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**EQUINOR BAY DU NORD DEVELOPMENT  
PROJECT: TECHNICAL REVIEW OF  
ENVIRONMENTAL IMPACT STATEMENT**

Prepared for: Mi'gmawe'l Tplu'taqnn Incorporated (MTI)  
September 4, 2020



**Mi'gmawe'l Tplu'taqnn Incorporated (MTI)**

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c/o Marcy Cloud, Impact Assessment Coordinator

September 4, 2020

Chief George Ginnish and Chief Rebecca Knockwood:

It is our pleasure to provide you with the technical review report on the Environmental Impact Statement for the Equinor Bay du Nord Offshore Development Project. This review was completed by Rachel White, MSc; Levi Snook, BSc; Meaghan Langille, BSc; and Rachel Speiran, MA, with senior review provided by Alison Fraser, MSc of Shared Value Solutions. 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, MA

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# 1.0 REVIEW OBJECTIVES

Shared Value Solutions Ltd. (SVS) provides this independent high-level peer review and strategic assessment of Equinor Canada Ltd.'s (Equinor; the Proponent) proposed Bay du Nord Development Project Environmental Impact Statement (EIS) on behalf of Mi'gmawe'l Tplu'taqnn Incorporated (MTI).

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 Proponent's EIS and documentation for the Project. This report identifies concerns, potential impacts and additional protection measures related to the following seven key issues of concern identified by MTI in communications with SVS, in relation to the rights, key values and interests of MTI member communities:

1. Atlantic salmon
2. Atlantic bluefin tuna
3. Migratory birds
4. North Atlantic right whale
5. Cumulative effects
6. Socioeconomic impacts on MTI Indigenous Knowledge Land Use and Occupancy Study (IKLUOS), commercial swordfish fisheries and Atlantic salmon
7. Accidents and malfunctions

This report provides a summary of our review findings, which are also provided in the form of a Comment and Response Tracking Table in [Appendix A](#).



## 2.0 PROJECT DESCRIPTION AND REGULATORY PROCESS

### 2.1 BAY DU NORD DEVELOPMENT PROJECT

#### 2.1.1 PROJECT LOCATION

The following information is derived directly from Section 2.4 of Equinor's EIS for the Bay du Nord Project.

The Project is located in the Flemish Pass area of the Canada-NL Offshore Area, approximately 500 km east-northeast of St. John's, Newfoundland.

The Project Area is defined as the overall geographic area where all planned Project-related components and activities will take place and is based on those aspects that are within the defined scope of the Project for environmental assessment (EA) purposes as detailed in Section 2.1 and Section 4.1 of the EIS.

The Project Area includes all or portions of Exploration Licenses (ELs) 1143, 1154 and 1156, and Significant Discovery Licenses (SDLs) 1047, 1048, 1055 and any SDLs that may be awarded within the foregoing ELs, or ELs that may be renamed on the issuance of SDLs.

The Core Bay du Nord (BdN) Development will occur primarily in the area currently defined by SDL 1055, SDL 1056/1057 and EL 1143 and EL 1157, within the Project Area (herein called the Core BdN Development Area). Equinor Canada recognizes that production activities are contingent on the requisite approvals and rights issuance granted by the C-NLOPB, IAAC, and other government regulatory entities as outlined in Section 2.2 below.

Figure 1 illustrates the proposed Project Area, which is approximately 4,900 km<sup>2</sup> in size. The Core BdN Development Area is approximately 470 km<sup>2</sup>. The footprint of the seabed Project facilities based on the current stage of design, cover approximately 7 km<sup>2</sup>.

Water depths in the Core BdN Development Area range from approximately 1,000 m to 1,200 m, whereas water depths in the broader Project Area range from approximately 340 m to 1,200 m. (Equinor Canada Ltd., 2020)



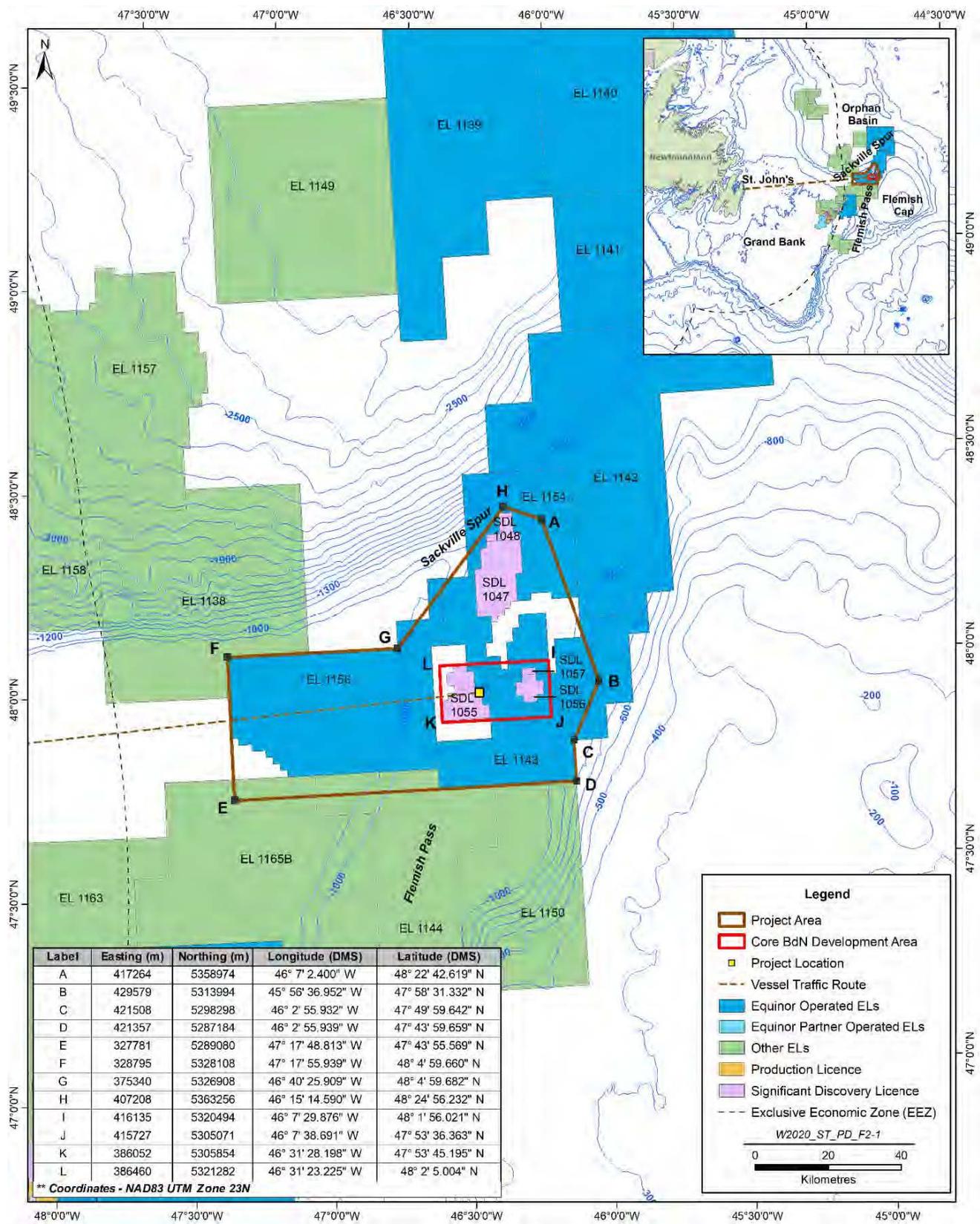


Figure 1 Map of Proposed Area for the Bay du Nord Development Project



## 2.1.2 PROJECT COMPONENTS

The following information is from Section 2.1 of Equinor's EIS for the Bay du Nord Project.

The BdN Development Project (the Project) is defined as the development of the Core BdN Development and Project Area Tiebacks. The Core BdN Development will include activities associated with the offshore construction and installation, hook-up and commissioning (HUC), production and maintenance operations, drilling and eventual decommissioning, as well as associated supporting surveys, field work, and supply and servicing activities.

Project Area Tiebacks would only occur if exploration activities discover economically recoverable reserves that can be tied back to the BdN production installation. Activities within the Project Area associated with Project Area Tiebacks include offshore construction and installation of well templates, flowlines, umbilicals, and risers to the existing BdN production installation within the Project Area, as well as associated supporting surveys.

There are no land-based activities associated with this Project. The location of the proposed Project is illustrated in Figure 1 above. The Project scope includes the following components and activities:

Core Bay du Nord Development:

- Offshore construction and installation, and HUC
- Production and maintenance operations
- Drilling activities
- Supply and servicing
  - Offshore supply vessels (OSV)
  - Standby vessels (SBV)
  - Helicopter support
  - Crude oil shipping (including movement, hook-up / disconnect and offloading of crude oil to shuttle tankers within the Project safety zone)
- Supporting surveys
  - Geohazard / wellsite and seabed surveys
  - Geophysical surveys (2D/3D/4D seismic surveys; vertical seismic profiling (VSP))
  - Geotechnical / geological surveys
  - Environmental surveys
  - Remotely-operated vehicle (ROV) / autonomous underwater vehicle (AUV) / video surveys
- Decommissioning

Activities to support Project Area Tiebacks, should they arise, are included in the scope of the Project assessment. Potential tieback activities include:



- Offshore Construction and installation of subsea tiebacks (well templates; flowlines, umbilicals); HUC activities associated with additional subsea tiebacks to exiting production installation
- Continuation of production and maintenance operations from the existing production installation
- Drilling activities from well templates in the Project Area
- Continuation of supply and servicing
- Potential additional supporting surveys, if required
- Decommissioning

The Project Area also includes lands adjacent to the Core BdN Development Area. Equinor Canada has majority interests in other exploration licenses (ELs) and significant discovery licenses (SDLs) in the area of the Project (Figure 1) with tieback opportunities.

Should future resource potential be discovered in areas adjacent to the Core BdN Development Area, resources could be developed and produced from the production installation through the addition of subsea tiebacks and are therefore included in the Project. The Core BdN Development has a life of field between 12 and 20 years. Should Project Area Tiebacks occur, production could be extended out to the design life of the Floating Production Storage and Offloading vessels (FPSO), which is 30 years. Therefore, the overall Project temporal scope is 30 years. (Equinor Canada Ltd., 2020)

## 2.2 REGULATORY PROCESS

The Project will require a number of approvals and authorizations under applicable regulatory processes, as summarized in the following sections.

### 2.2.1 THE ACCORD ACT

As outlined on the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) website (C-NLOPB, n.d.), their role, under the Accord Acts, is to regulate oil and gas exploration and development in the Canada-NL Offshore Area, oversee compliance with regulatory requirements for worker safety, environmental protection and safety, conservation of the resource, land tenure, and Canada-NL benefits. These processes are administered under various legislation, regulations, guidelines, and memoranda of understanding.

The C-NLOPB's responsibilities under the Accord Acts include:

- The issuance and administration of petroleum and exploration and development rights
- Administration of statutory requirements regulating offshore exploration, development, and production
- Approval of Canada-NL benefits and development plans



The Canada-NL Offshore Area, as defined in the Accord Acts, includes those lands within Canada's Economic Exclusion Zone (EEZ) or to the edge of the continental margin, whichever is greater. As a result, the Project Area includes marine lands that fall within the C-NLOPB jurisdiction.

## 2.2.2 LAND TENURE AND LICENSING

The C-NLOPB administers a scheduled land tenure system for the issuance and administration of petroleum exploration and production rights in the Canada-NL Offshore Area.

