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5th Floor, TD Place, 140 Water Street
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Subject: Environmental Assessment of the project *Corridor Resources Inc. Drilling of an exploration well on the Old Harry prospect – EL 1105*, CEAR No. 11-01-60633

Dear Sir,

1. Introduction

This is further to the above-mentioned environmental assessment by your Board of the proposal by Corridor Resources Inc. (the proponent) to drill an exploration well at the Old Harry prospect.

The French version will follow.

2. Environmental assessment duties

a. Generally

The Board is responsible for completing a screening of the project under the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 (CEAA), pursuant to the decision of the Minister of the Environment. It is a federal authority for the purposes of CEAA: *Federal Authorities Regulations*, SOR/96-280.

The purpose of the Board's assessment is, among other things, to ensure that the project does "not cause significant adverse environmental effects" under s. 4(1)(a) of CEAA.

This means that among other things, the Board is obliged by s. 2(1) of CEAA to assess any change that the project may cause to:

- land and water, matter and living organisms found in those lands and waters, as well as the interacting natural systems all those components form;
- wildlife species listed under the *Species at Risk Act*, S.C. 2002, c. 29 (SARA), as well as their critical habitat or the residences of individuals of species protected by SARA;
- current use of lands and resources for traditional purposes by aboriginal persons.

Deciding the likelihood of "significant adverse environmental effects" depends not only on the probability of their occurrence, but also on the degree of scientific certainty that conclusions in this regard are accurate.¹

The changes caused to the environment by a project must, under s. 16(1)(a), be assessed taking into consideration factors including:

- the environmental effects of malfunctions or accidents that may occur in connection with the project;
- any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out..

¹ Federal Environmental Assessment Review Office, *Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects*, November 1994.

More particularly, cumulative effects assessment means the authority must:

- assess effects over a larger (i.e., "regional") area that may cross jurisdictional boundaries; [Includes effects due to natural perturbations affecting environmental components and human actions.]
- assess effects during a longer period of time into the past and future;
- consider effects on Valued Ecosystem Components (VECs) due to interactions with other actions, and not just the effects of the single action under review;
- include other past, existing and future (e.g., reasonably foreseeable) actions; and
- evaluate significance in consideration of other than just local, direct effects.²

The Board's screening is also meant by s. 4(1)(c) to ensure that the project does not cause significant adverse environmental effects in the five provinces adjoining the Gulf of St. Lawrence, since it is a project that would be carried out in the internal waters of Canada under federal jurisdiction.

b. The particular issue of oil spills

The Board is currently unable to determine the likelihood of "significant adverse environmental effects" from oil spills because there is no certainty that the proponent's calculation of the probability of their occurrence is accurate.

The Department of Fisheries and Oceans (DFO) concluded that the proponent's Oil Spill Scenarios and Modelling Inputs in its environmental impact statement (EA REPORT) are inadequate.³ More particularly, DFO has concluded: "Regarding the trajectories of the oil spill, the trajectories presented in the document are unrealistic and do not serve the purpose."⁴

While Corridor purported to respond to these concerns, the fundamental conclusion reached by DFO scientists as expressed in the Fisheries Protection Program officer's letter to the Board of October 6, 2013, is:

...that the revisions to the "Oil Spill Fate and Behavior Modeling Updated Report" have not fully addressed all of the issues raised by DFO in the original review of the environmental assessment report. This results in increased uncertainties, and increases the risk that there may be inadequate preparedness to deal with the consequences of an oil spill in this area.

² *Cumulative Effects Assessment Practitioners' Guide* prepared for the Canadian Environmental Assessment Agency, February 1999.

³ DFO, Canadian Science Advisory Secretariat Science Response 2013/018, "Science Review of the Revised (2013) Old Harry Prospect Exploration Drilling Program", October 2013, Appendix 2, Item 2.

⁴ DFO, Canadian Science Advisory Secretariat Science Response 2013/014, "Science Review of the Old Harry Prospect Exploration Drilling Program", October 2013, p. 41.

Similarly, Environment Canada's letter of November 1, 2013 categorically refused to accept Corridor's position with respect to oil spill modelling, having concluded that "the Proponent continues to assert a position that is contrary to the advice provided."

More recently, in May 2014, an independent study concluded "there is a lack of scientific evidence to assess the impact of oil spills at Old Harry." As a result of the "limited independent scientific research available on the environmental risks of oil activities to inform this process... at the current time, Board decisions are not being informed by science."⁵

The same study from the Institut des sciences de la mer de Rimouski at l'Université du Québec à Rimouski concluded that "there is a clear need for comprehensive, independent, field-based scientific research on this project" that must take place "prior to issuing exploratory drilling licences."

The Board is therefore currently unable to assess the environmental effects of malfunctions or accidents in the form of oil spills that may occur in connection with the project, as required by s. 16(1)(a) of CEEA.

The result is that as a matter of both science and law, the Board cannot proceed in its consideration of this project without at least proper oil spill scenarios and modelling.

3. Innu and the Mi'gmaq rights and title in relation to the screening and permit

a. The project's affected area

Since time immemorial, the Gulf of St. Lawrence and its northern shore have been used and occupied by the Innu and they continue to do so, as discussed in more detail below. The governments of Canada and Québec, in 1979, accepted the use and occupation by the Innu of a vast territory that included the waters of the northern Gulf as the basis for treaty negotiations with the Conseil des Atikamekw et des Montagnais (CAM), of which Ekuanitshit was a part.⁶

Since time immemorial, the Mi'gmaq have used and occupied the Gulf of St. Lawrence and its southern shore, as well as Mawi Paqtapeg (Baie des Chaleurs) and they continue to do so, as discussed in more detail below. The governments of Canada and Québec, in 2008, reached an agreement with Mi'gmawei Mawiomi to establish a process for negotiation of a framework agreement for a comprehensive claim by its

⁵ D. Bourgault, F. Cyr, D. Dumont and A. Carter, 2014, "Numerical simulations of the spread of floating passive tracer released at the Old Harry prospect." Environ. Res. Lett. 9 054001.

