SHARED VALUE SOLUTIONS

BHP CANADA EXPLORATION DRILLING: TECHNICAL REVIEW OF ENVIRONMENTAL IMPACT STATEMENT

Prepared for: Mi'gmawel Tplu'taqnn Incorporated (MTI)

March 30, 2020

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PROSPERITY.
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Mi'gmawel Tplu'taqnn Incorporated (MTI)

Chief George Ginnish
Chief Rebecca Knockwood
40 Micmac Rd
Eel Ground New Brunswick

c/o Marcy Cloud, Impact Assessment Coordinator

March 30, 2020

Dear 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 BHP Canada Exploration Drilling Project. This review was completed by Allie Mayberry, MA, BSc; Lauren Jones, BSc; Chris Wagner, BSc; 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

Senior Consultant and Regulatory and Negotiations Practice Area Lead, Shared Value Solutions Ltd.

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1.0 REVIEW OBJECTIVES

Shared Value Solutions Ltd. (SVS) provides this independent high-level peer review and strategic assessment of BHP Petroleum (New Ventures) Corporation (BHP; the Proponent) proposed BHP Canada Exploration Drilling 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, socioeconomics, and community development conducted the review. This report is not intended to be a comprehensive review of the Proponent's EIS and documentation for the Project. Rather, this report identifies concerns, potential impacts and additional protection measures related to seven key issues of concern, as identified by MTI in communications with SVS, in relation to the rights, key values and interests of MTI members:

1. Atlantic salmon
2. Atlantic bluefin tuna
3. Migratory birds
4. North Atlantic right whale
5. Cumulative effects
6. MTI Indigenous Knowledge and Land Use (IKLU) and Socio-economic impacts on 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, which MTI can provide to the Agency.

2.0 PROJECT DESCRIPTION AND REGULATORY PROCESS

2.1 BHP CANADA EXPLORATION DRILLING PROGRAM

BHP is proposing to undertake an exploration drilling program within the areas of its existing offshore exploration licences (ELs). The ELs are in the Orphan Basin, approximately 350 kilometres (km) northeast of St. John's, Newfoundland and Labrador (NL), in the Northwest Atlantic Ocean. Over the term of the ELs

(2019-2028), the BHP Canada Exploration Drilling Project (herein referred to as the "Project") will include drilling of up to 20 wells, with an initial well proposed to be drilled as early as 2021, pending regulatory approval.

In Eastern Canada, BHP's current offshore interests include two existing ELs in the Orphan Basin Area, EL 1157 and EL 1158. These two ELs were issued to BHP, as the sole interest holder (Table 1), by the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) in January 2019. The term of these ELs extends from January 15, 2019 to January 15, 2028. BHP will serve as the operator for this exploration drilling program.

Table 1 Licence Size and Interests

EL	SIZE (HECTARES)	INTEREST HOLDER
1157	269,799	BHP (100%)
1158	273,579	BHP (100%)

The drilling, testing, and abandonment of offshore exploratory wells in the first drilling program, in an area set out in one or more of the ELs issued, requires review and approval by the Canadian Environmental Assessment Agency (CEA Agency) (now the Impact Assessment Agency of Canada) per section 10 of the Regulations Designating Physical Activities under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). This Environmental Impact Statement (EIS) was developed following the published project specific guidelines (CEA Agency 2019). Pursuant to the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* and the *Canada-Newfoundland Atlantic Accord Implementation Act* (the Accord Act), the C-NLOPB also requires a project-specific environmental assessment (EA) for offshore oil and gas activities, including the drilling of exploration wells. The EIS Guidelines (CEA Agency 2019) and the C-NLOPB Accord Acts EA requirements will both be satisfied by the preparation of this EIS.

2.1.1 PROJECT LOCATION

During the term of the ELs, BHP proposes to drill up to 20 exploration wells in total, with between one and ten wells on either, or both, EL 1157 and EL 1158. The ELs are located offshore eastern Newfoundland in the Orphan Basin, with the ELs both inside and outside Canada's 200 nautical mile Exclusive Economic Zone (EEZ) (Figure). The ELs cover an area of approximately 543,378 ha, and are located approximately 350 km from St. John's, NL. Water depths in the ELs range from approximately 1,175 to 2,575 metres (m). Drilling operations carried out as part of the Project will be conducted within the defined boundaries of the ELs, but specific well site numbers, types, and locations will be determined as Project planning activities continue

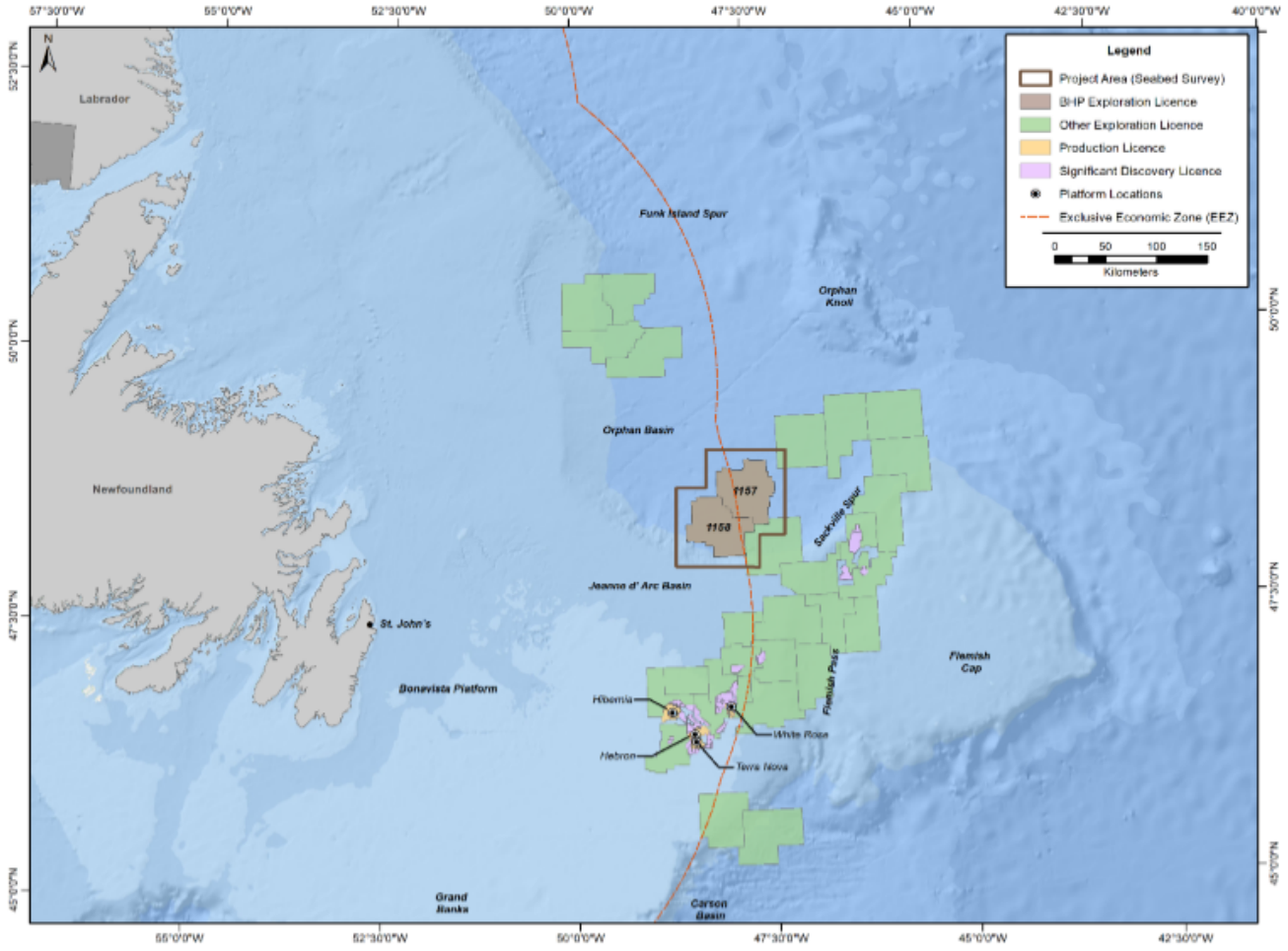

Figure 1 Map of Proposed BHP Project Location

Wells will be drilled by a mobile offshore drilling unit (MODU). The specific type of MODU used for the Project will be determined as Project planning continues but will be either a semi-submersible rig or a drillship. It is anticipated that the analysis of initial well results will be used to inform the execution strategy for subsequent wells. Depending on availability, the type of MODU may change during the temporal scope of the Project. This is referred to as a multiple phase approach for exploration drilling.

A fleet of Project support vessels (PSVs) and helicopters will provide logistics, stand-by, supply, and operational support and will be based out of existing, onshore facilities in Eastern NL. The scope of this EIS does not include onshore activities at these shore-based facilities.

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.

2.2.2 LAND TENURE AND LICENSING

The Canada-NL Offshore Area, as defined in the Accord Acts, includes those lands within Canada's 200 nautical mile (NM) Exclusive Economic Zone (EEZ) or to the edge of the continental margin, whichever is greater. ELs 1157 and 1158 is located on the border of Canada's EEZ on the outer continental shelf. Other activities, such as vessel traffic, will take place within the 200 NM EEZ. In addition, CEAA 2012 defines federal lands as including:

(i) the internal waters of Canada, in any area of the sea not within a province, (ii) the territorial sea of Canada, in any area of the sea not within a province, (iii) the exclusive economic zone of Canada, and (iv) the continental shelf of Canada.

Therefore, pursuant to CEAA 2012, exploration drilling on ELs and 1157 1158 will be carried out on federal lands.

2.2.3 ENVIRONMENTAL ASSESSMENT UNDER CEAA 2012

The methods used to assess the effects of routine Project activities and accidental events, as well as the potential cumulative effects of the Project, are outlined below and in Chapter 4 of the EIS, in consideration of the requirements of the CEAA 2012 and guidance issued by the CEA Agency. Previous offshore exploration project assessments within the Newfoundland and Nova Scotian offshore areas have been prepared using these methods and have been reviewed and approved by the CEA Agency or are currently under review.

These methods follow the guiding principles and specific requirements as set out in the Project-specific Guidelines, "Guidelines for the Preparation of an Environmental Impact Statement pursuant to the Canadian Environmental Assessment Act, 2012" BHP Exploration Drilling Project (EIS Guidelines), issued by the CEA Agency on 28 June 2019. The importance of EA as a planning and decision-making tool is emphasized in these guiding principles.

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 Municipal Affairs and Environment
- NL Department of Fisheries and Land Resources
- NL Department of Natural Resources Legislation, and regulations thereunder, that may be relevant and subsequently required regulatory approvals include the following:
    - Accord Acts and its 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

3.0 MI'GMAQ RIGHTS AND INTERESTS RELATIVE TO REGIONAL ASSESSMENT STUDY AREA

For this review, Mi'gmawe'l Tplu'taqnn Incorporated represents the rights and interests of eight of its nine member communities: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipõgtõtjg (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 have occupied, relied on, used, and been stewards of the lands and waters of Mi'gmaq'i, currently known as Nova Scotia, Prince Edward Island, New Brunswick, southern and western Newfoundland, the Gaspe area of Quebec, Anticosti Island, the Magdalen Islands, and sections of the Northeastern United States, since time immemorial.

