

Consultation and Accommodation in Gespe'gewa'gi: Feedback from the Mi'gmaq Tri-Councils

During a presentation made to the Tri-Council on April 8, 2009, the Office of the Nutewistoq was able to gather information from the three Elected Councils of Gespe'gewa'gi. This report is a compilation of the comments, issues and areas of concern for the three Mi'gmaq Communities in Gespe'gewa'gi, namely, Gesgapegiag, Gespeg and Listuguj.

This is an internal document for sole use by the Mi'gmawei Mawiomi Secretariat and the Office of the Nutewistoq.

The following questions were posed during the presentation made to the Mi'gmaq Tri-Council, and their responses are listed after each question.

RIGHTS

What is the territory each community is most concerned about?

- Gespe'gewa'gi
- Mi'gma'gi

What are the traditional activities engaged in by members of the community within the territory?

- Hunting
- Fishing
- Harvesting
- Trapping
- Powwows
- Gathering medicines, ash, cedar, spruce
- Basket making
- Canoe making
- Travel

What is the current manner of exercising rights?

- We allow other nations to come into our territory based on our systems, we grant permission for them to hunt or fish in our territory – but the Government of Quebec sent a letter advising the Mohawks that they do not have the right to hunt in our territory.
- In Gesgapegiag, they have established hunting grounds and they issue permits. They also have stopped people from cutting along their river systems, but only received support because of non-native involvement (surrounding municipalities)
- Salmon Regulations or Mi'gmaq Laws for fishing were made, after the Supreme Court Marshall Decision – Listuguj wanted to ensure that their unique perspective was written, and a copy of these regulations were provided to the Captain and Crews of LMG vessels. “This is our land, these are our laws”
- We need to assert our rights and laws and we need to make Governments aware of our rights
- We need to stop the CRE from interfering in our territory, to stop the development of camps in our territory. We need to bring this to the Minister responsible, and tell them to move the camps, or we will move them ourselves.
- Hunting licenses are issued for Zone 1 (a Province of Quebec-defined zone) – but they do not include a “no hunting in our community territories” clause for non-band members, which directly contradicts the Indian Act. We have no funding for policing our territory, to prevent non-natives hunting on our lands.

- We need to educate our own members on how to hunt in a way that respects our Mi'gmaq views. The younger generation of Mi'gmaq feel that they are breaking laws, or have fear when they hunt because of a lack of understanding of our rights.
- Gespeg does not pay stumpage fees for the wood they harvest, and this may be as a result of negotiations.
- Gespeg asked for (and received) a specific area for the collection of ash, which would not be used by other non-natives (buffer zone).
- Oil, gas and wind permits are issued without our input
- We need to assert our jurisdiction over our territory – it is our business, our rights need to be respected, we know what to do to protect our natural resources

What are the economic benefits each community expects if development occurs (for example, revenue sharing)?

- Our fair share – fishing revenues, royalties from wind projects, any and all revenues that flow from the natural resources in our territory
- We had increased access to the commercial fishery as a result of Marshall – while negotiating for a sizable share in the fishery, the Government wanted to know why we wanted so much – the answer lies in our exclusion from other industries within our territory. If we had better (more) access to all the revenue-generating activities, we would require less in each area.

DECISION-MAKERS AND OTHER PLAYERS

Can you identify the government agencies whose decisions affect you regularly or in a specific manner?

- Minister of Natural Resources and Wildlife
- Department of Fisheries and Oceans
- Indian and Northern Affairs
- CRE
- ZEC, Hunting Associations
- Parks Canada
- Skidoo Associations
- MEF
- MAPAQ
- FAPAQ
- Any government agencies that have dealings in natural resources, even in areas such as recreation: hunting and fishing clubs, the Atlantic Salmon Federation, etc.

As for the specific manner in which they affect us, a specific example was used to illustrate a point – in the Baldwin negotiations, Gesgapegiag felt that the number one reason non-natives voices are heard prominently, is because they have strong lobbying skills and ultimately, elect the politicians who become the decision makers.