⁶ Conseil Attikamek Montagnais, « Nishashtanan Nitasinan (Notre terre, nous l'aimons et nous y tenons) » (1979) IX :3 *Recherches amérindiennes au Québec* 171.

member Mi'gmaq communities of Gesgapegiag, Gespeg, and Listuguj to their traditional territory, including the waters of the southern Gulf.⁷

The project's Regional Area as defined by the proponent⁸ clearly includes these same areas. We believe that our lands and waters are also within the project's Affected Area, which the Board has defined as: "The area which could potentially be affected by project activities beyond the 'Project Area'."⁹

We cannot accept the proponent's definition of the relevant Affected or Study Area as consisting of only the 27,602 km² that it alleges include "the furthest extent of the drill cutting deposition modelling results,"¹⁰ since as set out above, DFO has concluded that the proponent's oil spill scenarios and modelling are inadequate.

We believe that the Board must therefore base its assessment and any subsequent decisions on the strong probability that the project's real Affected Area includes all those parts of the Gulf of St. Lawrence and Mawi Paqtapeg where we exercise our rights and title.

b. The Board's obligations and the Crown's duty to consult and accommodate

When conducting its screening under CEAA, the Board is clearly obliged by s. 16 to consider the significance of the environmental effects of the project on the current use of lands and resources for traditional purposes by aboriginal persons.

The Board also asserts the statutory power to issue the exploration licence sought by Corridor under s. 65 of the *Canada-Newfoundland Atlantic Accord Implementation Act*, SC 1987, c. 3.

The constitutional duty to consult and accommodate Aboriginal peoples with respect to the adverse effects that decision could have on the exercise of potential Aboriginal rights or title goes beyond a responsible authority's duties under s. 16 of CEAA.

At this point, we have not been informed as to whether the Board considers itself the federal Crown's delegate with respect to the consultation and accommodation that must take place before issuing the licence. Our view is that the duty is shared by the Board with the federal Minister of Natural Resources, since we understand he must review and

⁷ Niganita'suatas'gi IIsutaqann Agreement, 5 September 2008
<http://www.aadnc-aandc.gc.ca/eng/1298562489774/1298562750415>

⁸ Revised *Environmental Assessment of the Old Harry Prospect Exploration Drilling Program – Report*, February 2013, section 6.3.1.

⁹ CNLOPB, Scoping Document, 17 August 2011, section 5.1.1.

¹⁰ Revised EA Report, section 6.3.1.

approve your fundamental decision if you choose to issue an exploration licence: *Canada-Newfoundland Atlantic Accord Implementation Act*, ss. 31, 57(2).

What is clear is that legally, the Crown must take Aboriginal rights and title into account before issuing exploration licences.¹¹

c. Failure to consider Innu and Mi'gmaq issues

i. The EA Report's failure

We note that in August 2011, the Board had instructed the proponent to include in its EA Report:

- descriptions of “location, type, diversity and real extent of marine fish habitat in the Affected Area” and “[i]n particular, those indirectly or directly supporting... traditional, aboriginal, historical, present or potential fishing activity, and including any essential habitats (e.g. spawning, feeding, overwintering)”;
- descriptions of “traditional, existing and potential commercial, recreational and aboriginal/subsistence... fisheries in the Affected Area”;
- “the assessment of cumulative environmental effects” on “Fishing activities, including Aboriginal fisheries”.¹²

However, as a result of the proponent's unreasonably narrow definition of the Affected Area, this information is not properly included in the EA Report, neither as filed in December 2011 nor as revised in March 2013.

We are concerned about the poor quality of data in the EA Report because most Atlantic salmon populations are already suffering from poor marine survival rates, due to changes to marine ecosystems that are not yet properly understood, while oil and gas exploration in the Gulf could make the situation worse.

Since time immemorial, the most significant fishing activities of the Innu on the North Shore and of the Mi'gmaq in the Gaspé have concerned the Atlantic salmon, above all other species.

In the words of Fred Metallic of Listuguj:

In Mi'gmaq I say 'the salmon is my brother.' If the salmon is my brother, then he's no different than my uncle, my cousin, my aunt's husband who has passed away. And all

¹¹ *Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14, para. 38, 57.

¹² Scoping Document, sections 5.2.4, 5.2.12, 5.4.

these people are buried here, all these people who shared their experience and understanding of salmon fishing; they shared their experiences and knowledge of this territory. They taught my father everything that he knows about salmon fishing... and he taught me... we continue to give back to people through the salmon so that we can continue to acknowledge and strengthen that we are connected.¹³

An elder in Nutashkuan told interviewers in 2012 that every life form has a master and that for the salmon, that master is “Mesnak”. Another elder in the community said that respect for the spirit of Mesnak is connected to respect for the salmon. In his words: “There is a spirit for marine animals, Mesnak. He saw the fish that lived in the water and he offered them to the Innu.”¹⁴ An elder from Ekuanitshit said: “The salmon follows natives so that it can help them survive when they go into the forest – where there are Indians, there was always fish.”¹⁵

The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) has identified 16 designatable units of Atlantic Salmon, 11 of which are considered at risk, including the Anticosti Island, Gaspé-Southern Gulf of St. Lawrence, Inner St. Lawrence, Quebec Eastern North Shore and Quebec Western North Shore populations, though they are not yet listed under the *Species at Risk Act*.

