



ATLANTIC POLICY CONGRESS OF FIRST NATION CHIEFS SECRETARIAT INC.

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Via Email: oeer@offshoreenergyresearch.ca

Anthony Secco, President and Director
OEER Association
Suite 400, Bank of Montreal Building
5151 George Street Halifax, NS
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Dear Mr. Secco:

Re: APC Response to the Whitford Report

This letter represents the response of the Atlantic Policy Congress of First Nations Chiefs Secretariat Inc. (APC) to *The Background Report for the Fundy Tidal Energy Strategic Environmental Assessment* prepared by Jacques Whitford (Whitford Report) for the Offshore Energy Environmental Research Association (OEER).

The Whitford report was given a joint mandate by the Government of New Brunswick Department of Energy and the OEER to answer 6 key questions. As the report itself states at page 1-5, "This report focuses primarily on potential environmental and socio-economic interactions within the Marine Environment."

In a very general sense the report fails to properly address the specific questions posed and is at best, a preliminary analysis of the impact of utilizing tidal energy in the Bay of Fundy on the marine environment. APC is particularly concerned with the incomplete responses to questions 1 and 2:

1. "Can marine renewable energy technologies, and specifically tidal in stream technologies be developed in the Bay of Fundy without significant impacts on the marine ecosystems?"
2. "Can these technologies be developed without significant socio-economic impacts on fishers and on other marine and coastal resource users?"

In fairness to the authors of the Whitford report, it appears as though the reason that some portions of these questions were not fully addressed was due to the fact that there is a significant gap in the data available to answer these particular questions and the report recommends running a number of pilot projects to fill in these data gaps.

However, the data gathered from Pilot projects will not necessarily address all of the issues that the respective Governments must address with respect to the First Nations who may be impacted by Tidal Power projects in the Bay of Fundy. There are a number of other considerations that must also be addressed given that First Nations have a number of outstanding legal claims to the Bay of Fundy area which have yet to be resolved. For example, studies which focus of the traditional use by First Nations of the various areas would also have to be undertaken.

APC's submissions to date have provided an overview of the value to the First Nations of the Commercial Fishery and that is only one area of interest to the First Nations. Curiously, the Whitford report does not mention anything about First Nations interests or how their unique interests ought to be managed if pilot projects are to go ahead. In 1999, the Supreme Court of Canada's decision in *Marshall* recognized a Treaty Right to fish commercially. The potential for any impact on aboriginal or treaty rights, whether they have been proven or not requires all governments to discharge their duty to consult with each of the First Nations who may be impacted. APC has flagged the communities who currently hold commercial licenses in the Bay of Fundy and the approximate commercial value of the same, however, the Whitford report does not speak to this issue in any manner.

Therefore, one of the most obvious weaknesses of the report is the lack of any in depth social and economic analysis for the First Nations commercial and social/ceremonial/food fishery located in the Bay of Fundy Region. It is certainly clear from reviewing the report that there is a very real potential to impact Aboriginal or Treaty rights as the pilot projects will require fishing exclusion zones and there is very little information on the impact of the tidal projects on such species as the Benthic Feeders.

The proposed Fundy Tidal Power Plant (FTPP) converts kinetic energy collected from the currents produced during rising and falling tides into electricity. Generally the currents in the Bay are used to suspend benthic particles used as an important base to the food chains found throughout the Bay. Possible impacts on ecosystem dynamics caused by any reduction or increase in particles suspended are not addressed within the Whitford report. Any effects produced by the FFTP, depending on location, will be most severe in close proximity to the plant. The two most commercially important species harvested by First Nations are Lobster and Scallop, both benthic feeders and the two most widely distributed species throughout the Bay of Fundy. Therefore, any alteration of the ocean floor composition or effects on particle distribution may have large impacts on the populations of these two species. In 2004, lobster and scallops generated over 16 Million dollars worth of revenue for First Nation communities and any impact on these fisheries could have significant financial ramifications.

APC feels that in order to properly address the types concerns with respect to a species like the benthic feeders and prior to any government accepting the Whitford report, the following questions must be answered:

1. Will the electromagnetic field produced by the energy conversion affect fish behaviour? If so, how?
2. Will the vibrations produced by the turbines influence fish behaviour? If so, how?
3. What are the potential habitat effects that will be caused by the attachment of the turbines to the ocean bottom? How do we ensure that this will not impact the habitat beyond repair?
4. How can the protection of any species at risk be ensured throughout the development and running of the plant? (There are currently 22 Species at Risk found and protected in the Bay of Fundy region.)
5. Will the turbines affect the currents and tide flows? If so what impact will this have the fishery and the distribution of larvae?

While APC appreciates the need to explore sources of renewable energy, it also recognizes that such projects must be properly evaluated for the effects of on the environment around them. Not enough time was devoted to the negative outcomes and methods of dealing with them and therefore, APC would recommend that prior to the SEA process final report that the following steps be taken:

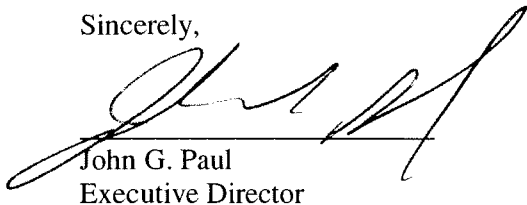
1. The identification of one definite location of a FTTP rather than several.
2. Conduct a site specific environmental assessment at the single location before construction is allowed to proceed.
3. A traditional use study of the single location.
4. Provide answers to the 5 questions noted above on the effects of power generation on fish behaviour and mortality.
5. Obtain a better understanding of how the turbines used to generate power might affect the currents and tides around them.
6. Prepare a detailed report on the potential reduction or destruction of Fish habitat in the Bay of Fundy as a result of the establishment of a FTTP.
7. An in depth analysis of the potential socio-economic impacts to the First Nations with the Development of a FTTP and a collection of more data on the environmental, fishery, social and economic impacts to address the numerous "data gaps" identified by the Whitford report.
8. Provide an outline of the process Governments will use to consult with First Nations prior to any pilot projects being established. (First Nations must be included in the entire process from planning to implementation.)
9. Development of a compensation model for First Nations whose rights may be infringed by the establishment of Tidal Power projects.

Finally, all governments must recognize that First Nations are not mere stakeholders in this process and that there is an overriding legal obligation to First Nations which must be properly discharged. It is in the best interest of everyone to properly engage First Nations in these processes as the failure to do so can have significant ramifications for all involved.

Should you have any questions or require further information, please do not hesitate to contact either myself or Ian Wentzell, Senior Fisheries Advisor at 902.435.8021.

We look forward to your earliest possible response to our concerns detailed above.

Sincerely,



John G. Paul
Executive Director

cc. Ian Wentzell/Jennifer Cox, APC
APC Chiefs