



October 25, 2019

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Canadian Environmental Assessment Agency  
200 – 1801 Hollis Street  
Halifax NS B3J 3N4

Dear Sir/Madam,

**Re: Technical Review & Assessment of the Draft Environmental Assessment Report and potential EA conditions for the CNOOC International Flemish Pass Exploration Drilling Project**

On behalf of Mi'gmawé'l Tplu'taqnn, we are responding to the Draft Environmental Assessment Report for the above project, dated September 2019.

Mi'gmawé'l Tplu'taqnn's primary concern remains how the projects impact migratory species that are of great cultural significance to the Mi'gmaq, including salmon, swordfish, Bluefin tuna, Atlantic right whales, and migratory birds.

Please find enclosed a report from Shared Value Solutions that we are submitting on behalf of Mi'gmawé'l Tplu'taqnn. Based on the report, we highlight the following recommendations in particular:

- 1) A focused and integrated Indigenous Knowledge and Science Study with respect to potential interactions between the Project Area and including salmon, swordfish, Bluefin tuna, Atlantic right whales, and migratory birds. This should happen before any project approvals. This will require proponent funding.
- 2) Establish a forum and process where Mi'gmawé'l Tplu'taqnn can meet with CNOOC International whereby issues and follow-up program decision making regarding the Projects can be brought forward, discussed, and addressed throughout the life of the Projects.
- 3) The Proponents and the Crown must engage in direct, meaningful consultation with all Mi'gmaq First Nations of New Brunswick to ensure that its legitimate concerns are understood and reflected in the Projects EAs and all Follow-up Monitoring Programs
- 4) Involvement of Mi'gmawé'l Tplu'taqnn communities in environmental, socio-economic and cultural monitoring, and emergency preparedness planning.



All of which is respectfully submitted.

Yours in Peace and Friendship,

<Original signed by>

Marcy Cloud  
Offshore and Mining Coordinator  
Mi'gmawé'l Tplu'taqnn Inc.

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# CNOOC Petroleum North America ULC Flemish Pass Exploration Drilling Project

Review of Draft Environmental Assessment and Draft  
Conditions

Prepared for:  
Mi'gmawe'l Tplu'taqnn Incorporated

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**S**hared Value  
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Mi'gmawe'l Tplu'taqnn Incorporated  
Chief George Ginnish  
Chief Rebecca Knockwood  
38 Micmac Road  
Eel Ground, NB E1V 4A7

Oct 18, 2019

Dear Chief George Ginnish and Chief Rebecca Knockwood:

It is our pleasure to provide you with the review of the Draft Environmental Assessment Report for the CNOOC Petroleum North America ULC Flemish Pass Exploration Drilling Project. This review was completed by Don Richardson, PhD; Rachel Speiran, MA; Allie Mayberry, BSc, MA, Levi Snook, BSc, and Alison Fraser, MSc, of Shared Value Solutions Ltd. We look forward to continuing to serve you in consultation and lands and resources protection matters. Please do not hesitate to get in touch with us if you have any questions or concerns with the enclosed report.

With best regards,

<Original signed by>

Don Richardson  
Managing Partner, Shared Value Solutions Ltd.

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# 1.0 Review Objectives

On behalf of Mi'gmawe'l Tplu'taqnn Incorporated (MTI), Shared Value Solutions Ltd. (SVS) provides this independent high-level peer review and strategic assessment of the Impact Assessment Agency of Canada's (the Agency) Environmental Assessment (EA) Report and Draft conditions for the CNOOC Petroleum North America ULC (the Proponent), formerly known as Nexen Energy ULC, proposed Flemish Pass Exploration Drilling Project (the Project). Our review focuses on environmental, cultural and socio-economic factors, and our comments build on previous submissions submitted by MTI on the draft Environmental Impact Statement (EIS) for the Project.

MTI is a not for profit organization created by the Mi'gmaq First Nations of New Brunswick to promote and support the recognition, affirmation, exercise, and implementation of their members' Aboriginal and Treaty rights and title. SVS consultants with expertise in marine water resources, aquatic ecology, migratory birds, fisheries biology, and socioeconomics, and community development conducted the review.

This report is not intended to be a comprehensive review of the agency's EA process and documentation for the Project. This report identifies concerns, potential impacts and additional protection measures related to seven key issues of concern identified by MTI in communications with SVS, in relation to the rights and key values and interests of MTI member communities:

1. North Atlantic Right Whale
2. Atlantic Salmon
3. Atlantic Bluefin Tuna
4. Migratory birds
5. Cumulative effects
6. The need for a Mi'gmaq Indigenous Knowledge and Land Use and Occupancy Study (IKLUOS) and Socio-economic impacts study, particularly for commercial Swordfish fisheries and Atlantic Salmon
7. Accidents and malfunctions

This report provides a summary of our review findings, which are also provided in the form of a Comment and Response Tracking Table in Appendix A, which MTI can provide to the Agency.



## 2.0 Project Description and Regulatory Process

### 2.1 Flemish Pass Exploration Drilling Project

CNOOC is proposing to conduct a petroleum exploration drilling project and associated activities within two offshore Exploration Licenses (ELs) located in the Flemish Pass Basin, over 400 km east of St. John's, Newfoundland and Labrador. The Flemish Pass Exploration Drilling Project (the Project) would take place from 2018 to 2028 and would allow for CNOOC to determine the presence, nature and quantities of potential hydrocarbon resources within these licenses (CEAA, April 4, 2018).

The Project Area includes two (2) Exploration Licenses (ELs 1144 and 1150) in the Flemish Pass region for which CNOOC is currently the Operator and sole interest holder. These ELs have not yet been subject to exploration drilling activity to date. Further, the 20 km buffer area surrounding the two licenses to accommodate the location and extent of ancillary activities that may be carried out in support of such drilling activities has yet to be drilled (Nexen, 2018).

The main Project components and activities include exploration drilling within the two ELs identified above; possible appraisal (delineation) drilling in the event of a hydrocarbon discovery; vertical seismic profiling (VSP); well testing; eventual well abandonment or suspension procedures; and associated supply and service activities. The scope of the Project may involve the drilling of up to 10 wells over its 10-year duration. Each well is anticipated to require approximately 45 to 160 days for drilling and evaluation (including sidetracking and potential well testing) and associated well abandonment or suspension. Specific wellsite types and locations will be selected as Project planning and design activities move forward. Wells may be drilled using either harsh environment semi-submersible or drill ship mobile offshore drilling units (MODUs). There could be two MODUs involved in Project-related drilling activities in different areas simultaneously.

Supply vessels and helicopters will be used to transport personnel, equipment and materials to and from the active MODU(s). Project-related supply and support activities will take place at one or more existing, established onshore facilities operated by a third-party contractor that provides services to multiple offshore operators. No Project-specific construction or expansion of such facilities or other onshore infrastructure is required or planned.

During exploration and appraisal drilling activities, sidetracking (i.e., the drilling of a new lateral from an existing well that has poor or no productivity due to mechanical damage to the well or depleted hydrocarbons at that particular site) of the lower portions of the main wellbore may be required for geologic or mechanical reasons. This will be conducted by directionally drilling around obstructions in the main wellbore to either secure the original target or to intersect alternate subsurface geologic targets (Nexen, 2018).

