



November 23, 2020

VIAEMAIL: iaac.bhpcanada.aeic@canada.ca

Canadian Environmental Assessment Agency
200 – 1801 Hollis Street
Halifax NS B3J 3N4

Dear Sir/Madam,

Re: Technical Review & Assessment of the Draft Environmental Assessment and Potential Conditions for the BHP Canada Exploration Drilling Project Pass Exploration Drilling Project.

On behalf of Mi'gmawé'l Tplu'taqnn, we are responding to the Draft Environmental Assessment Report for the above project, dated September 2020.

Mi'gmawé'l Tplu'taqnn's primary concern remains how the project impacts migratory species that are of great cultural significance to the Mi'gmaq, including salmon, swordfish, Bluefin tuna, Atlantic right whales, and migratory birds.

Please find enclosed a report from Shared Value Solutions that we are submitting on behalf of Mi'gmawé'l Tplu'taqnn Incorporated. Based on the report, we highlight the following recommendations in particular:

- 1) The Agency and/or the Proponents should engage MTI and Anqotum Fisheries Resource Centre in designing and conducting a focused Atlantic Salmon research project that seeks to fill data gaps related to Atlantic Salmon use and existence in the Project Area. This should happen before any project approvals and will require dedicated proponent funding.
- 2) Establish a forum and process where Mi'gmawé'l Tplu'taqnn can meet with BHP whereby issues and follow-up program decision making regarding the Project can be brought forward, discussed, and addressed throughout the life of the Project.
- 3) The Proponents and the Crown must engage in direct, meaningful consultation with all Mi'gmaq First Nations of New Brunswick to ensure that its legitimate concerns are understood and reflected in the Environmental Assessment Report.
- 4) Involvement of Mi'gmawé'l Tplu'taqnn communities in environmental, socio-economic and cultural monitoring, and emergency preparedness planning.



All of which is respectfully submitted.

Yours in Peace and Friendship,

<Original signed by>

Marcy Cloud
Impact Assessment Coordinator
Mi'gmawé'l Tplu'taqnn Inc.

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SOLUTIONS



**BHP CANADA EXPLORATION DRILLING:
REVIEW OF IAAC'S ENVIRONMENTAL
ASSESSMENT REPORT & DRAFT
POTENTIAL CONDITIONS**

Prepared for: Mi'gmawe'l Tplu'taqnn Incorporated (MTI)
November 6, 2020

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**PROSPERITY.
STEWARDSHIP.
JURISDICTION.**

Mi'gmawe'l Tplu'taqnn Incorporated (MTI)

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

c/o Marcy Cloud, Impact Assessment Coordinator & Jeremy Johnson, Environmental Assessment Technician

November 6, 2020

Dear Chief George Ginnish and Chief Rebecca Knockwood:

It is our pleasure to provide you with the technical review of the Impact Assessment Agency of Canada's (IAAC; the Agency) Environmental Assessment Report and Draft Potential Conditions for the BHP Canada Exploration Drilling Project. This review was completed by Allie Mayberry, MA, BSc; Levi Snook, BSc; Meaghan Langille, BSc; and Rachel Speiran, MA, with senior review provided by Alison Fraser, MSc of Shared Value Solutions. We look forward to continuing to serve you in consultation and lands and resources protection matters. Please do not hesitate to get in touch with us if you have any questions or concerns with the enclosed report.

With best regards,

<Original signed by>

Rachel Speiran, MA

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



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1.0 REVIEW OBJECTIVES

Shared Value Solutions Ltd. (SVS) provides this independent high-level peer review and strategic assessment of the Impact Assessment Agency of Canada's (IAAC; the Agency) Environmental Assessment Report and Draft Potential Conditions for the BHP Canada (BHP; the Proponent) proposed Exploration Drilling Project, on behalf of Mi'gmawe'l Tplu'taqnn Incorporated (MTI).

MTI is a not for profit organization created by the Mi'gmaq First Nations of New Brunswick to promote and support the recognition, affirmation, exercise, and implementation of their members' Aboriginal and Treaty rights and title.

SVS consultants with expertise in marine water resources, aquatic ecology, migratory birds, fisheries biology, socioeconomics, and community development conducted the review.

This report is not intended to be a comprehensive review of the Agency's EA report for the Project, rather this report identifies concerns, potential impacts, additional protection measures, and provides comments on the draft potential conditions related to seven key issues of concern that were identified by MTI in communications with SVS. These seven key issues are in relation to the rights, key values, and interests of MTI member communities and include:

1. Atlantic salmon
2. Atlantic bluefin tuna
3. Migratory birds
4. North Atlantic right whale
5. Cumulative effects
6. MTI Indigenous Knowledge and Land Use (IKLU) and Socio-economic impacts on commercial swordfish fisheries and Atlantic salmon
7. Accidents and malfunctions

2.0 PROJECT DESCRIPTION AND REGULATORY PROCESS

2.1 BHP CANADA EXPLORATION DRILLING PROGRAM

BHP is proposing to undertake an exploration drilling program within the areas of its existing offshore exploration licences (ELs). The ELs are in the Orphan Basin, approximately 350 kilometres (km) northeast of St. John's, Newfoundland and Labrador (NL), in the Northwest Atlantic Ocean. Over the term of the ELs (2019-2028), the BHP Canada Exploration Drilling Project (herein referred to as the "Project") will include drilling of up to 20 wells, with an initial well proposed to be drilled as early as 2021, pending regulatory approval.

In Eastern Canada, BHP's current offshore interests include two existing ELs in the Orphan Basin Area, EL 1157 and EL 1158 (BHP Canada, 2020). These two ELs were issued to BHP, as the sole interest holder (Table 1), by the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) in January 2019. The term of these ELs extends from January 15, 2019 to January 15, 2028. BHP will serve as the operator for this exploration drilling program.

Table 1 Licence Size and Interests

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

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



2.1.1 PROJECT LOCATION

During the term of the ELs, BHP proposes to drill up to 20 exploration wells in total, with between one and ten wells on either, or both, EL 1157 and EL 1158. The ELs are located offshore eastern Newfoundland in the Orphan Basin, with the ELs both inside and outside Canada's 200 nautical mile Exclusive Economic Zone (EEZ) (Figure). The ELs cover an area of approximately 543,378 ha, and are located approximately 350 km from St. John's, NL (BHP Canada, 2020). Water depths in the ELs range from approximately 1,175 to 2,575 metres (m). Drilling operations carried out as part of the Project will be conducted within the defined boundaries of the ELs, but specific well site numbers, types, and locations will be determined as Project planning activities continue

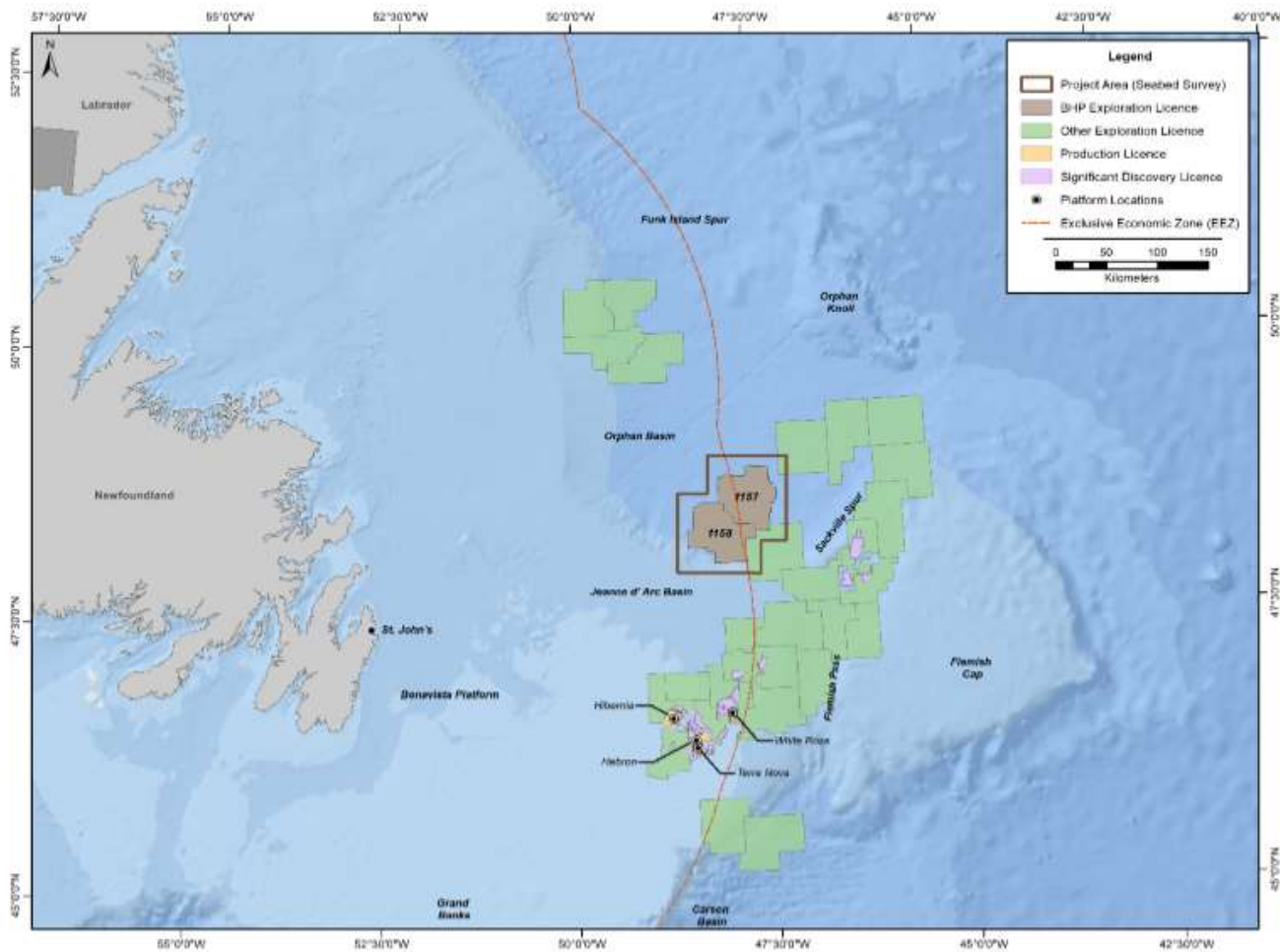


Figure 1 Map of Proposed BHP Project Location

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



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

2.2 REGULATORY PROCESS

The Project will require a number of approvals and authorizations under applicable regulatory processes, as summarized in the following sections.

