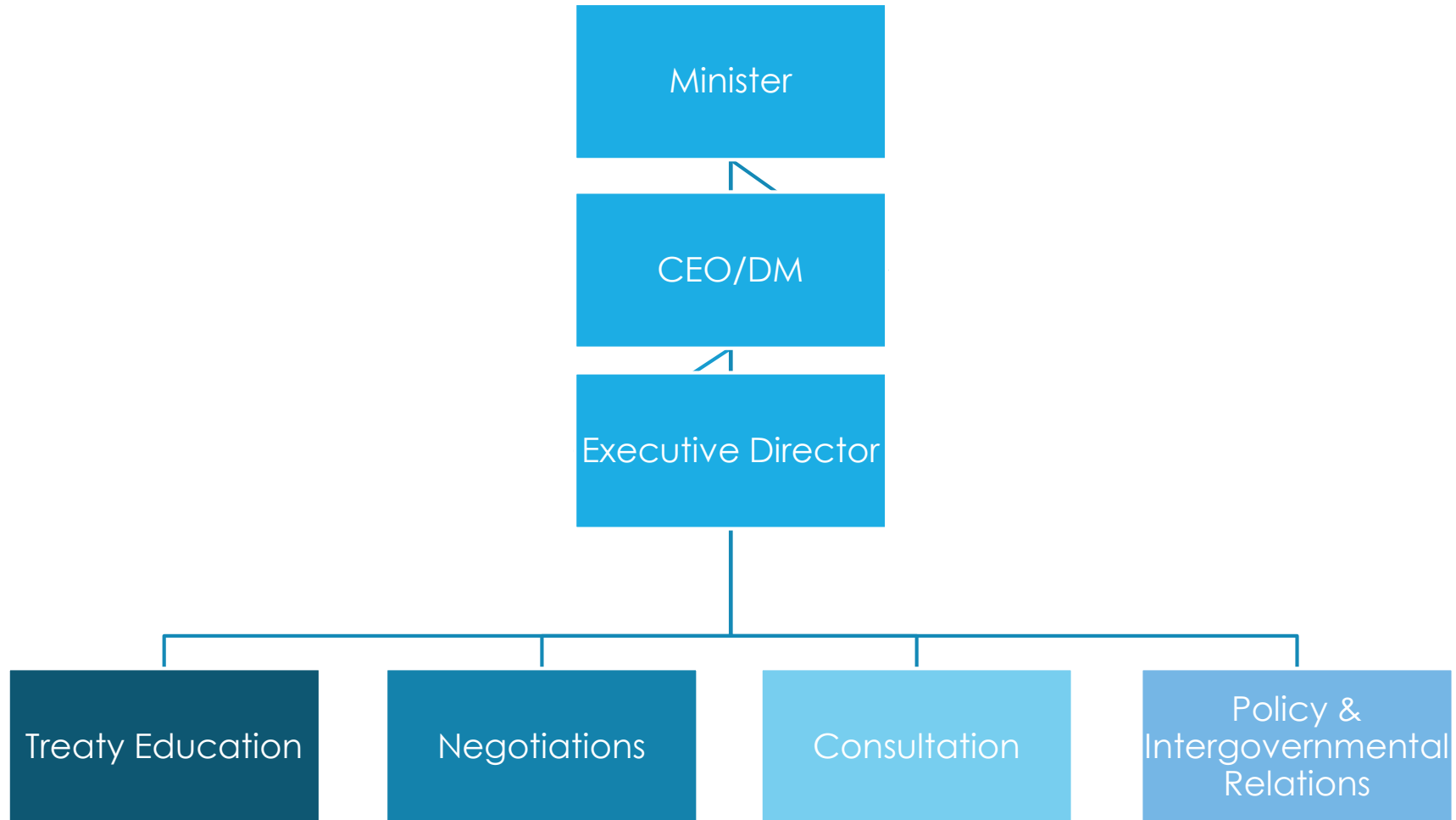
- Office of L'nu Affairs & Consultation Division
- Historical Context
- Nova Scotia Context
- Consultation Process
- Role of Proponents

Office of L'nun Affairs (OLA)

Mandate

- Coordinate government's approach on matters related to Aboriginal people.
- Represent the interests of the Province in inter-governmental, multilateral initiatives.
- Provide policy advice, analysis, and research to government on Aboriginal issues.
- Lead rights-based initiatives, including negotiations and coordination of consultation on behalf of the Province.
- Coordinate Treaty education with Mi'kmaw partners and increase public awareness and understanding of Aboriginal issues.

