

**Current Use of Land
and Resources for
Traditional Purposes
by Aboriginal
Persons Technical
Study**

Project Eider Rock –
Proposed Petroleum Refinery
and Marine Terminal in Saint
John, New Brunswick

IRVING OIL COMPANY, LIMITED
SAINT JOHN, NEW BRUNSWICK

PROJECT NO. 1013263.03-007





REPORT NO. 1013263.03-007

REPORT TO **Irving Oil Company, Limited
10 Sydney Street
Saint John, New Brunswick
E2L 4K1**

ON **Current Use of Land and Resources for Traditional Purposes by
Aboriginal Persons Technical Study**

FOR **Project Eider Rock – Proposed Petroleum Refinery and Marine
Terminal in Saint John, New Brunswick**

September 26, 2008

Jacques Whitford Limited
130 Somerset Street
Saint John, New Brunswick
E2K 2X4
Phone: 506-634-2185
Fax: 506-634-8104
www.jacqueswhitford.com

and

Aboriginal Resource Consultants
Tobique First Nation
P.O. Box 3216
Perth, New Brunswick
E7H 5K3
Phone: 506-273-6071
Fax: 506-273-4409
www.arccanada.com





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CURRENT USE OF LAND AND RESOURCES FOR TRADITIONAL PURPOSES BY ABORIGINAL PERSONS TECHNICAL STUDY

1.0 INTRODUCTION

This document is a Technical Study on the Current Use of Land and Resources for Traditional Purposes by Aboriginal Persons prepared as background information for the environmental impact assessment (EIA) for Project Eider Rock (“the Project”), the proposed petroleum refinery and marine terminal in Saint John, New Brunswick.

The Project, proposed by Irving Oil Company, Limited (“the Proponent”) involves the development of a new petroleum refinery, marine terminal, and associated land-based and marine-based infrastructure in the Red Head area, near east Saint John, New Brunswick. The new refinery and associated land-based and marine-based infrastructure will process up to 40,000 m³/d (250,000 barrels per day, nominal) of crude oil into refined petroleum products for supplying export markets in North America and elsewhere. The Project location is shown in Figure 1.1.

This report has been prepared by Aboriginal Resource Consultants (ARC) and Jacques Whitford on behalf of Irving Oil Company, Limited. ARC is a Maliseet-owned corporate Aboriginal relations consulting firm, based at the Tobique First Nation in Perth, New Brunswick, that specializes in Aboriginal relations and engagement.

1.1 Purpose of this Technical Study

The Current Use of Land and Resources for Traditional Purposes by Aboriginal Persons (“Current Use”) has been identified as a valued environmental component (VEC) to be assessed as part of the EIA/EA for the Project, to evaluate the potential environmental effects on the current use of land and resources for traditional purposes by Aboriginal persons as required under the *Canadian Environmental Assessment Act (CEAA)*.

This Technical Study has been prepared as background information for the EIA Report to be developed to meet the requirements of provincial and federal environmental assessment legislation. Characterization of Current Use is required as background information for the EIA/EA and the environmental effects assessment for the Project. Thus, the purpose of this Technical Study is to describe current land and resource use for traditional purposes by Aboriginal Persons within the area surrounding the Project (referred to as the Study Area). Further, the Technical Study is intended to document and report on Aboriginal engagement activities conducted in respect of the Project.

Section 35(1) of the *Constitution Act, 1982* provides constitutional protection to the Aboriginal and treaty rights of Aboriginal persons in Canada. A number of recent decisions by the Supreme Court of Canada determined that Aboriginal persons in New Brunswick have certain rights to hunting, fishing, and gathering activities in traditional territories. These rights must be considered when there is potential for interaction with a proposed development or activity.

The Government of Canada has a fiduciary responsibility in respect of Aboriginal rights and interests pursuant to the *Constitution Act, 1982* and a duty to consult with potentially affected First Nations

leadership in respect of decisions to be made by the Crown that might affect Aboriginal or treaty rights, including the current use of land and resources for traditional purposes by Aboriginal persons. The Government of New Brunswick has a similar fiduciary responsibility, including in respect of its administration of Crown land in New Brunswick.

1.2 Organization of this Technical Study

This Technical Study is presented in six major sections, as follows:

- Section 1.0 provides a general introduction and background information about the Project and the Technical Study;
- Section 2.0 provides an overview of Current Use of Land and Resources for Traditional Purposes by Aboriginal Persons;
- Sections 3.0 and 4.0 provide a description of the methodology used in this Technical Study, and a discussion of findings and results, respectively;
- Section 5.0 provides an overall summary; and
- Section 6.0 lists references consulted as part of the work.

Appendix A is a Sample Open House Notification. Appendices B and C are copies of the Interviewee Information Sheet and Instructions to Interviewers and Questions for the Interviews, respectively.

2.0 CURRENT USE OF LAND AND RESOURCES FOR TRADITIONAL PURPOSES – AN OVERVIEW

2.1 New Brunswick First Nations

There are 15 First Nation communities in the Province of New Brunswick, consisting of 9 Mi'kmaq Nation communities and 6 Maliseet Nation communities (Figure 2.1).