The Peace and Friendship Treaties have been renewed many times with the Crown and are in the process of being implemented through a Mi'gmaq /New Brunswick/Canada Framework Agreement (Indigenous and Northern Affairs Canada 2012).

The Mi'gmaq have established Aboriginal and Treaty Rights to hunt, fish and gather from the lands and waters of their territory for food, social and ceremonial purposes, as well as to trade and to earn a moderate livelihood all of which have been upheld by the Supreme Court of Canada.

3.1 MI'GMAWE'L TPLU'TAQNN'S VISION FOR SUSTAINABLE DEVELOPMENT OF NATURAL RESOURCES

Natural Resources are an integral part of the Lands and Waters of the Mi'gmaq. The Vision for Sustainable Development of Natural Resources states:

"Those Resources belong to Mother Earth. We may use them, but we are also their custodians. Natural Resources are not simply here for the taking, rather they must be managed carefully so as to provide benefits today while guaranteeing the rights and needs of generations yet to come. This requires truly sustainable development."

There are four pillars to sustainable development:

- Environmental Sustainability
- Social Sustainability
- Cultural Sustainability
- Economic Sustainability

Each pillar supports the others. They must be kept in balance. MTI is committed to the cultural, spiritual and social importance of lands, waters and natural resources. Natural resource development must:

- Understand that lands, waters and natural resources are integral to the well-being of humanity and are not simply commodities to be exploited;
- Seriously take into account the short and long-term ecological costs of natural resource extraction and see those costs as potentially debilitating debts;
- Honour the precautionary principle (in that lack of scientific certainty must not impede conservation efforts and must not enable irresponsible development);
- Guarantee that the benefits of natural resource development are shared equitably with those most in need;
- Protect the environment;
- Ensure biological diversity;
- Maintain ecological balance;

- Commit to the rehabilitation of habitat and species that have been damaged by current and past natural resource extraction practices; and
- Place the needs of future generations on at least an equal footing with the needs of our time.

This Vision, and the rights described above, were the primary guides to undertaking this review considering MTI's rights and interests. Also considered, in a more generic sense, are the primary effects of importance to the federal EA process that overlap with the 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:*

i. health and socio-economic conditions;

ii. physical and cultural heritage;

iii. the current use of lands and resources for traditional purposes; or

iv. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance."

The proposed activities within the geographic location of the Project's development area have the potential to impact Mi'gmag 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 REGIONAL ASSESSMENT STUDY AREA

Engagement with Indigenous groups was initiated via letter by BHP on March 28, 2019 to introduce the Project and inquire about potential interests and concerns. In July 2019, BHP followed up on the initial request with a second letter acknowledging and outlining the Indigenous interests and concerns that had been brought forward and invited Indigenous groups to attend a series of workshops in September 2019 to discuss interests and concerns.

Three workshops were held in September across the Atlantic Region in St. John's, Moncton, and Quebec City. The workshops provided an opportunity for mutual information exchange and dialogue regarding the following topics: introduction to company, Indigenous knowledge and social value, approach to the EIS, emergency preparedness and response, well control strategies, environmental monitoring, cumulative effects and ongoing communication with Indigenous groups.

BHP is aware that there are several other similar offshore exploration drilling EAs at various stages of environmental assessment under CEAA 2012. BHP understands the importance of recognizing and learning from ongoing engagement with Indigenous groups and has joined with other operators to collaborate on current and future engagement to reduce burdens that may be caused by multiple engagement requests from multiple operators to Indigenous groups. BHP will coordinate opportunities for engagement with the

exploratory drilling programs in the Flemish Pass and Orphan and Jeanne d'Arc Basins, including Husky Oil Operations, CNOOC Petroleum North America ULC (formerly Nexen Energy ULC), Suncor Energy, BP, Equinor (formerly Statoil), Chevron Canada, and ExxonMobil Canada.

MTI has and will continue to be notified by the Impact Assessment Agency of Canada about the steps in the EIS development process and of opportunities to review key documents. BHP remains available to meet with interested Indigenous groups to discuss details of their exploration drilling program, and concerns and interests they raise.

4.0 REVIEW FINDINGS

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

4.1 MARINE FISH AND FISH HABITAT

4.1.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified through the review of all marine environment related information provided within the Project's EIS, and provides recommendations to resolve the issues.

Comment 1: *EIS Section 4.5 – Topics of Interests and Concerns*:

Throughout the regulatory review process of other adjacent and simultaneous exploration projects, MTI have consistently indicated that Atlantic salmon, swordfish, and bluefin tuna are species of interest. Despite raising the concern, the effects assessment is seemingly hasty in stating that there are no predicted significant adverse impacts of the Project on these species.

Recommendation 1: The EIS should incorporate Indigenous Knowledge around bluefin tuna interactions with the Project Area in the Terms of Reference (TOR) for a focused Indigenous Knowledge Study with MTI knowledge holders, as well as complete a more comprehensive assessment of tuna in the Existing Biological Environment and Effects Assessment sections of the EIS.

Comment 2: *EIS Section 4.5 – Topics of Interests and Concerns*

MTI have provided Indigenous Knowledge studies which have included and highlighted swordfish as a culturally important species. Although expected in low abundance, the EIS still acknowledges that swordfish may be found within the Project Area. Despite this, swordfish are not included in the Effects Assessment of the EIS. Thus, the Proponent has not included Information on the biological environment or a susceptibility assessment of swordfish to Project-related stressors or impacts.

Recommendation 2a: The EIS should include Indigenous Knowledge around swordfish interactions with the Project Area, in the terms of reference for a focused Indigenous Knowledge Study with MTI knowledge holders,

as well as complete a more comprehensive assessment of swordfish in the Existing Biological Environment sections of the report.

Recommendation 2b: Considering the commercial and cultural importance of swordfish to MTI, similar to a focus review on Atlantic Salmon, an assessment of environmental effects on swordfish should be provided within the Effects Assessment. This assessment should include the impacts of sound, light and spills, as well as the biological thresholds and behavior response from swordfish, and be inclusive of Indigenous Knowledge from MTI knowledge holders.

Comment 3: *EIS Section 6.1 – Fish and Fish Habitat:*

There are potential impacts of exploration drilling on Atlantic salmon populations that may migrate and over-winter in the Project Area. The EIS goes on to repeat the similar statement from other nearby and associated exploration projects that BHP, along with other oil and gas companies are contributing funding to the Environmental Studies Research Fund (ESRF) for studies related to environmental and social issues. This EIS is relatively vague in the commitment and allocation of these funds and provides little detail on the specifics of the funding programs the Proponent will be involved in. Related to salmon concerns raised by MTI and other indigenous groups, the ESRF only states that the Proponent is funding research in this area that involves Indigenous peoples.

Recommendation 3a: 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 ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic salmon research study is funded and executed.

Recommendation 3b: Potential projects that could be cooperatively carried out between the Proponent, MTI and Anqotum may include a tracking study of Atlantic salmon using tags on salmon leaving New Brunswick waters to determine if those populations, in fact, reach and migrate through the Project Area. Acoustic receivers could be installed on the drilling platforms to monitor salmon populations within the Project Area.

Comment 4: *EIS Section 4.5 – Topics of Interests and Concerns*

MTI have consistently observed that the EIS reports submitted to date have relied on existing data and studies, some of which are outdated. This issue has been acknowledged in the BHP EIS, however the action related to the issue only states that BHP will make full use of existing studies, published literature, information available from federal and provincial agencies, and the regional assessment in the preparation of its EIS. This action is seemingly in conflict with the previous commitment to fund the ESRF with a specific focus on Atlantic salmon. In one instance, the Proponent claims to commit to funding the ESRF, which will further the understanding of Atlantic salmon distribution around the Project Area, however the EIS does not mention the ESRF as a means to contribute to the lack of original studies.

Recommendation 4: As discussed above, it is recommended that updated salmon distribution studies be carried out, in order to have a more reliable and relevant data set with which to analyze potential effects of the Project. See recommendations 3a and 3b. These studies should be included in the action/mitigation measures for the issues and concerns related to the lack of original and recent baseline studies.

4.2 MARINE MAMMALS & MIGRATORY BIRDS

4.2.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified in our scoped review of content related to marine mammals and migratory birds' provided within the EIS, and provides comments and recommendations to resolve the identified issues.

Comment 5: *EIS Section 2.4.5.1 – Project support Vessel Operations (Pg. 2-19)*

BHP plans for Project Supply Vessels (PSVs) to have an average travelling speed of 12 knots. PSVs will be required to reduce speeds to a maximum of 7 knots when marine mammals are observed within 400 meters. MTI is concerned by these high travelling speeds and the short distance at which slow down procedures would be initiated. NARW are particularly vulnerable to fast moving vessels; high speeds offer less opportunity for both the animal and vessel crew to take corrective action and avoid collision, and upon collision, higher speeds are more likely to result in more severe injuries to the animal (Vanderlaan et al., 2007). The species is experiencing decreased survivability as a result of injuries from ship strikes and increased mortality, which has ultimately led to steep population declines (Hazel et al., 2007; Vanderlann et al. 2007; Gerstein et al., 2005; Myers et al., 2019).

In addition to this, BHP has not specified that marine mammal monitoring activities will take place on PSVs. Without measures to actively detect marine mammals in place, MTI is unclear on how BHP's slow-down procedures will be effectively triggered and implemented.

Recommendation 5a: We recommend that BHP require a more conservative average travelling speed for PSVs, as well as a larger PSV slow-down buffer. For example, in other Canadian waters, Transport Canada has implemented a maximum, general travelling speed of 10 knots and an additional slow down to 7 knots upon sighting a marine mammal within 500 meters (Transport Canada, 2019). Voluntarily complying with these parameters within the Regional Assessment Area will help decrease the likelihood of collisions and potential marine mammal injury or mortality.

Recommendation 5b: MTI also recommends that BHP actively monitor marine mammals during all PSV transit. As outlined in Recommendation 12, marine mammal detection probabilities are maximized when multiple methods are used concurrently. MTI specifically recommends that BHP use marine mammal observers (MMOs) and passive acoustic monitoring (PAM).

Comment 6: *EIS Section 6.3 - Existing Biological Environment - Marine Mammals and Sea Turtles (Pg. 6-117); EIS Section 10.1.4.2 – Temporal Boundaries (Pg. 10-5); EIS Section 6.1.4.3 – Existing Biological Environment – Zooplankton (Pg. 6-12 –6-13)*

a) BHP's characterization of the existing biological environment for marine mammals is largely based on a database of incidental or opportunistic sightings. Since these data were not collected systematically and search effort is not quantified, they cannot be used to reliably predict distribution and abundance. Despite these known limitations, the Proponent has used the data to conclude that there is a low potential for NARW to interact with project activities. While BHP does acknowledge that they are making these conclusions and overall significance determination with only a moderate level of confidence, MTI remains concerned that consideration of potential impacts to NARW, a critically endangered and culturally important species, are cursory and need to be improved upon to justify and strengthen EIS conclusions.

b) BHP has also not adequately considered the full temporal scope of the Project (2019 – 2028) when examining potential use of the Project Area by NARW in the short-term future. NARW summer range distribution and migratory patterns are shifting rapidly in response to changing oceanographic conditions and the changing distribution of their primary prey species, *Calanus finmarchicus* (Meyer-Gutbrod et al., 2018; Record et al., 2019). As noted by the Proponent, the zooplankton biomass in the NL shelf region is dominated by *C. finmarchicus* (EIS, Sect. 6.1.4.3), and MTI remains concerned that the Project Area could become important foraging habitat for North Atlantic Right Whale (NARW) during BHP's exploration license period (2019 through 2028) and that BHP will not be prepared to respond to this.