2.2.1 THE ACCORD ACT

As outlined on the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) website (C-NLOPB, n.d.), their role, under the Accord Acts, is to regulate oil and gas exploration and development in the Canada-NL Offshore Area, oversee compliance with regulatory requirements for worker safety, environmental protection and safety, conservation of the resource, land tenure, and Canada-NL benefits. These processes are administered under various legislation, regulations, guidelines, and memoranda of understanding.

2.2.2 LAND TENURE AND LICENSING

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

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

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

2.2.3 ENVIRONMENTAL ASSESSMENT UNDER CEAA 2012

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

These methods follow the guiding principles and specific requirements as set out in the Project-specific Guidelines, "Guidelines for the Preparation of an Environmental Impact Statement pursuant to the Canadian Environmental Assessment Act, 2012" BHP Exploration Drilling Project (EIS



Guidelines), issued by the CEA Agency on 28 June 2019. The importance of EA as a planning and decision-making tool is emphasized in these guiding principles.

2.2.4 OTHER POTENTIAL REGULATORY AND POLICY REQUIREMENTS AND INTERESTS

Federal and provincial government departments and agencies, which may have regulatory responsibilities, information, and advice regarding exploration drilling activities in the Project Area pursuant to their associated legislation and mandates include the following:

- Fisheries and Oceans Canada (DFO)
- Environment and Climate Change Canada (ECCC)
- Transport Canada
- Department of National Defence (DND)
- NL Department of Municipal Affairs and Environment
- NL Department of Fisheries and Land Resources
- NL Department of Natural Resources Legislation, and regulations thereunder, that may be relevant and subsequently required regulatory approvals include the following:
 - Accord Acts and its associated Regulations and Guidelines
 - Fisheries Act
 - Canadian Environmental Protection Act
 - Oceans Act
 - Canadian Navigable Waters Act
 - Canada Shipping Act, 2001
 - Migratory Birds Convention Act
 - Species at Risk Act (SARA)
 - NL Endangered Species Act (NL ESA)
 - NL Seabird Ecological Reserve Regulations



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

For this review, Mi'gmawe'l Tplu'taqnn Incorporated represents the rights and interests of eight of its nine member communities: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipôgtôtjg (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and Metepenagiag Mi'gmaq Nation.

The Mi'gmaq have occupied, relied on, used, and been stewards of the lands and waters in what is currently known as New Brunswick since time immemorial

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

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

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

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

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

There are four pillars to sustainable development:

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

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

- Understand that lands, waters and natural resources are integral to the well-being of humanity and are not simply commodities to be exploited;



- Seriously take into account the short- and long-term ecological costs of natural resource extraction and see those costs as potentially debilitating debts;
- Honour the precautionary principle (in that lack of scientific certainty must not impede conservation efforts and must not enable irresponsible development);
- Guarantee that the benefits of natural resource development are shared equitably with those most in need;
- Protect the environment;
- Ensure biological diversity;
- Maintain ecological balance;
- Commit to the rehabilitation of habitat and species that have been damaged by current and past natural resource extraction practices; and
- Place the needs of future generations on at least an equal footing with the needs of our time.

This Vision, and the rights described above, were the primary guides to undertaking this review considering MTI's rights and interests. Also considered, in a more generic sense, are the primary effects of importance to the federal EA process that overlap with the MTI's rights and interests (as per Section 5(1)(c) of CEAA, 2012) are as follows:

Section 5. (1)(c)- *"with respect to Aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on:*

- i. health and socio-economic conditions;*
- ii. physical and cultural heritage;*
- iii. the current use of lands and resources for traditional purposes; or*
- iv. any structure, site or thing that is of historical, archaeological, paleontological or architectural significance."*

The proposed activities within the geographic location of the Project's development area have the potential to impact Mi'gmaq's rights to the lands and waters, especially in the Atlantic Ocean shorelines, which are used by some Mi'gmaq for land and water use and socio-economic purposes.



3.2 SUMMARY OF MI'GMAWE'L TPLU'TAQNN MEMBER COMMUNITIES' INDIGENOUS KNOWLEDGE, LAND USE AND OCCUPANCY IN THE REGIONAL ASSESSMENT STUDY AREA

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

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

BHP is aware that there are several other similar offshore exploration drilling EAs at various stages of environmental assessment under CEAA 2012. BHP understands the importance of recognizing and learning from ongoing engagement with Indigenous groups and has joined with other operators to collaborate on current and future engagement to reduce burdens that may be caused by multiple engagement requests from multiple operators to Indigenous groups. BHP will coordinate opportunities for engagement with the exploratory drilling programs in the Flemish Pass and Orphan and Jeanne d'Arc Basins, including Husky Oil Operations, CNOOC Petroleum North America ULC (formerly Nexen Energy ULC), Suncor Energy, BP, Equinor (formerly Statoil), Chevron Canada, and ExxonMobil Canada.

MTI requests continuing to be notified and informed by the Impact Assessment Agency of Canada throughout the assessment and subsequent lifecycle regulation process for this Project, if approved. BHP has stated their commitment to continually being available to meet with interested Indigenous groups to discuss details of their exploration drilling program, and concerns and interests they raise. As such, MTI requests that BHP fulfill on this commitment and engage with MTI to ensure both our concerns are appropriately addressed and our knowledge is continually used to inform decision-making on the project throughout its lifecycle.

4.0 REVIEW FINDINGS

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



4.1 CUMULATIVE EFFECTS

4.1.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of cumulative effects information provided within the Agency's EA Report and Draft Potential Conditions and provides comments and recommendations to resolve the issues.

Comment 1: As MTI has previously commented on, it is unclear how the Regional Assessment Area (RAA) depicted in BHP's EIS is spatially reflected in BHP's predictions, characterization of residual effects, its mitigations pertaining to Indigenous community related value components and in particular to addressing cumulative effects. The Agency does not clarify this point that was raised in MTI's previous submissions regarding the EIS in its EA Report.

Recommendation 1: MTI requests that this RAA's spatial boundary be upheld within follow-up monitoring programs that directly and indirectly include Indigenous representatives and knowledge holders to account for any residual and/or unforeseen environmental effects related to the Project's activities that could interact cumulatively with the residual environmental effects of other past, present, and future activities. Given the unknown long-term impacts of the multiple offshore oil exploration projects in the region, combined with uncertainty of impacts in the case of an accident or spill, MTI requires the potential for residual effects within the wider RAA be identified and addressed through formalized follow up monitoring and management plans that directly involve Indigenous knowledge holders.

Comment 2: Section 4 Predicted Effects on Valued Components states *"As described in the analysis below and taking into account the implementation of key mitigation measures, the Agency is of the view that the Project is not likely to cause significant adverse environmental effects on fish and fish habitat, marine mammals and sea turtles, migratory birds, special areas, species at risk, commercial fisheries or the current use, health and socioeconomic conditions of Indigenous peoples"* (p.12). As a general comment, limiting the assessment to "significant" adverse environmental effects is systemically problematic in regard to addressing the ongoing cumulative effects issues and concerns around the myriad of offshore oil projects taking place in the Atlantic region. The proponent and the Agency acknowledge the wide range of adverse impacts that are characterized as "low" in magnitude and have also been characterized as "reversible". With these conclusions, project impacts, on their own, are not carried forward and classified as "residual" effects, and in turn, do not get accounted for in cumulative effects assessments. Meanwhile, dozens of projects are proceeding with a substantial (or, "significant") amount of uncertainty regarding long-term and cumulative effects.

Recommendation 2: MTI acknowledges that the way impacts are assessed, characterized and carried forward within this current system is challenging to undo. However there remains a systemic incongruence between the continued siloed approach to assessing each project and the cumulative nature of the amalgamated adverse impacts, as, the cumulative impact of multiple impacts characterized as being "low" in magnitude are not being accounted for, and the long term outcome of this is unknown. As such, MTI argues that it is imperative that a more formalized mechanism and process for Indigenous peoples' involvement be implemented that allows for Indigenous input and feedback into each projects' follow-up and monitoring programs that incorporates Indigenous knowledge and expertise.



Comment 3: The potential for cumulative environmental effects was raised as a concern by MTI in the EIS review due to the number of potential projects that could occur in the region, in the future. MTI remains concerned that fish and fish habitat in the regional study area may be negatively affected by the Project, as well as other projects and activities. Particularly in light of recent announcements of an additional \$4 billion investment in exploration of offshore reserves is being planned for the region (CBC, 2019). The Agency acknowledges within the EA that given these potential activities, the Government of Canada has worked with the Province of Newfoundland and Labrador and the C-NLOPB on a regional assessment for offshore exploratory drilling in the offshore area of eastern Newfoundland, which aimed to examine the effects of existing and anticipated offshore oil and gas exploratory drilling, including cumulative environmental effects. Although the Agency states that mitigation, follow-up and monitoring for this Project would contribute to the mitigation or monitoring of cumulative environmental effects, the fulsome cumulative impact of all projects is not carried forward into the EA or in the Project Conditions.

