



BP Canada Energy Group ULC Newfoundland Orphan Basin Exploration Drilling Project

Review of Draft Environmental Assessment and Draft
Potential Conditions

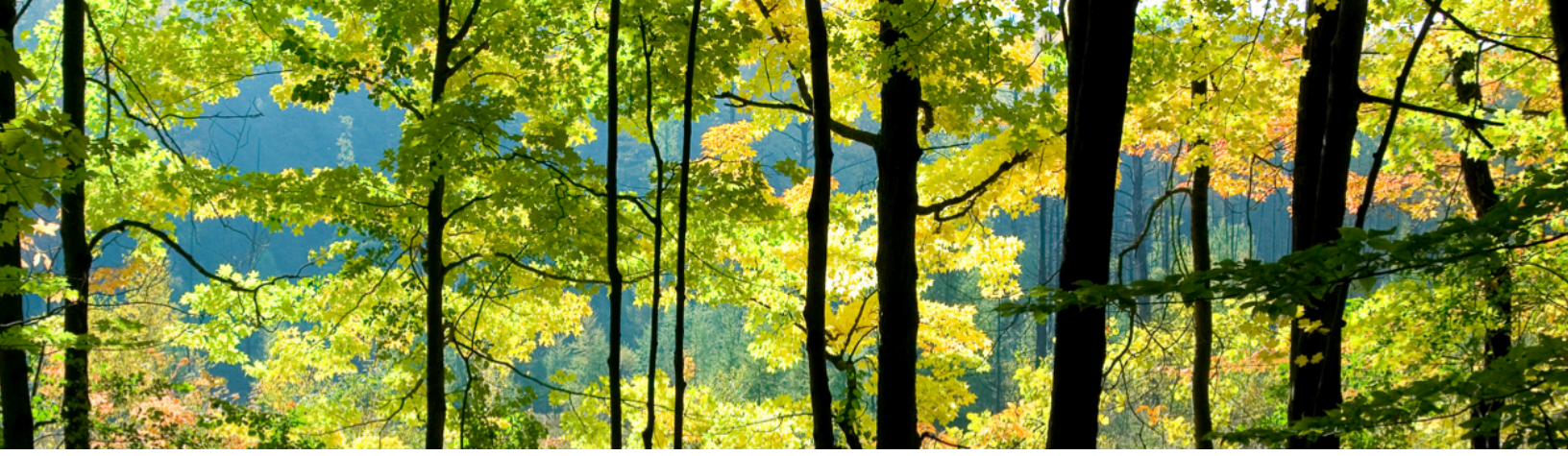
Prepared for:
Mi'gmawe'l Tplu'taqnn Incorporated

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

December 2, 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 BP Canada Energy Group ULC Newfoundland Orphan Basin Exploration Drilling Project. This review was completed by Rachel Speiran, MA; Allie Mayberry, BSc, MA, Levi Snook, BSc, and Meaghan Langille, BSc; EPT, 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>

Rachel Speiran
Senior Community Development Consultant
Project Director
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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) draft Environmental Assessment (EA) Report and draft Potential Environmental Assessment conditions for BP Canada Energy Group ULC's (the Proponent) proposed Newfoundland Orphan Basin 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 socio-economics 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
4. Migratory birds
5. Cumulative effects
6. The need for Mi'gmaw Indigenous Knowledge and Land Use and Occupancy Study (IKLUOS) and socio-economic impacts study, particularly for commercial Atlantic salmon and swordfish fisheries
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

BP Canada Energy Group ULC has proposed an offshore drilling exploration program in the Grand Banks region, within the west Orphan Basin with license applications being held between approximately 343



km and 496 km northeast of St. John's, Newfoundland and Labrador, to determine the potential for oil and gas resources (Stantec, 2018).

Exploratory offshore drilling is a designated activity under Section 10 of the Canadian Environmental Assessment Agency's (the Agency) *Regulations Designating Physical Activities*. Accordingly, BP Canada Energy Group ULC has prepared and submitted an EIS to the Agency to fulfill the requirements of an EA under the *Canadian Environmental Assessment Act (2012)*. The EIS also works to fulfill the requirements of the Canada-Newfoundland Offshore Petroleum Board (C-NLOPB) for an EA Report as part of the Operations Authorization (OA) process (Stantec, 2018).

A Project specific EA is also a requirement of the *Canada-Newfoundland Atlantic Accord Implementation Act* and the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*.

The designated Project includes the drilling, testing, and eventual decommissioning of up to twenty exploratory wells to be drilled in 2020, pending regulatory approval. The proposed Project would be located within exploration licenses (ELs) 1145, 1146, 1148, and 1149 with specific wellsite locations not yet known. The locations of the proposed Project Area and respective ELs are shown in Figure 1 below.

In addition to regulation and approval through the Agency, approvals are also required through the C-NLOPB. Specifically, the Project will require an OA to be issued from C-NLOPB. Before the C-NLOPB can issue to OA the following must be submitted and approved:

- An Environmental Assessment Report
- A Canada-Newfoundland and Labrador Benefits Plan
- A Safety Plan
- An Environmental Protection Plan, including a waste management plan
- Emergency Response and Spill Contingency Plans
- Financial security measures
- Certificates of Fitness for the equipment proposed for the Project

(Stantec, 2018).