Overall, MTI is concerned that the Proponent has not done enough to characterize the current (and projected future) existing environment for marine mammals (including NARW) and is further concerned that BHP's proposed mitigation, monitoring and follow-up measures are not commensurate with this level of uncertainty.

Recommendation 6a: BHP needs to undertake additional, targeted research on the current and projected future abundance and distribution of NARW and *C. finmarchicus* within the Project's Regional Assessment Area to fill data gaps. Alternatively, BHP could also solicit this information from independent researchers who may currently be investigating these topics and could provide insights or unpublished findings. If these data gaps cannot be filled, BHP should provide funding to the ESRF to support future research on NARW within the Regional Assessment Area and address this persistent issue in the environmental regulation of offshore exploration projects.

Recommendation 6b: Implement more conservative mitigation, monitoring, and follow-up measures to account for the lack of certainty regarding potential adverse effects of the Project on NARW. MTI recommends that the Proponent develop and implement an adaptive management framework specific to the marine mammal valued component. More detailed and specific information on MTI's suggested conservative measures can be found in Recommendation 5 and Recommendation 12 below.

Comment 7: *EIS Section 9.3.1.2 – Mitigation* (Pg. 9-10)

BHP states that in order to reduce impacts on marine and migratory birds "Lighting will be limited to the extent that worker safety and safe operations is not compromised. Measures may include avoiding use of unnecessary lighting, shading, and directing lights towards the deck." (Pg. 9-10).

BHP does not mention the use of other technologies available to reduce the effects of MODUs and PSV lighting on marine and migratory birds, which is concerning to MTI as lighting on the MODU and PSVs could have an adverse impact on marine and migratory birds. Specifically, spectral modified lighting has been shown to be effective at reducing light attraction or marine and migratory birds (Marquenie et al., 2014; Poot et al., 2008).

Recommendation 7a: In addition to avoiding use of unnecessary lighting, shading, and directing lights towards the deck, BHP should consider installing spectrally modified lighting to the extent that worker safety and safe operations is not compromised.

Recommendation 7b: BHP should contact Environment and Climate Change Canada – Canadian Wildlife Service (ECCC-CWS) and discuss possible data collection efforts to record changes made to lighting (e.g., duration, location). BHP should commit to assembling these data into an annual report and share it with ECCC-CWS and MTI. This would provide MTI with greater confidence that impacts on seabird communities are being reduced

during the Project's life and provide them with an opportunity to provide input to inform future mitigation efforts. As well, these data would contribute to the current understanding of the effectiveness of lighting changes at mitigating the effects of lights on marine and migratory birds.

Comment 8: *EIS Section 9.3.1.2 – Mitigation* (Pg. 9-10)

BHP states that they "in consultation with Environment and Climate Change Canada (ECCC) Canadian Wildlife Service (CWS), will develop a protocol for systematic, daily searches for seabirds stranded on the MODU and PSVs, which will include the documentation of search effort. Seabirds found will be recovered, rehabilitated, released and documented in accordance with the methods in Procedures for Handling and Documenting Stranded Birds Encountered on Infrastructure Offshore Atlantic Canada (ECCC 2017a). BHP will provide training in these protocols and procedures. A Seabird Handling Permit will be obtained from ECCC-CWS annually. In accordance with ECCC requirements, an annual report and all occurrence data that summarizes stranded and/or seabird handling occurrences will be submitted to ECCC." (Pg. 9-10).

MTI appreciates that BHP will be developing a protocol for daily stranded bird searches on the MODU and PSWs, but is concerned with the potential quality of these searches as there is no dedicated qualified Seabird Observer performing these daily searches on the MODU and PSVs and there is a lack of general awareness training provided to staff on the MODU and PSVs. As well, MTI is concerned with the lack of engagement with their communities on the seabird monitoring activities and reporting, as this Project has the potential to adversely affect these bird species.

Recommendation 8a: BHP should commit to employing dedicated qualified Seabird Observers to perform stranded seabird searches on the MODU and PSVs and provide them with training in the relevant survey/monitoring protocols. In addition, BHP should provide all staff on the MODU and PSVs with general training on seabird stranding awareness and have all staff record incidental observations and notify the qualified Seabird Observers.

Recommendation 8b: BHP should hire MTI community members to facilitate the seabird monitoring program and provide them with industry-standard job training as needed. Allowing MTI community members to perform seabird monitoring activities will provide the MTI community with greater assurance that BHP's seabird observation protocols are being implemented correctly to monitor the impacts on seabird communities throughout the life of the Project.

Recommendation 8c: In addition to sharing the annual report and all occurrence data that summarizes stranded and/or seabird handling occurrences with ECCC, BHP should share these with MTI so that they can be kept up to date on seabird monitoring activities and impacts on seabird communities throughout the Project's life and provide input to inform future monitoring efforts.

Comment 9: *EIS Section 9.3.1.2 – Mitigation* (Pg. 9-10)

BHP states that they "will monitor daily for the presence of marine birds from the drilling installation using a trained observer following ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms" (Pg. 9-10).

MTI appreciates that BHP will be monitoring for the presence of marine birds on the MODU, but is concerned with the potential quality of these searches as there is no dedicated qualified Seabird Observer performing these activities on the MODU and these observer-based surveys have limitations during poor weather conditions (Ronconi et al., 2015). As well, MTI is concerned that these searches are only being performed on the MODU, but

not the PSVs. In addition, there has been a lack of engagement with MTI communities on seabird monitoring activities and reporting, especially given this Project has the potential to adversely affect these bird species.

Recommendation 9a: BHP should commit to employing dedicated qualified Seabird Observers to perform monitoring surveys following ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms on both the MODU and PSVs, and provide them with training in the relevant survey/monitoring protocols.

Recommendation 9b: BHP should hire MTI community members to facilitate the seabird monitoring program and provide them with industry-standard job training as needed. Allowing MTI community members to perform seabird monitoring activities will provide the MTI communities with greater assurance that BHP's seabird observation protocols are being implemented correctly to monitor the impacts on seabird communities throughout the life of the Project.

Recommendation 9c: BHP should compile the data from these surveys into an annual report and submit them to both ECCC-CWS and MTI, which would contribute to the understanding of marine and migratory bird abundance in the study area and allow MTI to be kept up to date on marine and migratory bird monitoring activities throughout the Project's life.

Recommendation 9d: These visual *Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms* surveys should be enhanced with the use of instrument-based systems (e.g., acoustic monitoring/recording, radar) to help reduce limitations of visual observer-based approaches (e.g., poor weather conditions) (Ronconi et al., 2015).

Comment 10: *EIS Section 9.3.1.2 – Mitigation* (Pg. 9-11)

BHP states that "C-NLOPB will be notified at least 30 days in advance of planned flaring to determine whether the flaring would occur during a period of migratory bird vulnerability and to determine how the Proponent plans to avoid adverse environmental effects on migratory birds." (Pg. 9-11). BHP does not mention contacting other relevant agencies, who could provide valuable input on flaring activities.

Recommendation 10: BHP should contact ECCC-CWS in addition to CNLOPB at least 30 days in advance of planned flaring activities so that they are able to incorporate their suggestions (e.g., only flaring outside of sensitive times for marine and migratory birds).

Comment 11: *EIS Section 9.3.1.2 – Mitigation* (Pg. 9-11)

BHP states that "If flaring is required, BHP will discuss flaring plans with the C-NLOPB including steps to reduce adverse effects on migratory birds. This may involve restricting flaring to the minimum required to characterize the wells' hydrocarbon potential and as necessary for the safety of the operation, minimizing flaring during periods of migratory bird vulnerability, and the use of a water curtain to deter birds from the general vicinity of the flare." (pg. 9-11).

BHP does not mention collecting any data related to bird interactions with water curtains or flaring activities, which could help to inform mitigation activities in the future and help with the overall understanding of this activity and its effect on marine and migratory birds.

Recommendation 11a: BHP should commit to employing dedicated qualified Seabird Observers who will be present during flaring activities and record any possible interactions with marine or migratory birds and note the effectiveness of the water curtain at deterring species.

Recommendation 11b: BHP should commit to assembling these data into an annual report and share it with ECCC-CWS and MTI. These data would contribute to the understanding of the effectiveness of water curtains at mitigating the effects of flaring on marine and migratory birds.

Comment 12: *EIS Section 10.3.1.2 – Mitigation – Vertical Seismic Profiling* (Pg. 10-9)

BHP has stated that they will employ MMOs to monitor and report on marine mammal sightings before and during VSP surveys. However, visual observation-based approaches to marine mammal monitoring can be limited by a number of factors (e.g. low/no light conditions, foggy or inclement weather, rough sea conditions, observer training and experience, behavior of marine mammals, etc.), which can affect detection probability (Brillant et al., 2015; Verfuss et al., 2019). In particular, NARW tend to keep a low profile in water and may be harder to detect than other species (Elvin & Taggart, 2008). Several studies have shown that marine mammal detection probabilities increase when multiple monitoring methods, such as visual surveys and Passive Acoustic Monitoring (PAM) are used concurrently (Brillant et al., 2015; Verfuss et al., 2019; Smith et al., 2020).

Recommendation 12: Please consider implementing multiple marine mammal monitoring methods during VSP surveys to maximize detection probability. Specifically, MTI recommends that BHP use MMOs and PAM concurrently during all relevant Project activities, but at a minimum BHP should be prepared to adjust their approach to marine mammal monitoring to maintain a high detection probability as fluctuating conditions (e.g. inclement weather) may require.

Comment 13: *Section 10.6– Environmental Monitoring and Follow-Up* (Pg. 10-34*); EIS Section 10.3.1.2 – Change in Risk of Mortality or Physical Injury – Mitigation* (Pg. 10-9 to 10-10); *EIS Section 10.3.2.2.– Change in Habitat Quality and Use – Mitigation (*Pg. 10-17 to 10-18*); EIS Section 10.3.3– Species At Risk; Overview of Potential Effects and Key Mitigation* (Pg. 10-29 to 10-32)

There is no mention of efforts to involve Indigenous groups, including MTI, in marine mammal mitigation, monitoring, and follow-up measures. For example, BHP has committed to developing a marine mammal and sea turtle monitoring plan and providing reporting results to the C-NLOPB and DFO, but not affected Indigenous groups (EIS Sect. 10.6). BHP has also stated that they will employ MMOs to monitor for marine mammals during Project activities, but again there is no mention of efforts to reach out to Indigenous groups, including MTI, to staff these positions.

Mi'gmaq people have used these waters since time immemorial and Project activities subsequently have the potential to affect their inherent rights and interests. Additionally, MTI and its members can provide valuable experience and input related to Project activities (e.g. navigation) and the protection of marine mammals and is disappointed that BHP has not yet made an effort to solicit this.

Recommendation 13: BHP should consider involving MTI in the development and implementation of the Project's marine mammal mitigation, monitoring, and follow-up measures. Specifically, this should include:

1) Providing MTI with an opportunity to review and comment on the draft marine mammal and sea turtle monitoring plan at least 60 days in advance of the initiation of Project activities. MTI expects that BHP will solicit Mi'gmaq knowledge during the development of this plan and consider ways that it can contribute to enhanced protections for marine mammals. This draft plan should also be submitted to the C-NLOPB and DFO for approval.

