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Manitoba Metis Traditional Use and the Bipole III Project

**Submitted to:
Manitoba Clean Environment Commission
With Respect to Manitoba Hydro's BiPole III Application**

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Acronyms Used in the Report

ATK	Aboriginal Traditional Knowledge, as defined in the EIS
CEC	Manitoba Clean Environment Commission
EACP	Environmental Assessment Communications Program, as defined in the EIS
EIS	Environmental Impact Statement submitted by Manitoba Hydro to Manitoba Conservation on December 1, 2011 for the BiPole III Transmission Reliability Project
EPP(s)	Environmental Protection Plan or Plans, as defined in the EIS
ESS(s)	Environmentally Sensitive Site(s), as defined in the EIS
GHA(s)	Game Hunting Area(s)
IR	Information Request of the CEC to Manitoba Hydro
MCWS	Manitoba Conservation and Water Stewardship
MMF	Manitoba Metis Federation
PPR	Preferred Preliminary Route, as defined in the EIS
PFR	Preferred Final Route, as defined in the EIS
TLUKS	Manitoba Metis Federation's Traditional Land Use and Knowledge Study
RSM	Route Selection Matrix, as defined in the EIS
SSEA	Site Selection and Environmental Assessment process, as defined in the EIS

1.0 INTRODUCTION

1.1 Manitoba Metis History and Connection to Project Area

The following provides a high level overview of Manitoba Metis history and rights in order to assist the Clean Environment Commission (CEC) in situating and contextualizing Manitoba Metis rights and interests, as well as residential and traditional use patterns in the geographic areas where the BiPole III is proposed. It is understood that the MMF will be introducing substantive information about the legal basis for Manitoba Metis rights directly to the CEC, and thus this overview is not intended as, nor does it constitute, a thorough review, analysis or description of Metis history of rights claims within Manitoba.

In *Cunningham v. Alberta*, [2011] 2 S.C.R. 670, Paragraph 5, the Supreme Court of Canada discussed the emergence of Metis people in what is now known as the Canadian Prairies as follows:

“The Métis were originally the descendants of eighteenth-century unions between European men - explorers, fur traders and pioneers - and Indian women, mainly on the Canadian plains, which now form part of Manitoba, Saskatchewan and Alberta. Within a few generations the descendants of these unions developed a culture distinct from their European and Indian forebears. In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture. The descendants of Francophone families developed their own Métis language derived from French. The descendants of Anglophone families spoke English. In modern times the two groups are known collectively as Métis.”

As a part of the 1869/70 negotiations that ultimately led to the creation of the Province of Manitoba, Canada made a series of land related promises to Manitoba Metis, which are set out in Canada's Constitution as sections 31 and 32 of the *Manitoba Act, 1870*. For over 30 years, the Manitoba Metis Federation (MMF), on behalf of the Manitoba Metis, has pursued litigation in the court (i.e. *MMF v. Canada and Manitoba* also known as the “MMF land claim case”) with a view to finally achieving justice in relation to these land-based promises. The land area that is the subject of this litigation is transected by the proposed BiPole III transmission line and right of way and southern infrastructure components. In December 2011, the MMF land claim was heard by the Supreme Court of Canada. The Manitoba Metis are currently awaiting a decision in this land-related litigation.

With respect to aboriginal user-rights (i.e. hunting, fishing, trapping, gathering, etc.), Manitoba Metis constitutional protected rights have already been recognized. In 2008, in *R. v. Goodon*, 2008 MBPC 59, Manitoba courts recognized the Manitoba Metis as a distinct aboriginal people with aboriginal rights protected within the meaning of Section 35 of the *Constitution Act, 1982*.

In September 2012, based on presently available historic research, judicial determinations and negotiations, the Manitoba Government executed a harvesting agreement with the MMF that recognizes that Manitoba Metis possess “collectively-held Métis Harvesting Rights, within the

meaning of s. 35 of the *Constitution Act 1982*” throughout a territory of approximately 750,000 km² in size depicted in Figure 1.¹ The BiPole III transmission line and right of way crosses through a large portion of this recognized harvesting rights area, and infrastructure associated with the Riel component of the BiPole III project is also situated in this harvesting rights area.

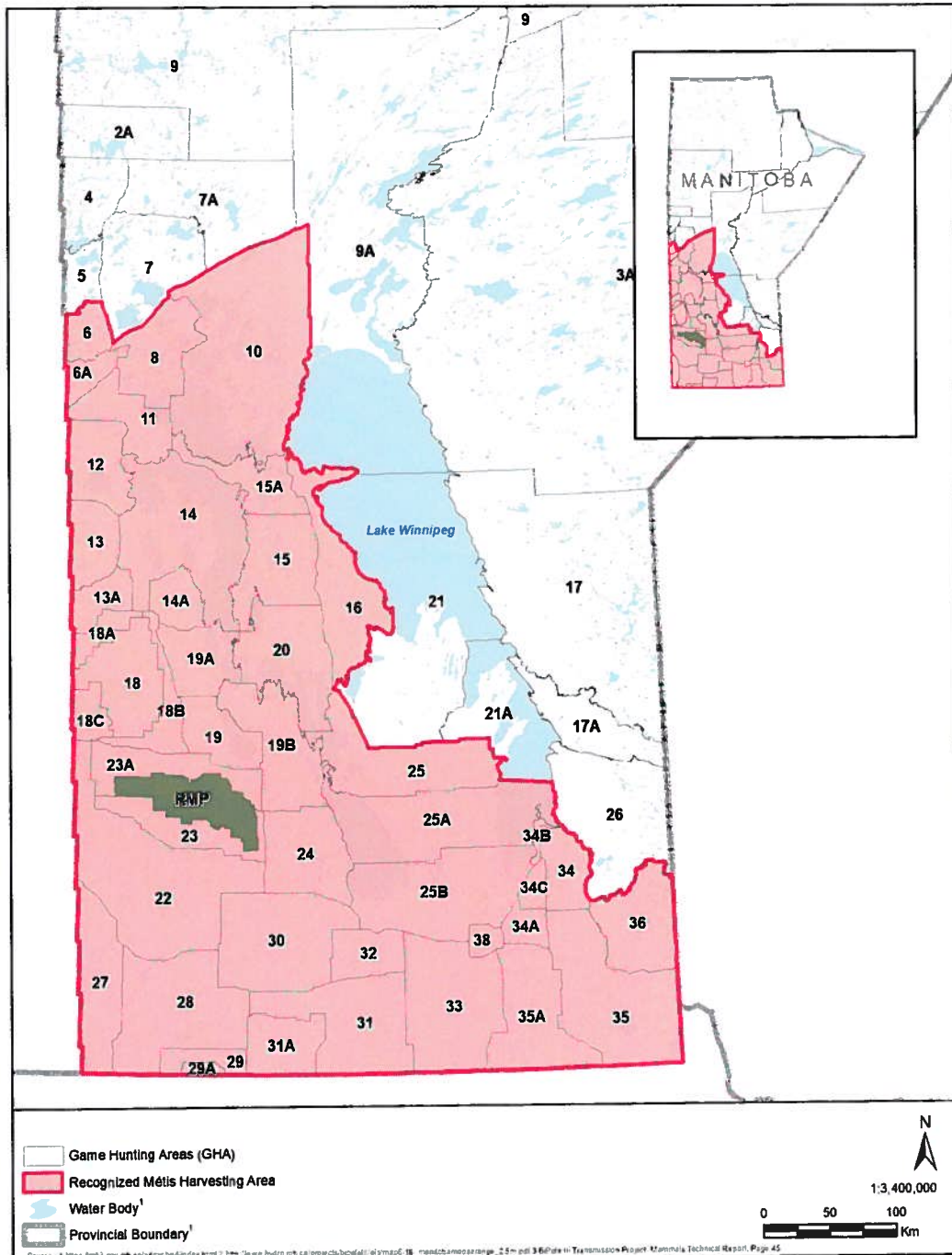
The writer understands there is a commitment between Manitoba and the MMF to engage in research and discussion to expand this recognized Metis harvesting territory. Areas for additional research and potential expansion include an area north of The Pas (including, but not limited to Grass River Provincial Park, Clearwater Lake, Cormorant Lake, Cranberry Portage, Snow Lake) and areas of northern Manitoba (including north of Lake Winnipeg and along the Nelson River system), as well as on the east side of Lake Manitoba. The BiPole III transmission line and right of way may overlap areas of northwestern and northeastern Manitoba where the MMF and Manitoba will be discussing expanding the geographic extent of harvesting rights recognition.

As discussed in this report, and presented in greater detail in the MMF’s BiPole III Traditional Land Use and Knowledge Study², hereinafter referenced as MMF’s TLUKS 2011, Manitoba Metis reside throughout the Province, with the largest segment living in the greater Winnipeg area. Manitoba Metis from throughout the Province have historically engaged in traditional use in a large expanse of land that is proposed to be transected by the BiPole III transmission line and right of way. The area north of Riding Mountain National Park and south of Red Deer Lake has been and continues to be an intensively relied upon landscape for the exercise and enjoyment of rights associated with traditional use, including the full range of social, cultural and economic values and benefits.

¹ It should be noted that while this territory is quite extensive, the parts of this territory that are available to Manitoba Metis for large animal harvesting is more concentrated and in some cases limited. This report will attempt to illustrate those constraints in the context of the impacts of Bipole III on Manitoba Metis rights in relation to traditional use.

² Included as Appendix E of the Aboriginal Traditional Knowledge Technical Report 2 of Manitoba Hydro’s Environmental Impact Statement dated November, 2011.

FIGURE 1:
 Geographic Area of the Manitoba-MMF 2012 Agreement on Metis Natural Resource Harvesting



1.2 Manitoba Metis Traditional Use

In the context of this report, the term Manitoba Metis traditional use means the full spectrum of activities and outcomes derived from and/or associated with harvesting of animals, fish, plants and other natural materials for social, cultural, health, and economic well-being. Traditional use encompasses:

- The physical act of harvesting preferred animal, fish, and plant species, water, and other resources important for medicinal, spiritual, sustenance, livelihood and cultural needs, in preferred locations, at preferred times, in preferred quantities and quality, and by preferred methods, including access routes and transportation modes;
- The social and cultural norms, practices and benefits associated with harvesting, processing, sharing, and consuming harvested goods, including all aspects of their planning, execution, and celebration;
- Engagement in, preserving, and enhancing cultural and/or spiritual practices, knowledge, teaching, and intergenerational transmission, including but not limited to language, oral history stories, legends, and songs; sharing and reciprocity norms; handicrafts and art; tangible and intangible cultural and spiritual properties, sites or places;
- Knowledge and skills related to harvesting and processing of country foods; and
- Knowledge about where and when specific species of animals, fish and plant resources can be successfully harvested, when and where land and water travel routes are accessible, and places to stay on the land while engaged in traditional activity.

2.0 Overview of MMF TLUKS

The MMF first put its mind to developing a plan and methodology for documenting Manitoba Metis traditional use in early 2010. The need for a strategy to document traditional use was stimulated in large part by a number of proposed developments and attendant pending environmental regulatory review processes; namely the all-weather Berens River Road on the east side of Lake Winnipeg, the BiPole III project, and the Keeyask project. The MMF understood that assessing the potential impacts of these and other future projects on Metis rights with respect to traditional use initially required the establishment of baseline information – something the MMF had not at that time had opportunity or means to create. They also understood that the environmental regulatory review guidelines established by provincial and/or federal agencies for such projects would require an evaluation of project effects on Manitoba Metis use of lands and resources for traditional purposes. Creating a system for acquiring, documenting, organizing, storing and analyzing this information was identified as a critical step in the MMF's ability to meaningfully be engaged in environmental review processes and with respect to Crown consultation pertaining to actions that could infringe or otherwise adversely affect Manitoba Metis rights.

At the outset, it was known that the Manitoba Metis community is widely dispersed throughout the Province and highly mobile in terms of geographic extent of traditional use. To assist in the

development of a methodology for documenting Manitoba Metis traditional use, the MMF brought together a number of highly experienced professionals to brainstorm with MMF staff and Ministers about a traditional use documentation system. Participants at this workshop included individuals and academics with specific expertise in: Metis genealogy, history, cultural geography, and demographics; practical experience in undertaking traditional use and knowledge studies, notably Dr. Peter Usher and the writer of this report; and experience in the environmental regulatory review processes.

There is considerable variation in the Canadian lexicon about the meaning of such terms as 'traditional use', 'traditional knowledge', 'traditional ecological knowledge', Aboriginal traditional knowledge', to name a few. Methods of documenting traditional use and knowledge also widely vary, depending largely upon the reason or stimulus for the exercise. For example some methods are designed to document information suitable for litigation or negotiation of modern day treaties or land claims. In other cases studies are carried out specifically in the context of environmental assessment of unique industrial or government infrastructure projects or regional planning initiatives.

The MMF identified the need design a comprehensive data collection system that permit the assembly of traditional use information, over the long term, in a consistent and systematic manner. It was also determined the data collection system would have to recognize and address some of the unique aspects of Manitoba Metis traditional use, namely the diversity of the Manitoba Metis community at large and the broad geographic extent of traditional use throughout the Province.

After the workshop, the writer of this report prepared a draft design for what became called the MMF Traditional Land Use and Knowledge Study (TLUKS). The TLUKS is more of a system than a study. The TLUKS is a framework, complete with methodological descriptions, instructions and tools, created to ensure that a standard and consistent system of documenting Manitoba Metis traditional use is employed. The draft TLUKS was peer reviewed by Dr. Usher, tested with a number of Manitoba Metis harvesters, finalized and then employed to document traditional use throughout the BiPole III Project Study Area as it was defined by Manitoba Hydro (hereinafter referred to as the Project Study Area, see Figure 3 later in this report). The TLUKS system is designed to systematically document traditional use in order to build, over time, a credible baseline of information. The TLUKS system is not an impact assessment tool per se; rather it generates information that contributes to understanding the nature and patterns of Manitoba Metis traditional use, the locations of landscapes and waterscapes that are important, and serves as a foundation to further consider potential influences or impacts on Manitoba Metis rights.