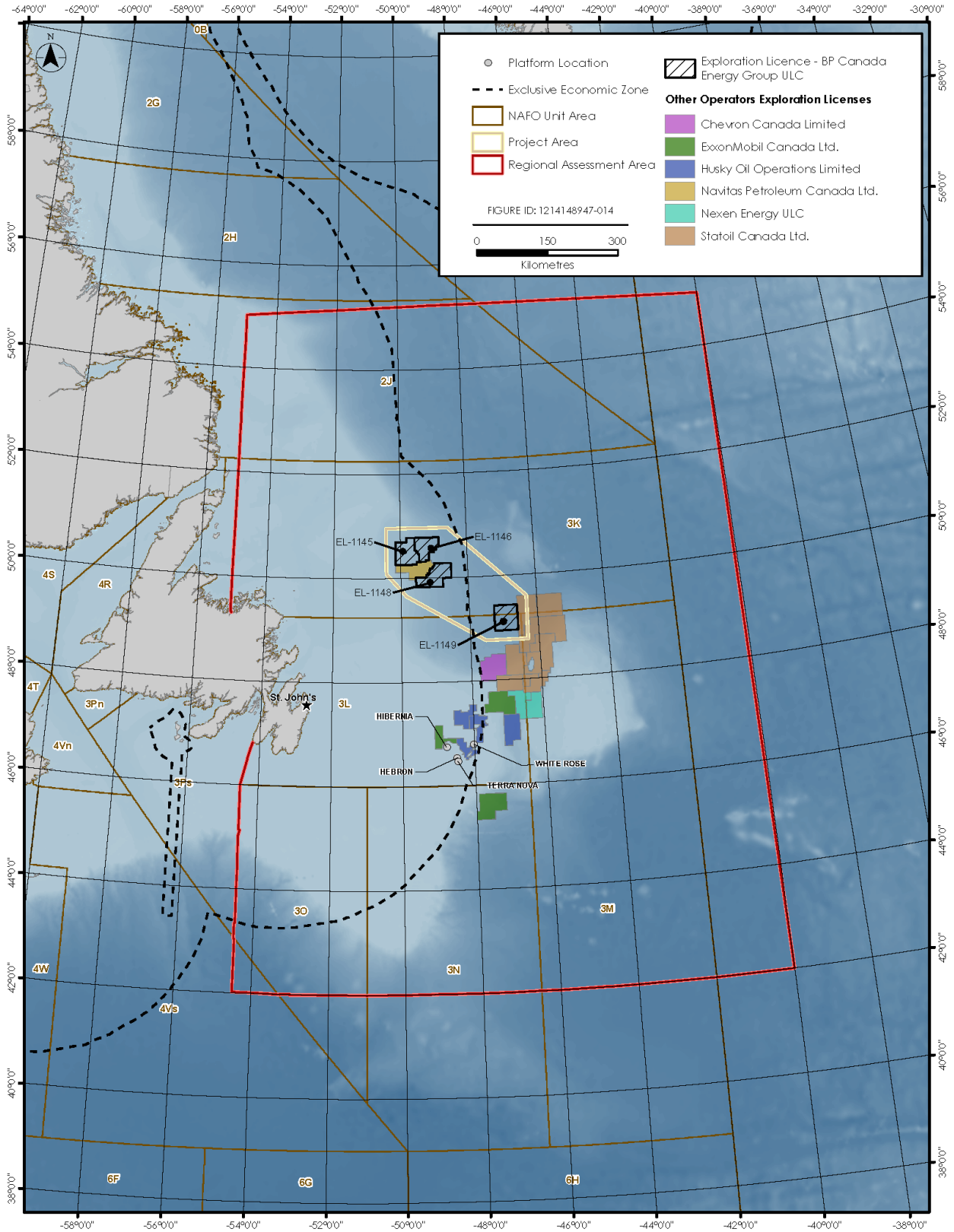


Figure 1 Locations of the proposed BP Newfoundland Orphan Basin Exploration Drilling Program. Source: Stantec, 2018



Once finalized and approved, the proposed wells will be drilled using a Mobile Offshore Drilling Unit (MODU) within the Els, including the establishment of a safety zone, with support by platform supply vessels and helicopters based out of existing facilities in eastern Newfoundland. The proposed MODUs will be either a drillship, semi-submersible rig, or jack-up rig, as shown in Figure 2 below.

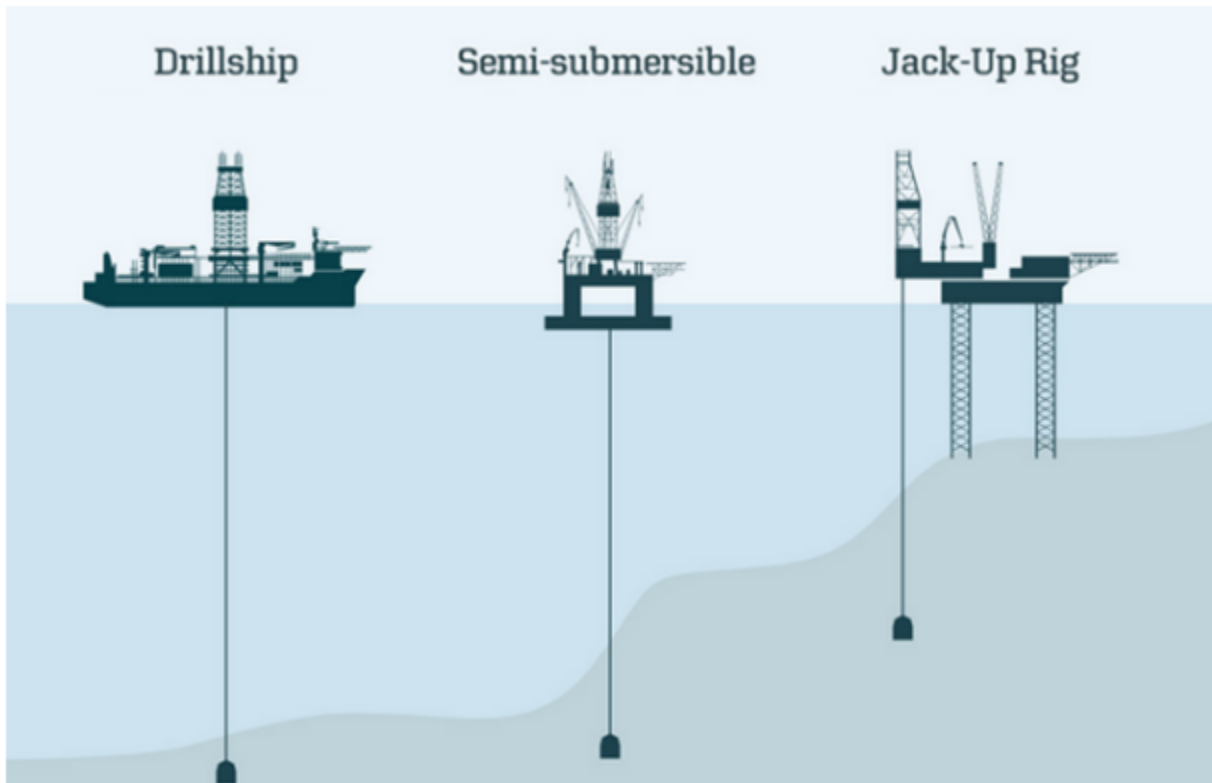


Figure 2 Examples of potential MODU types for the Project. Source: Stantec, 2018,

During the exploration projects, should hydrocarbons be discovered, the material will be released through flaring. “All flaring will be via one of two horizontal burner booms, to either a high efficiency burner head for liquids, or simple open-ended gas flare tips for gases” (Stantec, 2018). High efficiency combustion equipment will be used that will maximize complete combustion with the goal of reducing the likelihood of black smoke in flaring activity and drop-out of unburned hydrocarbons liquids onto the sea surface (Stantec, 2018).