Recommendation 3a: Although the Regional Assessment is briefly touched on in the context of cumulative effects, the Agency should require the mitigations and recommendations from the Regional assessment be included in the conditions of the project approval.

Recommendation 3b: MTI has reviewed and made comments related to the Cumulative Effects Assessment section of the Regional Assessment. The Proponent has committed to incorporating and applying new learnings from the Regional Assessment and as such should consider and incorporate the comments provided by MTI within this EIS.

Recommendation 3c: Additional measures to mitigate the cumulative impacts have not been identified by the Agency, and MTI remains concerned and interested in contributing to cumulative impact analysis during the Regional Assessment process and the development of further mitigation measures specific to cumulative impacts. Although the EA states that the Government of Canada has worked with the Province of Newfoundland and Labrador and the C-NLOPB on the regional assessment, the EA must acknowledge that MTI must continue to be engaged and contribute to both the ongoing regional assessment as well as the individual EA's and EIS'.

4.2 MARINE FISH AND FISH HABITAT

4.2.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in review of all marine fish and fish habitat-related information provided within the Agency's EA Report and Draft Potential Conditions and provides comments and recommendations to resolve the issues.

Comment 4: The key mitigation measures outlined in the EIS and in the EA do not include any mention of completing or implementing any type of marine fish monitoring or on-going impact assessment during operations. The EIS acknowledges the fluctuating nature of fish presence in the Project Area depending on time of year, however no commitment is made to continually assess fish presence, fish avoidance or mortalities during exploration activities.



Recommendation 4: As part of a follow up program, the Agency should require the Proponent to implement an operational fish monitoring program that will give insight into which species and how many of each are passing through or frequenting the Project Area, as well as determine if significant avoidance or mortalities are occurring as a result of Project operations.

Comment 5: The Agency noted that DFO reviewed available information and confirmed the uncertainty around at-sea migration patterns and habitat use of Atlantic Salmon. Given the potential for some Atlantic Salmon to be present in areas that overlap with the Project, impacts could occur. DFO, however, still advised that potential effects of the Project are expected to be negligible to low, and spatially and temporally limited, despite the “uncertainty of at-sea migrations”.

Recommendation 5: Given the lack of data on Atlantic Salmon in the project area and their migration, as well as uncertainty with respect to impact predictions, the Agency should require the Proponent to develop and implement a fisheries monitoring program to be implemented during operations. This monitoring program should be designed and implemented in collaboration with MTI and Anqotum Fisheries Resource Centre.

Comment 6: MTI remains concerned with the potential impacts of the Project on Atlantic Salmon. DFO provided further information on the migration patterns of Atlantic Salmon and advised that Atlantic Salmon that spawn in rivers of eastern Canada (including New Brunswick) travel throughout the Northwest Atlantic Ocean. Following the filing of the EIS, the Proponent acknowledged gaps in understanding Atlantic Salmon migration patterns in the Northwest Atlantic and indicated that it would contribute to research on migratory routes within the project area, including potential new studies through the Environmental Studies Research Fund (ESRF).

Recommendation 6a: The North Shore Micmac District Council (NSMDC) has established the Anqotum, Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian Fishing Industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute such an Atlantic Salmon research program specific to New Brunswick and Salmon populations of importance to MTI.

Recommendation 6b: In addition to ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic Salmon research study is funded and executed. The Agency can require a follow up program that includes such research to fill the current knowledge gaps identified in the project EA and satisfy MTI concerns regarding New Brunswick-Atlantic Salmon impacts from the Project.

Recommendation 6c: A tracking study of Atlantic Salmon, using fish tags, could be used to determine if those populations, leaving New Brunswick waters, in fact reach and migrate through the Project Area. The study could be developed and implemented in collaboration with MTI and Anqotum. Acoustic receivers could be installed on the drilling platforms to monitor the occurrence of Salmon within the Project Area during drilling operations.



4.3 MARINE MAMMALS AND MIGRATORY BIRDS

4.3.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in review of all marine mammals and migratory birds-related information provided within the Agency's EA Report and Draft Potential Conditions and provides comments and recommendations to resolve the issues.

Comment 7: In Section 4.2.2 of the EA Report, the Agency is requiring the proponent to conduct Vertical seismic profiling (VSP) surveys in accordance with or exceeding the Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment (SOCP). With specific respect to key mitigation measures to avoid significant effects to marine mammals and sea turtles, this includes delaying sound source intensity ramp up if a marine mammal or sea turtle is observed within the safety zone during the 60 minute pre-ramp up watch. However, the Agency does not specify how long ramp up should be delayed, leaving MTI concerned that this will be at the discretion of the Proponent. There is a similar lack of detail in the Potential Conditions under CEAA (2012) for this Project (Condition 3.10).

DFO recently commissioned a review of the SCOP and included in this report a recommendation that ramp-up should be delayed by a minimum of 30 minutes since the last marine mammal detection (DFO, 2020). The report also recommends extending this ramp-up delay period to a minimum of 60 minutes since last detection if it is deep-diving species (e.g. beaked whale, sperm whale, etc.) that are detected.

Recommendation 7: MTI recommends that the Agency revise their wording in Section 4.2.2 of the EA Report and Potential Condition 3.10 to reflect these recommendations from the Review of the SCOP, and to minimize opportunities for misinterpretation by the proponent.

Comment 8: In Section 4.2.2 of the EA Report, the Agency also states that the proponent will be required to establish a safety (observation) zone of a minimum of 500 metres around the sound source, which is being used as the threshold for determining cetacean proximity to potentially harmful sounds. Similarly, the Potential Conditions under CEAA (2012) for this Project (Condition 3.10) contain reference to the safety zone, only. The report on the Review of the SCOP (DFO, 2020) recommends that a pre-clearance zone should be established to increase the likelihood of detecting marine mammals that are approaching the sound source array, but not yet within the safety zone. The establishment of a more conservative pre-clearance zone would ensure that marine species travelling towards the sound source, but outside of the prescribed safety zone, are accounted for and protected from potential acoustic harm.

Recommendation 8: MTI recommends that the Agency revise their wording in Section 4.2.2 of the EA Report and Potential Condition 3.10 to include the establishment of a pre-clearance zone, in addition to the safety zone. The radius of the pre-clearance zone should be based on acoustic modelling using the best available data for the region.

Comment 9: In Section 4.2.2 of the EA Report, the Agency states that the proponent will be required to delay VSP ramp-up if a marine mammal or sea turtle is *observed* within the safety zone. It is unclear to MTI whether this requirement excludes marine mammals or sea turtles that are *detected* (i.e., not observed by Marine Mammal Observers (MMO) during visual observations, but instead detected through PAM).

Recommendation 9: MTI requests clarification from the Agency on whether proponent will be required to delay ramp-up if marine mammals or sea turtles are detected by PAM, but not concurrently observed by



MMOs during the pre-ramp up watch period. The wording in Section 4.2.2 of the EA Report and Potential Condition 3.10 should be clarified accordingly.

Comment 10: Per Section 4.2.2 of the EA Report, the Agency is requiring the Proponent to use cetacean detection technology (e.g. PAM) concurrent with visual observations during VSP surveys. MTI is very supportive of this additional requirement, as it will help address the many limitations of a visual-observation-only approach (e.g. limited success in inclement weather, cannot detect individuals that do not surface, etc.). However, MTI would like to note that it is important that multiple detection techniques are not only used concurrently, but that detections are also shared in real-time across methods (Smith et al., 2020). In addition to this, technologies other than PAM, such as Infrared (IR) imaging systems should also be considered and subsequently named in the EA Report. Proponents should be prepared for marine mammal monitoring with a menu of detection techniques, and be required to select the combination of techniques that will maximize detection probability in a variety of conditions. For example, PAM and IR methods work most effectively in darkness, whereas PAM and visual observations work most effectively in periods of high sea and low visibility due to precipitation.

Recommendation 10: MTI recommends that the Agency strengthen the requirement to use cetacean detection technology concurrent with visual observations by specifying tools other than PAM that could be used by proponents (e.g. IR), and recommends that the Agency encourage proponents to have a menu of tools available. Additionally, the Agency should include a VSP survey work stoppage requirement if for some reason two techniques cannot be employed concurrently (e.g. due to PAM equipment malfunction, or MMO absence, etc.).

Comment 11: In Section 4.2.2 of the EA Report, the Agency states that the Proponent will be required to reduce the risk of collisions with marine mammals by limiting vessel travel to established shipping lanes and reducing vessel speeds to 7 knots when marine mammals or sea turtles are observed or reported within 400 metres. However, the Agency is not requiring the Proponent to undertake marine mammal monitoring efforts (e.g. MMOs, PAM, etc.) on supply vessels during transit. MTI remains concerned that vessel slow-down procedures will not be effectively triggered and implemented in the absence of monitoring efforts. This is of particular concern to MTI considering the occurrence of several large and slow-moving at-risk whale species such as North Atlantic right whales and fin whales in the area. While there have been no reported ship strikes with North Atlantic Right Whales in Canadian waters in 2020, results from the latest North Atlantic Right Whale Consortium estimate that there are only 356 individuals left in the world (a decrease from estimates of 407 in 2019) (Davie, E., 2020, October 27).