The proponent admits in its EA Report that Atlantic salmon of both the Gaspé-Southern Gulf of St. Lawrence and Québec Eastern North Shore “migrating from freshwater streams to the North Atlantic may pass through EL [Exploration Licence] 1105.”¹⁶

DFO added that even if the migration routes of Atlantic salmon are generally not known at a level detailed enough to determine how often they pass through or near EL 11055, it is “likely that use of the Belle Isle route would be highest in salmon from the northern Gulf,”¹⁷ therefore making that migration a crucial factor in the assessment of the project. It is clear to the Mi’gmaq that salmon from the Restigouche River follow the currents through the Straits of Belle Isle on their way to the North Atlantic.¹⁸

DFO also criticized the EA Report for failing to discuss in sufficient detail the Atlantic salmon populations of the Quebec Western North Shore and the Inner St. Lawrence.¹⁹

¹³ Fred Metallic (Gopit), “Strengthening our Relations in Gespe’gewa’gi, the Seventh District of Mi’gma’gi” (2008), as cited in National Centre for First Nations Governance, Native Nations Institute for Leadership, Management, and Policy, *Making First Nation Law: The Listuguj Mi’gmaq Fishery*, August 2010.

¹⁴ Agence Mamu Innu Kaikusseht (AMIK), *Nutashkuan: Portrait-diagnostic de la pêche et du saumon atlantique*, 2013, p. 4.

¹⁵ AMIK, *Ekuanitshit: Portrait-diagnostic de la pêche et du saumon atlantique*, 2013, p. 4.

¹⁶ Revised EA Report, Table 5.2.

¹⁷ DFO, Canadian Science Advisory Secretariat Science Response 2013/014, p. 8.

¹⁸ Gespe’gewa’q Mi’gmaq Resource Council, “A review of the health, habitat and management of the Atlantic salmon in the Restigouche River”, 3 June 2010, section 2.1.

¹⁹ DFO, Canadian Science Advisory Secretariat Science Response 2013/014, p. 14.

Corridor's EA Report omits the fact that any adverse effect of the project on the Atlantic salmon of the Gaspé-Southern Gulf of St. Lawrence, Québec North Shore or the Inner St. Lawrence would also constitute an adverse effect on the most important Aboriginal subsistence fishery in those same regions.

Traditional knowledge about other species at risk in the St. Lawrence and the Gulf held by the Innu of the North Shore and the Mi'gmaq of Gespeg was the subject of a detailed study published in 2008 by the Innu aboriginal aquatic resource and oceans management agency, l'Agence Mamu Innu Kaikusseht,²⁰ but this study is not cited in the EA Report.

Finally, the EA Report acknowledges that in addition to their subsistence fisheries, Innu and Mi'gmaq communities around the Gulf hold Communal Commercial Fishing Licenses from DFO under which they fish and sell their catch.²¹ The EA Report also admits that "commercial fishing licenses are issued to Aboriginal peoples fishing" in the 4Ss NAFO Unit Area south of Anticosti Island and in the 4Tf area around the Magdalen Islands – the waters adjacent to the proposed exploration well.²²

However the proponent's definition of the Affected Area allows it to conclude with respect to these commercial fisheries that "the only expected interaction is in relation to the Project's supply vessel traffic." DFO has also criticized this approach, as discussed below.

In short, the EA Report fails to describe the Aboriginal fisheries affected by the project and the Board is therefore currently without the information on one of the environmental effects as defined in and required by CEAA.

ii. The Board's failure

The Board for its part has undertaken no meaningful consultation or accommodation of the Innu or Mi'gmaq with respect to this project.

In a letter from the Mi'gmawei Mawiomi Secretariat (MMS) dated April 27, 2012, the Mi'gmaq noted the Board's "decision to complete the update of the Western Newfoundland Strategic Environmental Assessment before proceeding with public consultations associated with the Environmental Assessment for a drilling program on exploration licence 1105." The Mi'gmaq expressed their "strong desire to be invited to

²⁰ S. Giroux et al, *Projet de collecte de connaissances autochtones sur les espèces marines en péril du Saint-Laurent: Rapport final*, Agence Mamu Innu Kaikusseht, Réseau d'observation des mammifères marins et Amphibia-Nature, 2008

²¹ EA Report, section 5.8.2.

²² EA Report, section 5.8.2.

participate in the next round of consultations in order to adequately present our concerns as rights holders as well as our opinions on the broader environmental effects of oil and gas activities in the waters of Gespe'gewa'gi.”

The Board therefore engaged in both its Strategic Environmental Assessment (SEA) of oil and gas development in the eastern Gulf of St. Lawrence and in its environmental assessment of this project after having received a clear request for meaningful consultation and accommodation of the Mi'gmaq of Gespe'gewa'gi (the Gaspé), but it did not respond.

Only a month before the MMS wrote to the Board, DFO made the following comment on March 12, 2012, about Corridor's original EA Report for this project:

A key concern that has been raised repeatedly by stakeholders to DFO is the need for additional consultation with fishery stakeholders including the commercial, recreational, Aboriginal Fisheries and the Aquaculture sector within the Gulf Region. The consultation program focused primarily on the “geographic region”, most likely to be affected by the project and included Western Newfoundland and the Magdellan [sic] Islands. It should be noted that the proposed exploratory well is near the border of NAFO zones 4R, 4S, 4T and 4VN, where Gulf Region fish harvesters participate in fisheries within close proximity to the proposed well location.

(emphasis added)

A full year later, in March 2013, Corridor responded as follows:

A summary of Corridor's public consultation is included in the Environmental Assessment document. Corridor conducted consultations in NL and the Magdalen Islands with key stakeholders, including fisheries groups. Corridor also obtained fisheries information from DFO. Any information on fisheries data that arose from the consultations conducted by Corridor and its consultants was included in the draft EA document. Consultation appropriate for a screening level EA of a single, short duration exploration well has already been conducted. Additional consultation is unlikely to result in information that would enhance the Old Harry EA or that would substantively change its conclusions. Fisheries effort in the vicinity of the proposed Old Harry well location show that minimal to no fishing activities are conducted within 30 km of the proposed well (see Figures 5.67-5.70 in the EA). In addition, the C-NLOPB has undertaken a public consultation process for the Strategic Environmental Assessment (SEA) update of the Western Newfoundland offshore area and fisheries stakeholders will be able to provide input on their activities in relation to proposed drilling activities in the Gulf of St. Lawrence. The updated regional fisheries information will be included in the SEA Update.²³

²³ Revised EA Report, Appendix B, Disposition Table of Regulatory Information Requests and Responses, Total Comment #49.