Office of L'nu Affairs



Consultation Division

1. Strategic Leadership in Aboriginal Consultation

- Ensure consistent government approach, lead the Policy, Consultation TOR, liaise with other jurisdictions (fed/prov).

2. Operational Support to Departments

- **Advice on whether to consult, coordination of process, issue tracking, advice to proponents, file management, committees.**

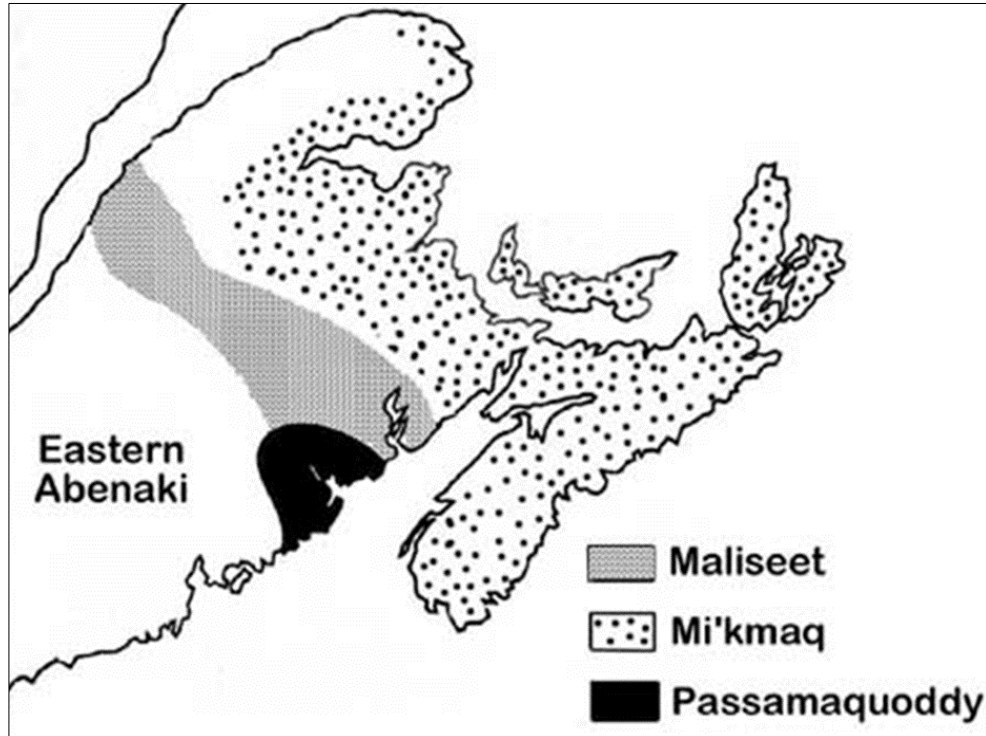
3. Training

- Training sessions for provincial employees, training resources.

4. Strengthening Capacity of the Mi'kmaq

- Capacity funding for Assembly of NS Mi'kmaq Chiefs (KMKNO) and other groups.

Mi'kmaq of Nova Scotia – Historical Context



Bay of Fundy Ecosystem Partnership, "Living Lightly on Land and Water: Native People and the Bay of Fundy," 2003.

- Traditional lands of the Mi'kmaq are known as Mi'kma'ki.
- Mi'kmaq presence can be traced back 13,000 years.
- Longstanding connection to the land and water that continues today.
- Historical context helps understand why we have a duty to consult today.

The Mi'kmaq of Nova Scotia

NOVA SCOTIA'S 42 MI'KMAQ COMMUNITIES

 **13 Governance Communities & their**
 **29 Satellite Affiliates**

- A. ACADIA
- B. ANNAPOLIS VALLEY
- C. BEAR RIVER
- D. ESKASONI
- E. GLOOSCAP
- F. INDIAN BROOK
- G. MEMBERTOU
- H. MILLBROOK
- I. PAQTNKEK
- J. PICTOU LANDING
- K. POTLOTEK
- L. WAGMATCOOK
- M. WE'KOQMA'Q