Licences afford the holder the exclusive rights to explore for or produce petroleum resources in that area, and include ELs, SDLs, and Production Licenses (PLs).

ELs are issued for a term of nine years covering two periods. A well must be drilled or diligently pursued by the end of Period I in order to obtain tenure to Period II.

If an exploration drilling program results in a significant discovery and a declaration of significant discovery is made, an interest owner is entitled to apply for an SDL. A significant discovery is defined in the Accord Acts as:

*A discovery indicated by the first well on a geological feature that demonstrates by flow testing the existence of hydrocarbons in that feature and, having regard to geological and engineering factors, suggests the existence of an accumulation of hydrocarbons that has potential for sustained production.*

An SDL is the document that allows the owner of the EL to continue to hold rights to a discovery area while the extent of that discovery is determined and, if it has potential to be brought into commercial production in the future, until commercial development becomes viable.

An SDL is effective from the application date and remains in force for so long as the relevant declaration of significant discovery is in force, or until a PL is issued for the relevant lands. A PL allows the following:

- 1) The right to explore for, and the exclusive right to drill and test for, petroleum
- 2) The exclusive right to develop those portions of the offshore area in order to produce petroleum
- 3) The exclusive right to produce petroleum from those portions of the offshore area
- 4) Title to the petroleum produced in the licensing area

A PL is effective from the date it is issued for a term of 25 years or for such period thereafter during which commercial production continues.

(Bay du Nord Development Project EIS July 2020).

## 2.2.3 ENVIRONMENTAL ASSESSMENT UNDER CEAA 2012

The federal EA process under *Canadian Environmental Assessment Act (CEAA) 2012* focuses on potential adverse environmental effects that are within areas of federal jurisdiction, including: fish



and fish habitat, migratory birds, federal lands, and other changes to the environment that are directly linked to or necessarily incidental to federal decisions about a project.

The Regulations Designating Physical Activities (the Regulations) enacted under CEAA 2012 identify the physical activities that constitute a "designated project" that may require a federal EA. Section 11 of the Regulations specify that offshore oil and gas development activities are subject to federal EA review and are defined as:

*The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.*

The Project, therefore, constitutes a "designated project" under CEAA 2012. (Bay du Nord Development Project EIS July 2020).

## 2.2.4 OTHER POTENTIAL REGULATORY AND POLICY REQUIREMENTS AND INTERESTS

Federal and provincial government departments and agencies, which may have regulatory responsibilities, information, and advice regarding exploration drilling activities in the Project Area pursuant to their associated legislation and mandates include the following:

- Fisheries and Oceans Canada (DFO)
- Environment and Climate Change Canada (ECCC)
- Transport Canada
- Department of National Defence (DND)
- NL Department of Environment, Climate Change and Municipalities
- NL Department of Fisheries, Forestry and Agriculture
- NL Department of Natural Resources legislation, and regulations thereunder, that may be relevant and subsequently required regulatory approvals include the following:
  - Accord Acts and associated Regulations and Guidelines
  - Fisheries Act
  - Canadian Environmental Protection Act
  - Oceans Act
  - Canadian Navigable Waters Act
  - Canada Shipping Act, 2001
  - Migratory Birds Convention Act



- Species at Risk Act (SARA)
- NL Endangered Species Act (NL ESA)
- NL Seabird Ecological Reserve Regulations

## 2.3 MTI REGULATORY PROCESS ISSUES AND CONCERNS TO DATE

MTI has raised several issues with the regulatory process to date. These issues have been clearly documented in a letter to the Agency on August 4, 2020. These issues are centred around flaws and shortcomings in the consultation process set out for the Project. These shortcomings include:

- **Changing of the process and lack of notification.** MTI was recently made aware of the Memorandum of Understanding (MOU) between the Impact Assessment Agency of Canada (IAAC/The Agency) and the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) dated January 2019. The Agency did not give any notification when this was posted to the registry. By moving the Information Requests (IRs) to the beginning of the EA process and having no consultation or engagement in this step, MTI is concerned that the Agency will not give proper consideration to the comments throughout the process.
- **A lack of engagement by the Crown.** The Agency has had access to the Draft EIS since February 2019, and Indigenous groups were not notified or given the opportunity to be included in any capacity. Indigenous groups should have been included in the face to face meetings between The Agency and The Proponent to discuss and clarify issues. The Agency had the perfect opportunity to show they comprehend the importance of early engagement, and still we were never contacted.
- **Timeline.** Even with the comment period extended from 30 to 45 days, the process is still rushed. In addition to this being the first Offshore Development project MTI will be consulted on, restrictions from COVID-19 are hindering MTI's ability to properly consult and engage.
- **Inadequate funding.** Neither the Impact Assessment Agency nor the Proponent are providing adequate funding for the consultation process for this project. The amount of funding made available to MTI is the same as for exploration projects, which is inadequate. This is the first development project MTI will be engaged and consulted on, which will require additional consideration, as well as time and effort.

To date these issues have been unaddressed and a formal response to the letter has yet to be received. As a result, we have included this letter in Appendix B of this submission for the Agency to review and respond to in a timely manner.

In order for MTI to be properly consulted and accommodated, and ultimately for the Duty to Consult to be met in a satisfactory manner for MTI, these concerns **must** be addressed.



## 3.0 MI'GMAQ RIGHTS AND INTERESTS RELATIVE TO PROJECT INTERACTIONS

For this review, Mi'gmawé'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 Mi'gmaq entered into Peace and Friendship Treaties with the British Crown, which have been renewed many times and form a covenant chain. These treaties 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,—among others—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
- 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 Mi'gmaq's rights and interests. Also considered, in a more generic sense, are the following primary effects of importance to the federal EA process that overlap with the MTI'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:*

- health and socio-economic conditions;*
- physical and cultural heritage;*
- the current use of lands and resources for traditional purposes; or*
- 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 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**

The Proponent has not integrated Mi'gmaq comprehensive Indigenous Knowledge or Socio-Cultural-Economic Baseline Information into their respective projects' Environmental Assessment processes to date. This includes failure to properly consider and integrate the Indigenous Knowledge Study for the Eastern Newfoundland Offshore Exploration Drilling Project and the Flemish Pass Exploration Drilling Project that MTI completed and submitted in August 2018.

Although the Study was not completed explicitly for the Bay du Nord Project, the Study does focus on the Flemish Pass area, which is where the Bay du Nord development will occur. In addition, as part of the process agreement established between MTI and the Proponent, Equinor requested permission to use the information provided in this Study to inform other project EAs for a period of up to five years.

The Bdn assessment falls well within that five-year threshold and therefore, should have properly and thoroughly considered and integrated the results from MTI's Indigenous Knowledge Study for the Eastern Newfoundland Offshore Exploration Drilling Project and the Flemish Pass Exploration Drilling Project. Lastly, failure to consider this Study clearly violates requirements established in the EIS guidelines released by the Agency, namely requirements set out in sections 6, 7.1.8, and 7.3.7.

As a result, the Crown's duty to consult, via adequate integration of Indigenous Knowledge shared and meaningful engagement, consultation, and accommodation with the Mi'gmaq in New Brunswick, has not been met.

## **4.0 REVIEW FINDINGS**

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

### **4.1 CUMULATIVE EFFECTS**

#### **4.1.1 EVALUATION & RECOMMENDATIONS**

The following section describes issues identified by MTI in our scoped review of cumulative effects provided within the EIS and provides comments and recommendations to resolve the issues.



**Comment 1:** *Table 15.5 Marine Fish and Fish Habitat: Other Project and Activities and their potential Environmental Effects* – The table includes mention of the numerous offshore exploration drilling projects that are currently in the environmental approvals process in the vicinity of the Project. The EIS states that most of the project-specific EAs typically conclude that, with the implementation of mitigation measures, the projects are not likely to result in significant adverse environmental effects. However, the Project EIS does not include any mention or assessment of the ongoing Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador being conducted by IAAC that was created to assess cumulative impacts of exploration and production projects in the region.

**Recommendation 1:** The EIS should include a summary of the findings of the Regional Assessment and discussion on how the Project aligns with the findings and mitigation measures laid out in the Regional Assessment recommendations.

**Comment 2:** *Section 15.1.4 – Assessing Cumulative Effects* – The impacts of an increase in vessel traffic are downplayed within the EIS. The Proponent states that the movement of supply vessels back and forth from the drilling installations to the supply base will result in a small increase in total marine traffic travelling through the Project Area. It seems as though no consideration of noise impacts or disturbance to migrating fish species is given, and that the assumption is that impacts are negligible.

**Recommendation 2:** A more comprehensive analysis of vessel traffic, including noise impacts and potential risks of fuel spills, should be completed. In addition, a more detailed description of the scheduling and frequency of vessel activity would be beneficial.

**Comment 3:** *Section 15.0 – Cumulative Environmental Effects* - Between 1997 and 2009, Newfoundland has had 417 accidental spills totalling 434,993 L of hydrocarbons and synthetic based drilling fluids (Ellis et al, 2013). In addition, drilling mud release in these areas has occurred in considerable volume in recent years. Thousands of litres of synthetic drilling mud were spilled at the White Rose project in September 2017. Husky Energy reported a spill of approximately 5,000 litres of drilling mud from the GSF Grand Banks oil rig during normal drilling operations in September 2011. The EIS does not adequately consider the extent of cumulative impacts of drilling mud release on the overall marine environment.

**Recommendation 3:** In the context of species of importance for MTI, including swordfish, Atlantic salmon and Atlantic bluefin tuna, the Proponent should provide an analysis of the cumulative effects of continuous drilling fluid release, in addition to the oil spill modelling. The Proponent claims these drilling releases are unlikely, but recent and nearby events suggest otherwise.

**Comment 4:** In Section 15.7.5 Cumulative Effects Summary and Evaluation, the EIS states that “the Project, in combination with other known projects and activities that have been or will be carried out, is not likely to result in significant adverse cumulative environmental effects on this valued component (VC) [“Indigenous Peoples”] ... “Moreover, the relative contribution of the residual effects of the Project to cumulative effects on this VC is predicted to be low.” And Table 15.18, Summary of Potential Cumulative Environmental Effects: Indigenous Peoples, states that “[T]he Project will have no residual effects upon the exercise of Aboriginal or treaty rights;” and that “[T]he Project may result in residual adverse effects on commercial-



communal fisheries. These residual effects are predicted to be not significant” (pp. 15–83). Despite acknowledgement of potential residual adverse effects on (Indigenous) commercial–communal fisheries, this does not extend to an acknowledgement of potential residual adverse effects on Aboriginal or Treaty rights, which is contradictory in nature. Furthermore, this contradiction indicates a need for a follow-up monitoring program to ensure the protection of Indigenous rights and related socio-economic / socio-cultural interests, which the EIS currently denies as being necessary.

**Recommendation 4:** Similar to recommendations made in Section 4.2.1 and other sections of this report, MTI requests that an Indigenous environmental monitoring committee be established to monitor and address direct, indirect and cumulative effects throughout each phase of the Project.

## 4.2 SOCIO-ECONOMICS AND COMMUNITY WELL-BEING

### 4.2.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of socio-economic information provided within the EIS and provides comments and recommendations to resolve the issues.