The Agency has concluded that the slight increase in vessel traffic due to the Project would be unlikely to substantially increase the probability of collisions with whales (EA Report, Section 4.2.2, p. 24) but has provided little discussion of the potential cumulative effects of vessel traffic from offshore exploration and production projects in the eastern Newfoundland offshore region more broadly (Section 5.3.2). This, combined with the uncertainty of North Atlantic Right Whale distribution within their summer foraging range, leaves MTI concerned that vessel collision prevention measures are not conservative enough.

Transport Canada and research affiliates have successfully piloted the use of autonomous underwater acoustic gliders to detect the presence of large whale species in shipping lanes in the Laurentian Channel (Davie, E., 2020, November 2). These gliders are equipped with a digital acoustic monitoring device that sends data back to shore in near real-time, where the data are validated by analysts and disseminated via automated systems (e.g. WhaleMap) providing earlier and widespread detection to prevent ship strikes. Given these promising results, MTI feels that it would be beneficial to pilot the use of autonomous gliders



in the main shipping routes used by offshore exploration and production proponents as an additional precautionary measure.

Recommendation 11: MTI recommends that the Agency require the proponent to contribute to a research program that pilots the use of autonomous gliders in commonly used shipping channels of the eastern Newfoundland offshore region. This would be an additional precautionary measure that the proponent, in partnership with other oil exploration and production proponents and industry representatives, could take to minimize their contributions to the cumulative increase in vessel traffic in the region. This could also help address data gaps regarding the distribution and abundance of marine mammals in the region through systematic surveying and search effort.

Comment 12: In Section 4.3.2 of the EA Report, the Agency states that the Proponent shall “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” (p. 30). MTI would like to note that many of these technologies are currently available, but their effectiveness when applied to seabird monitoring at offshore oil exploration and production platforms is not well-known. This presents an opportunity for the proponent to actively contribute to this gap in knowledge.

In addition, as stated in Section 4.3.2 of the EA Report, it is unclear how any technological advancements in seabird monitoring would be incorporated into the proponent’s follow-up plan. For example, will the proponent be required to review their monitoring techniques on an annual basis? Will they be required to liaise directly with ECCC-CWS, other experts in the field, and/or other proponents regarding the most up to date study findings and best practices? MTI would also like to note that this follow-up measure is not reflected in the Potential Conditions for this project. MTI is concerned that this follow-up measure will not be effectively implemented if expectations are not clearly defined.

Recommendation 12a: Instead of simply requiring the proponent to adopt any technology that becomes available, the Agency should require the proponent to actively contribute to this gap in knowledge by supporting a study that investigates the effectiveness of instrument-based automated bird monitoring techniques, using the Canada Exploration Drilling Project as a case study.

Recommendation 12b: MTI recommends that the Agency provide more detailed information on what would trigger the proponent to incorporate any new seabird monitoring technology into their project activities. This follow-up requirement should also be added to the Potential Conditions for this project.

Comment 13: In EA Report Section 4.7.1., the Agency notes that Indigenous groups expressed concerns that oil and gas operators should “move beyond sharing information about the monitoring efforts and begin co-developing their monitoring programs with Indigenous peoples, taking Indigenous knowledge into consideration in both program design and implementation” (p. 53). Despite acknowledging this issue, the Agency has done little to actually address it through its own analysis and conclusions, including mitigation measures and follow-up, indicating that it does not feel this is a warranted request. The lack of opportunities for Indigenous communities to meaningfully participate in this project (e.g. by reviewing marine mammal and monitoring plans, participating in monitoring activities), as reviewed and accepted by the Agency, remains a concern to MTI.

Recommendation 13: MTI supports the recommendation that oil and gas operators should move beyond sharing information about their marine mammal, sea turtle, and migratory birds monitoring program and begin co-developing these monitoring programs (including appropriate consideration of Indigenous



knowledges) with Indigenous peoples. Instead of allowing the lack of meaningful involvement to perpetuate, the Agency should require the proponent to involve Indigenous groups, including MTI by:

- a) Providing opportunity for MTI (not just DFO and the C-NLOPB) to review the Marine Mammal and Sea Turtle Monitoring Plan at least 30 days prior to initiating activities
- b) Hiring MTI community members (Mi'gmaq monitors) to assist with marine mammal monitoring activities during VSP surveys (and during supply vessel transit, though the Agency has not required this mitigation measure – see Comment 11). Note: MTI does not necessarily expect Mi'gmaq monitors without prior training and experience to act solely as qualified professionals, but rather to play a field or research assistant role.
- c) Hiring MTI community members (Mi'gmaq monitors) to assist with systematic daily monitoring of the MODU and supply vessels for the presence of stranded birds and collecting migratory seabird data, and to monitor and document behaviour during flaring. Note: MTI does not necessarily expect Mi'gmaq monitors without prior training and experience to act solely as qualified professionals, but rather to play a field or research assistant role.

4.4 SOCIO-ECONOMICS AND COMMUNITY WELL-BEING

The socio-economic and community well-being facet of this technical review focuses on the Agency's assessment and subsequent Draft Potential Conditions on the consideration of New Brunswick Mi'gmaq Knowledge within the Project documentation to date and— assessing risks to MTI's land and resource uses and socio-economic impacts on fisheries.

4.4.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI upon review of the socio-economic and community well-being related sections of Agency's EA Report and Draft Potential Conditions and provides recommendations to address the issues raised.

Comment 14: In Section 4.6.1 Views Expressed (on Commercial Fisheries), the Agency does not address Indigenous peoples' repeated requests to be involved in the development of the "Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity" compensation program – guidelines may be generalized however Indigenous communities need to provide input on specific contexts and situations.

Recommendation 14: MTI agrees with Sipekne'katik First Nation's assertion that differences between communal commercial licenses and the commercial licenses need to be factored into decision-making and compliance around compensation and that Indigenous groups need to be directly involved in the development and implementation of these programs in a formalized and transparent manner.

Comment 15: In Section 4.7.2 Agency Analysis and Conclusion (Current Use of Traditional Lands and Resources For Traditional Purposes and Health and Socio-economic Conditions of Indigenous Peoples), the Agency concludes that there is no need for a follow-up or monitoring programs for land and resource use for traditional purposes or for the health and socioeconomic conditions of Indigenous peoples: "The Agency is of the view that that the adverse residual environmental effects of the Project, on current use of



lands and resources for traditional purposes and health and socioeconomic conditions of Indigenous peoples throughout the regional assessment area, would be low/negligible in magnitude. [...]Taking into account the implementation of the mitigation measures described for fish and fish habitat (Section 4.1), marine mammals and sea turtles (Section 4.2), migratory birds (Section 4.3) and commercial fisheries (Section 4.6), the Agency is of the view that the Project is not likely to cause significant adverse environmental effects on the current use of lands and resources for traditional purposes or on the health and socioeconomic conditions of Indigenous peoples” (p.53). MTI acknowledges that the mitigations put forth for other VCs may help avoid or minimize impacts on these and how they reflect pathways to traditional land and resource use and in turn, health and socio-economic VCs. MTI, however, disagrees with the Agency’s conclusion that no follow up or monitoring program is required.

Recommendation 15: MTI recommends that a follow-up and monitoring program, tailored to meet the specific inter-connected and inter-dependent nature of the Indigenous land and resource use VC be established and implemented. The bio-physical components are apt to be monitored on their own. And without an explicit program to collect and apply follow-up program results to Indigenous values related to cultural and rights-based activities – these critical linkages and required analysis will not be made for this VC. A way to monitor changes in cultural activities, impacts to socio-cultural or socio-economic sub-VC type related baselines, over time, and cumulatively in alignment with the wider Regional assessment, is critically needed. A formalized follow-up and monitoring program for this VC would support that need.

Comment 16: In Section 6.1 Potential or Established Aboriginal or Treaty Rights, the Agency states that “There are no traditional territories or recognized treaties overlapping the exploration licenses or the larger project area. Since there are no Aboriginal or treaty rights being exercised in the project area, the pathways for potential impacts to rights of Indigenous groups are through impacts from project activities to migratory species that migrate through the project area and are then harvested or fished within the traditional territories of Indigenous groups” (p.80). MTI, in previous submissions through reviews of other offshore oil exploration projects and in letters to the Agency, has communicated the importance of accurate representation in the myriad of offshore oil project EISs and overall regulatory processes. BHP, similar to other proponents, and now in this EA Report, the Agency, claims that they are not made aware of any group that holds claims or asserts aboriginal and treaty rights in the proposed study area. MTI finds this lack of understanding and acknowledgement disappointing, and associated statements to be untrue. The communities’ commercial activities are a modern-day interpretation of the rights given to us through our treaties. Because the federal government chooses to make us use the commercial fishery to exercise these rights does not mean they are not the assertion of our Aboriginal and Treaty rights.

Recommendation 16: MTI request that future reports from the Agency put forth a more accurate portrayal of MTI’s rights holding members, and associated modern-day rights, and explicitly acknowledge the importance of considering Indigenous Knowledge of the marine environment on equal standing as the input provided by entities representing western scientific knowledge of the marine environment.

Comment 17: In Section 6.1 Potential or Established Aboriginal or Treaty Rights, the Agency does not include Swordfish as a species of importance to Indigenous groups: “Migratory species of particular concern to Indigenous groups include Atlantic Salmon, seals, whales, migratory birds as well as American Eel” (p.80).

Recommendation 17: MTI requests that the record show Swordfish as a species of cultural and socio-economic importance for Indigenous groups.



