



Newfoundland Offshore Oil Projects

Review and Comments on the Draft Environmental Assessment and Potential Conditions

Prepared by
Miawpukek First Nation
and
Shared Value Solutions

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SHARED VALUE
SOLUTIONS



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1.0 INTRODUCTION

On September 20, 2020, the Impact Assessment Agency of Canada (IAAC) released the draft environmental assessments (draft EAs) and potential conditions for the Central Ridge, BHP Canada, and West Flemish Pass Offshore Exploratory Drilling Projects (collectively, “the Projects”). The environmental assessments for the Projects have been completed under the transition provisions of the *Canadian Environmental Assessment Act, 2012* (CEAA, 2012).

Miawpukek First Nation (MFN) has completed a review of the draft EAs and potential conditions for the Projects with technical support from Shared Value Solutions Ltd. (SVS). The following report builds on previous submissions from MFN, highlighting the concerns of our community, including (but not limited to) including recreational, commercial and Aboriginal fisheries, species at risk, Atlantic salmon, marine birds, cold water corals, accidents and malfunctions, sediment and benthic quality, socioeconomics, and community well-being. Findings of this review, related to the rights and interests of MFN, including issues, recommendations and requested accommodations, are described below. In general, comments and recommendations are related to all the Projects, unless specifically stated otherwise.

1.1 PROJECT DESCRIPTIONS

1.1.1 CENTRAL RIDGE

Equinor Canada Ltd. (Equinor), on behalf of its partners Husky Oil Operations Ltd. (Husky) and Suncor Energy Offshore Exploration Partnership (Suncor), is proposing to conduct exploratory offshore drilling in the Central Ridge area (the Project). Drilling would take place in Exploration Licences (ELs) 1159 and 1160, located approximately 375 kilometres (km) east of St John’s, Newfoundland and Labrador (NL).

The Central Ridge Project would include the drilling, testing, and abandonment/decommissioning of up to 12 wells in ELs 1159 and 1160. The Project Area assessed for the EA has an area of approximately 108,000 km² and has been divided into a Northern section and Southern section (Figure 1). EL 1160 is located within the Southern Section of the Project Area and EL 1159 is located within both the Northern and Southern Sections. Water depths in EL 1160 range from approximately 40 to 1,020 metres (m) and from approximately 90 to 930 m in EL 1159. The Project would allow for the Proponent to determine the presence, nature and quantities of potential hydrocarbon resources with the goal of obtaining a Significant Discovery Licence and expanding production. The Proponent is currently seeking regulatory approval for these drilling activities by undergoing a federal Impact Assessment.



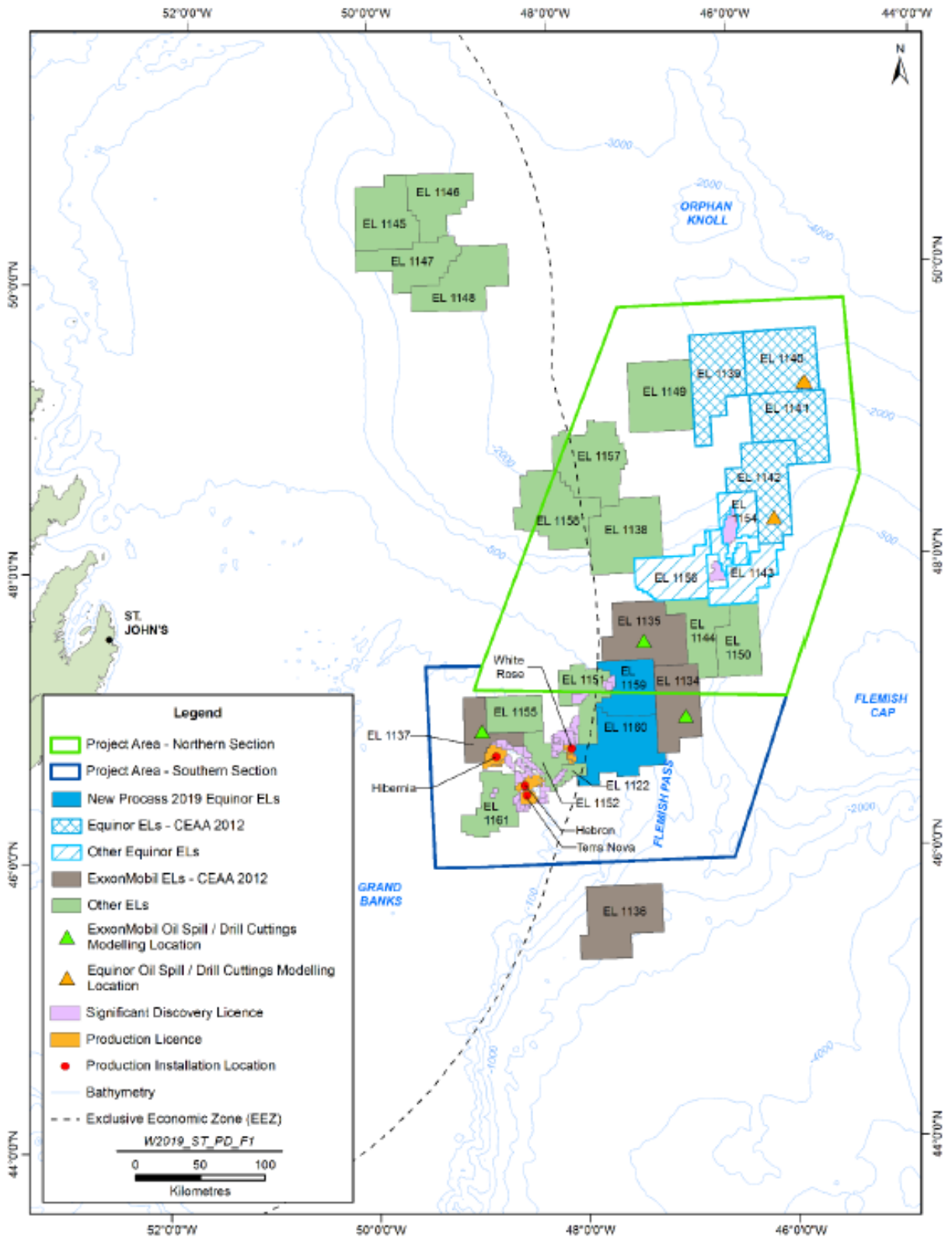


Figure 1: Central Ridge EIS Project Area (Equinor Canada Ltd., 2020)



1.1.2 BHP CANADA

BHP Petroleum Corporation (“BHP” or “the Proponent”) is proposing to undertake drilling of up to 20 exploration and delineation/appraisal wells in Exploration Licences (ELs) 1157 and 1158 (“the Project”). Between one to ten wells will be drilled in either, or both, EL 1157 and 1158. The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) awarded BHP exploration rights to EL 1157 and 1158 in 2019, the terms of which extends from January 2019 to January 2028. The scope of work covered in the Environmental Impact Statement (EIS) will occur within the terms of the EL.