**Comment 5:** In Section 7.3.6.1, Mi’gmaq of New Brunswick, the nine Mi’gmaq First Nations of NB are listed and described within brief community overviews in Table 7.13, Mi’gmaq of New Brunswick Community Profiles. The “Community Indicator” column, within the “Asserted or Established Aboriginal and / or Treaty Rights” category (pp. 7–117), states: “The Mi’gmaq of NB have a right to fish for a “moderate livelihood” which flows from the Peace and Friendship Treaties and an Aboriginal right to fish for food, social or ceremonial(FSC) purposes. These rights do not extend to lands or waters in or near the Project Area.” The first sentence is correct. The second is not and requires correction.

**Recommendation 5:** Amend this section and any other associated documents concerning this Project to reflect the fact that “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.” (as per Section 3.0 of this Report).

**Comment 6:** In Section 7.3.6.1, Mi’gmaq of New Brunswick, Table 7.13, Mi’gmaq of New Brunswick Community Profiles – The “Community Indicator” column, within the “Current Use of Lands and Resources for Traditional Purposes” category (pp.7–118) states: “The Mi’gmaq of NB are known to occupy and use the land and waters around NB primarily for travel corridors, harvesting and fishing for traditional purposes. Salmon and American eel have been identified as species of particular importance to the Mi’gmaq of NB. Although Section 7.3.8 later in the EIS refers to swordfish, it is not apparent within these summary tables that MTI member First Nations consider swordfish a species of cultural importance.

**Recommendation 6:** Amend this section and any other associated sections and documents concerning this Project (e.g., Table 7.20, Marine-Associated Species Used by Indigenous Groups) to reflect the fact that the Mi’gmaq of NB also have a particular interest in swordfish as a species of cultural and commercial importance.



**Comment 7:** In Section 14.1.5.1, Scope of the VC Assessment, within Section 14, Effects Assessment on Indigenous Peoples, the EIS states: “the various Indigenous groups listed in the EIS Guidelines (Appendix A) are located at a range of 640 km to 2,000 km from the Project and its associated activities. There is no overlap between the traditional territory of any of the 41 Indigenous groups and the Core BdN Development Area, the Project Area, or the Local Study Area (LSA). It is Equinor Canada’s understanding that none of the identified groups have asserted or established Indigenous rights to, in or near the lands and waters of the LSA, including the Core BdN Development Area and the Project Area” (pp. 14–8). This statement is inaccurate.

**Recommendation 7:** Amend this section, and all other sections and future documents regarding this Project, with wording that reflects the breadth of Indigenous Rights that intersect with the Project’s study areas. These rights and interests extend beyond where Indigenous Peoples may live in their communities. Wording from MTI to this effect is: “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” (as per Section 3.0 of this Report).

**Comment 8:** The EIS acknowledges that “...the potential for certain marine associated species of commercial or traditional importance to Indigenous groups to be present in or migrate through the Project Area and to be potentially affected by planned Project activities. Equinor Canada also acknowledges that direct interactions between the Project and marine-associated species of importance could potentially result in indirect impacts on Aboriginal or treaty rights. For example, direct impacts upon marine-associated species could, in turn, indirectly affect the exercise of the right to harvest marine species for food, social or ceremonial (FSC) purposes or pursuant to the terms of a treaty” (pp. 14–9). However, it then states - under the sub-section Health and Socio-economic Conditions – “Routine Project-related activities will occur in the marine environment at a range of approximately 640 km to 2,000 km from the listed Indigenous communities and their traditional territories. The geographic extent of potential effects resulting from routine Project activities (e.g., environmental emissions or discharges) will be localized and therefore, will not extend to Indigenous communities. As a result, no direct Project effects on the physical or social health and well-being and socioeconomic conditions of the relevant Indigenous groups are predicted” (pp. 14–9). These statements reflect a contradiction. This is presumed to be based on a lack of understanding of the connection between potential impacts to migratory species and cultural and commercial values and interests, which in turn, result in impacts to Indigenous Peoples’ health and socio-economic conditions. MTI First Nations have interests in multiple marine species for social, cultural and economic reasons. These interests, along with cultural ties to the species themselves, are fundamental facets of community health and well-being. Impacts to the species or habitats that support the integrity of these species’ populations result in impacts to health and socio-economic conditions.

**Recommendation 8:** Amend this section, subsequent sections and documents regarding this Project to accurately reflect how the Project’s effect mechanisms interact with Indigenous Peoples and supporting value components as described in the statement above. This includes Tables 14.2 and 14.3, where value components and Project interactions relating to Indigenous Peoples are outlined.

**Comment 9:** In Section 14.1.5.3, Summary of Mitigation Measures, the EIS lists mitigation measures that are also reflected in other sections of the EIS pertaining to fish, marine mammals and sea birds and



commercial fisheries. MTI acknowledges the relevance of these mitigations to “reduce potential effects to Indigenous Peoples” (pp. 14–23). However, in Section 14.2.1, Offshore Construction and Installation, Hook-up and Commissioning, Section 14.2.2., Production and Maintenance Operations and 14.4.3 Drilling Activities, under the sub-heading “Follow up Monitoring,” the EIS states that “Follow-up Monitoring for the effects on Indigenous Peoples associated with Offshore Construction and Installation and HUC Activities in consideration of the residual effects predictions is not proposed (pp.14–23). This is unacceptable to MTI given the potential for accidents and malfunctions and/or medium- to long-term effects to migratory species that are - albeit rated as low likelihood – inconclusive.

**Recommendation 9:** MTI requests a Follow Up Program to monitor and evaluate the accuracy of effects predictions and mitigation effectiveness specifically for Indigenous Peoples. Such a program requires ongoing direct involvement to ensure the integrity of MTI First Nation’s socio-economic and cultural sustainability as these relate to the species of cultural and commercial importance to the Nations – in particular, Atlantic salmon and swordfish.

**Comment 10:** Similar to the comments above, Section 14.5 of the EIS, Environmental Monitoring and Follow-up, states: “given the high level of confidence regarding the prediction of no significant adverse environmental effects on Indigenous Peoples, and the implementation of mitigation measures, no follow-up is proposed to be implemented for routine Project activities (pp. 14–49). This decision is of concern to MTI, given the issues identified within the fish, marine mammal and accident and malfunctions sections of this technical review. Although the magnitude of impacts may be low or defined as “insignificant” by the Proponent, there remains the possibility of direct and cumulative impacts that require monitoring within an adaptive management approach that involves Indigenous Peoples such as MTI.

**Recommendation 10:** Establish an Indigenous environmental monitoring committee and mechanisms to directly involve Indigenous Peoples in the ongoing monitoring of impacts throughout the Project’s phases.

## 4.3 ACCIDENTS & MALFUNCTIONS

### 4.3.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of accidents and malfunctions information provided within the EIS and provides comments and recommendations to resolve the issues.

**Comment 11:** *Section 16.4.3 – Subsurface Blowout Model Results* – It appears that although the EIS includes assessment of vessel traffic for general operations of the Project, it does not include the marine shipping of oil on tankers into Canadian waters. Nor does it include any modelling around the potential spill trajectories if a tanker were to spill along any of its routes within Canadian waters. MTI remains very concerned about oil tanker shipping and the potential for accidental release into the aquatic environment to impact fish and fish habitat.

**Recommendation 11:** The EIS should include a robust assessment of the marine shipping by oil tanker from the Project site to shore facilities. Modelling of various potential release sites along these shipping routes would provide a greater understanding of the potential area that may be affected if a ship were to accidentally release on route from the extraction site to onshore facilities.



**Comment 12:** *Section 16.1.2.2, Well Capping and Containment Plan* – The Proponent estimates that mobilization and installation of the capping stack could take anywhere from 18 to 36 days, depending on whether it comes from Norway or Brazil. The C-NLOPB confirmed that capping and containment of a blown-out well requires mobilization of equipment to prepare the subsea release site before use of a capping stack. This equipment would be transported by air to begin site preparation, which would include clearing of the site and cutting away of debris to ready the well for capping stack installation.

**Recommendation 12:** MTI believes it would reduce the lag time and extent of a blowout to have a capping stack along with the appropriate capacity for equipment modification, and rapid staging and deployment, situated near the drill, potentially staged in Newfoundland or Atlantic Canada. This could also help address the cumulative risks of all current and future oil and gas projects. The Agency and the Proponent must ensure this critical risk mitigation and accommodation measure is in place to protect and reduce the risk to MTI rights and interests.

**Comment 13:** 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, and effects on fish and fish habitat. In addition, MTI could be affected if a spill impacts species that migrate through the spill area to areas where they are harvested for food, social or ceremonial reasons (e.g., Atlantic salmon and Atlantic bluefin tuna).

**Recommendation 13:** Any damages, including the loss of commercial or food, social and ceremonial fisheries must require compensation in accordance with the C-NLOPB's Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.

**Comment 14:** *Section 16.1.2.3, Spill Response* - The EIS states that in the event of an accident or spill, remediation measures will be dependent on the size of the spill and the area and resources affected. Equinor Canada will use their *internal* specialists and external remediation expertise and contractors (e.g., OSRL, ECRC) to develop and implement long-term remediation strategies and plans. These would be developed in consultation with the C-NLOPB and the National Environmental Emergencies Centre (NEEC) and other government agencies as necessary.

**Recommendation 14:** It is imperative that MTI, along with other Indigenous communities, be fully engaged and consulted on the development and implementation of remediation activities planned in the event of a spill. MTI must be involved in the development, and review of the effectiveness of, the proposed remediation activities, to ensure the protections and objectives of the remedial design align with MTI rights and interests.



## 4.4 MARINE FISH & FISH HABITAT

### 4.4.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of marine fish and fish habitat information provided within the EIS and provides comments and recommendations to resolve the issues.

**Comment 15:** *Table 3.1 Summary of Alternative Analysis for the Project* – The Proponent states that the Project is in the early stages of planning, which means that Project design and operational aspects are still under review. The table provided suggests that a number of preferred options for several project activities are still “under investigation.” Currently, as the EIS is laid out, the options being pursued are said to likely result in the harmful alteration, disruption or destruction (HADD) of fish habitat as determined by DFO and may require a section 35(2) Fisheries Act Authorization. It is difficult to determine whether the current design is the plan that will have the least amount of impacts to fish and fish habitat when there are other potential options still under review.

**Recommendation 15:** The EIS should fully incorporate the assessment of other potential options for Project design that will reduce the impacts to fish and fish habitat. MTI will then be able to assess the potential impacts of other options and determine which design will have the least amount of impacts to fish and fish habitat important to MTI communities.

**Comment 16:** *Section 9.3.4.2 - Underwater Sound Emissions from Vessels* – The EIS states that there may be changes in fish behaviour due to underwater sound emissions from vessel supply and servicing traffic, and that these would be adverse but short-term. Despite the potential adverse effect, mitigations to reduce potential effects to marine fish and fish habitat associated with underwater sound emissions from vessels engaged in supporting surveys are not proposed. Further, follow-up monitoring is also not proposed.

**Recommendation 16:** Considering the potential adverse effects on fish, the EIS should include a monitoring program that assesses the underwater impacts of light and sound from all Project activities, including vessel traffic, drilling and operations.

**Comment 17:** MTI remains concerned about the potential impacts on sensitive habitats and migratory routes of Atlantic salmon and other important fish species currently protected in Marine Protected Areas (MPAs). The concern remains that potential spills of oil from tankers may eventually reach important habitat within these areas and beyond. MTI member communities are concerned about impacts of oil spills on all MPAs including the Laurentian Channel MPA, which is in close proximity to the Project Area and its transportation routes, and where Atlantic salmon migrate. In addition, MTI is very concerned about the impacts to the Marine Refuge at the Miramichi Bay Closure, which is established to protect adult Atlantic salmon and is an important migration corridor (DFO, 2019)

**Recommendation 17:** The EIS should include a section that addresses the potential for impacts to reach these MPAs, including an assessment of the extent of the expected impacts. Of particular concern to MTI is



an assessment of potential oil release effects on the Laurentian Channel MPA and the Miramichi Bay Closure marine refuge.