Comment 18: In Section 6.2 Potential Adverse Impacts of the Project on Potential or Established Aboriginal or Treaty Rights and Section 6.3 Proposed Accommodation Measures, the Agency outlines the wide range of mitigations and follow-up programs for various VCs, and indicates that the proponent would “...share the results of these programs with Indigenous groups” (p.84). It is positive and acknowledged that the results will be shared with Indigenous groups. However, as already referenced within the EA Report in various places, Indigenous groups have repeatedly requested that a formal Indigenous environmental advisory or monitoring group be established to provide meaningful and formalized feedback on such programs -their development, the results, as well as a means to capture any Indigenous knowledge based observations and expertise regarding the short, medium and long term impacts of the Project at hand, as well as the cumulative effects of the multiple projects in the area. Currently, the Agency is supporting the proponents’ reliance on the overarching mitigation of a “Fisheries Communication Plan” to do this. And yet a notification-based plan is not a sufficient engagement mechanism to ensure that Indigenous groups’ rights are protected. Instead, a formalized Indigenous advisory or monitoring group would allow for formalization and coordination of this – dialogue based; and allow a mechanism for Indigenous fishers to provide reports and field observations to the Agency and proponents – also in a formalized and coordinated process.

Recommendation 18: MTI carries forward its request from multiple previous regulatory submissions that a formal Indigenous environmental advisory or monitoring committee be formed that has direct involvement in the projects’ full life cycle. As MTI has requested of each proponent and the IAAC, a formalized Indigenous monitoring oversight framework is required for project operations – one that includes a committee, terms of reference and adaptive management measures to provide input into environmental monitoring plans and a communication protocol for Indigenous groups and resource users and knowledge holders to provide feedback on proposed monitoring plans including emergency response plans.

Comment 19: In Appendix A: Key Mitigation and Follow-up Measures Identified by the Agency, there is no follow-up for Traditional Land and Resource Use. MTI does not agree with this omission.

Recommendation 19: Similar to previous recommendations, MTI requests a follow-up monitoring program, tailored to meet the specific inter-connected and inter-dependent nature of the Indigenous land and resource use VC. The bio-physical components are apt to be monitored on their own. And without an explicit program to collect and apply follow-up program results to Indigenous values related to cultural and rights-based activities, these critical linkages and required analysis will not be made for this VC. A way to monitor changes in cultural activities, impacts to socio-cultural or socio-economic sub-VC type related baselines over time and cumulatively in alignment with the wider Regional assessment is critically needed. A formalized follow-up and monitoring program for this VC would support that need.

Comment 20: In Condition 5 Indigenous and commercial fisheries, it is positive to note that there is reference to Indigenous group consultation on the Fisheries Communication Plan (5.1), as well as reference to “procedures to engage in two-way communication with Indigenous groups...” pertaining to spills or other accidents (5.1.4). However, despite a lot of notification-based information related to BHP’s project’s schedule and activities, there is no indication of information or updates being shared with Indigenous groups about monitoring and follow up program results, nor is there a clear indication of what processes and mechanisms will be put in place to formally receive input from Indigenous nations regarding follow-up and monitoring programs.



Recommendation 20: MTI requests that Condition 5 Indigenous and commercial fisheries include an explicit clause that Indigenous groups be provided updates on monitoring and follow-up programs. Additionally, a clause is required that stipulates a process for Indigenous groups to provide feedback and input into such programs and their respective results.

4.5 ACCIDENTS AND MALFUNCTIONS

4.5.1 EVALUATION & RECOMMENDATIONS

The following section describes issues identified by MTI in the review of Accident and Malfunction-related information provided within the Agency's EA Report and Draft Potential Conditions and provides comment and recommendation to resolve the issues.

Comment 21: The Agency outlines requirements for the Proponent to develop a Spill Response Plan.

Recommendation 21: MTI must be involved in the development and implementation of the Spill Response Plans and other emergency response and contingency plans in relation to the Project. The response plan should include emergency response and preparedness planning, exercises and training for MTI members. The Agency can require the Proponent to ensure that information about accidental events will be shared, immediately, with MTI, and include consultation in relation to the findings of the dispersion modelling, and to the scope of emergency preparedness and response planning.

Recommendation 21: MTI should be given clear specific roles and responsibility descriptions for offshore operations and onshore responders, capacity funding and proper equipment to effectively respond to accidents and malfunctions that impact MTI lands and waters.

Comment 22: MTI could be affected if a spill affects species that migrate through the spill area to areas where they are harvested for food, social or ceremonial reasons (e.g., Atlantic Salmon). MTI fishers with commercial and communal commercial fishing licenses could be affected by accidental spills. A large batch spill or subsea release could result in the closure of fishing areas, the fouling of gear and vessels, a reduction in the marketability of commercial fish products, as well as effects on fish and fish habitat.

Recommendation 22: Any damages, including the loss of commercial, or food, social and ceremonial fisheries must require compensation in accordance with the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity and should be a part of the Project Conditions.

Comment 23: Within the EIS the Proponent estimates that mobilization and installation of the capping stack could take anywhere from 15 to 30 days. The C-NLOPB confirmed that capping and containment of a blown out well requires mobilization of equipment to prepare the subsea release site before use of a capping stack. This equipment would be transported by air to begin site preparation, which would include clearing of the site and cutting away of debris to ready the well for capping stack installation.

Recommendation 23: MTI believes it would reduce the lag time and extent of a blowout to have a capping stack along with the appropriate capacity for equipment modification, and rapid staging and deployment situated in near the drill, potentially staged in Newfoundland or Atlantic Canada. This could also account for the cumulative risks of all current and future oil and gas projects. The Agency and the Proponent must ensure this critical risk mitigation and accommodation measure is in place to protect and reduce the risk to MTI rights and interests.



Comment 24: Insufficient information is provided on whether adequate equipment is available for large spills and whether the equipment could reasonably be deployed before oil reaches shore. The proponent would maintain access to spill response equipment to respond to a range of potential scenarios. Some localized equipment (e.g. sorbents) will be maintained on the mobile offshore drilling unit and platform supply vessels. Booms and skimmers will be located in or near Halifax. It is still unclear the details regarding how spills will be detected and the time it will take to deploy the spill contingency measures.

Recommendation 24: The Agency should require the Proponent to provide more detail regarding how spills will be detected, including the time it will take between detection and deployment of spill contingency methods. When the spill contingency plan is complete, MTI should be engaged and provided the opportunity to comment. Further, MTI personnel represent untapped resources for spill response measures that include surveillance and tracking, offshore and recovery, dispersant application, in-situ burning, shoreline protection, shoreline clean-up, oiled wildlife and waste management.

5.0 SUMMARY AND RECOMMENDATIONS

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

We have identified issues and concerns relevant to MTI and provide 24 recommendations that work to ensure Mi'gmaq knowledge, rights, and concerns are wholly and completely considered throughout the life of the Project. Of particular importance to MTI, is the very poor job the Agency did of requiring more meaningful involvement opportunities for Indigenous groups including MTI community members, in follow-up environmental and cultural monitoring programs and adaptive management plans throughout the life of the Project. This includes insufficient mitigation and follow-up measures pertaining to the protection of marine mammals.

We conclude that BHP has integrated minimal Indigenous Knowledge, from MTI and MTI member communities, into the EIS and that the Agency's EA Report does not sufficiently address this concern. As a result, MTI asserts that meaningful engagement, consultation, and accommodation with the Mi'gmaq in New Brunswick has not been carried out in a substantive manner.

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

1. The Agency and/or BHP should engage MTI in conducting a focused Indigenous Knowledge Study with respect to potential interactions between the Regional Assessment Area (RAA) and Atlantic Salmon, Bluefin Tuna, swordfish, and the results of this Study should be used to inform decision-making throughout the life of the Project, particularly as it relates to monitoring, environmental protection, and emergency response planning.



2. The Agency and/or BHP should engage MTI and Anqotum Fisheries Resource Centre in designing and conducting a focused research project on Atlantic Salmon to help assess their presence in the Project area.
3. IAAC and BHP Canada must ensure MTI communities are provided with adequate capacity funding to participate in ongoing engagement, data collection, and decision making through the provision of capacity funding to support and participate in an equal capacity in this process.
4. BHP should provide employment opportunities for MTI community members as environmental monitors (e.g. Seabird Observer, Marine Mammal Observer) and provide industry standard training.
5. The Agency should implement an Indigenous Environmental Advisory or Monitoring Committee that includes representatives from impacted Indigenous Nations and groups, including MTI working alongside the Agency, C-NLOPB, and the Agency to provide oversight and ensure the proponent maintains compliance with their environmental commitments and conditions.
6. BHP and the Crown must engage in direct, meaningful consultation with all Mi'gmaq First Nations of New Brunswick to ensure that its legitimate concerns are understood and reflected throughout the life of the Project, including the EA and all follow-up monitoring programs. This includes developing a plan for enhanced and ongoing engagement and consultation with MTI and its member communities for exploration activities, construction, and operations of the Project. An annual report should also be submitted to MTI that summarizes the implementation and results of all consultation and engagement activities.
7. MTI, the Crown, and the Proponent should develop agreements to support MTI and MTI-member communities' participation in environmental, socio-economic, and cultural monitoring of drilling and associated activities throughout the life of the Project. This may also require:
 - a. Training, involvement, employment of Mi'gmaq First Nations of New Brunswick environmental and cultural monitors for all Project phases.
 - b. Involvement in emergency preparedness planning and appropriate notifications and consultations in the event of a significant accident or malfunction.