## 2.2 Regulatory Process

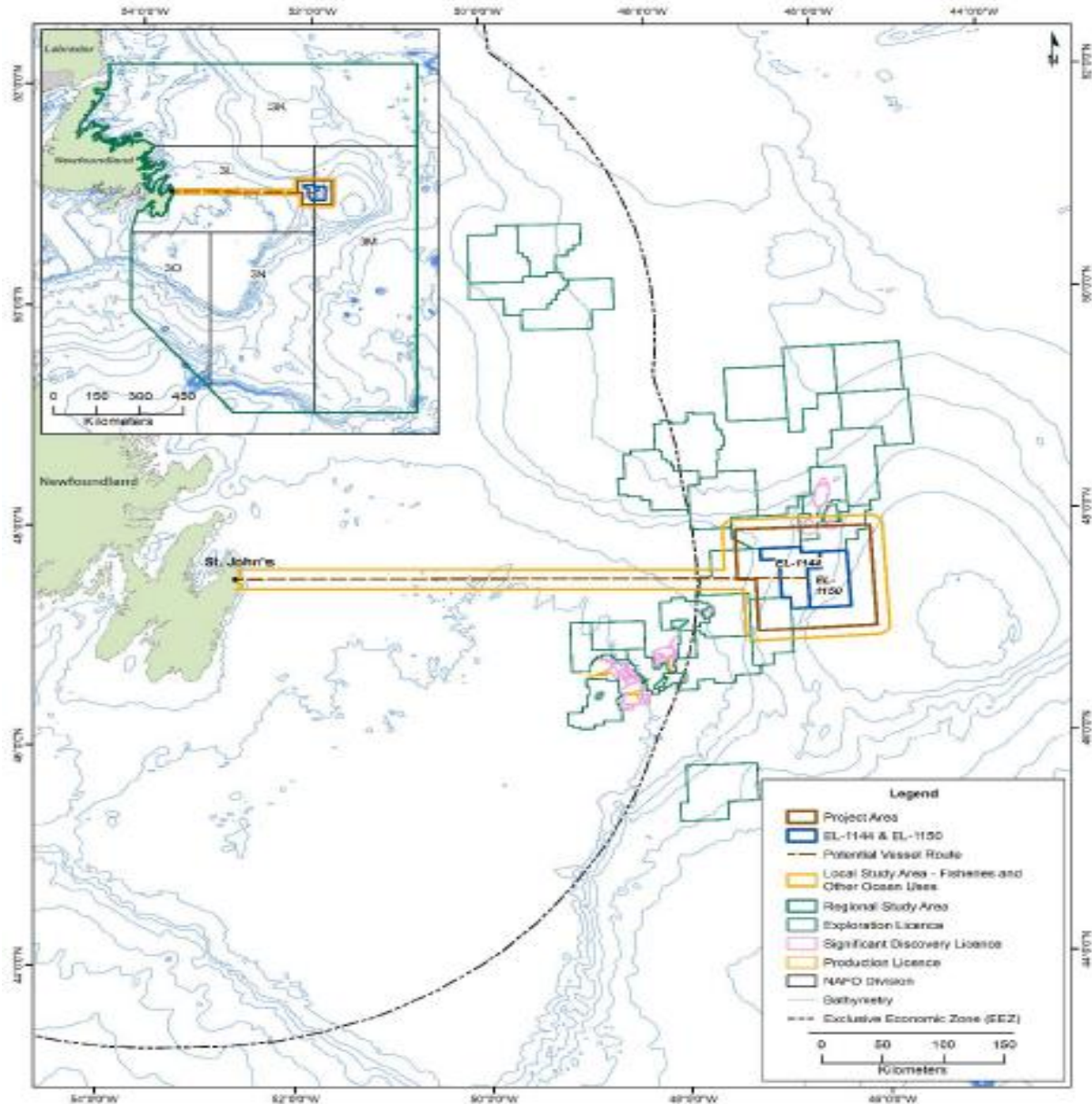
The Project requires review and approval pursuant to the requirements of the Canadian Environmental Assessment Act, 2012 (CEAA 2012) as exploratory offshore drilling is a designated activity under Section 10 of the Canadian Environmental Assessment Agency's (the Agency) *Regulations Designating Physical Activities*. On August 28, 2019, the Impact Assessment Act (IAA) came into force and the Canadian Environmental Assessment Act, 2012 (CEAA 2012) was repealed. However, in accordance with the transitional provisions of the IAA, the EA of this Project is being continued under CEAA 2012.

CNOOC prepared and submitted an Environmental Impact Statement (EIS) in 2018 under the *Canadian Environmental Assessment Act (2012)*. A project specific EA is also required to be completed as a requirement of the *Canada-Newfoundland Atlantic Accord Implementation Act* and the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*. The EIS and the EA has been filed to address the requirements of the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB).

The EA describes the Project, potential environmental effects and associated mitigation. Valued Components (VCs) considered in this assessment include: a) Marine Fish and Fish Habitat (including Species at Risk); b) Marine and Migratory Birds (including Species at Risk); c) Marine Mammals and Sea Turtles (including Species at Risk); d) Special Areas; e) Indigenous Peoples; f) Fisheries and Other Ocean Uses; and g) Atmospheric Environment (CNOOC, Flemish Pass Exploration Drilling Project EA, 2019).

Figure 1 shows the proposed Project Area and associated EL Licenses.





Source: CNOOC Petroleum North America ULC

Figure 1. CNOOC Proposed Flemish Pass Exploration Licenses (Source: Nexen Energy ULC, 2018)

### 3.0 Mi'gmaq Rights and Interests Relative to Project Interactions

For this review, Mi'gamawe'l Tplu'taqnn Incorporated represents the rights and interests of eight of its nine member communities: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipôgtôtjig (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and

Metepenagiag Mi'kmaq Nation. The Mi'gmaq have occupied, relied on, used, and been stewards of the lands and waters in what is currently known as the Atlantic Provinces, Quebec and Northeastern United States since time immemorial.

The Peace and Friendship Treaties have been renewed many times with the Crown and are in the process of being implemented through a Mi'gmaq /New Brunswick/Canada Framework Agreement (Indigenous and Northern Affairs Canada 2012). The Mi'gmaq have established Aboriginal and Treaty Rights to hunt, fish and gather from the lands and waters of their territory for food, social and ceremonial purposes, as well as to trade and to earn a moderate livelihood all of which have been upheld by the Supreme Court of Canada.

### 3.1 Mi'gmawe'l Tplu'taqnn's Vision for Sustainable Development of Natural Resources

Natural Resources are an integral part of the Lands and Waters of the Mi'gmaq. The Vision for Sustainable Development of Natural Resources states:

*“Those Resources belong to Mother Earth. We may use them, but we are also their custodians. Natural Resources are not simply here for the taking, rather they must be managed carefully so as to provide benefits today while guaranteeing the rights and needs of generations yet to come. This requires truly sustainable development.”*

There are four pillars to sustainable development:

- Environmental Sustainability
- Social Sustainability
- Cultural Sustainability
- Economic Sustainability

Each pillar supports the others. They must be kept in balance. The Mi'gmaq are committed to the cultural, spiritual and social importance of lands, waters and natural resources. Natural resource development must:

- Understand that lands, waters and natural resources are integral to the wellbeing of humanity and are not simply commodities to be exploited;
- Seriously take into account the short- and long-term ecological costs of natural resource extraction and see those costs as potentially debilitating debts;

- Honour the precautionary principle (in that lack of scientific certainty must not impede conservation efforts and must not enable irresponsible development);
- Guarantee that the benefits of natural resource development are shared equitably with those most in need;
- Protect the environment;
- Ensure biological diversity;
- Maintain ecological balance;
- Commit to the rehabilitation of habitat and species that have been damaged by current and past natural resource extraction practices; and
- Place the needs of future generations on at least an equal footing with the needs of our time.

