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Bay du Nord Development Project

Review and Comments on the Draft Environmental Assessment Report and Potential Conditions

Prepared by
Miawpukek First Nation
September 8, 2021



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1.0 INTRODUCTION

The Impact Assessment Agency of Canada (IAAC) has conducted their Environmental Assessment of the Bay du Nord Project (the Project), proposed by Equinor Canada Ltd. (Equinor or the Proponent). The Project is for the development of an offshore oil and gas production facility approximately 500 kilometres (km) east of St. John's, Newfoundland and Labrador (Figure 1). The Project is comprised of two areas each represented by a significant discovery licence, that the Proponent is planning to convert to production. These areas include the Bay du Nord, Bay de Verde, and Baccalieu. Equinor proposes to continue exploration in the nearby areas (Project Area Tiebacks: PAT) and may develop them if economically recoverable reserves are discovered.

The core Bay du Nord Development has an area of approximately 470 square kilometres (km²), with water depths ranging from approximately 1,000 metres (m) to 1,200 m. Seabed infrastructure would have a footprint of approximately 7km². The total potential well count for development includes up to 60 wells, depending on ongoing evaluations and delineation of reservoirs. The core Bay du Nord Development has a proposed life of 12 to 20 years, which could be extended to 30 years. The entire Project Area, which encompasses is approximately 4,900 km² in size.

Equinor has prepared the Environmental Impact Statement (EIS) to cover a temporal and spatial scale that includes development of both the core Bay du Nord Area and PATs. The scope of activities covered in the EIS include:

- Offshore construction, installation, hook up, and commissioning
- Production and maintenance operations
- Drilling activities (Anchored Semi-submersible and/or Drillship)
- Supply and servicing
 - Offshore supply vessels
 - Standby vessels
 - Helicopter support
- Crude oil shipping
- Supporting surveys
 - Geohazard / wellsite and seabed surveys
 - Geophysical surveys
 - Geotechnical / geological surveys
 - Environmental surveys
 - Remotely operated vehicle (ROV) / autonomous underwater vehicle (AUV) / video surveys
- Decommissioning

Miawpukek First Nation (MFN) has reviewed the draft EA Report and conditions. Comments on this document and the environmental assessment (EA) process, in general, are provided in this report. These comments build on previous communications from MFN sent to the Proponents and the Crown.

The rights, values, and interests of MFN are the focus of these comments, and on this basis we focus on key issues of commercial and Aboriginal fisheries, species at risk, Atlantic salmon, the marine environment, socioeconomics and community well-being. This report summarizes the position of MFN regarding the Project and outlines, on behalf of our community, recommendations and requested accommodations.