(emphasis added)

In short, Corridor took the position that any shortcomings in the consultation of Aboriginal peoples for this project would be remedied by the SEA for the part of the Gulf of St. Lawrence for which your Board is responsible.

While DFO deemed this response to be “adequate” and the Board offered no comment, we disagree.

Based on the Board’s position in response to our earlier comments on the draft SEA Update, the strategic environmental assessment as you conducted it cannot substitute for meaningful consultation of the Aboriginal peoples affected by this project.

As you know, we pointed out in our September 27, 2013 submissions on the SEA that:

Your draft update report contains less than two pages on Aboriginal use and occupation, a significant part of which is irrelevant to the issue of use and occupation of the waters and shores of the Gulf (for instance, the paragraph on membership and governance rules of the Qalipu Mi’kmaq First Nation): 4.3.5.5. The draft also contains an appendix describing so-called “consultation and engagement,” but it merely summarizes what our communities told your representatives during meetings: Consultation Report (Draft), pp. 51, 56.

By contrast, Québec’s EES2 [second strategic environmental assessment] resulted in a report that includes a dozen single-spaced pages on the Aboriginal use of the marine and coastal environment. It cites more than a dozen scholarly works on the subject, in addition to government reports: EES2, 3.4.8. Nevertheless, the EES2 still identifies Aboriginal fishing as one of the continuing “gaps” in the state of knowledge that requires further research: Tableau 8.1.

Your draft update report does not propose any further research, nor does it propose any further “engagement” with our nations, despite our constitutionally-protected rights in these waters.

While your report refers to the “Aboriginal engagement” that took place as “an important and integral component of the SEA Update” (p. 1), that process did not constitute a meaningful consultation: it was mere information gathering.

The letters you cite as “engagement” invited Innu and Mi’gmaq communities to public information sessions, the notice was no longer than 30 days and only one of the towns where they were held was near a Québec reserve (Havre St-Pierre, near Ekuanitshit): Consultation Report (Draft), Attachment C. When the Innu of Ekuanitshit took you up on your offer of a meeting, your staff needed an interpreter in order to deal effectively with a community whose second language is French.

...

Even when our communities expressed their concerns very specifically and clearly, your draft update report does not show that you considered the need for changes to the rules governing oil and gas exploration based on the information you obtained from us.

As a result, we asked that among other things, the Board should:

- conduct a survey and analysis of the literature on Innu and Mi'gmaq use and occupancy of the Gulf of St. Lawrence at least as comprehensive as in EES2 and also determine a means by which to collect and apply traditional indigenous knowledge;
- set out a realistic schedule for meeting with as many of the Innu and Mi'gmaq communities as possible, in all five provinces, in order to identify our concerns about the possibility of oil and gas exploration, including providing capacity for our participation;

The Board declined to take these measures when after seven months, you responded to our submissions in your April 30, 2014 letter that stated:

We are of the view that your comments, and those of other groups and individuals, have been appropriately solicited, received and reviewed in preparation of the SEA Update. The SEA Update is not a process which "assesses", "approves" or "authorizes" any project-specific oil and gas activity. We are of the view that the preparation of the SEA Update does not trigger or prompt any additional "duty to consult" obligation on the Crown. The issuance of exploration licences, project-specific environmental assessments and approvals and authorizations processes for oil and gas activities will provide opportunities for further public consultation and may trigger or prompt a duty to consult.

(emphasis added)

The Board is now before precisely the kind of "issuance of exploration licences" and "project-specific environmental assessments and approvals and authorizations processes for oil and gas activities" that you stated "may trigger or prompt a duty to consult." However the Board failed to consult the Innu and the Mi'gmaq in relation to the Old Harry Prospect assessment that it was conducting at the same time that it took this position on the SEA.

Moreover, we have yet to receive an answer to the questions we raised in our June 2, 2014 letter to the Board in response to your position on the SEA and the Crown's duty to consult and accommodate:

- By what means and according to what schedule do you plan to fill the gaps we identified in the data collected for the purposes of the SEA, particularly those

concerning the use and occupation of the waters by the Innu and the Mi'gmaq, as well as the gaps concerning the biophysical environment?

- If your intention is to defer that work till permits are issued, till projects are subject to environmental assessment, or till activities are authorized, how do you intend to apply an ecosystem approach to the data collection and how you intend to take cumulative effects into account?

To summarize, at this point, the Board has:

- accepted an environmental assessment report on Corridor's application for an exploration permit that fails to address Innu and Mi'gmaq rights and title;
- issued an SEA Report on oil and gas activities in the region that fails to address Innu and Mi'gmaq rights and title, a course of action it has justified by stating that consultation may occur at the environmental assessment and permitting stages for particular projects; and
- proposed no means by which the Crown will respect its duty to consult and accommodate Innu and Mi'gmaq rights and title before it reaches a decision on its environmental assessment and Corridor's permit application.

We believe that the Board cannot legally proceed to render any decision on the Old Harry Prospect until the Crown has engaged in a meaningful consultation and accommodation of our nations.

d. Summary of use and occupation

i. Introduction

As we explained out in our September 27, 2013 submissions on the SEA, the Innu and Mi'gmaq communities whose reserves are located in Québec nevertheless use and occupy a territory beyond the boundaries created for that province.