DECISION-MAKERS AND OTHER PLAYERS, CONTINUED...

Which government agencies regularly notify the communities of decisions with a potential impact on our rights?

- We receive no notice, or the information provided only comes after the project has approval or is being implemented.
- Gesgapegiag has more experience working with the MRN.

Who are the major developers of current of proposed projects on our territory?

- Cartier
- Invenergy
- Junex
- Hydro-mega
- Temrex
- GDS
- Unknown mining organization(s)

Have developers approached communities directly?

- Wind project companies – mostly after the project has received approval
- GDS
- The sawmill companies have fear that if anything goes wrong, that the Mi'gmaq people would be to blame

Have federal or provincial agencies referred communities directly to developers?

- No

Have you ever been referred to other entities, such as municipalities?

- Gesgapegiag has been referred to Maria, for waste water projects

Have you ever been referred to advisory bodies such as the Bureau d'audiences publique sur l'environnement (BAPE)?

- Yes

Have you ever been referred to regulators such as the Regie de l'energie or the National Energy Board?

- Troy Jerome has been referred to the provincial organization (Regie de l'energie) but not to the National Energy Board

NOTIFICATION

How are communities currently notified of development in our territory, if at all?

- We are not notified – we find out about mining or exploration activities when we fall upon them accidentally. (Kempt Road example – came across activity while harvesting wood)
- The Crown never came out and advised us that the wind projects would impact our rights.

Were there significant projects that communities were not notified about?

- Hydro-electric, wind, oil and gas development and exploration

What information about major development is generally provided by government?

- Very little information is provided, and it comes after the project is approved

Are there examples of notice which were not accompanied by sufficient information on the project?

- Not enough information or notice is given to the communities

Do developers notify the communities of their proposed projects? If so, what information do they provide?

- Eneenergy provided the most information, Cartier provided an overview, requests for partnership were made

Which developers have offered to (or have met with) the community concerning their projects?

- MNR wanted to recover money for the use of “their road” while we were doing forestry activities in Listuguj, Henry Mitchell requested the same, and the discussion ended there
- Cartier made attempts to meet with the community at an AGA, but this did not ultimately happen – confirm with Troy (Dean??)

Are there examples where developers informed the community of their projects but not the government responsible for giving a permit?

- None

CONSULTATION MECHANISMS: ENVIRONMENTAL ASSESSMENT

Have communities participated in environmental assessment meant for the general public?

- BAPE
- Wind
- Green Paper
- Buffer Zone issues along river in Gesgapegiag
- GMRC has invited the general public and the Councils to various meetings

CONSULTATION MECHANISMS: ENVIRONMENTAL ASSESSMENT CONTINUED...

When communities participated, what were their experiences?

- They have the general feeling of being “outsiders”, who were invited only to be put on record, and no real impact was made on the projected development.
- Overall negative experience

Within environmental assessment, have the communities ever been offered distinct consultation mechanisms by government?

- No

OTHER CONSULTATION MECHANISMS

Government makes other decisions which are not about specific projects. For example, strategic planning such as five-year forestry plans. Government also gives permits or authorizations not subject to environmental assessment. In these cases, have communities received notice and information?

- Yes, after the fact notification – CRE process

What actual consultation process has government offered, if any?

- The CRE has provided one seat on their committee – confirm with Troy

Do they hear what is said?

When discussions have been held with government officials, what means did those officials use to learn of the communities concerns?

- Direct questioning – What are your concerns? The MTC advised that often they were no answers to their questions.

If discussions took place, did the officials involved have the power to change the project or did they merely report to the ultimate decision-maker?

