



Newfoundland Orphan Basin Exploration Drilling Project

**Comments on the Draft Environmental Assessment Report
and Draft Conditions of Approval**

Prepared by
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and
Shared Value Solutions

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SHARED VALUE
SOLUTIONS

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1.0 Introduction

BP Canada Energy Group ULC (the Proponent) is proposing to conduct exploratory offshore drilling in the Orphan Basin (the Project). Drilling of up to 20 offshore wells would take place between 2021 and 2026 in areas covered by exploration licences (EL) 1145, 1146, 1148, and 1149. The ELs have a combined area of 9,432 km², the closest of which is located approximately 343 kilometres northeast of St. John’s, Newfoundland. The project would allow for the Proponent to determine the presence, nature and quantities of potential hydrocarbon resources with the goal of obtaining a Significant Discovery Licence and expanding production. The Proponent is currently seeking regulatory approval for these drilling activities by undergoing a Federal Environmental Assessment.

Miawpukek First Nation (MFN) has reviewed the draft Environmental Assessment (EA) Report and the potential conditions for these Projects with support from our Environmental Advisors, Shared Value Solutions (SVS). Comments on these documents and the EA process in general are provided in this report. These comments build on previous submissions on the draft Environmental Impact Statement (EIS) and several communications from MFN sent to the Proponent and the Crown (Table 1).

Table 1. A summary of formal written submissions prepared by MFN related to the offshore oil and gas projects (does not include email conversations, phone calls and other less formal communications).

Date of Submission	Description
Jul. 27, 2017	Initial letter to Proponent outlining concerns and describing MFN’s requests for meaningful consultation.
Nov. 30, 2017 (dated October 24, 2017)	Response to Proponent letter dated Aug. 24, 2017
Jan. 31, 2018	Letter to Proponent elaborating on the concerns of MFN related to Atlantic salmon
Dec. 4, 2018	Technical review of the Environmental Impact Statement by BP
Jun. 28, 2018	Response to Proponent letter dated May 31, 2018
Aug. 27, 2018	Response to Proponent offer for capacity funding
Jul. 9, 2019	Modified request for capacity funding based on requests of offshore proponent
Sept. 24, 2019	Agreement in principle for consultation support with offshore exploration proponent
Nov. 12, 2019	The Proponent provided a draft agreement for consultation support. This has not yet been executed.

The rights, values, and interests of MFN are the focus of these comments. They build on previous submissions completed by MFN, highlighting the concerns of our community, including (but not limited to) recreational, commercial and Aboriginal fisheries, species at risk, Atlantic salmon, the marine environment, socioeconomics and community well-being. This report summarizes the position of MFN in regard to the Projects and outlines, on behalf of our community, recommendations and requested accommodations.

2.0 Miawpukek First Nation

Miawpukek Mi'kamawey Mawi'omi (also known as Miawpukek First Nation) is located on the south shore of Newfoundland along the Conne River at the confluence of the Bay D'Espoir. The community became a permanent settlement in the 1820s but was used long before that as one of the many semi-permanent seasonal camping grounds of the Mi'kmaq on the south shore of Newfoundland. Oral tradition states that the community reserve lands were established in 1870. This reserve was given the name Samiajij Miawpukek Indian Reserve which translates to "too small" reserve because the land is considered much too small to carry out traditional activities including hunting for caribou. This name was reportedly chosen partly in frustration, and partly out of a sense of humour by the people of MFN.

The total on-reserve population of MFN was recorded as 956 in 2016 (Stats Canada, 2016). In 1987, the community of MFN was established as a reserve, and since that time has changed from an isolated community with almost 90% unemployment to a vibrant community with nearly 100% full or part-time employment.

2.1 Historic Overview

Covering a vast area, the Mi'kmaq territory of Mi'kmaki stretches from the Gaspé Peninsula in Quebec, through New Brunswick to northern Maine, across Nova Scotia, Prince Edward Island and the Island of Newfoundland, which is known as Ktaqamkuk. The Mi'kmaq of Newfoundland have a shared ancestry with Mi'kmaq people from across Mi'kmaki. Their relationship with the land, and the surrounding waters, stretches back over at least 10,000 years.

The earliest use of Ktaqamkuk by Mi'kmaq people is something which is still debated by Western scholars. It is known that Mi'kmaq hunters and fisherman would stay seasonally on the island from as early as the 1600s, although it is likely that this occurred much earlier (Pastore, 1998). French and English historical records suggest that the Mi'kmaq didn't establish permanent residences on Ktaqamkuk until the 1760s (Bartels and Janzen, 1990). However, the idea of permanent residence is rooted in the colonialist ideas and perceptions of the time. It does not account for the Mi'kmaq way of life which at that time was seasonal and revolved around frequent travel throughout traditional territories to access resources. This would have included travel between Unamaki (Cape Breton) and Taqamkik for hundreds of years before the land became known as Canada. Thus, it is argued by many scholars that the island of Ktaqamkuk is part of the traditional territory of the Mi'kmaq people.

