

MONTHLY ENGAGEMENT NEWSLETTER: TOBIQUE FIRST NATION



EA REVIEW PROCESS

This Issue

The Maliseet communities presented to the Environmental Assessment (EA) Review Panel on October 12, 2016 in Fredericton, NB.

Topics presented by the Maliseet included:

- Aboriginal Title;
- Capacity;
- Consent;
- Cumulative Impacts;
- Issues with Process; and
- Jurisdiction.

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The panel sessions held in Fredericton were considered pre-consultation and panel members told presenters to “think big” and “step away from what you see and say what you want” (in regards to the current federal environmental processes).

We will be holding a community meeting (likely in early December 2016) to discuss members ideas on the EA review process and what issues are most important to the Maliseet. The outcome of the discussion will be incorporated in written submissions to the panel.

We are still waiting to hear if we have funding for the NEB review, the Fisheries act review and the Navigation Protection Act review.



NATIONAL ENERGY BOARD PROCESS—PROPOSED ENERGY EAST PIPELINE

As mentioned in the September 2016 newsletter, the original members of the National Energy Board panel stepped down after two were accused of conflict of interest. Since then the NEB process has been on hold. More recently, temporary appointments have been made to the NEB, including: Ronald Durelle who is a former Assistant Deputy Minister for the Department of Tourism and Parks in NB and Wilma Jacknife, an Indigenous lawyer from Cold Lake First Nation. More information on the temporary appointments can be found at:

<http://news.gc.ca/web/article-en.do?mthd=tp&ctr.page=1&nid=1140679&ctr.tp1D=930>

The Crown has determined that the NEB, through its review process, is to fulfill the constitutional duty to consult and accommodate about the proposed Energy East Pipeline. The Maliseet are currently working on applying for funding (up to 5K for each community) to discuss the "Proposed Approach to Crown Consultations for the Energy East Project." This will include a legal review of the proposed approach, community meeting, as well as follow up meetings with the government to see how our comments would be incorporated.

Energy East is a proposed 4500 km pipeline that would carry 1.1 million barrels of crude oil per day from Alberta and Saskatchewan to the marine facility in Saint John, NB. A portion of the oil would be refined in the Irving Oil facility in Saint John, while the rest would likely be shipped to other countries. This would triple the large ship traffic in the Bay of Fundy, if approved and would mean the construction of new pipeline extending throughout traditional Maliseet territory.



THE PROPOSED SISSON PROJECT—UPDATE

The federal government has still not decided on the Sisson project (the project needs both federal and provincial approvals to go forward—the provincial approval was given in December 2015, subject to 40 conditions). The federal decision may come at any time now, but is now likely in November 2016. A recent call with the Canadian Environmental Assessment Agency (CEAA) stated that the Minister is still waiting the outcome of accommodation discussions, however, she does have to make a determination at some point and the Maliseet are not given an unlimited amount of time. The Maliseet Chiefs continue to discuss with New Brunswick, potential measures to accommodate the impacts of the Sisson Mine on Maliseet treaty and Aboriginal rights in the event that the mine proceeds.

Accommodation measures include: a training and employment strategy, a mining accident/malfunction compensation fund, revenue-sharing on mine profits and the protection of other lands in Maliseet Territory from future development. If a package of accommodation measures is developed, it will be presented to Tobique members at a community meeting and Council will be seeking your feedback. Additionally, as discussed at the last community meeting (September 2016), a potential Cooperation Agreement with the company was also discussed. Tobique is in very early exploratory stages in this process.