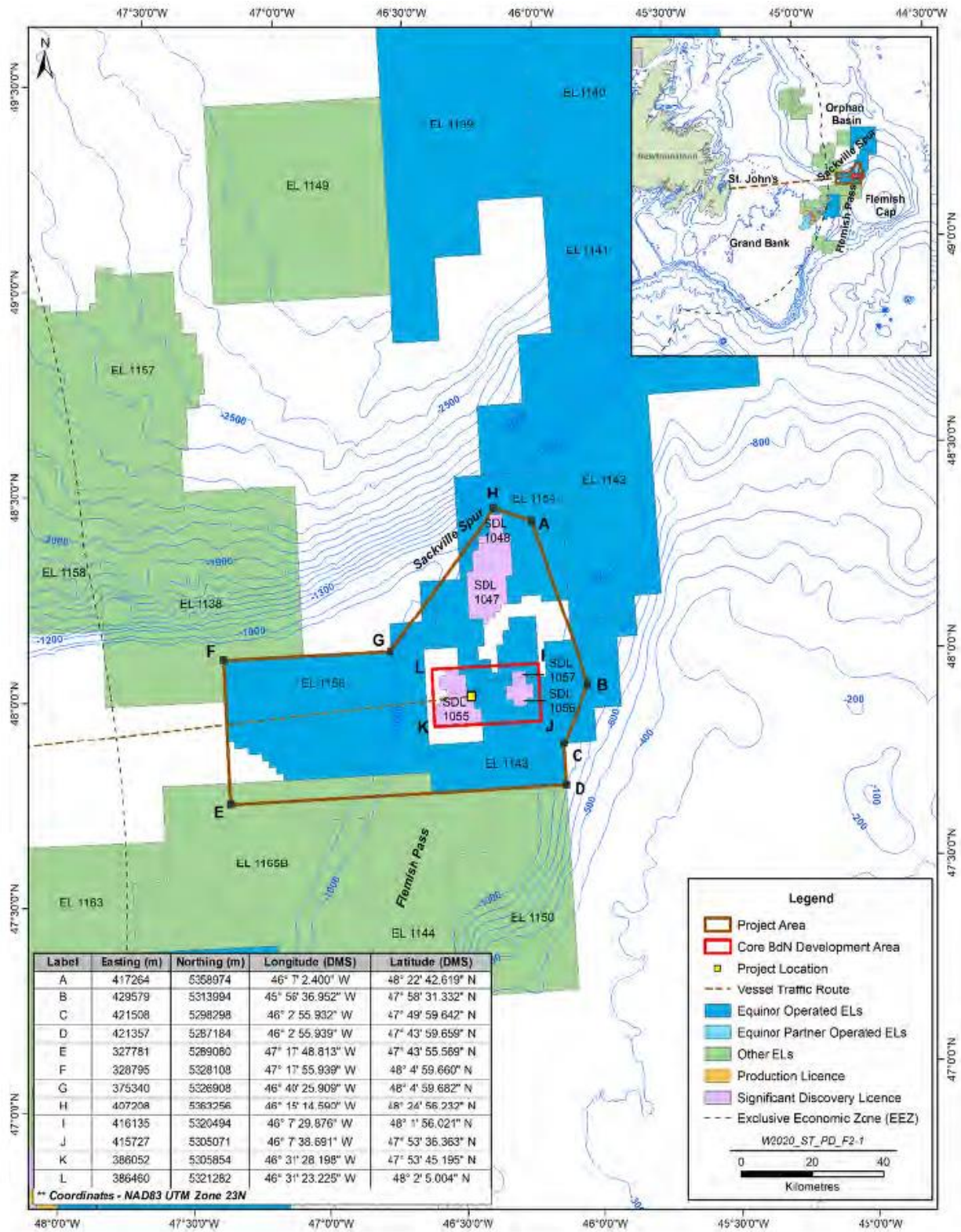


Figure 1. Location of the Project and Project Area (Source: Equinor Canada Ltd., 2020).

2.0 MIAWPUKEK FIRST NATION

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

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

2.1 HISTORIC OVERVIEW

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

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

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

summarized by Frank Speck (1922) who completed ethnographic surveys on Newfoundland in the summer of 1914:

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

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

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

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

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

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

part of the Mi'kmaq diet, reduced access to the caribou caused fish, Atlantic salmon in particular, to become much more important.

2.2 RIGHTS AND INTERESTS

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

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

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

The proposed offshore project is within fishing grounds that are part of the Traditional Territory of MFN currently used by community members. There are potential major environmental, cultural, and socio-economic risks associated with all phases of drilling and production that could impact MFN's rights and interests. The offshore production in the Bay du Nord has the potential to cause direct and indirect impacts from all phases.