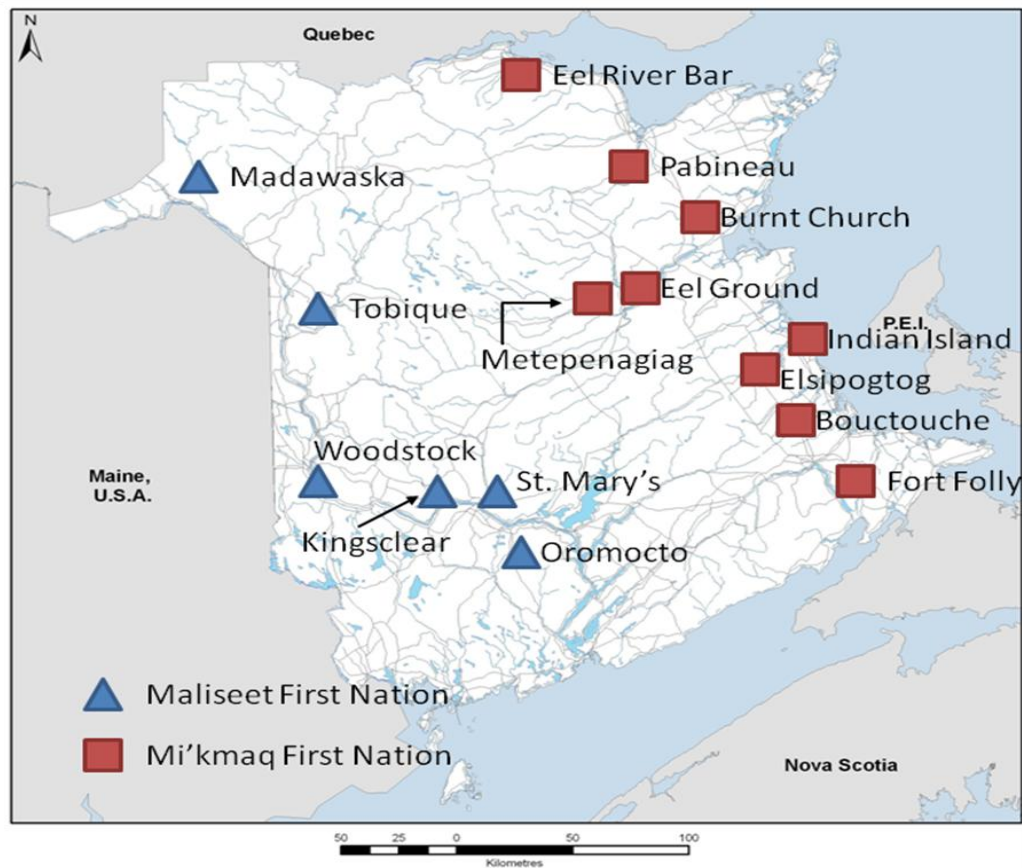


Figure 2.1 Location of New Brunswick First Nation Communities

In general, Mi'kmaq communities are predominantly located along the eastern coastal regions of the Province, while the Maliseet populations are located along the Saint John River valley from Edmundston to Oromocto. Additionally, although located in Maine, the Passamaquoddy First Nation considers parts of Southern New Brunswick to be part of its traditional territory. It is noted that the Passamaquoddy are not currently officially recognized as a First Nation in Canada.

As of December 2007, the total First Nations population (on-reserve) in New Brunswick was 8,326 (INAC 2008). The 2006 Census reported a total declared First Nations population (on- and off-reserve, but excluding Métis and Inuit) of New Brunswick at 12,385 (Statistics Canada 2008). The populations of each New Brunswick First Nation as of December 31, 2007 are summarized in Table 2.1 (INAC 2008).

Table 2.1 Population of New Brunswick Mi'kmaq and Maliseet First Nations, 2007

| First Nation | Population (2007) |
|---|-------------------|
| Mi'kmaq First Nations | |
| Elsipogtog (Big Cove) First Nation | 2,215 |
| Esgenoopetitj (Burnt Church) First Nation | 1,167 |
| Eel Ground First Nation | 527 |
| Metepenagiag (Red Bank) First Nation | 410 |
| Eel River Bar First Nation | 326 |
| Pabineau First Nation | 99 |
| Indian Island First Nation | 88 |
| Buctouche First Nation | 72 |
| Fort Folly First Nation | 27 |
| Maliseet First Nations | |
| Tobique First Nation | 1,373 |
| St. Mary's First Nation | 734 |
| Kingsclear First Nation | 627 |
| Woodstock First Nation | 282 |
| Oromocto First Nation | 259 |
| Madawaska First Nation | 120 |

Source: INAC (2008)

The closest First Nation community to the Project study area is the Oromocto First Nation, located approximately 80 km to the north of the Project location. In addition, the Brothers 18 Indian Reserve, consisting of two uninhabited islands of importance to New Brunswick First Nations as a traditional gathering place, is located in the Kennebecasis River, north of the City of Saint John.

2.2 Aboriginal Umbrella Organizations

New Brunswick First Nation communities are represented by three key umbrella organizations, as follows.

- The Union of New Brunswick Indians (UNBI) represents the communities of Eel Ground, Metepenagiag (Red Bank), Eel River Bar, Pabineau, Indian Island, Buctouche, Fort Folly, Saint Mary's, Kingsclear, Woodstock, Oromocto, and Madawaska.
- The Mawiw Council represents the three largest First Nation communities in New Brunswick, namely Elsipogtog (Big Cove), Esgenoopetitj (Burnt Church), and Tobique.
- The New Brunswick Aboriginal Peoples' Council (NBAPC) represents Aboriginal persons living off-reserve in New Brunswick.

Each First Nation community is represented by an elected Chief and council (the Leadership), which makes all decisions in respect of their community. The umbrella organizations do not supersede the authority of elected Chief and council; rather, they provide advocacy and expertise on matters of common interest to the communities they represent.