We also recommend that issues related to key concerns expressed by MTI in this report be the focus of subsequent meetings with the Proponents and Crown agencies, and in subsequent ongoing reviews and updates of the data within the Newfoundland Offshore Regional Assessment and its related regulations, should the Project proceed.



6.0 REFERENCES

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APPENDIX A– COMMENT TRACKING TABLE – REVIEW OF IAAC’S EA REPORT AND DRAFT POTENTIAL CONDITIONS FOR BHP CANADA EXPLORATION DRILLING PROJECT

COMMENT #	ENVIRONMENTAL ASSESSMENT REPORT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
CUMULATIVE EFFECTS			
1	General Comment	As MTI has previously commented on, it is unclear how the Regional Assessment Area (RAA) depicted in BHP’s EIS is spatially reflected in BHP’s predictions, characterization of residual effects, its mitigations pertaining to Indigenous community related value components and in particular to addressing cumulative effects. The Agency does not clarify this point that was raised in MTI’s previous submissions regarding the EIS in its EA Report.	MTI requests that this RAA’s spatial boundary be upheld within follow-up monitoring programs that directly and indirectly include Indigenous representatives and knowledge holders to account for any residual and/or unforeseen environmental effects related to the Project’s activities that could interact cumulatively with the residual environmental effects of other past, present, and future activities. Given the unknown long-term impacts of the multiple offshore oil exploration projects in the region, combined with uncertainty of impacts in the case of an accident or spill, MTI requires the potential for residual effects within the wider RAA be identified and addressed through formalized follow up monitoring and management plans that directly involve Indigenous knowledge holders.
2	Section 4 Predicted Effects on Valued Components	Section 4 Predicted Effects on Valued Components states “As described in the analysis below and taking into account the implementation of key mitigation measures, the Agency is of the view that the Project is not likely to cause significant adverse environmental effects on fish and fish habitat, marine mammals and sea turtles, migratory birds, special areas, species at risk, commercial fisheries	MTI acknowledges that the way impacts are assessed, characterized and carried forward within this current system is challenging to undo. However there remains a systemic incongruence between the continued siloed approach to assessing each project and the cumulative nature of the amalgamated

COMMENT #	ENVIRONMENTAL ASSESSMENT REPORT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		<p>or the current use, health and socioeconomic conditions of Indigenous peoples” (p.12). As a general comment, limiting the assessment to “significant” adverse environmental effects is systemically problematic in regard to addressing the ongoing cumulative effects issues and concerns around the myriad of offshore oil projects taking place in the Atlantic region. The proponent and the Agency acknowledge the wide range of adverse impacts that are characterized as “low” in magnitude and have also been characterized as “reversible”. With these conclusions, project impacts, on their own, are not carried forward and classified as “residual” effects, and in turn, do not get accounted for in cumulative effects assessments. Meanwhile, dozens of projects are proceeding with a substantial (or, “significant”) amount of uncertainty regarding long-term and cumulative effects.</p>	<p>adverse impacts, as, the cumulative impact of multiple impacts characterized as being “low” in magnitude are not being accounted for, and the long term outcome of this is unknown. As such, MTI argues that it is imperative that a more formalized mechanism and process for Indigenous peoples’ involvement be implemented that allows for Indigenous input and feedback into each projects’ follow-up and monitoring programs that incorporates Indigenous knowledge and expertise.</p>
3	General Comment	<p>The potential for cumulative environmental effects was raised as a concern by MTI in the EIS review due to the number of potential projects that could occur in the region, in the future. MTI remains concerned that fish and fish habitat in the regional study area may be negatively affected by the Project, as well as other projects and activities. Particularly in light of recent announcements of an additional \$4 billion investment in exploration of offshore reserves is being planned for the region (CBC, 2019). The Agency acknowledges within the EA that given these potential activities, the Government of Canada has worked with the</p>	<p>3A: Although the Regional Assessment is briefly touched on in the context of cumulative effects, the Agency should require the mitigations and recommendations from the Regional assessment be included in the conditions of the project approval.</p> <p>3B: MTI has reviewed and made comments related to the Cumulative Effects Assessment section of the Regional Assessment. The Proponent has committed to incorporating and applying new learnings from the Regional Assessment and as such should consider and incorporate the comments provided by MTI within this EIS.</p>



COMMENT #	ENVIRONMENTAL ASSESSMENT REPORT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		<p>Province of Newfoundland and Labrador and the C-NLOPB on a regional assessment for offshore exploratory drilling in the offshore area of eastern Newfoundland, which aimed to examine the effects of existing and anticipated offshore oil and gas exploratory drilling, including cumulative environmental effects. Although the Agency states that mitigation, follow-up and monitoring for this Project would contribute to the mitigation or monitoring of cumulative environmental effects, the fulsome cumulative impact of all projects is not carried forward into the EA or in the Project Conditions.</p>	<p>3C: Additional measures to mitigate the cumulative impacts have not been identified by the Agency, and MTI remains concerned and interested in contributing to cumulative impact analysis during the Regional Assessment process and the development of further mitigation measures specific to cumulative impacts. Although the EA states that the Government of Canada has worked with the Province of Newfoundland and Labrador and the C-NLOPB on the regional assessment, the EA must acknowledge that MTI must continue to be engaged and contribute to both the ongoing regional assessment as well as the individual EA's and EIS'.</p>

MARINE FISH AND FISH HABITAT

4	General Comment	<p>The key mitigation measures outlined in the EIS and in the EA do not include any mention of completing or implementing any type of marine fish monitoring or on-going impact assessment during operations. The EIS acknowledges the fluctuating nature of fish presence in the Project Area depending on time of year, however no commitment is made to continually assess fish presence, fish avoidance or mortalities during exploration activities.</p>	<p>As part of a follow up program, the Agency should require the Proponent to implement an operational fish monitoring program that will give insight into which species and how many of each are passing through or frequenting the Project Area, as well as determine if significant avoidance or mortalities are occurring as a result of Project operations.</p>
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COMMENT #	ENVIRONMENTAL ASSESSMENT REPORT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
5	General Comment	<p>The Agency noted that DFO reviewed available information and confirmed the uncertainty around at-sea migration patterns and habitat use of Atlantic Salmon. Given the potential for some Atlantic Salmon to be present in areas that overlap with the Project, impacts could occur. DFO, however, still advised that potential effects of the Project are expected to be negligible to low, and spatially and temporally limited, despite the “uncertainty of at-sea migrations”.</p>	<p>Given the lack of data on Atlantic Salmon in the project area and their migration, as well as uncertainty with respect to impact predictions, the Agency should require the Proponent to develop and implement a fisheries monitoring program to be implemented during operations. This monitoring program should be designed and implemented in collaboration with MTI and Anqotum Fisheries Resource Centre.</p>
6	General Comment	<p>MTI remains concerned with the potential impacts of the Project on Atlantic Salmon. DFO provided further information on the migration patterns of Atlantic Salmon and advised that Atlantic Salmon that spawn in rivers of eastern Canada (including New Brunswick) travel throughout the Northwest Atlantic Ocean. Following the filing of the EIS, the Proponent acknowledged gaps in understanding Atlantic Salmon migration patterns in the Northwest Atlantic and indicated that it would contribute to research on migratory routes within the project area, including potential new studies through the Environmental Studies Research Fund (ESRF).</p>	<p>6A: The North Shore Micmac District Council (NSMDC) has established the Anqotum, Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian Fishing Industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute such an Atlantic Salmon research program specific to New Brunswick and Salmon populations of importance to MTI.</p> <p>6B: In addition to ESRF funding, the Proponent should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic Salmon research study is funded and executed. The Agency can require a follow up program that includes such research to fill the current knowledge gaps identified in the project EA and satisfy MTI</p>



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			<p>concerns regarding New Brunswick-Atlantic Salmon impacts from the Project.</p> <p>6C: A tracking study of Atlantic Salmon, using fish tags, could be used to determine if those populations, leaving New Brunswick waters, in fact reach and migrate through the Project Area. The study could be developed and implemented in collaboration with MTI and Anqotum. Acoustic receivers could be installed on the drilling platforms to monitor the occurrence of Salmon within the Project Area during drilling operations.</p>

MARINE MAMMALS & MIGRATORY BIRDS

7	Section 4.2.2	<p>In Section 4.2.2 of the EA Report, the Agency is requiring the proponent to conduct Vertical seismic profiling (VSP) surveys in accordance with or exceeding the Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment (SOCP). With specific respect to key mitigation measures to avoid significant effects to marine mammals and sea turtles, this includes delaying sound source intensity ramp up if a marine mammal or sea turtle is observed within the safety zone during the 60 minute pre-ramp up watch. However, the Agency does not specify how long ramp up should be delayed, leaving MTI concerned that this will be at the discretion of the Proponent. There is a similar lack of detail in the Potential Conditions under CEAA (2012) for this Project (Condition 3.10).</p>	<p>MTI recommends that the Agency revise their wording in Section 4.2.2 of the EA Report and Potential Condition 3.10 to reflect these recommendations from the Review of the SCOP, and to minimize opportunities for misinterpretation by the proponent.</p>
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		<p>DFO recently commissioned a review of the SCOP and included in this report a recommendation that ramp-up should be delayed by a minimum of 30 minutes since the last marine mammal detection (DFO, 2020). The report also recommends extending this ramp-up delay period to a minimum of 60 minutes since last detection if it is deep-diving species (e.g. beaked whale, sperm whale, etc.) that are detected.</p>	
8	Section 4.2.2	<p>In Section 4.2.2 of the EA Report, the Agency also states that the proponent will be required to establish a safety (observation) zone of a minimum of 500 metres around the sound source, which is being used as the threshold for determining cetacean proximity to potentially harmful sounds. Similarly, the Potential Conditions under CEAA (2012) for this Project (Condition 3.10) contain reference to the safety zone, only. The report on the Review of the SCOP (DFO, 2020) recommends that a pre-clearance zone should be established to increase the likelihood of detecting marine mammals that are approaching the sound source array, but not yet within the safety zone. The establishment of a more conservative pre-clearance zone would ensure that marine species travelling towards the sound source, but outside of the prescribed safety zone, are accounted for and protected from potential acoustic harm.</p>	<p>MTI recommends that the Agency revise their wording in Section 4.2.2 of the EA Report and Potential Condition 3.10 to include the establishment of a pre-clearance zone, in addition to the safety zone. The radius of the pre-clearance zone should be based on acoustic modelling using the best available data for the region.</p>