The TLUKS was carried out in two phases. Phase one involved a high level screening survey and the second phase involved a series of detailed interviews with Manitoba Metis harvesters. An interim report of the MMF TLUKS was provided by the MMF to Manitoba Hydro under date of June 23, 2011. This interim report provided the full analysis of the Screening Survey results, as well as descriptive and spatial information on the detailed interviews completed at that time (about half of 49 interviews). The final MMF TLUKS report was submitted to Manitoba Hydro at the end of August, 2011.

2.1 Screening Survey

The first phase of the TLUKS involved the administration of a Screening Survey.³ This survey was designed to obtain high-level information about Manitoba Metis use of the lands, waters and resources throughout the Province, including the Project Study Area. This survey also allowed for the identification of individuals who were willing to participate in more detailed interviews to document Manitoba Metis traditional use, values and knowledge.

The population chosen as the Screening Survey sample frame was comprised of individuals who meet the definition of Metis as per the MMF Constitution (2008). This population includes individuals who are acknowledged as Manitoba Metis through their acceptance under the MMF's new membership registration and/or through their acceptance under the MMF's Metis Harvester Card registration.

There were 1,886 individuals on the new membership list and 1,862 individuals on the Harvester Card list as of June, 2010, with an overlap of 470 individuals. Thus, the combined lists yielded a Screening Survey population of 3,278 individuals aged 15 years and older. It is noted the current number of adult Manitoba Metis registered under the new membership system now sits at approximately 8,100. Details regarding the survey instrument, survey method, and response rates are described in MMF 2011.

The response rate for the Screening Survey (mailed out October 1, 2010) was 24.3%. It yielded 735 surveys with information about the types of traditional activities engaged in by the respondents and the general geographic locations where they reported engaging in traditional activities on a regular basis.

2.2 Detailed Traditional Land Use and Knowledge Interviews

The detailed interview process for the TLUKS was designed to document spatial, temporal and other characteristics of Manitoba Metis use of lands, waters, and resources.⁴ Information concerning harvesting, processing, sharing and consumption and associated cultural, social and economic benefits was documented. The temporal framework of the study focused on traditional use experience of the interviewee in their lifetime. Traditional use activity associated commercial activities (e.g. outfitting, guiding, or commercial fishing) or purely recreational use (e.g. catch and release fishing, camping, hiking or cottaging with no associated food or other form of personal production activity), was not documented.

MMF's goal was to conduct 50 detailed interviews. This goal was not based upon an analysis of what would constitute a statistically valid sample size, but rather represented a realistic number

³ A complete description of the Screening Survey design and implementation is described in the MMF's TLUKS 2011 in Section 2.1 and Appendix B. A full description of the findings are presented in Section 3.0 of the same report.

⁴ A complete description of the methodology and tools are described in MMF's TLUKS 2011 in Section 2.2 and Appendices C through F.

of interviews that could be completed given the budget and timelines for the study. Initially, a list of potential interview candidates was generated based upon 60 Manitoba Metis who had indicated in their returned Screening Survey they would be willing to participate in a more detailed interview. These potential interviewees were contacted by telephone and arrangements made to conduct interviews. During the course of conducting interviews, additional individuals who had not completed a Screening Survey were also identified and participated. The 49 interviewees were completed between November 12, 2010 and July 28, 2011. Interviews were conducted at MMF's main office in Winnipeg, and at regional or local offices in Selkirk, Brandon, Dauphin, Swan River, The Pas, and Thompson, Manitoba. The residence, place of birth and place of birth of parents of the 49 interviewees are summarized in Table 1 below.

TABLE 1: Residency and Origins of Interviewees

MMF REGION	Interviewee Residence at Time of Interview		Interviewee Place of Birth		Interviewees Parents Place of Birth	
	#	%	#	%	#	%
Winnipeg	14	28.6%	9	18.4%	10	10.2%
Southeast	2	4.1%	7	14.3%	16	13.3%
Interlake	10	20.4%	6	12.2%	12	12.2%
Northwest	5	10.2%	8	16.3%	23	23.5%
Thompson	6	12.2%	3	6.1%	0	0.0%
The Pas	5	10.2%	8	16.3%	10	10.2%
Southwest	7	14.3%	5	10.2%	14	14.3%
Unknown/Out of Province	0	0.0%	3	6.1%	16	16.3%
TOTAL	49	100.0%	49	100.0%	98	100.0%

3.0 MANITOBA METIS TRADITIONAL USE IN THE PROJECT AREA AND PREFERRED FINAL ROUTE

3.1 Screening Survey Findings

Of the 735 Screening Surveys returned by Manitoba Metis with geographic information, it was determined that 52% (382) of the respondents had identified engaging in one or more traditional use activities within the Project Study Area. These respondents resided throughout the Province, however a majority (77%) were residing in the Northwest, Southwest, Winnipeg and Pas MMF Regions (see Table 4 on page 18 and Figure 4 on page 16 of MMF TLUKS-2011).

TABLE 2: Residence of Screening Survey Respondents who Engage in Traditional Activities Within the Project Study Area

MMF REGION	#	%
Northwest	79	20.7%
Southwest	76	19.9%
Winnipeg	75	19.6%
The Pas	64	16.8%
Southeast	41	10.7%
Interlake	40	10.5%
Thompson	7	1.8%
TOTAL	382	100%

Figure 2 depicts the geographic areas in the southwest quadrant of the province that were identified by Screening Survey respondents as the locations they currently and regularly utilize for traditional use purposes (all harvesting activities including large animals, small animals, fish and plants. It is noted that Figure 2 does not include the screening survey data of the 49 Manitoba Metis who participated in the detailed interviews.⁵ Figure 2 was created by compiling and overlapping all geographic areas identified. The darkest tinted areas (dark brown) indicate areas where the highest number of overlap occurs, i.e. where the largest number (66 or more) of respondents independently identified the same places. The medium (identified by 45-65 respondents) and lighter (identified by 24-44 respondents) tinted areas indicate landscapes where there was less overlap. The outer boundary (non-tinted area bounded by a light brown line) indicates the full extent of area identified (identified by up to 23 respondents). The location of the Preferred Final Route (PFR) within this portion of the province is shown as a red linear

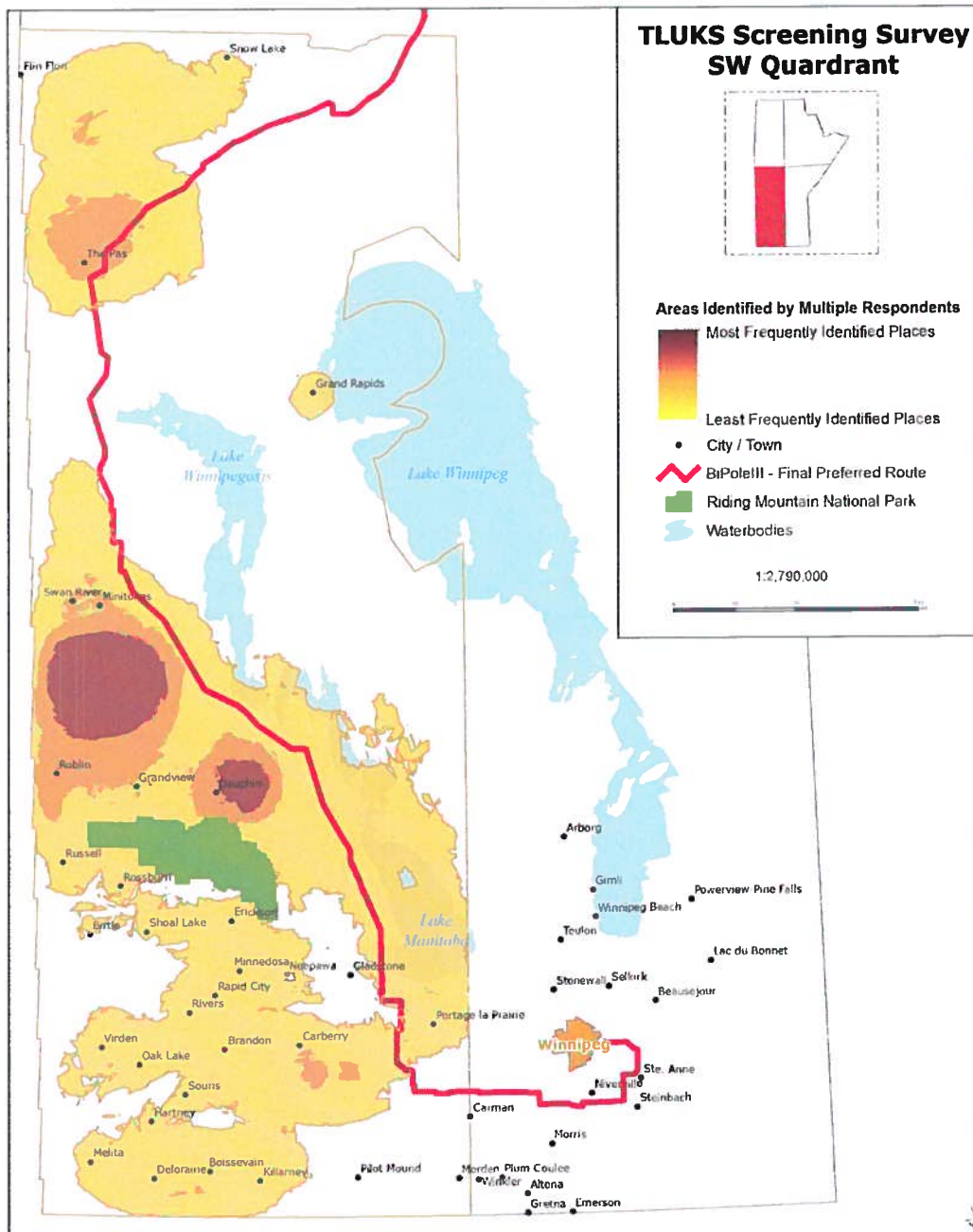
⁵ Although the Screening Survey results contain information for the entire province. Due to financial constraints, the MMF was not able to support the compilation and mapping of all results relevant to the BiPole III Project Study Area. Therefore a choice was made to focus time and financial resources on the southwest quadrant where significant traditional use has and continues to occur and where highest concerns about the Project were raised.

feature. It must be stressed that Figure 2 is illustrative of the areas that are relied upon by Manitoba Metis. These results must be viewed with caution for the following reasons:

- The results are based on ‘self-administered’ mapping and very generalized;
- The results are only based on a small percentage of the overall Manitoba Metis population who responded to the Screening Survey;
- It is unknown if the respondents who did map traditional areas are representative of the broader Manitoba Metis community;
- Since the Screening Survey was administered the number of Manitoba Metis who have registered under the new citizenship code has grown substantially (from 1,886 adults in mid-2010 to approximately 8,100 as of September, 2012), i.e. over 6,000 now registered Manitoba Metis did not receive the Screening Survey; and
- The Screening Survey was implemented prior to the closure of a vast area of central western Manitoba to moose hunting (see Section 4.3) in late 2011. Thus the results may not be indicative of current conditions.

This map illustrates that Manitoba Metis utilize a large expanse of the landscape that intersects or overlaps the PFR. Heaviest traditional use as of 2010 was occurring just west of the PFR in the Porcupine and Duck Mountain areas, and in the Dauphin region. A more heavily relied upon area around The Pas is transected by the PRF. Areas around The Pas and north to Flin Flon and Snow Lake are also important. The area from approximately Red Deer Lake south to the Assiniboine River just east of Spruce Woods Provincial Park is an important traditional use area and is transected by the PFR.

FIGURE 2: General Traditional Use Area by Manitoba Metis in the West Central and Southwestern Portions of Manitoba



Produced by Sofa Logic Inc.

3.2 Detailed Interview Findings

The Project Study Area covered by the TLUKS, shown on Figure 3, is a vast expanse of the north, central, and southern areas of the province. A study area of this geographic extent is not common in the context of a traditional use, values and/or knowledge study associated with environmental assessment of a particular project. As just described in Section 3.1, Manitoba Metis who engage in traditional pursuits within the Project Study Area are disbursed throughout the province. As a consequence of these two factors, characterizing Manitoba Metis traditional use, values and knowledge based upon a sample size of 49 individuals must be viewed with great caution. To be specific, the information provided by the 49 interviewees and summarized in the balance of this section of the report is considered a highly accurate depiction of their traditional activities and patterns. However, this information should only be considered illustrative of the likely broader Manitoba Metis population traditional use and practices within the Project Study Area. Full details of the results of the TLUKS detailed interviews are described in MMF TLUKS 2011.

Highlights of the detailed interviews are summarized as follows:

- Manitoba Metis living both within and outside the Project Study Area engage in traditional use activities in the Project Study Area as illustrated in Figure 4;
- 419 food harvesting and 82 trapping polygon/point/line areas were identified;
- In the 2000's, the average interviewee spent 49 days engaged in traditional activity, half of interviewees spent more than 24 days;
- A majority of interviewees (85.4%) consumed country food at least once per week and close to two-thirds (60.4%) consumed country food 2-3 times per week or more. These levels pertain to all country foods derived from all locations, not solely from the Project Study Area;
- A large proportion of the interviewees reported harvesting large animals (88%) and fishing (88%). Almost a third reported harvesting small animals (63%) and less than half (41%) reported they engage in gathering activities;
- Moose is the most sought after species of large animals, followed by deer and then elk;
- Interviewees make multiple trips to and within the Project Study Area each year to engage in traditional activities. Typically each trip is made for a specific harvesting purpose. For example harvesters will make one or more trips each year specifically to harvest moose and do separate trips in the same year for each of deer and/or elk. Small animal harvesting is typically done in conjunction with large animal harvesting, while fishing and plant gathering or done on separate trips.
- During the most recent decade (2000-2010) the interviewees spent an average of 49.1 (median 24.0) days/year each engaged in traditional use activities in the Project Study Area. Collectively, they spent just over 2000 days each year.