2.3 Historical Overview of First Nations Land and Resource Use

The Maliseet and Mi'kmaq of New Brunswick have used certain lands and resources of what is now known as New Brunswick since before the first European contact, which historic records indicate most likely occurred in the early to mid 16th Century. The exact period of time that the Maliseet and Mi'kmaq

have occupied New Brunswick has not been documented; however, archaeological records indicate the presence of camp sites from more than 11,000 years ago. The Metepenagiag (Red Bank) area (near Miramichi, New Brunswick) has been continuously inhabited by Aboriginal people for over 3,000 years.

Prior to the arrival of Europeans to New Brunswick in the early 17th Century and continuing after European contact, the Maliseet and Mi'kmaq people were sustained through their use of certain lands and resources within the province and through trading activities with other First Nations throughout eastern and central North America. Use of lands and resources for traditional purposes includes, but is not necessarily limited to, hunting, fishing (including fishing in the marine environment), gathering, and spiritual and ceremonial activities. In more recent times, many of those traditional activities have declined for various reasons.

2.4 Policy and Legislative Framework

Over the last two decades, there have been substantive changes in the social climate with regards to First Nations' interests in the lands and resources in Canada as a whole, and also specifically in Atlantic Canada. Recent Supreme Court of Canada decisions have determined that certain treaty rights to hunting, fishing, and gathering in traditional territories exist for Aboriginal persons and these rights must be considered when the potential exists for interaction with proposed developments or activities.

To ensure potential interactions with proposed developments or activities are effectively mitigated, it must be determined what, if any, use of land and/or resources for traditional purposes by Aboriginal persons is currently ongoing in the area of a proposed development. This is accomplished by undertaking a study of traditional activities, such as hunting, fishing, trapping, and/or gathering activities that are currently practiced by Aboriginal persons in the proposed area of development (the "Study Area"). As part of a Current Use Study, First Nations leadership and elders are engaged to determine the potential presence of any sites of spiritual, cultural, or ceremonial importance within or near the Study Area, as well as to determine any current use of the land or resources for traditional purposes.

Aboriginal fisheries are to be managed in a manner consistent with treaty rights and the constitutional protection given Aboriginal persons. In 1999, the Supreme Court of Canada released its decision in *R v. Marshall*, [1999] 3 S.C.R. 456e, which recognized treaties signed in 1760 and 1761 by Mi'kmaq and Maliseet communities granting the treaty right to hunt, fish, and gather in pursuit of a moderate livelihood. This decision precipitated the acquisition of fishing licenses by First Nations to further the participation of Aboriginal persons in the commercial fisheries (FRCC 2007).

Formal consultation with First Nations is to be conducted by the provincial and federal Crown at some time during the conduct of the EIA/EA, as upheld by various Supreme Court of Canada decisions. Some recent Supreme Court decisions that affirm these requirements include *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, *Haida Nation v. British Columbia (Minister of Forests)*, and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, to name a few. In these cases, the Supreme Court held that the Crown has a legal duty to consult and, where appropriate, to accommodate affected First Nation communities in respect of decision making that may affect Aboriginal and treaty rights. The Crown's duty to consult cannot be delegated, but the Proponent's engagement efforts serve to inform and facilitate that eventual consultation.

2.5 Study Area

First Nations have traditionally used various land, water and resources throughout the province of New Brunswick. The Project, however, is limited in its geographic extent to a relatively small portion of the province, centred in the Red Head and Mispec areas of east Saint John. Therefore, the Study Area shown in Figure 1.1 was selected as the main area of focus for carrying out the Current Use Study. The Study Area consists of the following:

- The Refinery Study Area, consisting of the land in the Red Head and Mispec areas upon which the proposed refinery and other land-based infrastructure (e.g., tanks, processing units) will be constructed;
- The Linear Facilities Corridor Study Area consisting of 4-km wide broad study corridor between the Refinery Study Area and east Saint John, and a preferred linear facilities corridor within that study area within which linear facilities for the Project (e.g., pipelines, electrical transmission line, rail line) will eventually be located; and
- The Marine Environment Study Area, consisting of the adjacent area of the Bay of Fundy to the land in the Mispec area, within which the marine terminal and other marine-based infrastructure (e.g., jetty, intake, outfall, barge landing facility) will be located.

3.0 METHODOLOGY

3.1 Methodological Overview

Information for the Current Use Study was acquired through a First Nations engagement program undertaken by ARC on behalf of the Proponent. ARC initiated a thorough First Nations engagement program with the Mi'kmaq and Maliseet peoples of New Brunswick as well as with the Aboriginal umbrella organizations (Union of New Brunswick Indians, Mawiw Council, and New Brunswick Aboriginal Peoples' Council) that represent these First Nation communities. Discussions were also held with the Passamaquoddy First Nation.

The objectives of the First Nations engagement program were to:

- Share information about the Project;
- Establish if and how Aboriginal leadership wished to have the Proponent engage their respective communities;
- Gather information on the current use of land and resources for traditional purposes by Aboriginal persons in the vicinity of the Project as it related to the EIA/EA; and
- Facilitate any formal consultation activities with First Nations that may be conducted in the future by the provincial and/or federal Crown as part of the EIA/EA.

Throughout the engagement program, people were asked to share their comments, questions, and concerns about the Project, specifically with respect to traditional activities (e.g., hunting, fishing, gathering, and spiritual or ceremonial activities) currently ongoing in the vicinity of the Project.

These engagement activities were aimed at both gathering information as it relates to the Current Use Study and sharing information about the Project in general. Participants in engagement activities were asked to share their comment, questions, and concerns about the Project in general, and specifically about traditional activities currently ongoing in the Study Area.