- They already know what they will agree to, or not. Often the person conducting the meeting will not have any ability to address the concerns at the meeting. The government official may not have a mandate a complete mandate.
- Worst experience in Gespeg was with Parks Canada, (Pointe-Penouille). Announcing \$ 7.1 Million for the project, there was no communication with Gespeg on this matter: no letter, no notification or information exchanged. Parks Canada wanted Gespeg’s approval for the project, but offered nothing for the community.

Have the communities ever obtained accommodation, not just consultation? For example, the mitigation of environmental impacts or financial compensation?

- Gesgapegiag re-iterated that they have more success when a non-native partner is making their joint concerns known. No examples were made on receiving accommodation.

If so, did accommodation measures come from the government or the developer?

- Cartier met with the Listuguj Mi'gmaq Government, but did not offer funding or any other item to address their interests and concerns.

CAPACITY

What scientific or technical capacity do the communities have with which to assess notices and information they receive about projects on their territory?

- Not enough staff to respond to letters, a lot of the requests are technical in nature, and again, there is not enough capacity to respond adequately. Funding is not provided to address the issue at hand, and communities must use their existing budgets and capacity to attempt response.
- GMRC is used in some areas of research, for salmon, but it is not project or development driven.

What internal capacity do communities have to apply traditional knowledge (such as elders or other experts) in order to assess a project's potential impact?

- Gespeg has a forest technician, as does apply some traditional knowledge in the area concerning the collection of ash.
- In Gesgapegiag, their experience is that the elders' knowledge is often dismissed, and contemporary reports are sought from biologists or other experts (non-native).

Have communities ever participated in consultations where their ability to respond had been limited by lack of capacity?

- LMG Forest Technician is told to advise all government agencies that he is not participating in any consultation on behalf of the community.

Can you describe your needs for capacity to respond to current projects?

- Biologists, other science specialists

FUNDING

Have you ever received offers of funding with a notice of projects or decisions?

- No

Who offered funding for a community to respond to their projects? Government or developers?

- No offers

Have you ever received Aboriginal Initiatives Fund (AIF) financial support from Quebec for consultation purposes? Have you ever received participant funding from the Canadian Environmental Assessment Agency?

- Yes, \$ 197,000 from AIF (Secretariat aux Affaires) to conduct on its behalf consultations on 135 files, mostly related to small projects or low-impact development, but do not address our consultation participation in wind, oil and gas.
- We have not received any funding from the CEAA; GMRC may have received funding

Was the funding adequate for the work needed to address the communities concerns?

- When MMS put forward a budget for consultation, it was for \$ 323,000, ultimately the agreement was valued at \$ 197,000 (~60% of total requested)

How do you wish to be consulted?

- Concerns raised at this point surrounded a lack of Consultation by the Federal and Provincial Governments in areas that affect our rights
- MTC wants more time to process requests, to identify the expertise that is needed, to hire those resources which would help make a decision on a process, to be provided with funding to hire those resources and for our Traditional Knowledge to be considered in conjunction with scientific reports.
- The AFNQL Consultation Protocol should be looked at more closely and possibly adjusted to fit our needs, as the Chiefs of Quebec have already adopted this protocol. It was also stated that we could look at the Nova Scotia Mi'gmaq process, the "Joint Proclamation of the Gespe'gewa'gigewei Saqamuti on the Duty to Consult and Accommodate the Mi'gmaq" and incorporate the 3 protocols and "Gespe'gewa'gi-ize" it to reflect our needs.
- We need to consult our own members to get their input on an ideal consultation process.
- As the Governments of Canada and Quebec have stated, it becomes impractical to consult everyone on everything. Impractical or not, this practice of continuously gathering feedback from members is a vital step in ensuring that proper consultation occurs and that projects are well planned and executed.

- Chief Metallic states that he would like to work in the long term on a Treaty or agreement between the communities, “we have a long standing relationship where we have always worked together.” He would like to formalize the process, address it with the Governments and assert our intent to work together in the area of our rights.

Sherri Morrison concluded the presentation by thanking the participants, and the meeting was adjourned for lunch.