



WOLASTOQEY NATION IN NEW BRUNSWICK

Matawaskiye • Neqotkuk • Wotstak • Pilick • Sitansisk • Welamoktok

[SUBMITTED VIA EMAIL]

Ref: WNNB [026-20]

April 17, 2020

Re: Comment on the Proposed BHP Canada Exploration Drilling Project (the “Project”)

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

General Summary

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

With several new exploration projects and with forecasts of doubling oil and gas production and 100 new exploration wells by 2030,¹ serious concerns surround compounding and cumulative effects for all environmental resources in offshore Newfoundland. While the first Regional Assessment (“RA”) under CEAA 2012 is underway, and may address some of these concerns, we urge CEAA/IAAC to more fully review cumulative impacts. Projects and conditions may be similar, but each proposed project is different, and each one carries the potential to cause distinctive adverse effects and would benefit from tailored

¹ <https://www.releases.gov.nl.ca/releases/2018/exec/0219n01.aspx>

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

Comments in response to draft EIS Report

Impacts to Atlantic Salmon

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

In this report the proponent acknowledged the importance of species such as salmon and eel to Indigenous groups in the Atlantic region, as well as the uncertainty associated with the presence and habitat use of these species in the proposed Project area. The report (Section 6.1.9.2²) also recognized that the proposed Project area may be used by Atlantic Salmon and that Research Vessel (“RV”) surveys have caught salmon in the proposed Project area in the past, although at low abundances. The proponent believes these catches to be representative of migrations through the proposed Project area rather than overwintering or feeding behaviour. They point to the Environmental Studies Research Fund (ESRF) as a potential avenue for addressing data gaps pertaining to Atlantic Salmon in the offshore environment. While WNNB is disappointed with the rejection of our collaborative proposal to access the ESRF to address several of these existing data gaps, we look forward to seeing the results of these studies and remain open to opportunities and partnerships that enable us to conduct this important work. Additionally, Equinor sponsored an Atlantic Salmon Federation (ASF) salmon tagging study which tagged fish near Greenland. We also look forward to hearing the results of this study as well as any mechanisms that are developed

² Unless otherwise specified all sections referenced are from the proposed Project’s EIS



to translate this research (and others as part of the ESRF) into decision-making criteria for project approvals and project-specific mitigation and response measures.

However, our anticipation of these results does not eclipse the fact that Atlantic Salmon may be at risk from these exploratory drilling operations, regardless of our knowledge on the magnitude of such risk. This necessitates the implementation of an interim strategy until we fully understand the gravity of routine drilling operations and incidental hydrocarbon release on Atlantic Salmon. The proponent mentions the need to maintain a precautionary approach, and we could not agree more. Given existing evidence of salmon near the proposed Project area (albeit limited in breadth and scope), and the potential for feeding or overwintering, salmon-specific mitigation and monitoring measures must be developed even as more comprehensive research partnerships and programs are being solidified.

Impacts to American eel

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

Monitoring and mitigation measures

As per Section 12.6: “[n]o follow-up and monitoring are proposed for routine Project activities.” The proponent continues by outlining the following reasons for disregarding routine Project activities within proposed follow-up and monitoring protocols: future ESRF research, standard mitigation measures already in place, ongoing Indigenous engagement, collaboration on an Indigenous Fisheries



Communication Plan, as well as a high degree of confidence surrounding the lack of impacts. In contrast to their claims, Cordes et al. (2016)³ states that routine activities during exploratory phases can have “detrimental environmental effects” and “impacts can result from indirect (sound and traffic) and direct physical (anchor chains, drill cuttings, and drilling fluids) disturbance”. WNNB agrees with the authors’ recommendations that the entire suite of potential impacts of routine operations must be considered and addressed when designing mitigation or monitoring plans. The proponent highlights several mitigation measures that were developed in response to concerns expressed by Indigenous groups and communities on the loss of access to salmon (Section 3.2.5). However, these proposed measures have all become the standard for exploration projects and do not represent an extra effort on behalf of the proponent to accommodate the concerns of Indigenous peoples. In Section 12.3.4.5, emphasis is placed on the waste management measures on how they prevent impacts on migratory species and FSC/communal commercial fisheries. However, given the high degree of uncertainty pertaining to the movements and migration patterns of these species, the efficacy of such a mitigation strategy remains unknown. Section 8.3.2.3.2 states : “received sound levels are unlikely to result in physical effects to the majority of mobile fish species due to the expectation that they would avoid underwater sound at lower levels than those at which injury or mortality may occur.” While salmon and other species may indeed avoid these excessive sound levels, there is no way of knowing without monitoring for the presence of salmon within the proposed Project Area. As the proponent recommended, we should employ the precautionary approach and in turn expect that Vertical Seismic Profiling may end up disturbing the migration of salmon, causing permanent damage to hearing organs and/or temporary hearing loss depending on their distance from the source.⁴