The following is a summary description of traditional and current Innu and Mi'gmaq use and occupation of the lands and waters affected by the project and is not meant to be exhaustive. It is provided in order to inform the Board of a range of possible effects of the project on our rights and title.

The Crown's duty to consult and accommodate our nations includes a proactive duty to provide our communities with the capacity to participate meaningfully in the process. So far, we have not received any support even though it would be necessary in order to provide a description of our use and occupation and of the project's effects of that use and occupation of a quality sufficient for such a complex and important decision.

ii. Communal Commercial Fishing Licenses

As discussed above, the EA Report acknowledges that “commercial fishing licenses are issued to Aboriginal peoples fishing” in the 4Ss NAFO Unit Area south of Anticosti Island and in the 4Tf area around the Magdalen Islands – the waters adjacent to the proposed exploration well.²⁴

In fact, licenses that are valid in any one of the 4R, 4S or 4T NAFO Unit Areas are valid in all of them. Those held by Innu and Mi'gmaq communities whose reserves are in Québec, include licenses for:

- groundfish, held by Agence Mamu Innu Kaikusseht (AMIK)²⁵ and by Essipit, Innu Takuaiakan Uashat mak Mani-Utenam, Nutashkuan and Pessamit among the Innu;
- cod and turbot, held by Innu Takuaiakan Uashat mak Mani-Utenam among the Innu and by Gesgapegiag, Gespeg and Listuguj among the Mi'gmaq;
- halibut, held by Gesgapegiag, Gespeg and Listuguj among the Mi'gmaq;
- winter flounder, held by Gesgapegiag among the Mi'gmaq.

Moreover, in the fishing zones designated for each species by DFO and that adjoin the Project Area as defined by Corridor (the upper two-thirds of EL 1105),²⁶ at least a dozen Communal Commercial Fishing Licenses are held by Aboriginal communities whose reserves are in Québec.

These include licenses for:

- snow crab in Zone 12B, held by Listuguj and Unamen Shipu;
- lobster in Zone 17B, held by Gespeg and Innu Takuaiakan Uashat mak Mani-Utenam;
- mackerel in Zone 16, held by Gespeg, Gesgapegiag, Pessamit, and Innu Takuaiakan Uashat mak Mani-Utenam;
- mackerel in Zones 13 and 15, held by Innu Takuaiakan Uashat mak Mani-Utenam;

²⁴ EA Report, section 5.8.2.

²⁵ Ekuanitshit, Essipit, Nutashkuan, Pakua Shipu, Pessamit, Uashat mak Mani-Utenam, Unamen Shipu

²⁶ EA Report, section 6.3.1.

- herring in Zone 15, held by Ekuanitshit, Pakua-Shipi, Innu Takuaikan Uashat mak Mani-Utenam, Nutashkuan, and Unamen Shipu;
- shrimp in Zone 9, held by Innu Takuaikan Uashat mak Mani-Utenam, Gespeg, and Gesgapegiag.

The effects of this project on Innu and Mi'gmaq commercial fishing are not limited to the DFO zones or NAFO Unit Areas immediately adjacent to or surrounding the Project Area, since the Gulf of St. Lawrence is a semi-enclosed Sea that requires an integrated approach.²⁷

Nevertheless, these particular Communal Commercial Fishing Licenses demonstrate how immediate the interests of the Innu and Mi'gmaq in this project are and how little the proponent has taken them into account.

iii. Innu rights and title

The Innu use and occupy a vast territory encompassing the entire Saint Lawrence watershed from the Saguenay – Lac St. Jean to Labrador. They call this territory “Nitassinan” (our land).

In the fall, the Innu traditionally left their camps at the mouths of the major North Shore rivers that flow into the estuary and the Gulf of Saint Lawrence, to travel up river to the interior (*Nutshimiu*), where the Innu spent the winter hunting caribou. In the spring, they travelled back to the Saint Lawrence, coinciding with the arrival of Canada geese on the shore in May and the Atlantic salmon run in the rivers in June.²⁸

Fishing has therefore always played an important role in the Innu's activities generally and particularly for those who used the salmon rivers of the North Shore, such as the Moisie (*Mishta-shipu*), Romaine (*Unamen-shipu*) or St. Augustin (*Pakut-shipu*) rivers²⁹. When smoked, salmon allowed the Innu to make provisions for the long journey to the winter hunting grounds.

The culmination of the Innu's yearly cycle of traditional activities in the summer on the shore of the St. Lawrence was not only a time to fish in the mouth of its tributary rivers,

²⁷ C-NLOPB, *Western Newfoundland and Labrador Offshore Area Strategic Environmental Assessment Update - Final Report*, section 4.1.4; Conference of the Parties to the *Convention on Biological Diversity*, COP 10 Decision X/29, Marine and coastal biodiversity (2010), para. 71.

²⁸ Musée régional de la Côte-Nord, *Nametau Innu: Memory and knowledge of Nitassinan*, “Territory and Traditional Life Cycles”, 2010 (<http://www.nametauinnu.ca/en/home/science/tool/cycle>).