FIGURE 3: Manitoba Hydro's BiPole III Project Study Area

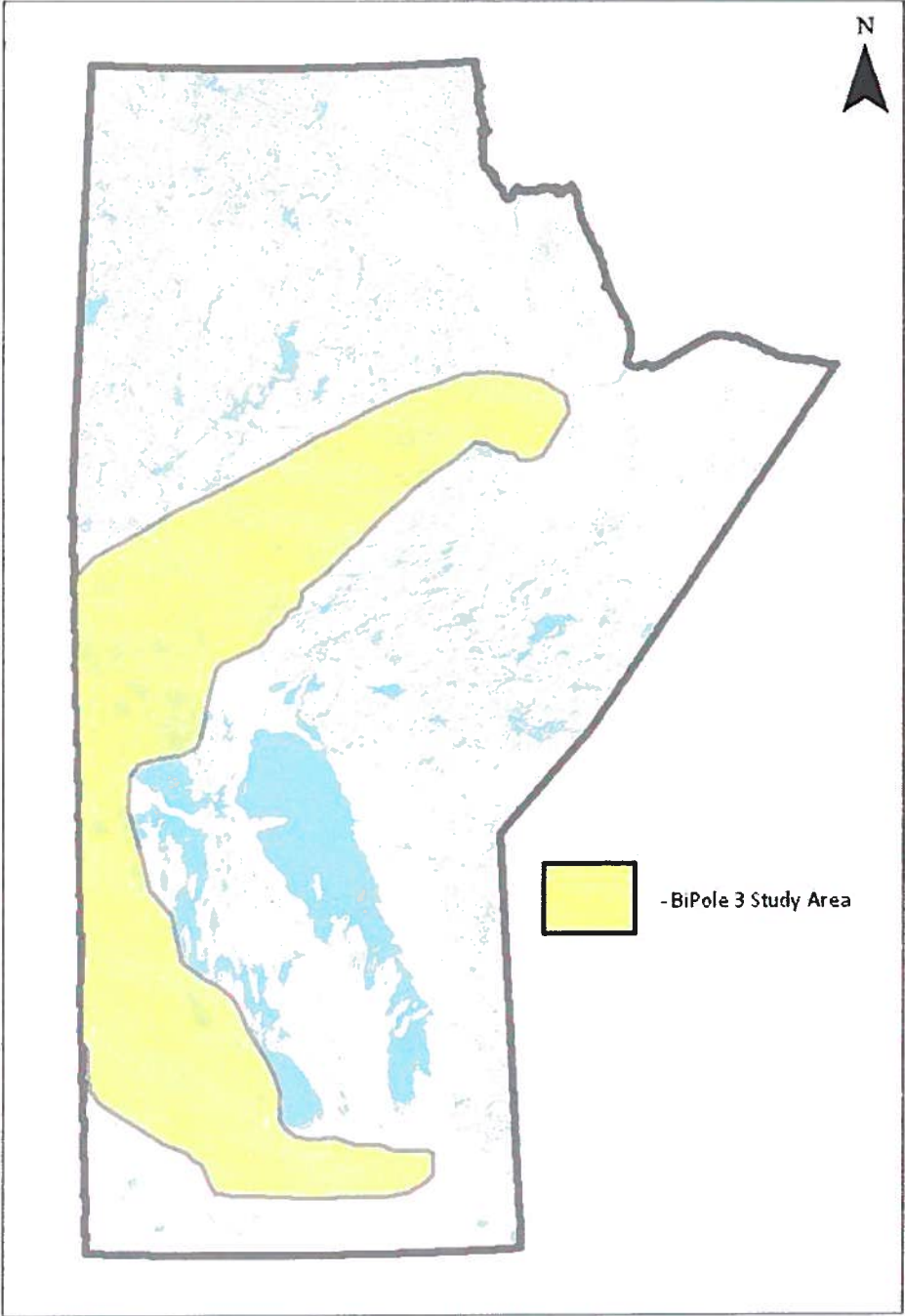
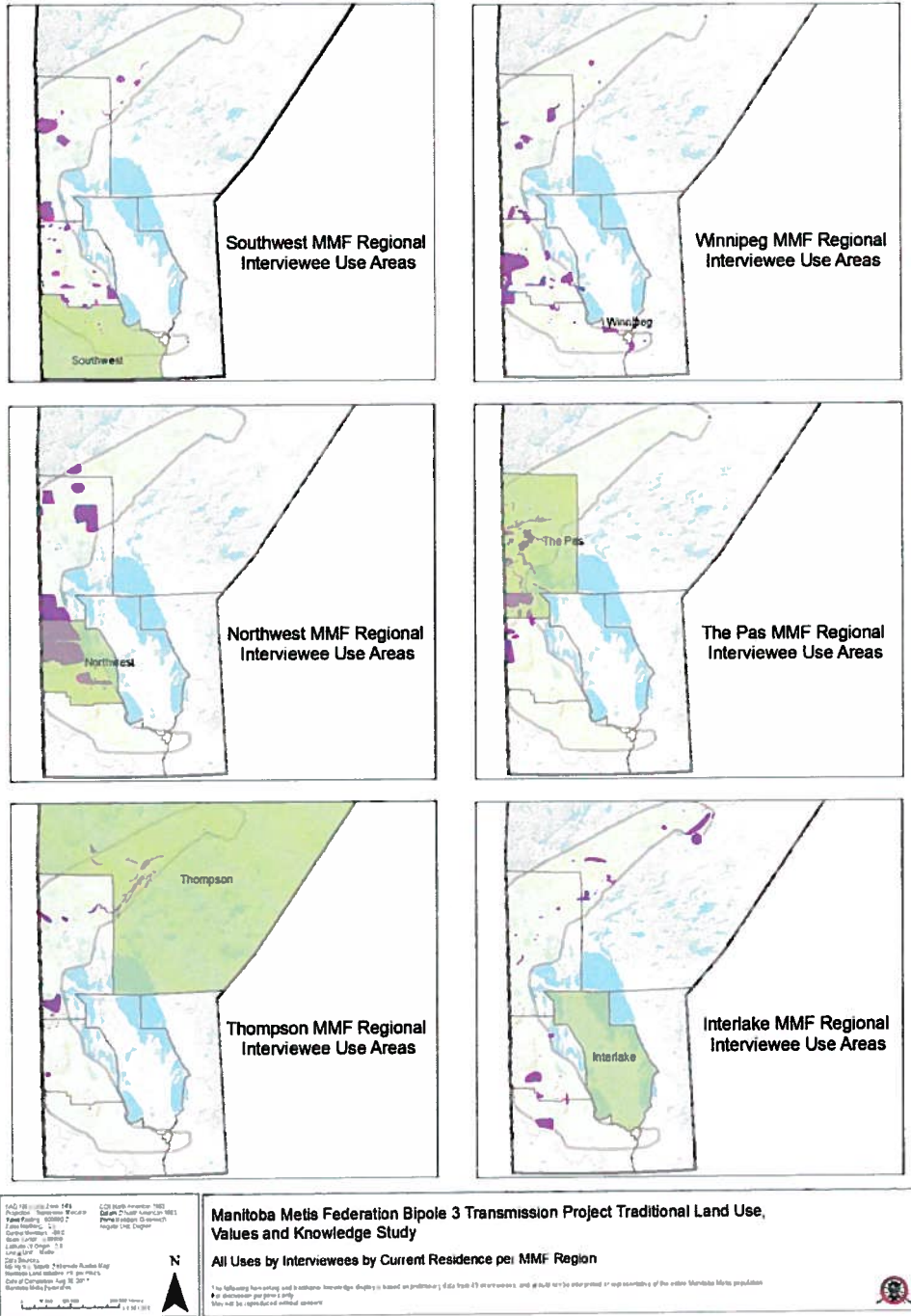


FIGURE 4: Traditional Use Areas by Interviewee Residence (MMF Region)



- Many of the interviewees do not live in close proximity to the areas they frequent and stay with family or friends who do live nearer harvesting areas;
- Almost half (46%) of traditional use locations identified were learned about by the interviewees from their own family members, 36% of locations were learned about through friends or others, and 18% of locations were discovered by the interviewee's themselves.
- Interviewees generally began their traditional activity experiences in the company of their parents, aunts and uncles and siblings and cousins, and as they aged, married and had children, spent more time with their immediate family and spouse/partner's family, as well as friends.

The TLUKS detailed interview process documented traditional use and traditional activity patterns associated with large and small animal harvesting, fishing, and gathering. However for the purposes of this report, only the findings concerning certain large animal, small animal and gathering activities are highlighted.

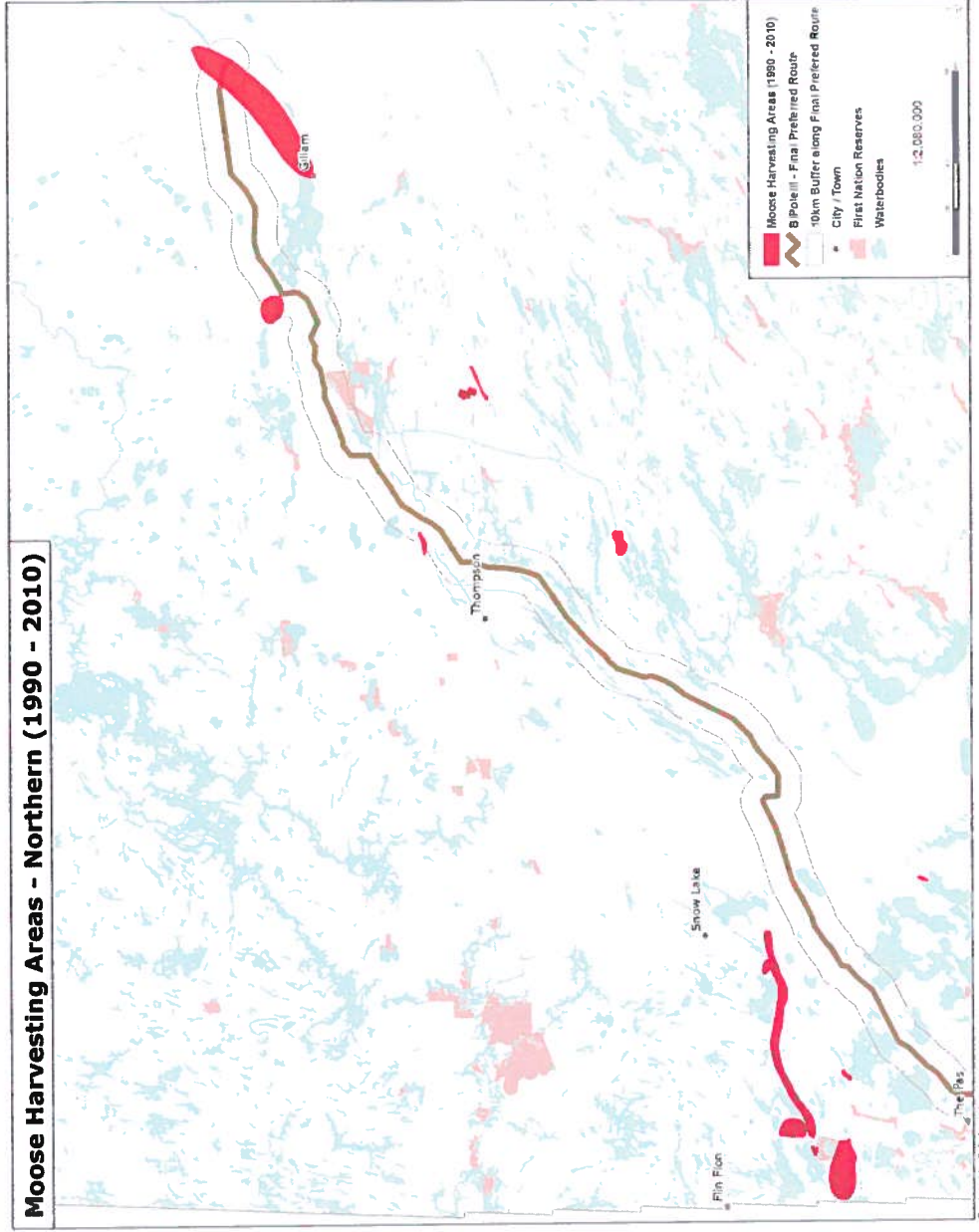
3.2.1 Moose Harvesting

- Just over two-thirds (67%) reported they have hunted moose within the Project Study Area at some time in their life.
- During the period from 1990 to 2010, the average annual number of days the harvesters spent engaged in moose was 11-12 days (median 5-7 days).
- During the period from 1990 to 2010, the average number of trips/year the harvesters made to engage in moose hunting was 21-22 days (median 15-16 days).

The locations that the interviewees identified they go to for purposes of moose harvesting are shown on Figures 5 and 6.⁶ In the northern portion of the Project Study Area, moose harvesting areas are generally located along waterways or roadways (see Figure 5) where access is available. Manitoba Metis who harvest in the northern area largely live in the Thompson or Gillam areas. An area around Gillam and north along the access road on the north shore of the Nelson River, including the area identified for the Keewatinooow Converter Station is identified.

⁶ The MMF TLUKS 2011 report (Maps A-G) indicate traditional use areas identified from the 1940s through 2010. For purposes of this report, the maps indicate areas identified in more contemporary times, i.e. 1990's and 2000's.

FIGURE 5: Moose Harvesting Areas Identified by TLUKS Interviewees (1990-2010) – North



Moose harvesting areas in the west central portion of the Project Study Area (see Figure 6) are more dispersed, owing to greater road and off-road trail access. It is important to note that the detailed interviews were conducted prior to the closure by Manitoba of a number of Game Hunting Areas to moose hunting (see Section 4.3). How Manitoba Metis are adapting to these closures since 2011 has not been studied. Up until the Fall of 2011, harvesting was occurring throughout an area roughly bounded by the towns of Swan River and Minitonas at the southern end, easterly to Duck Bay, north to Pelican Rapids and Red Deer Lake, and to the west the Manitoba-Saskatchewan border. Higher intensity use areas within this general block included the Swan Lake area and Porcupine Provincial Forest Area. Moose are also harvested south of the town of Swan River to just south of Roblin, and around the town of Grandview south to the northern boundary of Riding Mountain National Park. It can be seen on Figure 6 that the PFR runs through a large part of the landscape utilized for moose hunting. This area roughly extends south of Red Deer Lake to the town of Cowan. The PFR also parallels or intersects with moose harvesting areas access from Highway #10 south of The Pas.