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

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

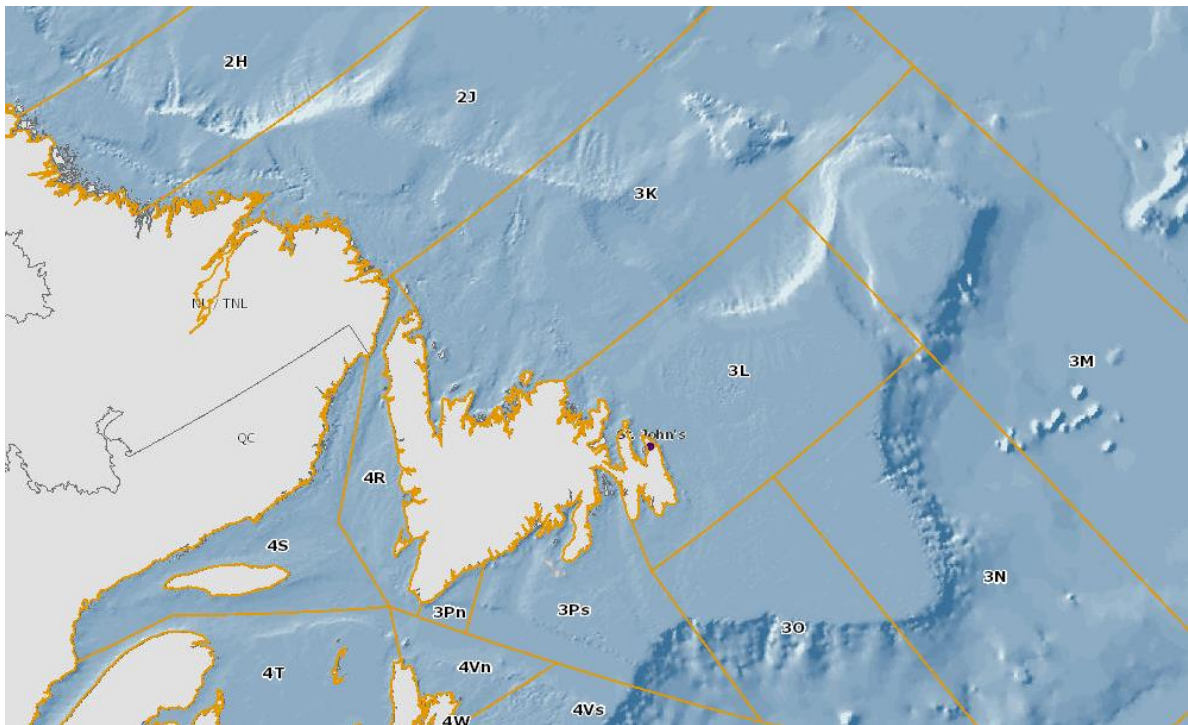


Figure 2. Northwest Atlantic Fisheries Organization (NAFO) Zones (DFO).

3.0 REVIEW FINDINGS

MFN has reviewed the Conditions of Approval and EA Report, including Appendix C, which provides a summary of the Crown's consultation with Indigenous groups and responses to some of the concerns raised by MFN during the EA process. MFN recognizes that the Crown has responded to many of the concerns listed below in the EA Report but has reiterated many of these comments below because responses are either inadequate or do not address the concerns to the satisfaction of MFN.

Comment 1: The current approach being taken by proponents for the involvement and capacity support of Indigenous communities in EAs for offshore exploration and development projects does not result in meaningful engagement. Throughout the EAs MFN has been inundated with requests for meetings, input, and document reviews. This includes requests for participation during the Impact Assessment process, after approval, and during exploration/production (e.g., EIS documents, communication plans, spill reports, etc.). With very limited staff capacity and funding, MFN is significantly challenged to participate effectively in the process. This situation is worsening as more projects are being proposed or moving forward in the development process, into Significant Discovery Licenses or Production Licenses. The current situation does not in any way represent meaningful consultation by the Crown—which ultimately bears the duty to consult, and where appropriate, accommodate—or by proponents, in discharging procedural aspects of the Crown's duty to consult and accommodate.

The complex nature and longevity of these offshore projects warrants more meaningful consultation and involvement of MFN and other affected Mi'kmaq Nations throughout the entire lifecycle of the projects. Moreover, proponents should coordinate this involvement to mitigate the cumulative effects of the oil and gas industry on the health and socioeconomic conditions of Indigenous communities.

Due to the complexity and number of projects and documents that must be reviewed, MFN requires adequate capacity funding and support to enable:

- a) effective understanding and evaluation of technical and regulatory documentation;
- b) community-based decision making, with specific attention to MFN's Aboriginal fishery, about MFN's response to offshore projects such as the Bay du Nord; and
- c) planning and preparation to enable MFN's involvement and participation in the regulatory process and the potential socioeconomic accommodations and opportunities MFN may wish to pursue associated with the projects.

Furthermore, the complex and ongoing nature of the Bay du Nord Project (and other offshore projects) requires a sustained and organized approach to involvement and consultation with Indigenous peoples in environmental oversight. To address these issues, MFN recommends the development of an **Indigenous Environmental Advisory Committee (IEAC)**, dedicated to oversight of the offshore oil/gas projects.