The people of Miawpukek First Nation assert that the entire Island of Ktaqamkuk is included in their traditional territory. Oral history passed down through generations holds that the ancestors of Miawpukek First Nation have lived and travelled Ktaqamkuk since time immemorial. Mi'kmaq people hunted, fished and travelled back and forth along the coasts year-round. Mi'kmaq people from the mainland travelled back and forth between Unamaki and Ktaqamkuk, thus maintaining constant connections between the island and the mainland. This occurred as recently as the 1760s when Chief Jeannot Pequidalouet led a group of Mi'kmaq people across the Cabot Strait to avoid hostility and mistreatment at the hands of the British (Martijn, 1989). It should be noted that the Mi'kmaq have a long history as explorers, and similar trips likely occurred frequently before this time, but were not documented by European colonizers. This history is best summarized by Frank Speck (1922) who completed ethnographic surveys on Newfoundland in the summer of 1914:

“Throughout Newfoundland the [Mi'kmaq] Indians refer to their predecessors as Sa'qawedjkik 'the ancients,' speaking of them as though they were the first inhabitants of the island [...]. The Sa'qawedjkik families are said to have become completely merged with the later [Mi'kmaq] comers from Cape Breton and Labrador.” (Speck, 1922, p. 123)

The Mi'kmaq of Ktaqamkuk/Newfoundland have continued to live, hunt, fish, trap and guide on the island over the centuries. During the later part of the 18th century through the 19th century, Mi'kmaq guides helped European explorers to visit and map the areas which were already being used by Mi'kmaq people. In 1822 William Cormack, the first European credited with crossing the island, was guided by Sylvester Joe, a Mi'kmaq traveller. During their journey, the two encountered several First Nations people in areas that were thought, by Europeans, to be uninhabited (Pastore, 1998). Ironically, to earn a wage and support themselves, Mi'kmaq people would go on to work on major projects such as the railroad, which ultimately facilitated the expansion of European colonizers who would fight for control over the natural resources upon which the Mi'kmaq traditional livelihood depended.

Where Newfoundland was not part of Confederation until 1949, the Mi'kmaq people of Miawpukek were not included under the Indian Act of 1876. In many ways this may have been beneficial because they were not subject to the harmful actions exerted by the federal government through this act. However, by being outside of the Indian Act they were also not afforded the same Aboriginal rights granted to Indigenous peoples across Canada. This lack of protection, combined with political, economic and religious pressure, led to the continuous erosion of traditional practices and ways of life.

In 1984, after years of fighting for recognition, the federal government granted status to the people of Miawpukek under the Indian Act. This was followed three years later by the allocation of a 500-hectare reserve in Conne River named by Council as the Samiajij Miawpukek Indian Reserve, which translates closely to “too small Indian Reserve”. The larger traditional territory known as Mimaju'nnullkwe'kati covers an area greater than 17,000km² and has never been surrendered or ceded. This area has been used by the members and ancestors of Miawpukek First Nation since time immemorial. Despite repeated land claims and court battles, this area has never been formally recognized. However, the right has never been extinguished and the people of Miawpukek continue the struggle for recognition to this day.

From their earliest time on Ktaqamkuk, the ancestors of MFN relied on hunting and trapping for sustenance. Diet and preferred location changed with the seasons. Spring and summer were typically spent mostly along the coasts, while the Mi'kmaq returned inland, along rivers and lakes, during fall and winter.

The caribou played a special role for the Mi'kmaq of Ktaqamkuk/Newfoundland, due to their size and abundance. They provided nutritious food but also hide for clothing and construction. However the expansion of European colonists throughout the eighteenth and nineteenth centuries pushed the Mi'kmaq further and further away from caribou herds, making it more difficult to rely on them for sustenance. Subsequently, large-scale caribou hunting resulted in catastrophic declines of the island population. This pressure nearly caused the extinction of the herd when it declined from an estimated 40,000 individuals in 1900 to approximately 2,000 in the 1930s (Bergerud, 1969). Adapting to the changing circumstances, the Mi'kmaq of Ktaqamkuk/Newfoundland were forced to shift their diets. While fish was always an important part of the Mi'kmaq diet, reduced access to the caribou caused fish, and Atlantic salmon in particular, to become much more important.

2.2 Rights and Interests

The Crown has a duty to consult and accommodate First Nations pursuant to section 35 of the *Constitution Act, 1982*. This is a legal requirement that has been repeatedly upheld by the Supreme Court of Canada. Moreover, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which has been adopted by Canada, requires that states cooperate in good faith with Indigenous peoples so that they obtain free, prior and informed consent. According to UNDRIP Section (2) and (3) of Article 32:

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

The proposed offshore drilling site is within fishing grounds that are part of the Traditional Territory of MFN currently used by community members. There are potential major environmental, cultural, and socio-economic risks associated with all phases of drilling and exploration that could impact MFN's rights and interests. The offshore drilling in Flemish Pass has the potential to cause direct and indirect impacts from all phases. Should the drilling program determine the presence of significant quantities of petroleum hydrocarbons and result in development of industrial extraction, there will be additional direct and indirect impacts on MFN's rights and interests.

MFN fisheries (offshore, inshore and land-based), traditional activities, and culture could be at risk from any potential spills, leaks, blowouts or other releases of petroleum, cuttings, lubricant, or other products from the proposed drilling. MFN rights to navigable waters may also be impacted from increased traffic in the region and in and around St. John's Harbour. These potential risks to the natural environment, navigation, and the community of MFN underscore the need for meaningful and ongoing consultation throughout the Environmental Assessment (EA) process, and the need for mitigation and accommodation measures to address these potential impacts to MFN rights and interests.