3.2.2 Deer Harvesting

- Just over half of the 49 Interviewees (26 or 53%) reported they have hunted deer within the Project Study Area at some time in their life.
- During the period from 1990 to 2010, the average number of days the harvesters spent engaged in deer hunting annually was 15-16 days (median 10-12 days). The average and medium number of days has increased over the past 4 decades.
- During the period from 1990 to 2010, the average number of trips/year the harvesters made to engage in deer hunting was 24-25 days (median 20 days). The average and medium number of trips has increased over the past 4 decades.

The locations that the interviewees identified they go to for purposes of deer harvesting are shown on Figure 7. Deer harvesting occurs in many of the previously described for moose. Additionally, deer harvest areas are located east of Dauphin to the west north shore of Lake Manitoba. It can be seen that the PFR runs through a large part of the landscape utilized for deer hunting.

FIGURE 6: Moose Harvesting Areas Identified by TLUKS Interviewees (1990-2010) – South

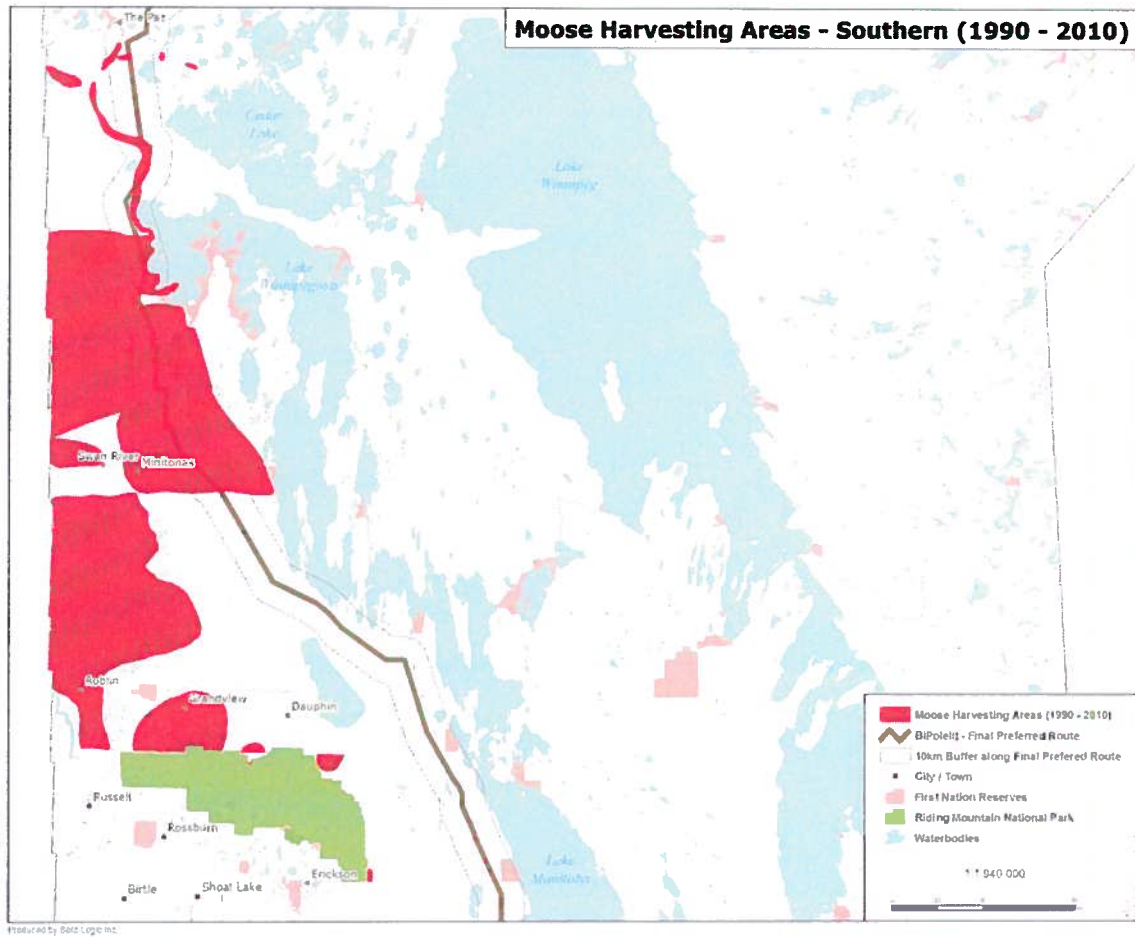
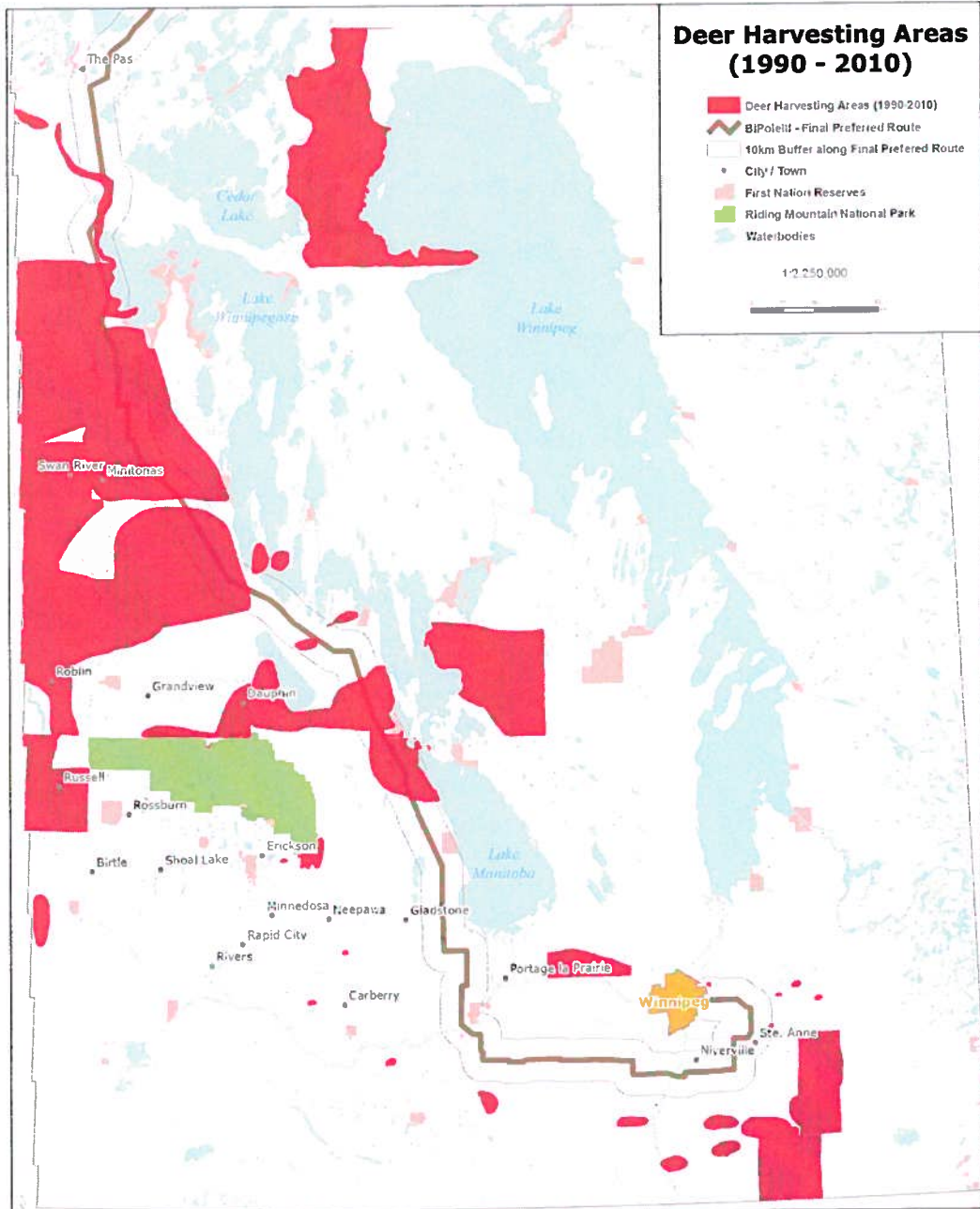


FIGURE 7: Deer Harvesting Areas Identified by TLUKS Interviewees (1990-2010)



Produced by Sofia Logic Inc.

3.2.3 Elk Harvesting

- Just less than half of the 49 Interviewees (22 or 45%) reported they have hunted elk within the Project Study Area at some time in their life. These 22 Interviewees identified a total of 43 areas (tags) within the Project Study Area.
- During the period from 1990 to 2010, the average number of days the harvesters spent engaged in elk hunting annually was 11-13 days (median 4-7 days). The average and medium number of days has decreased over the past 4 decades.
- During the period from 1990 to 2010, the average number of trips/year the harvesters made to engage in elk hunting was 19-23 days (median 15-22 days). The average and medium number of trips has increased over the past 4 decades.

The locations that the interviewees identified they go to for purposes of elk harvesting are shown on Figure 8. The main elk harvesting are in the western most side of the province in an area south of the water body Swan Lake to the northern boundary of Riding Mountain National Park and in areas along the south boundary of the park. The PRF crosses through elk harvesting areas in the vicinity of Mafeking, Bellsite, Birch River, and south to near the town of Cowan.

3.2.4 Small Animal Harvesting

- Almost two-thirds (31 or 63.3%) of the 49 Interviewees reported harvesting one or more small animals at some point in their lifetime. Upland birds (grouse, partridge, ptarmigan, and chicken) are the most sought after, followed by ducks and geese, and then rabbits.
- During the past four decades, the average number of days spent harvesting small animals ranged from 16 to 18 days/harvester. The median number of days during the same four decade period has ranged between 11 and 15 days. In the 2000's decade, the mean number of days reported by the interviews was slightly higher than was reported for the 1970's through 1990's.

The locations that the interviewees identified they go to for purposes of harvesting small animals in the southern portion of the Project Study Area are shown on Figure 9.⁷ It can be seen that the PFR overlaps with a portion of these small animal harvesting areas.

⁷ Due to the small number of interviews in the sample from the Thompson/Gillam area, small animal harvesting data is minimal. A map of small animal harvesting in the northern most portion of the Project Study Area is included in the MMF TLUKS 2011 as Map F-North.

FIGURE 8: Elk Harvesting Areas Identified by TLUKS Interviewees (1990-2010)

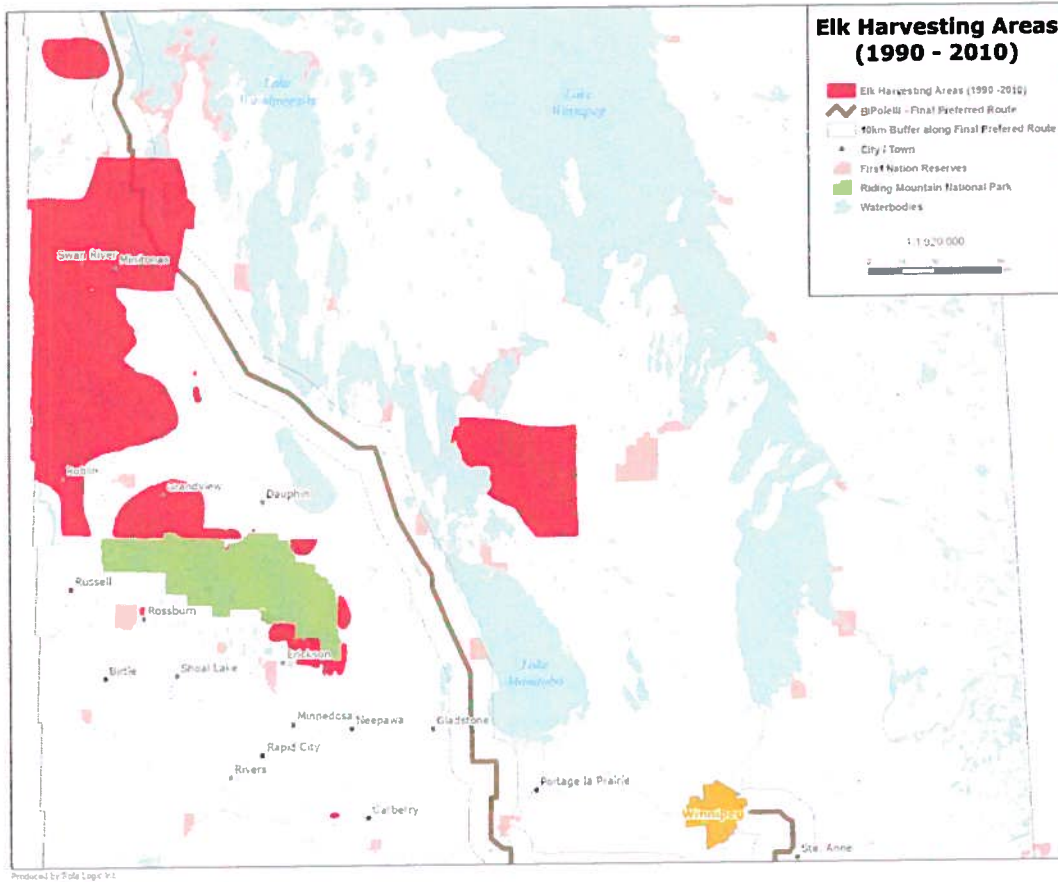
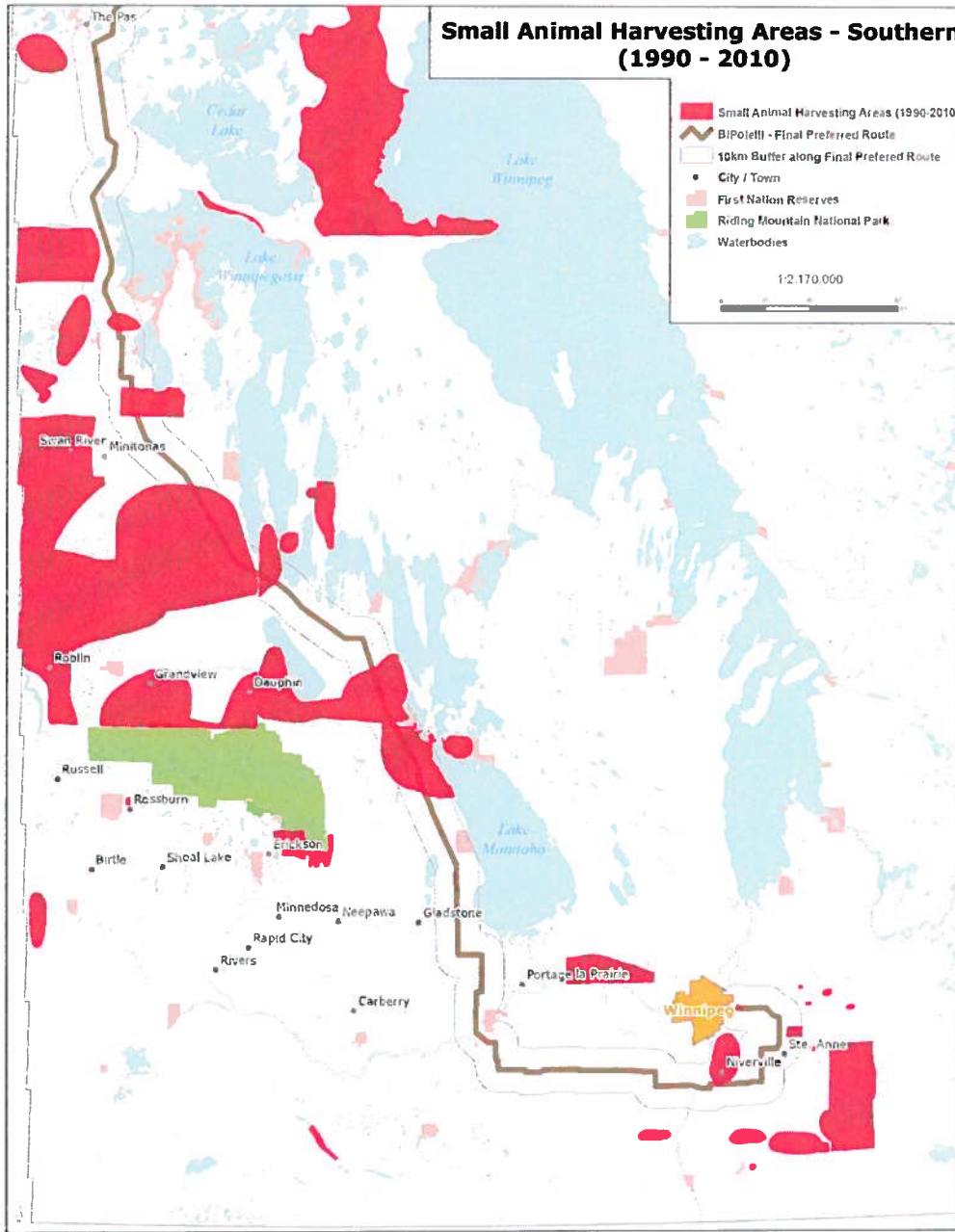