The ELs are in the Orphan Basin area, approximately 350 kilometres (km) northeast of St. John’s Newfoundland and Labrador (Figure 1). ELs 1157 and 1158 have an area of 269,799 hectares (ha) and 273,579 ha respectively, totalling a combined area of 543,378 ha. Water depths in EL 1157, located to the northeast, range from 2,150 to 2,575 meters (m), while waters depths in EL 1158 to the southwest range from 1,175 to 2,265 m. The scope of work covered in the EIS includes vertical seismic profiling (VSP) operations, mobile offshore drilling unit (MODU) mobilization and drilling, well evaluation and testing, supply and servicing, and well decommissioning and suspension, or abandonment. Activities occurring at shore-based facilities (e.g. transport vessel and helicopter maintenance) are not covered in the scope of the EA.

The Proponent is currently seeking regulatory approval for the Project activities by undergoing a Federal environmental assessment. Since BHP received their notice of commencement on June 28, 2019, before the new *Impact Assessment Act* came into force (August 28, 2019), the Project will remain under the *Canadian Environmental Assessment Act* process. Approval of the Project would allow for the Proponent to determine the presence, nature and quantities of potential hydrocarbon resources with the goal of obtaining a Significant Discovery Licence and expanding into production. Pending regulatory approval, the first exploration well may be drilled as early as 2021.



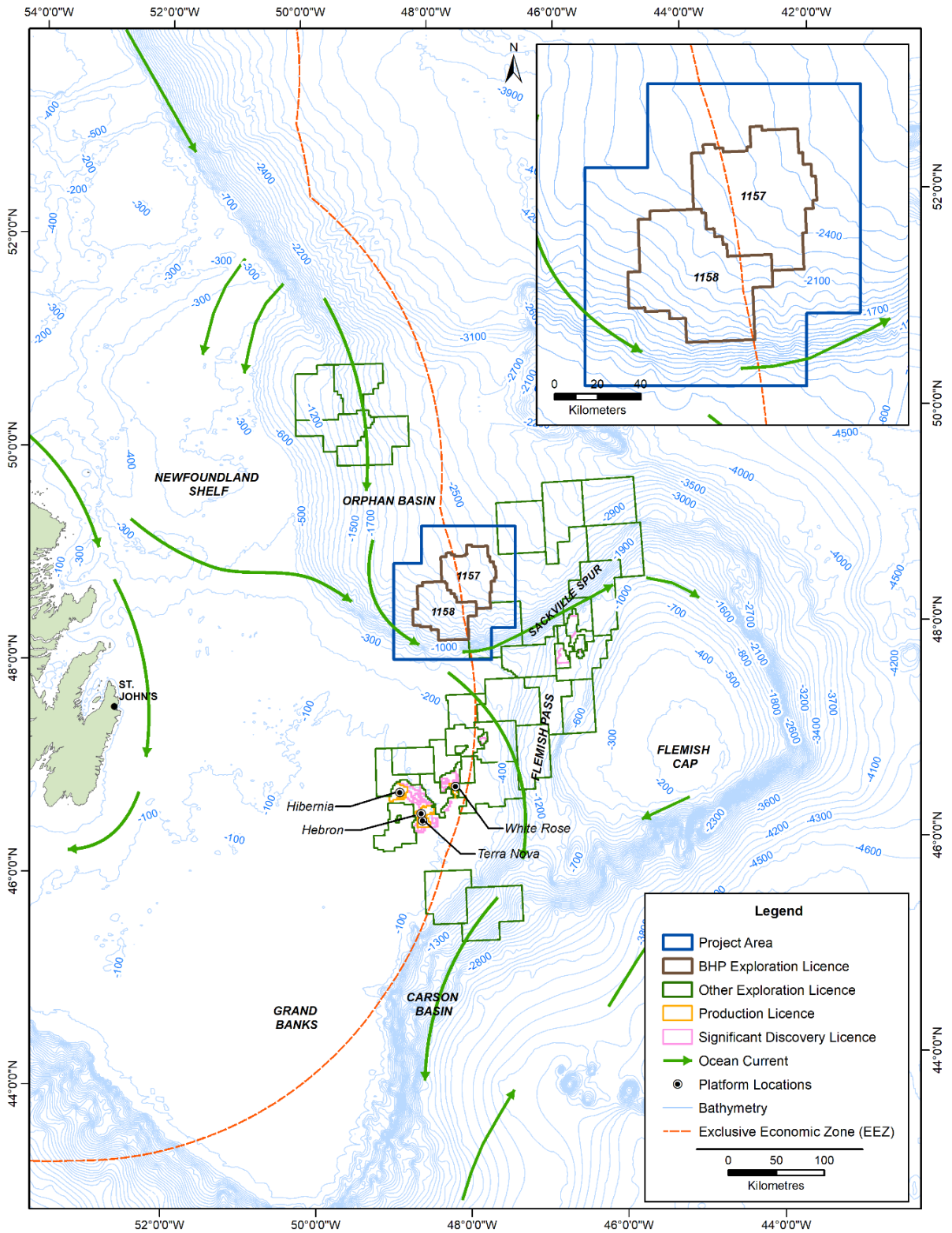


Figure 2. Location of Exploration Licences 1157 and 1158 (Adapted from Figure 5-1. Stantec, 2020).



1.1.3 WEST FLEMISH PASS

Chevron Canada Limited (Chevron, the Proponent) is proposing to undertake drilling of up to eight exploration and delineation/appraisal wells in Exploration Licence (EL) 1138. The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) awarded Chevron and its co-venturer, Anadarko Canada E&P Ltd, exploration rights to EL 1138 in 2016, the terms of which extends from January 2016 to January 2025. The scope of work covered in the Environmental Impact Statement (EIS) will occur within the terms of the EL. Chevron will serve as the operator for the exploration drilling program.