2) 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.

3) Providing Mi'gmaq environmental monitors 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 assurance that BHP's marine mammal monitoring protocols are being implemented correctly throughout the life of the Project.

4.3 CUMULATIVE EFFECTS

4.3.1 EVALUATION AND RECOMMENDATIONS

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

Comment 14: *EIS Section 4.5 – Topics of Interests and Concerns*

The Regional Assessment currently only assesses the cumulative impacts of existing production facilities and future exploratory drilling, with limited to no assessment of future production facility cumulative impacts. Cumulative effects are only described in terms of existing oil production facilities (Hibernia, Terra Nova, White Rose, Hebron), future e*xploratory* drilling projects and one proposed oil production facility (Bay du Nord). There is no effects assessment of the scenario where all of these proposed *exploratory* wells turn into actual oil production facilities. Acknowledging that the e*xploration* drills are relatively short lived, the potential for these exploration wells to turn into production facilities significantly increases the timeline for activity, and potential impacts over time, in the region. Further, if all exploration wells transition into production facilities, the potential for simultaneous accidents, malfunctions and general project activities, would significantly increase the potential for cumulative impacts.

Recommendation 14: The EIS should consider, in the cumulative effects assessment, the scenario where all of the proposed exploration projects transition to oil production facilities within the Regional Assessment Study Area. The EIS should examine and assess the potential environmental and cumulative impacts of increased oil production activities including an increase in general oil production operation activities, as well as simultaneous accidents, malfunctions and oil spills in the study area.

Comment 15: *EIS Section 4.5 – Topics of Interests and Concerns*

In documenting the perceived lack of comprehensive approach to analyzing, understanding and addressing the potential for cumulative impacts, the EIS states that the Proponent is participating in the Regional Assessment where a more regional approach is being taken to examining cumulative effects of multiple projects and interactions with other ocean users. BHP states that they will apply any applicable new learnings from the regional assessment to their exploration drilling Project. However, the Regional Assessment was released prior to the release of the BHP EIS and it is not clear if this has occurred.

Recommendation 15: MTI has reviewed and made comments related to the Cumulative Effects Assessment section of the Regional Assessment. The Proponent has committed to incorporating and applying new learnings from the Regional Assessment and as such should consider and incorporate the comments provided by MTI within this BHP EIS.

4.4 SOCIO-ECONOMICS AND COMMUNITY WELL-BEING

The socio-economics and community well-being facet of this technical review focuses on consideration of MTI member First Nation communities within the EIS; assessing risks to MTI's land and resource uses and socio-economic impacts on fisheries.

4.4.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI upon review of the socio-economics and community well-being related sections of BHP Canada Exploration Drilling Project EIS and provides recommendations to address the issues raised.

Comment 16: *EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*

In Table 3.8, a reasonable overview is provided of the main issues and concerns identified by Indigenous groups during the workshop in Moncton. Mitigations for potential impacts to culturally important species, however, exclusively focuses on Atlantic salmon, by way of providing funding to the ESRF for studies on environmental and social issues related to decision-making for oil and gas projects. Other mitigation and accommodation measures are also warranted and are included as recommendations in the fish and fish habitat section of this review.

Recommendation 16a: See recommendations and additional accommodations put forth in Sections 4.1.1 and 4.2.1 of this review report.

Comment 17: *EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*

In Table 3.8; for the concern **"***Potential Impacts to Indigenous Fisheries*": Mitigations focus on sharing information with Indigenous groups about operations and results of monitoring. This is not sufficient.

Recommendation 17: MTI requests a higher level of involvement in the environmental monitoring of the project by way of ability to review monitoring plans and for an Indigenous environmental monitoring advisory committee to be established.

Comment 18: *EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*

In Table 3.8, for the concern "*Indigenous Knowledge*"; as a mitigation, BHP states that is has endeavored to gather Indigenous Knowledge, where appropriate and available, and recognizes the importance of considering Indigenous Knowledge in its operations. BHP is actively supporting an Atlantic-wide proposal to fund a number of regional Indigenous Knowledge studies through the ESRF. Evidence of how IK has been considered and applied within the EIS is not evident; and as mentioned in other sections of this review, providing funding to the ESRF is positive, but not sufficient.

Recommendation 18: Please clarify how IK was incorporated into the EIS and how it will be considered during the operations phase – namely with regards to monitoring and adaptive management measures.

Comment 19: *EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*

In Table 3.8, for the concerns "*Environmental Monitoring*" and "*Communication and Ongoing Involvement of Indigenous Groups*", BHP has captured the essence of key concerns for this subject, and it is positive to read that "BHP will also explore partnerships with Indigenous groups, local universities including Memorial University, and other independent research groups to collaboratively further the environmental knowledge base in the region". The mitigation associated with this topic (in addition to the ones that the reader is referred to in Sections 8 to 13) are still an 'inform' level of communication and do not reflect an established or formal process for having Indigenous groups involved in environmental monitoring and follow up plans.

Recommendation 19: As MTI has requested of each proponent and the IAAC, a formalized Indigenous monitoring oversight framework is required for project operations – one that includes a committee, terms of reference and adaptive management measures to provide input into environmental monitoring plans and a communication protocol for Indigenous groups and resource users and knowledge holders to provide feedback on proposed monitoring plans including emergency response plans.

Comment 20: *EIS Section 7.4 – Indigenous Peoples and Communities*

In Section 7.4, BHP explains that (similar to Chevron's approach for their West Flemish EIS): "The information in Sections 7.4.1 to 7.4.7 was provided to BHP by Equinor. The goal of using the same information prepared by Equinor (and incorporating information provided by Indigenous groups who reviewed the tables in these sections) is to provide consistent information on the 41 Indigenous groups operators have engaged and continue to engage with during preparation for environmental assessments (EAs) for offshore exploration drilling projects". The intention and rationale for providing the same information is understood, however what is not included in the baseline information section of BHP's EIS (similar to Chevron's EIS) is a) consideration of MTI's input and requests for more relevant baseline information regarding their rights and socio-economic interests (i.e., MTI generated Indigenous Knowledge) b) results of MTI's technical review of Equinor's Central Ridge EIS. Moreover, there is no indication of information gathering from MTI either through their IK Study results or other information collection methods including interviews.

Recommendation 20: The EIS needs to clearly articulate all other issues, interests and concerns that MTI has communicated to previous proponents and the IAAC through previous submissions and within their Indigenous Knowledge Studies. MTI considers the lack of consideration of IK within the EIS a significant gap in process, and in turn, weakness of analysis and decision making.

Comment 21: *EIS Section 13 – Assessment of Potential Effects on Indigenous Peoples and Communities*

BHP states within the first introductory paragraphs within Section 13: "It is BHP's understanding that the lands and waters of eastern offshore NL where the Project components and activities will be located, are not within an area that the listed Indigenous groups have asserted or established Aboriginal or treaty rights protected by section 35 of the *Constitution Act, 1982* (section 35 rights)". MTI, in previous submissions through reviews of other offshore oil exploration projects and in letters to the Agency, has communicated the importance of accurate representation in the myriad of offshore oil project EISs and overall regulatory processes. BHP, similar to other proponents, claims that they are not made aware of any group that holds claims or asserts aboriginal and treaty rights in the proposed study area. MTI finds this lack of understanding and acknowledgement disappointing, and associated statements to be untrue. The communities' commercial activities are a modern-day interpretation of the rights given to us through our treaties**.** Because the federal government chooses to make us use the commercial fishery to exercise these rights doesn't mean they are not the assertion of our Aboriginal and Treaty rights.

Recommendation 21: Update documentation within section 7.4 and section 13.0 to reflect accurate portrayal of MTI's rights holding members and associated modern-day rights.

Comment 22: *EIS Section 13.1.2 – Influence of Consultation and Engagement on the Assessment*

Section 13.1.2 provides a high-level overview of concerns and interests put forth by Indigenous groups and points the reader to Chapter 3 and Table 3.8 that outlines more details of these concerns and interests. It is unclear how these concerns and interests are being addressed beyond notifications of studies and monitoring results through a standard Fisheries Communication Plan.

Recommendation 22: Provide MTI with information outlining how Mi'gmaq Knowledge was considered and will be considered throughout the project's lifecycle within a formal agreement.

Comment 23: *EIS Figure 13-1 – Indigenous Peoples and Communities Spatial Boundaries*

The Regional Assessment Area (RAA) depicted in Section 13.1.3, Figure 13-1, includes the overall Atlantic Canada region. MTI acknowledges the adequacy of this spatial boundary as it more accurately reflects the potential for interactions or effects for relevant value components (VC) as they pertain to MTI. However, this spatial boundary is not reflected in BHP's predictions, characterization of residual effects, nor its mitigations pertaining to Indigenous community related value components.

Recommendation 23: MTI requests that this RAA's spatial boundary be upheld within follow up monitoring programs that directly and indirectly include Indigenous representatives and knowledge holders to account for any residual and/or unforeseen environmental effects related to the Project's activities that could interact cumulatively with the residual environmental effects of other past, present, and future activities.

Comment 24: *EIS Section 13.3 – Assessment of Residual Environmental Effects on Indigenous Peoples and Communities* and *EIS Sections 13.3.1.2 & 13.3.2.2– Mitigation*

In Section 13.3, BHP comments that "Given the similarities in other offshore exploration project environmental assessments, this EIS incorporates information from previous Environmental Assessment (EA) documents for similar exploration drilling projects in Atlantic Canada. This includes comments received during Indigenous and stakeholder review processes, with updates incorporated, as applicable, due to Project and geographic differences, scientific updates, and refined EA methods". For example, in Section 13.3.1.1, Project Pathways, BHP notes that [in addition to species assessed with the LAA, "…this assessment also considers the potential residual effects on migratory species (e.g., bluefin tuna, swordfish) identified above that may move through the Project Area or LAA and be targeted by commercial communal fishing activities elsewhere in the RAA". MTI acknowledges this increased assessment scope as being positive.

In Sections 13.3.1.2 and 13.3.2.2 (Mitigation), however, key points and information that MTI has conveyed to proponents and the IAAC regarding projects like these are not reflected. For instance, in addition to the mitigations carried forward from other VCs within the EIS, BHP lists additional mitigation measures related to notification-based communication with Indigenous groups; safety zones; standard industry guidelines for compensation for fisheries related damages; and PSV routing along with PSV and MODU lighting alterations where feasible. Although these mitigations are acknowledged in terms of their reflection of Indigenous groups' concerns that has been provided previously, there still lacks key accommodation measures that have been raised by MTI over numerous review processes and other communications with proponents and regulators.

Recommendation 24: MTI requests that BHP adds to its list of mitigations, a clear and explicit commitment to implement processes that allow for Indigenous Knowledge, including Mi'gmaq Knowledge, to be meaningfully

incorporated into environmental management and monitoring plans over the course of the exploration project's lifecycle. This includes opportunities to be involved in the planning, design and review of follow up monitoring and/or adaptive management plans, as well as involvement in emergency response planning and readiness programs.