FIGURE 9: Small Animal Harvesting Areas Identified by TLUKS Interviewees (1990-2010)



3.2.5 Gathering

- Twenty of the 49 Interviewees reported gathering at some point between the 1940's and present. Since the 1980's, close to one-third of the 49 Interviews have engaged in gathering activities.
- During the past four decades, the Interviewees spent between one to one and half weeks a year engaged in gathering activities.
- Three-quarters of those than engage/engaged in gathering indicated they harvest berries, 60% harvest wood products, just over a third harvest roots, nuts and/or mushrooms, and one-fifth harvest medicines. The types of food and medicine species harvested are described in detail in the MMF TLUKS 2011.
- Plant gathering occurs predominantly in the summer and fall seasons, although fuel wood is harvested throughout the year and certain root plants may be harvested in the spring.

The locations that the interviewees identified they go to for purposes of gathering plant foods, medicines and fuel wood shown, for the period from the 1990's to 2010, are indicated on Figures 10 and 11.

In the northern portion of the Project Study Area (Figure 10), gathering areas are overlapped by the PFR northeast of Gillam and the area identified for the Keewatinoow Converter Station. In the southern portion of the Project Study Area (Figure 11), the PFR overlaps gathering areas near Overflowing River, near the towns of Baden and Pelican Rapids, and a stretch approximately from Cowan south to Ethelbert. Additionally, a gathering area is identified near Niverville that is in close proximity to the PRF at this location.

FIGURE 10: Gathering Areas Identified by TLUKS Interviewees (1990-2010) – North

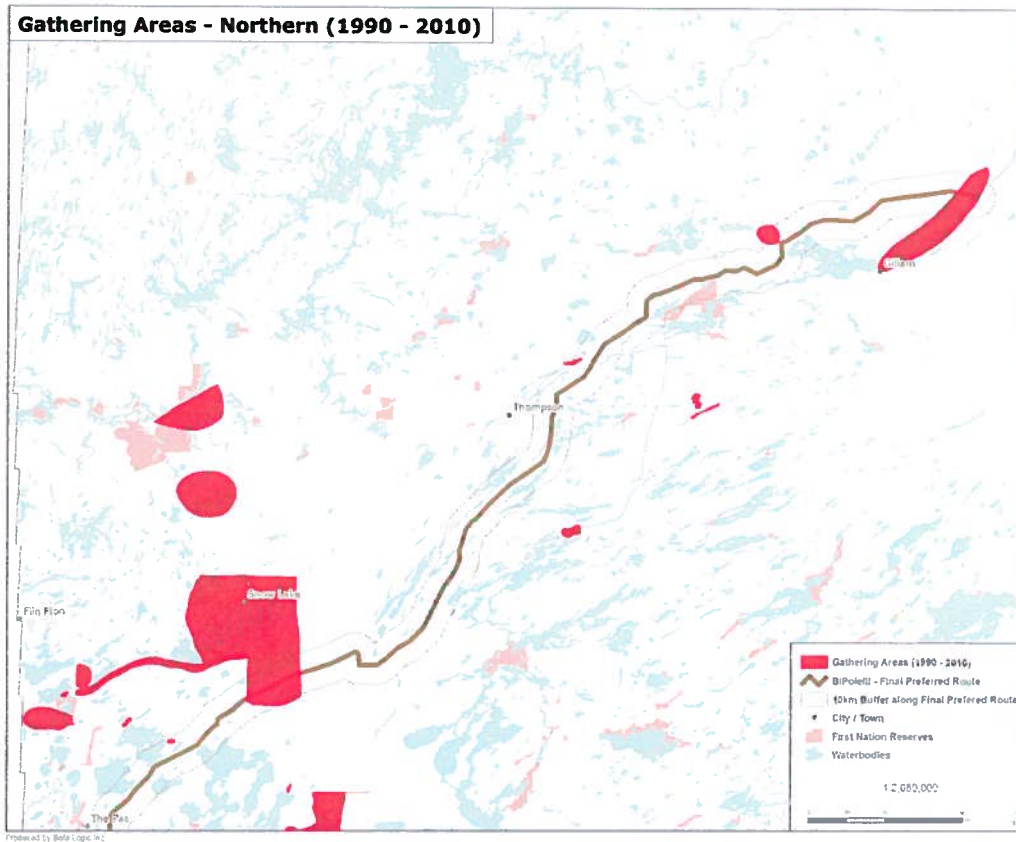
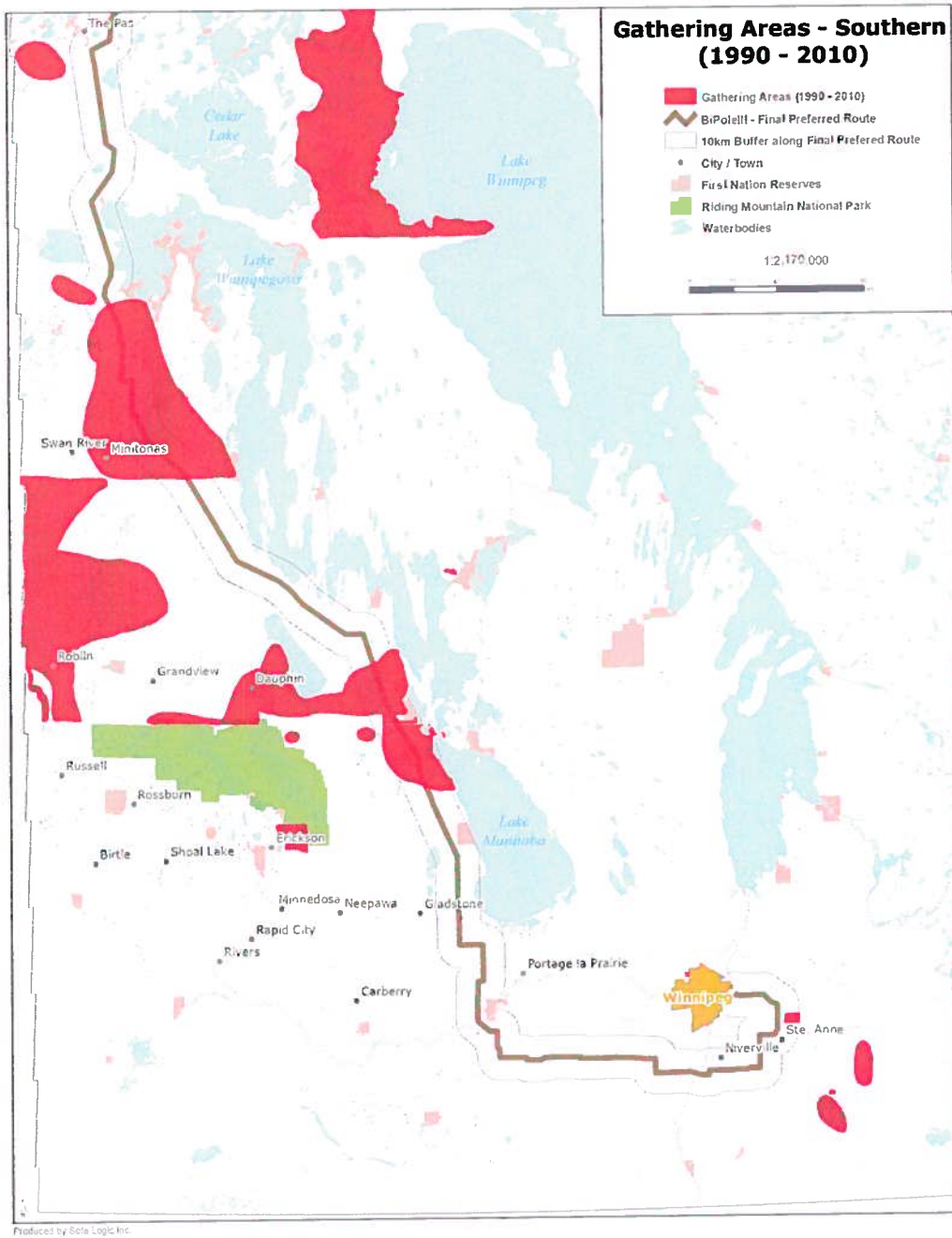


FIGURE 11: Gathering Areas Identified by TLUKS Interviewees (1990-2010) – South



4.0 INFLUENCES OR CONSTRAINTS ON MANITOBA METIS TRADITIONAL USE

4.1 Metis Laws of the Harvest

For the past eight years Manitoba Metis traditional use has been practiced and governed under the MMF 'Metis Laws of the Harvest.' The first interim edition of the laws of the harvest were developed in 2004 based upon MMF consultations with Manitoba Metis. Now in its third edition, the laws of the harvest reiterate the guiding principles of responsibility to community, to the environment and to conservation and sharing, among others. Some of the key highlights of the laws include:

- The right to harvest is for food purposes;
- Harvesters are to follow health and safety regulations and requirements, including all applicable provincial and federal firearms, vehicular and boating safety and operating certificates and licenses;
- No hunting of deer, elk or moose from January 15th to July 15th;
- No hunting of large animal species accompanied by offspring under one year of age;
- Conservation measures, including;
 - No hunting where a conservation closure has been issued by MMF to recover a particular species experiencing declining population,
 - No fishing by net during species-specific fish spawning seasons,
 - No waterfowl hunting during nesting period
- Harvesters must obtain large animal tags from the MMF for moose, elk, deer, caribou, and black bear;
- Annually, a Harvester Card holder may obtain 1 tag each for moose, elk, caribou and black bear, and 2 tags for deer. However, a household (regardless of the number of Harvester Card holders in the home) may not possess more than 4 of the noted animals in their household (including freezer) at one time;
- Harvesters may not have more than 50 pounds of fish fillets per household at any one time.

On September 29, 2012, the Province of Manitoba-Manitoba Metis Federation Agreement on Metis Natural Resource Harvesting was signed. In this agreement Manitoba has recognized Manitoba Metis rights to harvest animals, fish and plants for food and trees for fuel wood purposes within the area depicted earlier in Figure 1. Manitoba Metis will continue to harvest under the MMF Metis Laws of the Hunt in this area. However harvesters engaged in harvesting outside of this defined area will be subject to provincial sport hunting legislations and regulations. The MMF and Manitoba have agreed to conduct further research regarding future expansion of the geographic area identified in the Agreement.

4.2 Land Tenures or Designations

Although Manitoba Metis have constitutionally protected rights to harvest for food, ceremonial and fuel wood purposes, traditional use is subject to a number of natural, legal and regulatory influences or constraints. In addition to the Metis Laws of the Harvest, Manitoba Metis traditional use is also influenced, and in some cases restricted, by: land ownership, land designations, and general safety regulations; natural access constraints (e.g. terrain, water travel conditions, lack of access); and availability and abundance of animals, fish and/or plants. In some cases these influences or restrictions pertain to all traditional use, in some cases they pertain to where or how harvesting may be done, and in some cases they pertain to specific species.