Recommendation 1: MFN firmly believes that an **Indigenous Environmental Advisory Committee (IEAC)** must be formed, as soon as possible, to provide a forum for ongoing consultation and oversight on potential impacts and mitigation/accommodation measures for MFN's rights and interests and those of and other affected Mi'kmaq Nations, for this Project and other offshore projects. Members of the IEAC may include a representative from all potentially affected Mi'kmaq Nations, a representative from the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), the Impact Assessment Agency of Canada (IAAC), and other relevant provincial/federal agencies. The mandate of the IEAC should be guided by a Terms of Reference codeveloped by Indigenous Nations and the previously mentioned agencies. The Proponent, or a consortium of proponents, must provide sufficient funding to support the IEAC in its endeavours. The IEAC would act as a technical advisory committee and would be responsible for:

- Identifying common priorities (economic development opportunities, environmental research initiatives, knowledge gaps, mitigation measures, etc.) between Indigenous communities and provide a framework for exploration.
- Providing informed advice to the IAAC, C-NLOPB, and the industry on addressing concerns and impacts to Indigenous Rights and interests.
- Overseeing the continued collection and incorporation of Indigenous Knowledge through community-led Indigenous Knowledge studies.
- Reviewing and providing input on all monitoring programs, response plans, etc., including, but not limited to, the Fisheries Communication Plan, Spill Response Plan, Spill Impact Mitigation Assessment, seabed investigation survey results, and results from the various follow-up monitoring programs.
- Ensuring regional consultation and engagement with community leadership, Elders, and Indigenous monitors from impacted communities.
- Enabling Indigenous Nations to participate in the oversight of offshore oil and gas projects. The IEAC may enable and support Indigenous Monitors to work alongside Environmental Monitors (EMs), Marine Mammal Observers (MMOs), etc., during environmental effects monitoring and

follow-up programs. This Indigenous Monitoring Program will help to build capacity within the C-NLOPB, IAAC, and industry to better understand and incorporate Indigenous Knowledge into the monitoring of offshore oil and gas infrastructure. It will also facilitate the sharing of capacity between the various environmental experts involved in the industry and Indigenous communities.

- Review and provide comments on the results from environmental effects monitoring and follow-up programs and provide input on adaptive management approaches.

Comment 2: Equinor indicates that a capping stack will be sourced through their membership with Oil Spill Response Limited (OSRL). The Proponent acknowledges that the location of the capping stack and resulting transportation times will be a factor in the time required to kill the well. Equinor provides a range for deployment of 18 to 36 days, the lower end of which is a scenario that includes sourcing the capping stack from Norway in the summer, favourable shipping conditions, and direct transport to the site. The longer scenario involves shipping the capping stack from Brazil in winter and non-direct transport to the site (i.e., inclusion of a port call for installation). It is apparent from the scenarios provided that a locally sourced capping stack would allow for more rapid deployment and, thus, a significant reduction in impacts to the marine environment.

Recommendation 2a: MFN asserts that it is critical to have a locally managed capping stack, deployment entity, and appropriate capacity for equipment modification and rapid staging and deployment situated in Newfoundland or Atlantic Canada to mitigate the risks associated with an uncontained blowout. This is important on a project-level basis, but also to account for the cumulative risks of all current and future exploratory and production oil and gas projects. We would also support the formation of a consortium, similar to the Marine Well Containment Company (<https://marinewellcontainment.com/>), whose purpose is to provide at-the-ready state-of-the-art well containment services and technology to operators in the U.S. Gulf of Mexico. Similar industry-led consortia exist in other geographies where offshore oil and gas drilling is commonplace, such as the Helix Well Containment Group (<https://www.hwcg.org/>) that also serves the Gulf of Mexico and WellCONTAINED (<https://wildwell.com/well-control/wellcontained/>), which has capping stacks in Scotland and Singapore. MFN's proposed locally managed entity may also be involved in the continual research and development of best available and safest technology (BAST). Whether this effort is funded by a consortium of all offshore oil and gas proponents in Atlantic Canada and/or the Crown is of no consequence to MFN; someone must fund and ensure this critical risk mitigation measure to protect MFN's rights, and to reduce the inequitable burden of risk MFN bears in relation to the exercise of our rights.