This Vision, and the rights described above, were the primary guides to undertaking this review considering the Mi'gmaq's rights and interests. Also considered, in a more generic sense, are the primary effects of importance to the federal EA process that overlap with the Mi'gmaq's rights and interests (as per Section 5(1)(c) of CEAA, 2012) are as follows:

Section 5. (1)(c)- *“with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on:*

- (i) health and socio-economic conditions;*
- (ii) physical and cultural heritage;*
- (iii) the current use of lands and resources for traditional purposes; or*
- (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.”*

The proposed activities within the geographic location of the Project's development area have the potential to impact the Mi'gmaq's rights to the lands and waters, especially in the Atlantic Ocean shorelines, which are used by some Mi'gmaq for land and water use and socio-economic purposes.

## 3.2 Summary of Mi'gmawe'l Tplu'taqnn Member Communities' Indigenous Knowledge, Land Use and Occupancy in the Project Study Area

Although required to by the EIS Guidelines, CNOOC has not commissioned a Mi'gmaq Indigenous Knowledge Land Use and Occupancy Study, and therefore has not yet integrated Mi'gmaq comprehensive Indigenous Knowledge or Socio-Cultural-Economic Baseline Information, from MTI and

MTI member communities, into their respective project's environmental assessment processes to date. As such, the Crown's duty to consult, via integration of adequate and meaningful engagement, consultation, and accommodation with the Mi'gmaq in New Brunswick has not been met.

## 4.0 Review Findings

Results of SVS's review of the Project EA are presented below, with a focus on key issues and concerns related to potential impacts on the marine environment, marine mammals, cumulative effects, accidents and malfunctions, and socio-economics and community well-being as they relate to the rights, values and interests of MTI First Nation communities.

### 4.1 Marine Fish and Fish Habitat

#### 4.1.1 Evaluation & Recommendations

The following section describes issues identified by MTI in review of all marine environment related information provided within both EIS and EA and provides comment and recommendation to resolve the issue.

**Issue 1:** MTI remains concerned with the potential impacts of the Project on Atlantic Salmon. There remains the potential for Atlantic Salmon to pass through the project area on route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. DFO provided further information on the migration patterns of Atlantic Salmon in the Northwest Atlantic and on the potential effects of the Project and advised that Atlantic Salmon that spawn in rivers of eastern Canada (including New Brunswick) travel throughout the Northwest Atlantic Ocean. There have been few marine surveys of the species, and thus their oceanic movement is not well understood. Following the filing of the EIS, the Proponent acknowledged the gaps in understanding of Atlantic Salmon migration patterns in the North Atlantic and indicated that it would contribute to research on migratory routes within the project area, which includes potential new studies through the Environmental Studies Research Fund (ESRF).

**Recommendation 1a:** The North Shore Micmac District Council (NSMDC) has established the Anqotum, Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian Fishing Industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute such an Atlantic Salmon research program specific to New Brunswick and Salmon populations important to MTI. In addition to the ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic Salmon research study is funded and executed. The Agency can require a follow up program that includes such research to fill the current knowledge gaps identified in the project EA and satisfy MTI concerns regarding New Brunswick-Atlantic Salmon impacts from the Project.

**Recommendation 1b:** Potential projects that could be cooperatively carried out between the Proponent, MTI and Anqotum may include a tracking study of Atlantic Salmon using tags on Salmon leaving New Brunswick waters to determine if those populations in fact reach and migrate through the Project Area. Acoustic receivers could be installed on the drilling platforms to monitor for the occurrence of those Salmon populations within the Project Area during drilling operations. The Agency can require a follow up program that includes such a tracking study.

**Issue 2:** As previously stated in the MTI comments on the Project EIS (SVS, 2019) , the key mitigation measures outlined in the EIS and in the EA do not include any mention of completing or implementing some type of marine fish monitoring or on-going impact assessment during operations. The EIS acknowledges the fluctuating nature of fish presence in the Project Area depending on time of year, yet no commitment is made to continually assess fish presence, fish avoidance or mortalities during operation.

**Recommendation 2:** As part of a follow up program, the Agency can require the Proponent to implement a seasonal fish monitoring assessment that will give insight into which species and how many are passing through or frequenting the Project Area, as well as to determine if significant avoidance or mortalities are occurring as a result of Project operations.

**Issue 3:** During the EA, the Proponent provided information on Atlantic Salmon and its potential interaction with the Project. The Agency noted that DFO reviewed available information and confirmed the uncertainty regarding the at-sea migration patterns and habitat use of Atlantic Salmon. Given the potential for some Atlantic Salmon to occur in areas that overlap with the Project, effects on the species could occur, however DFO still advised that potential effects of the Project are expected to be negligible to low and spatially and temporally limited, despite the “uncertainty of at-sea migrations”. This prediction was made with a moderate level of certainty given uncertainties about Atlantic Salmon distributions and reasons for population declines.

**Recommendation 3:** Given the lack of data on Atlantic Salmon in the project area and their migration, as well as uncertainty with respect to impact predictions, the Agency can require the Proponent to develop and implement a follow up monitoring for the potential presence of Atlantic Salmon in the project area be implemented. In addition to collaboration with MTI and Aquotum for further research into Atlantic Salmon migration for this follow up monitoring program, the Proponent should implement a detailed marine fish monitoring plan for all fish species for the operation phase of the project. This detailed Marine Fish Monitoring Plan should be designed in collaboration with MTI and Aquotum Fisheries Resource Centre.

## 4.2 Marine Mammals & Migratory Birds

### 4.2.1 Evaluation & Recommendations

The following section describes issues identified by MTI in our scoped review of Marine Mammals and Migratory Birds provided within the EA and provides comments and recommendations to resolve the issues.

**Issue 4:** MTI remains concerned about the level of detail and scope of the Project's marine mammal monitoring planning, as outlined in both the EIS and Draft EA.

**Issue 4a:** First, there is a lack of detail on the methodologies that will be employed by Project marine mammal observers (MMOs). The Proponent states that trained observers will conduct visual monitoring, but no further information is provided. Visual surveys are known to be limited by a number of factors including daylight, weather conditions, and the availability of suitable monitoring platforms at appropriate times and appropriate locations (Brillant et al., 2015). By contrast, other methods such as passive acoustic monitoring can provide continuous coverage of areas that are otherwise difficult to observe visually and may therefore be a more suitable approach in the context of the Flemish Pass.

**Issue 4b:** Second, it is unclear how Project supply vessel speed restrictions will be effectively implemented. DFO has stated that it would support the requirement for Project vessel speeds to be reduced to 7 knots when within 400 metres of a marine mammal (Draft EA, Section 6.2.3, p. 42). However, the Proponent has only committed to employing trained MMOs during vertical seismic profiling (VSP) surveys. No such commitments have been outlined for supply vessel transit, nor has the Agency or DFO made this a requirement in the Draft EA.

**Issue 4c:** Third, MTI's opportunities for further input and involvement in the Marine Mammal and Sea Turtle Monitoring Plan are not sufficient. As outlined in the Draft EA, the Proponent is required to develop the Plan in close consultation with DFO and to submit to the C-NLOPB for approval before Project activities commence. While the Draft EA states that the Proponent would be required to report the findings of marine mammal monitoring to Indigenous groups, MTI would also like to be more involved prior to this stage.