**Comment 18:** *Section 9.3, Core BdN Development Area* - The EIS claims that many of the offshore activities and associated disturbances that will occur as a result of this Project will be either relatively localized at a specific location or transient, though of a long-term nature. The EIS suggests that species like Atlantic salmon do not migrate in large concentrations and preferred sea surface temperatures would *likely* limit habitat use to temporary movement corridors in the Project Area, limiting potential for interactions with Project activities. However, many of the sources provided to support this claim in Section 9.5.5 are dated (1970s and 80s). MTI remains concerned with the potential impacts of the Project on Atlantic salmon. There remains the potential for Atlantic salmon to pass through the Project Area on route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. In addition, there is also a gap in understanding the potential impacts of a marine shipping accident and the extent of oil release into the surrounding environment.

There have been few marine surveys of the species, and thus oceanic movement of Atlantic salmon is not well understood. The ongoing IAAC Regional Assessment for nearby exploration projects has mandated the establishment of an Environmental Studies Research Fund (ESRF) in acknowledgement of a need for more data to fill data gaps on Atlantic salmon distribution. Under the Regional Assessment, the ESRF is meant to fund and research projects to gather additional data to support the assessment of effects from offshore projects. It is unclear whether the BdN project is contributing to, or will be using, the data from the ESRF under the Regional Assessment to further assess the impacts to Atlantic salmon and other fish species.

**Recommendation 18a:** The EIS should provide clarity on whether the Proponent will be contributing to the ESRF under the Regional Assessment for this specific Bay Du Nord Project, and whether they plan on incorporating the data collected to enhance and update the effects assessment for the Project.

**Recommendation 18b:** The North Shore Micmac District Council (NSMDC) has established the Anqotum Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian fishing industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute an Atlantic salmon research program specific to New Brunswick and Salmon populations important to MTI. In addition to the mandated ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic salmon research study that focuses on concerns to MTI is funded and executed.

**Recommendation 18c:** : A tracking study of Atlantic salmon, using tags on Atlantic salmon leaving New Brunswick waters, to determine if those populations in fact reach and migrate through the Project Area, would be a benefit to MTI and to the overall assessment of effects from the Project. This type of Project may be funded either through the ESRF or directly from the Proponent.



**Comment 19:** *Section 9.3, Core BdN Development Area* - The key mitigation measures outlined in the EIS do not include any mention of completing or implementing some type of marine fish monitoring or ongoing impact assessment during operations. In fact, the EIS explicitly states that no follow-up monitoring or long-term mitigation measures will be implemented. The EIS acknowledges the fluctuating nature of fish presence in the Project Area depending on time of year, yet no commitment is made to continually assess fish presence, fish avoidance or mortalities during operation.

**Recommendation 19a:** Considering the Project concerns of MTI and many other Indigenous communities on the long-term effects of operations on fish and fish habitat, the Proponent should implement a seasonal fish monitoring assessment that will provide insight into species type and numbers that are passing through or frequenting the Project Area. This will also help determine if significant avoidance or mortalities are occurring as a result of Project operations.

**Recommendation 19b:** Given the lack of data on Atlantic salmon and their migration patterns in the Project Area, as well as the uncertainty with respect to impact predictions, the Proponent should collaborate with MTI and Anqotum to conduct further research into Atlantic salmon migration. For this follow-up monitoring program, the Proponent should implement a detailed Marine Fish Monitoring Plan for the operation phase of the Project, which should be designed in collaboration with MTI and Anqotum Fisheries Resource Centre.

**Comment 20:** *Section 9.6.3 – Determination of Significance; Appendix O – Fish Habitat Characterization, Mitigation and Fisheries Act Compliance Overview* – The EIS concludes that in consideration of the overall nature and characteristics, geographic extent and short- to long-term duration of the various planned components and activities associated with this Project, the Project is not likely to result in significant residual adverse effects on marine fish and fish habitat. The EIS also states that Project activities and discharges will interact with fish habitat, however, the effects on fish habitat would *not* result in the harmful alteration, disruption or destruction of fish habitat in the Project Area that cannot be adequately compensated by *offsetting*.

Although habitat offsetting is mentioned, the only details provided on potential or proposed offsetting measures is that the Proponent commits to developing an offsetting plan with DFO, in consultation with Indigenous groups. However, no planned or proposed offsetting plans or recommendations are provided in the EIS. Appendix O provides some high-level examples of other offsetting plans in the area that the project may follow, but specific recommendations or proposed offsetting measures are not provided for this Project.

**Recommendation 20a:** The EIS should include a summary of proposed offsetting plans that will be pursued to mitigate the specific impacts described in the EIS. The EIS needs to expand its detail on how these offsetting measures will result in nonet loss to fish populations, specifically Atlantic salmon. Currently, the EIS is vague in how these measures will be applied.

**Recommendation 20b:** MTI must be consulted and meaningfully engaged in the development and implementation of these habitat offsetting measures. MTI is particularly concerned about the long-term health of Atlantic salmon and Atlantic bluefin tuna. As a result, MTI would like to be involved to ensure appropriate measures are being implemented to offset the Project's effects.



## 4.5 MARINE MAMMALS & MIGRATORY BIRDS

### 4.5.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of marine mammals and migratory bird information provided within the EIS and provides comments and recommendations to resolve the issues.

**Comment 21:** *EIS Section 10.1.5.2, Summary of Mitigation Measures (pp. 10–15), EIS Section 10.3.2.2 Light emissions from FPSO (pp. 10–35 to 10–42).*

Equinor will undertake an engineering study of lighting on the FPSO that will be reviewed by both ECCC and Canadian Wildlife Service (CWS). Equinor will evaluate lighting options that are economically and technically feasible during the detailed design phase. The options may include shading, avoiding unnecessary lighting, and directional lighting that is pointed toward the deck and not out to the water. The lighting options that will be chosen will not compromise worker safety and safe operations. (pp. 10–15).

Equinor profiled options for using lighting technologies such as spectrally modified lighting or green lights to reduce the effects of vessel lighting on marine and migratory birds (pp. 10–37) but has not made it clear whether these options would be considered in the lighting engineering study. It is also not clear whether lighting options would be evaluated in the engineering study for the FPSO only or for all vessels (support, supply and shuttle tankers).

**Recommendation 21a:** In addition to shading, avoiding unnecessary lighting, and using directional lighting, Equinor should also evaluate the spectral modified lighting (Marquenie et al., 2014; Poot et al., 2008) in the lighting engineering study. The study should include lighting options for all vessels included in this Project.

**Recommendation 21b:** If it is feasible to use spectral modified lighting on some or all vessels, MTI recommends that Equinor work with ECCC-CWS to evaluate the effectiveness of the spectral modified lighting to mitigate risk to marine and migratory birds. Equinor should compile the results into an annual report to share with the ECCC-CWS and MTI. The information would contribute to the broader understanding of the effectiveness of spectral modified lighting to reduce risks to birds and address critical knowledge gaps in the EIS.

**Comment 22:** *EIS Section 10.1.5.2, Summary of Mitigation Measures, 10.3.1.2 Light Emissions from Vessels (pp. 10–28), 10.3.2.2 Light Emissions from FPSO (pp. 10–36), 10.3.2.4, Non-routine Flaring, 10.3.3.2, Light Emissions from Drilling Installation (pp. 10–56), 10.3.3.3 Waste Discharges during Drilling (pp. 10–63), Section 10.7 Environmental Monitoring and Follow-up (pp. 10–131).*

To reduce the impact of the presence and operation of the FPSO and other vessels on marine and migratory birds, Equinor will implement an observation-based monitoring program that will be developed in collaboration with ECCC-CWS. Equinor will conduct systematic searches of the FPSO for stranded birds and will record their findings. The live, stranded birds will be collected and released. The vessel/installation crew will be trained to identify and handle birds (pp. 10–16, 10–131).

With regards to Equinor’s plans for marine bird monitoring, MTI is concerned that:



- The monitoring program will only be implemented on the FPSO, and not the supporting vessels
- Regular searches will be undertaken by vessel crews, and not qualified Seabird Observers
- There are no plans to use supporting technology/equipment (e.g., bird radar) to account for the limitations of observer-based surveys in poor weather conditions (Ronconi et al., 2015)
- There is no commitment to consult Indigenous communities on program development, or involve Indigenous monitors in the work

**Recommendation 22a:** MTI recommends that Equinor implement the marine bird monitoring program on all project vessels (not just the FPSO). If this is not necessary, please provide rationale on why concerns related to marine bird stranding and mortality do not apply to other project vessels.

**Recommendation 22b:** MTI recommends that Equinor employ qualified Seabird Observers to implement searches for marine and migratory birds on the FPSO and support vessels. In collaboration with ECCC-CWS, Equinor should provide Seabird Observers with training in relevant monitoring protocols. To support and supplement the work of Seabird Observers, all crew members should receive marine and migratory bird awareness training and be required to notify Seabird Observers of all incidental observations.

**Recommendation 22c:** MTI recommends that Equinor use supporting technology/equipment (e.g., bird radar, cameras, acoustic recording/deterrents) to account for limitations of observer-based surveying during poor conditions. If this is deemed unnecessary, please provide a rationale on how these limitations will be addressed.

**Recommendation 22d:** Equinor should consult MTI during the development of the marine and migratory bird monitoring protocol to ensure their Indigenous Knowledge is considered, and their values protected. Equinor should also consider hiring and training MTI community members to work as Seabird Observers on board the FPSO and other vessels. This direct involvement would give MTI greater confidence that marine bird monitoring protocols are effectively designed and implemented.

**Comment 23:** *EIS Section 10.1.5.2 Summary of Mitigation Measures (pp. 10–16), 10.3.2 Production and Maintenance Operations (pp. 10–32), Section 10.3.2.4 Non-routine Flaring (pp. 10–50).*

Equinor does not plan to conduct routine flaring during production and maintenance operations. However, there may be flaring during start up (to depressurize process segments), regularly scheduled major shutdowns, well clean-up activities, and upset process conditions (pp. 10–32). Due to safety constraints, when flaring will occur it cannot be limited to daytime hours and periods of good visibility (pp. 10-50). Equinor states that “a flaring and venting plan will be submitted to the C-NLOPB for review and acceptance in support of the application for Operations Authorization, which will outline planned non-routine flaring events. It is the understanding of Equinor Canada that a flaring and venting plan is required to be submitted annually for approval.” (pp. 10-16).

**Recommendation 23a:** Equinor has not committed to consulting ECCC-CWS regarding the timing of flaring events and potential impacts during sensitive periods for marine and migratory birds. While Equinor has committed to regular searches on the FPSO for stranded birds (see Comment 22: , they do not propose any measures to *prevent* adverse impacts of flaring on migratory birds. Equinor also provides information in Section 10.7 (pp. 10-131) about monitoring to evaluate the impacts of concurrent drilling and FPSO



operation, but not of recording data related to bird interactions with flaring, which would help build understanding of the effects of flaring on migratory birds.

