WOLASTOQEY NATION IN NEW BRUNSWICK

Matawaskiye • Neqotkuk • Wotstak • Pilick • Sitansisk • Welamoktok

[Submitted via email]

*Ref: WNNB [007-20]*

January 14, 2019

**Re: Comment on Draft Environmental Assessment Report and Conditions for the Proposed Husky/Jeanne D'Arc Exploration Project**

The Wolastoqey Nation in New Brunswick ("**WNNB**") represents the six Wolastoqey communities in New Brunswick (Madawaska Maliseet, Tobique, Kingsclear, Woodstock, St. Mary's and Oromocto First Nations). WNNB is not the rights holder, nor are we the body to which the Duty to Consult is owed. WNNB provides technical advice to Wolastoqey leadership and their respective Resource Development Consultation Coordinators ("**RDCCs**") on resource development matters that relate to our Wolastoqey constitutionally protected rights. WNNB also acts to protect and promote traditional lands, ceremony, cultural practices and language.

## General Summary

The proposed Project is one of several that have recently been proposed in the area that are of a similar nature, both in scope, as well as temporal and spatial boundaries. Each of these most recently proposed projects all faced positive Environmental Assessment ("**EA**") determinations and are currently in some phase of the federal review process.

With several new exploration projects and with forecasts of doubling oil and gas production and 100 new exploration wells by 2030,[1] serious concerns surround compounding and cumulative effects for all environmental resources in offshore Newfoundland. While the first Regional Assessment ("**RA**") under CEAA 2012 is underway, and may address some of these concerns, we urge CEAA/IAAC to more fully review cumulative impacts. Projects and conditions may be similar, but each project is different, and each

[1] https://www.releases.gov.nl.ca/releases/2018/exec/0219n01.aspx



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one carries the potential to cause distinctive adverse effects and would benefit from tailored mitigation measures. Further, while proponents will continually downplay the significance of effects to the environment, even small residuals can accumulate and produce incremental, but damaging, cumulative impacts. This necessitates added conditions to explore the cumulative impacts specific to Green House Gases ("**GHGs**") and sustainability as well as the potential effects for both routine and unexpected impacts to fish and mammals, effects of avoidance during migration and feeding, as well as look at the statistics surrounding spills.

**Comments in response to draft EA report**

WNNB focused its analysis on the impacts to Atlantic Salmon (OBoF & IBoF) as it is a resource that is currently on the verge of extinction within Wolastoqey territory and yet new sources of potential mortality are being proposed while access for FSC harvest has long been forgone. However, an ecosystem-based analysis within the project area is likely to provide the most comprehensive understanding of the potential impacts associated with this project to the ecosystem itself as well as to Atlantic Salmon.

In this report, the proponent acknowledged that the project area may be used by Atlantic Salmon without specifying any particular Designable Units ("**DUs**"). OBoF Salmon are recognized by the Agency as possibly using the project area as overwintering grounds. It is noted in section 6.1.1 that research vessels have caught salmon in the project area previously in Spring, however no further metrics were taken. This is particularly disappointing given the relative simplicity of tracing the origin of an individual with current molecular genomic tools.

Given that DFO stated in the report that potential effects of the proposed project on Atlantic Salmon are expected to be "negligible to low and spatially/temporally limited", this statement should be accompanied by a citation documenting where this information may be found or at the very least, a rationale for how this conclusion was reached. The EA report as well as many others before it, repeatedly cite data gaps on salmon migration and extent of occurrence within the project area, yet in contradiction, it readily assumes the magnitude of the impacts. WNNB would like to remind DFO that regarding salmon presence within the project area, 'absence of evidence is not evidence of absence' and until that evidence comes to light, the magnitude of impacts is unknown. If no information on abundance, population composition or habitat use exists, as was stated in the report, the extent of the effects of this project are unknown and should be



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labelled as such. If the evidence does exist at present, then this needs to be properly referenced and cited with the statements from the Agency on potential impacts.