To initiate the engagement program and acquire information for the Current Use Study, the Chiefs of all 15 First Nation communities in New Brunswick were contacted by telephone or in person to inform them of the Project and the EIA/EA. Following initial discussions with the Chiefs of the First Nation communities in New Brunswick, open houses were held in all communities wishing to hold one. Interviews were conducted by ARC with community elders and other members of the First Nation communities potentially having information relevant to the Project. In addition, a review of available information concerning Current Use was conducted.

3.2 First Nation Community Engagement

The First Nation community engagement program was intended to ensure that those potentially affected by the Project were:

- Aware of the Project and its potential environmental effects;
- Able to obtain information about the Project; and

- Able to express concerns about the Project or its potential environmental effects.

Additionally, the community engagement program served to identify, scope, and resolve or mitigate potential issues of concern. To achieve the above goals, the Proponent committed to an engagement program based on open, forthright, and responsive communication.

Issues identified during the course of engagement activities were tracked and responded to when appropriate.

Community engagement activities with the First Nations of New Brunswick, undertaken in support of this report and of the EIA/EA of the Project, included meetings with First Nation Chiefs and leadership, community open houses, and interviews with individuals potentially in possession of knowledge relevant to the Project. Community engagement is described in further detail in the following sections.

3.2.1 Discussions with the First Nation Leadership

3.2.1.1 Chiefs of First Nation Communities

The Chiefs of the Maliseet and Mi'kmaq First Nation communities of New Brunswick were initially contacted by telephone or in person, beginning in January 2007, to inform them of the Project and the Current Use Study associated with the Project. Through the course of spring and summer 2007, meetings were held individually with each Chief to brief them about the Project and to determine if and how they wanted additional information. In cases where the Chief's schedule would not allow for a meeting, a briefing was provided by telephone.

The goals of these initial meetings were:

- To ensure that the Chiefs were informed of the Project and of the Current Use Study;
- To request permission to visit the communities, to gather information about any traditional activities currently carried out; and
- To offer to hold an open house to provide Project information to interested community members.

Chiefs were also asked of their personal knowledge of the prevalence of traditional activities in the Study Area. If a Chief was aware of any individuals they felt might be able to provide information relevant to the Current Use Study, he or she was asked to provide contact information so that additional interviews could be undertaken.

Through these initial discussions, several Chiefs indicated that the most appropriate venue for the provision of additional information would be an open house to be held in their respective communities. Other Chiefs requested a briefing for Chief and council, while a few others expressed an interest in being kept informed simply by mail or not at all. All Chiefs were given the option of a meeting in their home community to be provided with information on the Project in general and on the Current Use Study.

3.2.1.2 Aboriginal Groups or Umbrella Organizations

In addition to the individual briefings and discussions with the leadership, presentations were made to:

- The Natural Resource Committee of the Union of New Brunswick Indians (June 19, 2007);
- The Chiefs of the Union of New Brunswick Indians (October 17, 2007);

- Chief Hugh Akagi of the Passamaquoddy First Nation in Maine (April 14, 2008);
- The Chiefs of the MAWIW Council (April 24, 2008); and
- The leadership of the New Brunswick Aboriginal Peoples Council (January 23, 2009).

3.2.2 First Nation Community Open Houses

Following initial discussions with Chiefs, open houses were held in the First Nation communities that desired such an event. The Chief of each community was asked to recommend an appropriate date and venue for an open house in his or her community, to ensure maximum participation by community members. Chiefs were also asked to inform any key community members who may have a particular interest in the Project or who may be able to provide information relevant to the Project, including members of their community administrations, about the open house. In addition to this word of mouth promotion of the open houses, posters were placed in highly visible locations in the communities as advertisement.

All open houses followed the same general format. The open houses were casual in nature and allowed participants to move through the venue as they desired. Information booths describing various aspects of the Project, including the Project location and the list of Valued Environmental Components (VECs) to be assessed, were displayed. Representatives of ARC, Jacques Whitford, and the Proponent were present to walk participants through the displays, to answer questions from those in attendance, and to record any pertinent information provided by attendees. Attendees were asked to share any knowledge they had of any traditional activities currently ongoing within or near the Study Area for the Project, including the marine environment, and were asked if they knew of any other community members who might have such information.

Participants were asked to sign a register to record attendance at each open house. Participants who requested additional Project information were asked to complete a feedback form prior to leaving the event. A typical open house set up is shown in Figure 3.1.



Figure 3.1 Typical Community Open House (Indian Island First Nation, March 18, 2008)

Open houses were held in nine First Nation communities. The locations, dates, and approximate number of attendees of the First Nations open houses are provided in Table 3.1.

Table 3.1 Locations, Dates, and Number of Attendees at First Nations Open Houses

| First Nation | Date of Open House | Approximate Number of Attendees |
|---|--------------------|---------------------------------|
| Metepenagiag (Red Bank) First Nation | February 12, 2008 | 12 |
| Esgenoopetitj (Burnt Church) First Nation | February 12, 2008 | 17 |
| Oromocto First Nation | March 11, 2008 | 4 |
| Woodstock First Nation | March 12, 2008 | 7 |
| Indian Island First Nation | March 18, 2008 | 12 |
| Elsipogtog (Big Cove) First Nation | March 18, 2008 | 40 |
| Eel River Bar First Nation | March 25, 2008 | 10 |
| Tobique First Nation | March 26, 2008 | 13 |
| Kingsclear First Nation | June 3, 2008 | 9 |
| Eel Ground First Nation | February 16, 2009 | 10 |

An open house was scheduled for Madawaska First Nation on March 26, 2008, but it was cancelled by the Chief while the Study Team was in transit to the Open House. It was not possible to coordinate a suitable date for an open house at Pabineau First Nation (originally scheduled for March 25, 2008) due to upcoming Band council elections at the time. Nonetheless, the Chief of this community has since indicated that an Open House is no longer required, but the community would like to be kept informed of progress regarding the Project.