MFN relies on hunting, fishing and trapping for commercial, recreational and Aboriginal fisheries. Species targeted include salmon, mackerel, cod, herring, redfish, brook trout, rainbow trout, eels, capelin, smelt, tuna, whelk, scallop, snow crab, lobster, and surf clam. MFN possesses several commercial licenses for fishing in NAFO fishing zones 3P, 3KL, and 3LN (Figure 1). The community utilizes a Food, Social and Ceremonial licence to target species off the south shore in Zone 3P. Commercial fishing by MFN in zones 3KL and 3LN overlap with the Projects. Impacts to any of the species listed above represent potential effects on the Aboriginal rights of MFN.

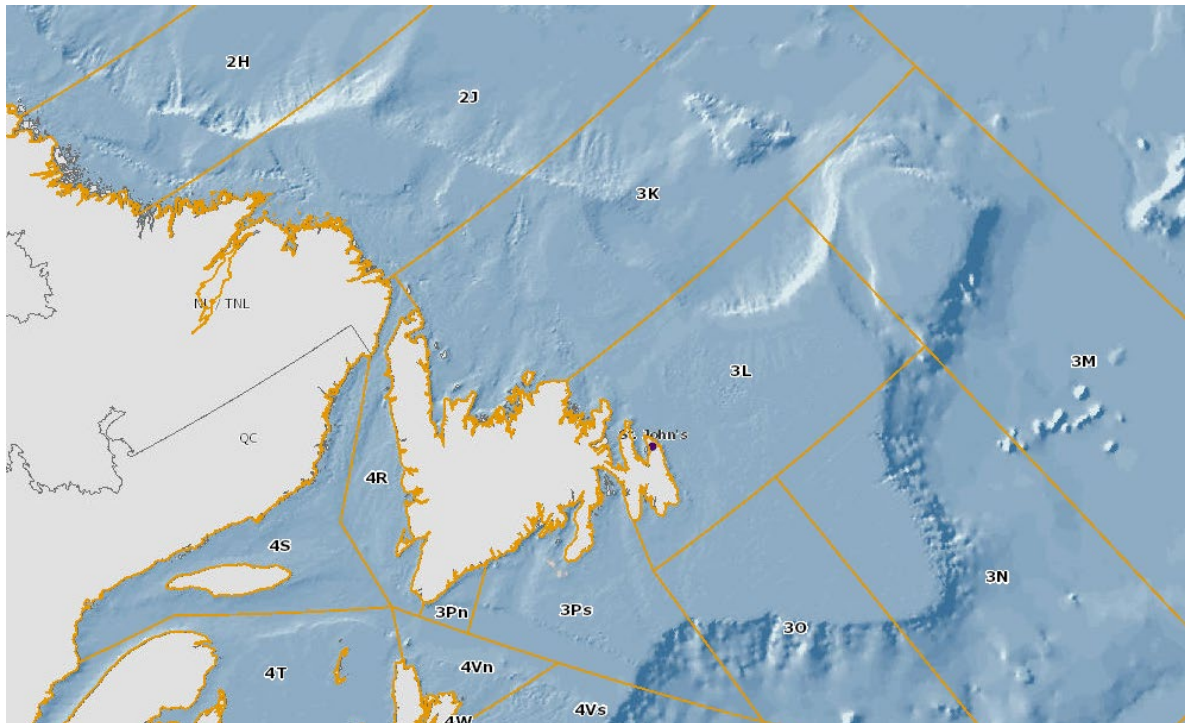


Figure 1. Northwest Atlantic Fisheries Organization (NAFO) Zones (DFO)

3.0 Comments on the Project, EA and Potential Conditions

Comment 1: The lag time between a potential well blowout and the deployment of a capping stack (such as was required during the Deepwater Horizon oil spill) is absolutely unacceptable to MFN. The Proponent states that a capping stack would be sourced from Norway and would take between 13 and

17 days to mobilize and deploy; a contingency stack has not been identified (which is concerning in of itself, as there would be no stack available in the event of two simultaneous blowouts). The Proponent has not stated whether having a capping stack situated locally (e.g., within Atlantic Canada) would result in reduced response times. The evidence provided by the Proponent does not support their claim that a locally stored capping stack would not speed up responses. For example, bringing in a capping stack from Europe would require additional time for mobilization, transport, and testing prior to initializing an attempt at capping. Furthermore, it is stated that the capping stack may be transported directly to the site well site by a specialized vessel. It is unclear how this is possible, considering capping stacks must undergo QA/QC upon arrival, which would result in further delays. This is on top of any unforeseen complications or delays, which are to be expected for a highly complex and dynamic situation such as an uncontained well blowout.