EL 1138 is located in the Flemish Pass, approximately 375 kilometres (km) northeast of St. John's Newfoundland and Labrador, and has an area of approximately 2,747 km² (Figure 1). The EL is located approximately 130 km from Husky's White Rose oil development field and 370 km from the nearest community of Flatrock. Water depths in the EL range from 400 to 2,200 metres (m). The scope of work covered in the EIS includes vertical seismic profiling (VSP) operations, mobile offshore drilling unit (MODU) mobilization and drilling, well evaluation and testing, supply and servicing, and well decommissioning, suspension and abandonment. Activities occurring at shore-based facilities (e.g. transport vessel and helicopter maintenance) are not covered in the scope of the EIS. The Proponent is currently seeking regulatory approval for these activities by undergoing a Federal Environmental Assessment. Approval of the Project would allow for the Proponent to determine the presence, nature and quantities of potential hydrocarbon resources with the goal of obtaining a Significant Discovery Licence and expanding into production.



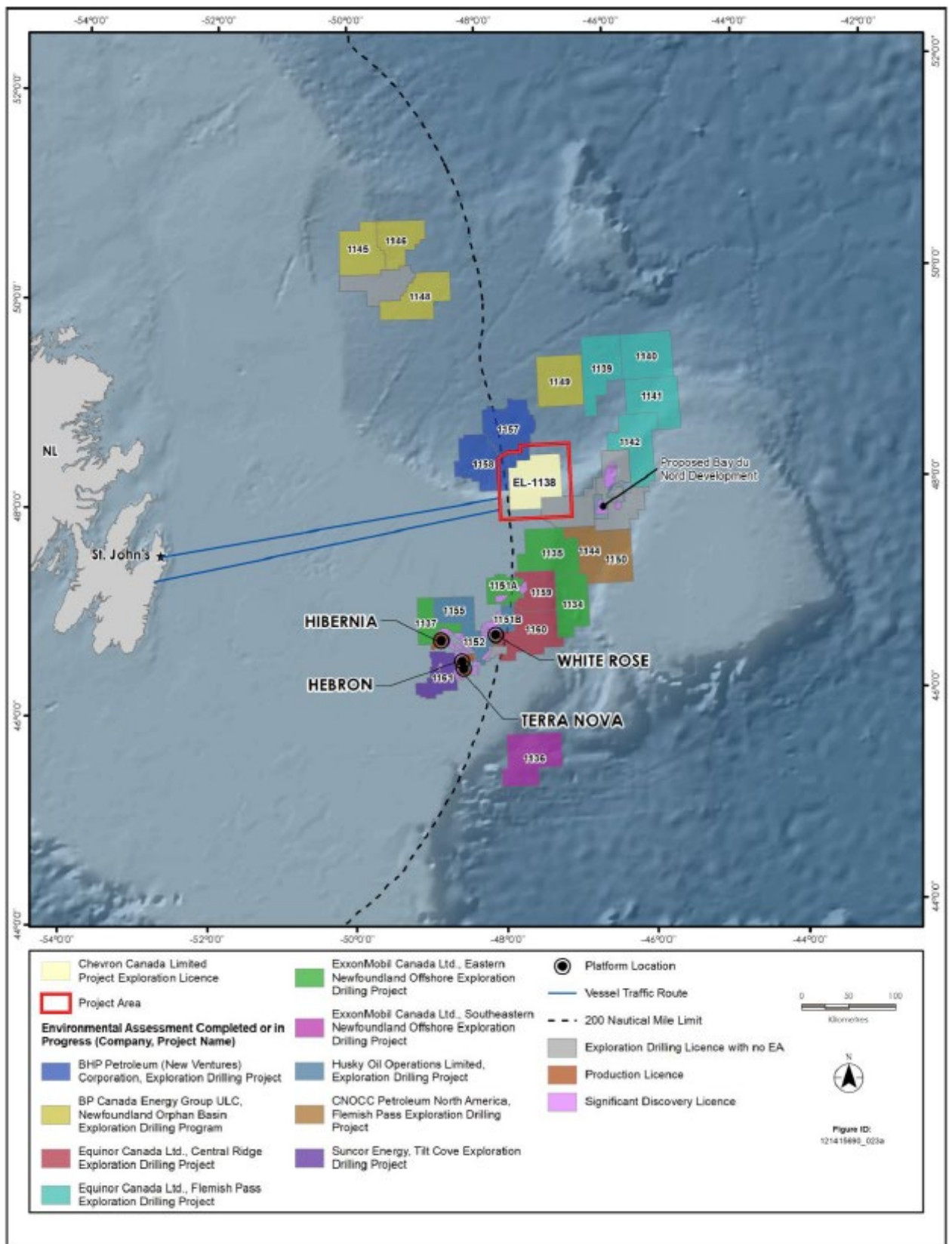


Figure 3. Project Location and Potential Vessel Traffic Routes (Stantec, 2020)



Miawpukek First Nation (MFN) has reviewed the draft EAs and potential conditions for the Projects with support from our Environmental Advisors, Shared Value Solutions Ltd (SVS). Comments on this document and the environmental assessment (EA) process in general are provided in this report. These comments build on previous communications from MFN sent to the Proponents and the Crown

The rights, values, and interests of MFN are the focus of these comments. They build on previous submissions completed by MFN, highlighting the concerns of our community, including (but not limited to) commercial and Aboriginal fisheries, species at risk, Atlantic salmon, the marine environment, socioeconomics and community well-being. This report summarizes the position of MFN regarding the Projects and outlines, on behalf of our community, recommendations and requested accommodations.

2.0 MIAWPUKEK FIRST NATION

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

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

2.1 HISTORIC OVERVIEW

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

The earliest use of Ktaqamkuk by the Mi'kmaq is something that is still debated by Western scholars. It is known that Mi'kmaq hunters and fisherman would stay seasonally on the island from as early as the 1600s, although it is likely that this occurred much earlier (Pastore, 1998). French and English historical records suggest that the Mi'kmaq didn't establish permanent residences on Ktaqamkuk until the 1760s (Bartels and Janzen, 1990). However, the idea of permanent residence is rooted in the



colonialist ideas and perceptions of the time. It does not account for the Mi'kmaq way of life, which at that time was seasonal and revolved around frequent travel throughout traditional territories to access resources. This would have included travel between Unamaki (Cape Breton) and Taqamkik for hundreds of years before the land became known as Canada. Thus, it is argued by many scholars that the island of Ktaqamkuk is part of the Traditional Territory of the Mi'kmaq.