**Recommendation 23b:** Equinor should work with ECCC-CWS to identify sensitive periods for marine and migratory birds within the area and develop a flaring and venting plan that avoids flaring during these periods. If this is not feasible due to safety concerns, measures to prevent flaring-related bird mortality must be taken during these time periods, as well as times when flaring occurs outside of daytime hours and periods of good visibility. Options could include using a water curtain around the flare to deter birds and reduce the risk that the flare would harm the birds. The Impact Assessment Agency of Canada (IAAC), formerly known as the Canadian Environmental Assessment Agency (CEAA) has previously identified the use of water curtains as a key mitigation measure for similar projects (Canadian Environmental Assessment Agency [CEAA], 2018). Equinor should also consider collecting data on flaring-related bird mortality and the effectiveness of preventive measures (e.g., the use of water curtain barriers) to address critical EIS knowledge gaps.

**Comment 24:** *EIS Section 11.3.1.1, Underwater Sound Emissions from Vessels (pp. 11-22), Section 11.3.4.1, Presence of Marine Vessels (pp. 11-41).*

North Atlantic right whales are considered rare in the Project Area (pp. 11–22). Vessel strikes are the most significant threat to North Atlantic right whales (Fisheries and Oceans Canada, 2014). Equinor acknowledges that additional supply and servicing vessel traffic may result in a higher risk of vessel strikes leading to injury or mortality of marine mammals and sea turtles (pp. 11–41). Equinor reports that every vessel “shall maintain a proper lookout at all times” and will alter course and/or reduce speed if they detect a marine mammal or sea turtle (pp. 11–41). However, the EIS lacks detailed information on:

- Marine mammal visual encounter survey methodology/protocol
- Marine Mammal Observer (MMO) training requirements
- Whether alternative methods for detecting marine mammals (e.g., passive acoustic monitoring, underwater acoustics engineering surveys, etc.) were considered or will be implemented

There is also no information on the speeds the vessels will travel in proximity to marine mammals.

**Recommendation 24a:** Equinor should develop a detailed marine mammal monitoring plan and provide this to MTI for further review and comment. This plan should include more information on marine mammal visual surveying protocol (e.g., timing, MMO location, etc.), and should specify that Equinor will hire MMOs that are experienced and trained in accordance with industry standards. MTI also encourages the use of multiple surveying methods, such as Passive Acoustic Monitoring to maximize real-time detection probability during times when a single approach will not be effective (e.g., in low visibility or poor weather). The protocol should also specify reporting and oversight requirements (e.g., annual reports should be submitted to DFO and MTI).

**Recommendation 24b:** MTI recommends that Equinor voluntarily adopt the speed restrictions required by Transport Canada in other North Atlantic waters for this Project. Specifically, MTI is requesting a voluntary speed reduction of 10 knots (maximum) during the active season for North Atlantic right whales (Transport Canada, 2020).



**Comment 25:** *EIS Section 11.2, Overview of Marine Mammals and Sea Turtles (pp. 11–20), Section 11.5 Overview of Potential Effects and Mitigation Measures (pp. 11–82), Section 11.6.3 Determination of Significance (pp. 11–99).*

Equinor’s assessment of marine mammals and sea turtles was based on information gathered from regional government databases, ESRF acoustic soundscape study, observations made by Equinor during the seabed surveys, and from scientific literature (pp. 11-20). Equinor states: “There are no direct studies of marine mammal prey preferences and foraging strategies in the Project Area or LSA. Information for the RSA is dated and limited to a few species” (pp. 11-20). In addition to this, the distribution of North Atlantic right whales is shifting rapidly in response to changing ocean conditions and the shifting abundance of their primary prey species, *Calanus finmarchicus* (Brillant et al., 2015; Plourde et al., 2016; Davis et al., 2017; Meyer-Gutbrod, Greene C. H., 2017). MTI is concerned that Equinor is interpreting the lack of data and targeted survey effort in this region as an absence of North Atlantic right whales. Further, MTI is concerned that Equinor has not made an effort to address this data gap by conducting targeted surveys for North Atlantic right whales or adequately evaluating current and future prey availability. Additional work is needed to adequately determine that North Atlantic right whales will have limited interactions with the Project (pp. 11-82) and that there will be no significant adverse impacts on marine mammals (including the North Atlantic right whale) (pp. 11–99).

**Recommendation 25:** Equinor should collect baseline data on the endangered North Atlantic right whale through targeted surveys, or by consulting with independent researchers who are investigating abundance and distribution in this area. Alternatively, Equinor could estimate the current and future distribution and abundance of *Calanus finmarchicus* in the Project Area to determine whether this could become foraging habitat for the whales within the timeframe of Project operations. If it is not possible to enhance Equinor’s dataset with primary research, Equinor should commit to more conservative monitoring and mitigation measures to account for the potential impacts the Project may have on North Atlantic right whales.

**Comment 26:** *EIS Section 11.7, Environmental Monitoring and Follow-up (pp. 11–99).*

It is stated that “Equinor Canada will develop and implement a marine mammal and sea turtle observation program for 4D seismic surveys. The plan will be provided to DFO for review and acceptance. The plan will include MMO requirements, shutdown and ramp-up procedures and reporting requirements. A report of the observational program will be submitted annually to the C-NLOPB and DFO, including documentation of marine mammal and sea turtle sightings.” (pp. 11–99).

MTI is concerned that no Indigenous groups, including MTI, will be consulted regarding Equinor’s plans for mitigation and monitoring of marine mammals. Mi’gmaq peoples have used these waters since time immemorial and the Project activities have the potential to affect their inherent rights and interests. MTI and its members can provide valuable experience and input to Project activities and the protection of marine mammals, and MTI is disappointed that Equinor has not solicited their participation in the mitigation and monitoring aspects of this Project.

**Recommendation 26:** Equinor must meaningfully involve MTI in the development of the Project’s mitigation and monitoring measures, including:

- Providing MTI with the opportunity to review and comment on the marine mammals and sea turtle observation program. MTI expects that Equinor will solicit Mi’gmaq knowledge during the development of this plan.



- Providing MTI with annual reports, outlining the results of the Project's marine mammal and sea turtle monitoring plan and activities, and notifying MTI of any Project vessel collisions with marine mammals within five days of an incident.
- Providing Mi'gmaq members with funding and industry standard job training as needed to participate in marine mammal monitoring activities and reporting. Allowing MTI community members to participate in these activities will provide the Mi'gmaq community with greater confidence in the implementation of marine mammal monitoring protocols throughout the life of the Project.

## 5.0 SUMMARY AND RECOMMENDATIONS

This independent review of Equinor's EIS for the proposed Bay du Nord Development Project focuses on areas integral to Mi'gmaq rights and interests. With this lens, the review strategically assesses potential Project interactions with the environment that may result in risks to MTI's rights and interests, as described in Section 4.0 of this report.

This review documents issues relevant to MTI, and provides 26 recommendations for accommodations that appropriately consider and include Mi'gmaq Indigenous Knowledge that MTI has provided to Equinor, in addition to potential effects on Mi'gmaq First Nations rights and interests. In particular, the review provides recommendations for accommodations related to the Mi'gmaq Indigenous fishery, accommodations to deal with insufficient information to support mitigation and effects assessment results, and accommodations related to insufficient environmental protection planning and follow-up program involvement for MTI.

The Proponent has not integrated Mi'gmaq comprehensive Indigenous Knowledge or socio-cultural-economic baseline information into their respective projects' Environmental Assessment processes to date. This includes failure to properly consider and integrate the *Indigenous Knowledge Study for the Eastern Newfoundland Offshore Exploration Drilling Project and the Flemish Pass Exploration Drilling Project* that MTI completed and submitted in August 2018.

Although the Study was not completed explicitly for the Bay du Nord Project, the Study does focus on the Flemish Pass area, which is where the Bay du Nord development will occur. In addition, as part of the process agreement established between MTI and the Proponent, Equinor requested permission to use the information provided in this Study to inform other project EAs for a period of up to five years. The BdN assessment falls well within that five-year threshold and therefore, should have properly and thoroughly considered and integrated the results from MTI's *Indigenous Knowledge Study for the Eastern Newfoundland Offshore Exploration Drilling Project and the Flemish Pass Exploration Drilling Project*. Lastly, failure to consider this study clearly violates requirements established in the EIS guidelines released by the Agency, namely requirements set out in sections 6, 7.1.8, and 7.3.7.

As a result, the Crown's duty to consult, via adequate integration of Indigenous Knowledge shared and meaningful engagement, consultation, and accommodation with the Mi'gmaq in New Brunswick, has not been met.

MTI puts forward the following additional accommodations as potential means of addressing the issues and comments raised in this review of the EIS for the proposed Bay du Nord Development Project:



1. The Project EIS, its baseline studies, EA Report, mitigation, and monitoring plans need to accurately reflect consideration of MTI's Indigenous Knowledge Study that was submitted to the Proponent in August 2018.
2. The Agency and/or the Proponents should engage MTI and Anqotum Fisheries Resource Centre in designing and conducting a research project focused on species of cultural importance to MTI (swordfish, Atlantic salmon and Atlantic bluefin tuna) that seeks to fill data gaps related to use and existence in the Project Area.
3. Establish a forum and process where MTI can meet with Equinor Canada Ltd. 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).
4. Equinor Canada Ltd. 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 throughout the life of the Project, including the EA report, conditions imposed on the Project, and all follow-up monitoring programs.
  - a. A plan for enhanced and ongoing engagement and consultation with MTI and its member communities that spans the life 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, including a concordance table that identifies how all outstanding issues will be addressed.
5. MTI, the Crown and the Proponent should develop agreements to support MTI and MTI member communities' participation in environmental, socio-economic and cultural monitoring of activities throughout the life of the Project. This may also require:
  - a. Training, involvement, employment of Mi'gmaq First Nations of New Brunswick environmental and cultural monitors for all Project phases.
  - b. Involvement in emergency preparedness planning and appropriate notifications and consultations in the event of a significant accident or malfunction.

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

## 6.0 REFERENCES

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# APPENDIX A: COMMENT TRACKING TABLE

COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
CUMULATIVE EFFECTS			
1	<i>Table 15.5 Marine Fish and Fish Habitat: Other Project and Activities and their potential Environmental Effects</i>	The table includes mention of the numerous offshore exploration drilling projects that are currently in the environmental approvals process in the vicinity of the Project. The EIS states that most of the project-specific EAs typically conclude that, with the implementation of mitigation measures, the projects are not likely to result in significant adverse environmental effects. However, the Project EIS does not include any mention or assessment of the ongoing Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador being conducted by IAAC that was created to assess cumulative impacts of exploration and production projects in the region.	The EIS should include a summary of the findings of the Regional Assessment and discussion on how the Project aligns with the findings and mitigation measures laid out in the Regional Assessment recommendations.
2	<i>Section 15.1.4 – Assessing Cumulative Effects</i>	The impacts of an increase in vessel traffic are downplayed within the EIS. The Proponent states that the movement of supply vessels back and forth from the drilling installations to the supply base will result in a small increase in total marine traffic travelling through the Project Area. It seems as though no consideration of noise impacts or disturbance to migrating fish species is given, and that the assumption is that impacts are negligible.	A more comprehensive analysis of vessel traffic, including noise impacts and potential risks of fuel spills, should be completed. In addition, a more detailed description of the scheduling and frequency of vessel activity would be beneficial.
3	<i>Section 15.0 – Cumulative Environmental Effects</i>	Between 1997 and 2009, Newfoundland has had 417 accidental spills totalling 434,993 L of hydrocarbons and synthetic based drilling fluids (Ellis et al, 2013). In addition, drilling mud release in these areas has occurred in considerable volume in recent years. Thousands of litres of synthetic drilling mud were spilled at the	In the context of species of importance for MTI, including swordfish, Atlantic salmon and Atlantic bluefin tuna, the Proponent should provide an analysis of the cumulative effects of continuous drilling fluid release, in addition to the oil spill modelling. The Proponent claims these drilling releases are unlikely, but