The full well-testing operational process would occur over a one-month window after drilling is complete. However, it is possible that it could extend up to three months from testing through to well abandonment (Stantec, 2018).



3.0 Mi'gmaq Rights and Interests Relative to Project Interactions

For this review, Mi'gmawe'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, Tjipôgtôtjg (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 are the Indigenous people (known to ourselves as L'Nu'g) whose traditional territory, known as Mi'gmaq'i, encompasses the lands and waters of what is currently known as Nova Scotia, Prince Edward Island, New Brunswick, southern and western Newfoundland, the Gaspé area of Quebec, Anticosti Island, the Magdalen Islands, and sections of the Northeastern United States (D. Simon, personal communication, December 14, 2018). The Mi'gmaq have occupied, relied on, used, and been stewards of the lands and waters in Mi'gmaq'i 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 (Government of New Brunswick, 2011).

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 well-being 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 by sections 2.3, 3.2.2, and 4.2.2 of the EIS Guidelines, BP has included virtually no Mi’gmaq Indigenous Knowledge or Socio-Cultural-Economic Baseline Information, from MTI and MTI member communities, into their respective Project’s Environmental Assessment processes to date. More specifically, BP relied solely on existing Indigenous Knowledge, Land Use, and Occupancy information gathered in relation to separate resource development projects. The methodology used for the characterization of Indigenous Knowledge (IK) for the Project from a data collection and analysis perspective, is completely insufficient and regionally/culturally inappropriate in capturing Mi’gmaq’s current use of traditional lands and resources. As evidence, less than a handful of interviews with only one NB Mi’gmaq community (Fort Folly) was included in the IK study. In no way can this data be considered complete or representative of the broader spectrum of fishing and resource use and interests of the New Brunswick Mi’gmaq Nation.

Although the Proponent has demonstrated a consideration of existing Indigenous Knowledge, Land Use, and Occupancy information from MTI there is little to no indication of efforts being made to collect and integrate Project and site-specific information. Review Findings

The following sections present the results of SVS’s review of the Impact Assessment Agency of Canada’s (IAAC) Project EA Report and where relevant, the Project’s draft conditions. The high-level review focused on key issues and concerns related to potential impacts on the marine environment, marine mammals, cumulative effects, accidents and malfunctions, socioeconomics and community well-being as they relate to the rights, values and interests of MTI First Nation communities.

3.3 Marine Fish and Fish Habitat

3.3.1 Evaluation and Recommendations

Comment 1: The following section describes issues from reviewing all information related to the marine environment provided within both the EIS and the EA and provides comments and recommendations to resolve the issue or issues identified: MTI remains concerned about the potential impacts of the Project on Atlantic salmon. Fisheries and Oceans Canada (also referred to as the Department of Fisheries and



Oceans or DFO) provided further information on the migration patterns of Atlantic salmon in the Northwest Atlantic Ocean and on the potential effects of the Project. The DFO advised that Atlantic salmon that spawn in the rivers of eastern Canada (including New Brunswick) travel throughout the Northwest Atlantic Ocean and that there remains the potential for Atlantic salmon to pass through the Project Area en route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. Following the filing of the EIS, the Agency acknowledged the gaps in understanding of Atlantic salmon migration patterns in the North Atlantic and indicated that the Proponent would be required to 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 has established the Anqotum Resource Management, which is an Aboriginal Aquatic Resources and Oceans Management 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 to salmon populations important to MTI. In addition to the potential ESRF-funded studies, 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.

Comment 2: The Agency notes within the EA that given the uncertainty about Atlantic salmon and the importance of the species to Indigenous groups, the Proponent *would be* required participate in or support research on the presence and distribution of Atlantic salmon in Eastern Canadian offshore regions. The Agency states that additional research on the presence, migration, and distribution of Atlantic salmon may be supported through the ESRF and that in May 2019 a call for proposals for studies related to Atlantic salmon was issued. Despite making the statement that the Proponent would be required to support research, this obligation is not included in the Project Conditions.

Recommendation 2: In order to ensure the Proponent is held accountable for following through on the Agency's recommendation, the provision to support research toward Atlantic salmon should be included in the *Potential Conditions under the Canadian Environmental Assessment Act, 2012*.



Comment 3: The Proponent has not included Indigenous Knowledge from MTI knowledge holders in drawing conclusions on interactions between Atlantic salmon, swordfish, bluefin tuna and the Project Area.

Recommendation 3: The Proponent should engage MTI in conducting a focused Indigenous Knowledge and Science Study with respect to potential interactions between the Project Area and Atlantic salmon, swordfish and bluefin tuna.

3.4 Marine Mammals and Migratory Birds

3.4.1 Evaluation and Recommendations

The following section describes issues identified through a scoped review of marine mammals and migratory birds provided within the EA and provides comments and recommendations to resolve the issues identified.

Comment 4: MTI remains concerned about the level of detail in the Proponent’s plan for marine mammal monitoring. Specifically, there is a lack of detail on marine mammal observation protocols that will be implemented during Project vertical seismic profile (VSP) surveys. 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). MTI is encouraged that the Agency will require the Proponent to concurrently implement passive acoustic monitoring during VSP surveys, as this method 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 Orphan Basin. However, detailed information on both visual observation and passive acoustic monitoring protocols still needs to be provided.

Recommendation 4: Please ensure that the Marine Mammal and Sea Turtle Monitoring Plan includes detailed information on marine mammal visual observation and passive acoustic monitoring protocols (e.g., equipment used, timing of surveys, location of passive acoustic monitors and visual observation platforms, marine mammal observer training, adaptive management planning, reporting requirements, etc.). In addition to DFO, MTI should also be consulted in the development of this Plan and provided with the opportunity to review and approve it at least 30 days prior to initiating Project activities.

Comment 5: MTI also remains concerned about the scope and effective implementation of the Proponent’s marine mammal monitoring and mitigation. Specifically, it is unclear how Project supply vessel speed restrictions would be effectively implemented. DFO has stated that it would support the requirement for Project vessel speeds to be reduced to seven knots when within 400 metres of a marine mammal (Draft EA, Section 6.2.3, p. 42). However, the Proponent has not committed to employing dedicated marine mammal observers during supply vessel transit, nor has the Agency or DFO made this a requirement in the Draft EA.



Recommendation 5: The Proponent should be required to employ dedicated marine mammal observers to undertake visual surveys on supply vessels during transit. As is being implemented for VSP surveys, the Proponent should consider 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 by the Proponent, please provide a detailed explanation on how the limitations of visual surveys (as outlined in the previous issue) will be addressed.

Draft Potential Conditions of Approval 3.9 and 3.10 should also be revised to include marine mammal monitoring measures during supply vessel transit.