Recommendation 1: MFN asserts that it is critical to have a capping stack, along with the appropriate capacity for equipment modification and rapid staging and deployment, situated in Newfoundland or Atlantic Canada to mitigate the risks associated with an uncontained blowout. This is important on a Project-level basis but also to account for the cumulative risks of all current and future oil and gas projects. Whether this is funded by the Proponent, a consortium of all offshore oil and gas Proponents in the area, and/or the Crown is of no consequence to MFN: someone must fund and ensure this critical risk mitigation measure is in place to protect MFN’s rights (and those of all Atlantic Canadians) and to reduce the inequitable burden of risk MFN bears in relation to the exercise of our rights.

Comment 2: The southern Newfoundland population of Atlantic salmon is considered *threatened* by the Committee on the Status of Endangered Species in Canada and already faces many risks. The people of MFN have witnessed the continual and alarming decline of this species because of a range of factors including aquaculture, overfishing, forestry and at-sea mortality. Returns of adult salmon to the Conne River reached an estimated 398 individuals in 2019, a drop from approximately 454, 712, and 1,230 during the years of 2018, 2017, and 2016 respectively (Department of Fisheries and Oceans [DFO], 2019; pers. comm. Brian Dempson, DFO). This is down from an average of 2,432 from 1992–2016 and highs of 10,000 reached during the 1980s (Demson, O’Connell, and Schwarz, 2004).

The continued exploration in offshore Newfoundland will potentially exert direct impacts and cumulative effects on Atlantic salmon through seismic effects, changes to water quality, major accidents and malfunctions and more. These effects may cause stress to migrating salmon, induce behavioural changes, reduce feeding efficiency and, in limited circumstances, direct mortality. Atlantic salmon migrate through the project area on their way to feeding grounds, and again on their return journey to Conne River, and other rivers on the south shore of Newfoundland. The population of these salmon is already in such a poor condition that additional cumulative effects may could be the “straw that broke the camel’s back,” resulting in the extirpation of salmon from rivers in MFN traditional territory, rivers that have had salmon runs since time immemorial. Any negative effects to Atlantic salmon from the Project would represent a direct impact the rights and interests of MFN.

Recommendation 2a: Due to the value of Atlantic salmon to the MFN community, the continual decline in numbers of returning adults, and the potential effects of the Project, it is necessary that the

Proponent apply the precautionary principle to mitigate potential harm, especially given the already extremely fragile state of the stock. Moreover, any serious harm to fisheries must be offset through an Authorization under the Fisheries Act. This may be achieved in part through the delivery of funds to MFN for engaging in a feasibility study for evaluating potential recovery strategies of Atlantic salmon in southern Newfoundland. This research would benefit the local restoration priorities for Atlantic salmon. According to the Fisheries Productivity Investment Policy: Proponent Guide to Offsetting (DFO, 2013), providing funding for this type of research can be considered a Complimentary Measure. The results of this feasibility study would be used to inform recovery actions taken by MFN, the province of Newfoundland and Labrador, and the DFO.

Recommendation 2b: Based on the outcome of the feasibility study described above (Recommendation 2a), MFN will identify preferred recovery strategies for Atlantic salmon on the south shore of Newfoundland. In order to undertake the recommendations from this study and the recovery of salmon, the Proponent should provide funding to MFN. In this way, the Proponent may be considered a supporting partner in the recovery efforts.

Recommendation 2c: The Proponent has not completed any targeted baseline monitoring of salmon movement through the Project Area. As a result, baseline data on the migration and behaviour of Atlantic salmon while at sea is insufficient to adequately assess the effects of the Projects. To better evaluate the potential effects of the Project on Atlantic salmon migrating through and near the Project Area, the Proponent should provide funding for tracking studies of Atlantic salmon (e.g. using satellite pop-up tags) to be completed before any exploration activities take place. These studies would improve knowledge of salmon movements during the post-smolt and adult stages of their life-cycle. Once baseline data has been collected, it will be necessary for follow up monitoring to occur during and after the exploration Project.

Rather than initiating new projects, the Proponent should provide funding to support ongoing research projects or programs. This would allow the research protocol for any study to be designed by established organizations and integrated with existing research. Organizations involved in the tracking of marine fishes include MFN, the Atlantic Salmon Federation, the Ocean Tracking Network, and the DFO. These organizations are already engaged in projects aimed at understanding the movements of Atlantic salmon while at sea. In addition to supporting these studies, funding for capacity building and training of MFN community members should be provided directly to MFN. This funding should be in addition to any contributions made on behalf of the Proponent to the Environmental Studies Research Fund (ESRF).

Comment 3: The current approach being taken by Proponents for involvement and capacity support of Indigenous communities in EAs for offshore exploration and development projects is seriously deficient. MFN is being inundated with requests for meetings, input, and document reviews. This includes requests for participation during the Environmental Assessment process, post approval, and during exploration (e.g., EIS documents, communication plans, spill reports etc.). With very limited staff capacity, MFN is significantly challenged to participate effectively in the process. This will only get worse as more projects are proposed or move forward in the exploration process, into Significant Discovery

Licenses or Production Licenses. The current situation does not in any way represent meaningful consultation by the Crown—who ultimately bears the Duty to Consult—or proponents, in discharging procedural aspects of the Duty.