- | | |
|------------------------------|-----------------------------|
| 1. Bear River 6A - Greywood | 16. Paqtnkek-Niktuek |
| 2. Bear River 6 B - Lequille | 17. Pennal 19 |
| 3. Beaver Lake 17 | 18. Ponthook Lake 10 |
| 4. Boat Harbour West 37 | 19. Sheet Harbour 36 |
| 5. Caribou Marsh 29 | 20. Shubenacadie Grand Lake |
| 6. Cole Harbour 30 | 21. Indianbrook |
| 7. Eskasoni 3A | 22. St. Croix 34 |
| 8. Fishers Grant 24G | 23. Welnek |
| 9. Fisher's Grant IR 24 | 24. Sydney 28A |
| 10. Franklin Manor 22 | 25. Truro 27A |
| 11. Gold River 21 | 26. Truro 27 B |
| 12. Malagawatch 4 | 27. Truro 27 C |
| 13. Margaree 25 | 28. Wallace Hill 14A |
| 14. Merigomish Harbour 31 | 29. Wildcat 12 |
| 15. New Ross 20 | |

Why do we Consult the Mi'kmaq?

Legal/Constitutional Obligations

- Aboriginal and Treaty rights are entrenched in the Constitution Act, 1982, Section 35:
 - (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
 - (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Metis peoples of Canada.

- Aboriginal and Treaty Rights are collectively held and include activities such as hunting, fishing, and gathering.

- Court decisions have further defined rights and continue to do so.

Who do we Consult with?

- Only the Mi'kmaq of Nova Scotia and their governance/representative bodies:
 - Assembly of Nova Scotia Mi'kmaw Chiefs (11 communities)
 - Sipekne'katik First Nation
 - Millbrook First Nation

- KMKNO (Kwilmu'kw Maw-klusuaqn Negotiation Office) is the **executive branch** of the Assembly responsible for coordinating negotiations and consultation: rights-based issues

Important Consultation Documents

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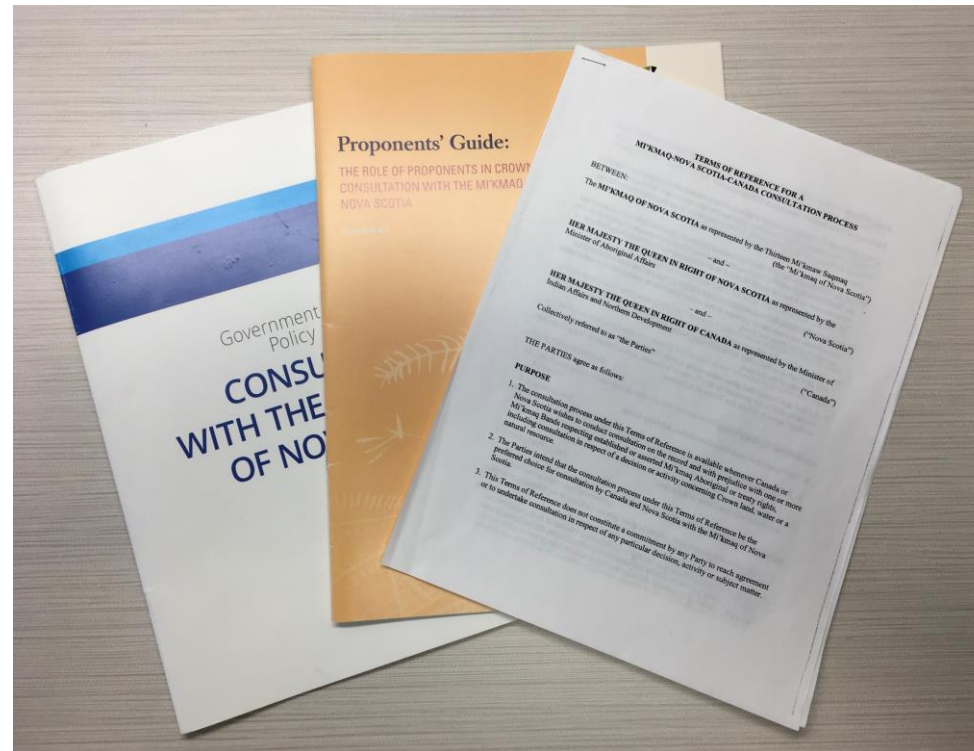
1. **The 2010 Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference (TOR)**
2. **Government of Nova Scotia Policy and Guidelines: Consultation with the Mi'kmaq of Nova Scotia**
3. Canada-NS Memorandum of Understanding on Cooperation regarding Duty to Consult
4. **Proponents Guide: The Role of Proponents in Crown Consultation with the Mi'kmaq of NS**



