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Mi'kmaq Rights Initiative

Our Rights. Our Future.

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November 10, 2020

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Re: Review of the Draft Environmental Assessment Report and Potential Conditions for the BHP Canada Exploration Drilling Project and West Flemish Pass Exploration Drilling Project

Ms. Addison,

KMKNO has reviewed the Draft Environmental Assessment Report and Potential Conditions for the BHP and West Flemish exploration projects. I wish to provide you with our comments, concerns and recommendations. KMKNO has contracted AECOM to conduct a review of the draft EA reports and potential conditions and we have submitted the reports to the Impact Assessment Agency of Canada (IAAC).

The Mi'kmaq are the holders of constitutionally protected Aboriginal and treaty rights, which include the Aboriginal right to fish for food and the treaty right to fish for a moderate livelihood. Any impacts to fish and fish habitat are impacts to Mi'kmaq rights. Therefore, it is our expectation the Mi'kmaq will be compensated for any infringement on fishing rights.

We wish to reiterate our concern that these exploration projects, as well as the other concurrent offshore oil and gas developments in Newfoundland, may impact both Atlantic salmon and American eel. The timing, location, and design of the project activities will be important to reduce potential impact to migrating fish as well as those overwintering. We have already provided IAAC with a copy of the UINR report on Atlantic salmon that indicates drilling activities between the months of January to August pose a greater impact Atlantic salmon in the area.

We are also concerned about the potential for accidental spills in the deep water and the potential effects this would have on the Mi'kmaq of Nova Scotia. This concern is magnified when

considering the number of exploration drilling projects being proposed in the offshore Newfoundland.

We look forward to further consultation on this matter.

Yours in recognition of Mi'kmaq Rights and Title,

<Original signed by>

Twila Gaudet, BA, LL.B.

Director of Consultation

Kwilmu'kw Maw-klusuaqn Negotiation Office

cc:

Robin Boychuk, IAAC

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Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO)

Review of the Canadian Environmental Assessment Agency Draft EA Report and Potential Conditions for the BHP Canada Exploration Drilling Project (2019-2028)

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Date: November 2020

Project #: 60628250

Distribution List

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	✓	Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO)
	✓	AECOM Canada Ltd.

Mr. Derek Peters
Mi'kmaq Energy Advisor
Kwilmu'kw Maw-klusuaqn Negotiation Office
75 Treaty Trail
Millbrook, NS B6L 1W3

November 5, 2020

Project #
60628250

DRAFT

Dear Mr. Peters:

Subject: Review of the Canadian Environmental Assessment Agency Draft EA Report and Potential Conditions for the BHP Canada Exploration Drilling Project (2019-2028)

AECOM Canada Ltd. (AECOM) is pleased to provide Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) with this draft report on AECOM's review of the draft Environmental Assessment Report and potential EA Conditions prepared by the Impact Assessment Agency of Canada for the BHP Canada Exploration Drilling Project, proposed by BHP Petroleum (New Ventures) Corporation.

Thank you for the opportunity to assist KMKNO with this work.

Sincerely,
AECOM Canada Ltd.

<Original signed by>

Derek Heath, P.Geo.
Senior Project Manager, Canada East
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DH:mm
Enc

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1. Introduction

1.1 AECOM's Mandate

Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO), on behalf of the Assembly of Nova Scotia Mi'kmaq Chiefs (ANSMC), retained AECOM Canada Ltd. (AECOM) as an Independent Consultant to review the federal environmental assessment (EA) of exploration / delineation / appraisal drilling programs and associated activities, proposed to be conducted in the eastern portion of the Canada-Newfoundland and Labrador (NL) Offshore Area.

AECOM's mandate consists of supporting the ANSMC in the review of the Environmental Impact Statement (EIS) and the draft EA Report in order to evaluate the scientific and technical information for completeness, to identify information gaps, and environmental risks to the Mi'kmaq of Nova Scotia, and to propose actions to address any outstanding information gaps.

This report summarizes AECOM's review of the Impact Assessment Agency of Canada (the Agency) draft EA Report and potential EA Conditions for the BHP Canada Exploration Drilling Project (the Project).

1.2 Project Description

To determine the potential presence of hydrocarbons, BHP Petroleum (New Ventures) Corporation (BHP) plans to conduct a program of petroleum exploration drilling and associated activities within a Project area that includes exploration licences (ELs) in the Orphan Basin region, located approximately 350 kilometres (km) northeast of St. John's, Newfoundland and Labrador, in the Northwest Atlantic Ocean. The Project includes drilling up to 20 exploration wells on ELs 1157 and 1158. The ELs are located in the Orphan Basin Region, in water depths ranging from 1,175 m to 2,575 m. The ELs are located both within and beyond Canada's 200 nautical miles (nm) Exclusive Economic Zone (EEZ). ELs 1157 and 1158 cover an area of 269,799 ha and 273,579 ha respectively and are located approximately 350 km east of Newfoundland. Specific drill site locations have not been identified and will be selected as Project planning and design activities move forward. The final location of the drill site will consider water depth, reservoir potential and geological properties.

Wells will be drilled using a mobile offshore drilling unit (MODU) in the form of a semi-submersible drilling unit or drillship. Logistics support will be provided through a fleet of platform supply vessels (PSVs) and helicopters. Existing shore-based facilities in Eastern Newfoundland will be used for supply, support, and logistical functions. Onshore activities at existing shore-based facilities (i.e., supply base) are not included in the scope of the EA.