The people of Miawpukek First Nation assert that the entire Island of Ktaqamkuk is included in their Traditional Territory. Oral history passed down through generations holds that the ancestors of Miawpukek First Nation have lived and travelled Ktaqamkuk since time immemorial. The Mi'kmaq hunted, fished and travelled back and forth along the coasts year-round. Mi'kmaq from the mainland travelled back and forth between Unamaki and Ktaqamkuk, thus maintaining constant connections between the island and the mainland. This occurred as recently as the 1760s when Chief Jeannot Pequidalouet led a group of Mi'kmaq across the Cabot Straight to avoid hostility and mistreatment at the hands of the British (Martijn, 1989). It should be noted that the Mi'kmaq have a long history as explorers, and similar trips likely occurred frequently before this time but were not documented by European colonizers. This history is best summarized by Frank Speck (1922) who completed ethnographic surveys on Newfoundland in the summer of 1914:

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

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

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

In 1984, after years of fighting for recognition, the federal government granted status to the people of Miawpukek under the Indian Act. This was followed three years later by the allocation of a 500-hectare reserve in Conne River named by Council as the Samiajij Miawpukek Indian Reserve, which translates closely to "too small Indian Reserve." The larger Traditional Territory, known as



Mimaju'nnulkwe'kati, covers an area greater than 17,000km² and has never been surrendered or ceded. This area has been used by the members and ancestors of Miawpukek First Nation since time immemorial. Despite repeated land claims and court battles, this area has never been formally recognized. However, the right has never been extinguished and the people of Miawpukek continue the struggle for recognition to this day.

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

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

2.2 RIGHTS AND INTERESTS

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

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

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

The proposed offshore drilling site is within fishing grounds that are part of the Traditional Territory of MFN currently used by community members. There are potential major environmental, cultural, and socio-economic risks associated with all phases of drilling and exploration that could impact MFN's rights and interests. The offshore drilling in Flemish Pass has the potential to cause direct and indirect impacts from all phases. Should the drilling program determine the presence of significant



quantities of petroleum hydrocarbons and result in the development of industrial extraction, there will be additional direct and indirect impacts on MFN's rights and interests.

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

MFN relies on hunting, fishing, and trapping for commercial, recreational, and Aboriginal fisheries. Species that are targeted include salmon, mackerel, cod, herring, redfish, brook trout, rainbow trout, eel, capelin, smelt, tuna, whelk, scallop, snow crab, lobster, and surf clam. MFN possesses several commercial licenses for fishing in NAFO fishing zones 3P, 3KL, and 3LN (Figure 2). The community utilizes a Food, Social and Ceremonial licence to target species off the south shore in Zone 3P. Commercial fishing by MFN in zones 3KL and 3LN overlap with the Project. Impacts to any of the species listed above represent potential effects on the Aboriginal rights of MFN.

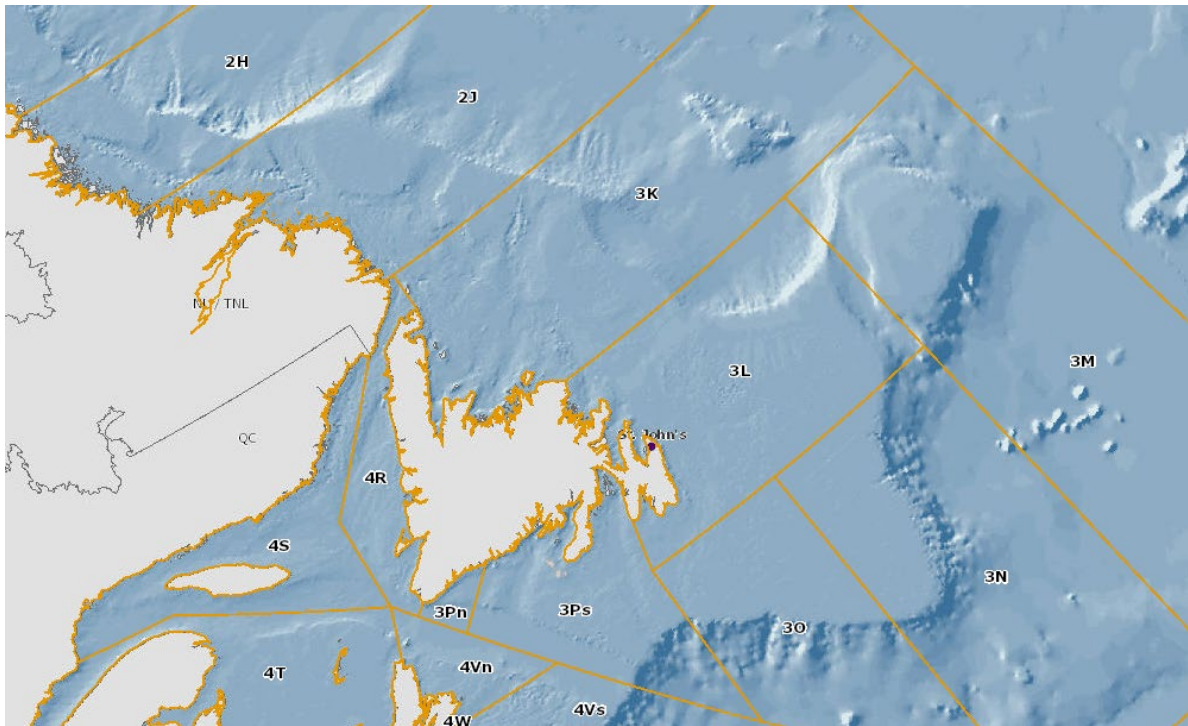


Figure 4. Northwest Atlantic Fisheries Organization (NAFO) Zones (DFO).



3.0 REVIEW FINDINGS

3.1 GENERAL COMMENTS

Comment 1: In April 2019, the Minister of the Impact Assessment Agency of Canada, together with the Minister of Natural Resources Canada, the provincial Minister of Natural Resources and the provincial Minister for Intergovernmental and Indigenous Affairs established the Committee for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador (the Committee) to undertake a regional assessment of the effects of exploratory drilling in the offshore east of Newfoundland and Labrador. In March 2020, the Impact Assessment Agency of Canada released the *Discussion Paper on a Ministerial Regulatory Proposal to Designate Offshore Exploratory Drilling East of Newfoundland and Labrador for Exclusion under the Impact Assessment Act* (Ministerial Discussion Paper) (Impact Assessment Agency of Canada, 2020), which included proposed conditions for offshore exploratory drilling projects to address recommendations from the Committee. Several of the Minister's proposed conditions have not been included as Potential Conditions for the West Flemish Pass, Central Ridge, and BHP Projects.

Recommendation 1: Several of the proposed conditions from the Ministerial Discussion Paper have not been included as Potential Conditions for the Projects. The Potential Conditions must be updated to include these notable exclusions:

- The Proponent shall install and use oil water separators to treat contained deck draining, with collected oil stored and disposed of properly.
- The Proponent shall conduct inspections of ship hulls, drill rigs and equipment for alien invasive species and associated follow-up maintenance, as well as maximize the use of local vessels, rigs and equipment where possible.