Comment 6: MTI's opportunities for involvement in the implementation of the Marine Mammal and Sea Turtle Monitoring Plan are limited. As outlined in the Draft EA (Section 6.2.3, p. 42), the Proponent will only be required to provide results of the Plan, any collisions with marine mammals, and follow-up program results to Indigenous communities. While this satisfies the need to provide MTI with additional information, it does not do enough to meaningfully involve MTI in a Project that has the potential to adversely affect marine mammals of cultural significance.

Recommendation 6: Mi'gmaq environmental monitors need to participate in the implementation of the Marine Mammal and Sea Turtle Monitoring Plan. The presence of Mi'gmaq monitors during relevant Project activities (e.g., VSP surveys and supply vessel transit) will provide MTI with the level of oversight and confidence needed to ensure that the Proponent is adequately implementing measures to protect marine mammals of cultural significance. Mi'gmaq monitors could also assist with reporting the activities, observations, and results of the Marine Mammal and Sea Turtle Monitoring plans. Capacity funding for industry-standard job training (e.g., marine mammal observation protocols, including detection and identification skills) and salaries would need to be provided by the Proponent.

Comment 7: Section 6.2.3 of the Draft EA states that "when and where such speeds do not present a risk to safety of navigation" (p. 42) the Proponent will be required to reduce supply vessel speeds to seven knots when a marine mammal is observed within 400 metres of the vessel. MTI supports the implementation of necessary health and safety measures but is unclear on exactly what circumstances this might include.

Recommendation 7: MTI requests more detailed information on the types of navigation safety risks that might require the Proponent to maintain vessel speeds above seven knots in proximity to marine mammals.

Comment 8: MTI remains concerned that measures to monitor for stranded migratory birds on the MODU and Project supply vessels using only an observer-based approach are not sufficient. Studies indicate that there is a need to implement supplemental, instrument-based systems (e.g., radar, thermal imaging, camera, acoustic recordings, telemetry, etc.) for monitoring bird activities around offshore oil platforms to account for limitations of observer-based approaches (e.g., limited spatial and temporal coverage, effects of inclement weather conditions on observer ability to detect birds, etc.) (Ronconi et



al., 2015). The Agency is requiring the Proponent to conduct monitoring for migratory birds from the MODU by trained observers following Environment and Climate Change Canada's (ECCC) *Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Surveys from Moving and Stationary Platforms*, but this protocol is centered around observer-based monitoring. The Agency is also requiring the Proponent to develop and implement a protocol for systematic daily monitoring of the MODU and supply vessels for the presence of stranded birds. It seems that this will be centred around observer-based monitoring approaches: it is unclear whether this will consider instrument-based approaches.

Recommendation 8: The Proponent should consider implementing an integrated (combined observer- and instrument-based) approach to monitoring for migratory birds around the MODU and Project supply vessels to optimize the effectiveness of the program.

Draft Potential Conditions of Approval 4.3.1 and 4.3.2 should also be revised to reflect a combined observer- and instrument-based approach to monitoring for migratory birds around the MODU and Project supply vessels.

Comment 9: 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 9: 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 before the initiation of Project activities. MTI also requests the opportunity for Mi'gmaq environmental monitors to support the monitoring of the MODU and supply vessels for the presence of stranded birds, and to participate in any training on ECCC's *Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Surveys from Moving and Stationary Platforms*.

Comment 10: Other than minimizing flaring and operating water curtain barriers if flaring must occur, the Proponent is not undertaking any efforts to prevent marine and migratory bird attraction to other sources of Project-related lighting (e.g., MODUs, supply vessel light sources). The Proponent will be required to conduct systematic searches for stranded birds on the MODU and supply vessels, but this is not a preventive measure. Given that the Agency has acknowledged uncertainty around potential adverse impacts associated with bird attraction to Project lighting and refuted the high-certainty prediction that these impacts will be low in magnitude, MTI is concerned that preventive measures are not being implemented.

Recommendation 10: The Proponent should consider taking additional measures to prevent migratory bird attraction to MODU and supply vessel light sources. For example, the use of spectral modified lighting or green lights has been shown to reduce fatal attraction to platform lighting, while upholding safety standards (Marquenie et al., 2014) and other offshore oil projects (e.g., ExxonMobil Hebron) have had success with manipulating the direction and positioning of lighting.



Draft Potential Condition of Approval 4.3. should also be revised to include preventive measures for minimizing bird attraction to MODU and supply vessel lighting.

3.5 Cumulative Effects

3.5.1 Evaluation and Recommendations

The following section describes issues identified through the review of cumulative effects from the Draft EA and provides comments and recommendations to resolve the issues.

Comment 11: Concern over potential cumulative environmental effects was raised by MTI in the EIS review due to the number of potential future projects that could occur in 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 11: 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.

3.6 Socioeconomics and Community Well-Being

The socioeconomics and community well-being facet of this technical review focuses on assessing risks to MTI's land and resource uses and socioeconomic impacts on fisheries, inclusion of Mi'gmaq knowledge and involvement in ongoing engagement and consultation regarding the Project.

3.6.1 Evaluation and Recommendations

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

Comment 12: In Section 8.2 (Potential Adverse Impacts of the Project on Potential or Established Aboriginal or Treaty Rights) within the Agency's analysis, the Report states: "The Agency acknowledges



the potential consequences of an accidental spill on Indigenous fishers and Indigenous communities. However, the probability of a major subsea blowout is extremely low and therefore the potential effects would be unlikely to occur. In the unlikely event of a blowout, spill modelling predicts that shoreline oiling would be unlikely, and if occurred, generally minimal. The Agency notes that the proponent would be required to take all reasonable measures to reduce the probability of an accidental event and ensure that it is prepared to respond effectively if an accidental event does occur. In conjunction with spill response measures, **any damages incurred by Indigenous fishers, including the loss of commercial or food, social, and ceremonial fisheries, would require compensation in accordance with the *Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.***

It is not clear, within the Conditions of Approval for the Project (i.e., Conditions 5 and 6.15) what the specific compensation requirements for Indigenous fishers are within the *Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.*

Recommendation 12: The Conditions for the Project need include explicit and compliance-bound terms that outline what the specific compensation requirements for Indigenous fishers are within the *Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.*

Comment 13: In Section 8. 2 (Potential Adverse Impacts of the Project on Potential or Established Aboriginal or Treaty Rights) within the Agency’s Analysis, the Report states : “The Proponent has developed an Indigenous Fisheries Communication Plan, which includes procedures to communicate with fishers in the event of routine operations and accidental events. Indigenous groups would be notified in the development of spill response plans and provided with the approved version (see Effects of Accidents and Malfunctions, Section 7.1, for additional details). **The Plan would include sharing results of environmental monitoring and appropriate feedback mechanisms for the concerns of Indigenous groups, fishers and other ocean users.**” It is not indicated, within the Conditions of Approval for the Project (i.e., Condition 5), nor anywhere else in the EA Report, that there is a feedback mechanism for Indigenous groups and fishers to report to the Proponent and/or Regulator, observations and Indigenous Knowledge of relevance to support ongoing monitoring and adaptive management of the Project’s activities.