The complex nature and longevity of these exploratory drilling projects warrant more meaningful consultation and involvement of the affected Indigenous communities throughout the entire lifecycle of the Project. Moreover, Proponents should coordinate this involvement to mitigate the cumulative effects of the oil and gas industry on the health and socioeconomic conditions of Indigenous communities. Due to the complexity and number of projects and documents which must be reviewed, adequate capacity funding/support is required to enable: a) effective understanding and evaluation of technical and regulatory documentation; b) community-based decision-making about MFN's response to offshore projects such as Orphan Basin; and c) planning and preparation to enable MFN's involvement and participation in the regulatory process and the potential socioeconomic opportunities MFN may wish to pursue associated with the projects.

Recommendation 3: MFN firmly believes that an environmental advisory committee (EAC) must be formed as soon as possible for reviewing this Project and other offshore projects. Members of the EAC may include a representative from the all potentially effected Indigenous communities, a representative from the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) and/or the Impact Assessment Agency of Canada (IAAC). The Proponent, or a consortium of Proponents, must provide sufficient funding to support the EAC in its endeavours. The EAC would act as a technical advisory committee and would provide designated Indigenous monitors to support the various follow-up monitoring programs. The EAC would review and provide input on *all* monitoring programs, response plans, etc. including, but not limited to, the Fisheries Communication Plan, Spill Response Plan, Spill Impact Mitigation Assessment, seabed investigation survey results, and results from the various follow-up monitoring programs. MFN's perspective is that the creation of an EAC would be an important step towards meaningful engagement of Indigenous groups, something that has not occurred in the past.

Comment 4: Results from the follow-up programs will be used to verify predictions made in the EA and/or to determine the effectiveness of mitigation measures. If it is decided that additional mitigation measures are required, the Proponent will be required to develop and implement these mitigation measures in a timely manner (Condition 2.7.4). Input from Indigenous communities should be considered when developing additional mitigation measures for the Project.

Recommendation 4: MFN is in general agreement with this Condition, as an adaptive management approach can help to effectively identify and mitigate unforeseen effects of the Project. However, MFN believes the results of these follow-up programs should be shared with the community for review and input. Based on the input provided, the Proponent shall develop additional mitigation measures through a consultative process with MFN and other Indigenous communities.

Comment 5: The Proponent will be required to develop, and conduct, follow-up programs for fish and fish habitat, marine mammals and sea turtles, and migratory birds, to verify the accuracy of predictions

made during the EA and the effectiveness of mitigation measures (Condition 3.12). The results from these follow-up programs may be shared with MFN.

Recommendation 5: MFN requires participation of community monitors in follow-up programs for fish and fish habitat, marine mammals and sea turtles, and migratory birds. In addition, MFN requests that the Proponent provide the necessary training for community members to participate as monitors and the resources required for an annual community meeting in MFN to share the results of monitoring activities and for the MFN monitor(s) to be able to participate in presenting such results to the community.

Comment 6: Condition 6.7 of the potential conditions states that the Proponent shall consult with Indigenous groups during development of the Spill Response Plan and share the final version of the plan once completed. This condition does not elaborate on how MFN will be resourced to facilitate this consultation.

Recommendation 6: MFN requires that sufficient capacity funding be provided by the Proponent to facilitate meaningful participation in consultation and review of the Spill Response Plan. MFN has outlined its requirements on a number of occasions for what constitutes meaningful participation, including resources for internal community consultation and the involvement of independent technical advisors, and we suggest that the Crown and Proponent refer to these previous communications in addressing this recommendation.

Comment 7: Condition 2.4 states that:

“The Proponent shall, where consultation with Indigenous groups is a requirement of a condition set out in this document, communicate with each Indigenous group with respect to the manner by which to satisfy the consultation requirements referred to in condition 2.3, including methods of notification, the type of information and the period of time to be provided when seeking input, the process to be used by the Proponent to undertake impartial consideration of all views and information presented on the subject of the consultation, the period of time to advise Indigenous groups of how their views and information were considered by the Proponent and the means by which Indigenous groups will be advised.”

The information on consultation activities must be provided to MFN in a timely manner and with adequate resources so that MFN may plan engagement and consultation activities accordingly.

Recommendation 7: MFN requests that the Proponent provide a list of all activities for which consultation is expected to occur during the Projects. This may include, but is not limited to, the Spill Response Plan, Fisheries Communication Plan, Follow-Up Plan, and Monitoring Plans. This list should include the proposed schedule for consultation and funding amounts provided to MFN for consultation on each item.

Comment 8: The Proponent noted that it had invited MFN, amongst other Indigenous groups, to submit Indigenous Ecological Knowledge (IEK) related to the Project for consideration. However, the collection of this knowledge takes planning, time, coordination, and resources. IEK is a living body of knowledge

that is passed down through generations. Individuals grow in their knowledge throughout their entire lives by listening, observing and doing. IEK is also often rooted in the natural world and can be very specific and detailed when it comes to places and landscapes. This knowledge is incredibly valuable for informing design, mitigations, monitoring, impact assessment and accommodation. It is being omitted to the detriment of the EA process.

Thus far there have been no meaningful attempts by the Proponent or IAAC to collect or integrate any IEK from MFN. The Proponents have offered funding to complete a highly scoped IEK study which would then be used for all offshore projects going forward. As previously stated by MFN, this approach is not commensurate with the planned level of offshore activity that is currently happening, and which is planned in the future, and is not acceptable to MFN. This has been communicated to both the Crown and the Proponent on several occasions. Alternatively, the Proponents are seeking to fund an IEK project through the ESRF, however it is unclear at the time of writing whether that will become a reality.