Activities associated with this drilling program may include:

- MODU mobilization and drilling
 - Mobilization, operation and demobilization of the MODU
 - Establishment of a safety zone
 - Light and sound emissions associated with MODU presence and operation
 - Waste and water management, including the discharge of drill muds and cuttings, and other discharges and emissions
 - Geophysical surveys and/or geotechnical surveys
 - If a well is successful (i.e., hydrocarbons are discovered), vessels may be required to complete geophysical surveys (high-resolution geophysical data acquisition) and geotechnical sampling (geotechnical coring)

- Vertical seismic profiling (VSP) operations
- Well evaluation and testing
- Well decommissioning and abandonment or suspension
- Supply and servicing
 - Loading, refuelling and operation of PSVs (for re-supply and transfer of materials, fuel and equipment; on-site safety during drilling activities; and transit between the supply base and the MODU)
 - PSVs will also be used for ice management that may be required during the annual ice season (including icebergs) in offshore eastern Newfoundland (typically between March to June). Ice management processes will include established procedures for iceberg towing and deflection, and if required, procedures for the safe disconnect and movement of the drilling unit while leaving the well in a safe condition
 - Helicopter support (for crew transport and delivery of supplies and equipment)

The proponent proposes to commence exploration drilling with an initial well in 2021, pending applicable regulatory approvals to proceed. Up to 20 exploration wells could be drilled between 2021 and 2028 contingent on the drilling results of the initial well(s). Drilling activities will not be continuous and will be determined, in part, by the MODUs availability and previous wells' results. It is anticipated that each well will take between 35 to 115 days to drill.

The EIS assumes year-round drilling, although the proponent anticipates drilling will be during summer. VSP operations will take approximately one or two days per well and well testing, where required, and would occur over a one to three-month period. Well abandonment will be conducted following drilling and/or well testing.

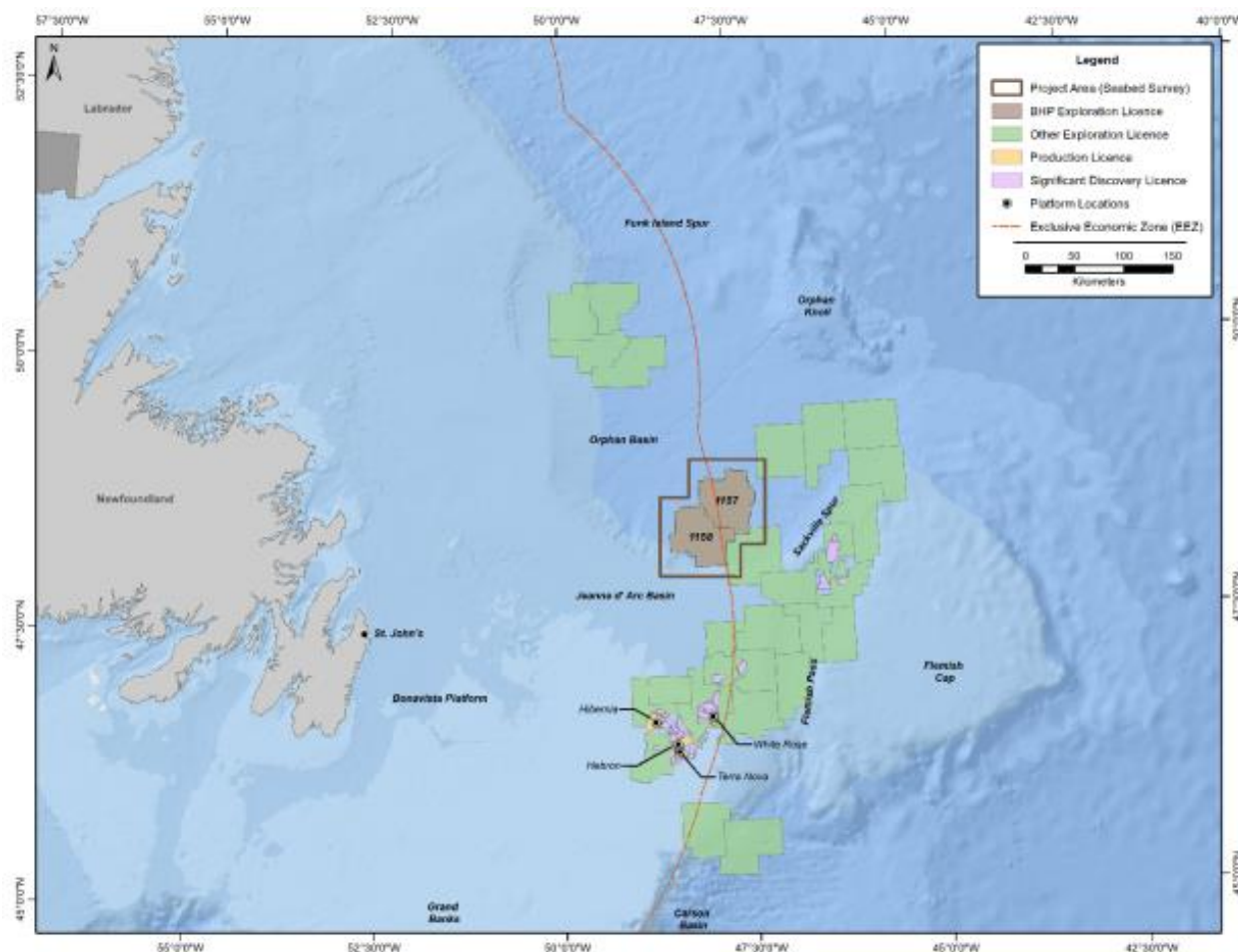


Figure 1: Project Location (Stantec 2020)

1.3 Environmental Assessment Process

The Agency is conducting an EA of the Project based on the requirements of the *Canadian Environmental Assessment Act*, 2012 (CEAA 2012), as it was determined that this constituted a “designated project” under Section 10 of the Regulations Designating Physical Activities. The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) also requires that Project-specific EAs be conducted pursuant to the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* and the *Canada-Newfoundland Atlantic Accord Implementation Act* (“the Accord Acts”).

