



Kwilmu'kw Maw-klusuaqn Negotiation Office
Mi'kmaq Rights Initiative

Our Rights. Our Future.

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September 10, 2021

Amanda Park
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Newfoundland and Labrador Satellite Office
901-10 Barter's Hill
St. Johns, N.L., A1C 6M1

RE: Bay du Nord Development Project - Invitation to Comment on Draft EA Report

Ms. Park,

I am writing in response to your e-mail dated August 11, 2021 with respect to consultation under the *Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process (ToR)* as ratified on August 31, 2010 on the above noted project.

The Mi'kmaq Nation in Nova Scotia has a general interest in all lands and resources in Nova Scotia as the Mi'kmaq Nation has never surrendered, ceded, or sold the Aboriginal title to any of its lands in Nova Scotia. The Mi'kmaq have a title claim to all of Nova Scotia and as co-owners of the land and its resources it is expected that any potential impacts to rights and title shall be addressed. Clearly, this project will impact Mi'kmaq Rights and Title. Should any unplanned environmental impacts and/or environmental accidents occur during the development, operations, and reclamation of the proposed Project it is our expectation that the Mi'kmaq of Nova Scotia will be compensated thoroughly.

On behalf of Kwilmu'kw Maw-Klusuaqn Negotiation Office (KMKNO), please see attached AECOM's Review of the Canadian Environmental Assessment Agency Draft EA Report and Potential Conditions for the Bay du Nord Development Project as part of our comment submission. This review highlights gaps of information and provides comments and recommendations on various parts of the EA Report and Potential EA conditions.

KMKNO does not represent the communities of Millbrook, Sipekne'katik, Membertou or We'koma'q First Nations. We do however encourage further consultation with these communities as they may have interest in the proposed project area.

We kindly request that all information and continued correspondence be forwarded to KMKNO to facilitate the flow of the process and communication. Please contact Patrick Butler, Mi'kmaw Energy and Mines Advisor at KMKNO for any further questions.

Yours in Recognition of Mi'kmaw Rights and Title,

<Original signed by>

Twila Gaudet, B.A., LL. B.
Director of Consultation
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c.c.:

Chief Annie Bernard, We'koqma'q First Nation.

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I. Murphy, Canada-Newfoundland and Labrador Offshore Petroleum Board.

S. Curran, Equinor Canada Ltd.



Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO)

Review of the Canadian Environmental Assessment Agency Draft EA Report and Potential Conditions for the Bay du Nord Development Project

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Date: September 2021

Project#: 60565441

Distribution List

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

Mr. Patrick Butler
Consultation Researcher
Kwilmu'kw Maw-klusuaqn Negotiation Office
75 Treaty Trail
Millbrook, Nova Scotia B6L 1W3

September 7, 2021

Project #
60565441

Dear Mr. Butler:

Subject: Review of the Canadian Environmental Assessment Agency Draft EA Report and Potential Conditions for the Bay du Nord Development Project

AECOM Canada Ltd. (AECOM) is pleased to provide Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) with this draft report on AECOM's review of the draft Environmental Assessment Report and potential EA Conditions prepared by the Impact Assessment Agency of Canada for the Bay du Nord Development Project, completed by Equinor Canada Ltd.

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

Sincerely,
AECOM Canada Ltd.

<Original signed by>

Derek Heath
Senior Project Manager, Canada East
Derek.Heath@aecom.com

DH:mm
Encl.

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Table of Contents

	page
1. Introduction	1
1.1 AECOM's Mandate	1
1.2 Project Overview	1
1.3 Environmental Assessment Process	4
2. Review Method.....	5
3. Results	6
4. Conclusions and Recommendations	10
5. Review Limitations	12

List of Figures

Figure 1: Project Location	3
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List of Tables

Table 1: Review of Bay du Nord Development Project Draft EA Report and Potential EA Conditions	7
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Appendices

Appendix A. Table A-1 List of Acronyms and Abbreviations	
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1. Introduction

1.1 AECOM's Mandate

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

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

This report summarizes AECOM's review of the Impact Assessment Agency of Canada (the Agency) draft EA Report and potential EA Conditions for the Bay du Nord Development Project. **Appendix A** contains a list of acronyms and abbreviations used throughout this report.