Duty to Consult and Accommodate

The proponent directly contradicts itself in the EIS where it initially states in Section 7.4 that “migratory species (including fish, birds and mammals) that move through the Flemish Pass may potentially be

³ Cordes, E.E., D.O.B. Jones, T.A. Schlacher, D.J. Amon, A.F. Bernardino, S. Brooke, R. Carney, D.M. DeLeo, K.M. Dunlop, E.G. Escobar-Briones, A.R. Gates, L. Génio, J. Gobin, L. Henry, S. Herrera, S. Hoyt, M. Joye, S. Kark, N.C. Mestre, A. Metaxas, S. Pfeifer, K. Sink, A.K. Sweetman and U. Witte. 2016. Environmental impacts of the deep-water oil and gas industry: A review to guide management strategies. *Frontiers in Environmental Science*, 4: 1-26.

⁴ Bagočius, D., 2015. Piling underwater noise impact on migrating salmon fish during Lithuanian LNG terminal construction (Curonian Lagoon, Eastern Baltic Sea Coast). *Marine pollution bulletin*, 92(1-2), 45-51.



affected by proposed Project activities and these species may be harvested by Indigenous groups in coastal areas through FSC fishing, commercial-communal fishing or through other harvesting activities.” However Section 13.3.1.3 maintains that: [i]t is unlikely that marine resources will be affected or disturbed in a manner that would result in effects on the overall availability or quality of a marine resource for commercial fishers or other ocean users.” We would request that the proponent clarify exactly how they reached the conclusion that Atlantic Salmon and other such “marine resources” will not be adversely impacted.

This statement on the nature of the impacts to marine resources used by Indigenous groups, should be accompanied by a citation documenting where this information may be found or at the very least, a rationale for how this conclusion was reached. Furthermore, what aspects of drilling operations were considered or omitted? WNNB acknowledges that much of this information remains to be fully investigated so as a result, any assertions made regarding the scope of potential impacts, should either be qualified as to the limited body of existing research on this topic or contingent on new evidence.

With regards to compensation, we want to explicitly state that no amount of compensation will adequately account for the loss of a population so vitally intertwined with Wolastoqey existence and culture. The proponent acknowledges the differences between commercial, communal commercial, and rights-based fisheries the potential for varied impacts to each. While they agree to the CNLOPB Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity, in Section 3.2.7 they also state that they would: “BHP would take a case-by-case approach and seek to co-design a compensation negotiation process with the affected community in accordance with their institutions, decision making processes, and norms. The Company and community would then work through this process together to identify the appropriate compensation plan.”. The proponent also states that they will: “continue to work with Indigenous fishers to minimize any potential impact on their ability to exercise their rights to fish.” While this language offers some initial promise, it fails to elaborate on exactly how BHP will work with Indigenous, and specifically Wolastoqey fishers, in mitigating potential infringement of Aboriginal and Treaty fishing rights. This statement also remains sufficiently vague surrounding a definition of “impacts” and whether this only includes a hydrocarbon release or if it also includes impacts from routine drilling operations. We still have very little indication of how these operations affect Atlantic



Salmon and therefore this may indeed be more harmful than previously believed to the point of potentially higher rates of injury and/or mortality than a spill depending on the magnitude and timing. For further context regarding compensation and how the Fishing Gear Damage or Loss Compensation Program proposed in this report falls short of addressing impacts to Aboriginal and Treaty rights, please refer to the document WNNB submitted for Husky Energy Exploration Project's Information Requirement 58-02 specific to compensation and the inadequacies within the current framework.

Woliwon/Wəliwən,

<Original signed by>

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