The EA of the Project commenced in May 2019, when BHP submitted a Project Description and associated Summary Documents to the Agency. Following government and public review, the Agency determined that a federal EA was required for the Project (June 28, 2019). Notices of EA Determination and EA Commencement, as well as the EIS Guidelines were posted on June 28, 2019.

BHP submitted the EIS and EIS Summary to the Agency on February 14, 2020. Following a conformity review, the Agency issued a letter to BHP on March 5, 2020 indicating that the documents conform to the EIS Guidelines. The EIS and EIS Summary were posted for public comment from September 30, 2020 to October 30, 2020.

Following completion of subsequent information request (IR) responses and clarifications, the Agency prepared a summary of the main findings of the federal EA process. During preparation of the EA Report, the Agency considered input from Indigenous consultation, public and stakeholder comments, regulatory input, the Proponent's EIS, and other information received during the EA process. The EA Report was prepared in consultation with the C-NLOPB, Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Health Canada, Natural Resources Canada, Transport Canada, the Parks Canada Agency, the Department of National Defence, and Indigenous and Northern Affairs Canada, and will inform a Decision Statement to be made by the federal Minister of Environment.

The draft EA Report, along with potential EA Conditions that may be included in the Decision Statement, has been issued for public comment from September 30 to October 30, 2020. If the Minister decides that the Project is unlikely to cause significant adverse environmental effects as defined under subsections 5(1) and 5(2), or if the Minister decides that the Project is likely to cause significant adverse environmental effects and the Governor in Council decides such effects are justified in the circumstances, the Project would be allowed to proceed (pending applicable additional regulatory authorizations), and any conditions established by the Minister under CEAA 2012 would become legally binding.

2. Method

AECOM's team of senior environmental and social specialists performed the review of the draft EA Report and potential EA Conditions. The team is well versed in best practices for offshore oil and gas projects, have extensive expertise in environmental and social impact assessment, and have work experience in offshore oil and projects in Atlantic Canada. Various additional documents were referenced (see References section) to contextualize the information, data and conclusions. The Terms of Reference for a Mi'kmaq–Nova Scotia–Canada Consultation Process and the Mi'kmaq Ecological Knowledge Study Protocol (MEKSP) were referenced to consider the extent to which they were adhered to during the EA process.

As noted earlier, AECOM has been retained by KMKNO on behalf of the ANSMC to conduct review of EIS and EA Report documents for several projects within the Newfoundland offshore area. This work was initiated in February 2018 and is ongoing. Given AECOM's involvement in the review of multiple EIS and EA documents for within the Newfoundland offshore, where applicable this review references AECOM/KMKNO comments and recommendations made during EIS and EA Report reviews of the other projects.

The focus of this review is on the Agency's analysis and conclusions, including how views expressed were incorporated in the draft EA Report and potential EA Conditions. Areas considered to have the most potential to affect Mi'kmaq rights and interests, notably environmental effects to traditional activities and the quality of life of the Mi'kmaq people, were of highest priority for the review.

3. Review Results

The results of AECOM's review are provided herein, with sections following the structure of the Agency's draft EA Report. The potential EA Conditions were reviewed, with comments incorporated in the applicable report section. The report sections align with the sections of the draft EA Report that are considered to be of greatest potential impact to KMKNO. **Section 3.1** addresses consultation activities and **Section 3.2** considers the Agency's assessment, conclusions and conditions related to predicted effects on valued components. **Section 3.3** relates to the effects of accidents and malfunctions; **Section 3.4** the effects of the environment on the Project; and **Section 3.5** cumulative environmental effects. **Section 3.6** discusses impacts on potential or established Aboriginal or treaty rights.

3.1 Consultation and Engagement Activities

3.1.1 Indigenous Consultation led by the Agency

Depth of Consultation Determination

The draft EA Report states:

"The Agency served as Crown Consultation Co-ordinator for a whole-of-government approach to consultation. The Agency consulted communities and groups that hold communal commercial fishing licences in NAFO areas that overlap the project area, local study area and regional study area, or portions of them, or hold licences for species that migrate through the project area such as swordfish. In addition, the Agency consulted communities that fish for and have an interest in certain Atlantic Salmon populations, a species which could potentially be affected by the Project."

The communities included Labrador Inuit, Labrador Innu, Nova Scotia Mi'kmaq First Nations, New Brunswick Wolastoqiyik (Maliseet First Nations), New Brunswick Mi'gmaq First Nations, New Brunswick Peskotomuhkati Nation at Skutik (Passamaquoddy), Prince Edward Island Mi'kmaq First Nations, Quebec Mi'gmaq, Quebec Innu. Subsequent engagement, based on good governance reasons, was also conducted with Qalipu First Nation and Miawpukek First Nation (MFN).

The Agency determined that the depth of consultation required was on the low end of the consultation spectrum based the potential adverse effects of the Project on the Section 35 Rights of the above noted Indigenous Groups. Apart from Qalipu First Nation and Miawpukek First Nation (MFN), who were contacted later with engagement opportunities, the Agency provided the depth of consultation analysis and draft consultation plans to Indigenous groups and requested their feedback on the plans.

The draft EA Report indicates that comments were received on the depth of consultation and the plan but does not provide details on the communication received and how the Agency considered the feedback into their final depth of consultation analysis and consultation plan.