Comment 25: *Section 13.3.1.3 Characterization of Residual Project-related Environmental Effects*

In Section 13.3.1.3, BHP has provided substantial consideration of the potential project interactions (i.e., MODU, VSP and/or discharges etc.) with species of importance to MTI, notably Atlantic salmon, swordfish, in addition to Atlantic bluefin tuna. BHP predicts that "Residual effects associated with the presence and operation of a MODU on commercial communal fisheries, including potential indirect socio-economic effects, on Indigenous peoples and communities are predicted to be adverse, low in magnitude, and within the Project Area". In various sections of the EIS (e.g., 13.3.2.1 Project Pathways), BHP has acknowledged and described the behaviours and patterns of various migratory species that inhabit the project's RAA, and acknowledged the potential for effects to migratory species as a result of the project's various components and activities. Given the unknown long term impacts of the multiple offshore oil exploration projects in the region, combined with uncertainty of impacts in the case of an accident or spill, MTI requires the potential for residual effects within the wider RAA be identified and addressed through formalized follow up monitoring and management plans that directly involve Indigenous knowledge holders.

Recommendation 25: MTI requests that BHP include the RAA as spatial characterization of potential for residual effects to address wider effects linked to migratory species, and establish formalized follow up monitoring and management plans that directly involve Indigenous knowledge holders.

Comment 26: *EIS Section 13.3.3 – Overview of Potential Effects on Indigenous Peoples and Communities*

In Section 13.3.3, BHP states that "routine Project activities are not anticipated to result in changes to the environment that would influence human health and well-being of Indigenous peoples"; and "…routine Project activities are not predicted to significantly affect current use of lands and resources for traditional purposes by an Indigenous group or community". Although BHP acknowledges the potential for project interactions with these value components, the Proponent concludes that "..effects are not predicted to occur to the extent that they would result in measurable effects on socio-economic conditions for Indigenous communities or Aboriginal or treaty rights" (13.3.4 Summary of Project Residual Environmental Effects). With mitigations implemented, BHP characterizes the residual effects as negligible to low in magnitude for each Project activity, and as occurring within the Project Area or LAA, to be of short to long-term in duration, and be reversible" and that "the ecological and socio-economic context is predicted to be disturbed because of previous or existing human development and activities present in the RAA, such as shipping traffic and commercial fisheries" (13.3.4 Summary of Project Residual Environmental Effects). As stated in previous comments, the potential residual effects – whether low or negligible or intermittent in nature, need to be monitored and addressed as required.

Recommendation 26: Please refer to previous recommendations related to the establishment of follow up monitoring and adaptive management plans with direct Indigenous involvement.

Comment 27: *EIS Section 13.5 – Follow up and Monitoring*

In Section 13.5, it states that "No follow-up and monitoring are proposed for routine Project activities due to the high level of confidence in the prediction of no significant adverse environmental effects on Indigenous peoples and communities. This recommendation is also given in consideration of the standard mitigation to be implemented, ongoing engagement with communities, and the implementation of an Indigenous Fisheries

Communication Plan." MTI requests that follow up and monitoring measures be implemented that include processes for Indigenous knowledge holder involvement as described in previous recommendations.

Recommendation 27: MTI requests that BHP establish a follow up and monitoring program with Indigenous knowledge holder involvement that entails more than notification-based communication plans.

4.5 ACCIDENTS AND MALFUNCTIONS

4.5.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in review of Accident and Malfunction related information provided within the EIS and provides comment and recommendation to resolve the issues.

Comment 28: *EIS Section 6.1.4 – Potential Effects from Accidents*

MTI have commented in previous EIS reviews that booms, berms, and other barriers may be used to protect sensitive shorelines in the event of a spill. Insufficient information is provided on whether adequate equipment is available for large spills and whether the equipment could reasonably be deployed before oil reaches shore. The proponent would maintain access to spill response equipment to respond to a range of potential scenarios. Some localized equipment (e.g. sorbents) will be maintained on the mobile offshore drilling unit and platform supply vessels. Booms and skimmers will be located in or near Halifax. It is still unclear the details regarding how spills will be detected, and the time it will take to deploy the spill contingency measures.

Recommendation 28: More detail regarding how spills will be detected, including the time it will take between detection and deployment of spill contingency methods, is required. When the spill contingency plan is complete, MTI should be engaged and provided the opportunity to comment. Further, MTI personnel represent untapped resources for spill response measures that include surveillance and tracking, offshore containment and recovery, dispersant application, in-situ burning, shoreline protection, shoreline clean-up, oiled wildlife recovery and waste management.

Comment 29: *EIS Section 6.1.4 – Potential Effects from Accidents*

The EIS states that the Project will include contingency plans for responding to specific emergency events, including potential spill or well control events. The contingency plans, such as an Oil Spill Response Plan, will be submitted to the C-NLOPB prior to the start of any drilling activity as part of the Operations Authorization process.

Recommendation 29: MTI requests the opportunity to review the Project Incident Management Plan, Spill Response Plan, Environmental Protection Plan, and Safety Plan before they are finalized, and provide comments to the Proponent, IAAC and other relevant regulatory authorities. The proponent noted that engagement with Indigenous groups will continue. Discussions on the Incident Management Plan, Spill Response Plan, Environmental Protection Plan, and Safety Plan will occur at a high level. However, MTI maintains that this engagement is not occurring. MTI would like firm commitment that the proponent will consult and engage the community on the completion of the Project Incident Management Plan, Spill Response Plan, Environmental Protection Plan, and Safety Plan prior to finalization.

Comment 30: *EIS Section 6.1.4 – Potential Effects from Accidents*

The impacts of a collision with icebergs and the drilling platform in the Project area seem potentially catastrophic and could be likely and unavoidable. This sections states that supply and personnel movement to and from the drilling installation can be delayed and the drilling installation could be moved off the well site to avoid being struck by an iceberg. In addition, sea ice and icebergs can also increase the risk of an accidental event (e.g., a vessel collision potentially and/or impact with the drilling installation, potentially resulting in a spill), and human health risk, and/or irreparable damage to the drilling installation superstructure. This seems like a very large issue and could result in far reaching environmental impacts. However, there is little discussion on how iceberg movement will be monitored, and what avoidance or notification procedures are in place.

Recommendation 30: Understanding the oil spill potential, please provide information pertaining to how the proponent plans to monitor for iceberg movement and collision potential and how emergency evacuation and shut down could reduce some of the effects. Will Indigenous groups be notified of this potential and how iceberg activity may affect progress or execution of the drilling program.

Comment 31: *EIS Section 6.1.4 – Potential Effects from Accidents*

The proponent states that during drilling, operational discharges will be managed in accordance with a proponent-specific Environmental Protection Plan (EPP). The EPP will be developed based on the OWTG and will be submitted to the C-NLOPB as part of the Operations Authorization process. Discharges not identified in the EPP are not permitted to be discharged and are considered a spill if released into the marine environment. Response and management of spill events is outlined in the Operator's Project and site-specific Oil Spill Response Plan.

Recommendation 31a: The EPP should be circulated to all Indigenous group, including MTI, s for review and comment prior to project initiation.

Recommendation 31b: In relation to BHP's commitment to funding Atlantic salmon research studies through the ESRF, the Cumulative Effects Assessment should incorporate and apply any new findings from the salmon studies in order to appropriately enhance mitigation and protection measures on Atlantic salmon in relation to potential accidents and malfunctions.

5.0 SUMMARY AND RECOMMENDATIONS

This review of the Environmental Impact Statement for the BHP Canada Exploration Drilling Project (2019 – 2028) focuses on areas integral to Mi'gmaq rights and interests. With this lens, the review strategically assesses how valued components that intersect with MTI's rights and interests were considered in the EIS, as described in Section 4.0 of this report.

We have identified issues and concerns relevant to MTI, and provide 31 recommendations that work to ensure Mi'gmag knowledge, rights, and concerns are wholly and completely considered in this EIS, as well as all future project reporting. Of particular importance to MTI, BHP did not adequately consider the effects of the project on Indigenous fisheries, and inadequacies were found in their monitoring programs for marine mammals and migratory birds, as well as accommodations related to future involvement of Indigenous nations, including MTI community members in follow-up environmental and cultural monitoring programs and adaptive management plans. We conclude that BHP has integrated minimal Indigenous Knowledge, from MTI and MTI member communities, into the EIS, and that meaningful engagement, consultation, and accommodation with the Mi'gmag in New Brunswick has not been carried out in a meaningful or substantive manner.

We put forward the following additional accommodations as potential means of addressing the issues and comments raised in our review of the BHP Canada Exploration Drilling Program (2019- 2028):

1. The Agency and/or BHP should engage MTI in conducting a focused Indigenous Knowledge Study with respect to potential interactions between the Regional Assessment Area (RAA) and Atlantic Salmon, Bluefin Tuna, swordfish, and this should happen before any project approvals are advanced.

2. The Agency and/or BHP should engage MTI and Anqotum Fisheries Resource Centre in designing and conducting a focused research project on Atlantic Salmon to help assess their presence in the Project area.

3. IAAC and BHP Canada must ensure MTI communities are provided with adequate capacity funding to participate in ongoing engagement, data collection, and decision making through the provision of capacity funding to support and participate in an equal capacity in this process.

4. BHP should provide employment opportunities for MTI community members as environmental monitors (e.g. Seabird Observer, Marine Mammal Observer) and provide industry standard training.

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

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APPENDIX A – COMMENT TRACKING TABLE – REVIEW OF BHP CANADA EXPLORATION DRILLING PROJECT EIS

COMMENT #	REFERENCE TO EIS (SECTION AND PAGE)	CONTEXT AND RATIONALE	SPECIFIC QUESTION/ REQUEST FOR INFORMATION
MARINE FISH AND FISH HABITAT			
1	*EIS Section 4.5 – Topics of Interests and Concerns*	Throughout the regulatory review process of other adjacent and simultaneous exploration projects, MTI have consistently indicated that Atlantic salmon, swordfish, and bluefin tuna are species of interest. Despite raising the concern, the effects assessment is seemingly hasty in stating that there are no predicted significant adverse impacts of the Project on these species.	The EIS should incorporate Indigenous Knowledge around bluefin tuna interactions with the Project Area in the Terms of Reference (TOR) for a focused Indigenous Knowledge Study with MTI knowledge holders, as well as complete a more comprehensive assessment of tuna in the Existing Biological Environment and Effects Assessment sections of the EIS.
2	*EIS Section 4.5 – Topics of Interests and Concerns*	MTI have provided Indigenous Knowledge studies which have included and highlighted swordfish as a culturally important species. Although expected in low abundance, the EIS still acknowledges that swordfish may be found within the Project Area. Despite this, swordfish are not included in the Effects Assessment of the EIS. Thus, the Proponent has not included Information on the biological environment or a susceptibility assessment of swordfish to Project-related stressors or impacts.	2a: The EIS should include Indigenous Knowledge around swordfish interactions with the Project Area, in the terms of reference for a focused Indigenous Knowledge Study with MTI knowledge holders, as well as complete a more comprehensive assessment of swordfish in the Existing Biological Environment sections of the report. 2b: Considering the commercial and cultural importance of swordfish to MTI, similar to a focus review on Atlantic Salmon, an assessment of environmental effects on swordfish should be provided within the Effects Assessment. This assessment should include the impacts of sound, light and spills, as well as the biological thresholds and behavior response from