The Chiefs of Fort Folly, Buctouche, and St. Mary's First Nations did not wish to be further engaged in respect of the Project and declined the Proponent's offer to hold an open house in their respective communities.

3.2.3 Umbrella Organizations

3.2.3.1 Union of New Brunswick Indians

The Proponent and its study team met with the Natural Resource Committee of the Union of New Brunswick Indians on June 19, 2007. A presentation was provided about Project Eider Rock and plans for future study to be conducted as part of the EIA for the Project. Substantive discussion was undertaken regarding the Project, potential for Current Use in general (although no specific Current Use of the Study Area was identified), Aboriginal and treaty rights, and the Crown's duty to consult and accommodate First Nations in respect of development initiatives.

A further presentation was provided to the Chiefs of the Union of New Brunswick Indians on October 17, 2007. No specific Current Use was identified in the Project's Study Area.

3.2.3.2 Mawiw Council

A presentation was provided to the Chiefs of the Mawiw Council and its representatives on April 24, 2008. The main topics for discussion were related to the potential for employment and contracting opportunities for Aboriginal persons as part of the Project. No specific Current Use was identified in the Project's Study Area.

3.2.3.3 New Brunswick Aboriginal Peoples' Council

A separate series of discussions was undertaken with the leadership and membership of the NBAPC. An initial meeting was held with executive and staff on January 23, 2009, where a presentation was provided and a discussion of various issues. It was agreed that further interviews with NBAPC members in the Saint John area would be conducted, with the goal of identifying any Current Use in the Project's Study Area.

Individual interviews with identified NBAPC members in Saint John were held on March 19-20, 2009. A presentation was provided to the local NBAPC membership in Saint John on April 7, 2009. Feedback was received on various issues, including general assertions of Current Use. However, no specific Current Use could be confirmed in the Project's Study Area.

3.2.4 Interviews

During discussions with Chiefs, each Chief was interviewed regarding any current use activities in the Study Area and was asked to recommend additional people to be interviewed. The open houses provided a further opportunity to identify potential interviewees. Additionally, visits to the communities allowed key interviewees to be identified and interviewed (e.g., First Nation fisheries directors).

A total of 73 individuals were interviewed in the context of establishing Current Use, in addition to the open houses held. Most individuals interviewed were either community Elders, or held positions within the community's administration (e.g., First Nation fisheries directors). A list of individuals interviewed is provided in Table 3.2.

Table 3.2 Individuals Interviewed for the Current Use Study

| Interviewee No.* | Role in Community | First Nation Community | Date of Interview |
|------------------|--|--|-------------------|
| 1. | Band Administration | Woodstock First Nation | April 10, 2008 |
| 2. | Elder | Woodstock First Nation | April 10, 2008 |
| 3. | Community member | Tobique First Nation | April 10, 2008 |
| 4. | Elder | Tobique First Nation | April 10, 2008 |
| 5. | Band Staff | Oromocto First Nation | April 11, 2008 |
| 6. | Elder | Oromocto First Nation | April 11, 2008 |
| 7. | Band Staff | Oromocto First Nation | April 11, 2008 |
| 8. | Leadership | Metepenagiag (Red Bank) First Nation | March 11, 2008 |
| 9. | Leadership | Eel River Bar | March 11, 2008 |
| 10. | Band Administration | Metepenagiag (Red Bank) First Nation | April 7, 2008 |
| 11. | Band Staff | Metepenagiag (Red Bank) First Nation | April 7, 2008 |
| 12. | Band Staff | Metepenagiag (Red Bank) First Nation | April 7, 2008 |
| 13. | Band Administration | Pabineau First Nation | April 7, 2008 |
| 14. | Leadership | Fort Folly First Nation | April 10, 2008 |
| 15. | Elder | Elsipogtog (Big Cove) First Nation | April 10, 2008 |
| 16. | Band Staff | Elsipogtog (Big Cove) First Nation | April 10, 2008 |
| 17. | Band Staff | Elsipogtog (Big Cove) First Nation | April 10, 2008 |
| 18. | Leadership | Elsipogtog (Big Cove) First Nation | April 10, 2008 |
| 19. | Band Staff | Elsipogtog (Big Cove) First Nation | April 10, 2008 |
| 20. | Band Administration | Woodstock First Nation | April 7, 2008 |
| 21. | Leadership | Madawaska First Nation | April 23, 2008 |
| 22. | Band Staff | Madawaska First Nation | April 23, 2008 |
| 23. | Leadership | Esgenooetitj (Burnt Church) First Nation | April 2, 2008 |
| 24. | Leadership | Eel Ground First Nation | April 16, 2008 |
| 25. | Former community member now living in Saint John | Eel Ground First Nation | April 16, 2008 |