Recommendation 2b: Equinor indicates that a Well Capping and Containment Plan will be developed for the Project. MFN requests that this plan be provided for review upon development.

Comment 3: For information pertaining to MFN Indigenous Knowledge (IK), Equinor has used information from face-to-face meetings and workshops, telephone conversations, emails and letter correspondence, publicly available land claim documents, government documents and data, the community website, and reports and studies completed for other projects. This is not a meaningful attempt by the Proponent to incorporate MFN's Indigenous Knowledge into the Project. To date, MFN has yet to complete a thorough community-led Traditional Knowledge and Land Use Study for the Project Area. The collection of this knowledge takes planning, time, coordination, and resources. IK is a living body of knowledge that is passed down through generations. Individuals grow in their knowledge throughout their entire lives by listening, observing, and doing. IK is also often rooted in the natural

world and can be very specific and detailed when it comes to places and landscapes. This knowledge is incredibly valuable for informing design, mitigation, monitoring, impact assessment and accommodation. It is being omitted to the detriment of the EA process.

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

Recommendation 3: IK is difficult to collect and document and must be done with care and to appropriate standards to ensure it is authentic, verifiable, representative, and defensible. In addition, sensitive information cannot just be handed over to the Proponent without ensuring that the proper protocols and protections for MFN and any participating community members' intellectual property (IP) and confidentiality are in place. MFN requires that sufficient resources for the collection of the information requested be provided. This should be completed in accordance with MFN's engagement protocol. Without this highly important baseline information (both in terms of the IA process and the process to determine potential impacts to MFN's S. 35 and other Aboriginal Rights), the IA must be considered incomplete. MFN has shared its Guidebook for the Collection of Aboriginal Traditional Knowledge with the Proponent. This detailed guide provides information on the formative steps and methodology necessary for a successful IK study that is protective of MFN's rights and interests. For the IA process to be completed such that the Honour of the Crown and the Crown's obligations are met, the Proponent and/or IAAC must provide accommodations in the form of resources to MFN for internal coordination, the collection of IK, and reporting. Although the proponent is delegated procedural aspects of the duty to consult and the environmental assessment process, it is ultimately the responsibility of the Crown to ensure that this IK is then meaningfully considered and incorporated into the IA process, the Crown consultation process, and any further Crown accommodations necessary.

Comment 4: The southern Newfoundland population of Atlantic salmon is considered threatened by the Committee on the Status of Endangered Species in Canada and already faces many risks. The people of MFN have witnessed the continual and alarming decline of this species because of a range of factors including aquaculture, overfishing, forestry, and at-sea mortality. Returns of adult salmon to the Conne River reached an estimated 398 individuals in 2019, a drop from approximately 454, 712, and 1,230 during the years of 2018, 2017, and 2016 respectively (Fisheries and Oceans Canada [DFO], 2019; pers. comm. Brian Dempson, DFO). This is down from an average of 2,432 from 1992–2016 and highs of 10,000 reached during the 1980s (Dempson, O'Connell, & Schwarz, 2004).

The continued exploration and production of oil in offshore Newfoundland will potentially exert direct impacts and cumulative effects on Atlantic salmon through seismic effects, changes to water quality, major accidents and malfunctions, and more. These effects may cause stress to migrating salmon, induce behavioural changes, reduce feeding efficiency and, in limited circumstances, direct mortality. Atlantic salmon migrate through the Project Area on their way to feeding grounds, and again on their return journey to Conne River and other rivers on the south shore of Newfoundland. The population of

these salmon is already in such a poor condition that additional cumulative effects may further increase at-sea-mortality, resulting in the extirpation of salmon from rivers in MFN Traditional Territory, rivers that have had healthy salmon runs since time immemorial. Any negative effects to Atlantic salmon from the Project would represent a direct impact on the rights and interests of MFN.