1.2 Project Overview

Equinor Canada Ltd. is proposing to develop the Bay du Nord field, which includes Bay du Nord, Bay de Verde and Bay de Verde East and the Baccaieu discovery (collectively the Core Bay du Nord [BdN]) and Project Area Tiebacks (if additional economically recoverable reserves within the Project Area are developed) for the production of oil and gas. The Project is located approximately 500 km east-northeast of St Johns, outside of Canada's 200 nautical miles Exclusive Economic Zone (**Figure 1**). The Project Area (the area in which development takes place) will cover an area of approximately 4,900 km² in waters 340 m to 1,200 m deep. Within the Project Area, the Core BdN Development will occur primarily within Significant Discovery Licence (SDL) 1055, SDL 1056 and SDL 1057 and portions of Exploration Licence (EL) 1143 and EL 1157, an area of approximately 470 km² in water depths ranging from 1,000 m to 1,200 m. According to the current design, the footprint of the Project facilities on the seabed will cover approximately 7 km².

The Project includes the offshore construction, installation and hook-up and commissioning, production and maintenance operation, drilling activities, supply and servicing, supporting surveys, and decommissioning. The Proponent will drill up to 40 wells with an estimate of between 5 and 20 production wells serviced by a floating production, storage and offloading facility (FPSO). Logistics support will be provided through a fleet of supply vessels, helicopters and tankers. Extracted crude oil will be offloaded from the production installation via a shuttle tanker; the activity of shipping crude oil, along with land-based activities are included within the scope of the assessment.

As described in detail in the EIS and the EA Report, activities associated with the Project include:

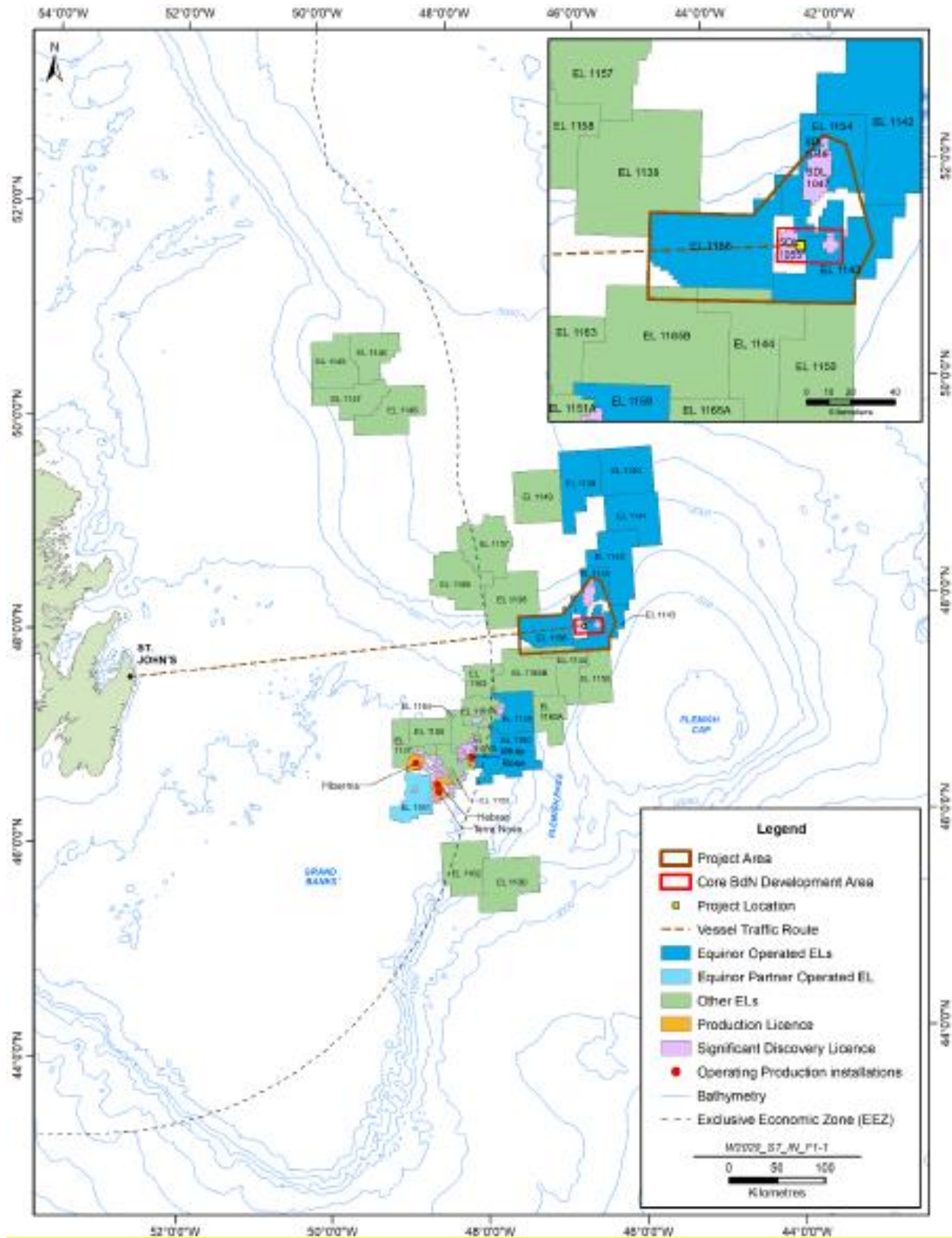
- **Mobilization of FPSO**
 - The FPSO will be connected to moorings via the turret. Lowlines and umbilicals will be tied-in via the turret also.