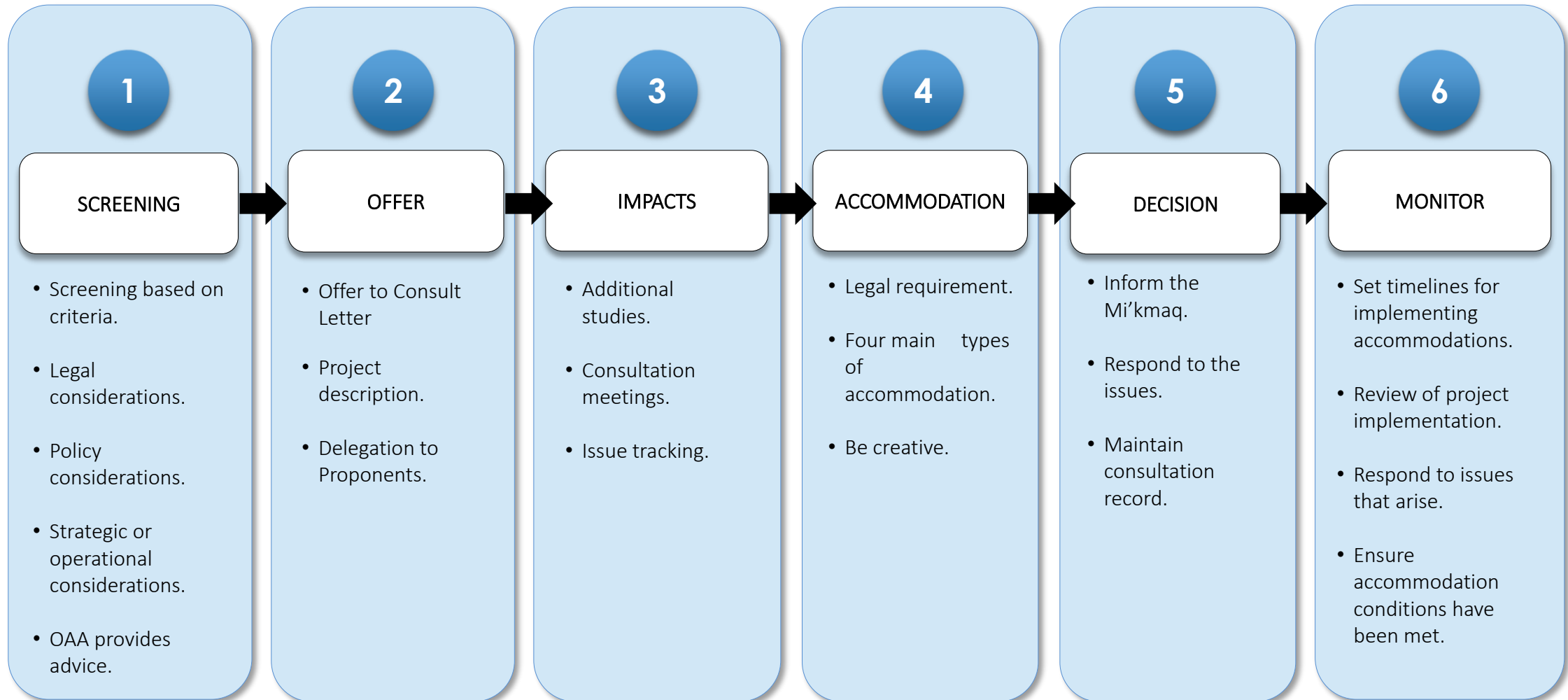
Aboriginal Consultation

Online Resources

<https://novascotia.ca/abor/office/what-we-do/consultation/>



Aboriginal Consultation Process



Aboriginal Consultation Process

Step 1: Consultation Screening

- Screening is completed to determine if consultation is required.
- Understand how project may impact Aboriginal and Treaty rights
- Consider various types and sources of information: project description, regulatory schedule, land ownership, potential environmental impacts, distance to First Nation lands, archaeology.

Step 2: Offer to Consult

- When departments choose to consult, an offer to consult letter is sent which includes as much project information as possible.
- The letter will follow the Consultation TOR requirements.
- The Mi'kmaq will be provided a reasonable amount of time to indicate whether they would like to participate in consultation.
- Mi'kmaq also asked to indicate any impacts to Aboriginal and Treaty rights.