²⁹ Thierry Rodon, « Les Innus d'Uashat mak mani-Utenam et la pêche au saumon de la Moisie : de la confrontation à la cogestion » in Paul Charest, et al., *Les pêches des premières nations dans l'est du Québec: Innus, Malécites et Micmacs*, Québec, Presses de l'université Laval, p. 116.

but also a time to hunt marine mammals and waterfowl, including on the islands in the estuary and the Gulf.³⁰

Fishing was managed by the families, which generally had their own traditional fishing sites. The catch was shared with family members and friends and sometimes traded for other supplies. Overfishing was not punished directly, but the elders say that everyone knew what the effect of overfishing would be: overfishing in one year meant a smaller catch in subsequent years and meant going hungry. Fishing was for survival and abusing that right was life-threatening. In addition to avoiding waste, respect for the animal also meant respecting its cycles: as a result, the Innu avoided fishing in spawning grounds in order to allow the fish time to reproduce.³¹

The Innu continue to use the resources of the St. Lawrence for food and communal purposes, including:

- fishing for Atlantic Salmon (*ushashameku*) and brook trout on the shore (*uinipeku-matameku*);
- collecting goose eggs (*nishk*) in the peat bogs between its tributaries and the St. Lawrence and collecting eggs from other species on the islands at the mouths of the tributary rivers in the St. Lawrence;
- hunting waterfowl in the St. Lawrence, such as goose and the black guillemot (*shikauniss*);
- gathering edible plants that grow along the St. Lawrence, such as black crowberry (*ashtshiminanakashi*) and small cranberries (*mashtshekuminanakashi*), especially in the peat bogs (*masseku*)³²;
- fishing for lobster (*natau-shatsheueu*) and scallops with harpoons;
- collecting other shellfish (*eshat*) along the coast³³.

The Innu's traditional lifestyle was based on values of sharing, exchange and respect. Fishing was an activity practiced for subsistence and the Innu only fished for as much salmon as they needed to eat, avoiding waste. The elders say that respect for the salmon is demonstrated above all by avoiding waste³⁴.

A recent study of fishing and community management of the salmon by the Innu of Ekuanitshit concluded that among those who took part, the words that came up most

³⁰ Hydro-Québec, *Étude d'occupation et d'utilisation du territoire par les Innus d'Ekuanitshit*, Août 2008, p. 4-3.

³¹ Pierre Verreault et al., *Pêches des communautés Innues de la Côte-Nord : Étude de cas à dimension multiple*, AMIK, Octobre 2013, p. 10.

³² Daniel Clément, *Le savoir innu relatif à la Unaman-shipu*, rapport présenté à Hydro-Québec Équipement, Septembre 2007.

³³ Musée régional de la Côte-Nord, *Nametau Innu: Memory and knowledge of Nitassinan*, "Seafood", 2010 (<http://www.nametauinnu.ca/en/nomad/detail/41>).

³⁴ Pierre Verreault et al., *Op. Cit.*, p. 11.

often were food, respect and sharing. Sharing is the most important value reported and respect is shown through conservation; in addition, salmon remains an important source of high-quality food, harvested by most of the community..³⁵ These are the values that led an Innu in Nutashkuan to say: “Salmon fishing perfectly represents the Innu way of life. That way of life is proof of spirituality, of communion with nature and proof of respect for nature.”³⁶

iv. Mi'gmaq rights and title

The Mi'gmaq use and occupy a vast territory that includes a large part of the Atlantic provinces, as well as the Gaspé peninsula and also the Magdalen Islands.³⁷ They refer to the territory of the Mi'gmaq nation as *Mi'gma'gi*.

The Mi'gmawei Mawiomi occupy the lands and waters of Gespe'gewa'gi or the Seventh District of Mi'gma'gi. The heart of this district is what is known today as the Gaspé peninsula, including its rivers and surrounding waters and islands, particularly the Maqtugweg (Gulf of Saint Lawrence) and the Mawi Paqtapeg (Baie des Chaleurs).³⁸

Among the Aboriginal peoples of present-day northeastern Canada, the Mi'gmaq traditionally made a particularly intense use of the resources of the sea, harvesting from the communities they established on coasts such as on the Gulf of St. Lawrence during the warm seasons between March and October and before they moved to the interior in winter.

The Mi'gmaq fishing season began in the spring with the break-up of shore and river ice, when the population moved to the bays, estuaries, coves, and river mouths of the coasts known for their good runs, such as the estuary of the Getnig (Restigouche) or the Gesgapegia'jg (Cascapedia) Rivers that flow into the Mawi Paqtapeg (Baie des Chaleurs).

Fishing began with shallow water fish exposed by the melting ice, the most important of which were the winter flounder (*anagwaach*). The next fishing season was the spawning runs of anadromous and catadromous fish species – those migrating from fresh water to the sea to spawn or the reverse – that appeared in particularly dense groups at particular times of the year and could then be intercepted in the mouths of rivers. These

³⁵ Agence Mamu Innu Kaikusseht (AMIK), *Ekuanitshit : Portrait-diagnostic de la pêche et du saumon atlantique*, 2013, pp. 4-6, 12.

³⁶ AMIK, *Nutashkuan : Portrait-diagnostic de la pêche et du saumon atlantique*, 2013, p. 4.

³⁷ P. Dumais and G. Rousseau, “Menagoesenog, ou les îles de la Madeleine: contexte environnemental” in C.A. Martin (éd.), *Les Micmacs et la mer* (Montreal : Recherches amérindiennes au Québec, 1986), pp. 67-97.

³⁸ Mi'gmawei Mawiomi Secretariat, *Nm'tginen: Me'mnaq ejiglighmuetueg gis na naqtmueg*. a Statement of Claim to the Seventh District of the Mi'gmaq national territory of Mi'gma'gi, October 2007.

species included smelt (*gaqpesaw*) around March, alewife in April, sturgeon (*komkudamoo*) and the salmon (*plamu*). In May, salmon again in July and August, eel (*ga'tej*) in September and Atlantic tomcod as late as December.

The spawning runs were accompanied by the migration of sea-bird species which nested in the same areas: they were hunted during the spring and their eggs were collected from offshore islands. Another sea-bird hunt took place at the beginning of autumn, during the southward migrations.

During spring and summer, the Mi'gmaq could also harvest marine invertebrates, especially the shellfish that were abundant and easy to catch during the warm seasons. These included oysters (*mntmu*), scallops (*sasqale's*), the quahog or hard clam (*upkwaask* or *boogoonumowaas*), the soft clam (*a'suk*), the American lobster (*jakej*) and the northern crab (*numjinegech*). The oysters found in the waters of the southern gulf of St. Lawrence were not used only for food, the shells were also used for wampum.