- The Agency should provide details on feedback received and how that feedback was considered in the development of the consultation plan and final determination of the depth of consultation.

Consultation Opportunities

Based on the depth of consultation determination, the Agency provided opportunities for input into the EIS. Public comments were first invited May 2019, then in August 2019 the Agency offered participant funding to the public and Indigenous groups, and public comments were again invited April 2020. Public comments were invited on the draft EA report September 2020.

While the Agency's determination that the depth of consultation for the Project was deemed to be on the low end of the spectrum, there should still be an opportunity for Indigenous communities to be consulted directly by the Crown. The Agency also provided participant funding to support Indigenous community participation in the EA process. The draft EA Report indicates the following:

"The Agency integrated the Crown's consultation and engagement activities into the EA and invited all the aforementioned Indigenous groups to review and comment on the Summary of the Project Description, EIS Summary, and the draft EA Report (this report) and draft potential conditions. Indigenous groups were also provided an opportunity to review and comment on additional information provided by the proponent in to information requirements issued by the Agency following the comment period on the EIS Summary. Furthermore, the Agency maintained contact with Indigenous groups throughout the EA providing intermittent updates via e-mail on all offshore oil and gas exploration projects; sending reminders during comment periods; and responding to questions as they arose throughout the process."

Areas of Concern Raised by Indigenous Groups

The main areas of concern, as presented in the draft EA, raised by Indigenous groups included:

- salmon and potential interactions with the Project;
- effects on fish and fish habitat;
- effects on fishing for communal commercial and food, livelihood, social or ceremonial purposes, including related socio-economic and health effects;
- effects of accidents and malfunctions, including the use of dispersants in oil spill response;
- effects on migratory birds;
- compensation in the event of damages from normal operation or due to accidents and malfunctions; and
- cumulative effects.

In communication with KMKNO, Project-related effects to moderate livelihood fishery has been identified as an area of concern, after the Agency's aforementioned consultation, and should be considered and addressed in the socio-economic effects.

Appendix C of the draft EA Report documents the feedback received from Indigenous groups along with the Proponent's response and the Agency's response, as well as the information directly in Section 4 (Predicted Effects on Valued Components), Section 5 (Other Effects Considered) and Section 6 (Impacts on Potential or Established Aboriginal or Treaty Rights) of the draft EA Report.

Follow-Up Consultation Opportunities

The draft EA Report does not indicate areas of continued consultation by the Agency with Indigenous groups nor does it highlight specific compliance and enforcement processes within the potential EA Conditions to ensure the Proponent undertakes meaningful consultation and seeks opportunities to incorporate or modify plans based on input received from Indigenous groups.

- The Agency should indicate how Condition 2.1 and 2.5 will be approved, monitored and enforced.

3.1.2 The Proponent's Indigenous Engagement Activities

The draft EA Report states that *"Previous to this EA, the Agency organized information sessions and workshops in 2017 and 2018 for Indigenous groups being consulted in the EAs of several other exploratory drilling projects proposed for the eastern Newfoundland offshore area. The Agency has taken a coordinated approach to*

engagement with Indigenous groups on offshore exploratory drilling projects, given the similarity between project activities, locations, and the timing of the EAs. Given that concerns raised were similar across projects, the Agency has also considered previous comments in its analysis of effects for this Project.”

The Agency should state whether the Proponent attended the information sessions organized by the Agency as a means to build relationships with Indigenous groups and provide information on the Project, along with clarify whether the Proponent conducted its own engagement.

Follow-up Engagement Activities

The Proponent has committed to several ongoing and future consultation opportunities and the potential EA Conditions provide the support to some of these commitments. In particular, the draft EA Report indicated that, *“the Proponent also committed to engage with Indigenous groups throughout the life of the Project and to explore opportunities to provide education in oil spill response, which could include training, workshops or exercises to more fully integrate these groups into the Project”*. This commitment is not included in the potential EA Conditions and would be a component of a Socio-Economic Effects Monitoring Plan (SEEMP).

KMKNO recognizes that the Agency has included the following requirements in the EA Conditions, which have been summarized below, and presented with an Indigenous focus:

- Condition 2.1 -The Proponent will commit to considering community, and Indigenous traditional knowledge during all phases of the Designated Project.
- Condition 2.5 – The Proponent will communicate and engage with required Indigenous groups, and invite each Indigenous group to participate in, and contribute to the Project.
- Condition 2.10 – The Proponent shall notify Indigenous groups of reports and executive summaries within 48 hours of publication on the internet.
- Condition 2.12 - The Proponent shall notify Indigenous groups in writing if there is a change of operator for the Project.
- Condition 2.13 - The Proponent shall consult with Indigenous groups on any potential changes to the Project.
- Condition 3.12 – The Proponent shall notify Indigenous groups within 3 days of any marine animal strikes.
- Condition 3.14.2 – The Proponent shall update Indigenous groups annually on research activities related to the Atlantic salmon.
- Condition 4.5.2 - The Proponent shall notify Indigenous groups annually of contributions to research programs pertaining to migratory birds.
- Condition 5.1 - The Proponent shall develop and implement a Fisheries Communication Plan in consultation with Indigenous groups prior to the commencement of the drilling program.
- Condition 5.2- In the case of wellhead abandonment that may impact Indigenous fisheries, the Proponent shall develop a strategy in consultation with potentially affected Indigenous groups.
- Condition 5.4 – The Proponent will report lost or damaged fishing gear attributed to the Project to Indigenous groups upon request.
- Condition 6. 7 – The Proponent shall prepare a Spill Response Plan to be reviewed by Indigenous groups, and in accordance with input received by Indigenous groups prior to Board acceptance before the start of the drilling program.