Recommendation 8: IEK is difficult to collect and must be done with care and to appropriate standards. In addition, sensitive information cannot just be handed over to the Proponent without ensuring that the proper protocols and protections for MFN and any participating community members' intellectual property (IP) and confidentiality are in place. MFN requires that sufficient resources for the collection of the information requested be provided. This should be completed in accordance with MFN's engagement protocol. Without this highly important baseline information (both in terms of the EA process and the process to determine potential Impacts to MFN's S. 35 and other communal rights) the EA must be considered incomplete. MFN has shared its Guidebook for the collection of Aboriginal Traditional Knowledge with the Proponent. This detailed guide provides information on the steps and methodology necessary for a successful IEK study.

For the EA process to be completed such that the Honour of the Crown and its other obligations are met, the Proponent and/or IAAC must provide resources to MFN for internal coordination, the collection of IEK, and reporting. It would then be the responsibility of the Crown to ensure that this IEK is then meaningfully considered and incorporated into the EA process and the Crown consultation process.

Comment 9: Seabirds, including several bird species at risk (ivory gull, red-necked phalarope, ross's Gull, etc.), have been identified as potentially occurring in the regional assessment area and may interact with the Project. It is well understood that migratory birds are attracted to light emissions, especially during migration and in poor weather conditions where visibility is low (Marquenie et al., 2014; Day et al., 2015), often resulting in injury and mortality through strandings, collisions, increased predation, or other vessel-based threats. The Proponent has acknowledged that there is uncertainty with respect to attraction distances to flaring and lighting. To mitigate the potential impacts of offshore lighting on seabirds, the Proponent should implement a precautionary approach based on best practices.

Recommendation 9: MFN requests that the Proponent complete an assessment of lighting equipment on the offshore installation to determine what lighting is essential for safety purposes and if the potential exists to reduce external light emissions. This may be partially assessed by taking photographs in the dark from outside the installation to detect significant sources of light emissions (OSPAR

Commission, n.d.). Lighting levels on the installation should be reduced to the minimum required for safe operations, where possible.

To further mitigate the effects of light emissions beyond what has been proposed in the EA (e.g., water curtains), the Proponent should align lighting to minimize outward emissions (i.e., minimize lighting facing out and up from the platform) and implement the use of light shields to reduce upward radiation of light emissions. The Proponent should also consider the use of manual or automatic switches which allow for platform lights to be shut off during unmanned periods, aside from those lights required to comply with regulations on aviation and shipping navigation.

It is acknowledged that the Proponent assessed modified spectral lighting as an alternative means to the Project; however, it was deemed unfeasible as modified spectral lighting was not available on mobile offshore drilling units (MODUs) and supply vessels with the technical capability to support the Project. This technology has shown promising results in helping to reduce shorebird attraction to offshore oil platform lighting. Studies conducted in the North Sea found that the use of modified spectral lighting on offshore platforms can reduce the disturbance of birds by 50–90% (Marquenie et al., 2008; Marquenie et al., 2014). Understandably, this technology is still in its infancy and has yet to be widely implemented in the offshore oil industry. However, the Proponent should consider devoting funds to further research and develop this technology to help expedite its use in the offshore oil industry.

Comment 10: The IAAC has identified transporting spent or excess synthetic-based muds, that cannot be re-used during drilling operations, to shore for disposal at an approved facility to mitigate the effects of drill cuttings on fish and fish habitat (Condition 3.2). While MFN is in support of this Condition, there is currently no approved treatment facility located in the Atlantic region of Canada and it is unclear where spent or excess synthetic-based cuttings will be shipped for disposal.

Recommendation 10: At the time of writing, there are four operating oil and gas production projects, one proposed production project, and ten proposed exploration programs off eastern Newfoundland. Due to the scope of proposed offshore oil and gas activities, including the existing offshore drilling production and proposed exploration, the Proponents should pool resources to create an approved treatment facility in Newfoundland. All cuttings from existing and proposed drilling could be directed to this facility for treatment and disposal. This will benefit the environment by reducing the loading of contaminants released and reduce transportation requirements, and it will benefit the local economy by creating local employment.

Comment 11: The Proponent and the Agency have both stated that a major uncontrolled spill may affect the perceived quality of fish harvested in the region. This is a reasonable perception, as tainting could occur if fish were exposed to hydrocarbons and absorb oil-derived substances into their tissues. This could have serious detrimental effects on MFN, as our community is reliant on fish for sustenance and our commercial fishers rely on the ability to market a safe and healthy product.

Recommendation 11: MFN requests that the Proponent commit to monitoring hydrocarbon and heavy metal body burden in benthic organisms, fish, and other commercially harvested species. In the event of

a large or uncontrolled spill, this will provide baseline data to which increases in hydrocarbon and heavy metal body burden can be compared and may help to minimize negative perceptions in relation to the quality of fish and other commercially harvested species.