4.2.1 Titled Land

A large, but not quantified, portion of the Project Study Area is held by private land owners. The majority of private lands are situated in the southern portion of the Project Study Area, largely south of Dauphin. However there are a substantial number of private lands south of Mafeking including an area encompassing Lenswood, Minitonas and Swan River, as well as along Highway 10 from Cowan south to Dauphin. Manitoba Metis may only engage in traditional activities on private land with the permission of the land owner. The general location of agricultural lands, which are predominantly titled lands, in the west central part of the Project Study Area are illustrated in Figure 12.

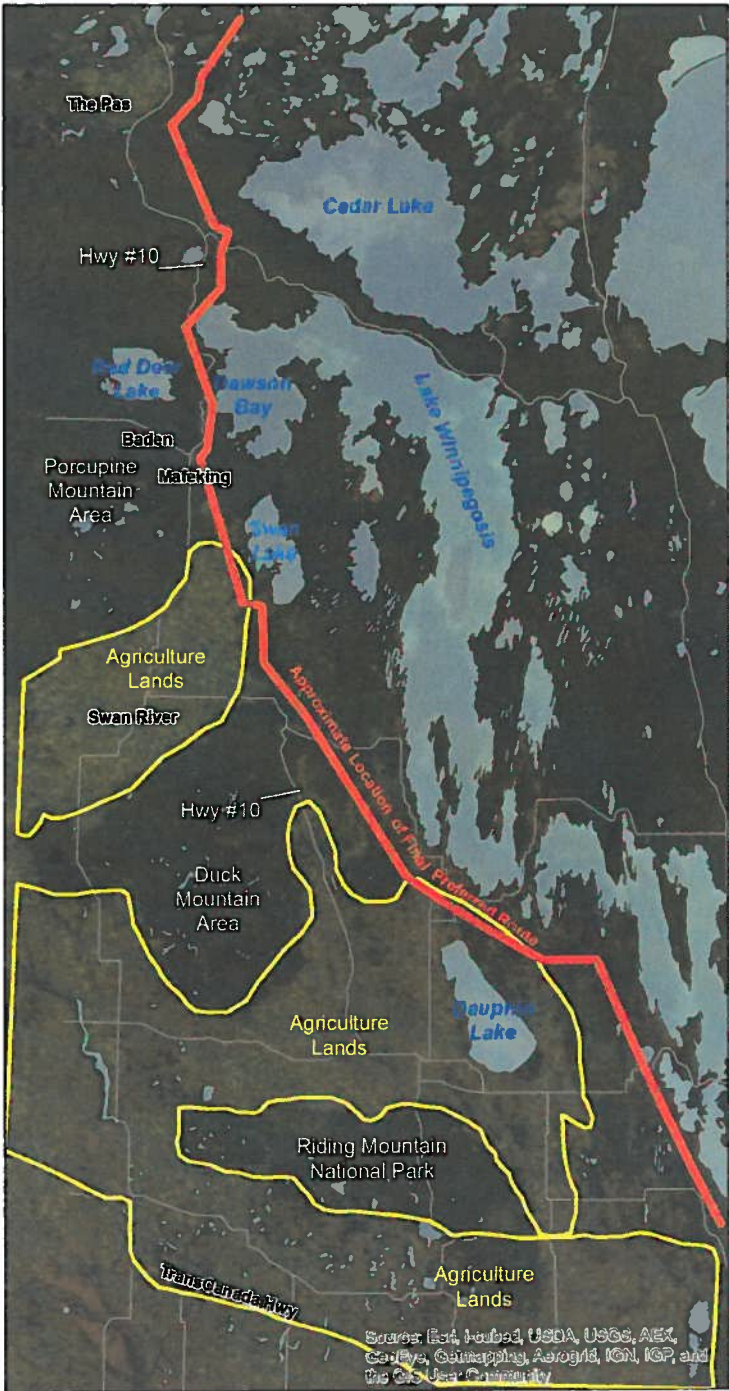
As noted above, the Metis Laws of the Harvest (and provincial hunting regulations) require that a Metis harvester acquire prior permission from a private land owner to utilize their property for traditional use. Some private land owners do give permission, however there is a large landscape in the central and southern portions of the Project Study Area that is not available to Manitoba Metis for traditional use purposes.

4.2.2 Federal Land

Riding Mountain National Park is federal Crown land (see Figure 12). The National Parks Wildlife Regulations under the *Canada National Parks Act*, prohibits the harvesting of larger animals (e.g. deer, moose, elk) and smaller animals (e.g. upland birds, waterfowl, rabbits) throughout the park boundaries. The park was created in 1929 and Manitoba Metis have been prohibited from harvesting within its boundaries since that time.

Within the BiPole III Project Study Area, the other main form of federal Crown land is lands set aside as Reserve land for First Nations. Engagement of traditional activities on First Nation Reserve lands by Manitoba Metis is not prohibited, however permission is required from the First Nation. In addition to existing Reserve lands, under the Manitoba Treaty Land Entitlement Agreement, many First Nations in Manitoba have selected additional lands that will be set aside as Reserves.

FIGURE 12: General Location of Titled Agricultural Lands and Riding Mountain National Park



4.2.3 Provincial Regulations

Standard safety regulations for harvesting are abided by Manitoba Metis under the Metis Laws of the Harvest. These include, but are not limited to:

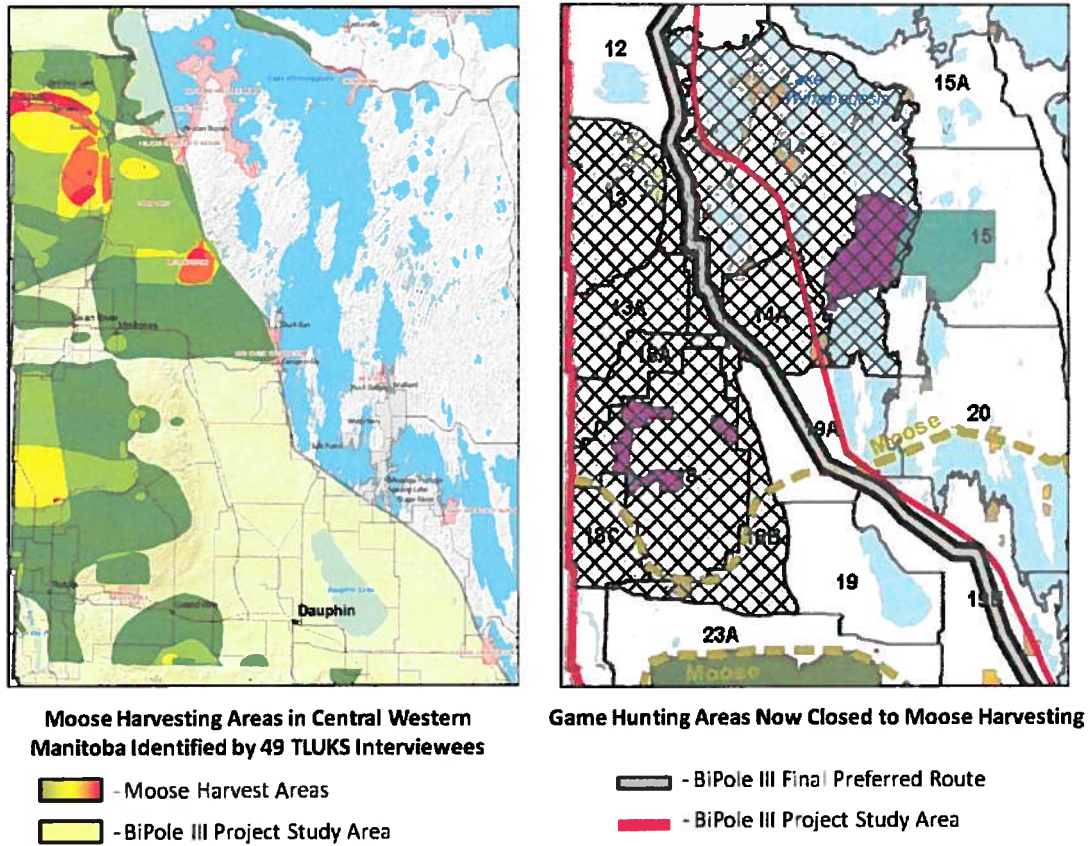
- hunting in provincial parks is subject to specific regulations as these are multiple-use areas where a variety of outdoor recreation occurs. Use of off-road vehicles are restricted to designated trails. Additionally, hunters may not hunt, possess a loaded firearm, or discharge a firearm within 300 metres of recreation areas, cottages, dumps, roads and prescribed trails.
- Railway rights-of-way are deemed to be equivalent to privately owned land and hunting is generally not permitted.
- Discharge of a firearm or bow from, across or along Provincial Roads, Provincial Trunk Highways, and public roads within municipalities or local government districts is prohibited.
- Hunters are advised to use discretion when hunting in the vicinity of a resource road, timber operation, forest-harvested area or quarry mineral mine. Signs may be posted to prohibit hunting on or within 300 metres of such areas for safety or conservation purposes.

4.3 Closure of Game Hunting Areas to Moose Harvesting

Due to declining moose populations or imbalances in gender ratios amongst certain populations, in 2010 Manitoba announced they were closing certain Game Hunting Areas (GHAs) to licensed moose hunting for conservation purposes. Further closures were announced in 2011. In July of 2011, GHA's 13, 13A, 14, 14A, and 18, 18A – 18C, all located in central western Manitoba, were closed by regulation (122/2011) to all licensed sport hunting as well as First Nation and Manitoba Metis rights holders. The MMF passed Resolution 7 at their Annual General Assembly on September 11, 2011 which instituted a temporary law that Manitoba Metis would abstain from moose hunting in the noted GHA's. Manitoba amended its 122/2011 regulation in February, 2012 to include specified areas within GHA 26 in central eastern Manitoba. The MMF followed suit on September 22, 2011 by issuing a temporary law to abstain from moose harvesting in the same portions of GHA 26. In addition to these noted closures, partial closures to moose are also in effect for GHAs 2A, 4 and 7A, north of The Pas, and 17A on the east side of Lake Winnipeg. Manitoba is currently considering closing Game Hunting Area 12 which is situated around Red Deer Lake.

As earlier described, the TLUKS detailed interviews indicate that areas in central western Manitoba subject to recent moose closures by Manitoba and the MMF are highly important to Manitoba Metis traditional use. Figure 13 indicates the locations relied upon by the 49 TLUKS interviewees for moose hunting relative to the GHAs that have been closed.

FIGURE 13: Moose Harvest Areas Identified by TLUKS Interviewees Relative to Game Hunting Areas Closed to Moose Harvesting in Central Western Manitoba



It is important to state that Manitoba Metis utilize these geographic areas for a number of other traditional use purposes and the moose closures have not and do not restrict harvesting of other species. It is also important to note that portions of GHA's 26 and 17, which are also important moose harvesting areas for Manitoba Metis, are also currently not available.

The effect of the loss of opportunity to harvest moose throughout most of the central western and central eastern parts of the province is significant for a number of reasons. First, moose were identified as the most important large animal species by the TLUKS interviewees. Second, there is now a limited landscape that contains moose populations, is accessible, and importantly, constitutes an area where Manitoba Metis have a cultural connection. Remaining areas within the Project Study Area where Manitoba Metis have a history of harvesting moose, that for the present time remain open to moose harvesting, are now largely limited to just north of Riding Mountain National Park (GHA 23), the Red Deer Lake area (GHA 12) and north of Lake Winnipegosis. For many Manitoba Metis this means if they wish to engage in moose hunting

they have a long way to travel now to access moose harvesting areas. For many, these more northerly areas are new territory where they may not hold long-term knowledge about where moose are found, means of accessing the landscape, and places to overnight on the land. Costs associated with accessing more northerly areas may also be time and cost prohibitive to some. Importantly, many Manitoba Metis have a long history of staying with family in the central western part of the province and connecting culturally and socially through moose harvesting activity in this region. The loss of opportunity to engage in this aspect of traditional use will no doubt impact on this as some Manitoba Metis may not visit relations as often or connect through moose harvesting activities.

5.0 CRITIQUE OF BIPOLE III TRANSMISSION LINE ROUTE SELECTION METHODOLOGY

According to the EIS, Volume 7.0, the Proponent utilized a Site Selection and Environmental Assessment (SSEA) process to identify the Final Preferred Route (PFR). The SSEA involved a two-stage approach: (1) route identification and (2) route evaluation and selection.

5.1 Initial Routing Considerations

At the outset, the SSEA identified a number of biophysical, socio-economic and technical factors that were to be generally avoided during the alternative route selection analyses (see EIS, Table 7.2-1 on page 7-23). The constraint and opportunity criteria in this list were the main tools used to identify alternative routes for further study (EIS, pgs. 7-20 and 7-24). The Proponent suggests that this list of “constraints” evolved with input from technical specialists and feedback from Rounds 1 and 2 of their Environmental Assessment Communications Program (EACP).

Lands important to Aboriginal peoples, including Manitoba Metis, for traditional use purposes is not identified in the SSEA overarching list of constraints. Moreover, this constraints list explicitly biased the alternative route selection process to favour “unoccupied lands” or the very lands that support Manitoba Metis traditional use.

5.2 Route Selection

Once the various alternative routes had been identified, each alternative route was subject to a preliminary evaluation based on a series of regional features (EIS, Table 7.2-2, pg. 7-29). **Again, lands important to Aboriginal peoples, including Manitoba Metis, for traditional use purposes is not identified as an evaluation criteria at this stage in the SSEA.**

The next step in the SSEA was focused on selecting a Preliminary Preferred Route (PPR). This was accomplished by a committee of specialists rating various segments of the alternative routes, based upon “27 pre-established criteria” and using a route selection matrix (RSM). These 27

criteria are identified in Table 7A-1 in Appendix 7A of the EIS. **Neither lands important to Aboriginal peoples, including Manitoba Metis, for traditional use purposes, nor traditional use are included as a pre-established criteria.** Notwithstanding this, it is noted that the RSM was based on information available up to April 2010 (EIS, Appendix 7A, pg. 7A-11, footnote 1). This date is important because the Proponent had only completed approximately half of its ATK workshops as of April 2010 (see Appendix 1) and none of the self-directed traditional knowledge or traditional use studies by First Nations and the MMF were completed at that time. It is noted that certain concerns or comments from the Proponent's ATK studies are included in the RSM results (EIS, Table 7A) in red font. However, these comments appear to be limited to ATK workshops that had been completed by April 2010.