- Condition 6.10 – The Proponent shall notify Indigenous groups (as per the conditions laid out in Condition 5.1 and the following subset of conditions) in the event of a spill or unplanned release of any substance that may have adverse effects on the environment.
- Condition 6.12 – The Proponent shall provide the finalized Spill Response Plan to Indigenous groups.

3.1.3 The Agency's Public Engagement Activities

Public engagement conducted by the Agency for the Project was limited to the public comment periods associated with the Project Description, draft EIS Guidelines and the EIS Summary and the draft EA Report. It was noted in the draft EA Report that the only public participation came from comments received from the Fish, Food and Allied Workers' Union and the Newfoundland and Labrador Oil & Gas Industries Association and the World Wildlife Fund - Canada. In addition, 100 comments were received from the public.

The draft EA Report indicated that the Fish, Food and Allied Workers' Union, *“provided information on the nature and importance of the fishing industry, and raised concerns related to potential effects of the Project on commercial fisheries, including cumulative effects, effects of increased vessel traffic, and the importance to consult and communicate with commercial fishers.”*

The Newfoundland and Labrador Oil & Gas Industries Association acknowledged the economic importance of the offshore oil and gas sector, the experience and knowledge that exists in the sector, and some of the outcomes and information presented in the draft Regional Assessment report.

The World Wildlife Fund – Canada questioned how oil and gas activities could be compatible with marine refuges or other marine protected areas, and raised concerns related to potential effects on sensitive deep-sea species and ecosystems, cumulative effects, the Project's contribution to climate change, and the effectiveness of the proposed mitigation measures.

The comments submitted by the public expressed opposition to the Project specifically, the Project's contribution to climate change, the need to shift away from fossil fuels, and concerns regarding the potential impacts to the marine environment. Comments also suggested that the assessment process should be paused due to the Covid-19.

The draft EA Report indicates that the Agency provided several opportunities for the public to comment on the Project Description, EIS Summary, draft EA Report, and potential EA Conditions. In an attempt to create efficiencies with all of the proposed offshore drilling projects, the Agency has taken a co-ordinated approach to engagement:

“Over the course of several EAs, the Agency has noted that concerns raised by Indigenous groups and the public have been similar from project to project. Similarly, this has been noted in expert advice received from federal authorities. As such, the Views Expressed sections of this EA Report include a summary of key comments received in relation to the various offshore exploratory drilling projects previously or currently subject to EA. All comment submissions specific to this Project are available in their entirety on the Canadian Impact Assessment Registry (<https://iaac-aeic.gc.ca/050/evaluations?culture=en-CA>).”

It does not appear that any Public Open Houses were undertaken to provide information on the Project and the draft EA Report does not indicate how the public was notified of the public comment periods nor whether the PD, draft EIS Guidelines, EIS Summary or draft EA Report were made available in hard copy for public to view.

- The Agency should indicate how the Public was notified of the Project comment periods and whether documents were made available in hard copy for those without internet access.

3.2 Predicted Effects on Valued Components

3.2.1 Fish and Fish Habitat & Marine Mammals and Sea Turtles

Drilling and associated cuttings discharges affect fish habitat via seabed disturbance, sediment deposition, resuspension of sediment, and change of substrate composition. KMKNO expressed concerns about the seabed investigation as presented by the Proponent and recommended that a pre-drill imagery-based seabed survey be undertaken prior to work taking place.

Potential EA Condition 3.6 specifies that investigation will be conducted for habitat-forming corals or sponges “*or any other environmentally sensitive features prior to drilling a well*”. Condition 3.7 further specifies requirements for adaptive mitigation in the event that “*habitat-forming corals or sponges, or if other environmentally sensitive features are identified by a qualified individual*”.

- Since certain conditions apply only to the first well drilled in the exploration license; therefore, Condition 3.6 should be revised to specify: “...or any other environmentally sensitive features prior to drilling every well.”

Vessel movement and operation have the potential to affect marine mammals and sea turtle through sensory, behavioural and physical disturbances. Potential sensory, behavioural and physical effects to marine mammals and turtles also exist during drilling and associated activities outlined in Section 1.2. KMKNO expressed concerns about the adequacy of the effects assessment on these species while simultaneously raised concerns about the adequacy, effectiveness and practicality of implementing the marine mammal monitoring plan.

Condition 3.10 address the concerns raised concerning the need for a robust marine mammal monitoring plan; however, the specifics of the plan remain absent.

- KMKNO requests an opportunity to review and comment on the final marine mammal monitoring plan. Furthermore, KMKNO suggests the following addition:
- Condition 3.10 should also require the Proponent, jointly with the MMO, to specify adverse the weather conditions in which marine mammal observation is compromised, and to avoid drilling when adverse weather conditions are present.
- KMKNO requests that Condition 3.10.4 be altered to include a provision to also provide the results to Indigenous groups.

Condition 3.11 refers to measures to prevent or reduce the risk of collisions between supply vessels and marine mammals and sea turtles.

- KMKNO requests that Condition 3.11 be modified to explicitly state the requirements to specify how marine mammals or turtles will be monitored during the vessel movement.

Condition 3.13.3 states: “*for the first well in the exploration licence, develop and implement, in consultation with Fisheries and Oceans Canada and the Board, follow-up requirements to verify the accuracy of the environmental assessment as it pertains to underwater sound levels.*”

- It should be specified that although the follow-up requirements will be developed for the first well, these will need to be implemented for every well drilled.