For instance, if the project area is indeed within a summer feeding grounds, are the impacts that DFO considered limited to just Atlantic Salmon, or the entire suite of potential prey species that may be found within this area? Furthermore, what aspects of drilling operations were considered or omitted? WNNB was dismayed to see the extent of the response to its Information Request (MSES IR-2) regarding potential impacts from drilling. While light and noise are certainly a portion of the potential impacts, we were expecting a much broader assessment of potential effects as part of this request. WNNB acknowledges that much of this information remains to be fully investigated so as a result, any assertions made regarding the scope of potential impacts, should either be qualified as to the limited body of existing research on this topic or contingent on new evidence. It is promising to learn that several proponents have deployed acoustic telemetry receivers within their respective project areas. This should be a mandatory component of any monitoring plan and could greatly contribute to future adaptive management strategies that are developed either regionally or within a project area. Given that salmon have been previously caught within this project area, we would recommend that at least for this specific project and ideally for all projects, the proponents deploy receivers within this project area as part of a monitoring program.

With regards to compensation, we want to explicitly state that no amount of compensation will adequately account for the loss of a population so vitally intertwined with Wolastoqey existence and culture. We also want to point out that the proposed compensation is only in response to a significant unexpected event and does not consider impacts from routine drilling operations. We still have very little indication of how these operations affect Atlantic Salmon and therefore this may indeed be more harmful than previously believed to the point of potentially higher rates of injury and/or mortality than a spill depending on the magnitude and timing. Considering the extremely low populations and salmon returns for the OBoF designatable unit (2017 estimated wild returns of 813[2]), additional or cumulative effects associated with offshore oil and gas could contribute to their extinction. In this case, however low the probability, the assertion that mitigation or spill prevention and response is adequate as a means to accommodate within the Duty to Consult is asinine.

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[2] DFO. 2018. Status of Atlantic Salmon in Salmon Fishing Areas (SFAs) 19-21 and 23. DFO Can. Sci. Advis. Sec. Sci. Resp. 2018/038.



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For further context regarding compensation and how the Fishing Gear Damage or Loss Compensation Program proposed in this report falls short of addressing impacts to Aboriginal and Treaty rights, please refer to the document WNNB submitted for Husky Energy Exploration Project's Information Requirement 58-02 specific to compensation and the inadequacies within the current framework.

Finally, we feel that further research needs to be conducted on another species that may be present within the project area, the American eel. Given that this is a panmictic population, declines in abundance are felt across the entire range of the species and in turn across the range of eel fisheries. Eel represents another a crucial cultural resource and food source for the Wolastoqey. They are also subject of ongoing fisheries negotiations for the Wolastoqey, and given the strong consideration for conservation of this species in response to growing commercial interests, any increase in potential threats for this species should be accompanied by comprehensive studies on potential impacts to various life stages and/or a species-specific mitigation/monitoring strategy. Proposed mitigation measures in the EA report are inadequate to address questions surrounding impacts on this species. Literature should be cited on how the proposed mitigation measures will truly be effective for each species but most importantly those that are "At-Risk" and essential to First Nations existence and livelihood.

**Potential EA conditions**

WNNB acknowledges and appreciates the consistency in the Potential Conditions between the proposed projects in all regions including Orphan Basin, Eastern Newfoundland and Flemish Pass. However, WNNB would warn against becoming too complacent in setting conditions. These are projects with great potential for adverse and complex effects and establishing a base standard does not promote innovation or added safety measure to further mitigate that risk.

To this end, one further recommendation for this document would be to include an additional condition under Section 3 with the purpose of developing adaptive monitoring/management plans, the goal of which would be to incorporate information that is produced as part of the Environmental Studies Research Fund **("ESRF"),** the ongoing RA and document/mitigate the potential impacts on Atlantic Salmon. The most recent rendition of conditions issued for a similar project in CNOOC's Exploration Project was recently released, and it is noted that this very same recommendation was not included. WNNB and the Wolastoqey communities would like to stress that adaptation is important, and simply stating intent to



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undertake studies such as the ESRF is not sufficient (condition 3.13), unless their knowledge is meaningfully incorporated into projects. Should there be evidence of greater interaction for salmon with the project area, evidence of increased feeding or overwintering, then the EA report becomes outdated and the conditions used to mitigate do as well. The Impact Assessment Agency of Canada has stated that it feels the mitigations for operations, preventative and minimizing efforts of spills is sufficient for accommodation as a means to dealing with the Duty to Consult. WNNB disagrees, and principally on the grounds that while there is a mechanism for research and addressing information gaps specific to Atlantic salmon, there is not one for altering projects based on this research as the conditions currently are stated.

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