Comment 2: Potential Condition 6.6 for the Projects requires that the Proponents maintain up-to-date information on the availability of capping stacks, and vessels capable of deploying capping stacks. There is currently no plan to set up regional capacity for a capping stack to address concerns related to uncontained blowouts associated with exploratory or production projects in the study area. For example, BHP's current plan is to use Oil Spill Response Limited's (OSRL) capping stack located in Stavanger, Norway. The proponent acknowledges that transportation times will be a factor in the time required to kill the well. BHP states that, mobilization and installation by sea would likely range from 13 days (summer) to 17 days (winter). If the capping stack was transported by air, the likely mobilization would be nine days. Depending on ocean conditions, the need for a port call upon arrival, and technical delays, BHP's response times may be even longer than reported. Having a capping stack situated locally is of utmost importance to the timely containment of a well blowout.

Recommendation 2: MFN asserts that it is critical to have a locally managed capping stack, deployment entity, and appropriate capacity for equipment modification and rapid staging and deployment, situated in Newfoundland or Atlantic Canada to mitigate the risks associated with an uncontained blowout. This is important on a Project-level basis, but also to account for the cumulative risks of all current and future exploratory and production oil and gas projects. The formation of a consortium may be a viable approach to servicing the multiple current, proposed, and future projects in the region, similar to the Marine Well Containment Company



(<https://marinewellcontainment.com/>), whose purpose is to provide at-the-ready state-of-the-art well containment services and technology to operators in the U.S. Gulf of Mexico. Similar industry-led consortia exist in other geographies where offshore oil and gas drilling is commonplace, such as the Helix Well Containment Group (<https://www.hwcg.org/>) that also serves the Gulf of Mexico, and WellCONTAINED (<https://wildwell.com/well-control/wellcontained/>), which has capping stacks in Scotland and Singapore. This proposed entity may also become involved in the continual research and development of best available and safest technology (BAST) specific to the region. Whether this effort is funded by a consortium of all offshore oil and gas proponents in Atlantic Canada, and/or the Crown, is of no consequence to MFN: someone must fund and ensure this critical risk mitigation measure to protect MFN's rights, and to reduce the inequitable burden of risk MFN bears in relation to the exercise of our rights.

Comment 3: Potential Condition 6.8 for the Projects requires that the Proponents undertake a spill response exercise to adequately prepare and identify any deficiencies associated with the Spill Response Plan.

Recommendation 3: Spill response planning is important to MFN. We therefore request that the Proponents submit an invite to MFN for a staff member to attend and observe the spill response exercise. This should include provision of funding to cover travel and accommodation expenses. After participating, MFN will collaborate with the Proponents and provide any feedback or suggestions on the Spill Response Plan (as outlined in potential condition 6.12).

Comment 4: The current approach being taken by the IAAC and proponents for the involvement and capacity support of Indigenous communities in Impact Assessments, for offshore exploration and development projects, is seriously deficient. MFN is being inundated with requests for meetings, input, and document reviews. This includes requests for participation during the Impact Assessment process, after approval, and during exploration (e.g., EIS documents, communication plans, spill reports, etc.). With very limited staff capacity and funding, MFN is highly limited in their ability to participate effectively in the process. This situation is worsening as more projects are being proposed or moving forward in the exploration process into Significant Discovery Licenses or Production Licenses. The current situation does not in any way represent meaningful consultation by the Crown—which ultimately bears the duty to consult, and where appropriate, accommodate—or by proponents, in discharging procedural aspects of the Crown's duty to consult and accommodate.

The complex nature and longevity of these exploratory drilling projects warrants more meaningful and long-term consultation and involvement of MFN and other affected Mi'kmaq nations throughout the entire lifecycle of the projects. Moreover, proponents should coordinate this involvement to mitigate the cumulative effects of the oil and gas industry on the health and socioeconomic conditions of Indigenous communities. Due to the complexity and number of projects and documents that must be reviewed, MFN requires adequate capacity funding and support to enable:

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



Recommendation 4a: An environmental advisory committee (EAC) or similar entity must be formed as soon as possible, to provide a forum for ongoing consultation and oversight on potential impacts and mitigation/accommodation measures for MFN's rights and interests and those of and other affected Mi'kmaq nations, for all offshore projects. Examples of this type of advisory committee can be found in western Canada associated with the Line 3 pipeline and the Transmountain Pipeline, both of which have formal Indigenous Advisory and Monitoring Committees (IAMC). These IAMCs form the basis for relationships between the Crown, the National Energy Board and Indigenous peoples on each project. Members of the EAC may include a representative from all potentially effected Mi'kmaq nations, a representative from the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), and/or the IAAC. The mandate of the EAC should be guided by a Terms of Reference codeveloped by Mi'kmaq Nations and the Agencies. The Proponent, or a consortium of proponents, and/or Canada must provide sufficient funding to support the EAC in its endeavors. The EAC would act as a technical advisory committee and would be responsible for:

- Identifying common priorities (economic development opportunities, environmental research initiatives, knowledge gaps, mitigation measures, etc.) between Indigenous communities and developing a framework for their consideration;
- Providing informed advice to the IAAC, C-NLOPB, and the industry on addressing concerns and impacts to Indigenous Rights and interests;
- Overseeing the continued collection and incorporation of Indigenous Knowledge through community-led Indigenous Knowledge studies;
- Reviewing and providing input on all monitoring programs, response plans, etc., including, but not limited to, the Fisheries Communication Plan, Spill Response Plan, Spill Impact Mitigation Assessment, seabed investigation survey results, and results from the various follow-up monitoring programs;
- Ensuring regional consultation and engagement with community leadership, Elders, and Indigenous monitors from impacted communities;
- Enabling Indigenous Nations to participate in the oversight of offshore oil and gas exploratory drilling projects. The work of the EAC should include the enabling and support of Indigenous Monitors to work alongside Environmental Monitors (EMs), Marine Mammal Observers (MMOs), etc., during environmental effects monitoring and follow-up programs. This Indigenous Monitoring Program will help to build capacity within the C-NLOPB, IAAC, and industry to better understand and incorporate Indigenous Knowledge into the monitoring of offshore oil and gas infrastructure. Through this program, the Agencies must also facilitate capacity-building for Indigenous communities; and,
- Reviewing and providing comments on the design of, and results from, environmental effects monitoring and follow-up programs and providing input on adaptive management approaches for the project.