**Recommendation 4b:** The Agency should require the Proponent to provide MTI with a detailed marine mammal visual surveying protocol. The Agency should also consider including passive acoustic monitoring as part of a follow up program, in combination with, or in lieu of, visual surveys as environmental conditions may require. If passive acoustic monitoring will not be considered MTI requests a detailed explanation on how the shortcomings of visual surveys will be addressed.

**Recommendation 4c:** The Agency should require the Proponent to employ MMOs to undertake visual surveys on supply vessels during transit, not just during VSP surveys. The follow up program can include undertaking visual surveys in combination with passive acoustic monitoring to improve marine mammal detection probability during supply vessel transit and minimize the risk of physical injury or mortality. If



passive acoustic monitoring will not be considered, MTI requests a detailed explanation on how the shortcomings of visual surveys will be addressed.

**Recommendation 4d:** MTI requests the opportunity to participate in the development of the Marine Mammal and Sea Turtle Monitoring Plan, and for Mi'gmaq environmental monitors to support MMOs with marine mammal surveying and reporting efforts. This level of involvement and oversight will help provide MTI with assurance that mitigation and monitoring efforts are being effectively implemented, and that concerns are being heard and considered.

**Issue 5:** The EIS indicates that Project aircrafts are prohibited from flying at an altitude of less than 300 metres over ecological reserves, observed bird colonies or significant aggregations of avifauna over specific periods of time, according to the Seabird Ecological Reserve Regulations, 2015. Through review of the EIS, MTI previously requested that the Proponent provide more detailed information on the circumstances under which Project supply vessels would avoid disturbance to coastal seabird colonies and the preventative guidelines that will be followed (e.g. buffers/setback distances). However, information on setback distances from coastal seabird colonies was not addressed in the Draft EA, nor was a response to this request received directly from the Proponent in response to the EIS review.

**Recommendation 5:** MTI reiterates their request for more detailed information on the circumstances under which Project supply vessels would avoid disturbance to coastal seabird colonies or significant aggregations, as well as the preventative guidelines (e.g. buffers or setback distances) that will be implemented.

**Issue 6:** In response to ECCC's concerns regarding potential bird strandings on MODUs and supply vessels, the Agency is requiring the development of a follow-up program to monitor effects on migratory birds. The Draft EA specifies that this should be developed in consultation with ECCC, but there is no mention of further discussions with MTI, and other Indigenous communities.

**Recommendation 6:** MTI requests the opportunity to be involved in the development of the follow-up monitoring program for marine and migratory birds, in close consultation with the Proponent and ECCC, or at an absolute minimum be provided with updated monitoring program documents. MTI also requests the opportunity for Mi'gmaq environmental monitors to support with monitoring the MODU and supply vessels for the presence of stranded birds, and to participate any training provided on ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms.

## 4.3 Cumulative Effects

### 4.3.1 Evaluation and Recommendations

The following section describes issues identified by MTI in review of Cumulative Effects from the Draft EA and provides comment and recommendation to resolve the issues.

**Issue 7:** MTI remains concerned that fish and fish habitat in the regional study area may be negatively affected by the Project in combination with effects of other projects and activities. Particularly in light of recent announcements of an additional \$4 billion investment in exploration of offshore reserves is being planned for the region (CBC, 2019). The potential for cumulative environmental effects was raised as a concern by MTI in the EIS review due to the number of potential projects that could occur into the future of the region. The Agency acknowledges within the EA that given these potential activities, the Government of Canada is working with the Province of Newfoundland and Labrador and the C-NLOPB on a regional assessment for offshore exploratory drilling in the offshore area of eastern Newfoundland, which would aim to examine the effects of existing and anticipated offshore oil and gas exploratory drilling, including cumulative environmental effects. Although the Agency states that mitigation, follow-up and monitoring for this Project would contribute to the mitigation or monitoring of cumulative environmental effects, the fulsome cumulative impact of all projects is not yet known until the completion of the Regional Assessment.

**Recommendation 7:** Although the EA states that the Government of Canada is working with the Province of Newfoundland and Labrador and the C-NLOPB on a regional assessment, the EA must acknowledge that MTI must continue to be engaged and contribute to the regional assessment. Additional measures to mitigate the cumulative impacts have not been identified by the Agency, and MTI remains concerned and interested in contributing to cumulative impact analysis during the Regional Assessment process and the development of further mitigation measures specific to cumulative impacts.

**Issue 8:** Drilling mud releases in these areas have occurred at considerable volumes in recent years. Newfoundland has had 417 accidental spills totaling 434,993 L of hydrocarbons and synthetic based drilling fluids between 1997 and 2009. Thousands of liters of synthetic drilling mud spilled at the White Rose Project in September 2017. Husky Energy reported a spill of about 5,000 liters of drilling mud from the GSF Grand Banks oil rig occurred during normal drilling operations. The EIS and EA fail to report on the cumulative extent of drilling mud release and its impact on the overall marine environment.

**Recommendation 8:** As stated in the EIS review, in the context of species important to MTI, including Swordfish, Atlantic Salmon and Bluefin Tuna, MTI requests the Agency and/or the Proponent provide an analysis of the cumulative effects of continuous drilling fluid release. The Proponent claims these drilling releases are unlikely, but recent and adjacent events seem to counter that sentiment. More detail and scrutiny should be given to the physiological and behavioral responses of these species to acute and chronic exposure to non-toxic drilling fluids from multiple projects.

## 4.4 Socio-Economics and Community Well-Being

The socio-economics and community wellbeing facet of this technical review focuses on assessing risks to MTI's land and resource uses, and socio-economic impacts on fisheries.

## 4.4.1 Evaluation & Recommendations

The following section describes issues identified by MTI related to socio-economics and community well-being within the EA Report and provides comments, information request and/or recommendations to resolve raised issues.

**Issue 9:** In Section 6.7.3 (Agency Analysis and Conclusion - Current Use of Lands and Resources for Traditional Purposes and Health and Socioeconomic Conditions of Indigenous Peoples), the Agency determines "...that the adverse residual environmental effects of the Project on current use of lands and resources for traditional purposes and health and socioeconomic conditions of Indigenous peoples throughout the regional study area would be negligible in magnitude." And further, "...concludes that the Project is not likely to cause significant adverse environmental effects on the current use of lands and resources for traditional purposes and health and socioeconomic conditions of Indigenous peoples" (p.70). Although the Agency acknowledges information gaps within the Proponents' EIS, and cites various Indigenous groups as having concerns over the impact assessment's methodology, these conclusive statements appear to dismiss the input that Indigenous groups, including MTI, have provided through the Project's consultation and regulatory process. It is unclear whether the Agency is holding the Proponent accountable to any further research, adaptive management planning and/or direct involvement of Indigenous groups in the design and implementation of follow up environmental monitoring and management measures, specifically with regards to Atlantic Salmon or Swordfish.

**Recommendation 9:** Confirmation is requested as to whether the Agency will hold the Proponent or other government agencies accountable for addressing information gaps within the Proponents' EIS other concerns regarding the impact assessment's methodology that have been raised by MTI and other Indigenous groups, including with respect to Atlantic Salmon and Swordfish. Confirm whether the Agency will compel the Proponent to directly involve Indigenous groups in the design and implementation of environmental monitoring and management measures beyond merely receiving the results of study results after the studies have taken place.