Finally, the sea allowed the Mi'gmaq to harvest the marine mammals that were abundant in the Gulf, such as the walrus and also seal during its whelping season in the fall or winter.³⁹

The right of the Mi'gmaq to harvest these species were preserved by the treaties they entered into with the British Crown beginning at least with Mascarene's Treaty of 1725, and including the Treaties of Peace and Friendship of 1760 and 1761, as well as Francklin's Treaty of 1779, which ratified the terms of the previous treaties.

The Mi'gmaq continue to harvest these species and they continue to be concerned for their survival. At a workshop held by the Gespe'gewaq Mi'gmaq Resource Council with Mi'gmaq elders about salmon, many participants expressed concerns about contaminants in the water, declining stocks and the need for management plans to address the threats to the salmon's habitat.⁴⁰ In some cases, such as eel, harvesting by the Mi'gmaq has declined because the waters of the Resitgouche River and Baie des Chaleurs were polluted by industry to the point that Mi'gmaq no longer believed the fish was safe to eat.⁴¹

³⁹ Norman Clermont, "L'adaptation maritime au pays Micmac," in Charles A. Martijn (ed.), *Les Micmacs et la mer* (Montreal: Recherches Amérindiennes au Québec, 1986); Bernard G. Hoffman, "The historical ethnography of the Micmac of the sixteenth and seventeenth centuries", Ph.D. diss., University of California, 1955.

⁴⁰ Gespe'gewaq Mi'gmaq Resource Council, "A review of the health, habitat and management of the Atlantic salmon in the Restigouche River", 3 June 2010, section 2.1.

⁴¹ GMRC, "Perceptions of American eel habitat in Gespe'gewa'gi = Ta'n telnenas'gl ga'te'gati'l Gespe'gewa'gig", 2007.

The Mi'gmaq believe they are in Gespe'gewa'gi in order to take care of its land and waters, including the Maqtugweg (Gulf of Saint Lawrence), and its resources, including all living and non-living things.

The Mi'gmaq have always believed all things in nature were created as equals, including them, “for man was only one part of a totally interdependent system that saw all things, animate and inanimate, in their proper places”.⁴²

The foundational principle of Mi'gmaq governance is *Gepmite'taqan* or respect: “respect and care for all beings within the territory and the importance of maintaining the well-being of our homeland.”

An Elder from Gesgapegiag spoke about respecting the land for the generation to come: *Aq ge'itmite'tman goqwei, mu pas'g ge'itmite'tmu ugjit gi'l gisgug, gepmite'tm ugjit ta'nig ula wejgwita'jig, gnngi'gwinaqi'g, na ninen ne'gaw teliangita'sultieg, ula nige' wejwigutijig, ta'n telo'tmi'tij na gji'tutesnug twenty years time.*

Translated: *When you respect something, you don't respect it just for today. You respect it for those who are coming, our children. This is what we've always believed. These generations coming will show us the benefits of this understanding.*⁴³

v. Traditional ecological knowledge

An elder of the Eskasoni Mi'kmaq, Albert Marshall, has advocated what he calls *Etuaptmumk* or “two-eyed seeing,” which means “learning to see from one eye with the strengths of Indigenous knowledges and ways of knowing, and from the other eye with the strengths of Western [scientific] knowledges and ways of knowing ... and learning to use both these eyes together, for the benefit of all.”⁴⁴

We are concerned that in the environmental assessment as carried out so far, neither eye is fully open.

⁴² According to a historian, “...the Micmacs [sic] accorded animals the same esteem they gave each other. They spoke of them as though the animals lived in the same way, each species a separate tribe living in two villages under its own chiefs...It was all one world indivisible”: L. F. S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver: University of British Columbia Press, 1979), p. 273.

⁴³ MMS, *Nm'tginen*, p. 60.

⁴⁴ <http://www.integrativescience.ca/Principles/TwoEyedSeeing/>

As discussed above, a detailed study of traditional knowledge about endangered species in the St. Lawrence and the Gulf held by the Innu of the North Shore and the Mi'gmaq of Gespeg was published in 2008,⁴⁵ but is not cited in the EA Report.

For its part, the Board has failed to make use of section 16.1 of CEAA, which gives responsible authorities conducting an environmental assessment the discretion to consider Aboriginal traditional knowledge.

The Canadian Environmental Assessment Agency has instructed responsible authorities that:

ATK [Aboriginal traditional knowledge] is held by the Aboriginal people who live in the area of a proposed project, and who have a long relationship with the lands and resources likely to be affected. As such, the input of ATK into the EA process can assist in an EA in many ways. For instance, ATK can:

- provide relevant biophysical information, including historical information, that may otherwise have been unavailable;
- help identify potential environmental effects;
- lead to improved project design;
- strengthen mitigation measures;
- contribute to the building of enhanced long-term relationships between proponents, Aboriginal groups, and/or responsible authorities;
- lead to better decisions; and
- contribute to the building of EA and ATK capacity within Aboriginal communities and build an awareness of, and appreciation for, ATK in non-Aboriginal communities.

For example, Aboriginal traditional knowledge could have been used in identifying valued ecosystem components (VECs), the impacts on these VECs, or knowledge gaps relevant to these VECs. Instead, the EA Report only presents the VECs selected by the proponent.⁴⁶

In order for Aboriginal traditional knowledge to be considered by responsible authorities in an environmental assessment, the Canadian Environmental Assessment Agency suggests that:

- communities be contacted early in the EA process and informed that their input is being sought;
- communities be provided with the opportunity to determine whether or not they wish to provide ATK to the EA;

⁴⁵ S. Giroux et al, *Projet de collecte de connaissances autochtones sur les espèces marines en péril du Saint-Laurent: Rapport final*, Agence Mamu Innu Kaikusseth, Réseau d'observation des mammifères marins et Amphibia-Nature, 2008

⁴⁶ EA Report, section 6.2.