Recommendation 4b: MFN's seat on the EAC must be supported by funding for an MFN support staff person. This individual may or may not be the same individual who participates as a member of the EAC. The support staff person would be responsible for coordinating reviews of documents;



scheduling and logistics associated with the EAC; completing background research and due diligence; and liaising with industry, government agencies, MFN community members and other individuals as required.

Comment 5: For information pertaining to MFN Indigenous Knowledge, the Proponents have relied on information from face-to-face meetings and workshops, telephone conversations, emails and letter correspondence, publicly available land claim documents, government documents and data, the community website, and reports and studies completed for other projects. This is not a meaningful attempt by the Proponents to incorporate MFN's Indigenous Knowledge into the Projects. To date, MFN has yet to complete a thorough community-led Traditional Knowledge and Land Use Study for the Project Areas. The collection of this knowledge takes planning, time, coordination, and resources. IK is a living body of knowledge that is passed down through generations. Individuals grow in their knowledge throughout their entire lives by listening, observing and doing. IK is also often rooted in the natural world and can be very specific and detailed when it comes to places and landscapes. This knowledge is incredibly valuable for informing design, mitigations, monitoring, impact assessment and accommodation. It is being omitted to the detriment of the EA processes.

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

Recommendation 5: IK is difficult to collect and must be done with care and to appropriate standards to ensure it is authentic, verifiable, representative, and defensible. In addition, sensitive information cannot just be handed over to the Proponent without ensuring that the proper protocols and protections for MFN and any participating community members' intellectual property (IP) and confidentiality are in place. MFN requires that sufficient resources for the collection of the information requested be provided. This should be completed in accordance with MFN's engagement protocol. Without this highly important baseline information (both in terms of the IA process and the process to determine potential Impacts to MFN's S. 35 and other Aboriginal rights), the IA must be considered incomplete. MFN has shared its Guidebook for the Collection of Aboriginal Traditional Knowledge with the Proponents. This detailed guide provides information on the formative steps and methodology necessary for a successful IK study that is protective of MFN's rights and interests.

For the IA process to be completed such that the Honour of the Crown and the Crown's obligations are met, the Proponents and/or IAAC must provide accommodations in the form of resources to MFN for internal coordination, the collection of IK, and reporting. Although the proponent is delegated procedural aspects of the Duty to Consult and the environmental assessment process, it is ultimately the responsibility of the Crown to ensure that this IK is then meaningfully considered and incorporated into the IA process, the Crown consultation process, and any further Crown accommodations necessary.



3.1.1 FISH AND FISH HABITAT

Comment 6: In Table 1 of the draft EA reports, the Agency identifies the predicted maximum geographic extent to which sediment deposition and sound may have impacts on fish and fish habitat. For cutting deposited on the seafloor the predicted area impacted ranges from 0.063 km² (Central Ridge project) to 0.28 km² (West Flemish project) for the Projects. Sound emissions from drilling or vertical seismic profiling are expected to result in injury to fish at distances of 130 – 300 m, with potential behavioural responses as far away as 30.6 km. Despite these clear instances of potential harmful alteration, disruption or destruction of fish habitat, there is no determination that a Fisheries Act authorization is required. The Fisheries Act states that:

35 (1) No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.

This is problematic for MFN, as it represents an unmitigated negative impact that constitutes harmful alteration, disruption or destruction of fish habitat which should not occur without authorization. MFN stands in support of the Fisheries Act as it is an important bulwark against destruction of fish habitat by industrial projects and disagrees with the assessment of no significant effect.

Recommendation 6a: MFN requests that a Fisheries Act authorization be required for all Projects. Offsetting plans can be developed in collaboration with MFN and Fisheries and Oceans (DFO).

Recommendation 6b: If DFO maintains that no authorization is required, we request a meeting with IAAC and DFO to elaborate on our concerns.

Comment 7: Potential Conditions 3.6 and 3.7 for the Projects require that the Proponents conduct seabed investigations to confirm the presence or absence of habitat-forming corals or sponges. Information on corals and sponges is of particular importance to MFN as these are foundational components of the marine ecosystem. The habitat provided by these organisms sustains healthy populations of many species including species of importance for Aboriginal, commercial and ceremonial fisheries. There is currently no requirement for offsetting harmful alteration, disruption or destruction of corals and sponges if the drilling or anchor location cannot be changed.

Recommendation 7a: If corals or sponges are located in the pre-drill survey, and the proponent is unable to change the drilling or anchoring location, then this would constitute harmful alteration, disruption or destruction as defined under section 35 the Fisheries Act. This would require offsetting activities to counter the impacts on productivity. MFN requests that they be consulted in the development and implementation of all offsetting plans related to offshore oil projects.

Recommendation 7b: The Agency notes in the EA reports that results of seabed investigations (including pre and post-drilling) should be provided to Indigenous groups and posted online. MFN requests clarity on how this information will be provided.

Comment 8: The IAAC has included Potential Conditions that requires all Proponents to confirm, in writing, their intent to participate in research related to Atlantic salmon and provide annual updates.

Recommendation 8: MFN is strongly supportive of this condition (and will be participating in the Atlantic salmon research funded by the ESRF) but requests additional clarity within the Potential Condition on the means by which the update will be provided. For example, is it expected that this will occur via email, at an annual meeting or otherwise?



Comment 9: Potential Condition 6.10 for the Projects prescribes several reactionary methods for responding to and mitigating the potential environmental effects of a spill. However, it is unclear what value these actions will have without meaningful baseline data upon which to interpret results. This is of importance to MFN as our community holds licenses for species such as mackerel, herring, Atlantic cod, American eel, smelt and capelin, some of which occur in high relative densities in the Study Area, particularly along the Grand Bank. Our community is reliant on fish for sustenance and our commercial fishers rely on the ability to market a safe and healthy product. Therefore, any discharges could potentially affect the quality of commercial fish species and must be fully characterized for potential effects

Recommendation 9a: MFN requests that proponents collaborate to undertake baseline surveys for establishing background hydrocarbon (i.e., polycyclic aromatic hydrocarbons (PAHs) and total petroleum hydrocarbons (TPHs)) and heavy metal body burdens in benthic organisms (e.g. snow crab, and lobster), fish, and other commercially harvested species, to evaluate the risk of consumption to our community and other consumers. This will provide baseline data to which increases in hydrocarbon and heavy metal body burden can be compared over time and may help to minimize potential negative perceptions regarding the quality of fish and other commercially harvested species. This information will also be valuable for evaluating impacts in the event of a large uncontainable spill.