**Issue 10:** It is unclear, from the Agency's assessment and conclusion, whether similar research efforts will take place for Swordfish as will for Atlantic Salmon in and around the Project Area, Local Study Area and Regional Study Area. Swordfish is a species of cultural importance for MTI.

**Recommendation 10:** Confirm whether similar research efforts will take place for Swordfish as will for Atlantic Salmon in and around the Project Area, Local Study Area and Regional Study Area.

**Issue 11:** Given the numerous accommodation requests for Indigenous monitoring advisory committees and other forms of direct involvement of Indigenous groups to support environmental monitoring throughout the Project's lifecycle, it is not clear in the EA Report, whether this accommodation will be an explicit condition of approval for the Project to proceed, in addition to Indigenous views being considered in Spill Response Plans or 'information out' based communication plans.

**Recommendation 11:** Please confirm whether the accommodation specified by MTI – the creation and engagement of an Indigenous environmental monitoring committee or advisory group - will be a

condition of approval for the Project to proceed (i.e., beyond information sharing based on passive “Indigenous Communities Fisheries Communications Plans”).

**Issue 12:** In Section 8 (Impacts on Potential or Established Aboriginal or Treaty Rights), the Agency states that “...Since there are no Aboriginal or treaty rights in the project area, the pathways for potential impacts to rights of Indigenous groups are through impacts from project activities to migratory species that are harvested or fished within Indigenous groups’ traditional territories. The potential impacts were examined through the lens of routine operations and accidents or malfunctions. [...] Migratory species of particular concern to Indigenous groups include Atlantic Salmon, seals, whales, migratory birds and American Eel.” (8.1.1. p.102). MTI has brought forth issues and interests concerning protection of Swordfish through this Project’s EIS review and consultation process. It is therefore not understood why the Agency has not assessed Swordfish or considered this specie through an Aboriginal and inherent right infringement lens.

**Recommendation 12:** It is imperative that Swordfish, and the potential risks of changes to migration, health or population to this specie be considered by the Agency in their determination of the Project’s conditions of approval and possible future accommodation measures for MTI.

**Issue 13:** In Section 8.3, the Agency lists the following accommodation/mitigation measure in relation to Aboriginal rights: “consider views of Indigenous groups during the development of the Spill Response Plan. Provide the approved version to Indigenous groups prior to drilling. Include a procedure to communicate with Indigenous fishers in the event of an accident or malfunction in the Fisheries Communications Plan; and compensate for any damages, including the loss of food, social and ceremonial fisheries in accordance with the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity” (p.106). It is unclear what process will be in place to determine impacts to Aboriginal rights and interests if a spill does indeed occur, and whether or not the Federal Government, as Crown Agent, will also be responsible for accommodation in the form of compensation to Indigenous fishers whose rights may be infringed upon in the event of an accident or malfunction resulting in a habitat or migration – affecting spill.

**Recommendation 13:** Please clarify the process that will be implemented to determine impacts to Aboriginal rights and interests if a spill does occur, and whether or not the Federal Government, as Crown agent will also be responsible for accommodation in the form of compensation to Indigenous fishers whose rights may be infringed upon in the event of a spill.

## 4.5 Accidents and Malfunctions

### 4.5.1 Evaluation & Recommendations

The following section describes issues identified by MTI in review of Accident and Malfunction related information provided within the EIS and provides comment and recommendation to resolve the issues.

**Issue 14:** The Proponent estimates that mobilization and installation of the capping stack could take anywhere from 15 to 30 days. The C-NLOPB confirmed that capping and containment of a blown out well requires mobilization of equipment to prepare the subsea release site before use of a capping stack. This equipment would be transported by air to begin site preparation, which would include clearing of the site and cutting away of debris to ready the well for capping stack installation.

**Recommendation 14:** MTI believes it would reduce the lag time and extent of a blowout to have a capping stack along with the appropriate capacity for equipment modification, and rapid staging and deployment situated in near the drill, potentially staged in Newfoundland or Atlantic Canada. This could also account for the cumulative risks of all current and future oil and gas projects. The Agency and the Proponent must ensure this critical risk mitigation and accommodation measure is in place to protect and reduce the risk to MTI rights and interests.

**Issue 15:** MTI fishers with commercial and communal commercial fishing licences could also be affected by accidental spills. A large batch spill or subsea release could result in the closure of fishing areas, the fouling of gear and vessels, a reduction in the marketability of commercial fish products, as well as effects on fish and fish habitat. In addition, MTI could be affected if a spill affects species that migrate through the spill area to areas where they are harvested for food, social or ceremonial reasons (e.g., Atlantic Salmon).

**Recommendation 15a:** Any damages, including the loss of commercial or food, social and ceremonial fisheries must require compensation in accordance with the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.

**Recommendation 15b:** Condition 5.1 outlines the requirement for CNOOC to develop a Fisheries Communication Plan, however, the Agency must ensure that the Proponent is required to fully engage MTI in the actual development of the Fisheries Communication Plan, and the establishment of procedures to communicate with fishers in the event of an accident or malfunction

**Issue 16:** Condition 6.7 outlines the requirement for the Proponent to develop a Spill Response Plan.

**Recommendation 16:** MTI must be involved in the development and implementation of the Spill Response Plans and other emergency response and contingency plans in relation to the Project. The response plan should include emergency response and preparedness planning, exercises and training for MTI members. The Agency can require the Proponent to ensure that information about accidental events will be shared, immediately, with MTI, and include consultation in relation to the findings of the dispersion modelling, and to the scope of emergency preparedness and response planning. Further, MTI should be given clear specific roles and responsibility descriptions for offshore operations and onshore responders, capacity funding and proper equipment to effectively respond to accidents and malfunctions that impact MTI lands and waters.

## 5.0 Summary and Recommendations

This independent review of the Agency's Draft EA for the CNOOC Flemish Pass Exploration Drilling Project focuses on integral areas related to Mi'gmaq rights and interests. With this lens, the review strategically assesses the potential project interactions with the environment that may result in risks to MTI's rights and interests, as described in Section 4.0 of this report.

The review documents remaining issues to MTI, and provides recommendations for accommodations that appropriately consider and include Mi'gmaq Indigenous knowledge, in addition to potential effects on Mi'gmaq First Nations rights and interests. In particular, the review provides recommendations for accommodations related to the Mi'gmaq Indigenous fishery, accommodations to deal with insufficient information to support mitigation and effects assessment results, and accommodations related to insufficient environmental protection planning and follow-up program involvement for MTI.

MTI acknowledges that CNOOC has made good faith efforts to describe the marine species that each Indigenous group harvests - including each of the MTI member First Nations. However, this is a first step in capturing baseline information. The Proponent has not commissioned an IKLUOS or Socio-Economic impacts study, and therefore has not integrated Mi'gmaq comprehensive Indigenous Knowledge or Socio-Cultural-Economic Baseline Information into their respective project's Environmental Assessment processes to date. As a result, the Crown's duty to consult, via integration of for adequate and meaningful engagement, consultation, *and* accommodation with the Mi'gmaq in New Brunswick has not been met.