Comment 12: DFO has advised that as a precautionary measure it would support extending the requirement for immediate shut-down of air source array(s) to include the observation of any marine mammal or sea turtle species within a 500-metre radius of the platform (“the safety zone”), as opposed to the minimum requirement of shut-down if a species at risk is present. The effects of noise on cetaceans is of particular concern, as they are dependent on sound for communication, navigation, feeding, and predator avoidance. Precautionary measures should be taken to mitigate the effects of *all* noise sources resulting from project activities.

Recommendation 12: The Proponent has stated that “helicopters would be used for crew changes on a routine basis,” although the number of transits per day was not provided. This will likely represent a significant source of frequently reoccurring sound, the effects of which may be detrimental to sea turtles and marine mammals. A review and discussion on progress in the study of aircraft noise effects on marine mammals found that in each of the studies reviewed, cetaceans reacted to aircraft noise to some extent, most often by diving (Luksenberg & Parsons, 2009). As a precautionary measure, MFN requests that if a sea turtle or marine mammal is within the 500 m safety zone, that helicopter take off from the MODU be restricted until the sea turtle or marine mammal has moved outside of the safety zone.

Comment 13: The deposition of drill cuttings on the seafloor may cause health effects and/or smothering on marine invertebrates, corals, sponges and benthic fishes. This deposition of deleterious substances is an activity that results in serious harm to fish habitat under the *Fisheries Act*.

If these activities occurred in freshwater habitat, then a Fish Habitat Offsetting Plan would be required. It is unclear why this is not required here.

Recommendation 13: MFN believes that the deposition of drill cuttings on the seafloor represents a clear case of *harmful alteration, disruption or destruction* (HADD) under the *Fisheries Act*. These impacts must be offset through an Authorization from DFO and the creation of a Fish Habitat Offsetting Plan. The Proponent must prepare these plans and share them with MFN for review and comment.

4.0 Conclusion

MFN has not asked for this Project: we currently see few, if any, meaningful benefits arising from it for our community, and we do not wish to bear the risks associated with it. These risks have been described by MFN on several occasions and highlighted by the spill and lack of clean up of 250,000 litres of oil from the SeaRose project. Despite these significant concerns, we have indicated our willingness and openness to engage with the Proponent to understand the Projects, make our concerns known and work with the Proponent to address those concerns and potentially reach a mutual understanding. However, the work that is required to get to a place of understanding for these large, complex projects is beyond the

capacity of our community. Therefore, as we have described on several occasions, our community requires adequate resources to support our staff capacity, advice from independent experts, expenses (e.g., travel), and the gathering of Indigenous Ecological Knowledge and traditional use information from elders and fishermen.

MFN has repeatedly and clearly stated the needs of our community for consultation on these projects to the Proponent and the Crown. These have been rejected repeatedly. MFN has been frustrated and disappointed with the unwillingness of IAAC, and offshore exploration Proponents, to provide the resources required by our community to engage on the proposed projects. More recently, there have been some positive developments with the Proponents, who have tentatively agreed to provide some capacity funding to support MFN's engagement. However, at the time of writing, no formal agreements have been signed, and until such time as those agreements are executed and fulfilled, it is the position of MFN that the duty to consult has not been met.

Legal Requirements for Meaningful Consultation

It is clear to MFN that a high level for the duty to consult and accommodate is triggered by the projects. The legal obligation for the duty is upheld by the Supreme Court of Canada and is a requirement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which has been adopted by Canada. The requirements of UNDRIP are that states cooperate in good faith with Indigenous peoples to obtain free, prior and informed consent (FPIC), from Article 32 Sections (2) and (3):

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Moreover, Section 5 (1) (c) of the Canadian Environmental Assessment Act 2012 requires that:

5 (1) For the purposes of this Act, the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a designated project or a project are

(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 requirements of CEAA 2012 section 5(1)(c) are directly applicable to MFN for the Projects. There are serious environmental, cultural, and socio-economic risks from all phases of the Project that have the potential to negatively impact the community of MFN's health and socio-economic conditions, current use of lands and resources for traditional purposes, and rights and interests. The proposed offshore exploration projects overlap with the Traditional Territory of MFN where our ancestors have fished, hunted, gathered, lived on since time immemorial. MFN members currently use and rely upon the coastal and offshore area where the Project is proposed for subsistence, commercial, recreational fisheries and ceremonial practices to support traditional practices, jobs and community well-being.

Our traditional activities and culture are in jeopardy due to the potential negative impacts associated with marine shipping, drilling, seismic blasting, noise, habitat loss, spills/leaks/releases and other environmental effects of the Project. These activities may directly affect:

- Migratory fish (e.g., salmon and eels) which travel through the project area and into the rivers in our traditional territory. These species hold tremendous cultural value and we have spent hundreds of years stewarding them to ensure they prosper. Now, due to a range of known and unknown causes, these species are in decline. Atlantic salmon, in particular, are experiencing a dramatic drop off with Adult returns to the Conne River of only 677, 454, and 398 in 2017, 2018 and 2019 respectively (DFO, 2019). This is down from an average return of 5,770 adults from 1984–1991. Indeed, oral history tells us that the numbers used to be much higher in the past. The cumulative effects of this project may contribute further to this decline, a risk that is unacceptable to MFN.
- MFN's commercial and communal fisheries. Our community holds commercial and communal licences for and fishes a variety of species including tuna, crab, herring, mackerel, cod, haddock, swordfish, scallop, capelin, seal, sea cucumber, whelk, and surf clam. We are constantly expanding (in terms of volume and species fished) these fisheries, which support Miawpukek fishers, their families and the community.
- Food, social and ceremonial fisheries off southern Newfoundland for species including lobster, snow crab, scallop, brook trout, mackerel, capelin, cod, eel, surf clam and redfish.
- Health and socioeconomic conditions of fishers, their families and community members who rely on the benefits (e.g., childcare, school programs) which our communal fisheries support. Impacts to fisheries will translate into lost jobs and lost income. This would harm the financial health, physical health and mental health of fishers and their families.