Condition 3.14 requires the Proponent to submit a letter to the Board, “*confirming its intent to contribute to research programs pertaining to the presence of Atlantic salmon (*Salmo salar*) in the Eastern Canadian offshore areas including a summary of potential research initiatives that the Proponent could contribute to.*”

- KMKNO request that Condition 3.14 should also reference traditionally-harvested fish species (e.g., American eel, Atlantic cod).

3.2.2 *Migratory Birds*

KMKNO did not identify any specific concerns in the proposed mitigation measures, follow-up programs and potential EA conditions that relate to migratory birds.

3.2.3 *Special Areas*

KMKNO did not identify any specific concerns in the proposed mitigation measures, follow-up programs and potential EA conditions that relate to special areas that have not been previously captured in the above comments.

3.2.4 *Species at Risk*

In the Species at Risk section and Appendix D of the draft EA Report, the Agency has not provided information or comments regarding marine invertebrate Species at Risk. While sea sponges and corals are addressed in the EIS review and the draft EA Report, and while no Indigenous groups raised related concerns, KMKNO notes a lack of consideration for benthic fauna, sea mussels and other invertebrate Species at Risk in the draft EA Report. KMKNO recommends the following addition to the final EA Condition:

- The Agency should address marine invertebrate Species at Risk, indicate how the Proponents should present this information, and provide the Agency’s conclusion on this matter.

3.2.5 *Commercial Fisheries*

The draft EA Report notes that within the study area commercial species harvested are predominately Northern Shrimp and Snow Crab (Queen Crab) at approximately 62% of all landings by weight, since the collapse of groundfish stocks. The remaining commercially harvested fisheries are groundfish such as Atlantic Cod, Greenland Halibut, Atlantic Halibut, Pollock and White Hake and small amounts of large pelagics such as Swordfish and tunas and some deepsea clams and bivalves. The potential effects to commercial fishing from the Projects include restricted access to fishing areas by the safety exclusion zone established for exploration drilling, potential damage to fishing gear, vessels or equipment and potential effects on fish and fish habitat. Further, as noted in the draft EA Report Section 5.1.3, “*Indigenous and non-Indigenous fishers with commercial and communal fishing licences could also be affected by accidental spills.*” An accidental spill could lead to further closures of fishing areas, damage to fishing gear or vessels, effects on fish or fish habitat as well as a potential impact on the marketability of the commercial fish products. Accordingly, the Proponents are required to develop and implement a Fisheries Communication Plan (Condition 5.1), and the Agency noted that the views of Indigenous groups would be considered in the development of a Spill Response Plan (Condition 6.7). Condition 5.1 indicates that a Fisheries Communication Plan (FCP) is to be developed in consultation with the Board, Indigenous groups and commercial fishers.

While the potential EA Conditions list the items that should be contained in the FCP, KMKNO recommends the following additions to the final EA Conditions:

- Expand Condition 5.4 to include development of a Fishing Gear Damage or Loss Compensation Program in consultation with Indigenous groups who hold communal fishing licenses or fish for food, social and ceremonial (FSC) purposes or moderate livelihood; and,

- Add notification to Indigenous groups and commercial fishers of the report submitted to the Board on incidents of lost or damaged fishing gear (Condition 5.4).

3.2.6 Current Use of Lands and Resources for Traditional Purposes and Health and Socio-Economic Condition of Indigenous Peoples

The draft EA Report indicates that the Agency acknowledges that the potential effects to the Current Use of Lands and Resources for Traditional Purposes and Health and Socio-Economic Condition of Indigenous Peoples “from a worst-case accident or malfunction (i.e., an unmitigated subsea blowout event) would be more severe”. KMKNO acknowledges the potential EA Conditions indicate that Indigenous groups and key stakeholders are to be included in the development of the Spill Response Plan and Fisheries Communication Plan as well as the commitment from the Proponent to “engage with Indigenous groups throughout the life of the Project and to explore opportunities to provide education in spill response which could include training, workshops or exercises to more fully integrate these groups into the Project.”

- The Agency should specify requirements for post-spill sampling and monitoring program, the consultation process and the inclusion of Indigenous knowledge in the final EA Condition 6.7.

3.3 Effects of Accidents and Malfunctions

3.3.1 Environmental Protection Plan

The draft EA Report includes only one reference to the requirement for an Environmental Protection Plan (EPP), and the EPP is not mentioned in the potential EA Conditions.

- KMKNO recommends that the Agency specify in the final EA Conditions that an EPP is required, and that the Proponent provide the draft EPP to Indigenous groups for review.

3.3.2 Harsh Weather Environment Training

Potential EA Condition 6.1.1 requires that operating procedures, including thresholds for cessation of a work or activity, be developed prior to the start of, and implemented for the duration of, the drilling program. Potential EA Condition 6.5.2 specifies that well control strategies include, “measures to quickly disconnect the marine drilling riser from the well in the event of an emergency or extreme weather conditions.” Operating thresholds and emergency disconnect procedures are vital to reducing the risk of an accidental event; however, it is likely that some personnel will not have previously conducted drilling in harsh weather environments similar to those in the North Atlantic.

- KMKNO recommends that the Agency and/or Board require the Proponent, prior to drilling program initiation, to engage experts to provide offshore well control training specific to operating in harsh weather environments, including specialized training for technical experts, decision-making factors and processes, and roles and responsibilities.

3.3.3 Capping Stack Deployment Timeline

The draft EA Report states: “Transportation could involve either mobilizing the capping stack direct from Norway to the incident site via a specialized marine vessel or transporting it by air to the St. John’s or Gander airports and mobilizing it from there in a suitable vessel.”

- KMKNO is encouraged that BHP has included potential transport by air in its response to a subsea blowout. It is requested that the Agency/Board specify that if, in the event of a subsea blowout, BHP

determines that transport by specialized marine vessel is the preferred option, they be required to justify why this is the case, and/or illustrate (through a detailed response timeline) that it would not decrease the overall response time.