COMMENT #	REFERENCE TO EIS (SECTION AND PAGE)	CONTEXT AND RATIONALE	SPECIFIC QUESTION/ REQUEST FOR INFORMATION
			swordfish, and be inclusive of Indigenous Knowledge from MTI knowledge holders.
3	*EIS Section 6.1 – Fish and Fish Habitat*	There are potential impacts of exploration drilling on Atlantic salmon populations that may migrate and over-winter in the Project Area. The EIS goes on to repeat the similar statement from other nearby and associated exploration projects that BHP, along with other oil and gas companies are contributing funding to the Environmental Studies Research Fund (ESRF) for studies related to environmental and social issues. This EIS is relatively vague in the commitment and allocation of these funds and provides little detail on the specifics of the funding programs the Proponent will be involved in. Related to salmon concerns raised by MTI and other indigenous groups, the ESRF only states that the Proponent is funding research in this area that involves Indigenous peoples.	3a: 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 ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic salmon research study is funded and executed. 3b: Potential projects that could be cooperatively carried out between the Proponent, MTI and Anqotum may include a tracking study of Atlantic salmon using tags on salmon leaving New Brunswick waters to determine if those populations, in fact, reach and migrate through the Project Area. Acoustic receivers could be installed on the drilling platforms to monitor salmon populations within the Project Area.
4	*EIS Section 4.5 – Topics of Interests and Concerns*	MTI have consistently observed that the EIS reports submitted to date have relied on existing data and studies, some of which are outdated. This issue has	As discussed above, it is recommended that updated salmon distribution studies be carried out, in order to

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		been acknowledged in the BHP EIS, however the action related to the issue only states that BHP will make full use of existing studies, published literature, information available from federal and provincial agencies, and the regional assessment in the preparation of its EIS. This action is seemingly in conflict with the previous commitment to fund the ESRF with a specific focus on Atlantic salmon. In one instance, the Proponent claims to commit to funding the ESRF, which will further the understanding of Atlantic salmon distribution around the Project Area, however the EIS does not mention the ESRF as a means to contribute to the lack of original studies.	have a more reliable and relevant data set with which to analyze potential effects of the Project. See recommendations 3a and 3b. These studies should be included in the action/mitigation measures for the issues and concerns related to the lack of original and recent baseline studies.
MARINE MAMMALS & MIGRATORY BIRDS			
5	*EIS Section 2.4.5.1 – Project support Vessel Operations (Pg. 2-19)*	BHP plans for Project Supply Vessels (PSVs) to have an average travelling speed of 12 knots. PSVs will be required to reduce speeds to a maximum of 7 knots when marine mammals are observed within 400 meters. MTI is concerned by these high travelling speeds and the short distance at which slow down procedures would be initiated. NARW are particularly vulnerable to fast moving vessels; high speeds offer less opportunity for both the animal and vessel crew to take corrective action and avoid collision, and upon collision, higher speeds are more likely to result in more severe injuries to the animal (Vanderlaan et al., 2007). The species is experiencing decreased survivability as a result of injuries from ship strikes and increased mortality, which has ultimately led to steep	5A: We recommends that BHP require a more conservative average travelling speed for PSVs, as well as a larger PSV slow-down buffer. For example, in other Canadian waters, Transport Canada has implemented a maximum, general travelling speed of 10 knots and an additional slow down to 7 knots upon sighting a marine mammal within 500 meters (Transport Canada, 2019). Voluntarily complying with these parameters within the Regional Assessment Area will help decrease the likelihood of collisions and potential marine mammal injury or mortality. 5B: MTI also recommends that BHP actively monitor marine mammals during all PSV transit. As outlined in Recommendation 12, marine mammal detection probabilities are maximized when multiple methods are used concurrently. MTI specifically recommends

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		population declines (Hazel et al., 2007; Vanderlann et al. 2007; Gerstein et al., 2005; Myers et al., 2019). In addition to this, BHP has not specified that marine mammal monitoring activities will take place on PSVs. Without measures to actively detect marine mammals in place, MTI is unclear on how BHP's slow-down procedures will be effectively triggered and implemented.	that BHP use marine mammal observers (MMOs) and passive acoustic monitoring (PAM).
6	*EIS Section 6.3 - Existing Biological Environment - Marine Mammals and Sea Turtles (Pg. 6-117); EIS Section 10.1.4.2 – Temporal Boundaries (Pg. 10-5); EIS Section 6.1.4.3 – Existing Biological Environment – Zooplankton (Pg. 6-12 – 6-13)*	a) BHP's characterization of the existing biological environment for marine mammals is largely based on a database of incidental or opportunistic sightings. Since these data were not collected systematically and search effort is not quantified, they cannot be used to reliably predict distribution and abundance. Despite these known limitations, the Proponent has used the data to conclude that there is a low potential for NARW to interact with project activities. While BHP does acknowledge that they are making these conclusions and overall significance determination with only a moderate level of confidence, MTI remains concerned that consideration of potential impacts to NARW, a critically endangered and culturally important species, are cursory and need to be improved upon to justify and strengthen EIS conclusions. b) BHP has also not adequately considered the full temporal scope of the Project (2019 – 2028) when examining potential use of the Project Area by NARW in the short-term future. NARW summer range distribution and migratory patterns are shifting rapidly	6A: BHP needs to undertake additional, targeted research on the current and projected future abundance and distribution of NARW and *C. finmarchicus* within the Project's Regional Assessment Area to fill data gaps. Alternatively, BHP could also solicit this information from independent researchers who may currently be investigating these topics and could provide insights or unpublished findings. If these data gaps cannot be filled, BHP should provide funding to the ESRF to support future research on NARW within the Regional Assessment Area and address this persistent issue in the environmental regulation of offshore exploration projects. 6B: Implement more conservative mitigation, monitoring, and follow-up measures to account for the lack of certainty regarding potential adverse effects of the Project on NARW. MTI recommends that the Proponent develop and implement an adaptive management framework specific to the marine mammal valued component. More detailed and specific information on MTI's suggested conservative measures

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		in response to changing oceanographic conditions and the changing distribution of their primary prey species, *Calanus finmarchicus* (Meyer-Gutbrod et al., 2018; Record et al., 2019). As noted by the Proponent, the zooplankton biomass in the NL shelf region is dominated by *C. finmarchicus* (EIS, Sect. 6.1.4.3), and MTI remains concerned that the Project Area could become important foraging habitat for North Atlantic Right Whale (NARW) during BHP's exploration license period (2019 through 2028) and that BHP will not be prepared to respond to this. Overall, MTI is concerned that the Proponent has not done enough to characterize the current (and projected future) existing environment for marine mammals (including NARW) and is further concerned that BHP's proposed mitigation, monitoring and follow-up measures are not commensurate with this level of uncertainty.	can be found in Recommendation 5 and Recommendation 12 below.
7	*EIS Section 9.3.1.2 – Mitigation* (Pg. 9-10)	BHP states that in order to reduce impacts on marine and migratory birds "Lighting will be limited to the extent that worker safety and safe operations is not compromised. Measures may include avoiding use of unnecessary lighting, shading, and directing lights towards the deck." (Pg. 9-10). BHP does not mention the use of other technologies available to reduce the effects of MODUs and PSV lighting on marine and migratory birds, which is concerning to MTI as lighting on the MODU and PSVs could have an adverse impact on marine and migratory birds. Specifically, spectral modified lighting	7A: In addition to avoiding use of unnecessary lighting, shading, and directing lights towards the deck, BHP should consider installing spectrally modified lighting to the extent that worker safety and safe operations is not compromised. 7B: BHP should contact Environment and Climate Change Canada – Canadian Wildlife Service (ECCC-CWS) and discuss possible data collection efforts to record changes made to lighting (e.g., duration, location). BHP should commit to assembling these data into an annual report and share it with ECCC-CWS and MTI. This would provide MTI with greater confidence that impacts on seabird communities are being reduced during the Project's life and provide them with an opportunity to

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		has been shown to be effective at reducing light attraction or marine and migratory birds (Marquenie et al., 2014; Poot et al., 2008).	provide input to inform future mitigation efforts. As well, these data would contribute to the current understanding of the effectiveness of lighting changes at mitigating the effects of lights on marine and migratory birds.
8	*EIS Section 9.3.1.2 – Mitigation (Pg. 9-10)*	BHP states that they "in consultation with Environment and Climate Change Canada (ECCC) Canadian Wildlife Service (CWS), will develop a protocol for systematic, daily searches for seabirds stranded on the MODU and PSVs, which will include the documentation of search effort. Seabirds found will be recovered, rehabilitated, released and documented in accordance with the methods in Procedures for Handling and Documenting Stranded Birds Encountered on Infrastructure Offshore Atlantic Canada (ECCC 2017a). BHP will provide training in these protocols and procedures. A Seabird Handling Permit will be obtained from ECCC-CWS annually. In accordance with ECCC requirements, an annual report and all occurrence data that summarizes stranded and/or seabird handling occurrences will be submitted to ECCC." (Pg. 9-10). MTI appreciates that BHP will be developing a protocol for daily stranded bird searches on the MODU and PSWs, but is concerned with the potential quality of these searches as there is no dedicated qualified Seabird Observer performing these daily searches on the MODU and PSVs and there is a lack of general awareness training provided to staff on the MODU and PSVs. As well, MTI is concerned with the lack of engagement with their communities on the seabird monitoring activities and reporting, as this	8A: BHP should commit to employing dedicated qualified Seabird Observers to perform stranded seabird searches on the MODU and PSVs and provide them with training in the relevant survey/monitoring protocols. In addition, BHP should provide all staff on the MODU and PSVs with general training on seabird stranding awareness and have all staff record incidental observations and notify the qualified Seabird Observers. 8B: BHP should hire MTI community members to facilitate the seabird monitoring program and provide them with industry-standard job training as needed. Allowing MTI community members to perform seabird monitoring activities will provide the MTI community with greater assurance that BHP's seabird observation protocols are being implemented correctly to monitor the impacts on seabird communities throughout the life of the Project. 8C: In addition to sharing the annual report and all occurrence data that summarizes stranded and/or seabird handling occurrences with ECCC, BHP should share these with MTI so that they can be kept up to date on seabird monitoring activities and impacts on seabird communities throughout the Project's life and provide input to inform future monitoring efforts.

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		Project has the potential to adversely affect these bird species.	
9	*EIS Section 9.3.1.2 – Mitigation (Pg. 9-10)*	BHP states that they "will monitor daily for the presence of marine birds from the drilling installation using a trained observer following ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms" (Pg. 9-10). MTI appreciates that BHP will be monitoring for the presence of marine birds on the MODU, but is concerned with the potential quality of these searches as there is no dedicated qualified Seabird Observer performing these activities on the MODU and these observer-based surveys have limitations during poor weather conditions (Ronconi et al., 2015). As well, MTI is concerned that these searches are only being performed on the MODU, but not the PSVs. In addition, there has been a lack of engagement with MTI communities on seabird monitoring activities and reporting, especially given this Project has the potential to adversely affect these bird species.	9A: BHP should commit to employing dedicated qualified Seabird Observers to perform monitoring surveys following ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms on both the MODU and PSVs, and provide them with training in the relevant survey/monitoring protocols. 9B: BHP should hire MTI community members to facilitate the seabird monitoring program and provide them with industry-standard job training as needed. Allowing MTI community members to perform seabird monitoring activities will provide the MTI community with greater assurance that BHP's seabird observation protocols are being implemented correctly to monitor the impacts on seabird communities throughout the life of the Project. 9C: BHP should compile the data from these surveys into an annual report and submit them to both ECCC-CWS and MTI, which would contribute to the understanding of marine and migratory bird abundance in the study area and allow MTI to be kept up to date on marine and migratory bird monitoring activities throughout the Project's life. 9D: These visual *Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms* surveys should be enhanced with the use of instrument-based systems (e.g., acoustic monitoring/recording, radar) to help reduce limitations of visual observer-based approaches (e.g., poor weather conditions) (Ronconi et al., 2015).