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		White Rose project in September 2017. Husky Energy reported a spill of approximately 5,000 litres of drilling mud from the GSF Grand Banks oil rig during normal drilling operations in September 2011. The EIS does not adequately consider the extent of cumulative impacts of drilling mud release on the overall marine environment.	recent and nearby events suggest otherwise.
4	Section 15.7.5 Cumulative Effects Summary and Evaluation	In Section 15.7.5 Cumulative Effects Summary and Evaluation, the EIS states that “the Project, in combination with other known projects and activities that have been or will be carried out, is not likely to result in significant adverse cumulative environmental effects on this valued component (VC) [“Indigenous Peoples”] ... “Moreover, the relative contribution of the residual effects of the Project to cumulative effects on this VC is predicted to be low.” And Table 15.18, Summary of Potential Cumulative Environmental Effects: Indigenous Peoples, states that “[T]he Project will have no residual effects upon the exercise of Aboriginal or treaty rights;” and that “[T]he Project may result in residual adverse effects on commercial-communal fisheries. These residual effects are predicted to be not significant” (pp. 15–83). Despite acknowledgement of potential residual adverse effects on (Indigenous) commercial–communal fisheries, this does not extend to an acknowledgement of potential residual adverse effects on Aboriginal or Treaty rights, which is contradictory in nature. Furthermore, this contradiction indicates a need for a follow-up monitoring program to ensure the protection of Indigenous rights and related socio-economic / socio-cultural interests, which the EIS currently denies as being necessary.	Similar to recommendations made in Section 4.2.1 and other sections of this report, MTI requests that an Indigenous environmental monitoring committee be established to monitor and address direct, indirect and cumulative effects throughout each phase of the Project.



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
SOCIO-ECONOMICS & COMMUNITY WELL-BEING			
5	Section 7.3.6.1, Mi'gmaq of New Brunswick	In Section 7.3.6.1, Mi'gmaq of New Brunswick, the nine Mi'gmaq First Nations of NB are listed and described within brief community overviews in Table 7.13, Mi'gmaq of New Brunswick Community Profiles. The "Community Indicator" column, within the "Asserted or Established Aboriginal and / or Treaty Rights" category (pp. 7–117), states: "The Mi'gmaq of NB have a right to fish for a "moderate livelihood" which flows from the Peace and Friendship Treaties and an Aboriginal right to fish for food, social or ceremonial(FSC) purposes. These rights do not extend to lands or waters in or near the Project Area." The first sentence is correct. The second is not and requires correction.	Amend this section and any other associated documents concerning this Project to reflect the fact that "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." (as per Section 3.0 of this Report).
6	Section 7.3.6.1, Mi'gmaq of New Brunswick, Table 7.13, Mi'gmaq of New Brunswick Community Profiles	In Section 7.3.6.1, Mi'gmaq of New Brunswick, Table 7.13, Mi'gmaq of New Brunswick Community Profiles – The "Community Indicator" column, within the "Current Use of Lands and Resources for Traditional Purposes" category (pp.7–118) states: "The Mi'gmaq of NB are known to occupy and use the land and waters around NB primarily for travel corridors, harvesting and fishing for traditional purposes. Salmon and American eel have been identified as species of particular importance to the Mi'gmaq of NB. Although Section 7.3.8 later in the EIS refers to swordfish, it is not apparent within these summary tables that MTI member First Nations consider swordfish a species of cultural importance.	Amend this section and any other associated sections and documents concerning this Project (e.g., Table 7.20, Marine-Associated Species Used by Indigenous Groups) to reflect the fact that the Mi'gmaq of NB also have a particular interest in swordfish as a species of cultural and commercial importance.
7	Section 14.1.5.1	In Section 14.1.5.1, Scope of the VC Assessment, within Section 14, Effects Assessment on Indigenous Peoples, the EIS states: "the various Indigenous groups listed in the EIS Guidelines (Appendix A) are located at a range of 640 km to 2,000 km	Amend this section, and all other sections and future documents regarding this Project, with wording that reflects the breadth of Indigenous Rights that intersect with the Project's study areas. These rights and interests extend



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		<p>from the Project and its associated activities. There is no overlap between the traditional territory of any of the 41 Indigenous groups and the Core BdN Development Area, the Project Area, or the Local Study Area (LSA). It is Equinor Canada’s understanding that none of the identified groups have asserted or established Indigenous rights to, in or near the lands and waters of the LSA, including the Core BdN Development Area and the Project Area” (pp. 14–8). This statement is inaccurate.</p>	<p>beyond where Indigenous Peoples may live in their communities. Wording from MTI to this effect is: “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” (as per Section 3.0 of this Report).</p>
8	Tables 14.2 and 14.3	<p>The EIS acknowledges that “...the potential for certain marine associated species of commercial or traditional importance to Indigenous groups to be present in or migrate through the Project Area and to be potentially affected by planned Project activities. Equinor Canada also acknowledges that direct interactions between the Project and marine-associated species of importance could potentially result in indirect impacts on Aboriginal or treaty rights. For example, direct impacts upon marine-associated species could, in turn, indirectly affect the exercise of the right to harvest marine species for food, social or ceremonial (FSC) purposes or pursuant to the terms of a treaty” (pp. 14–9). However, it then states - under the subsection Health and Socio-economic Conditions – “Routine Project-related activities will occur in the marine environment at a range of approximately 640 km to 2,000 km from the listed Indigenous communities and their traditional territories. The geographic extent of potential effects resulting from routine Project activities (e.g.,</p>	<p>Amend this section, subsequent sections and documents regarding this Project to accurately reflect how the Project’s effect mechanisms interact with Indigenous Peoples and supporting value components as described in the statement above. This includes Tables 14.2 and 14.3, where value components and Project interactions relating to Indigenous Peoples are outlined.</p>



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		<p>environmental emissions or discharges) will be localized and therefore, will not extend to Indigenous communities. As a result, no direct Project effects on the physical or social health and well-being and socioeconomic conditions of the relevant Indigenous groups are predicted” (pp. 14–9). These statements reflect a contradiction. This is presumed to be based on a lack of understanding of the connection between potential impacts to migratory species and cultural and commercial values and interests, which in turn, result in impacts to Indigenous Peoples’ health and socio-economic conditions. MTI First Nations have interests in multiple marine species for social, cultural and economic reasons. These interests, along with cultural ties to the species themselves, are fundamental facets of community health and well-being. Impacts to the species or habitats that support the integrity of these species’ populations result in impacts to health and socio-economic conditions.</p>	
9	Section 14.1.5.3, Summary of Mitigation Measures	<p>In Section 14.1.5.3, Summary of Mitigation Measures, the EIS lists mitigation measures that are also reflected in other sections of the EIS pertaining to fish, marine mammals and sea birds and commercial fisheries. MTI acknowledges the relevance of these mitigations to “reduce potential effects to Indigenous Peoples” (pp. 14–23). However, in Section 14.2.1, Offshore Construction and Installation, Hook-up and Commissioning, Section 14.2.2., Production and Maintenance Operations and 14.4.3 Drilling Activities, under the sub-heading “Follow up Monitoring,” the EIS states that “Follow-up Monitoring for the effects on Indigenous Peoples associated with Offshore Construction and Installation and HUC Activities in consideration of the residual</p>	<p>MTI requests a Follow Up Program to monitor and evaluate the accuracy of effects predictions and mitigation effectiveness specifically for Indigenous Peoples. Such a program requires ongoing direct involvement to ensure the integrity of MTI First Nation’s socio-economic and cultural sustainability as these relate to the species of cultural and commercial importance to the Nations – in particular, Atlantic salmon and swordfish.</p>



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
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effects predictions is not proposed (pp.14–23). This is unacceptable to MTI given the potential for accidents and malfunctions and/or medium- to long-term effects to migratory species that are - albeit rated as low likelihood – inconclusive.

10	Section 14.5 of the EIS, Environmental Monitoring and Follow-up	Similar to the comments above, Section 14.5 of the EIS, Environmental Monitoring and Follow-up, states: “given the high level of confidence regarding the prediction of no significant adverse environmental effects on Indigenous Peoples, and the implementation of mitigation measures, no follow-up is proposed to be implemented for routine Project activities (pp. 14–49). This decision is of concern to MTI, given the issues identified within the fish, marine mammal and accident and malfunctions sections of this technical review. Although the magnitude of impacts may be low or defined as “insignificant” by the Proponent, there remains the possibility of direct and cumulative impacts that require monitoring within an adaptive management approach that involves Indigenous Peoples such as MTI.	Establish an Indigenous environmental monitoring committee and mechanisms to directly involve Indigenous Peoples in the ongoing monitoring of impacts throughout the Project’s phases
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ACCIDENTS & MALFUNCTIONS

11	<i>Section 16.4.3 – Subsurface Blowout Model Results</i>	It appears that although the EIS includes assessment of vessel traffic for general operations of the Project, it does not include the marine shipping of oil on tankers into Canadian waters. Nor does it include any modelling around the potential spill trajectories if a tanker were to spill along any of its routes within Canadian waters. MTI remains very concerned about oil tanker shipping and the potential for	The EIS should include a robust assessment of the marine shipping by oil tanker from the Project site to shore facilities. Modelling of various potential release sites along these shipping routes would provide a greater understanding of the potential area that may be affected if a ship were to accidentally release on route from the extraction site to onshore facilities.
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COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		accidental release into the aquatic environment to impact fish and fish habitat.	
12	<i>Section 16.1.2.2, Well Capping and Containment Plan</i>	The Proponent estimates that mobilization and installation of the capping stack could take anywhere from 18 to 36 days, depending on whether it comes from Norway or Brazil. The C-NLOPB confirmed that capping and containment of a blow-out well requires mobilization of equipment to prepare the subsea release site before use of a capping stack. This equipment would be transported by air to begin site preparation, which would include clearing of the site and cutting away of debris to ready the well for capping stack installation.	MTI believes it would reduce the lag time and extent of a blowout to have a capping stack along with the appropriate capacity for equipment modification, and rapid staging and deployment, situated near the drill, potentially staged in Newfoundland or Atlantic Canada. This could also help address the cumulative risks of all current and future oil and gas projects. The Agency and the Proponent must ensure this critical risk mitigation and accommodation measure is in place to protect and reduce the risk to MTI rights and interests.
13	General Comment	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, and effects on fish and fish habitat. In addition, MTI could be affected if a spill impacts species that migrate through the spill area to areas where they are harvested for food, social or ceremonial reasons (e.g., Atlantic salmon and Atlantic bluefin tuna).	Any damages, including the loss of commercial or food, social and ceremonial fisheries must require compensation in accordance with the C-NLOPB's Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.
14	<i>Section 16.1.2.3, Spill Response</i>	The EIS states that in the event of an accident or spill, remediation measures will be dependent on the size of the spill and the area and resources affected. Equinor Canada will use their internal specialists and external remediation expertise and contractors (e.g., OSRL, ECRC) to develop and implement long-term remediation strategies and plans. These would be developed in consultation with the C-	It is imperative that MTI, along with other Indigenous communities, be fully engaged and consulted on the development and implementation of remediation activities planned in the event of a spill. MTI must be involved in the development, and review of the effectiveness of, the proposed remediation activities, to ensure the protections and objectives of the