Recommendation 4a: Due to the value of Atlantic salmon to the MFN community, the continual decline in numbers of returning adults, and the potential effects of the Project, it is necessary that the Proponent and Canada apply the precautionary principle to mitigate potential harm, especially given the already extremely fragile state of the stock. Moreover, any serious harm to fisheries must be offset through an Authorization under the Fisheries Act. This may be achieved, in part, through the delivery of funds to MFN for engaging in a feasibility study for evaluating potential recovery strategies of Atlantic salmon in southern Newfoundland. This research would benefit the local restoration priorities for Atlantic salmon. According to the Fisheries Productivity Investment Policy: Proponent Guide to Offsetting (DFO, 2013), providing funding for this type of research can be considered a Complimentary Measure. The results of this feasibility study would be used to inform recovery actions taken by MFN, the province of Newfoundland and Labrador, and DFO.

Recommendation 4b: Based on the outcome of the feasibility study described above (Recommendation 4a), MFN will identify preferred recovery strategies for Atlantic salmon on the south shore of Newfoundland. In order to undertake the recommendations from this study and the recovery of salmon, the Proponent should provide funding to MFN. In this way, the Proponent may be considered by Miawpukek to be a supporting partner in the recovery efforts.

Comment 5: The Conditions of Approval and Section 18.4 of the EIS (Follow-up and Monitoring) provide a summary of the various environmental monitoring and follow-up programs the Proponent will be required to develop and implement. The results of these environmental monitoring and follow-up programs should be shared with MFN. Also, as part of our accommodation measures, MFN requires that community members be provided with equitable opportunities in employment, training, and resource provision associated with these programs for the entirety of the project. MFN members have lived in the area for time immemorial and their input, opinions, and experiences would be a valuable asset to project construction, operation, and follow up monitoring.

Recommendation 5: MFN requests that environmental monitoring programs be developed in consultation with MFN and other affected Mi'kmaq Nations. Included with this accommodation, MFN also requires participation of community monitors in monitoring programs for fish and fish habitat, marine mammals and sea turtles, and migratory birds. MFN requests that the Proponent and/or the Crown provide or fund the necessary training for community members to participate in the project as monitors and the resources required for an annual community meeting in MFN to share the results of monitoring activities and for the MFN monitor(s) to be able to participate in presenting such results to the community. If results from environmental monitoring show that additional mitigation measures are required, MFN's input should be considered in the development and implementation of these additional mitigation measures as part of ongoing consultation.

Comment 6: Potential Condition 7.1.2 states that with regards to accidents and malfunctions the Proponent shall:

"implement emergency response procedures and contingency plans developed in relation to the Designated Project in the event of an accident or malfunction."

MFN has serious concerns with the potential for spills, accidents, and malfunctions, especially those that may result in harm to the environment and impact the rights and interests of the community. The contingency plans will include important information that will provide MFN with assurance that, should an emergency occur, Equinor will minimize, or mitigate the issue and that all reasonable efforts will be made to ensure that marine and shoreline resources upon which MFN relies for traditional use and commercial purposes will be protected.

Recommendation 6: MFN requests that, upon development and prior to the commencement of operations, Equinor provide a copy of the contingency plans to MFN for review.

Comment 7: Potential Condition 4.3 states that

"The Proponent shall develop, in consultation with Environment and Climate Change Canada and the Board, measures to mitigate impacts of lighting from the Designated Project's mobile offshore drilling unit(s), floating production storage and offloading vessel(s) and other Designated Project vessels on migratory birds, including measures to control the direction, timing, intensity, and glare of light fixtures while meeting operational health and safety requirements."

Recommendation 7a: The Proponent should implement lighting changes on all vessels / drilling installations involved with the project, not just the FPSO, in order to reduce adverse impacts on marine and migratory birds. These necessary mitigations will provide the MFN with greater confidence that marine and migratory birds are being adequately protected during the entire life of the Project.

Recommendation 7b: With regards to drilling installations specifically, the Proponent should perform their own feasibility assessment on whether shading, directing lighting towards the deck, and spectral modification of some lighting is possible on the drilling installation.

Recommendation 7c: The Proponent should discuss with potential drilling installation bidders options for potential modification of some lights (e.g., shading, directing lighting towards the deck, spectral modification, turning off unnecessary lighting) on the drilling installation to decrease attraction to marine and migratory birds, to the extent that worker safety, third-party safety, and safe operations are not compromised. These mitigation measures should be included in the bidding requirements.