- **Subsea infrastructure**
 - Subsea infrastructure will include well templates with wellhead and wet trees (production, water and gas injection), production and water injection manifolds, flowlines (gas injection, production, water injection), FPSO/ turret moorings, riser bases, umbilicals and a fibre optic cable.
 - Well installation.
 - Wells will be drilled using either a floating semi-submersible or a drillship.
- **Supply and Servicing of the Development**
 - The development will be supported by various logistical activities, including existing onshore supply base and warehousing, offshore supply vessel (OSV), standby vessels (SBVs), helicopters and airports.
- **Decommissioning**
 - The Project will be decommissioned by 2058, should Project area tiebacks be realized.

The development will be supported by several surveys that underpin the production and drilling activities. These surveys include:

- Geophysical / Geohazard / Wellsite and Seabed Surveys
- 2D / 3D / 4D Surveys
- Vertical Seismic Profiling (VSP) Surveys
- Environmental Surveys
- Geotechnical Surveys
- ROV / AUV Surveys

The Proponent proposes to commence development of the Project area in 2023, with activities extending to 2058, should Project area tiebacks be realized. Production duration is anticipated to be 20 to 30 years. Drilling is not anticipated to be continuous and may occur year-round and at any time over the life of the Project.



(Adopted from Bay du Nord Development Project: Summary of Environmental Impact Statement, 2020)

Figure 1: Project Location

1.3 Environmental Assessment Process

The proposed Project requires review and approval pursuant to the *Canadian Environmental Assessment Act* (CEAA 2012), as the Agency determined that it constitutes a “designated project” under the associated Regulations Designating Physical Activities, as it includes:

“The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.”

The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) also requires that Project-specific EAs be conducted pursuant to the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* and the *Canada-Newfoundland Atlantic Accord Implementation Act* (“the Accord Acts”).

The EA review of the Project under CEAA 2012 commenced on June 22, 2018, with the proponent’s submission of a Project Description and associated Summary Documents to the Agency. These documents were made available for government and public review, following which the Agency determined that a federal EA was required for the Project. Notices of EA Determination and EA Commencement were posted on August 9, 2018, followed by the final EIS Guidelines on September 26, 2018.

The Proponent submitted a draft Environmental Impact Statement (EIS) and EIS Summary to the Agency on February 12, 2019. Following a conformity review, the Agency issued a letter to the proponent on July 10, 2020, indicating that the documents conform to the EIS Guidelines. The EIS and EIS Summary were posted for public comment from July 30 to September 13, 2020. The Agency considered input from Indigenous consultation and engagement, public and stakeholder comments, regulatory review, the proponent’s EIS, and other information received during the EA process, in the preparation of the draft EA Report and potential EA Conditions, which will inform a Project Decision Statement to be made by the federal Minister of Environment and Climate Change.

2. Review Method

AECOM's team of senior environmental and social specialists conducted a review of the draft EA Report and potential EA Conditions. The team is well versed in best practices for offshore oil and gas projects, has extensive expertise in environmental and social impact assessment, and has work-related experience in offshore oil and gas projects in Atlantic Canada.

AECOM's review focused on the Agency's Potential EA Conditions, given that these will govern Project development and mitigation measures, monitoring and follow-up programs, and reporting requirements. The draft EA Report was referenced for context, as applicable, during the review. Areas considered to have the most potential to affect Mi'kmaq rights and interests, notably environmental effects to traditional activities and the quality of life of the Mi'kmaq people, were of highest priority for the review.