Table 3.2 Individuals Interviewed for the Current Use Study

| Interviewee No.* | Role in Community | First Nation Community | Date of Interview |
|------------------|-----------------------------------|----------------------------|-------------------|
| 26. | Band Staff | Eel Ground First Nation | April 15, 2008 |
| 27. | Band Staff | Kingsclear First Nation | April 16, 2008 |
| 28. | Elder 1 | Kingsclear First Nation | April 11, 2008 |
| 29. | Elder 2 | Kingsclear First Nation | April 11, 2008 |
| 30. | Elder 3 | Kingsclear First Nation | April 11, 2008 |
| 31. | Band Staff | Kingsclear First Nation | April 11, 2008 |
| 32. | Leadership | Kingsclear First Nation | April 16, 2008 |
| 33. | Band Staff | Oromocto First Nation | April 11, 2008 |
| 34. | Leadership | Indian Island First Nation | April 9, 2008 |
| 35. | Leadership | Indian Island First Nation | April 9, 2008 |
| 36. | Leadership | Indian Island First Nation | April 9, 2008 |
| 37. | Band Staff | Indian Island First Nation | April 9, 2008 |
| 38. | Band Staff | Indian Island First Nation | April 9, 2008 |
| 39. | Leadership | Buctouche First Nation | April 9, 2008 |
| 40. | Band Staff | Buctouche First Nation | April 9, 2008 |
| 41. | Band Administration | Buctouche First Nation | April 9, 2008 |
| 42. | Band Staff | Eel River Bar First Nation | April 9, 2008 |
| 43. | Band Staff | Eel River Bar First Nation | April 9, 2008 |
| 44. | Band Staff | Eel River Bar First Nation | April 9, 2008 |
| 45. | Leadership | Eel River Bar First Nation | April 9, 2008 |
| 46. | Leadership | Tobique First Nation | April 16, 2008 |
| 47. | Elder | Tobique First Nation | April 16, 2008 |
| 48. | Leadership | NBAPC | March 19, 2009 |
| 49. | Leadership | NBAPC | March 19, 2009 |
| 50. | Leadership | NBAPC | March 19, 2009 |
| 51. | Leadership | NBAPC | March 19, 2009 |
| 52. | Leadership | NBAPC | March 19, 2009 |
| 53. | Leadership | NBAPC | March 20, 2009 |
| 54 to 73 | Leadership and General Membership | NBAPC | April 7, 2009 |

Notes: * Names of specific individuals interviewed were withheld for privacy reasons.

Interviewees were provided with a map of the Study Area and Interviewee Information Sheets (Appendix B), which contained details on the Project and described the purpose of the interview. An interview guide (Appendix C) was prepared in advance to direct the questions asked by the interviewer. Interviewees were asked to provide any specific information they had with regards to Current Use of land and resources for traditional purposes by Aboriginal persons within the Study Area. All information collected from the interviews was documented.

3.3 Review of Available Information

In addition to information gathered through communication with First Nations leadership and community members, a review was conducted of various available information sources. Various publicly accessible government documents from the Department of Fisheries and Oceans Canada were reviewed in respect of the existing Aboriginal fishery in the Bay of Fundy. Although confidentiality prevented the release of all but one fishing agreement specific to an individual First Nation community, summaries of all fishing agreements with New Brunswick First Nations were available, and were consulted.

In addition to the research on First Nation fisheries activities, ARC representatives reviewed available archaeological reports from Jacques Whitford field studies, and undertook a walk through of the Refinery Study Area. The walk through was undertaken to determine the potential use of the area by

Aboriginal persons, particularly for Pre-contact period activities. The site was examined for distinctive features which would typically afford Aboriginal people the type of resources or land attributes which would make it an attractive site for permanent or temporary habitation. Such attributes could include navigable waterways, access to potable water, access to land, water-based food sources, or a combination of any or all these features.

In an archaeological report recently completed for the Project, Jacques Whitford (2008a) reported that a review of the archives of the Archaeological Services Unit indicated no known Pre-contact period archaeological sites within the immediate vicinity of the Study Area. However, one Pre-contact period archaeological site was discovered as part of Jacques Whitford's Heritage and Archaeological Resources Technical Study for the Project (Jacques Whitford 2008a). The reader is referred to that report for further information in this regard.

4.0 RESULTS AND DISCUSSION

The following sections provide an overview of the results of the various engagement activities, and of the review of available information. A summary of Current Use activities in the Study Area is provided, followed by a summary of key issues identified by the First Nation communities.

4.1 Current Use of Land and Resources for Traditional Purposes by Aboriginal Persons – Results

4.1.1 Land-Based Hunting, Fishing, and Gathering

Based on information obtained during the Aboriginal engagement activities as well as through the interviews conducted with Aboriginal leaders, elders, and staff, it has been determined that there is currently no known hunting, fishing, or gathering or other traditional activities undertaken by Aboriginal persons in the Study Area. This may be a result of several factors, including the relatively unfavourable topography of the Study Area, the lack of large watercourses on the property, and the site's proximity to the city centre of Saint John.

Some participants in engagement activities noted sweet grass gathering at Peck Point and Peck Beach. Rayburn (1975) states that Pecks Cove/Pecks Point is located at Rockport, near Cape Maringouin, well over 100 km from the Project and therefore no interactions with the Project and sweet grass harvesting at this location are expected.

4.1.2 Social, Ceremonial, or Spiritual Sites

Through the interviews conducted, and with the possible exception of archaeological sites in the Study Area (see the Heritage and Archaeological Resources Technical Study, Jacques Whitford (2008a)), it was determined that there are no known historically important locations to Aboriginal persons in the Study Area.

The closest known social, ceremonial, or spiritual site to the Study Area is located in an area known as The Brothers 18, located approximately 9 km from the northern edge of the Study Area on Goat and Indian Islands, in the Kennebecasis River, near Millidgeville.

Though no historically important locations to Aboriginal persons are known to exist within the Study Area, it is noted that the Saint John area in general was a traditional gathering point for historic period meetings with the Wabanaki, and later with the British. As documented in Jacques Whitford (2008a), during archaeological field surveys in 2006, twelve pieces of lithic debitage were found at a terrace above a cobble beach near Mispic Bay within the Study Area (Jacques Whitford 2008a). This finding of stone flakes likely indicates that the site was likely used at some point in the past by Aboriginal persons.