Recommendation 9b: PAHs are highly insoluble in water and, as a result, are often deposited to sediments (Collier, Meador, & Johnson, 2002). This sediment repository can act as a pathway of exposure for many organisms, including benthic invertebrates and fish, either directly through contact or indirectly through consumption of contaminated prey (Collier, Meador, & Johnson, 2002). To address concerns around tainting of benthic fishes and marine invertebrates, proponents should sample PAHs and TPHs in sediment and biota (paired observations of chemical concentration) and use these values to estimate biota sediment accumulation factor (BSAF). This data can then be included as part of the baseline surveys for establishing background contaminant levels.

3.1.2 MARINE MAMMALS AND SEA TURTLES

Comment 10: In all EAs, the Agency has noted that MFN expressed concerns regarding the Proponents reliance upon baseline data from online resources and opportunistic data (e.g. previous projects in the area, species assessments). Specifically, MFN stated that these data cannot be used as a substitute for focused baseline studies of marine mammals and sea turtles within the Project Study Areas. In light of these concerns, MFN recommended that the Proponents complete focussed baseline studies on marine mammals and sea turtles using Marine Mammal Observers, Passive Acoustic Monitoring (PAM), and standardized survey methods to allow for future surveys to be comparable.

This recommendation was not addressed within the EA Reports and the Agency has not carried this recommendation forward as a Potential Condition for the Projects. This is concerning to MFN as these Projects have the potential to cause adverse impacts on traditionally important marine mammals and sea turtles species, and without the completion of these keys studies and assessments there is the potential for these adverse effects to be underestimated or misrepresented.

Recommendation 10: The Agency should include in their Potential Conditions for the Projects that the Proponents complete focused marine mammal and sea turtle baseline studies within the Project Study Area, which would utilize dedicated trained Marine Mammal Observers (MMOs), Passive



Acoustic Monitoring (PAM) and standardized survey methods to allow for future surveys to be comparable. The inclusion of this Potential Condition will provide MFN with greater confidence that the baseline conditions of traditionally important marine mammals and sea turtles species are being accurately represented and that potentially effects after the Projects development is completed are recognized.

Comment 11: In Section 4.2.2. Agency Analysis and Conclusion, the Agency stated that the Proponent must “in consultation with DFO, develop a Marine Mammal and Sea Turtle Monitoring Plan which includes marine mammal observer requirements using qualified individuals. Provide the plan to the C-NLOPB and DFO for review and approval 30 days prior to initiating activities.” (pp. 24).

Contrary to this, within the Potential Conditions for the Projects, the Agency has stated that:

“3.9 The Proponent shall develop, in consultation with Fisheries and Oceans Canada and the Board, a Marine Mammal Monitoring Plan that shall be submitted to the Board at least 30 days prior to the commencement of any vertical seismic survey.” (pp. 8).

This Potential Condition does not reflect the wording from the EA Reports and does not include a recommendation made by MFN in the EIS review that the Proponents submit the plan to MFN decision makers for their review and approval. As well, the Marine Mammal Monitoring Plan name does not reflect the need for both marine mammal and sea turtle monitoring. These are concerning to MFN as the Projects have the potential to impact traditionally important marine mammal and sea turtle species.

Recommendation 11: The Agency must update this Potential Condition for the Projects as follows:

3.9 The Proponent shall develop, in consultation with Fisheries and Oceans Canada and the Board, a Marine Mammal and *Sea Turtle* Monitoring Plan that shall be submitted to the Board, DFO and Indigenous communities at least 30 days prior to the commencement of any vertical seismic survey for their review and approval.

Comment 12: In Section 4.2.2. Agency Analysis and Conclusion, the Agency has stated that to reduce the likelihood of collisions with marine mammals and sea turtles that the Proponents undertake the following measures:

“limit supply vessels movement to established shipping lanes where they are available; and when and where such speeds do not present a risk to safety of navigation, reduce supply vessel speed to seven knots (13 kilometres per hour) when a marine mammal or sea turtle is observed or reported within 400 metres of the vessel;” (pp.24)

MFN appreciates that the Agency has included these Potential Conditions to prevent vessel strikes but is still concerned by the lack of a speed limit for servicing and supply vessels in the Potential Condition for the Projects. Vessel strikes can result in lethal injury, decreased survivability and can represent 35% of the premature causes of death in some species (Vanderlaan & Taggart, 2007; Hazel, Lawler, Marsh, & Robson, 2007; Gerstein, Blue, & Forsythe, 2005), which could have significant adverse consequences for populations of species at risk (e.g. North Atlantic Right Whale).

Recommendation 12: Given the potential for adverse impacts of vessel strikes on traditionally important marine mammals and sea turtle species and the potential for species at risk (e.g. North Atlantic Right Whale) within the Project Areas, the Agency should take a more conservative approach



and include a speed limit of 10 knots for supply and servicing vessels as a Potential Condition for the Projects. This would provide vessel crew and the animal to have more time to avoid a collision and reduce the likelihood of a lethal injury if a collision does occur.

Comment 13: In the EA Reports, the Agency notes that in response to concerns raised by MFN in the review of the Project's EIS, that the DFO advised that they do not anticipate that effects of helicopter takeoffs from the MODU would have significant adverse impacts on marine mammals and sea turtles. No studies or collected data were cited in this advice. MFN remains concerned that seven helicopter transits per week and the associated helicopter takeoffs from the MODU could have adverse effects on traditional important marine mammals and sea turtles.

Recommendation 13: The Agency must provide further details behind the DFOs advice or the letter of advice itself for review by MFN. If these further details do not provide a reasonable explanation based on previous studies and collected data then the precautionary principle must be invoked and a visual watch be established 30-minutes prior to scheduled helicopter takeoff from the MODU. If a sea turtle or marine mammal is observed within the 500-metre safety zone, helicopter takeoff from the MODU should be restricted until the sea turtle or marine mammal has moved outside of the safety zone.

Comment 14: In the Potential Conditions for the Projects the Agency has only included:

"The Proponent shall implement measures to prevent or reduce the risks of collisions between supply vessels and marine mammals and sea turtles, including:

requiring supply vessels to use established shipping lanes, where they exist; and

requiring supply vessels to reduce speed to a maximum of 7 knots when a marine mammal or sea turtle is observed or reported within 400 metres of a supply vessel, except if not feasible for safety reasons." (pp. 9).