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9	Section 4.2.2	<p>In Section 4.2.2 of the EA Report, the Agency states that the proponent will be required to delay VSP ramp-up if a marine mammal or sea turtle is <i>observed</i> within the safety zone. It is unclear to MTI whether this requirement excludes marine mammals or sea turtles that are <i>detected</i> (i.e., not observed by Marine Mammal Observers (MMO) during visual observations, but instead detected through PAM).</p>	<p>MTI requests clarification from the Agency on whether proponent will be required to delay ramp-up if marine mammals or sea turtles are detected by PAM, but not concurrently observed by MMOs during the pre-ramp up watch period. The wording in Section 4.2.2 of the EA Report and Potential Condition 3.10 should be clarified accordingly.</p>
10	Section 4.2.2	<p>Per Section 4.2.2 of the EA Report, the Agency is requiring the Proponent to use cetacean detection technology (e.g. PAM) concurrent with visual observations during VSP surveys. MTI is very supportive of this additional requirement, as it will help address the many limitations of a visual-observation-only approach (e.g. limited success in inclement weather, cannot detect individuals that do not surface, etc.). However, MTI would like to note that it is important that multiple detection techniques are not only used concurrently, but that detections are also shared in real-time across methods (Smith et al., 2020). In addition to this, technologies other than PAM, such as Infrared (IR) imaging systems should also be considered and subsequently named in the EA Report. Proponents should be prepared for marine mammal monitoring with a menu of detection techniques, and be required to select the combination of techniques</p>	<p>MTI recommends that the Agency strengthen the requirement to use cetacean detection technology concurrent with visual observations by specifying tools other than PAM that could be used by proponents (e.g. IR), and recommends that the Agency encourage proponents to have a menu of tools available. Additionally, the Agency should include a VSP survey work stoppage requirement if for some reason two techniques cannot be employed concurrently (e.g. due to PAM equipment malfunction, or MMO absence, etc.).</p>



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		<p>that will maximize detection probability in a variety of conditions. For example, PAM and IR methods work most effectively in darkness, whereas PAM and visual observations work most effectively in periods of high sea and low visibility due to precipitation.</p>	
11	Section 4.2.2	<p>In Section 4.2.2 of the EA Report, the Agency states that the Proponent will be required to reduce the risk of collisions with marine mammals by limiting vessel travel to established shipping lanes and reducing vessel speeds to 7 knots when marine mammals or sea turtles are observed or reported within 400 metres. However, the Agency is not requiring the Proponent to undertake marine mammal monitoring efforts (e.g. MMOs, PAM, etc.) on supply vessels during transit. MTI remains concerned that vessel slow-down procedures will not be effectively triggered and implemented in the absence of monitoring efforts. This is of particular concern to MTI considering the occurrence of several large and slow-moving at-risk whale species such as North Atlantic right whales and fin whales in the area. While there have been no reported ship strikes with North Atlantic Right Whales in Canadian waters in 2020, results from the latest North Atlantic Right Whale Consortium estimate that there are only 356 individuals left in the world (a decrease from</p>	<p>MTI recommends that the Agency require the proponent to contribute to a research program that pilots the use of autonomous gliders in commonly used shipping channels of the eastern Newfoundland offshore region. This would be an additional precautionary measure that the proponent, in partnership with other oil exploration and production proponents and industry representatives, could take to minimize their contributions to the cumulative increase in vessel traffic in the region. This could also help address data gaps regarding the distribution and abundance of marine mammals in the region through systematic surveying and search effort.</p>



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		<p>estimates of 407 in 2019) (Davie, E., 2020, October 27).</p> <p>The Agency has concluded that the slight increase in vessel traffic due to the Project would be unlikely to substantially increase the probability of collisions with whales (EA Report, Section 4.2.2, p. 24) but has provided little discussion of the potential cumulative effects of vessel traffic from offshore exploration and production projects in the eastern Newfoundland offshore region more broadly (Section 5.3.2). This, combined with the uncertainty of North Atlantic Right Whale distribution within their summer foraging range, leaves MTI concerned that vessel collision prevention measures are not conservative enough.</p> <p>Transport Canada and research affiliates have successfully piloted the use of autonomous underwater acoustic gliders to detect the presence of large whale species in shipping lanes in the Laurentian Channel (Davie, E., 2020, November 2). These gliders are equipped with a digital acoustic monitoring device that sends data back to shore in near real-time, where the data are validated by analysts and disseminated via automated systems (e.g. WhaleMap) providing earlier and widespread detection to prevent ship strikes. Given these promising results, MTI feels that it would be beneficial to pilot the use of autonomous gliders in the main shipping routes used by offshore</p>	



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		exploration and production proponents as an additional precautionary measure.	
12	Section 4.3.2	<p>In Section 4.3.2 of the EA Report, the Agency states that the Proponent shall “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” (p. 30). MTI would like to note that many of these technologies are currently available, but their effectiveness when applied to seabird monitoring at offshore oil exploration and production platforms is not well-known. This presents an opportunity for the proponent to actively contribute to this gap in knowledge.</p> <p>In addition, as stated in Section 4.3.2 of the EA Report, it is unclear how any technological advancements in seabird monitoring would be incorporated into the proponent’s follow-up plan. For example, will the proponent be required to review their monitoring techniques on an annual basis? Will they be required to liaise directly with ECCC-CWS, other experts in the field, and/or other proponents regarding the most up to date study findings and best practices? MTI would also like to note that this follow-up measure is not reflected in the Potential Conditions for this project. MTI is concerned that this follow-up measure will not be effectively implemented if expectations are not clearly defined.</p>	<p>12a: Instead of simply requiring the proponent to adopt any technology that becomes available, the Agency should require the proponent to actively contribute to this gap in knowledge by supporting a study that investigates the effectiveness of instrument-based automated bird monitoring techniques, using the Canada Exploration Drilling Project as a case study.</p> <p>12b: MTI recommends that the Agency provide more detailed information on what would trigger the proponent to incorporate any new seabird monitoring technology into their project activities. This follow-up requirement should also be added to the Potential Conditions for this project.</p>
13	Section 4.7.1	In EA Report Section 4.7.1., the Agency notes that Indigenous groups expressed concerns that oil and	MTI supports the recommendation that oil and gas operators should move beyond sharing information



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		<p>gas operators should “move beyond sharing information about the monitoring efforts and begin co-developing their monitoring programs with Indigenous peoples, taking Indigenous knowledge into consideration in both program design and implementation” (p. 53). Despite acknowledging this issue, the Agency has done little to actually address it through its own analysis and conclusions, including mitigation measures and follow-up, indicating that it does not feel this is a warranted request. The lack of opportunities for Indigenous communities to meaningfully participate in this project (e.g. by reviewing marine mammal and monitoring plans, participating in monitoring activities), as reviewed and accepted by the Agency, remains a concern to MTI.</p>	<p>about their marine mammal, sea turtle, and migratory birds monitoring program and begin co-developing these monitoring programs (including appropriate consideration of Indigenous knowledges) with Indigenous peoples. Instead of allowing the lack of meaningful involvement to perpetuate, the Agency should require the proponent to involve Indigenous groups, including MTI by:</p> <ol style="list-style-type: none"> a. Providing opportunity for MTI (not just DFO and the C-NLOPB) to review the Marine Mammal and Sea Turtle Monitoring Plan at least 30 days prior to initiating activities b. Hiring MTI community members (Mi’gmaq monitors) to assist with marine mammal monitoring activities during VSP surveys (and during supply vessel transit, though the Agency has not required this mitigation measure – see Comment 11). Note: MTI does not necessarily expect Mi’gmaq monitors without prior training and experience to act solely as qualified professionals, but rather to play a field or research assistant role. c. Hiring MTI community members (Mi’gmaq monitors) to assist with systematic daily monitoring of the MODU and supply vessels for the presence of stranded birds and collecting migratory seabird data, and to monitor and document



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			behaviour during flaring. Note: MTI does not necessarily expect Mi'gmaq monitors without prior training and experience to act solely as qualified professionals, but rather to play a field or research assistant role.