Amongst the 27 criteria, there is a criteria labeled "Resource Use", however on page 7A-6 of the EIS it is said that the evaluation of this criteria considered "*...commercial fur harvest or trapping and the commercial allocation of big game wildlife resources to commercial operators through non-resident hunting allocations. The objective was to minimize the amount and frequency of potential disturbance to trappers and big game outfitters.*" **Again, with the exception of trapping, neither lands important to Aboriginal peoples, including Manitoba Metis, for traditional activity purposes, nor traditional use are included as a pre-established criteria.**

5.3 Consideration of Metis Traditional Use in the SSEA Process

Based on a review of the SSEA process, Manitoba Metis traditional use was not specifically considered in any of the alternative route, PPR or FPR selection processes. The framework and criteria employed in the SSEA does not appear at any point to identify or evaluate use of lands and resources by Manitoba Metis for traditional purposes as a consideration or constraint.

6.0 POTENTIAL IMPACTS ON TRADITIONAL USE

6.1 Avoidance of Plant Gathering

The EIS acknowledges that Aboriginal harvesters may avoid plant harvesting in the transmission line right of way due to contaminant concerns about herbicide use to management vegetative growth. The general response amongst Aboriginal peoples to contaminant concerns is to avoid harvesting in areas in the vicinity of known chemical usage. Communications or assurances by scientists and government representatives regarding the safety of herbicides typically do not alleviate concerns.

Avoidance practices can result in increased costs associated with accessing alternative areas, if they are known, accessible, and preferred. Permanent loss of cultural and ecological knowledge

about important gathering areas may occur due to the long lifespan of the transmission line and regular maintenance regime involving chemical management of vegetation growth.

6.2 Access and/or Harvesting Restrictions and Disturbance

The EIS acknowledges that during construction of the transmission line, operation of marshalling yards, borrow pits, construction of repeater stations, etc. that noise and activity may cause animals to avoid construction areas on a temporary basis (EIS, pg 8-102, 8-272). The EIS also acknowledges that access within and through segments of the transmission line right of way and access routes outside the right of way may be restricted temporarily during the construction phases for safety purposes (Response to CEC-MH-III-069). Finally, the EIS acknowledges that for purposes of protecting worker safety and limiting 'excess' harvest opportunities at the construction phase, Manitoba Hydro will work with Manitoba Conservation to institute no hunting areas around construction sites and access roads and trails used to transport materials and workers to the site (EIS, pg 8-102 and response to CEC-MH-III-069).

The displacement of Manitoba Metis and/or displacement of animals during the construction phase, although temporary in nature, alone and in combination have the potential to interfere with Manitoba Metis traditional use. Information from the TLUKS reveals that a large segment of the Manitoba Metis community regularly and frequently travel various distances from various parts of the Province to engage in traditional use within and adjacent to the PFR. The detailed interviews from the TLUKS indicates that it is common for harvesters to make multiple trips annually to engage in the harvesting of different species, at different times of the year. Without wide-reaching and timely communications, there is a real potential that Manitoba Metis could expend time and money travelling to engage in traditional activities only to find out upon arrival there are harvesting and/or access restrictions in effect.

The EIS acknowledges that the creation of the transmission line right of way will create new a new access route, which is some areas will open up landscapes that are currently not easily accessible. New access is a double-edged sword. As the EIS rightly points out, on the one hand it can increase access and harvesting opportunities for Manitoba Metis, as well as First Nations and licensed sport hunters. But on the other hand, it can increase harvesting pressure on species populations in areas previously not easily accessible. New access also can provide opportunities for non-consumptive recreational use, notably winter snow machining. The EIS correctly points out that use of the right of way by harvesters and recreationists may result in low level avoidance by animals sensitive to repeated disturbance.

As the PFR crosses through many areas used by Manitoba Metis for traditional purposes, the effects of access use of the right of way and disturbance of animals, may also affect harvesting success and enjoyment in adjacent areas. Additionally, recreational use and traditional use are not necessarily compatible, particularly in the early winter (before January 15th when Manitoba Metis cease large animal hunting per the Metis Laws of the Hunt) when conditions are suitable for snowmobiling and Manitoba Metis are still engaged in traditional activities. Manitoba Hydro has identified a number of mitigation measures to make winter use of the right of way less attractive (more difficult). They have also indicated that if use of the right of way impacts on wildlife populations and/or becomes an issue for "local communities" they will institute access

restrictions and/or access management plans in consultation with MCWS and “local communities.” The concern is that the existence of the right of way may impact on Manitoba Metis harvesting success in adjacent areas due to access related noise and disturbance. And if access restrictions and/or access management plans are instituted to address these issues, these responses may result in restrictions on traditional use outside of, but adjacent to the right of way.

7.0 REVIEW OF PROPOSED MITIGATION MEASURES

The main mitigation measures identified in the EIS specifically to reduce effects on traditional use (referred to as ‘domestic resource use’ in the EIS) during construction and/or operational phases of the project are listed below, accompanied by a brief assessment of the utility of these mitigation measures to prevent or minimize adverse effects on Manitoba Metis traditional use.

Identified Effect(s):

“In terms of domestic hunting, it is anticipated that wildlife/game species sensitive to disturbance may move away from sources of disturbance during construction of the line which may impact domestic harvesting levels in the area. This movement is anticipated to be short-term in duration, with the majority of mammal populations returning to the area once construction has been completed. Disturbance to game will be mitigated through conducting construction during off seasons for hunting (e.g., winter) which this is consistent with construction plans for the northern portions of the line, and the desired approach for the southern portions of the line” (EIS pg. 8-272).

Mitigation Measure Proposed:

“Construction and site decommissioning activities in northern Manitoba will be carried out during the winter months.”

Application: Construction Phase

Comments:

The EIS does not specify what is meant by “winter months” or “northern Manitoba.” Manitoba Metis engage in many traditional activities year round, with the exception that harvesting of moose, deer, elk, and caribou is restricted under the Metis Laws of the Hunt during the period January 15th through July 15th. Limiting construction to winter months does not necessarily mean it will not have an effect on traditional use. If construction activity occurs during the time frame that Manitoba Metis harvesters are harvesting large animals, there is a potential for construction activity and associated access or hunting restrictions to impact on large animal harvesting. As the EIS does not define the term “northern Manitoba”, the southern extent of the right of way and line that will be under construction during the ‘winter months’ is not clear.

Identified Effect(s):

“In terms of domestic hunting, it is anticipated that wildlife/game species sensitive to disturbance may move away from sources of disturbance during construction of the line which may impact domestic harvesting levels in the area. This movement is anticipated to be short-term in duration, with the majority of mammal populations returning to the area once construction has been completed” (EIS, pg. 8-272)

Mitigation Measure Proposed:

Where construction and site decommissioning activities do not occur during winter months, disturbances will be minimized in areas of plants used by Aboriginal people as identified through the ATK process.

Comments:

This mitigation measure appears to only recognize potential impacts on plant gathering. It appears that only information identified in Manitoba Hydro's ATK process is to be considered. There is no indication that Manitoba Hydro intends to consider important plant gathering areas identified in the MMF TLUKS.

Construction activity during non-winter months has the potential to impact on other forms of traditional use, particularly large and small animal harvesting.

Identified Effect(s):

"Clearing and construction of transmission line rights-of-way as well as the creation of new access roads/trails for the Project can allow increased access by non-community members to sensitive areas that have been identified by local Aboriginal communities and can result in the potential loss of important vegetation resources found at these sites." (EIS, pg. 8-67)

"There also is the potential for new rights-of-way and access roads/trails to create additional local access, which can result in the potential increase in human-related fire occurrences." (EIS, pg. 8-67)

New access roads/trails will generally increase access to hunters of all species potentially resulting in overharvesting [various references throughout the EIS]

Mitigation Measure Proposed:

Whenever possible, existing trails, roads and cut lines will be used as access routes.

Application: Construction Phase and Operational Phase

Comments:

While it is recognized that use of existing linear features is preferable to the creation of new ones, use of existing linear features has the potential to temporarily displace Manitoba Metis harvesters from the very access routes they rely upon. The EIS does not specify which existing linear features will be used during the construction phase and thus it is unknown to what extent and what duration, if any, this will displace Manitoba Metis harvesters.

The EIS does not indicate where new access routes will be created and thus predicting the impact, if any, on Manitoba Metis traditional use near these new access routes is not possible.

Identified Effect(s):

"Effects on domestic resource use during construction." (EIS, pg. 8-274)

Mitigation Measure Proposed:

Access controls adjacent to PTH 6 and other access points from main roads will be applied, including ditching and access road retirement (EIS, pg. 8-274).

Comments:

It is presumed this mitigation measure is meant to apply to new access created for the purposes of construction. However, if decommissioning of existing linear features is contemplated, this has the potential to remove access routes that may currently be relied upon by Manitoba Metis to access the landscape for traditional use purposes.

Identified Effect(s):

“In terms of domestic hunting, it is anticipated that wildlife/game species sensitive to disturbance may move away from sources of disturbance during construction of the line which may impact domestic harvesting levels in the area. This movement is anticipated to be short-term in duration, with the majority of mammal populations returning to the area once construction has been completed” (EIS, pg. 8-272)

Mitigation Measure Proposed:

Manitoba Hydro will work with individual communities that have identified important resource use sites that are in close proximity to the Project Site/Footprint to minimize potential effects.

Application: Construction Phase and Operational Phase

Comments:

This is a vague commitment and lacks detail on how it would be implemented in practice. It is not clear what is meant by “resource use sites.” In order to minimize adverse effects on Manitoba Metis harvesters, the Manitoba Metis community at large will need to be involved, i.e. many harvesters do not live in ‘individual communities’ near the project footprint.

Identified Effect(s):

In terms of domestic hunting and fishing, resource harvesters raised the issue of increased access to hunting and fishing areas, and the effects on desired wildlife and fish species. There were a variety of perspectives regarding the effects of increased access on wildlife and fish. Some resource harvesters felt that the development of the right-of-way and construction access trails may benefit resource users through increased access to resource use areas and, thus, improving their chance of an increased harvest. However, some were of the opinion that greater access increased the risk of theft, vandalism and potential reduction of their harvest due to others accessing the resource base (EIS, pg. 8-272).

Mitigation Measure Proposed:

Where the issue of increased access is important to a community (i.e., effect of increased access to areas deemed important for domestic resource use), Manitoba Hydro will work with directly affected communities to prepare Access Management Plans prior to construction of the line/prior to operation of the line.

Application: Construction Phase and Operational Phase

Comments:

This mitigation measure suggests that the requirement for an Access Management Plan would only be triggered if there was increased access. It fails to address situations where construction activity or operational activity causes a loss of access for Manitoba Metis harvesters. There are numerous references to Access Management Plans throughout the EIS but no detail on what they would look like, what would specifically trigger a need for a plan, and how competing concerns amongst various 'communities' would be dealt.

In some cases reference is made in the EIS and/or Information Requests (IRs) to development of Access Management Plans with MCWS, and in other cases reference is made to development with "affected communities" or specific First Nations. In some cases commitment is made to develop plans at some point in the future, while Manitoba Hydro's responses to certain IRs from the Manitoba Clean Environment Commission suggest some plans are already being developed. For example, Manitoba Hydro stated in response to IR CEC/MH-III-068; "Access Management Plans are currently being prepared and will address the above mentioned requirements" (reference is to plans to control access to construction areas for site security, worker safety and the general public and to respect Aboriginal rights and resource users).

Identified Effect(s):

Nineteen traditional plant harvesting locations were identified along the final preferred route for gathering food and medicines, and for harvesting plants and trees for cultural and other purposes. From the self-directed studies, general botanical resource areas have also been identified along the route. Potential effects include the disruption or loss of plant species and communities important to Aboriginal people (as identified through the ATK process). (EIS, pg. 8-273, 8-274)

There is the potential for operations of the line to negatively affect plants valued by Aboriginal people. Effects include the loss of plant species/communities as a result of the use of maintenance equipment outside of winter months, as well as the use of herbicides to control undesirable species. As a result of plant loss, Aboriginal people may have to travel further from current traditional areas to locate sites supporting favorable plants for food and medicine. (EIS, pg. 8-275)

Although mitigation measures have been identified below to reduce the potential effect of construction activities in these areas, there is the likelihood that a loss of some plant communities important to Aboriginal people will occur within the right-of-way (EIS, pg. 8-273)

Mitigation Measure Proposed:

Manitoba Hydro will work with individual communities and resource users who have identified important sites that are in close proximity to the line regarding ways to reduce pressure on the resource base caused by operations.

Manitoba Hydro will work with individual communities that have identified important resource use sites that are in close proximity to the Project Site/Footprint to minimize potential effects (EIS, pg. 2-874).

Application: Construction and Operational Phases

Comments:

The EIS appears to have only relied on the results of Manitoba Hydro's ATK study to identify important gathering sites along or adjacent to the PFR. The MMF's TLUKS 2011 has identified many gathering locations that are situated within or adjacent to the PFR, some of which are in addition to the nineteen sites identified as ESSs in the EIS, and which are to be addressed in the EPP.

Additional gathering areas identified in the MMF TLUKS 2011 need to be added to the listing of ESSs and appropriate mitigation measures regarding avoidance and/or non-chemical vegetation management options need to be jointly developed by the MMF and Manitoba Hydro.

Many of the above noted mitigation measures appear to be generalized commitments to develop mitigation at a later date, if requested by "individual communities" or "resource users" or deemed necessary by Manitoba Hydro. It is not clear how such general proposals can be incorporated into project licenses and/or permits. For example, it is not clear what specifically would trigger a requirement for Manitoba Hydro to act on these proposals. Nor is it clear how these proposals, or if one or more mitigation measures are eventually developed in detail, would be enforced or monitored for compliance, and by whom.