These Potential Conditions do not address a key concern expressed by MFN in the EIS review regarding the Proponents' approach for using vessel crew for the detection of marine mammals and sea turtles in supply and servicing vessels' travel path. Vessel crew members would not have appropriate experience, qualifications or training to accurately detect the presence of marine mammals or sea turtles and their ability to initiate adaptive measures and avoid collisions may also be suppressed given their position of employment by the Proponents. This remains a significant concern to MFN as without a reliable method for marine mammal and sea turtle detection it is unclear how the proponent will be able to implement appropriate mitigation measures to protect these traditionally important species.

Recommendation 14: The Agency must include as a Potential Condition for the Projects that:

- The Proponents employ dedicated third-party MMOs and have them present on all supply vessel transports in order to effectively initiate slow down and adaptive maneuvers upon sighting marine mammals and sea turtles and that PAM technologies be utilized to supplement these observations; and



- Employment of dedicated third-party MMOs by the Proponents must also include opportunities for MFN community members to participate in training and employment opportunities for these positions

Comment 15: In the EAs for the Projects, the Agency indicates that DFO does not have significant concerns with the effects of the Projects on marine mammals and sea turtles. This is very concerning to MFN, considering the uncertainties around the long-term effects of noise introduced into oceans and our inability to interpret the biological significance of short-term effects (Weilgart, 2007) . For example, long-term population impacts have been demonstrated in bottlenose dolphins (*Tursiops* spp.) despite there being no observable short-term reactions (Bejder, 2005).

Recommendation 15: The Agency must amend the Potential Conditions for the Projects to include a provision requiring that the Proponents confirm their intent to participate in research on the effects of noise on marine mammals and sea turtles.

3.1.3 MARINE AND MIGRATORY BIRDS

Comment 16: The Potential Conditions for these Projects do not align with the follow-up monitoring program details presented in the Agency Analysis and Conclusion sections of the EA Reports. The absence of these details in the Potential Conditions for the Projects are very concerning to MFN as they are significant components to ensuring the effective protection of marine and migratory birds.

Recommendation 16: The Agency must update the Potential Conditions for each of these Project to reflect the follow-up monitoring program details presented in the EA Reports. Specifically, the Agency must include the following in the Potential Conditions:

- Incorporate any technology (e.g., radar, infrared imaging, high definition aerial surveys, telemetry studies, etc) that becomes available into seabird monitoring to complement research on the mitigation of light attraction;
- Document any changes made to lighting regimes to allow for an evaluation of the effectiveness of the change in mitigating light attraction;
- Contribute to a research program to identify changes in light spectrum, type and/or intensity that may further reduce attraction for storm-petrels and other seabirds;

Comment 17: Within the Potential Conditions of these Projects, the Agency has not specified within whether dedicated trained marine and migratory bird observers will be responsible for carrying out all monitoring programs related to marine and migratory birds. Without specifically identifying the responsibilities of the dedicated trained marine and migratory bird observers MFN is concerned that data quality and effectiveness of the mitigation efforts may be impacted.

Recommendation 17: The Agency must update the Potential Conditions to reflect the follow-up monitoring program details presented in the EA Reports and expand upon these details to ensure that dedicated trained marine and migratory bird observers will carry out all surveys/data collection efforts related to marine and migratory birds. Survey/data collection efforts performed by the marine and migratory bird observers should include:



- Monitoring for marine birds at the MODU and supply vessels using ECCC's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms (Gjerdrum, 2012);
- Systematic daily monitoring of the MODU and supply vessels for the presence of stranded birds;
- Monitoring and documenting bird behaviour around the flare, and assessing the effectiveness of water curtains and flare shields in mitigating interactions between migratory birds and flares; and
- Documenting any changes made to lighting regimes to allow for an evaluation of the effectiveness of the change in mitigating light attraction.

Comment 18: MFN appreciates that, as part of the Potential Conditions for these Projects, the Agency has included trained marine and migratory bird observers whose primary responsibility is observing marine and migratory birds to perform monitoring tasks on the MODU and supply vessels. MFN remains concerned that the ability of these marine and migratory bird observers to initiate mitigation measures and collect data may be impacted by their position of employment by that Project's Proponent.

Recommendation 18a: The Agency must update the Potential Conditions to ensure that these marine and migratory bird observers are from a third-party to ensure that data quality and monitoring activities are not influenced by their position of employment. This will provide MFN with greater confidence in the quality of the monitoring activities and the associated data.

Recommendation 18b: The Agency should also include in the Potential Conditions for these Projects that:

- Employment of dedicated trained third-party marine and migratory bird observers by the Proponent must also include opportunities for MFN community members to participate in training and employment opportunities for these positions.

By requiring Proponents to employ marine and migratory bird observers from the MFN community, MFN will have greater confidence in the quality and accuracy of the monitoring and mitigations efforts identified in the Potential Conditions of the report.

4.0 CONCLUSION

MFN members have a deep respect for the land and waters of Mi'kma'ki that would be directly impacted by these Projects. These risks to the natural environment and the community of MFN emphasize the need for meaningful and ongoing consultation throughout the IA process (and beyond), and the need for mitigation and accommodation measures, such as described in this report, to address these potential impacts to MFN rights and interests.



MFN has not asked for these Projects; we currently see few, if any, meaningful benefits arising from them for our community, and we do not wish to bear the risks associated with them. These risks have been described by MFN on several occasions and highlighted by the spill and lack of clean up of 250,000 litres of oil from the SeaRose project. Despite these significant concerns, we have indicated our willingness and openness to engage with the Proponents and the Crown to understand the Projects, make our concerns known and work to address those concerns. However, the work that is required to get to a place of understanding for these large, complex projects is beyond the capacity of our community. Therefore, as we have described on several occasions, our community requires adequate resources to support our staff capacity, advice from independent experts, expenses (e.g., travel), and the gathering of Indigenous Ecological Knowledge and traditional use information from Elders and fishermen. These requests have been rejected repeatedly. MFN has been frustrated and disappointed with the unwillingness of IAAC, and offshore exploration Proponents, to provide the resources required by our community to engage on the proposed projects.

When projects like this are approved by the Crown, we are forced to bear the risks and suffer any negative consequences and environmental effects. We continue to voice our concerns that the duty to consult has not been met, implementation of UNDRIP is not occurring and that the requirements of CEEA 2012 and the new *Impact Assessment Act* are not satisfied. Ultimately this means that the Crown and the Proponents are far from satisfying their obligations for consultation and engagement with MFN. This is not in line with the legal requirements for consultation nor in the spirit of Truth and Reconciliation. However, based on recent experience, it appears that these Projects will be approved despite our requests for additional consultation. Therefore, we request that the recommendations within this report (as described in Section 3.0) be fully addressed through the final conditions of approval.

5.0 REFERENCES

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