3. Results

Table 1 provides the results of AECOM's review.

Table 1: Review of Bay du Nord Development Project Draft EA Report and Potential EA Conditions

Comment Number	Condition Number	Condition Description or Context	Assessment of Adequacy
1	2.3, which is similar in nature to 5.1, 5.2, 7.7	The Proponent shall, where consultation is a requirement of a condition set out in this document... provide a written notice of the opportunity to consult...provide information about the subject matter to be consulted on...consider all views presented ...advise the parties consulted on how the information received have/have not been integrated into the subject matter	<p>The Agency should specify that the Proponent is to work directly with Indigenous groups to develop a comprehensive consultation framework for all phases of the project.</p> <p>The Agency should specify requirements regarding:</p> <ul style="list-style-type: none"> ■ A detailed framework for the record of contact; ■ A mandatory post-consultation/engagement review of the record of contact by the engaged parties for accuracy, and approval for distribution; ■ Responses from the Proponent, if and when applicable; ■ An overview of how the record of contact will be distributed; and ■ The Agency should outline the criteria of the consultation/engagement logbook, including protection protocols regarding Indigenous knowledge
2	3.11	The Proponent shall develop, in consultation with Fisheries and Oceans Canada and the Board, a Marine Mammal and Sea Turtle Monitoring Plan that shall be submitted to the Board at least 30 days prior to the commencement of any geophysical survey.	Condition 3.11 should state that, at a minimum, the Marine Mammal and Sea Turtle Monitoring Plan is to comply with the requirements in the Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment.
3	3.11.1	The Proponent shall... develop and implement marine mammal observation requirements, including the use of passive acoustic monitoring, or equivalent technology, and visual monitoring by marine mammal observers throughout all applicable geophysical surveys.	Condition 3.11.1 should be revised to specify the qualification requirements of marine mammal observers and passive acoustic monitoring technicians.
4	3.11.3	The Proponent shall... require a 60-minute pre-watch for marine mammals, within the safety zone established in condition 3.9, to ensure that no marine mammals are spotted 60 minutes prior to starting the sound source.	Condition 3.11.3 should be revised to explicitly state that, should a marine mammal be spotted, start-up is to be delayed until no marine mammal has been observed within the safety zone for 60-minutes.
5	3.12.2	The Proponent shall implement measures to prevent or reduce the risks of collisions between Designated Project vessels and marine mammals and sea turtles, including requiring all Designated Project vessels, including supply and standby vessels, to reduce speed to 7 knots (13 kilometres per hour) when a marine mammal or sea turtle is observed or reported within 400 metres of a vessel, except if not feasible for safety reasons.	Condition 3.12 should state that all Designated Project vessels are required to have crew members specifically identified as marine mammal/sea turtle monitors. These designated crew members would be trained in proper identification and protocols and be responsible for monitoring during transit.

Table 1: Review of Bay du Nord Development Project Draft EA Report and Potential EA Conditions

Comment Number	Condition Number	Condition Description or Context	Assessment of Adequacy
6	3.11.4	3.11.4 submit the results of the activities undertaken as part of the marine mammal and sea turtle observation requirements to the Board within 60 days of the end of geophysical surveys.	<p>Potential condition 4.6.6 states: “the Proponent shall... report monitoring data collected pursuant to 4.6.1 through 4.6.5 annually to Environment and Climate Change Canada and the Board in a format determined in consultation with Environment and Climate Change Canada and the Board.”</p> <p>Similarly, to assist in standardizing marine mammal and sea turtle data and facilitate analyses and comparisons across years and from various projects, Condition 3.11.4 should specify that observations of marine mammals and sea turtles are to be reported in a format determined in consultation with Fisheries and Oceans Canada and the Board.</p>
7	4.2.3	The Proponent shall implement measures to avoid harming, killing or disturbing migratory birds, including... identifying specific circumstances under which the Proponent shall not commence flaring during conditions of poor visibility including when there is a low cloud ceiling or fog, and not commencing flaring during these circumstances;	Condition 4.2.3 should be expanded to state that flaring should be suspended/delayed, should conditions of poor visibility, including low cloud ceiling or fog, develop during flaring, except if not feasible for safety reasons.
8	4.6.1 and 4.6.2	<p>As part of the follow-up requirements, the Proponent shall:</p> <p>4.6.1 monitor daily for the presence of migratory birds at the mobile offshore drilling unit(s), and other Designated Project-related vessels, excluding supply and standby vessels using a trained observer whose primary responsibility is observing migratory birds and following Environment and Climate Change Canada's Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms;</p> <p>4.6.2 develop and implement procedures and methods for systematic monitoring of the mobile offshore drilling unit(s), and Designated Project-related vessels, excluding supply and standby vessels daily for the presence of stranded and re-stranded migratory birds using a trained observer and follow Environment and Climate Change Canada's Procedures for Handling and Documenting Stranded Birds Encountered on Infrastructure Offshore Atlantic Canada. Procedures and methods should include any technically and</p>	While it is reasonable to not require that supply and standby vessels have dedicated migratory bird observers, these vessels should be required to have crew members identified and properly qualified as seabird/migratory bird monitors. These designated crew members would be trained in proper handling of stranded and re-stranded migratory and seabirds, and be responsible for daily monitoring, handling, and reporting.