Recommendation 13: Ensuring that there is a feedback mechanism for Indigenous groups is critical and should be explicitly listed within the Condition 5 sub-section terms. The Indigenous Communication Plan, as commented on in MTI’s EIS Technical Review Report Submission in 2018 and carried forward within a review of the Proponent’s responses to MTI’s information requests, is positive and fulsome in terms of external, outbound information and notification. But there still remains an outstanding key component to the Communication Plan: the engagement and consultation feedback mechanism that allows for/enforces a process for Indigenous fishers and rights holders to report issues and observations of concern or interest to the Proponent and the IAAC. Although this last component is briefly mentioned within the Agency’s Report under Section 8.2, there is no indication of how binding it is as it is not mentioned anywhere else in the EA Report nor within the Project’s Conditions.



Comment 14: Related to the comment above, both the Proponent and the Agency appear to have dismissed the requests of numerous Indigenous groups to establish an Indigenous environmental and cultural monitoring committee dedicated to the Project's (or collective offshore oil projects') monitoring and adaptive management processes, as well as emergency response and contingency plans in relation to the Project.

Recommendation 14: In addition to a Communication Plan, more meaningful involvement and oversight is warranted given the increasing cumulative risks the multiple offshore oil projects are posing to Indigenous groups. MTI carries forward its recommendation to establish such a committee or similar Indigenous advisory group that serves as an accountability and transparency mechanism for Indigenous representation in monitoring and emergency preparedness.

Comment 15: In Section 6.7 (Current Use of Lands and Resources for Traditional Purposes and Health and Socio-economic Conditions of Indigenous Peoples), the Report states: "the Agency requested that the Proponent further consider the potential impacts of the Project on species of interest to Indigenous communities through the lens of current use including Atlantic salmon, American eel, swordfish and bluefin tuna. The Proponent reviewed existing information in response to Indigenous concerns and maintained that the assessment and conclusions as presented in the EIS remained accurate. Many Indigenous groups who provided comments were dissatisfied with the Proponent's lack of follow-up or monitoring measures for effects on species of cultural importance and recommend that follow-up or monitoring measures be developed in consultation with all communities. Several groups, including MTI, noted that it would be beneficial to implement an Indigenous advisory committee and Indigenous Guardian-type program whereby Indigenous communities could be involved in monitoring oversight and emergency response readiness, including provisions for training capacity. The Proponent committed to continued engagement with groups and to develop an Indigenous Communities Fisheries Communication Plan **which may include updates on the monitoring and follow-up programs.**"

The term "may" indicates that these updates may or may not occur; it further contributes to uncertainty regarding what terms will be included in the Indigenous Communication Plan.

The Report also states: "also, if required by the Agency, it would consult on the frequency and format of communications and notify Indigenous groups when results of monitoring and follow-up programs are published on the Internet. In April 2019, a group of proponents of offshore exploration drilling projects in the eastern Newfoundland and Labrador offshore area, including the Proponent of this Project shared a **proposed joint Indigenous Communications Plan for comment by Indigenous communities. The Plan shows how the companies propose to communicate with Indigenous communities during exploration operations and in the case of an emergency.**"

Collective reporting and monitoring measures are positive steps as they acknowledge the cumulative nature of risk to Indigenous groups; however input or feedback mechanisms that support consideration of Indigenous Knowledge in follow-up monitoring processes are still lacking.



Recommendation 15: As per previous comments related to this issue, MTI requests that Conditions for the Project be explicit and clear and that updates on monitoring and follow-up programs, and a process for Indigenous groups to provide feedback and input into such programs be included within Condition 5 sub-sections and respective Condition terms, including follow-up monitoring processes.

Comment 16: In Section 6.7.3. (Agency Analysis and Conclusion), the Report states that “the Agency concludes that the adverse residual environmental effects of the Project on current use of lands and resources for traditional purposes and health and socio-economic conditions of Indigenous peoples throughout the Regional Assessment Area (RAA) would be negligible in magnitude. Taking into account the implementation of the mitigation measures described in Section 6.1, Section 6.2, Section 6.3, and Section 6.6, the Agency 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 socio conditions of Indigenous peoples.”

Although the Agency 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 socio conditions of Indigenous peoples,” the basis of this conclusion is focused exclusively on the Local Study Area (LSA). And although the Proponent and government agencies acknowledge the lack of data and analysis for migratory fish species of cultural importance to MTI (including Atlantic salmon, American eel and swordfish), the issue of unknown medium- to long-term effects under regulator circumstances or in the case of an accident still requires follow-up and Indigenous involvement in adaptive management and monitoring measures.

Recommendation 16: See the recommendations listed above and throughout this Report.

3.7 Accidents and Malfunctions

3.7.1 Evaluation and Recommendations

The following section describes issues identified through the review of information related to Accident and Malfunction provided within the EIS, Draft EA and draft Potential Conditions, and provides comment and recommendation to resolve the issues.

Comment 17: Although the EA acknowledges that the majority of oil released from a blowout would remain in the offshore, where it could impede or alter the migration of some Atlantic salmon through avoidance of oiled areas, relatively limited detail is provided on the potential extent of spills and impacts to Atlantic salmon, stating only that adult pelagic and benthic fish species are considered to have lower exposure risk as they are highly mobile and have the ability to avoid oiled areas.

Recommendation 17a: The EA and EIS should include more detailed assessment of a potential oil spill and how the extensive depth of the site could potentially amplify the extent of the spill. Further, the EA and EIS should relate those impacts in terms of how the spill may interact with migratory species such as Atlantic salmon, and whether significant disturbance or avoidance behaviour may occur. The Proponent



should provide more detail in terms of modelling of the extent of this type of spill as well as the associated long-term biological and population effects of an oil spill to Atlantic salmon populations that can occur in the area.

Recommendation 17b: 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.

Recommendation 17c: Inclusion of MTI in the development and execution of Spill Response should be mandated within the Conditions of the Project.

Comment 18: MTI fishers with commercial and communal commercial fishing licenses 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 18a: 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 18b: Condition 5.1 outlines the requirement for the Proponent 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.