NB POWER—TOBIQUE FISH PASSAGE

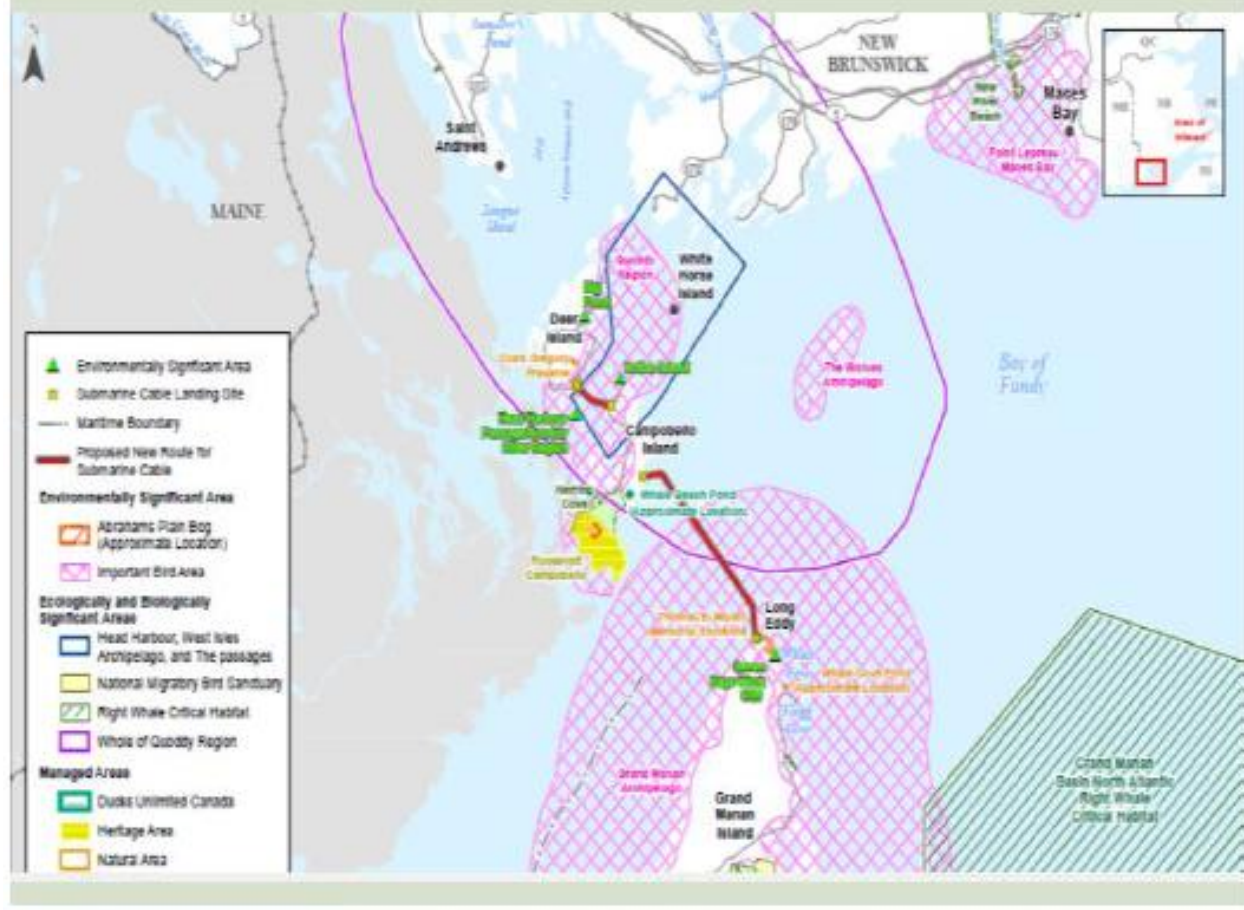
Work is ongoing at the Tobique dam for Fish Passage. The passageway is an effort to increase survival rates of Atlantic salmon and American eel (see April 2016 Newsletter for more information, located at: <http://www.tobiquefirstnation.ca/communityEngagement.html>).

Weekly environmental reports are submitted for the work and will be posted on our website under "NB Power".

NB POWER—FUNDY ISLES SUBMARINE CABLES REPLACEMENT

NB Power is proposing to install and commission new submarine electrical cables from Deer Island to Campobello Island and from Campobello Island to Grand Manan Island. The existing submarine cables were installed in 1978 and use obsolete nitrogen gas-filled insulation technology. The cables have a normal life expectancy of 40 years, suggesting NB Power needs to replace the cables by 2018. The project includes two segments of 69 kV submarine cables and modification of 4 land-based overhead-to-underground riser stations. New cables are proposed to be installed so that they can operate in parallel with existing line cables currently powering the islands.

The project will have to be a registered under NB's Environmental Impact Assessment. Stantec will undertake the EIA on behalf of NB Power. The Maliseet are currently developing a proposal for a land use study specific to the project.



CONSULTATION

Is consultation a dirty word?

According to the book *Aboriginal Power* by Chris Henderson, it is, because it is “practiced by private companies and governments interested in power projects and often involved nothing more than an exchange of information. The actual project plan was already fully baked, and the community is being offered nothing more than a take-it-or-leave-it-option.”

Henderson’s alternative to what currently is accepted as consultation is the following engagement principles:

Respectful Engagement—community engagement acknowledges Aboriginal traditional land use, cultural and treaty rights.

Comprehensive Engagement—proponents and government consider the large spectrum of issues that are a concern to Indigenous people, including: land, water, wildlife, Aboriginal business, jobs, benefits and economic development.

Proactive Engagement—Indigenous communities need to be involved at all stages of the project’s development process (early engagement).

Interactive Engagement—Indigenous communities expect to express their interests and concerns and have them acted on in a meaningful way.

Substantive Engagement—good engagement involves proponents and governments funding local engagement, legal, technical and business activities; such that band members are fairly and fully respected.

Going beyond the duty to consult?

As mentioned in page 1, the federal government is undergoing an Environmental Assessment review process. The panel mentioned that the process is also looking beyond the duty to consult and assessing how to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In July 2016, Justice Minister Wilson-Raybould stated (regarding UNDRIP): “It is no longer a question of if we are going to do it. We certainly are, it is more a question of how we are going to implement it here in Canada” (CBC news, “Government supports Indigenous declaration without reservation: Wilson-Raybould”, July 20, 2016).

One of the key messages in UNDRIP is “Free, Prior and Informed Consent”.

For more information on the proposed projects please visit the website:
<http://www.tobiquefirstnation.ca/communityEngagement.html>

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