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10	*EIS Section 9.3.1.2 – Mitigation (Pg. 9-11)*	BHP states that "C-NLOPB will be notified at least 30 days in advance of planned flaring to determine whether the flaring would occur during a period of migratory bird vulnerability and to determine how the Proponent plans to avoid adverse environmental effects on migratory birds." (Pg. 9-11). BHP does not mention contacting other relevant agencies, who could provide valuable input on flaring activities.	BHP should contact ECCC-CWS in addition to CNLOPB at least 30 days in advance of planned flaring activities so that they are able to incorporate their suggestions (e.g., only flaring outside of sensitive times for marine and migratory birds).
11	*EIS Section 9.3.1.2 – Mitigation (Pg. 9-11)*	BHP states that "If flaring is required, BHP will discuss flaring plans with the C-NLOPB including steps to reduce adverse effects on migratory birds. This may involve restricting flaring to the minimum required to characterize the wells' hydrocarbon potential and as necessary for the safety of the operation, minimizing flaring during periods of migratory bird vulnerability, and the use of a water curtain to deter birds from the general vicinity of the flare." (pg. 9-11). BHP does not mention collecting any data related to bird interactions with water curtains or flaring activities, which could help to inform mitigation activities in the future and help with the overall understanding of this activity and its effect on marine and migratory birds.	11A: BHP should commit to employing dedicated qualified Seabird Observers who will be present during flaring activities and record any possible interactions with marine or migratory birds and note the effectiveness of the water curtain at deterring species. 11B: BHP should commit to assembling these data into an annual report and share it with ECCC-CWS and MTI. These data would contribute to the understanding of the effectiveness of water curtains at mitigating the effects of flaring on marine and migratory birds.
12	*EIS Section 10.3.1.2 – Mitigation – Vertical Seismic Profiling (Pg. 10-9)*	BHP has stated that they will employ MMOs to monitor and report on marine mammal sightings before and during VSP surveys. However, visual observation-based approaches to marine mammal	Please consider implementing multiple marine mammal monitoring methods during VSP surveys to maximize detection probability. Specifically, MTI recommends that BHP use MMOs and PAM

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		monitoring can be limited by a number of factors (e.g. low/no light conditions, foggy or inclement weather, rough sea conditions, observer training and experience, behavior of marine mammals, etc.), which can affect detection probability (Brillant et al., 2015; Verfuss et al., 2019). In particular, NARW tend to keep a low profile in water and may be harder to detect than other species (Elvin & Taggart, 2008). Several studies have shown that marine mammal detection probabilities increase when multiple monitoring methods, such as visual surveys and Passive Acoustic Monitoring (PAM) are used concurrently (Brillant et al., 2015; Verfuss et al., 2019; Smith et al., 2020).	concurrently during all relevant Project activities, but at a minimum BHP should be prepared to adjust their approach to marine mammal monitoring to maintain a high detection probability as fluctuating conditions (e.g. inclement weather) may require.
13	*Section 10.6– Environmental Monitoring and Follow-Up (Pg. 10-34); EIS Section 10.3.1.2 – Change in Risk of Mortality or Physical Injury – Mitigation (Pg. 10-9 to 10-10); EIS Section 10.3.2.2.– Change in Habitat Quality and Use – Mitigation (Pg. 10-17 to 10-18); EIS Section 10.3.3– Species At Risk; Overview of Potential Effects and Key Mitigation (Pg. 10-29 to 10-32)*	There is no mention of efforts to involve Indigenous groups, including MTI, in marine mammal mitigation, monitoring, and follow-up measures. For example, BHP has committed to developing a marine mammal and sea turtle monitoring plan and providing reporting results to the C-NLOPB and DFO, but not affected Indigenous groups (EIS Sect. 10.6). BHP has also stated that they will employ MMOs to monitor for marine mammals during Project activities, but again there is no mention of efforts to reach out to Indigenous groups, including MTI, to staff these positions. Mi'gmaq people have used these waters since time immemorial and Project activities subsequently have the potential to affect their inherent rights and interests. Additionally, MTI and its members can provide valuable experience and input related to Project activities (e.g. navigation) and the protection	BHP should consider involving MTI in the development and implementation of the Project's marine mammal mitigation, monitoring, and follow-up measures. Specifically, this should include: 13A: Providing MTI with an opportunity to review and comment on the draft marine mammal and sea turtle monitoring plan at least 60 days in advance of the initiation of Project activities. MTI expects that BHP will solicit Mi'gmaq knowledge during the development of this plan and consider ways that it can contribute to enhanced protections for marine mammals. This draft plan should also be submitted to the C-NLOPB and DFO for approval. 13B: 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

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		of marine mammals and is disappointed that BHP has not yet made an effort to solicit this.	Project vessel collisions with marine mammals within five days of an incident. 13C: Providing Mi'gmaq environmental monitors 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 assurance that BHP's marine mammal monitoring protocols are being implemented correctly throughout the life of the Project.
CUMULATIVE EFFECTS			
14	*EIS Section 4.5 – Topics of Interests and Concerns*	The Regional Assessment currently only assesses the cumulative impacts of existing production facilities and future exploratory drilling, with limited to no assessment of future production facility cumulative impacts. Cumulative effects are only described in terms of existing oil production facilities (Hibernia, Terra Nova, White Rose, Hebron), future e*xploratory* drilling projects and one proposed oil production facility (Bay du Nord). There is no effects assessment of the scenario where all of these proposed *exploratory* wells turn into actual oil production facilities. Acknowledging that the e*xploration* drills are relatively short lived, the potential for these exploration wells to turn into production facilities significantly increases the timeline for activity, and potential impacts over time, in the region. Further, if all exploration wells transition into production facilities, the potential for simultaneous accidents,	The EIS should consider, in the cumulative effects assessment, the scenario where all of the proposed exploration projects transition to oil production facilities within the Regional Assessment Study Area. The EIS should examine and assess the potential environmental and cumulative impacts of increased oil production activities including an increase in general oil production operation activities, as well as simultaneous accidents, malfunctions and oil spills in the study area.

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		malfunctions and general project activities, would significantly increase the potential for cumulative impacts.	
15	*EIS Section 4.5 – Topics of Interests and Concerns*	In documenting the perceived lack of comprehensive approach to analyzing, understanding and addressing the potential for cumulative impacts, the EIS states that the Proponent is participating in the Regional Assessment where a more regional approach is being taken to examining cumulative effects of multiple projects and interactions with other ocean users. BHP states that they will apply any applicable new learnings from the regional assessment to their exploration drilling Project. However, the Regional Assessment was released prior to the release of the BHP EIS and it is not clear if this has occurred.	MTI has reviewed and made comments related to the Cumulative Effects Assessment section of the Regional Assessment. The Proponent has committed to incorporating and applying new learnings from the Regional Assessment and as such should consider and incorporate the comments provided by MTI within this BHP EIS.
SOCIO-ECONOMICS AND COMMUNITY WELL-BEING			
16	*EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*	In Table 3.8, a reasonable overview is provided of the main issues and concerns identified by Indigenous groups during the workshop in Moncton. Mitigations for potential impacts to culturally important species, however, exclusively focuses on Atlantic salmon, by way of providing funding to the ESRF for studies on environmental and social issues related to decision-making for oil and gas projects. Other mitigation and accommodation measures are also warranted and are included as recommendations in the fish and fish habitat section of this review.	See recommendations and additional accommodations put forth in Sections 4.1.1 and 4.2.1 of this review report

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17	*EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*	In Table 3.8; for the concern **"***Potential Impacts to Indigenous Fisheries*": Mitigations focus on sharing information with Indigenous groups about operations and results of monitoring. This is not sufficient.	MTI requests a higher level of involvement in the environmental monitoring of the project by way of ability to review monitoring plans and for an Indigenous environmental monitoring advisory committee to be established.
18	*EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*	In Table 3.8, for the concern "*Indigenous Knowledge*"; as a mitigation, BHP states that is has endeavored to gather Indigenous Knowledge, where appropriate and available, and recognizes the importance of considering Indigenous Knowledge in its operations. BHP is actively supporting an Atlantic-wide proposal to fund a number of regional Indigenous Knowledge studies through the ESRF. Evidence of how IK has been considered and applied within the EIS is not evident; and as mentioned in other sections of this review, providing funding to the ESRF is positive, but not sufficient.	Please clarify how IK was incorporated into the EIS and how it will be considered during the operations phase – namely with regards to monitoring and adaptive management measures.
19	*EIS Table 3.8 – Main Concerns Expressed during September 2019 Workshops with Indigenous Groups*	In Table 3.8, for the concerns "*Environmental Monitoring*" and "*Communication and Ongoing Involvement of Indigenous Groups*", BHP has captured the essence of key concerns for this subject, and it is positive to read that "BHP will also explore partnerships with Indigenous groups, local universities including Memorial University, and other independent research groups to collaboratively further the environmental knowledge base in the region". The mitigation associated with this topic (in addition to the ones that the reader is referred to in Sections 8 to 13) are still an 'inform' level of communication and do not	As MTI has requested of each proponent and the IAAC, a formalized Indigenous monitoring oversight framework is required for project operations – one that includes a committee, terms of reference and adaptive management measures to provide input into environmental monitoring plans and a communication protocol for Indigenous groups and resource users and knowledge holders to provide feedback on proposed monitoring plans including emergency response plans.

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		reflect an established or formal process for having Indigenous groups involved in environmental monitoring and follow up plans.	
20	*EIS Section 7.4 – Indigenous Peoples and Communities*	In Section 7.4, BHP explains that (similar to Chevron's approach for their West Flemish EIS): "The information in Sections 7.4.1 to 7.4.7 was provided to BHP by Equinor. The goal of using the same information prepared by Equinor (and incorporating information provided by Indigenous groups who reviewed the tables in these sections) is to provide consistent information on the 41 Indigenous groups operators have engaged and continue to engage with during preparation for environmental assessments (EAs) for offshore exploration drilling projects". The intention and rationale for providing the same information is understood, however what is not included in the baseline information section of BHP's EIS (similar to Chevron's EIS) is a) consideration of MTI's input and requests for more relevant baseline information regarding their rights and socio-economic interests (i.e., MTI generated Indigenous Knowledge) b) results of MTI's technical review of Equinor's Central Ridge EIS. Moreover, there is no indication of information gathering from MTI either through their IK Study results or other information collection methods including interviews.	The EIS needs to clearly articulate all other issues, interests and concerns that MTI has communicated to previous proponents and the IAAC through previous submissions and within their Indigenous Knowledge Studies. MTI considers the lack of consideration of IK within the EIS, a significant gap in process and in turn, weakness of analysis and decision making.