The Union of New Brunswick Indians expressed concern that these stone flakes may indicate past use of the area, which may have resulted in the potential presence of burial mounds. If this were the case, the area would be of importance to the First Nations. Locations within the Study Area that were considered to have elevated archaeological potential were field-examined (Jacques Whitford 2008a).

Based on field studies undertaken for the Heritage and Archaeological Resources Technical Study and based on interviews undertaken for this Technical Study, no burial mounds are known to be present in the Study Area, nor are there any areas within the Project Development Area that are considered by First Nations as being historically or culturally important to Aboriginal heritage. The only known location of First Nations heritage resources is the single location containing stone flakes (Jacques Whitford 2008a). The Study Area was surveyed and reviewed by the Study Team and no other potential Pre-contact period features were noted. Based on this, it is not likely that burial mounds are located in the Study Area.

4.1.3 Forestry

Based on information obtained during the engagement activities as well as through interviews, there is currently no known forestry related activities undertaken by Aboriginal persons within the Study Area. Forestry activities were not mentioned as a concern by participants at any of the meetings, community open houses, or interviews conducted as part of the Current Use Study.

4.1.4 New Brunswick Aboriginal Peoples Council

The engagement of the leadership and membership of the New Brunswick Aboriginal Peoples' Council resulted in five individual interviews with the current NBAPC leadership, as well as an open forum of approximately 20 individuals with leadership and members at large living in the Saint John area.

A number of specific issues were raised in the course of these interviews, although in each case few specifics were provided and there was no geo-referencing of those concerns with the maps of the Project location. Two interviewees indicated there has been spreading of ashes of deceased members in the general area, one indicating such activity took place outside the Project location in the Mispic Beach area, while the second respondent stated they were spread within the Project location. It was also indicated plants were gathered, including sweet grass, in that general area and there was a concern expressed that access would be limited for such activities as a result of the Project. One respondent also expressed concern in respect of access to Balls Lake as a result of the Project.

There was concern expressed that increased shipping resulting from the Project could affect the membership's lobster fishery in the Bay of Fundy. Concerns regarding ambient air quality being affected by the Project were also expressed.

In all discussions, it was indicated that any site-specific information that could be provided would be addressed by the Proponent. To date, however, no such information has been provided.

4.1.5 Fishing in the Bay of Fundy

A review of available information, including reports from Fisheries and Oceans Canada and information gathered through engagement activities, have confirmed the presence of an established First Nation commercial fishery in the Bay of Fundy. Documented Aboriginal commercial fishing activity in the Bay includes fishing for a variety of commercial species, including lobster, sea urchin, scallop, tuna, swordfish, rock/Jonah crab, and assorted fin fish. Licences for these fisheries have been issued by Fisheries and Oceans Canada. The Kingsclear, Oromocto, Woodstock, St. Mary's, and Tobique First Nations have been issued various commercial fishing licenses for the Bay of Fundy by Fisheries and Oceans Canada.

In Lobster Fishing Area (LFA) 36 (Figure 4.1), there are a total of 14 First Nations commercial fishing licences out of a total of 178 licences (FRCC 2007). As shown in Figure 4.1, LFA 36 encompasses a large portion of the New Brunswick side of the Bay of Fundy, extending from the US border to the upper portions of the Bay, near Fundy National Park. There are several vessels harvesting scallops in the Bay of Fundy, though the scallop fishery is a highly mobile fishery, with vessels covering a vast area each fishing season. Further information on fishing activities in general, including non-Aboriginal fisheries, is found in the Socio-Economic Technical Study (Jacques Whitford 2008b). Fishing licences currently held by the First Nation communities that are closest to the Project include those listed in Table 4.1.

Table 4.1 Commercial Fishing Licenses Issued to First Nations in New Brunswick (2008)

| First Nation Community | Commercial Fishing Licenses Issued by DFO |
|-------------------------------|--|
| Kingsclear First Nation | 1 lobster license, LFA 38 2 lobster licences, LFA 36 1 scallop licence, Mid Bay 2 sea urchin licences, LFA 36 3 sea urchin licences, LFA 38 |
| Oromocto First Nation | 1 scallop licence, Mid Bay, LFA 36 1 sea urchin licence, LFA 36 3 lobster licences, LFA 36 1 scallop licence, Full Bay 1 rock crab (experimental), LFA 36 1 gaspereau licence Gaspereau, groundfish, herring, mid bay scallop, and smelt (associated with LFA 36 lobster licence) |
| Woodstock First Nation | 2 lobster licences, LFA 38 2 sea urchin licences, LFA 38 1 scallop licence, Full Bay 1 swordfish licence, Atlantic-wide |
| St. Mary's First Nation | 3 tuna licences 2 sea urchin licences, LFA 36 6 lobster licences, LFA 36 1 herring licence 1 quahog licence, LFA 36 1 gaspereau licence 3 shad licences, St. John River System 1 scallop licence, Full Bay 1 shrimp licence, SFA 4X 3 eel licences, St. John River System 1 swordfish licence, Atlantic Wide |
| Tobique First Nation | 9 lobster licences, LFA 38 3 sea urchin licences, LFA 38 1 tuna licence, Bay of Fundy, LFA 38 2 community based groundfish licences 5 scallop licences, Full Bay 1 rock crab/Jonah crab licence |

In addition to the commercial fishing licenses held by Aboriginal persons and/or First Nation communities, although difficult to document or confirm, Aboriginal persons may also fish in the Bay of Fundy for subsistence purposes. This was mentioned during interviews, but could not be confirmed by any of the reviewed documentation.