8.0 RECOMMENDED MITIGATION AND ACCOMMODATION MEASURES

8.1 Addressing Information Gaps

The MMF's TLUKS was designed to provide a representation of Metis resource use and traditional knowledge in a very large study area. As such, the MMF's TLUKS provides general patterns of Manitoba Metis traditional use and identifies areas and regions of importance throughout the Project Study Area. It does not, nor was it intended, to provide concentrated study of traditional use and knowledge specifically within and adjacent to the PFR. Nor was the TLUKS an impact assessment of the Project on traditional use, values and knowledge.

At the time of preparing this report, Manitoba Hydro tabled proposed changes to the PFR in areas of concern for the Manitoba Metis.⁸ Some of these changes are outside the 4.8 kilometer Local Study Area of the PFR assessed as a part of the EIS⁹ and some sections appear to also be outside the Local Study Areas for the alternative routes investigated in the route selection process. Substantial changes in a project description such as this warrant a revised or supplemental EIS that includes an effects assessment, consideration of revised, new or expanded mitigation measures, and a determination of significance of residual effects.

In relation to the remaining PFR it does not appear that the limited baseline information concerning important locations used by Manitoba Metis for traditional purposes, contained in the MMF 2011 TLUKS report, informed the identification of ESSs or the PFR selection process. Moreover, Manitoba Hydro has not provided detailed information regarding the location of existing roads and trails they propose to utilize during the construction period, where new temporary access routes are to be located, or locations for construction camps, marshaling yards and borrow pits (see for example responses to IR's CEC-MH-III-074, 078, 081).

As a consequence of all of the above, there are considerable uncertainties regarding the nature of potential Project effects on Manitoba Metis traditional use and significant gaps in the identification of ESSs. To address these gaps and uncertainties, Manitoba Hydro must be required to engage the MMF in further work to identify possible routing changes and/or preferred temporary construction-related access routes to ensure that adverse effects are minimized through avoidance, and where avoidance is not feasible, practical mitigation measures to minimize effects are clearly developed. Clearly, this work needs to be done prior to issuing a license for the Project and before the right of way for the PFR is approved. This must also be done before Environmental Protection Plans (EPPs) are completed.

⁸ Manitoba Hydro's final response to August 29, 2012 Request for Additional Information, listed on Manitoba Environment's website [<http://www.gov.mb.ca/conservation/eal/registries/5433bipole/index.html>] on or about October 29th, 2012 and presented to the CEC on October 29th, Exhibit MH-59. Changes proposed include re-routing of the FPR in the vicinity of Wabowden, Moose Meadows, and within Game Hunting Area 19A.

⁹ Defined as 1.5 miles either side of the centre line of the proposed FPR right of way (EIS, pg. 8-2).

More focused and localized information about Manitoba Metis traditional use within and adjacent to the PFR, including use of existing roads and trails, and use in locations where new proposed access roads, marshaling yards, etc. is needed. The current EIS is deficient in this respect. Additionally, further information is needed with respect to Manitoba Metis traditional knowledge about heritage sites, spiritual locations, sensitive locations, areas of concern, etc. It is recommended that this additional information be acquired in time to inform the identification and avoidance of ESSs as committed to in the EIS.¹⁰ Existing information in the MMF TLUKS also needs to be incorporated into the ESS database.

The additional information gathering effort should involve the MMF through the identification of Manitoba Metis Elders and/or Metis harvesters who engage in traditional use in various segments of the PFR and focus on specific issues including intensively used and valued areas that will potentially be subject to construction and/or operational-related disturbance and/or access and use restrictions. This work may include having identified Manitoba Metis Elders and/or Metis harvesters work with Manitoba Hydro and MMF representatives by walking the segments of the route or visiting specific sites along the PFR in order to assess and identify ESSs. Further, where feasible, these Metis representatives should be provided detailed maps or airphoto's for different segments of the PFR to identify ESSs and to identify avoidance, and/or mitigation measures.

Additionally, this research would focus on soliciting information to inform potential routing adjustments, access routes and site-infrastructure locations, as well as practical and effective mitigation where required. It is suggested that this work be facilitated through a MMF-Manitoba ESS Committee. This Committee should involve the MMF Home Office in Winnipeg, along with identified MMF Regional and Local representatives, and appropriate representatives of Manitoba Hydro, who would meet to review the MMF's TLUKS, the supplemental Metis TLUK information, identified ESSs and then bring forth recommendations and actions to Manitoba Hydro. The MMF will require financial support from Manitoba Hydro to engage in this process throughout the Project's construction.

Finally, it is recommended that the MMF and Manitoba Hydro quickly engage in discussions to develop and agree upon a plan of action to get this additional work done and a process for MMF and Manitoba Hydro to work jointly on incorporating new and existing information into the ESS and mitigation measures into the EPPs.

¹⁰ For examples see EIS Mitigation Commitments at Sections 8.2.5, p. 8-79; 8.3.2, p. 8-274 – 8-276; 8.3.6, p. 8-352.

8.2 Meaningful MMF Role in Environmental Protection Plan Design and Implementation

It is recommended that a condition of project approval be that MMF, Manitoba Hydro and MCWS negotiate and execute a tri-party agreement¹¹ to design, implement, monitor and report on all EPPs. This is the only way to ensure a meaningful role for the Manitoba Metis in relation to the development, implementation and monitoring of the EPPs.

This tri-party agreement should be negotiated and finalized prior to MCWS granting a license for the Project. In the alternative, the tri-partite agreement must be in place before Manitoba Hydro can commence construction of the first segment of transmission line component of the Project. Manitoba Hydro and/or Manitoba would be responsible to cover the MMF's reasonable costs to participate in these tripartite agreement negotiations.

While this tri-party agreement would address a wide variety of matters, the overarching purpose is to ensure that adverse effects on Manitoba Metis rights with respect to traditional use and knowledge are prevented to the maximum extent possible. Given the geographic scope of the Project, the tri-partite agreement would likely have unique and discrete commitments to the Manitoba Metis in relation to the various components of the Project (i.e., Gillam and area, northern component, west-side corridor and southern component).

While the various topics and commitments within the tri-partite agreement would be subject to negotiation,¹² to be effective the agreement should specifically commit to creating an EPP Committee comprised as follows:

- MMF and MMF Regional and/or Local representatives. Different MMF Regional and/or Local representatives would be involved with different EPP specific segments of the transmission line;
- Manitoba Conservation and Water Stewardship; and
- Manitoba Hydro.

It is also recommended that the tri-party agreement include the following:

- Agreement terms of reference, including;

¹¹ A tri-party agreement is proposed because in order to effectively implement Manitoba Metis mitigation and accommodation measures the authorities and responsibilities of both Manitoba Hydro and MCWS are engaged. My experience has shown that licensing conditions do not provide an effective means to monitor, regulate and enforce commitments made to Aboriginal peoples in relation to the development and implementation EPPs. Further, without explicit and clear commitments, meaningful involvement of Aboriginal groups is not assured (e.g. the extent of Aboriginal involvement is limited to opportunity to "review" an EPP rather than comprehensive involvement in its development and implementation). Ideally, the MMF believes a tri-party agreement would be most effective, but two bilateral agreements (MMF-Manitoba Hydro and MMF-MCWS) may be able to achieve the same goals, but in a less coordinated manner.

¹² For example, this tripartite agreement may also include provisions pertaining to processes, mitigation measures and accommodations related to other Metis issues, concerns and adverse effects related to: trapper notification, heritage/archaeological resources, socio-economic effects, wildlife, independent monitoring body, etc.

- the purpose, objectives and outcomes of the agreement,
 - duration of the agreement,
 - mandate of the committee,
 - frequency, timing and location of committee meetings,
 - resources for MMF participation,
 - short and long term workplans.
- Specific commitments to address:
 - Inclusion of existing and additional Manitoba Metis traditional use and knowledge as described in Section 8.1 to assist in on-going routing decisions, identification of ESSs;
 - Construction-phase mitigation measures, including access management plans, deemed acceptable by the Committee and details on implementation responsibilities, timing, duration;
 - Operational-phase mitigation measures, including access management plans, deemed acceptable by the Committee and details on implementation responsibilities, timing, duration;
 - Means of assessing the efficacy of mitigation measures in real-time and means of employing adaptive management when measures are determined to require refined and/or new measures are identified in need of employment;
 - A communications program during construction as discussed in Section 8.3; and
 - Detailed arrangements for a meaningful role of the MMF in short and longer term monitoring of the efficacy of project construction and operational phase mitigation measures pertaining specifically to avoidance of or minimizing adverse effects on Manitoba Metis traditional use (as well as on heritage sites, culturally important sites, wildlife, etc.), assessment of the accuracy of the EIS effect predictions, and adaptive management as briefly outlined in Section 8.4.

8.3 Construction Phase Communications Program

It is recognized in the Project's EIS that during the construction phases in different regions of the province there will be times when Manitoba Metis access and/or harvesting opportunities will have to be restricted for Manitoba Hydro worker and contractor safety reasons. It is also recognized that construction activity may cause animals to avoid a broader area, and cause noise, dust, traffic, etc. and therefore disturb Metis harvesting opportunities and/or success. These are acknowledged adverse effects on Manitoba Metis traditional use during the project construction phase.

As many Manitoba Metis travel substantial distances from their place of residence to engage in traditional activities, it will be important that they are kept informed so that they do not spend time and money getting to a location only to find out access is blocked, there are restrictions on firearms in place, and/or the general area is disturbed. In order to minimize these types of impacts, it is recommended that a BiPole III communications program be put into place and operationalized.

It is recommended that the communications program be designed and delivered by the MMF, since it manages the annual Metis harvest through its Metis Laws of the Hunt.¹³ As outlined above and within the MMF's TLUKS, Manitoba Metis harvesting practices are unique and in some respects are distinct from other Aboriginal harvesters in relation to distance travelled for harvesting as well as locational opportunities for harvesting. As such, general public or pan-Aboriginal communication tools will not be effective for Manitoba Metis harvesters.

An effective communications program would necessarily involve on-going, time-sensitive information input and cooperation from Manitoba Hydro and MCWS, and resourcing by one or both of Manitoba Hydro and MCWS. At a minimum, the communications program should advise Manitoba Metis of:

- locations (descriptive and maps) and timelines (start and end dates) of temporarily restricted areas;
- the reasons for (e.g. construction camp, marshaling yard, right of way clearing) and nature of the restrictions (e.g. access route blocked, no firing of firearms within specified distance);
- locations and timelines of the broader geographic area where construction disturbance has the potential to impact on harvesting enjoyment and/or success; and
- negotiated arrangements or agreements (e.g. Access Management Agreements) where Manitoba Metis access will not be limited if valid MMF identification is provided.

The communications program should provide for Manitoba Metis to report on issues and concerns as they arise, and this information will feedback into improvements in the communication information and/or delivery mechanisms themselves, and to the aforementioned tri-party EEP Committee.

Information delivery to Manitoba Metis may include one or more of the following communications means:

- Interactive MMF Website link
- MMF telephone hotline
- MMF email alerts
- Posters in MMF Regional and Local offices
- Community meetings

The above communication methods will require that the MMF have the capacity to develop the tools and information, update information on an on-going basis, respond and disseminate information quickly in the event of unexpected construction schedule changes, and assemble and document feedback from harvesters to enable practical and effective adaptive management responses.

¹³ In addition to the mandate received from MMF members see the 2012 MMF-Manitoba Government Harvesting Agreement which also recognizes the MMF's role in relation to the management and operation of the Metis harvest.

8.4 Follow-Up Program

8.4.1 Construction Phase Monitoring and Reporting

It is recommended that the tri-party committee described in Section 8.2, or another entity as may be proposed by the MMF, prepare bi-annual or construction season reports throughout the Project construction phase, and final end of construction report, describing at a minimum the following:

- the efficacy of accommodation measures, including mitigation measures, employed in terms of their effectiveness in preventing adverse impacts on Manitoba Metis harvesting opportunities, success, and enjoyment. This could be informed, in part, by feedback from the communications program, MMF and/or Committee workshops with Local and/or Regional MMF offices, and/or with a regional representative sampling of harvesters;
- the efficacy of the communications program, including measures to improve delivery, and/or the content and timeliness of information;
- the final report should describe the extent to which adverse effects on traditional use were mitigated and lessons learned that would inform future similar projects.

8.4.2 Operational Phase Monitoring and Adaptive Management

It is recommended that the tri-party committee, or another entity as may be proposed by the MMF, continue to function for at least the first ten years of Project operation. This will ensure:

- a forum exists for MMF to bring forth Project operational phase concerns of Manitoba Metis Harvesters;
- allow for continuous monitoring, review, and reporting on mitigation measures that continue from the construction phase and/or introduced for the operational phase;
- on-going communications to Manitoba Metis harvesters with respect to Project maintenance activities that have potential to impact on traditional use (e.g. location and timing of mechanical or chemical vegetation management within the right of way).

**APPENDIX A:
MANITOBA HYDRO SCHEDULE OF
ABORIGINAL KNOWLEDGE STUDY WORKSHOPS**

BIPOLE III ABORIGINAL TRADITIONAL KNOWLEDGE WORKSHOPS	
COMMUNITY	DATE
CAMPERVILLE	Oct 6-7, 2009
WAYWAYSEECAPPO FIRST NATION	Nov 25-26, 2010
HERB LAKE LANDING	Dec 8-9, 2009
DAWSON BAY	Feb 9-10, 2010
BARROWS	Feb 18-19, 2010
PELICAN RAPIDS	Mar 15-16, 2010
PINE CREEK FIRST NATION	Mar 25-26, 2010
CORMORANT	Mar 30-31, 2010
PIKWITONEI	May 17-18, 2010
CHEMAWAWIN & EASTERVILLE	Jun 8-9, 2010
THICKET PORTAGE	Jun 16-17, 2010
POWELL, BADEN, RED DEER LAKE, WESTGATE, NATIONAL MILLS	Jun 24-25, 2010
DUCK BAY	Sept 16-17, 2010
DAKOTA PLAINS	Nov 16-17, 2010
DAKOTA TIPI	Nov 23-24, 2010