MTI puts forward the following additional accommodations as potential means of addressing the issues and comments raised in this review of the Draft EA for the CNOOC Flemish Pass Exploration Drilling Project:

1. The Agency and/or the Proponents should engage MTI and Anqotum Fisheries Resource Centre in designing and conducting a focused Atlantic Salmon research project that seeks to fill data gaps related to Atlantic Salmon use and existence in the Project Area.
2. Establish a forum and process where MTI can meet with CNOOC and Canada whereby issues and follow-up program decision making regarding the Project can be brought forward, discussed, and addressed throughout the life of the Project (including the provision of capacity funding to MTI to support and participate in an equal capacity in this process).
3. CNOOC and the Crown must engage in direct, meaningful consultation with all Mi'gmaq First Nations of New Brunswick to ensure that its legitimate concerns are understood and reflected in the Project EA and all Follow-up Monitoring Programs.
  - a. A plan for enhanced and ongoing engagement and consultation with MTI and its member communities for exploration activities, construction and operations of the project must be developed. An annual report should also be submitted to MTI which



summarizes the implementation and results of all consultation and engagement activities.

4. MTI, the Crown and the Proponent should develop agreements to support MTI and MTI member communities' participation in environmental, socio-economic and cultural monitoring of drilling and associated activities throughout the life of the Project. This may also require:
  - a. Training, involvement, employment of Mi'gmaq First Nations of New Brunswick environmental and cultural monitors for all Project phases;
  - b. Involvement in emergency preparedness planning and appropriate notifications and consultations in the event of a significant accident or malfunction.

We also recommend that issues related to key concerns expressed by MTI in this report be the focus of subsequent meetings with the Proponents and Crown agencies, and in subsequent Regional Environmental Assessment Reporting, should the Project proceed.

## 6.0 References

Brillant, S. W., Vanderlaan, A. S., Rangeley, R. W., & Taggart, C. T., 2015. Quantitative estimates of the movement and distribution of North Atlantic right whales along the northeast coast of North America. *Endangered Species Research*, 27(2), 141-154.

CBC (Canadian Broadcast Corporation, 2019. Near-record investment expected as 'bow wave' of activity heads for Newfoundland offshore. Available at: <https://www.cbc.ca/news/canada/newfoundland-labrador/nalcor-noia-exploration-investments-1.5316369>. Accessed October 10, 2109.

Impact Assessment Agency of Canada (IAAC), 2019. CNOOC International Flemish Pass Exploration Drilling Project, Draft Environmental Assessment Report.

Impact Assessment Agency of Canada (IAAC), 2019. Potential conditions under the Canadian Environmental Assessment Act, 2012; for CNOOC International Flemish Pass Exploration Drilling Project, Draft Environmental Assessment Report.

Nexen, 2018. Flemish Pass Exploration Drilling Project Environmental Impact Statement.8

Shared Value Solutions (SVS), 2019. Nexen Energy ULC Flemish Pass Exploration Drilling Project; Technical Review and Assessment of the Project Environmental Impact Statement.

# Appendix A – Comment Tracking Table

Table 1. CNOOC International Flemish Pass Exploration Drilling Project EA

Comment #	Issue	Question/Recommendation
<b>MARINE FISH AND FISH HABITAT</b>		
1.	<p>MTI remains concerned with the potential impacts of the Project on Atlantic Salmon. There remains the potential for Atlantic Salmon to pass through the project area on route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. DFO provided further information on the migration patterns of Atlantic Salmon in the Northwest Atlantic and on the potential effects of the Project and advised that Atlantic Salmon that spawn in rivers of eastern Canada (including New Brunswick) travel throughout the Northwest Atlantic Ocean. There have been few marine surveys of the species, and thus their oceanic movement is not well understood. Following the filing of the EIS, the Proponent acknowledged the gaps in understanding of Atlantic Salmon migration patterns in the North Atlantic and indicated that it would contribute to research on migratory routes within the project area, which includes potential new studies through the Environmental Studies Research Fund (ESRF).</p>	<p><b>1a:</b> The North Shore Micmac District Council (NSMDC) has established the Anqotum, Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian Fishing Industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute such an Atlantic Salmon research program specific to New Brunswick and Salmon populations important to MTI. In addition to the ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic Salmon research study is funded and executed. The Agency can require a follow up program that includes such research to fill the current knowledge gaps identified in the project EA and satisfy MTI concerns regarding New Brunswick-Atlantic Salmon impacts from the Project.</p> <p><b>1b:</b> Potential projects that could be cooperatively carried out between the Proponent, MTI and Anqotum may include a tracking study of Atlantic Salmon using tags on Salmon leaving New Brunswick waters to determine if those populations in fact reach and migrate through the Project Area. Acoustic receivers could be installed on the drilling platforms to monitor for the occurrence of those Salmon populations within the Project Area during drilling</p>

Comment #	Issue	Question/Recommendation
		operations. The Agency can require a follow up program that includes such a tracking study.
2.	As previously stated in the MTI comments on the Project EIS (SVS, 2019), the key mitigation measures outlined in the EIS and in the EA do not include any mention of completing or implementing some type of marine fish monitoring or on-going impact assessment during operations. The EIS acknowledges the fluctuating nature of fish presence in the Project Area depending on time of year, yet no commitment is made to continually assess fish presence, fish avoidance or mortalities during operation.	As part of a follow up program, the Agency can require the Proponent to implement a seasonal fish monitoring assessment that will give insight into which species and how many are passing through or frequenting the Project Area, as well as to determine if significant avoidance or mortalities are occurring as a result of Project operations.
3.	During the EA, the Proponent provided information on Atlantic Salmon and its potential interaction with the Project. The Agency noted that DFO reviewed available information and confirmed the uncertainty regarding the at-sea migration patterns and habitat use of Atlantic Salmon. Given the potential for some Atlantic Salmon to occur in areas that overlap with the Project, effects on the species could occur, however DFO still advised that potential effects of the Project are expected to be negligible to low and spatially and temporally limited, despite the “uncertainty of at-sea migrations”. This prediction was made with a moderate level of certainty given uncertainties about Atlantic Salmon distributions and reasons for population declines.	Given the lack of data on Atlantic Salmon in the project area and their migration, as well as uncertainty with respect to impact predictions, the Agency can require the Proponent to develop and implement a follow up monitoring for the potential presence of Atlantic Salmon in the project area be implemented. In addition to collaboration with MTI and Anqotum for further research into Atlantic Salmon migration for this follow up monitoring program, the Proponent should implement a detailed marine fish monitoring plan for <u>all</u> fish species for the operation phase of the project. This detailed Marine Fish Monitoring Plan should be designed in collaboration with MTI and Anqotum Fisheries Resource Centre.
<b>MARINE MAMMALS &amp; MIGRATORY BIRDS</b>		
4	MTI remains concerned about the level of detail and scope of the Project’s marine mammal monitoring planning, as outlined in both the EIS and Draft EA.	<b>4a:</b> The Agency should require the Proponent to provide MTI with a detailed marine mammal visual surveying protocol. The Agency should also consider including passive acoustic monitoring as part