MFN members have a deep respect for the land and waters of Mi'kma'ki that would be directly impacted by this Project. These risks to the natural environment and the community of MFN emphasize

the need for meaningful and ongoing consultation throughout the EA process and the need for mitigation and accommodation measures to address these potential impacts to MFN rights and interests.

Formal Request for Meaningful Consultation with Miawpukek First Nation

Given the potential impacts to our Aboriginal and asserted rights, we expected that the Proponent would engage MFN early and often by providing information relevant to the Project in a timely manner and capacity funding to support engagement activities. Canadian civil courts and the Government of Canada's own guidance to civil servants and those delegated the Duty to Consult underline the need for these aspects of consultation for it to be considered meaningful. This has not occurred. Communication of information and engagement support from the Crown and the Proponent have been lacking during this process. MFN's capacity to properly review and engage adequately with the current process is limited. The large burden and amount of attention required by these Projects has created stress and tension with the current situation and leaves the community leadership with serious doubt over the ability of the Crown to fulfil their legal requirements.

To date, the meagre participant funding provided by IAAC has been used to develop initial comments, engage in communication with IAAC and the Proponent, participate in meetings and workshops, review relevant documentation and a diversity of other activities. However, the limited funding is not sufficient for MFN to adequately understand the project, engage with community members, evaluate technical/environmental concerns and provide meaningful input. We strongly desire the ability to participate but our hands are tied by the lack of capacity funding.

We believe it is to our mutual benefit for the Crown/Proponent to develop a meaningful relationship, and related agreements, to engage with MFN in this process. This would include a commitment to providing capacity and funding support to MFN to be meaningfully engaged. We feel these are reasonable requests and yet they have been repeatedly rejected by the Proponent and the Crown. While the Proponent has tentatively accepted a dramatically reduced request for capacity funding, no formal agreement has yet been reached.

Path Forward for Miawpukek First Nation

The members of MFN have not asked for these offshore developments. If they go forward, we will be forced to bear the risks and suffer any negative consequences and environmental effects. MFN has never come to any agreement with the Proponent for our participation in this EA process and are of the opinion that no meaningful consultation has occurred to date—only information sharing. The poor planning and lack of consideration of our knowledge, rights and interests will only exacerbate the effects of the projects on our community. We continue to voice our concerns that the Duty to Consult has not been met, implementation of UNDRIP is not occurring and that the requirements of *CEAA 2012* are not satisfied. Ultimately this means that the Crown and the Proponent are far from satisfying their obligations for consultation and engagement with MFN. This is not in line with the legal requirements for consultation nor in the spirit of Truth and Reconciliation.

Going forward MFN will take all the steps within our power to protect our community and the environment from the potential harm associated with these Projects. For the sake of open and honest communication, we have provided a brief description of steps that are being considered.

1. MFN will issue a public statement regarding our perspectives on the offshore projects and the inadequate consultation that has occurred. This will include an appeal to the Prime Minister, Minister of the Environment, the people of Canada, and our fellow Indigenous communities, indicating that the Crown is failing to fulfill their Duty to Consult on these Projects.
2. MFN will reach out to other Indigenous communities across Canada to support us in our cause, as we believe the approach being taken by the Crown and Proponent runs counter to Reconciliation and thus affects all Indigenous peoples.
3. MFN will notify representatives of other sovereign states and Indigenous peoples outside of Canada (e.g., the Indigenous peoples of Greenland, Iceland, Ireland, and other European Union member states) who may be impacted by the development of oil and gas in offshore Newfoundland to encourage them to provide letters of comment and request participation in the EA processes for the offshore projects.

If the Proponent and the Crown are willing to engage with MFN in a meaningful and respectful manner, demonstrated by meeting our requests for capacity and engagement funding support (for which agreement in principle has been reached but no formal agreements have been signed), and commit to a defined engagement process which offers us certainty that our rights and interests will be respected and accommodated, then we are willing to come back to the table and engage in open and honest discussion. However, if this does not occur the community of MFN will be forced to conclude that the projects pose too great a risk to our fisheries, our brother salmon, our environment, and our way of life. For this reason, *MFN requests that the Crown take one of two actions:*

1. Determine that the projects pose a risk of significant environmental effects and recommend that the Minister reject the applications for approval, or
2. Make no decision or proceed with any further steps toward approval of the Project until the requirements of meaningful consultation with MFN are met.

Should the Crown recommend that the Projects be approved, then the recommendations within this report (described in Section 3.0) must be fully addressed through the final conditions of approval.

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