Table 1: Review of Bay du Nord Development Project Draft EA Report and Potential EA Conditions

Comment Number	Condition Number	Condition Description or Context	Assessment of Adequacy
		economically feasible ways to monitor strandings from areas of the mobile offshore drilling unit(s), and Designated Project-related vessels, excluding supply and standby vessels that are inaccessible to observers;	
9	7.1	The Proponent shall take all reasonable measures to prevent accidents and malfunctions that may result in adverse environmental effects and mitigate any adverse environmental effects from accidents and malfunctions that do occur.	The Agency should specify that interested Indigenous groups be invited to consulted and engage in the development of emergency response protocols (in addition to participating in the Spill Response Plan , as described in Condition 7.7).
10	7.1.	The Proponent shall take all reasonable measures to prevent accidents and malfunctions that may result in adverse environmental effects and mitigate any adverse environmental effects from accidents and malfunctions that do occur.	Condition 7.1. should be revised to include preventative training which would include operating in harsh weather, as well as establishing clear harsh weather operation protocols which will include roles and responsibilities for all personnel.
11	7.7.3	The Spill Response Plan will take into account the results of the modelling of spills identified in Appendix E and F of the environmental impact statement and shall include the following: 7.7.3 measures for wildlife response, protection and rehabilitation, including procedures for the collection and cleaning of marine mammals, birds, sea turtles and species at risk, and measures for shoreline protection and clean-up.	Condition 7.7.3 should be revised to specify that the Spill Response Plan will also include reporting protocols to the Canadian Wildlife Service and/or Fisheries and Oceans Canada, should injured and/or deceased SAR be found.
12	7.15	In the event of an accident or malfunction, the Proponent shall comply with the requirements of the Accord Acts and the Canada-Newfoundland and Labrador Offshore Financial Requirement Regulations, and the requirements described in the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activity.	Condition 7.15 should be revised to include compensation for affected Indigenous groups for the loss of commercial or food, social and ceremonial fisheries, or moderate livelihood.
13	9.1	The Proponent shall maintain all records.	The Agency should outline the criteria of the consultation/engagement logbook, including protection protocols regarding Indigenous knowledge.

4. Conclusions and Recommendations

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

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

i. Indigenous Consultation

Issue: *Engagement with Indigenous groups will provide greater certainty that the Proponent will follow through with commitments, work to build trust, and ensure that areas of concern have appropriate follow-up and monitoring programs in place. Inclusion of Indigenous groups in the development of programs and/or plans should be considered a priority, and care, attention and respect must be paid to how communication with Indigenous groups are recorded, vetted, distributed, protected and logged.*

Recommendation: *The Agency should add to Condition 2.3, (and to Conditions 5.1, 5.7 and 7.7) that the recording of consultation activities will be done in accordance with the directives of each affected Indigenous group.*

ii. Marine Mammal Monitoring

Issue: *Engagement with Indigenous groups will provide greater certainty that the Proponent will follow through with commitments, work to build trust, and ensure that areas of concern have appropriate follow-up and monitoring programs in place. Indigenous groups should be engaged in the development of all programs and/or plans (in addition to the Spill Response Plan).*