3.3.4 Indigenous Groups' Involvement in Spill Response Planning

Potential EA Condition 6.7 states the following:

"The Proponent shall prepare a Spill Response Plan and provide a draft of the plan to Indigenous groups for comment, taking into consideration these comments prior to submitting the plan to the Board for acceptance. The plan shall be submitted to the Board for acceptance prior to the start of the drilling program. The Spill Response Plan will take into account the results of the modelling of spills identified in Appendix F of the Environmental Impact Statement...and shall include... the list of relevant authorities to be notified of a spill, notification thresholds and notification procedures"

Additionally, the Spill Response Plan will be based on the results of the modelling (presented in Appendix F of the EIS) and shall include procedures to respond to and mitigate potential environmental effects, notification strategy, procedures and guidelines for marine animal response including collecting and cleaning marine mammals, birds, sea turtles, species at risk and shoreline clean up, and the roles/responsibilities for onshore operations and onshore responders.

- The Agency should specify requirements for post-spill sampling and monitoring program, the engagement process and the inclusion of Indigenous knowledge in the final EA Condition 6.7.
- Condition 6.10 also references procedures for notification of Indigenous groups and commercial fishers in the event of a spill; KMKNO recommends that this wording also be included in Condition 6.7.

3.3.5 Compensation Guidelines

Potential EA Condition 6.15 states the following:

"In the event of an accident or malfunction, the Proponent shall comply with the requirements of the Accord Acts and the Canada-Newfoundland and Labrador Offshore Financial Requirement Regulations and the requirements described in the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity."

- Condition 6.15 should state that compensation also applies to the loss of commercial or food, social and ceremonial fisheries or moderate livelihood.

3.3.6 Condition 6.15 should state that compensation also applies to the loss of commercial or food, social and ceremonial fisheries. Consumption of Country Foods

Section 5.1.2 of the draft EA Report identifies procedures to be included in the Fisheries Communication Plan, and states the following: *"Information that is provided to Indigenous groups and fishers needs to present a realistic estimation of potential health risks on consuming country foods, such that their consumption is not reduced unless there is a likely health risk from the consumption of these foods or specific quantities of these foods. If there is a potential health risk, consumption advisories should be considered"*.

- If there is a likely health risk from consumption, advisories should be required (i.e., not just considered); the wording should be revised accordingly.

3.3.7 Perceived Contamination

While the Proponent stated that any 'perceived' contamination (i.e., where traditional foods are not actually contaminated) would be addressed by a post-spill sampling and supporting information program to demonstrate that the *"various harvested food are not contaminated."* The Agency has acknowledged that actual socio-economic effects may result from 'perceived' contamination, even where post-spill tissue sampling has been conducted and there is evidence demonstrating that traditional foods have not been contaminated. The draft EA Report states that the, *"Agency is of the view that, in the event of a subsea release, actual and perceived environmental changes could potentially result in effects on socio-economic conditions of Indigenous peoples, including effects to traditional foods."* The spill response plan should include a post-spill sampling and monitoring program as well as the consultation process and the inclusion of traditional knowledge to ensure that potential health effects caused by contamination of lands and resources from an accident or malfunction are mitigated and communicated effectively to Indigenous groups.

The Agency has acknowledged the effect perceived contamination can have on Indigenous communities:

"The Agency agrees with comments from Indigenous groups that, even if effects on these species are relatively minor, perceived contamination may discourage individuals from engaging in certain traditional practices or consuming certain species which may have interacted with a spill."

Yet the Agency also states:

"Mitigation measures proposed for accidents and malfunctions and commercial fishing (e.g., development of the Fisheries Communication Plan and compensation for any damages, including loss of food, social and ceremonial fisheries), would also mitigate potential effects on Indigenous commercial and food, social and ceremonial fisheries."

Although the Agency has stated that it agrees that perceived contamination may affect health and socio-economic conditions of Indigenous groups, it did not require the Proponent to assess this potential adverse effect.

- The Agency should specify requirements for post-spill sampling and monitoring program, the consultation process and the inclusion of Indigenous knowledge in the final EA Condition 6.7.
- KMKNO reiterates its request that, in EIS guidelines for future projects, the Agency include the requirement to assess potential effects of perceived contamination.

3.4 Effects of the Environment on the Project

Recommendations related to the effects of the environment on the Project (e.g., harsh weather conditions and associated operating thresholds, criteria for flaring, requirements for marine mammal observations during VSP) are addressed in the relevant report section.

3.5 Cumulative Environmental Effects

AECOM did not identify specific concerns in the proposed mitigation measures, follow-up programs and potential EA conditions that relate to cumulative environmental effects.

3.6 Impacts on Potential or Established Aboriginal or Treaty Rights

The draft EA Report indicates that the Agency relied on the information from the Proponents and Indigenous groups when making its determination of the Project's impacts on potential or established Aboriginal or treaty rights.

With regard to the fisheries species that may migrate through the Project areas within traditional territories, the Agency determined that *"because project activities would likely have limited effects on these fish species (Section 6) it would also likely have a low impact on the potential or established Aboriginal or treaty rights of Indigenous groups with food, social and ceremonial licences to harvest migratory species."* Further, the Agency relied on DFO's determination that the potential effects of the Project on Atlantic Salmon are expected to be negligible to low. However, the Agency did acknowledge that in the "unlikely event of a major spill" there is potential for more serious impacts to these species, and particularly to Species at Risk, thereby having the potential to impact potential or established Aboriginal or treaty rights of Indigenous groups.