Aboriginal Consultation Process

Step 3: Identify Impacts

- In many cases, consultation is only conducted by **correspondence**.
- Rely on a variety of **studies** to help inform the Province regarding potential Aboriginal impacts (environmental studies, MEKs, archaeological studies).
- When possible, **consultation meetings** are preferred.
- Meetings can occur throughout the consultation process.

Step 4: Accommodation

- Accommodation must be considered in all consultation processes.
- Accommodation involves balancing Aboriginal with other societal interests.
- Four types of accommodation: **1. Avoidance 2. Reduce Impact /Mitigation 3. Compensate for Impacts 4. Proponent Accommodation**

Aboriginal Consultation Process

Step 5: Decision

- Once a decision is made by a Department (approval issued, project rejected) the Mi'kmaq are informed in writing.
- Decision letter responds to key issues and impacts raised in consultation.
- Resolution of issues and accommodations can be reflected in the conditions of a permit, authorization or license (*i.e.*: EA Approvals; Industrial Approvals).

Step 6: Monitoring

- Agreed-to accommodation measures are implemented.
- Responsibility of the Crown
- Regular review of project implementation.
- Communication channels with the Mi'kmaq continue throughout the life cycle of the project.

Proponent-led Engagement Role in Consultation

- Proponents have an important role to play by engaging the Mi'kmaq as part of the Crown's consultation process:
 - Early proponent engagement is strongly encouraged.
 - Proponents are best suited to provide technical and project-specific information.
 - Supports and complements Crown consultation.

- The Province is ultimately responsible for consultation and fulfilling its Duty to Consult with the Mi'kmaq, however (prior to or concurrent with Crown consultation) the Province may delegate procedural aspects of the consultation to Proponents.

Proponent-led Engagement Role in Consultation

- Examples of activities which may be delegated to Proponents:
 - Notifying the Mi'kmaq of their projects.
 - Providing project-specific information.
 - Meeting with the Mi'kmaq.
 - Conducting a Mi'kmaq Ecological Knowledge Study.
 - Understanding and addressing Mi'kmaq concerns.

- Document the engagement process:
 - Steps taken to engage the Mi'kmaq – attempts to address potential impacts.
 - Share documentation with the Province.

Engagement vs. Consultation

Engagement:

- No constitutional duty.
- Broad spectrum of meaning.
- Broad inclusion (representative organizations (KMKNO, communities); non-profits; and/or non-representative organizations (Native Council of Nova Scotia)).
- Proponents engage; the Crown consults and engages.

Aboriginal Consultation:

- Constitutional duty.
- Legal meaning/consequences.
- Rights holders (related to Aboriginal rights, treaty rights, title; status under the Indian Act).
- Can be much more formal.
- Only the Crown consults.

Mi'kmaq Ecological Knowledge Studies

- Protocol developed by Mi'kmaq of Nova Scotia:
<https://novascotia.ca/abor/aborlearn/docs/mek%20protocol%20second%20edition.pdf>
- Snapshot in time – understanding of Mi'kmaq past and current use and interaction with the environment in a specific location.
- Helps inform Parties – Crown, Mi'kmaq and Proponents - of Mi'kmaq activities, including the practice of rights, in project area.
- Completion of report alone is not sufficient to meet Duty to Consult.

Mi'kmaq Ecological Knowledge Studies (continued)

- Mi'kmaq generated and Mi'kmaq led.
- Described in Nova Scotia's proponents guide:
<https://novascotia.ca/nse/ea/docs/ea-proponents-guide-to-mikmaq-consultation.pdf>
- Not required, but sometimes encouraged.
- Done in advance of submitting applications for regulatory authorizations (early is best)
- Proponent responsible for engaging consultant to complete MEKS.
- Assembly endorses MEKS only.

Indigenous Knowledge in engagement and Crown consultation

- Helps proponents and Crown in ascertaining the nature and extent of Aboriginal and treaty rights practiced in project area.
- Can influence:
 - Project design,
 - Project location,
 - Operational decisions (e.g. time, seasonality),
 - Regulatory authorizations: terms and conditions, and
 - Development of accommodation measures.

Consultation Examples

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Operational Level Decisions

- Crown land transfers and permits
- Mineral and oil and gas exploration
- Highways
- Public works
- Environmental assessments
- Industrial Approvals
- Aquaculture leases

2019-20

- Over 250 active consultation files led by Province
- Mi'kmaq involved in more consultation files (federal and provincial)

Thank-you!