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21	*EIS Section 13 – Assessment of Potential Effects on Indigenous Peoples and Communities*	BHP states within the first introductory paragraphs within Section 13: "It is BHP's understanding that the lands and waters of eastern offshore NL where the Project components and activities will be located, are not within an area that the listed Indigenous groups have asserted or established Aboriginal or treaty rights protected by section 35 of the *Constitution Act, 1982* (section 35 rights)". MTI, in previous submissions through reviews of other offshore oil exploration projects and in letters to the Agency, has communicated the importance of accurate representation in the myriad of offshore oil project EISs and overall regulatory processes. BHP, similar to other proponents, claims that they are not made aware of any group that holds claims or asserts aboriginal and treaty rights in the proposed study area. MTI finds this lack of understanding and acknowledgement disappointing, and associated statements to be untrue. The communities' commercial activities are a modern-day interpretation of the rights given to us through our treaties**.** Because the federal government chooses to make us use the commercial fishery to exercise these rights doesn't mean they are not the assertion of our Aboriginal and Treaty rights.	Update documentation within section 7.4 and section 13.0 to reflect accurate portrayal of MTI's rights holding members and associated modern-day rights.
22	*EIS Section 13.1.2 – Influence of Consultation and Engagement on the Assessment*	Section 13.1.2 provides a high-level overview of concerns and interests put forth by Indigenous groups and points the reader to Chapter 3 and Table 3.8 that outlines more details of these concerns and interests. It is unclear how these concerns and interests are	Provide MTI with information outlining how Mi'gmaq Knowledge was considered and will be considered throughout the project's lifecycle within a formal agreement.

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		being addressed beyond notifications of studies and monitoring results through a standard Fisheries Communication Plan.	
23	*EIS Figure 13-1 – Indigenous Peoples and Communities Spatial Boundaries*	The Regional Assessment Area (RAA) depicted in Section 13.1.3, Figure 13-1, includes the overall Atlantic Canada region. MTI acknowledges the adequacy of this spatial boundary as it more accurately reflects the potential for interactions or effects for relevant value components (VC) as they pertain to MTI. However, this spatial boundary is not reflected in BHP's predictions, characterization of residual effects, nor its mitigations pertaining to Indigenous community related value components.	MTI requests that this RAA's spatial boundary be upheld within follow up monitoring programs that directly and indirectly include Indigenous representatives and knowledge holders to account for any residual and/or unforeseen environmental effects related to the Project's activities that could interact cumulatively with the residual environmental effects of other past, present, and future activities.
24	*EIS Section 13.3 – Assessment of Residual Environmental Effects on Indigenous Peoples and Communities and EIS Sections 13.3.1.2 & 13.3.2.2– Mitigation*	In Section 13.3, BHP comments that "Given the similarities in other offshore exploration project environmental assessments, this EIS incorporates information from previous Environmental Assessment (EA) documents for similar exploration drilling projects in Atlantic Canada. This includes comments received during Indigenous and stakeholder review processes, with updates incorporated, as applicable, due to Project and geographic differences, scientific updates, and refined EA methods". For example, in Section 13.3.1.1, Project Pathways, BHP notes that [in addition to species assessed with the LAA, "…this assessment also considers the potential residual effects on migratory species (e.g., bluefin tuna, swordfish) identified above that may move through the Project Area or LAA and be targeted by commercial communal fishing activities elsewhere in	MTI requests that BHP adds to its list of mitigations, a clear and explicit commitment to implement processes that allow for Indigenous Knowledge, including Mi'gmaq Knowledge, to be meaningfully incorporated into environmental management and monitoring plans over the course of the exploration project's lifecycle. This includes opportunities to be involved in the planning, design and review of follow up monitoring and/or adaptive management plans, as well as involvement in emergency response planning and readiness programs.

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		the RAA". MTI acknowledges this increased assessment scope as being positive. In Sections 13.3.1.2 and 13.3.2.2 (Mitigation), however, key points and information that MTI has conveyed to proponents and the IAAC regarding projects like these are not reflected. For instance, in addition to the mitigations carried forward from other VCs within the EIS, BHP lists additional mitigation measures related to notification-based communication with Indigenous groups; safety zones; standard industry guidelines for compensation for fisheries related damages; and PSV routing along with PSV and MODU lighting alterations where feasible. Although these mitigations are acknowledged in terms of their reflection of Indigenous groups' concerns that has been provided previously, there still lacks key accommodation measures that have been raised by MTI over numerous review processes and other communications with proponents and regulators.	
25	*Section 13.3.1.3 Characterization of Residual Project-related Environmental Effects*	In Section 13.3.1.3, BHP has provided substantial consideration of the potential project interactions (i.e., MODU, VSP and/or discharges etc.) with species of importance to MTI, notably Atlantic salmon, swordfish, in addition to Atlantic bluefin tuna. BHP predicts that "Residual effects associated with the presence and operation of a MODU on commercial communal fisheries, including potential indirect socio-economic effects, on Indigenous peoples and communities are predicted to be adverse, low in magnitude, and within the Project Area". In various sections of the EIS (e.g., 13.3.2.1 Project Pathways), BHP has acknowledged and described the behaviours	MTI requests that BHP include the RAA as spatial characterization of potential for residual effects to address wider effects linked to migratory species, and establish formalized follow up monitoring and management plans that directly involve Indigenous knowledge holders.

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		and patterns of various migratory species that inhabit the project's RAA, and acknowledged the potential for effects to migratory species as a result of the project's various components and activities. Given the unknown long term impacts of the multiple offshore oil exploration projects in the region, combined with uncertainty of impacts in the case of an accident or spill, MTI requires the potential for residual effects within the wider RAA be identified and addressed through formalized follow up monitoring and management plans that directly involve Indigenous knowledge holders.	
26	*EIS Section 13.3.3 – Overview of Potential Effects on Indigenous Peoples and Communities*	In Section 13.3.3, BHP states that "routine Project activities are not anticipated to result in changes to the environment that would influence human health and well-being of Indigenous peoples"; and "…routine Project activities are not predicted to significantly affect current use of lands and resources for traditional purposes by an Indigenous group or community". Although BHP acknowledges the potential for project interactions with these value components, the Proponent concludes that "..effects are not predicted to occur to the extent that they would result in measurable effects on socio-economic conditions for Indigenous communities or Aboriginal or treaty rights" (13.3.4 Summary of Project Residual Environmental Effects). With mitigations implemented, BHP characterizes the residual effects as negligible to low in magnitude for each Project activity, and as occurring within the Project Area or LAA, to be of short to long-term in duration, and be reversible" and that "the ecological and socio-economic context is predicted to be disturbed	Please refer to previous recommendations related to the establishment of follow up monitoring and adaptive management plans with direct Indigenous involvement.

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		because of previous or existing human development and activities present in the RAA, such as shipping traffic and commercial fisheries" (13.3.4 Summary of Project Residual Environmental Effects). As stated in previous comments, the potential residual effects – whether low or negligible or intermittent in nature, need to be monitored and addressed as required.	
27	*EIS Section 13.5 – Follow up and Monitoring*	In Section 13.5, it states that "No follow-up and monitoring are proposed for routine Project activities due to the high level of confidence in the prediction of no significant adverse environmental effects on Indigenous peoples and communities. This recommendation is also given in consideration of the standard mitigation to be implemented, ongoing engagement with communities, and the implementation of an Indigenous Fisheries Communication Plan." MTI requests that follow up and monitoring measures be implemented that include processes for Indigenous knowledge holder involvement as described in previous recommendations.	MTI requests that BHP establish a follow up and monitoring program with Indigenous knowledge holder involvement that entails more than notification-based communication plans.
ACCIDENTS AND MALFUNCTIONS			
28	*EIS Section 6.1.4 – Potential Effects from Accidents*	MTI have commented in previous EIS reviews that booms, berms, and other barriers may be used to protect sensitive shorelines in the event of a spill. Insufficient information is provided on whether adequate equipment is available for large spills and	More detail regarding how spills will be detected, including the time it will take between detection and deployment of spill contingency methods, is required. When the spill contingency plan is complete, MTI should be engaged and provided the opportunity to comment. Further, MTI personnel represent untapped resources for spill response measures that include

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		whether the equipment could reasonably be deployed before oil reaches shore. The proponent would maintain access to spill response equipment to respond to a range of potential scenarios. Some localized equipment (e.g. sorbents) will be maintained on the mobile offshore drilling unit and platform supply vessels. Booms and skimmers will be located in or near Halifax. It is still unclear the details regarding how spills will be detected, and the time it will take to deploy the spill contingency measures.	surveillance and tracking, offshore containment and recovery, dispersant application, in-situ burning, shoreline protection, shoreline clean-up, oiled wildlife recovery and waste management.
29	*EIS Section 6.1.4 – Potential Effects from Accidents*	The EIS states that the Project will include contingency plans for responding to specific emergency events, including potential spill or well control events. The contingency plans, such as an Oil Spill Response Plan, will be submitted to the C-NLOPB prior to the start of any drilling activity as part of the Operations Authorization process.	MTI requests the opportunity to review the Project Incident Management Plan, Spill Response Plan, Environmental Protection Plan, and Safety Plan before they are finalized, and provide comments to the Proponent, IAAC and other relevant regulatory authorities. The proponent noted that engagement with Indigenous groups will continue. Discussions on the Incident Management Plan, Spill Response Plan, Environmental Protection Plan, and Safety Plan will occur at a high level. However, MTI maintains that this engagement is not occurring. MTI would like firm commitment that the proponent will consult and engage the community on the completion of the Project Incident Management Plan, Spill Response Plan, Environmental Protection Plan, and Safety Plan prior to finalization.
30	*EIS Section 6.1.4 – Potential Effects from Accidents*	The impacts of a collision with icebergs and the drilling platform in the Project area seem potentially catastrophic and could be likely and unavoidable. This sections states that supply and personnel movement to and from the drilling installation can be delayed and the drilling	Understanding the oil spill potential, please provide information pertaining to how the proponent plans to monitor for iceberg movement and collision potential and how emergency evacuation and shut down could reduce some of the effects. Will Indigenous groups be

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		installation could be moved off the well site to avoid being struck by an iceberg. In addition, sea ice and icebergs can also increase the risk of an accidental event (e.g., a vessel collision potentially and/or impact with the drilling installation, potentially resulting in a spill), and human health risk, and/or irreparable damage to the drilling installation superstructure. This seems like a very large issue and could result in far reaching environmental impacts. However, there is little discussion on how iceberg movement will be monitored, and what avoidance or notification procedures are in place.	notified of this potential and how iceberg activity may affect progress or execution of the drilling program.
31	*EIS Section 6.1.4 – Potential Effects from Accidents*	The proponent states that during drilling, operational discharges will be managed in accordance with a proponent-specific Environmental Protection Plan (EPP). The EPP will be developed based on the OWTG and will be submitted to the C-NLOPB as part of the Operations Authorization process. Discharges not identified in the EPP are not permitted to be discharged and are considered a spill if released into the marine environment. Response and management of spill events is outlined in the Operator's Project and site-specific Oil Spill Response Plan.	31A: The EPP should be circulated to all Indigenous group, including MTI, s for review and comment prior to project initiation. 31B: In relation to BHP's commitment to funding Atlantic salmon research studies through the ESRF, the Cumulative Effects Assessment should incorporate and apply any new findings from the salmon studies in order to appropriately enhance mitigation and protection measures on Atlantic salmon in relation to potential accidents and malfunctions.