Comment #	Issue	Question/Recommendation
	<p><b>4a:</b> First, there is a lack of detail on the methodologies that will be employed by Project marine mammal observers (MMOs). The Proponent states that trained observers will conduct visual monitoring, but no further information is provided. Visual surveys are known to be limited by a number of factors including daylight, weather conditions, and the availability of suitable monitoring platforms at appropriate times and appropriate locations (Brillant et al., 2015). By contrast, other methods such as passive acoustic monitoring can provide continuous coverage of areas that are otherwise difficult to observe visually and may therefore be a more suitable approach in the context of the Flemish Pass.</p> <p><b>4b:</b> Second, it is unclear how Project supply vessel speed restrictions will be effectively implemented. DFO has stated that it would support the requirement for Project vessel speeds to be reduced to 7 knots when within 400 metres of a marine mammal (Draft EA, Section 6.2.3, p. 42). However, the Proponent has only committed to employing trained MMOs during vertical seismic profiling (VSP) surveys. No such commitments have been outlined for supply vessel transit, nor has the Agency or DFO made this a requirement in the Draft EA.</p> <p><b>4c:</b> Third, MTI's opportunities for further input and involvement in the Marine Mammal and Sea Turtle Monitoring Plan are not sufficient. As outlined in the Draft EA, the Proponent is required to develop the Plan in close consultation with DFO and to submit to the C-NLOPB for approval before Project activities commence. While the Draft EA states that the Proponent would be required to report the findings of marine mammal monitoring to</p>	<p>of a follow up program, in combination with, or in lieu of, visual surveys as environmental conditions may require. If passive acoustic monitoring will not be considered MTI requests a detailed explanation on how the shortcomings of visual surveys will be addressed.</p> <p><b>4b:</b> The Agency should require the Proponent to employ MMOs to undertake visual surveys on supply vessels during transit, not just during VSP surveys. The follow up program can include undertaking visual surveys in combination with passive acoustic monitoring to improve marine mammal detection probability during supply vessel transit and minimize the risk of physical injury or mortality. If passive acoustic monitoring will not be considered, MTI requests a detailed explanation on how the shortcomings of visual surveys will be addressed.</p> <p><b>4c:</b> MTI requests the opportunity to participate in the development of the Marine Mammal and Sea Turtle Monitoring Plan, and for Mi'gmaq environmental monitors to support MMOs with marine mammal surveying and reporting efforts. This level of involvement and oversight will help provide MTI with assurance that mitigation and monitoring efforts are being effectively implemented, and that concerns are being heard and considered.</p>

Comment #	Issue	Question/Recommendation
	Indigenous groups, MTI would also like to be more involved prior to this stage.	
5	The EIS indicates that Project aircrafts are prohibited from flying at an altitude of less than 300 metres over ecological reserves, observed bird colonies or significant aggregations of avifauna over specific periods of time, according to the Seabird Ecological Reserve Regulations, 2015. Through review of the EIS, MTI previously requested that the Proponent provide more detailed information on the circumstances under which Project supply vessels would avoid disturbance to coastal seabird colonies and the preventative guidelines that will be followed (e.g. buffers/setback distances). However, information on setback distances from coastal seabird colonies was not addressed in the Draft EA, nor was a response to this request received directly from the Proponent in response to the EIS review.	MTI reiterates their request for more detailed information on the circumstances under which Project supply vessels would avoid disturbance to coastal seabird colonies or significant aggregations, as well as the preventative guidelines (e.g. buffers or setback distances) that will be implemented.
6	In response to ECCC's concerns regarding potential bird strandings on MODUs and supply vessels, the Agency is requiring the development of a follow-up program to monitor effects on migratory birds. The Draft EA specifies that this should be developed in consultation with ECCC, but there is no mention of further discussions with MTI, and other Indigenous communities.	MTI requests the opportunity to be involved in the development of the follow-up monitoring program for marine and migratory birds, in close consultation with the Proponent and ECCC, or at an absolute minimum be provided with updated monitoring program documents. MTI also requests the opportunity for Mi'gmaq environmental monitors to support with monitoring the MODU and supply vessels for the presence of stranded birds, and to participate any training provided on ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms.
<b>CUMULATIVE EFFECTS</b>		
7	MTI remains concerned that fish and fish habitat in the regional study area may be negatively affected by the	Although the EA states that the Government of Canada is working with the Province of Newfoundland and Labrador and

Comment #	Issue	Question/Recommendation
	<p>Project in combination with effects of other projects and activities. Particularly in light of recent announcements of an additional \$4 billion investment in exploration of offshore reserves is being planned for the region (CBC, 2019). The potential for cumulative environmental effects was raised as a concern by MTI in the EIS review due to the number of potential projects that could occur into the future of the region. The Agency acknowledges within the EA that given these potential activities, the Government of Canada is working with the Province of Newfoundland and Labrador and the C-NLOPB on a regional assessment for offshore exploratory drilling in the offshore area of eastern Newfoundland, which would aim to examine the effects of existing and anticipated offshore oil and gas exploratory drilling, including cumulative environmental effects. Although the Agency states that mitigation, follow-up and monitoring for this Project would contribute to the mitigation or monitoring of cumulative environmental effects, the fulsome cumulative impact of all projects is not yet known until the completion of the Regional Assessment.</p>	<p>the C-NLOPB on a regional assessment, the EA must acknowledge that MTI must continue to be engaged and contribute to the regional assessment. Additional measures to mitigate the cumulative impacts have not been identified by the Agency, and MTI remains concerned and interested in contributing to cumulative impact analysis during the Regional Assessment process and the development of further mitigation measures specific to cumulative impacts.</p>
8	<p>Drilling mud releases in these areas have occurred at considerable volumes in recent years. Newfoundland has had 417 accidental spills totaling 434,993 L of hydrocarbons and synthetic based drilling fluids between 1997 and 2009. Thousands of liters of synthetic drilling mud spilled at the White Rose Project in September 2017. Husky Energy reported a spill of about 5,000 liters of drilling mud from the GSF Grand Banks oil rig occurred during normal drilling operations. The EIS and EA fail to</p>	<p>As stated in the EIS review, in the context of species important to MTI, including Swordfish, Atlantic Salmon and Bluefin Tuna, MTI requests the Agency and/or the Proponent provide an analysis of the cumulative effects of continuous drilling fluid release. The Proponent claims these drilling releases are unlikely, but recent and adjacent events seem to counter that sentiment. More detail and scrutiny should be given to the physiological and behavioral responses of these species to acute and chronic exposure to non-toxic drilling fluids from multiple projects.</p>



Comment #	Issue	Question/Recommendation
	report on the cumulative extent of drilling mud release and its impact on the overall marine environment.	
<b>SOCIO-ECONOMICS AND COMMUNITY WELL-BEING</b>		
9	<p>In Section 6.7.3 (Agency Analysis and Conclusion - Current Use of Lands and Resources for Traditional Purposes and Health and Socioeconomic Conditions of Indigenous Peoples), the Agency determines "...that the adverse residual environmental effects of the Project on current use of lands and resources for traditional purposes and health and socioeconomic conditions of Indigenous peoples throughout the regional study area would be negligible in magnitude." And further, "...concludes that the Project is not likely to cause significant adverse environmental effects on the current use of lands and resources for traditional purposes and health and socioeconomic conditions of Indigenous peoples" (p.70). Although the Agency acknowledges information gaps within the Proponents' EIS, and cites various Indigenous groups as having concerns over the impact assessment's methodology, these conclusive statements appear to dismiss the input that Indigenous groups, including MTI, have provided through the Project's consultation and regulatory process. It is unclear whether the Agency is holding the Proponent accountable to any further research, adaptive management planning and/or direct involvement of Indigenous groups in the design and implementation of follow up environmental monitoring and management measures, specifically with regards to Atlantic Salmon or Swordfish.</p>	Confirmation is requested as to whether the Agency will hold the Proponent or other government agencies accountable for addressing information gaps within the Proponents' EIS other concerns regarding the impact assessment's methodology that have been raised by MTI and other Indigenous groups, including with respect to Atlantic Salmon and Swordfish. Confirm whether the Agency will compel the Proponent to directly involve Indigenous groups in the design and implementation of environmental monitoring and management measures beyond merely receiving the results of study results after the studies have taken place.