4.0 Summary and Recommendations

This independent review of the Agency's Draft EA and draft Potential Conditions for the BP Canada Energy ULC Newfoundland Orphan Basin 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 3.0 of this report.

The review documents outstanding issues of concern to MTI and provides recommendations for mitigation measures 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 mitigation, management and/or monitoring measures related to the Mi'gmaq Indigenous fishery, processes to deal with insufficient information to support mitigation and effects assessment results, and measures for addressing insufficient environmental protection planning and follow-up program involvement for MTI.

The Proponent has not integrated Mi'gmaq comprehensive Indigenous Knowledge or Socio-Cultural and 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 adequate and meaningful engagement, consultation, *and* accommodation with the Mi'gmaq in New Brunswick, has not been met.

MTI puts forward the following additional recommendations as potential means of addressing the issues and comments raised in this review of the Draft EA for the BP Canada Energy Group ULC Newfoundland Orphan Basin 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 BP Canada Energy ULC 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. BP 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, socioeconomic and cultural monitoring of drilling and associated activities throughout the life of the Project. This may also require:
 - a. Training, involvement, and 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.

5.0 References

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Appendix A: Comment Tracking Table

Table 1. BP Canada Energy ULC Newfoundland Orphan Basin Exploration Drilling Project EA

Comment #	Issue	Recommendation
MARINE FISH AND FISH HABITAT		
1	<p>The following section describes issues from reviewing all information related to the marine environment provided within both the EIS and the EA, and provides comments and recommendations to resolve the issue or issues identified: MTI remains concerned about the potential impacts of the Project on Atlantic salmon. Fisheries and Oceans Canada (also referred to as the Department of Fisheries and Oceans or DFO) provided further information on the migration patterns of Atlantic salmon in the Northwest Atlantic Ocean and on the potential effects of the Project. The DFO advised that Atlantic salmon that spawn in the rivers of eastern Canada (including New Brunswick) travel throughout the Northwest Atlantic Ocean and that there remains the potential for Atlantic salmon to pass through the Project Area en route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. Following the filing of the EIS, the Agency acknowledged the gaps in understanding of Atlantic salmon migration patterns in the North Atlantic and indicated that the Proponent would be required to contribute to research on migratory routes within the</p>	<p>1a: The North Shore Micmac District Council has established the Anqotum Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management 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 to salmon populations important to MTI. In addition to the potential ESRF-funded studies, 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>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</p>



Comment #	Issue	Recommendation
	Project Area, which includes potential new studies through the Environmental Studies Research Fund (ESRF).	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.
2	The Agency notes within the EA that given the uncertainty about Atlantic salmon and the importance of the species to Indigenous groups, the Proponent <i>would</i> be required participate in or support research on the presence and distribution of Atlantic salmon in Eastern Canadian offshore regions. The Agency states that additional research on the presence, migration, and distribution of Atlantic salmon may be supported through the ESRF and that in May 2019 a call for proposals for studies related to Atlantic salmon was issued. Despite making the statement that the Proponent would be required to support research, this obligation is not included in the Project Conditions.	In order to ensure the Proponent is held accountable for following through on the Agency's recommendation, the provision to support research toward Atlantic salmon should be included in the <i>Potential Conditions under the Canadian Environmental Assessment Act, 2012</i> .
3	The Proponent has not included Indigenous Knowledge from MTI knowledge holders in drawing conclusions on interactions between Atlantic salmon, swordfish, bluefin tuna and the Project Area.	The Proponent should engage MTI in conducting a focused Indigenous Knowledge and Science Study with respect to potential interactions between the Project Area and Atlantic salmon, swordfish and bluefin tuna.
MARINE MAMMALS & MIGRATORY BIRDS		



Comment #	Issue	Recommendation
4	<p>MTI remains concerned about the level of detail in the Proponent’s plan for marine mammal monitoring. Specifically, there is a lack of detail on marine mammal observation protocols that will be implemented during Project vertical seismic profile (VSP) surveys. 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). MTI is encouraged that the Agency will require the Proponent to concurrently implement passive acoustic monitoring during VSP surveys, as this method 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 Orphan Basin. However, detailed information on both visual observation and passive acoustic monitoring protocols still needs to be provided.</p>	<p>Please ensure that the Marine Mammal and Sea Turtle Monitoring Plan includes detailed information on marine mammal visual observation and passive acoustic monitoring protocols (e.g., equipment used, timing of surveys, location of passive acoustic monitors and visual observation platforms, marine mammal observer training, adaptive management planning, reporting requirements, etc.). In addition to DFO, MTI should also be consulted in the development of this Plan and provided with the opportunity to review and approve it at least 30 days prior to initiating Project activities.</p>
5	<p>MTI also remains concerned about the scope and effective implementation of the Proponent’s marine mammal monitoring and mitigation. Specifically, it is unclear how Project supply vessel speed restrictions would be effectively implemented. DFO has stated that it would support the requirement for Project vessel speeds to be reduced to seven knots when within 400 metres of a marine mammal (Draft EA, Section 6.2.3, p. 42). However, the Proponent has not committed to employing dedicated marine mammal observers during supply vessel transit,</p>	<p>The Proponent should be required to employ dedicated marine mammal observers to undertake visual surveys on supply vessels during transit. As is being implemented for VSP surveys, the Proponent should consider 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 by the Proponent, please</p>



Comment #	Issue	Recommendation
	nor has the Agency or DFO made this a requirement in the Draft EA.	<p>provide a detailed explanation on how the limitations of visual surveys (as outlined in the previous issue) will be addressed.</p> <p>Draft Potential Conditions of Approval 3.9 and 3.10 should also be revised to include marine mammal monitoring measures during supply vessel transit.</p>
6	MTI's opportunities for involvement in the implementation of the Marine Mammal and Sea Turtle Monitoring Plan are limited. As outlined in the Draft EA (Section 6.2.3, p. 42), the Proponent will only be required to provide results of the Plan, any collisions with marine mammals, and follow-up program results to Indigenous communities. While this satisfies the need to provide MTI with additional information, it does not do enough to meaningfully involve MTI in a Project that has the potential to adversely affect marine mammals of cultural significance.	Mi'gmaq environmental monitors need to participate in the implementation of the Marine Mammal and Sea Turtle Monitoring Plan. The presence of Mi'gmaq monitors during relevant Project activities (e.g., VSP surveys and supply vessel transit) will provide MTI with the level of oversight and confidence needed to ensure that the Proponent is adequately implementing measures to protect marine mammals of cultural significance. Mi'gmaq monitors could also assist with reporting the activities, observations, and results of the Marine Mammal and Sea Turtle Monitoring plans. Capacity funding for industry-standard job training (e.g., marine mammal observation protocols, including detection and identification skills) and salaries would need to be provided by the Proponent.
7	Section 6.2.3 of the Draft EA states that “when and where such speeds do not present a risk to safety of navigation” (p. 42) the Proponent will be required to reduce supply vessel speeds to seven knots when a marine mammal is observed within 400 metres of the vessel. MTI supports the implementation of necessary	MTI requests more detailed information on the types of navigation safety risks that might require the Proponent to maintain vessel speeds above seven knots in proximity to marine mammals.