Recommendation: *The Agency should revise Condition 7.1 to stipulate that Indigenous groups will be invited to participate in the development of all plans and programs pertaining to accidents and malfunctions.*

iii. Marine Mammal Monitoring

Issue: *The types of information, level of detail, and data/formats contained in marine mammal observation reports varies greatly across projects, companies, surveys, etc. This makes it challenging to analyze and compare data from different programs, or even between years of a given project. Including Fisheries and Oceans Canada as well as the C-NLOPB in establishing parameters and reporting formats will ultimately reduce discrepancies and increase consistency, thereby facilitating analyses and comparisons.*

Recommendation: *The Agency should expand Condition 3.11.4 to specify that observations of marine mammals and sea turtles are to be reported in a format determined in consultation with Fisheries and Oceans Canada and the Board.*

iv. Marine Mammal Monitoring

Issue: *A clear and explicit marine mammal monitoring plan will help to prevent harm to sea turtles and marine mammals as a result of vessel movement. It is unclear whether marine mammal observers will be utilized on Supply and Servicing vessels.*

Recommendation: *The Agency should revise Condition 3.12.2 to state that all Designated Project Vessels (including Supply and Servicing Vessels) should have crew members specifically identified and trained as*

marine mammal/sea turtle monitors, and that these designated crew members are to be trained in proper identification and protocols, and will be responsible for monitoring during transit.

v. Flaring and Migratory Birds

Issue: While Condition 4.2.3 states that flaring is not to be commenced during conditions of poor visibility, it does not direct the proponent to cease flaring should these conditions develop while flaring is underway.

Recommendation: The Agency should expand Condition 4.2.3 to state that flaring should be suspended/delayed, should conditions of poor visibility, including low cloud ceiling or fog, develop during flaring, except if not feasible for safety reasons.

vi. Accidents and Malfunctions

Issue: Engagement with Indigenous groups will provide greater certainty that the Proponent will follow through with commitments, work to build trust, and ensure that areas of concern have appropriate follow-up and monitoring programs in place. Indigenous groups should be engaged in the development of all programs and/or plans (in addition to the Spill Response Plan, as described in Condition 7.7).

Recommendation: The Agency should revise Condition 7.1 to stipulate that Indigenous groups will be invited to participate in the development of all plans and programs pertaining to accidents and malfunctions.

vii. Accidents and Malfunctions

Issue: The Project is located in an area that experiences harsh weather, and personnel may not have previously worked in such conditions. Appropriate and specific training are necessary in order to prevent accidental events and malfunctions with potentially serious environmental consequences.

Recommendation: The Agency should expand Condition 7.1 to include harsh weather-specific training for drilling in the North Atlantic.

viii. Accidents and Malfunctions

Issue: Indigenous groups in the Project area who are reliant on fish for food, revenue and/or social/ceremonial reasons from the Project area could be negatively impacted if there were an accident or malfunction.

Recommendation: The Agency should expand Condition 7.15 to include the development and inclusion of Indigenous-specific compensation.

ix. Record Keeping

Issue: Engagement with Indigenous groups will provide greater certainty that the Proponent will follow through with commitments, work to build trust, and ensure that areas of concern have appropriate follow-up programs and monitoring programs in place. Consultation activities, and communications with Indigenous groups should be logged.

Recommendation: The Agency should expand EA Condition 9.1 to specify that the Proponent shall maintain, preserve, and protect logbooks and digital data of all Indigenous communications.

5. Review Limitations

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

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

Appendix **A**

Table A-1 **List of Acronyms and Abbreviations**

Table A-1: List of Acronyms and Abbreviations

Acronym	Definition
Accord Acts	<i>Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act and the Canada-Newfoundland Atlantic Accord Implementation Act</i>
AECOM	AECOM Canada Ltd.
ANSMC	Assembly of Nova Scotia Mi'kmaq Chiefs
Agency	Impact Assessment Agency of Canada
AUV	Autonomous Underwater Vessel
BdN	Core Bay du Nord
C-NLOPB	The Canada-Newfoundland and Labrador Offshore Petroleum
CEAA 2012	<i>Canadian Environmental Assessment Act, 2012</i>
EA	Environmental Assessment
EIS	Environmental Impact Statement
EL	Exploration Licence
FPSO	Floating Production, Storage and Offloading Facility
km	Kilometre
KMKNO	Kwilmu'kw Maw-klusuaqn Negotiation Office
m	Metre
NL	Newfoundland and Labrador
OSV	Offshore Supply Vessels
ROV	Remotely Operated Vehicle
SAR	Species At Risk
SBV	Standby Vessel
SDL	Significant Discovery Licence
VSP	Vertical Seismic Profiling