Recommendation 7d: The Proponent should consult ECCC-CWS regarding possible data collection efforts to record changes made to lighting (e.g., duration, location), to assist in furthering the collective knowledge base on lighting mitigations and the effectiveness of individual mitigation technologies. The Proponent should compile these data into an annual report and share it with ECCC-CWS and MFN.

Comment 8: Potential Condition 3.11 states:

"The Proponent shall develop, in consultation with Fisheries and Oceans Canada and the Board, a Marine Mammal and Sea Turtle Monitoring Plan that shall be submitted to the Board at least 30 days prior to the commencement of any geophysical survey. The Proponent shall implement the plan during the conduct of applicable geophysical surveys."

The lack of detail regarding this observation program is concerning to MFN, as programs that rely on visual observations by human observers have limitations under certain conditions. During times of low light, choppy waters, and inclement weather (e.g., rain and fog), the human observers are less likely to correctly detect and identify many species (Brillant, 2015). In addition, the accuracy with which human

observers can detect species is dependent on their training, familiarity, and experience with marine mammals and sea turtles.

Recommendation 8a: The Proponent must share further details of the marine mammal observation program. Specifically, the standards, procedures, and protocols for the program during geophysical surveys. These standards must include dedicated qualified Marine Mammal and Sea Turtle Observers with training on marine mammal and sea turtle observation and identification. These procedures and protocols must consider the use of passive acoustic monitoring (PAM), and, ideally, Unmanned Aerial Vehicle (UAV) methodologies, alongside Marine Mammal and Sea Turtle Observers to provide additional coverage and more confidence in the identification and detection of marine mammals and sea turtles during and leading up to geophysical surveys.

Recommendation 8b: The Proponent must also commit to providing MFN with the marine mammal and sea turtle observation program so that they can also provide input and review the details of the program. This will provide the MFN with greater confidence that the Proponent's observation programs standards, protocols and procedures are able to mitigate the impacts on marine mammals and sea turtles effectively.

Comment 9: Potential condition 3.15 states:

*"The Proponent shall participate in research programs pertaining to the presence of Atlantic salmon (*Salmo salar*) in the Eastern Canadian offshore areas, where available and agreed upon by the party(ies) responsible for the research programs."*

It is not clear what is meant by this condition. Furthermore, it is vague and unenforceable.

Recommendation 9: The agency should clearly indicate the proposed participation and/or support that should be provided by Equinor for any Atlantic salmon research programs. The scope of Equinor's support should be commensurate with the scope of proposed project. Once finalized, the details of this participation/support should be shared with MFN.

4.0 CONCLUSION

MFN has not asked for this Project and currently sees few, if any, meaningful benefits arising from it for our community, and we do not wish to bear the risks associated with it. It is the perspective of MFN that the Project poses too great a risk to our Indigenous fisheries, our Brother Salmon, our environment, and our way of life. These concerns have been described by MFN on several occasions and highlighted by the spill and lack of clean up of 250,000 litres of oil from the SeaRose project in 2018.

When projects like the Bay du Nord are approved by the Crown, it is often Indigenous community members, like the members of MFN, who are forced to inequitably bear the risks and suffer any negative consequences and environmental effects. Despite these risks, MFN has never come to any agreement with the Proponent regarding accommodation for impacts to our rights from, or consent for, this project. Furthermore, we are of the opinion that adequate meaningful consultation has not occurred to date—only information sharing. The poor planning and lack of consideration of our knowledge, rights and interests will only exacerbate the effects of the Project on our community. We continue to voice our concerns that the duty to consult has not been met, implementation of UNDRIP

is not occurring and that the requirements of *CEAA 2012* and the new *Impact Assessment Act* are not satisfied. Ultimately this means that the Crown and the Proponent are far from satisfying their obligations for consultation and engagement with MFN. This is not in line with the legal requirements for consultation, nor in the spirit of Truth and Reconciliation.

In spite of the protests from MFN, recent experience indicates that the Bay du Nord Project will be approved. Indeed, this was likely a forgone conclusion from the moment the Project was proposed. While we understand that our voices may not be considered as part of the approval, it is our hope that the perspectives we have provided will help create a project that is less impactful to the environment. To this end, *MFN requests that the Crown incorporate the recommendations within this report though the final conditions of approval.*

5.0 REFERENCES

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