Comment #	Issue	Recommendation
	health and safety measures but is unclear on exactly what circumstances this might include.	
8	<p>MTI remains concerned that measures to monitor for stranded migratory birds on the MODU and Project supply vessels using only an observer-based approach are not sufficient. Studies indicate that there is a need to implement supplemental, instrument-based systems (e.g., radar, thermal imaging, camera, acoustic recordings, telemetry, etc.) for monitoring bird activities around offshore oil platforms to account for limitations of observer-based approaches (e.g., limited spatial and temporal coverage, effects of inclement weather conditions on observer ability to detect birds, etc.) (Ronconi et al., 2015). The Agency is requiring the Proponent to conduct monitoring for migratory birds from the MODU by trained observers following Environment and Climate Change Canada’s (ECCC) <i>Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Surveys from Moving and Stationary Platforms</i>, but this protocol is centered around observer-based monitoring. The Agency is also requiring the Proponent to develop and implement a protocol for systematic daily monitoring of the MODU and supply vessels for the presence of stranded birds. It seems that this will be centred around observer-based monitoring approaches: it is unclear whether this will consider instrument-based approaches.</p>	<p>The Proponent should consider implementing an integrated (combined observer- and instrument-based) approach to monitoring for migratory birds around the MODU and Project supply vessels to optimize the effectiveness of the program.</p> <p>Draft Potential Conditions of Approval 4.3.1 and 4.3.2 should also be revised to reflect a combined observer- and instrument-based approach to monitoring for migratory birds around the MODU and Project supply vessels.</p>



Comment #	Issue	Recommendation
9	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 before the initiation of Project activities. MTI also requests the opportunity for Mi'gmaq environmental monitors to support the monitoring of the MODU and supply vessels for the presence of stranded birds, and to participate in any training on ECCC's <i>Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Surveys from Moving and Stationary Platforms</i> .
10	Other than minimizing flaring and operating water curtain barriers if flaring must occur, the Proponent is not undertaking any efforts to prevent marine and migratory bird attraction to other sources of Project-related lighting (e.g., MODUs, supply vessel light sources). The Proponent will be required to conduct systematic searches for stranded birds on the MODU and supply vessels, but this is not a preventive measure. Given that the Agency has acknowledged uncertainty around potential adverse impacts associated with bird attraction to Project lighting and refuted the high-certainty prediction that these impacts will be low in magnitude, MTI is concerned that preventive measures are not being implemented.	<p>The Proponent should consider taking additional measures to prevent migratory bird attraction to MODU and supply vessel light sources. For example, the use of spectral modified lighting or green lights has been shown to reduce fatal attraction to platform lighting, while upholding safety standards (Marquenie et al., 2014) and other offshore oil projects (e.g., ExxonMobil Hebron) have had success with manipulating the direction and positioning of lighting.</p> <p>Draft Potential Condition of Approval 4.3. should also be revised to include preventive measures for minimizing bird attraction to MODU and supply vessel lighting.</p>
CUMULATIVE EFFECTS		



Comment #	Issue	Recommendation
11	<p>Concern over potential cumulative environmental effects was raised by MTI in the EIS review due to the number of potential future projects that could occur in the region.</p> <p>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.</p> <p>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>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.</p>
SOCIO-ECONOMICS AND COMMUNITY WELL-BEING		
12	<p>In Section 8.2 (Potential Adverse Impacts of the Project on Potential or Established Aboriginal or Treaty Rights) within the Agency’s analysis, the Report states: “The Agency acknowledges the potential consequences of an accidental spill on Indigenous fishers and Indigenous communities. However, the probability of a major subsea blowout is extremely low and therefore the potential effects would be unlikely to occur. In the unlikely event of</p>	<p>The Conditions for the Project need include explicit and compliance-bound terms that outline what the specific compensation requirements for Indigenous fishers are within the <i>Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity</i>.</p>



Comment #	Issue	Recommendation
	<p>a blowout, spill modelling predicts that shoreline oiling would be unlikely, and if occurred, generally minimal. The Agency notes that the proponent would be required to take all reasonable measures to reduce the probability of an accidental event and ensure that it is prepared to respond effectively if an accidental event does occur. In conjunction with spill response measures, any damages incurred by Indigenous fishers, including the loss of commercial or food, social, and ceremonial fisheries, would require compensation in accordance with the <i>Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.</i></p> <p>It is not clear, within the Conditions of Approval for the Project (i.e., Conditions 5 and 6.15) what the specific compensation requirements for Indigenous fishers are within the <i>Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.</i></p>	
13	<p>In Section 8. 2 (Potential Adverse Impacts of the Project on Potential or Established Aboriginal or Treaty Rights) within the Agency’s Analysis, the Report states : “The Proponent has developed an Indigenous Fisheries Communication Plan, which includes procedures to communicate with fishers in the event of routine operations and accidental events. Indigenous groups would be notified in the development of spill response plans and provided with the approved version (see Effects of Accidents and Malfunctions, Section 7.1, for additional</p>	<p>Ensuring that there is a feedback mechanism for Indigenous groups is critical and should be explicitly listed within the Condition 5 sub-section terms. The Indigenous Communication Plan, as commented on in MTI’s EIS Technical Review Report Submission in 2018 and carried forward within a review of the Proponent’s responses to MTI’s information requests, is positive and fulsome in terms of external, outbound information and notification. But there still remains an outstanding key component to the Communication Plan: the engagement and consultation feedback mechanism that allows for/enforces a</p>