Comment #	Issue	Question/Recommendation
10	It is unclear, from the Agency's assessment and conclusion, whether similar research efforts will take place for Swordfish as will for Atlantic Salmon in and around the Project Area, Local Study Area and Regional Study Area. Swordfish is a species of cultural importance for MTI.	Confirm whether similar research efforts will take place for Swordfish as will for Atlantic Salmon in and around the Project Area, Local Study Area and Regional Study Area.
11	Given the numerous accommodation requests for Indigenous monitoring advisory committees and other forms of direct involvement of Indigenous groups to support environmental monitoring throughout the Project's lifecycle, it is not clear in the EA Report, whether this accommodation will be an explicit condition of approval for the Project to proceed, in addition to Indigenous views being considered in Spill Response Plans or 'information out' based communication plans.	Please confirm whether the accommodation specified by MTI – the creation and engagement of an Indigenous environmental monitoring committee or advisory group - will be a condition of approval for the Project to proceed (i.e., beyond information sharing based on passive "Indigenous Communities Fisheries Communications Plans").
12	In Section 8 (Impacts on Potential or Established Aboriginal or Treaty Rights), the Agency states that "...Since there are no Aboriginal or treaty rights in the project area, the pathways for potential impacts to rights of Indigenous groups are through impacts from project activities to migratory species that are harvested or fished within Indigenous groups' traditional territories. The potential impacts were examined through the lens of routine operations and accidents or malfunctions. [...] Migratory species of particular concern to Indigenous groups include Atlantic Salmon, seals, whales, migratory birds and American Eel." (8.1.1. p.102). MTI has brought forth issues and interests concerning protection of Swordfish through this Project's EIS review and consultation process. It is therefore not understood why the Agency has not assessed Swordfish or considered this	It is imperative that Swordfish, and the potential risks of changes to migration, health or population to this specie be considered by the Agency in their determination of the Project's conditions of approval and possible future accommodation measures for MTI.

Comment #	Issue	Question/Recommendation
	specie through an Aboriginal and inherent right infringement lens.	
13	<p>In Section 8.3, the Agency lists the following accommodation/mitigation measure in relation to Aboriginal rights: “consider views of Indigenous groups during the development of the Spill Response Plan. Provide the approved version to Indigenous groups prior to drilling. Include a procedure to communicate with Indigenous fishers in the event of an accident or malfunction in the Fisheries Communications Plan; and compensate for any damages, including the loss of food, social and ceremonial fisheries in accordance with the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity” (p.106). It is unclear what process will be in place to determine impacts to Aboriginal rights and interests if a spill does indeed occur, and whether or not the Federal Government, as Crown Agent, will also be responsible for accommodation in the form of compensation to Indigenous fishers whose rights may be infringed upon in the event of an accident or malfunction resulting in a habitat or migration – affecting spill.</p>	<p>Please clarify the process that will be implemented to determine impacts to Aboriginal rights and interests if a spill does occur, and whether or not the Federal Government, as Crown agent will also be responsible for accommodation in the form of compensation to Indigenous fishers whose rights may be infringed upon in the event of a spill.</p>
<b>ACCIDENTS AND MALFUNCTIONS</b>		
14	<p>The Proponent estimates that mobilization and installation of the capping stack could take anywhere from 15 to 30 days. The C-NLOPB confirmed that capping and containment of a blown out well requires mobilization of equipment to prepare the subsea release site before use of a capping stack. This equipment would be transported by air to begin site preparation, which would include</p>	<p>MTI believes it would reduce the lag time and extent of a blowout to have a capping stack along with the appropriate capacity for equipment modification, and rapid staging and deployment situated in near the drill, potentially staged in Newfoundland or Atlantic Canada. This could also account for the cumulative risks of all current and future oil and gas projects. The Agency and the Proponent must ensure this critical risk</p>

Comment #	Issue	Question/Recommendation
	clearing of the site and cutting away of debris to ready the well for capping stack installation.	mitigation and accommodation measure is in place to protect and reduce the risk to MTI rights and interests.
15	MTI fishers with commercial and communal commercial fishing licences could also be affected by accidental spills. A large batch spill or subsea release could result in the closure of fishing areas, the fouling of gear and vessels, a reduction in the marketability of commercial fish products, as well as effects on fish and fish habitat. In addition, MTI could be affected if a spill affects species that migrate through the spill area to areas where they are harvested for food, social or ceremonial reasons (e.g., Atlantic Salmon).	<p><b>15a:</b> Any damages, including the loss of commercial or food, social and ceremonial fisheries must require compensation in accordance with the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.</p> <p><b>15b:</b> Condition 5.1 outlines the requirement for CNOOC to develop a Fisheries Communication Plan, however, the Agency must ensure that the Proponent is required to fully engage MTI in the actual development of the Fisheries Communication Plan, and the establishment of procedures to communicate with fishers in the event of an accident or malfunction.</p>
16	Condition 6.7 outlines the requirement for the Proponent to develop a Spill Response Plan.	MTI must be involved in the development and implementation of the Spill Response Plans and other emergency response and contingency plans in relation to the Project. The response plan should include emergency response and preparedness planning, exercises and training for MTI members. The Agency can require the Proponent to ensure that information about accidental events will be shared, immediately, with MTI, and include consultation in relation to the findings of the dispersion modelling, and to the scope of emergency preparedness and response planning. Further, MTI should be given clear specific roles and responsibility descriptions for offshore operations and onshore responders, capacity funding and proper equipment to effectively respond to accidents and malfunctions that impact MTI lands and waters.

Comment #	Issue	Question/Recommendation
<b>MTI ADDITIONAL ACCOMODATIONS</b>		
17	The Agency and/or the Proponents should engage MTI and Anqotum Fisheries Resource Centre in designing and conducting a focused Atlantic Salmon research project that seeks to fill data gaps related to Atlantic Salmon use and existence in the Project Area.	
18	Establish a forum and process where MTI can meet with CNOOC and Canada whereby issues and follow-up program decision making regarding the Project can be brought forward, discussed, and addressed throughout the life of the Project (including the provision of capacity funding to MTI to support and participate in an equal capacity in this process).	
19	<p>CNOOC and the Crown must engage in direct, meaningful consultation with all Mi'gmaq First Nations of New Brunswick to ensure that its legitimate concerns are understood and reflected in the Project EA and all Follow-up Monitoring Programs.</p> <ul style="list-style-type: none"> <li>• A plan for enhanced and ongoing engagement and consultation with MTI and its member communities for exploration activities, construction and operations of the project must be developed. An annual report should also be submitted to MTI which summarizes the implementation and results of all consultation and engagement activities.</li> </ul>	
20	<p>MTI, the Crown and the Proponent should develop agreements to support MTI and MTI member communities' participation in environmental, socio-economic and cultural monitoring of drilling and associated activities throughout the life of the Project. This may also require:</p> <ul style="list-style-type: none"> <li>• Training, involvement, employment of Mi'gmaq First Nations of New Brunswick environmental and cultural monitors for all Project phases;</li> <li>• Involvement in emergency preparedness planning and appropriate notifications and consultations in the event of a significant accident or malfunction.</li> </ul>	