While the Agency acknowledged the potential consequences to Indigenous fishers and communities as well as a potential for impacts to potential or established Aboriginal or treaty rights from an accident or malfunction, it was determined that the probability of a major subsea blowout was extremely low. Further, the Agency noted that the Proponents, *"...would be required to take all reasonable measures to reduce the probability of an accidental event and ensure it is prepared to respond effectively if an accidental event does occur"*.

With regard to compensation for damages incurred by Indigenous fishers, including the loss of commercial or food, social and ceremonial fisheries, this would be required under the *Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity*. Lastly, with regard to spill response, the FCP would include, *"procedures to communicate with fishers in the event of routine operations and accidental events"*. The Proponents are also required to consider the views of Indigenous groups in the development of a Spill Response Plan.

With regard to the Spill Response Plan, the Condition 6.7 states that the plan will include sharing results of spill modelling, roles and responsibilities in the case of a spill, and appropriate feedback mechanisms for the concerns of Indigenous groups, fishers and other ocean users.

As stated above, the Agency has considered that mitigation measures and follow-up identified for fish and fish habitat, marine mammal and sea turtles, migratory birds, commercial fisheries and accidents and malfunctions would serve as accommodation measures for potential or established Aboriginal or treaty rights by avoiding or minimizing potential impacts on those rights.

Refer to sections specific to the migratory species of concern for comments related to proposed mitigation measures, follow-up programs and potential EA conditions that relate to that species.

- The Agency should specify requirements for post-spill sampling and monitoring program, the engagement process and the inclusion of Indigenous knowledge in the Conditions 6.7.

Given the potential significant adverse effects that could impact Aboriginal or treaty rights, in addition to the above-noted revisions to existing potential EA Conditions, KMKNO recommends that, in the final EA Conditions/EA Report (as applicable), the Agency:

- Identify specific compliance and enforcement processes to ensure the Proponent undertakes meaningful engagement throughout Project execution;
- Identifies how Mi'kmaq concerns were considered and addressed; and,
- Indicate how future consultation and engagement on the Project should be undertaken specific to follow-up programs and the Regional Assessment.

4. Conclusions and Recommendations

KMKNO requests that the Agency address the below in the final EA Report and EA Conditions. Note that while this section summarizes key recommendations, KMKNO requests that the Agency address all the issues and concerns provided in this document.

- It is also recommended that the Agency state in the final EA Conditions that, in addition to the conditions set out in that document, the Proponent is to adhere to all mitigation measures as described in the EIS.

i. Future Consultation Opportunities

Issue: The Proponent has committed to several ongoing and future consultation opportunities and the potential EA Conditions provide the support to some of these commitments. Further, there are several areas where notification to or engagement with Indigenous and key stakeholders would provide greater certainty that the Proponent will follow through with commitments and work to build trust that areas of concern have appropriate follow-up programs and monitoring for potential effects. Further, inclusion of Indigenous groups and stakeholders in the development of follow-up programs or plans should be considered a priority.

Recommendation: The Agency should add the following to final Condition 2.5: *'Consultation with Indigenous groups in the development of follow-up programs.'*

ii. Impacts on Potential or Established Aboriginal or Treaty Rights

Issue: Including Indigenous and local communities in the Project can reduce the risk of adverse health effects due to perceived contamination, which could affect those who are reliant of fish species from the Project area if there were an accident or malfunction.

Recommendation: The Agency should consider strengthening final EA Condition 3.13 to have the Proponent initiate the Atlantic salmon research program prior to commencing drilling operations.

iii. Harsh Weather Environment Training

Issue: Operating thresholds and emergency disconnect procedures are vital to reducing the risk of an accidental event; however, it is likely that some personnel will not have previously conducted drilling in harsh weather environments similar to those in the North Atlantic.

Recommendation: The Agency and/or Board should require the Proponent, prior to drilling program initiation, to engage experts to provide offshore well control training specific to operating in harsh weather environments, including specialized training for technical experts, decision-making factors and processes, and roles and responsibilities.

iv. Capping Stack Deployment Timelines

Issue: The draft EA Report states: *"Transportation could involve either mobilizing the capping stack direct from Norway to the incident site via a specialized marine vessel or transporting it by air to the St. John's or Gander airports and mobilizing it from there in a suitable vessel."*

Recommendation: The Agency and/or Board should specify that if, in the event of a subsea blowout, BHP determines that transport by specialized marine vessel is the preferred option, they be required to justify why this is the case, and/or illustrate (through a detailed response timeline) that it would not decrease the overall response time.

5. Review Limitations

AECOM relied upon publicly available information as referenced in the report. This report is intended solely for the Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) and the Assembly of Nova Scotia Mi'kmaq Chiefs (ANSMC). The information herein reflects our best judgement in consideration of information available at the time of preparation. No portion of this report should be used as separate entity, as it is written to be read in its entirety, and in conjunction with the previous reviews conducted for the Project (EIS review and IR reviews).

Any use which a third party makes of this report, or any reliance on or decisions to be made based on it, is the responsibility of such third parties. Please refer to the Statement of Qualifications at the beginning of the Report.

6. References

AECOM (AECOM Canada Ltd.). 2020:

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IAAC (Impact Assessment Agency of Canada). 2020(a):

BHP Canada Exploration Project. Draft Environmental Assessment Report. September 2020. Retrieved from <https://iaac-aeic.gc.ca/050/documents/p80174/136176E.pdf>. 167 pp.

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BHP Canada Exploration Project. Potential conditions under the Canadian Environmental Assessment Act, 2012. Retrieved from: <https://iaac-aeic.gc.ca/050/documents/p80174/136179E.pdf>