- community members be provided with clear and accurate information about the project, the EA, the EA process, which kinds of ATK may be sought, and how any ATK provided may be incorporated into the EA process;
- practitioners be prepared for unforeseen delays and make extra efforts for ongoing and extensive communications with communities;
- practitioners place their ATK collection efforts in the context of broader long-term relationship-building. Thus, the establishment of a relationship of trust with the community, its leaders, and ATK holders is crucial; and
- where language may be an issue, translation may be necessary.⁴⁷

None of those steps have been followed by the Board, so far as we know and the result is an additional data gap in the environmental assessment.

Conclusion

Since time immemorial, the Gulf of St. Lawrence and its northern shore have been used and occupied by the Innu, while the Gulf and its southern shore and and Mawi Paqtapeg (Baie des Chaleurs) have been used and occupied by the Mi'gmaq and both our peoples continue to occupy those coastal lands and waters.

We are concerned about the state of environmental assessment your Board is conducting into the proposal by Corridor Resources to drill an exploration well at the Old Harry prospect, known as Exploration Licence 1105.

The Board is obliged under the *Canadian Environmental Assessment Act* to assess any change that the project may cause to the environment, including current use of lands and resources for traditional purposes by aboriginal persons. Those changes include the environmental effects of malfunctions or accidents that may occur in connection with the project. The basic purpose of the assessment is to ensure that the project does not cause significant adverse environmental effects.

With respect to the oil spills, the Board is currently unable to determine the likelihood of significant adverse environmental effects from these malfunctions or accidents because there is no certainty that the proponent's scenarios and modelling are accurate. On the contrary, both DFO and independent scientists have concluded that Corridor's modelling is unreliable.

Since the proponent's oil spill scenarios and modelling are inadequate, we cannot accept the proponent's definition of the relevant Affected or Study Area as consisting of

⁴⁷ Canadian Environmental Assessment Agency, "Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act -- Interim Principles", 2004.

only the 27,602 km² that it alleges include “the furthest extent of the drill cutting deposition modelling results.”

We believe that the Board must instead base its assessment and any subsequent decisions on the strong probability that the project’s real Affected Area includes all those parts of the Gulf of St. Lawrence and Mawi Paqtapeg where we exercise our rights and title.

Moreover, oil spills are only one of the data gaps in the environmental assessment as it now stands. In particular, the Environmental Assessment Report filed by the proponent fails to address our peoples’ use of the Gulf of St. Lawrence and Mawi Paqtapeg.

For instance, Corridor was asked by DFO to provide more and better information of the effects of the project on the Atlantic salmon of the Gaspé-Southern Gulf of St. Lawrence, Québec North Shore and the Inner St. Lawrence. However, its EA Report omits the fact that any adverse effect on the salmon would also constitute a significant adverse effect on the most important Aboriginal subsistence fishery in those same regions.

Even when the EA Report acknowledges that Innu and Mi’gmaq communities around the Gulf hold Communal Commercial Fishing Licenses from DFO in the 4Ss NAFO Unit Area south of Anticosti Island and in the 4Tf area around the Magdalen Islands – the waters adjacent to the proposed exploration well – the proponent’s narrow definition of the Affected Area allows it to conclude the Innu and Mi’gmaq communities will be not be affected by the project.

In short, the EA Report fails to describe the Aboriginal fisheries affected by the project and the Board is therefore currently without adequate information on the significance of the project’s environmental effects on the current use of lands and resources for traditional purposes by aboriginal persons, as required by CEAA.

The Crown also has a constitutional duty to consult and accommodate Aboriginal peoples with respect to the adverse effects that the Board’s decision on the exploration licence could have on Innu and Mi’gmaq rights or title. This duty goes beyond a responsible authority’s duties under CEAA.

While we have not been informed as to whether it is the Board or the federal Minister of Natural Resources who plans to carry out this duty, it is clear is that the Crown must take Aboriginal rights and title into account before issuing exploration licences

However, we are concerned by the fact that after DFO commented on the lack of consultation of Aboriginal communities by the proponent, DFO nevertheless accepted Corridor’s position that any shortcomings in the Aboriginal consultation for this project

would be remedied by the Strategic Environmental Assessment for the part of the Gulf of St. Lawrence for which your Board is responsible.

Based on the Board's position in response to our earlier comments on the draft SEA Update, the strategic environmental assessment as you conducted it cannot substitute for meaningful consultation of the Aboriginal peoples affected by this project.

Your Board issued an SEA Report on oil and gas activities in the region that failed to address Innu and Mi'gmaq rights and title, but when we asked you to correct the situation, you declined on the basis that consultation might occur at the environmental assessment and permitting stages for particular projects.

Even though the Board is now before precisely the kind of "issuance of exploration licences" and "project-specific environmental assessments and approvals and authorizations processes for oil and gas activities" that you stated "may trigger or prompt a duty to consult," you have still not consulted the Innu and the Mi'gmaq about the Old Harry Prospect.

The Board cannot now legally proceed to render any decision on the exploration licence until the Crown has engaged in a meaningful consultation and accommodation of our nations.

We have provided a summary description in this letter of traditional and current Innu and Mi'gmaq use and occupation of the lands and waters affected by the project. The description is not meant to be exhaustive but is provided in order to inform the Board of a range of possible effects that must now form a part of your decision-making. .

We look forward to beginning a meaningful process of consultation and accommodation by the Crown before any further steps are taken.

Yours,



Chief Jean-Charles Piétacho
Conseil des Innu de Ekuanitshit



Chief Claude Jeannotte
Chairperson
Mi'gmawei Mawiomi

cc: Hon. Greg Rickford, P.C., M.P.
Minister of Natural Resources Canada
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