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		NLOPB and the National Environmental Emergencies Centre (NEEC) and other government agencies as necessary.	remedial design align with MTI rights and interests.
MARINE FISH & FISH HABITAT			
15	Table 3.1 Summary of Alternative Analysis for the Project	The Proponent states that the Project is in the early stages of planning, which means that Project design and operational aspects are still under review. The table provided suggests that a number of preferred options for several project activities are still “under investigation.” Currently, as the EIS is laid out, the options being pursued are said to likely result in the harmful alteration, disruption or destruction (HADD) of fish habitat as determined by DFO and may require a section 35(2) Fisheries Act Authorization. It is difficult to determine whether the current design is the plan that will have the least amount of impacts to fish and fish habitat when there are other potential options still under review.	The EIS should fully incorporate the assessment of other potential options for Project design that will reduce the impacts to fish and fish habitat. MTI will then be able to assess the potential impacts of other options and determine which design will have the least amount of impacts to fish and fish habitat important to MTI communities.
16	Section 9.3.4.2 - Underwater Sound Emissions from Vessels	The EIS states that there may be changes in fish behaviour due to underwater sound emissions from vessel supply and servicing traffic, and that these would be adverse but short-term. Despite the potential adverse effect, mitigations to reduce potential effects to marine fish and fish habitat associated with underwater sound emissions from vessels engaged in supporting surveys are not proposed. Further, follow-up monitoring is also not proposed.	Considering the potential adverse effects on fish, the EIS should include a monitoring program that assesses the underwater impacts of light and sound from all Project activities, including vessel traffic, drilling and operations.
17	General Comment	MTI remains concerned about the potential impacts on sensitive habitats and migratory routes of Atlantic salmon and other important fish species currently protected in Marine Protected Areas (MPAs). The concern remains that potential spills of oil from tankers may eventually reach	The EIS should include a section that addresses the potential for impacts to reach these MPAs, including an assessment of the extent of the expected impacts. Of particular concern to MTI is an assessment of potential oil release effects on the Laurentian



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		<p>important habitat within these areas and beyond. MTI member communities are concerned about impacts of oil spills on all MPAs including the Laurentian Channel MPA, which is in close proximity to the Project Area and its transportation routes, and where Atlantic salmon migrate. In addition, MTI is very concerned about the impacts to the Marine Refuge at the Miramichi Bay Closure, which is established to protect adult Atlantic salmon and is an important migration corridor (DFO, 2019)</p>	<p>Channel MPA and the Miramichi Bay Closure marine refuge.</p>
18	<p>Section 9.3, Core Bdn Development Area</p>	<p>The EIS claims that many of the offshore activities and associated disturbances that will occur as a result of this Project will be either relatively localized at a specific location or transient, though of a long-term nature. The EIS suggests that species like Atlantic salmon do not migrate in large concentrations and preferred sea surface temperatures would likely limit habitat use to temporary movement corridors in the Project Area, limiting potential for interactions with Project activities. However, many of the sources provided to support this claim in Section 9.5.5 are dated (1970s and 80s). MTI remains concerned with the potential impacts of the Project on Atlantic salmon. There remains the potential for Atlantic salmon to pass through the Project Area on route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. In addition, there is also a gap in understanding the potential impacts of a marine shipping accident and the extent of oil release into the surrounding environment.</p> <p>There have been few marine surveys of the species, and thus oceanic movement of Atlantic salmon is not well understood. The</p>	<p><b>18A:</b> The EIS should provide clarity on whether the Proponent will be contributing to the ESRF under the Regional Assessment for this specific Bay Du Nord Project, and whether they plan on incorporating the data collected to enhance and update the effects assessment for the Project.</p> <p><b>18B:</b> The North Shore Micmac District Council (NSMDC) has established the Anqotum Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian fishing industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute an Atlantic salmon research program specific to New Brunswick and Salmon populations important to MTI. In addition to the mandated ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic salmon research</p>



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		<p>ongoing IAAC Regional Assessment for nearby exploration projects has mandated the establishment of an Environmental Studies Research Fund (ESRF) in acknowledgement of a need for more data to fill data gaps on Atlantic salmon distribution. Under the Regional Assessment, the ESRF is meant to fund and research projects to gather additional data to support the assessment of effects from offshore projects. It is unclear whether the BdN project is contributing to, or will be using, the data from the ESRF under the Regional Assessment to further assess the impacts to Atlantic salmon and other fish species.</p>	<p>study that focuses on concerns to MTI is funded and executed.</p> <p><b>18C:</b> A tracking study of Atlantic salmon, using tags on Atlantic salmon leaving New Brunswick waters, to determine if those populations in fact reach and migrate through the Project Area, would be a benefit to MTI and to the overall assessment of effects from the Project. This type of Project may be funded either through the ESRF or directly from the Proponent.</p>
19	<p><i>Section 9.3, Core BdN Development Area</i></p>	<p>The key mitigation measures outlined in the EIS do not include any mention of completing or implementing some type of marine fish monitoring or ongoing impact assessment during operations. In fact, the EIS explicitly states that no follow-up monitoring or long-term mitigation measures will be implemented. The EIS acknowledges the fluctuating nature of fish presence in the Project Area depending on time of year, yet no commitment is made to continually assess fish presence, fish avoidance or mortalities during operation.</p>	<p><b>19A:</b> Considering the Project concerns of MTI and many other Indigenous communities on the long-term effects of operations on fish and fish habitat, the Proponent should implement a seasonal fish monitoring assessment that will provide insight into species type and numbers that are passing through or frequenting the Project Area. This will also help determine if significant avoidance or mortalities are occurring as a result of Project operations.</p> <p><b>19B:</b> Given the lack of data on Atlantic salmon and their migration patterns in the Project Area, as well as the uncertainty with respect to impact predictions, the Proponent should collaborate with MTI and Anqotum to conduct further research into Atlantic salmon migration. For this follow-up monitoring program, the Proponent should implement a detailed Marine Fish Monitoring Plan for the operation phase of the Project, which should be designed in collaboration with MTI and Anqotum Fisheries Resource Centre.</p>



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
20	Section 9.6.3 – Determination of Significance; Appendix O – Fish Habitat Characterization, Mitigation and Fisheries Act Compliance Overview	<p>The EIS concludes that in consideration of the overall nature and characteristics, geographic extent and short- to long-term duration of the various planned components and activities associated with this Project, the Project is not likely to result in significant residual adverse effects on marine fish and fish habitat. The EIS also states that Project activities and discharges will interact with fish habitat, however, the effects on fish habitat would not result in the harmful alteration, disruption or destruction of fish habitat in the Project Area that cannot be adequately compensated by <i>offsetting</i>.</p> <p>Although habitat offsetting is mentioned, the only details provided on potential or proposed offsetting measures is that the Proponent commits to developing an offsetting plan with DFO, in consultation with Indigenous groups. However, no planned or proposed offsetting plans or recommendations are provided in the EIS. Appendix O provides some high-level examples of other offsetting plans in the area that the project may follow, but specific recommendations or proposed offsetting measures are not provided for this Project.</p>	<p><b>20A:</b> The EIS should include a summary of proposed offsetting plans that will be pursued to mitigate the specific impacts described in the EIS. The EIS needs to expand its detail on how these offsetting measures will result in net loss to fish populations, specifically Atlantic salmon. Currently, the EIS is vague in how these measures will be applied.</p> <p><b>20B:</b> MTI must be consulted and meaningfully engaged in the development and implementation of these habitat offsetting measures. MTI is particularly concerned about the long-term health of Atlantic salmon and Atlantic bluefin tuna. As a result, MTI would like to be involved to ensure appropriate measures are being implemented to offset the Project’s effects.</p>

MARINE MAMMALS & MIGRATORY BIRDS

21	EIS Section 10.1.5.2, Summary of Mitigation Measures (pp. 10–15), EIS Section 10.3.2.2 Light emissions from FPSO (pp. 10–35 to 10–42).	Equinor will undertake an engineering study of lighting on the FPSO that will be reviewed by both ECCC and Canadian Wildlife Service (CWS). Equinor will evaluate lighting options that are economically and technically feasible during the detailed design phase. The options may include shading, avoiding unnecessary lighting, and directional lighting that is pointed toward the deck and not out to the water. The	<b>21A:</b> In addition to shading, avoiding unnecessary lighting, and using directional lighting, Equinor should also evaluate the spectral modified lighting (Marquenie et al., 2014; Poot et al., 2008) in the lighting engineering study. The study should include lighting options for all vessels included in this Project.
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COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		<p>lighting options that will be chosen will not compromise worker safety and safe operations. (pp. 10–15).</p> <p>Equinor profiled options for using lighting technologies such as spectrally modified lighting or green lights to reduce the effects of vessel lighting on marine and migratory birds (pp. 10–37) but has not made it clear whether these options would be considered in the lighting engineering study. It is also not clear whether lighting options would be evaluated in the engineering study for the FPSO only or for all vessels (support, supply and shuttle tankers).</p>	<p><b>21B:</b> If it is feasible to use spectral modified lighting on some or all vessels, MTI recommends that Equinor work with ECCC-CWS to evaluate the effectiveness of the spectral modified lighting to mitigate risk to marine and migratory birds. Equinor should compile the results into an annual report to share with the ECCC-CWS and MTI. The information would contribute to the broader understanding of the effectiveness of spectral modified lighting to reduce risks to birds and address critical knowledge gaps in the EIS.</p>
22	<p>EIS Section 10.1.5.2, Summary of Mitigation Measures, 10.3.1.2 Light Emissions from Vessels (pp. 10–28), 10.3.2.2 Light Emissions from FPSO (pp. 10–36), 10.3.2.4, Non-routine Flaring, 10.3.3.2, Light Emissions from Drilling Installation (pp. 10–56), 10.3.3.3 Waste Discharges during Drilling (pp. 10–63), Section 10.7 Environmental Monitoring and Follow-up (pp. 10–131).</p>	<p>To reduce the impact of the presence and operation of the FPSO and other vessels on marine and migratory birds, Equinor will implement an observation-based monitoring program that will be developed in collaboration with ECCC-CWS. Equinor will conduct systematic searches of the FPSO for stranded birds and will record their findings. The live, stranded birds will be collected and released. The vessel/installation crew will be trained to identify and handle birds (pp. 10–16, 10–131).</p> <p>With regards to Equinor’s plans for marine bird monitoring, MTI is concerned that:</p> <ul style="list-style-type: none"> <li>• The monitoring program will only be implemented on the FPSO, and not the supporting vessels</li> <li>• Regular searches will be undertaken by vessel crews, and not qualified Seabird Observers</li> <li>• There are no plans to use supporting technology/equipment (e.g., bird radar) to account for the</li> </ul>	<p><b>22A:</b> MTI recommends that Equinor implement the marine bird monitoring program on all project vessels (not just the FPSO). If this is not necessary, please provide rationale on why concerns related to marine bird stranding and mortality do not apply to other project vessels.</p> <p><b>22B:</b> MTI recommends that Equinor employ qualified Seabird Observers to implement searches for marine and migratory birds on the FPSO and support vessels. In collaboration with ECCC-CWS, Equinor should provide Seabird Observers with training in relevant monitoring protocols. To support and supplement the work of Seabird Observers, all crew members should receive marine and migratory bird awareness training and be required to notify Seabird Observers of all incidental observations.</p> <p><b>22C:</b> MTI recommends that Equinor use supporting technology/equipment (e.g., bird radar, cameras, acoustic</p>



COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
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limitations of observer-based surveys in poor weather conditions (Ronconi et al., 2015)

- There is no commitment to consult Indigenous communities on program development, or involve Indigenous monitors in the work

recording/deterrents) to account for limitations of observer-based surveying during poor conditions. If this is deemed unnecessary, please provide a rationale on how these limitations will be addressed.