The interviews revealed that, although there is Aboriginal fishing activity in the Bay of Fundy (mainly focused on lobster and scallop), there is no known Aboriginal fishing activity currently being conducted in the Study Area, including the marine environment study area where the Project structures will be located, nor anywhere near Saint John Harbour.

4.2 Key Issues Identified

Through the various engagement activities and meetings with the New Brunswick First Nation community, several common issues, questions, and concerns have been identified concerning the Project in general.

A summary of the key issues and concerns raised by First Nations during the engagement activities conducted is provided in Table 4.2. Predominantly, First Nations participants indicated a strong desire to participate in economic benefits associated with the Project (e.g., employment, contracting opportunities), and many indicated a desire that the Proponent facilitate training opportunities for their community members to enable them to participate in the Project. Other themes raised during engagement activities included Crown consultation and accommodation in respect of the Project; Aboriginal inclusion policies or set aside policies; traditional use of land; and potential interactions with the Aboriginal fishery in the Bay of Fundy.

Table 4.2 Summary of Key Issues and Concerns Raised During First Nations Engagement Activities

| Key Issues or Concerns Raised During First Nations Engagement Activities |
|--|
| ▪ Employment and contracting opportunities for First Nations people and firms as part of the Project. |
| ▪ Training opportunities for First Nations people to assist them in participating in employment opportunities offered by the Project. |
| ▪ Aboriginal and treaty rights, and unextinguished land claims in New Brunswick. |
| ▪ Need for the federal and provincial governments to consult with, and accommodate, First Nations people in respect of the Project. |
| ▪ Concerns about potential interactions between the Project (particularly increased ship traffic) and the Aboriginal fishery (both the commercial fishery and the food fishery in the Bay of Fundy). |
| ▪ Consideration of Aboriginal Inclusion Policies, set asides, and Impact-Benefit Agreements in respect of the Project. |
| ▪ Concerns about heritage or archaeological resources, particularly spiritual sites or burial grounds. |
| ▪ Historical use of land and resources for traditional purposes (hunting, fishing, trapping, gathering, spiritual, or subsistence). |
| ▪ First Nations participation in the establishment of traditional and ecological knowledge regarding the Project. |
| ▪ Decreased accessibility to lands affected by Project (although no current use identified). |
| ▪ Consultation vs. information exchange/engagement. |
| ▪ Benefits to Aboriginal communities. |





5.0 SUMMARY

The First Nation communities in New Brunswick are interested in job creation and contracting opportunities as a result of the Project. First Nation leadership have stated their desire to work with the Proponent to maximize economic opportunities afforded to their community, including job training, job creation, and contracting opportunities.

Although there is Aboriginal fishing activity in the Bay of Fundy (mainly focused on lobster and scallop), there is no known Aboriginal fishing activity currently being conducted in the Study Area, including the marine environment study area where the Project structures will be located, nor anywhere near Saint John Harbour.

Although some general indications of Current Use were expressed by interviewees with no specifics provided, this Study did not identify any current use of land or land-based resources within the Study Area or in the vicinity of the Project. The area may have been used by Aboriginal people in the past, possibly as far back as Pre-contact times, but there are no formal indications that it is currently used for traditional purposes by Aboriginal persons.

6.0 CLOSING

This report has been prepared by Jacques Whitford and Aboriginal Resource Consultants (ARC) for the sole benefit of Irving Oil Company, Limited (Irving Oil) for the purposes of its environmental impact assessment studies and Aboriginal engagement. The report may not be relied upon by any other person or entity, other than for its intended purposes, without the express written consent of Jacques Whitford, Aboriginal Resource Consultants, or Irving Oil.

This report was undertaken exclusively for the purpose outlined herein and is limited to the scope and purpose specifically expressed in this study. It cannot be used or applied under any circumstances to another location or situation or for any other purpose without further evaluation of the data and related limitations. Any use of this study by a third party, or any reliance on decisions made based upon it, are the responsibility of such third parties. Jacques Whitford and ARC accept no responsibility for damages, if any, suffered by any third party because of decisions made or actions taken based on this report.

Jacques Whitford and ARC make no representation or warranty with respect to this report, other than the work was undertaken by trained professional and technical staff in accordance with generally accepted practices current at the time the work was performed. Any information or facts provided by others and referred to or used in the preparation of this report were assumed by Jacques Whitford and ARC to be accurate. Conclusions presented in this report should not be construed as legal advice.

The information provided was compiled from existing documents and data provided by stakeholders during semi-structured interviews. This report represents the best professional judgment of Jacques Whitford and ARC personnel available at the time of its preparation. Jacques Whitford and ARC reserve the right to modify the contents of this study, in whole or in part, to reflect the any new information that becomes available. If any conditions become apparent that differ significantly from our understanding of conditions as presented in this report, we request that we be notified immediately to reassess the conclusions provided herein.

This study has been prepared by a team of professionals on behalf of Irving Oil. Jacques Whitford and ARC thank those individuals who contributed information for use in this report, whose participation is gratefully acknowledged and greatly appreciated.

7.0 REFERENCES

7.1 Literature Cited

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7.2 Cases Cited

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Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), [2005] 3.S.C.R. 388, 2005 SCC 69.

Taku River Tl'it First Nation v. British Columbia (Project Assessment Director), [2004] 3 S.C.R. 550, 2004 SCC 74.



Appendix A

Sample Open House Notification





Appendix B

Interviewee Information Sheet





Appendix C

Instructions to Interviewers
and Questions for the Interviews