Comment #	Issue	Recommendation
	<p>details). The Plan would include sharing results of environmental monitoring and appropriate feedback mechanisms for the concerns of Indigenous groups, fishers and other ocean users. It is not indicated, within the Conditions of Approval for the Project (i.e., Condition 5), nor anywhere else in the EA Report, that there is a feedback mechanism for Indigenous groups and fishers to report to the Proponent and/or Regulator, observations and Indigenous Knowledge of relevance to support ongoing monitoring and adaptive management of the Project's activities.</p>	<p>process for Indigenous fishers and rights holders to report issues and observations of concern or interest to the Proponent and the IAAC. Although this last component is briefly mentioned within the Agency's Report under Section 8.2, there is no indication of how binding it is as it is not mentioned anywhere else in the EA Report nor within the Project's Conditions.</p>
14	<p>Related to the comment above, both the Proponent and the Agency appear to have dismissed the requests of numerous Indigenous groups to establish an Indigenous environmental and cultural monitoring committee dedicated to the Project's (or collective offshore oil projects') monitoring and adaptive management processes, as well as emergency response and contingency plans in relation to the Project.</p>	<p>In addition to a Communication Plan, more meaningful involvement and oversight is warranted given the increasing cumulative risks the multiple offshore oil projects are posing to Indigenous groups. MTI carries forward its recommendation to establish such a committee or similar Indigenous advisory group that serves as an accountability and transparency mechanism for Indigenous representation in monitoring and emergency preparedness.</p>
15	<p>In Section 6.7 (Current Use of Lands and Resources for Traditional Purposes and Health and Socio-economic Conditions of Indigenous Peoples), the Report states: "the Agency requested that the Proponent further consider the potential impacts of the Project on species of interest to Indigenous communities through the lens of current use</p>	<p>As per previous comments related to this issue, MTI requests that Conditions for the Project be explicit and clear and that updates on monitoring and follow-up programs, and a process for Indigenous groups to provide feedback and input into such programs be included within Condition 5 sub-sections and</p>



Comment #	Issue	Recommendation
	<p>including Atlantic salmon, American eel, swordfish and bluefin tuna. The Proponent reviewed existing information in response to Indigenous concerns and maintained that the assessment and conclusions as presented in the EIS remained accurate. Many Indigenous groups who provided comments were dissatisfied with the Proponent’s lack of follow-up or monitoring measures for effects on species of cultural importance and recommend that follow-up or monitoring measures be developed in consultation with all communities. Several groups, including MTI, noted that it would be beneficial to implement an Indigenous advisory committee and Indigenous Guardian-type program whereby Indigenous communities could be involved in monitoring oversight and emergency response readiness, including provisions for training capacity. The Proponent committed to continued engagement with groups and to develop an Indigenous Communities Fisheries Communication Plan which may include updates on the monitoring and follow-up programs.”</p> <p>The term “may” indicates that these updates may or may not occur; it further contributes to uncertainty regarding what terms will be included in the Indigenous Communication Plan.</p> <p>The Report also states: “also, if required by the Agency, it would consult on the frequency and format of</p>	<p>respective Condition terms, including follow-up monitoring processes.</p>



Comment #	Issue	Recommendation
	<p>communications and notify Indigenous groups when results of monitoring and follow-up programs are published on the Internet. In April 2019, a group of proponents of offshore exploration drilling projects in the eastern Newfoundland and Labrador offshore area, including the Proponent of this Project shared a proposed joint Indigenous Communications Plan for comment by Indigenous communities. The Plan shows how the companies propose to communicate with Indigenous communities during exploration operations and in the case of an emergency."</p> <p>Collective reporting and monitoring measures are positive steps as they acknowledge the cumulative nature of risk to Indigenous groups; however input or feedback mechanisms that support consideration of Indigenous Knowledge in follow-up monitoring processes are still lacking.</p>	
16	<p>In Section 6.7.3. (Agency Analysis and Conclusion), the Report states that "the Agency concludes that the adverse residual environmental effects of the Project on current use of lands and resources for traditional purposes and health and socio-economic conditions of Indigenous peoples throughout the Regional Assessment Area (RAA) would be negligible in magnitude. Taking into account the implementation of the mitigation measures described in Section 6.1, Section 6.2, Section 6.3, and Section 6.6, the</p>	<p>See the recommendations listed above and throughout this Report.</p>



Comment #	Issue	Recommendation
	<p>Agency 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 socio conditions of Indigenous peoples.”</p> <p>Although the Agency 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 socio conditions of Indigenous peoples,” the basis of this conclusion is focused exclusively on the Local Study Area (LSA). And although the Proponent and government agencies acknowledge the lack of data and analysis for migratory fish species of cultural importance to MTI (including Atlantic salmon, American eel and swordfish), the issue of unknown medium- to long-term effects under regulator circumstances or in the case of an accident still requires follow-up and Indigenous involvement in adaptive management and monitoring measures.</p>	
ACCIDENTS AND MALFUNCTIONS		
17	<p>Although the EA acknowledges that the majority of oil released from a blowout would remain in the offshore, where it could impede or alter the migration of some Atlantic salmon through avoidance of oiled areas, relatively limited detail is provided on the potential extent of spills and impacts to Atlantic salmon, stating only that adult pelagic and benthic fish species are considered to</p>	<p>17a: The EA and EIS should include more detailed assessment of a potential oil spill and how the extensive depth of the site could potentially amplify the extent of the spill. Further, the EA and EIS should relate those impacts in terms of how the spill may interact with migratory species such as Atlantic salmon, and whether significant disturbance or avoidance behaviour may occur. The Proponent should provide more detail in terms of modelling of the extent of this type of spill as well as the associated long-term</p>



Comment #	Issue	Recommendation
	<p>have lower exposure risk as they are highly mobile and have the ability to avoid oiled areas.</p>	<p>biological and population effects of an oil spill to Atlantic salmon populations that can occur in the area.</p> <p>17b: 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.</p> <p>17c: Inclusion of MTI in the development and execution of Spill Response should be mandated within the Conditions of the Project.</p>
18	<p>MTI fishers with commercial and communal commercial fishing licenses 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</p>	<p>18a: 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>



Comment #	Issue	Recommendation
	<p>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>	<p>18b: Condition 5.1 outlines the requirement for the Proponent 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>
MTI ADDITIONAL RECOMMENDATIONS		
	<ul style="list-style-type: none"> • 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. 	
	<ul style="list-style-type: none"> • Establish a forum and process where MTI can meet with BP Canada Energy ULC 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). 	
	<ul style="list-style-type: none"> • BP 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. <ul style="list-style-type: none"> ○ 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. 	



Comment #	Issue	Recommendation
	<ul style="list-style-type: none"> • MTI, the Crown and the Proponent should develop agreements to support MTI and MTI member communities' participation in environmental, socioeconomic and cultural monitoring of drilling and associated activities throughout the life of the Project. This may also require: <ul style="list-style-type: none"> ○ Training, involvement, and employment of Mi'gmaq First Nations of New Brunswick environmental and cultural monitors for all Project phases; ○ Involvement in emergency preparedness planning and appropriate notifications and consultations in the event of a significant accident or malfunction. 	