**22D:** Equinor should consult MTI during the development of the marine and migratory bird monitoring protocol to ensure their Indigenous Knowledge is considered, and their values protected. Equinor should also consider hiring and training MTI community members to work as Seabird Observers on board the FPSO and other vessels. This direct involvement would give MTI greater confidence that marine bird monitoring protocols are effectively designed and implemented.

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*EIS Section 10.1.5.2 Summary of Mitigation Measures (pp. 10–16), 10.3.2 Production and Maintenance Operations (pp. 10–32), Section 10.3.2.4 Non-routine Flaring (pp. 10–50).*

Equinor does not plan to conduct routine flaring during production and maintenance operations. However, there may be flaring during start up (to depressurize process segments), regularly scheduled major shutdowns, well clean-up activities, and upset process conditions (pp. 10–32). Due to safety constraints, when flaring will occur it cannot be limited to daytime hours and periods of good visibility (pp. 10-50). Equinor states that “a flaring and venting plan will be submitted to the C-NLOPB for review and acceptance in support of the application for Operations Authorization, which will outline planned non-routine flaring events. It is the understanding of Equinor Canada that a flaring and venting plan is required to be submitted annually for approval.” (pp. 10-16).

**23A:** Equinor has not committed to consulting ECCC-CWS regarding the timing of flaring events and potential impacts during sensitive periods for marine and migratory birds. While Equinor has committed to regular searches on the FPSO for stranded birds (see Comment 22), they do not propose any measures to prevent adverse impacts of flaring on migratory birds. Equinor also provides information in Section 10.7 (pp. 10-131) about monitoring to evaluate the impacts of concurrent drilling and FPSO operation, but not of recording data related to bird interactions with flaring, which would help build understanding of the effects of flaring on migratory birds.

**23B:** Equinor should work with ECCC-CWS to identify sensitive periods for marine and migratory birds within the



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			area and develop a flaring and venting plan that avoids flaring during these periods. If this is not feasible due to safety concerns, measures to prevent flaring-related bird mortality must be taken during these time periods, as well as times when flaring occurs outside of daytime hours and periods of good visibility. Options could include using a water curtain around the flare to deter birds and reduce the risk that the flare would harm the birds. The Impact Assessment Agency of Canada (IAAC), formerly known as the Canadian Environmental Assessment Agency (CEAA) has previously identified the use of water curtains as a key mitigation measure for similar projects (Canadian Environmental Assessment Agency [CEAA], 2018). Equinor should also consider collecting data on flaring-related bird mortality and the effectiveness of preventive measures (e.g., the use of water curtain barriers) to address critical EIS knowledge gaps.

24	<i>EIS Section 11.3.1.1, Underwater Sound Emissions from Vessels (pp. 11-22), Section 11.3.4.1, Presence of Marine Vessels (pp. 11-41).</i>	North Atlantic right whales are considered rare in the Project Area (pp. 11–22). Vessel strikes are the most significant threat to North Atlantic right whales (Fisheries and Oceans Canada, 2014). Equinor acknowledges that additional supply and servicing vessel traffic may result in a higher risk of vessel strikes leading to injury or mortality of marine mammals and sea turtles (pp. 11–41). Equinor reports that every vessel “shall maintain a proper lookout at all times” and will alter course and/or reduce speed if they detect a marine mammal or sea turtle (pp. 11–41). However, the EIS lacks detailed information on:	<b>24A:</b> Equinor should develop a detailed marine mammal monitoring plan and provide this to MTI for further review and comment. This plan should include more information on marine mammal visual surveying protocol (e.g., timing, MMO location, etc.), and should specify that Equinor will hire MMOs that are experienced and trained in accordance with industry standards. MTI also encourages the use of multiple surveying methods, such as Passive Acoustic Monitoring to maximize real-time detection probability during times when a single approach will not be effective (e.g., in low visibility or poor weather). The protocol should also
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COMMENT #	EIS SECTION REFERENCE	ISSUE	RECOMMENDATION
		<ul style="list-style-type: none"> <li>• Marine mammal visual encounter survey methodology/protocol</li> <li>• Marine Mammal Observer (MMO) training requirements</li> <li>• Whether alternative methods for detecting marine mammals (e.g., passive acoustic monitoring, underwater acoustics engineering surveys, etc.) were considered or will be implemented</li> </ul> <p>There is also no information on the speeds the vessels will travel in proximity to marine mammals.</p>	<p>specify reporting and oversight requirements (e.g., annual reports should be submitted to DFO and MTI).</p> <p><b>24B:</b> MTI recommends that Equinor voluntarily adopt the speed restrictions required by Transport Canada in other North Atlantic waters for this Project. Specifically, MTI is requesting a voluntary speed reduction of 10 knots (maximum) during the active season for North Atlantic right whales (Transport Canada, 2020).</p>
25	EIS Section 11.2, Overview of Marine Mammals and Sea Turtles (pp. 11–20), Section 11.5 Overview of Potential Effects and Mitigation Measures (pp. 11–82), Section 11.6.3 Determination of Significance (pp. 11–99).	<p>Equinor’s assessment of marine mammals and sea turtles was based on information gathered from regional government databases, ESRF acoustic soundscape study, observations made by Equinor during the seabed surveys, and from scientific literature (pp. 11-20). Equinor states: “There are no direct studies of marine mammal prey preferences and foraging strategies in the Project Area or LSA. Information for the RSA is dated and limited to a few species” (pp. 11-20). In addition to this, the distribution of North Atlantic right whales is shifting rapidly in response to changing ocean conditions and the shifting abundance of their primary prey species, <i>Calanus finmarchicus</i> (Brillant et al., 2015; Plourde et al., 2016; Davis et al., 2017; Meyer-Gutbrod, Greene C. H., 2017). MTI is concerned that Equinor is interpreting the lack of data and targeted survey effort in this region as an absence of North Atlantic right whales. Further, MTI is concerned that</p>	<p>Equinor should collect baseline data on the endangered North Atlantic right whale through targeted surveys, or by consulting with independent researchers who are investigating abundance and distribution in this area. Alternatively, Equinor could estimate the current and future distribution and abundance of <i>Calanus finmarchicus</i> in the Project Area to determine whether this could become foraging habitat for the whales within the timeframe of Project operations. If it is not possible to enhance Equinor’s dataset with primary research, Equinor should commit to more conservative monitoring and mitigation measures to account for the potential impacts the Project may have on North Atlantic right whales.</p>



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		<p>Equinor has not made an effort to address this data gap by conducting targeted surveys for North Atlantic right whales or adequately evaluating current and future prey availability. Additional work is needed to adequately determine that North Atlantic right whales will have limited interactions with the Project (pp. 11-82) and that there will be no significant adverse impacts on marine mammals (including the North Atlantic right whale) (pp. 11–99).</p>	
26	EIS Section 11.7, Environmental Monitoring and Follow-up (pp. 11–99).	<p>It is stated that “Equinor Canada will develop and implement a marine mammal and sea turtle observation program for 4D seismic surveys. The plan will be provided to DFO for review and acceptance. The plan will include MMO requirements, shutdown and ramp-up procedures and reporting requirements. A report of the observational program will be submitted annually to the C-NLOPB and DFO, including documentation of marine mammal and sea turtle sightings.” (pp. 11–99).</p> <p>MTI is concerned that no Indigenous groups, including MTI, will be consulted regarding Equinor’s plans for mitigation and monitoring of marine mammals. Mi’gmaq peoples have used these waters since time immemorial and the Project activities have the potential to affect their inherent rights and interests. MTI and its members can provide valuable experience and input to Project activities and the protection of marine mammals, and MTI is disappointed that Equinor has not solicited their participation in the mitigation and monitoring aspects of this Project.</p>	<p>Equinor must meaningfully involve MTI in the development of the Project’s mitigation and monitoring measures, including:</p> <ul style="list-style-type: none"> <li>• Providing MTI with the opportunity to review and comment on the marine mammals and sea turtle observation program. MTI expects that Equinor will solicit Mi’gmaq knowledge during the development of this plan.</li> <li>• Providing MTI with annual reports, outlining the results of the Project’s marine mammal and sea turtle monitoring plan and activities, and notifying MTI of any Project vessel collisions with marine mammals within five days of an incident.</li> <li>• Providing Mi’gmaq members with funding and industry standard job training as needed to participate in marine mammal monitoring activities and reporting. Allowing MTI community members to participate in these activities</li> </ul>



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will provide the Mi'gmaq community with greater confidence in the implementation of marine mammal monitoring protocols throughout the life of the Project.



# APPENDIX B: MTI LETTER TO IAAC RE: REGULATORY PROCESS CONCERNS





August 4, 2020

**VIA EMAIL: [iaac.baydunord.aeic@canada.ca](mailto:iaac.baydunord.aeic@canada.ca)**

Impact Assessment Agency of Canada

Dear Sir or Madam,

**Re: Bay du Nord Development Project Environmental Assessment Process**

Thank you for your letter on July 30, inviting Mi'gmaw'e'l Tplu'taqnn Incorporated (MTI) to comment on the Environmental Impact Statement (EIS) Summary as part of the Environmental Assessment (EA) process for Equinor's Bay du Nord Development Project. Please accept this letter, addressing some concerns about the integrity of this project's process from Mi'gmaw'e'l Tplu'taqnn Incorporated.

MTI represents the rights and interests of eight of its nine member communities for the purposes of commenting on the Bay du Nord Development Project: those communities are 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. MTI has advocated extensively for the rights and interests of its member communities through the Environmental Assessment Process on many Offshore Exploration Drilling Projects, but this will be the first development project MTI has the opportunity to participate.

In general, MTI has a number of concerns with respect to the development of the Environmental Impact Statement and changes to the Environmental Assessment process that need to be addressed. In particular, MTI is concerned with the following:

- **Changing of the process and lack of notification.** MTI was recently made aware of the Memorandum of Understanding (MOU) between the Impact Assessment Agency of Canada (IAAC/The Agency) and the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) dated January 2019. The Agency did not give any notification when this was posted to the registry. By moving the Information Requests (IRs) to the beginning of the EA process and having no

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## Mi'gma'we'l Tplu'taqnn

consultation or engagement in this step, MTI is concerned that the Agency will not give proper consideration to the comments throughout the process.

- **The lack of engagement by the Crown.** The Agency has had access to the Draft Environmental Impact Statement since February 2019, and the Indigenous groups were not notified or given the opportunity to be included in any capacity. Indigenous groups should have been included in the face to face meetings between The Agency and The Proponent to discuss and clarify issues. The Agency has had the perfect opportunity to show they comprehend the importance of early engagement, and still we were never contacted.
- **Timeline.** Even with the comment period extended from 30 to 45 days process will still been rushed. In addition to this being the first Offshore Development project MTI will be consulted on, restrictions from COVID-19 are hindering MTI's ability for proper consultation and engagement.
- **Inadequate funding.** Neither the Impact Assessment Agency nor the Proponent are providing adequate funding for the consultation process for this project. The amount of funding made available to MTI is the same as the exploration projects; this amount is inadequate for exploration projects, not to mention, being the first development project MTI will be engaged and consulted on, which will require additional considerations as well as time and effort.

MTI has identified these issues in hopes that they can and will be rectified where possible on this project and to ensure the integrity of the process is upheld for any future and current projects.

Regards,  
<Original signed by>

Marcy Cloud  
Impact Assessment Coordinator

Mi'gma'we'l Tplu'taqnn Incorporated