SOCIO-ECONOMICS AND COMMUNITY WELL-BEING

14	Section 4.6.1	In Section 4.6.1 Views Expressed (on Commercial Fisheries), the Agency does not address Indigenous peoples' repeated requests to be involved in the development of the "Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity" compensation program – guidelines may be generalized however Indigenous communities need to provide input on specific contexts and situations.	MTI agrees with Sipekne'katik First Nation's assertion that differences between communal licenses and the commercial licenses need to be factored into decision-making and compliance around compensation and that Indigenous groups need to be directly involved in the development and implementation of these programs in a formalized and transparent manner.
15	Section 4.7.2	In Section 4.7.2 Agency Analysis and Conclusion (Current Use of Traditional Lands and Resources For Traditional Purposes and Health and Socio-economic Conditions of Indigenous Peoples), the Agency concludes that there is no need for a follow-up or monitoring programs for land and resource use for traditional purposes or for the health and socioeconomic conditions of Indigenous peoples: "The Agency is of the view that that the adverse residual environmental effects of the Project, on current use of lands and resources for traditional purposes and health and socioeconomic conditions of Indigenous peoples throughout the regional assessment area, would be low/negligible in magnitude. [...]Taking into account the implementation of the mitigation measures	MTI recommends that a follow-up and monitoring program, tailored to meet the specific inter-connected and inter-dependent nature of the Indigenous land and resource use VC be established and implemented. The bio-physical components are apt to be monitored on their own. And without an explicit program to collect and apply follow-up program results to Indigenous values related to cultural and rights-based activities – these critical linkages and required analysis will not be made for this VC. A way to monitor changes in cultural activities, impacts to socio-cultural or socio-economic sub-VC type related baselines, over time, and cumulatively in alignment with the wider Regional assessment, is critically needed. A



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		<p>described for fish and fish habitat (Section 4.1), marine mammals and sea turtles (Section 4.2), migratory birds (Section 4.3) and commercial fisheries (Section 4.6), the Agency is of the view that the Project is not likely to cause significant adverse environmental effects on the current use of lands and resources for traditional purposes or on the health and socioeconomic conditions of Indigenous peoples” (p.53). MTI acknowledges that the mitigations put forth for other VCs may help avoid or minimize impacts on these and how they reflect pathways to traditional land and resource use and in turn, health and socio-economic VCs. MTI, however, disagrees with the Agency’s conclusion that no follow up or monitoring program is required.</p>	<p>formalized follow-up and monitoring program for this VC would support that need.</p>
16	Section 6.1	<p>In Section 6.1 Potential or Established Aboriginal or Treaty Rights, the Agency states that “There are no traditional territories or recognized treaties overlapping the exploration licenses or the larger project area. Since there are no Aboriginal or treaty rights being exercised in the project area, the pathways for potential impacts to rights of Indigenous groups are through impacts from project activities to migratory species that migrate through the project area and are then harvested or fished within the traditional territories of Indigenous groups” (p.80). MTI, in previous submissions through reviews of other offshore oil exploration projects and in letters to the Agency, has communicated the importance of accurate representation in the myriad of offshore oil project EISs and overall regulatory processes. BHP, similar to other proponents, and now in this EA Report, the Agency, claims that they are not made aware of</p>	<p>MTI request that future reports from the Agency put forth a more accurate portrayal of MTI’s rights holding members, and associated modern-day rights, and explicitly acknowledge the importance of considering Indigenous Knowledge of the marine environment on equal standing as the input provided by entities representing western scientific knowledge of the marine environment.</p>



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		any group that holds claims or asserts aboriginal and treaty rights in the proposed study area. MTI finds this lack of understanding and acknowledgement disappointing, and associated statements to be untrue. The communities' commercial activities are a modern-day interpretation of the rights given to us through our treaties. Because the federal government chooses to make us use the commercial fishery to exercise these rights does not mean they are not the assertion of our Aboriginal and Treaty rights.	
17	Section 6.1	In Section 6.1 Potential or Established Aboriginal or Treaty Rights, the Agency does not include Swordfish as a species of importance to Indigenous groups: "Migratory species of particular concern to Indigenous groups include Atlantic Salmon, seals, whales, migratory birds as well as American Eel" (p.80).	MTI requests that the record show Swordfish as a species of cultural and socio-economic importance for Indigenous groups.
18	Section 6.2	In Section 6.2 Potential Adverse Impacts of the Project on Potential or Established Aboriginal or Treaty Rights and Section 6.3 Proposed Accommodation Measures, the Agency outlines the wide range of mitigations and follow-up programs for various VCs, and indicates that the proponent would "...share the results of these programs with Indigenous groups" (p.84). It is positive and acknowledged that the results will be shared with Indigenous groups. However, as already referenced within the EA Report in various places, Indigenous groups have repeatedly requested that a formal Indigenous environmental advisory or monitoring group be established to provide meaningful and formalized feedback on such programs -their development, the results, as	MTI carries forward its request from multiple previous regulatory submissions that a formal Indigenous environmental advisory or monitoring committee be formed that has direct involvement in the projects' full life cycle. As MTI has requested of each proponent and the IAAC, a formalized Indigenous monitoring oversight framework is required for project operations – one that includes a committee, terms of reference and adaptive management measures to provide input into environmental monitoring plans and a communication protocol for Indigenous groups and resource users and knowledge holders to provide feedback on proposed monitoring plans including emergency response plans.



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19	Appendix A	<p>well as a means to capture any Indigenous knowledge based observations and expertise regarding the short, medium and long term impacts of the Project at hand, as well as the cumulative effects of the multiple projects in the area. Currently, the Agency is supporting the proponents' reliance on the overarching mitigation of a "Fisheries Communication Plan" to do this. And yet a notification-based plan is not a sufficient engagement mechanism to ensure that Indigenous groups' rights are protected. Instead, a formalized Indigenous advisory or monitoring group would allow for formalization and coordination of this – dialogue based; and allow a mechanism for Indigenous fishers to provide reports and field observations to the Agency and proponents – also in a formalized and coordinated process</p> <p>In Appendix A: Key Mitigation and Follow-up Measures Identified by the Agency, there is no follow-up for Traditional Land and Resource Use. MTI does not agree with this omission.</p>	<p>Similar to previous recommendations, MTI requests a follow-up monitoring program, tailored to meet the specific inter-connected and inter-dependent nature of the Indigenous land and resource use VC. The bio-physical components are apt to be monitored on their own. And without an explicit program to collect and apply follow-up program results to Indigenous values related to cultural and rights-based activities, these critical linkages and required analysis will not be made for this VC. A way to monitor changes in cultural activities, impacts to socio-cultural or socio-economic sub-VC type related baselines over time and cumulatively in alignment with the wider Regional assessment is critically needed. A formalized follow-up and monitoring program for this VC would support that need.</p>



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20	Draft Potential Condition 5	In Condition 5 Indigenous and commercial fisheries, it is positive to note that there is reference to Indigenous group consultation on the Fisheries Communication Plan (5.1), as well as reference to “procedures to engage in two-way communication with Indigenous groups...” pertaining to spills or other accidents (5.1.4). However, despite a lot of notification-based information related to BHP’s project’s schedule and activities, there is no indication of information or updates being shared with Indigenous groups about monitoring and follow up program results, nor is there a clear indication of what processes and mechanisms will be put in place to formally receive input from Indigenous nations regarding follow-up and monitoring programs.	MTI requests that Condition 5 Indigenous and commercial fisheries include an explicit clause that Indigenous groups be provided updates on monitoring and follow-up programs. Additionally, a clause is required that stipulates a process for Indigenous groups to provide feedback and input into such programs and their respective results.

ACCIDENTS AND MALFUNCTIONS

21	General Comment	The Agency outlines requirements for the Proponent to develop a Spill Response Plan.	MTI should be given clear specific roles and responsibility descriptions for offshore operations and onshore responders, capacity funding and proper equipment to effectively respond to accidents and malfunctions that impact MTI lands and waters.
22	General Comment	MTI could be affected if a spill affects species that migrate through the spill area to areas where they are harvested for food, social or ceremonial reasons (e.g., Atlantic Salmon). MTI fishers with commercial and communal commercial fishing licenses could be affected by accidental spills. A large batch spill or subsea release could result in the closure of fishing areas, the fouling of gear and	Any damages, including the loss of commercial, or food, social and ceremonial fisheries must require compensation in accordance with the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity and should be a part of the Project Conditions.



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		vessels, a reduction in the marketability of commercial fish products, as well as effects on fish and fish habitat.	
23	General Comment	Within the EIS the Proponent estimates that mobilization and installation of the capping stack could take anywhere from 15 to 30 days. The C-NLOPB confirmed that capping and containment of a blown out well requires mobilization of equipment to prepare the subsea release site before use of a capping stack. This equipment would be transported by air to begin site preparation, which would include clearing of the site and cutting away of debris to ready the well for capping stack installation.	MTI believes it would reduce the lag time and extent of a blowout to have a capping stack along with the appropriate capacity for equipment modification, and rapid staging and deployment situated in near the drill, potentially staged in Newfoundland or Atlantic Canada. This could also account for the cumulative risks of all current and future oil and gas projects. The Agency and the Proponent must ensure this critical risk mitigation and accommodation measure is in place to protect and reduce the risk to MTI rights and interests.
24	General Comment	Insufficient information is provided on whether adequate equipment is available for large spills and whether the equipment could reasonably be deployed before oil reaches shore. The proponent would maintain access to spill response equipment to respond to a range of potential scenarios. Some localized equipment (e.g. sorbents) will be maintained on the mobile offshore drilling unit and platform supply vessels. Booms and skimmers will be located in or near Halifax. It is still unclear the details regarding how spills will be detected and the time it will take to deploy the spill contingency measures.	The Agency should require the Proponent to provide more detail regarding how spills will be detected, including the time it will take between detection and deployment of spill contingency methods. When the spill contingency plan is complete, MTI should be engaged and provided the opportunity to comment. Further, MTI personnel represent untapped resources for spill response measures that include surveillance and tracking, offshore and recovery, dispersant application, in-situ burning, shoreline protection, shoreline clean-up, oiled wildlife and waste management.

