

NOTICE OF NON-COMPLIANCE

28 February 2019

BY EMAIL AND COURIER

GX Technology Canada Ltd.
20 Duntara Crescent
St. John's, NL
A1E 5Z1

Attention: Dean Kennedy
Project Manager

File No: 48150-052-001

Dear Mr. Kennedy:

Re: Non-Compliance - Conditions of Authorization 48120-020-004 – Mitigations in Environmental Assessment with respect to spatial and temporal separation of seismic activities from the Industry-DFO Collaborative Post-Season Trap Survey

The C-NLOPB was advised on 18 October 2018, that the *Petroleum Industry Liaison Report 2018*, submitted by Robyn Lee to One Ocean, stated that “seismic has been shot within 3 miles of at least one of the stations while it was being actively sampled for science.” Further inquiry with FFAW/Unifor indicated that, on 03 October 2018, the GX Technology (GXT) contracted vessel the *Hai Yang Shi You 760* (COSL 760) conducted active seismic survey operations in close proximity to deployed fishing gear - crab traps deployed by the Fishing Vessel *August Gale* - associated with the Industry-DFO Collaborative Post-Season Trap Survey. On 31 October 2018, GXT was asked to investigate this occurrence and provided a report to the C-NLOPB on 14 November 2018.

Condition 19 of Geophysical Authorization 48120-020-004 stated the following requirement of authorization:

The Operator shall implement or cause to be implemented, all the policies, practices, recommendations and procedures for the protection of the environment included in or referred to in the Application and in the:

- Environmental Assessment of GX Technology Canada Ltd.'s GrandSPAN 2D Seismic, Gravity and Magnetic Survey, 2014-2018 (AMEC Environment & Infrastructure March 2014) and Addendum (AMEC Environment & Infrastructure 20 July 2014);
- GX Technology Canada Ltd.'s GrandSPAN 2D Seismic, Gravity and Magnetic Survey, 2014-2018 Environmental Assessment Amendment (for 2016 - 2018) (AMEC Environment & Infrastructure December 2015); and
- GX Technology Canada Ltd.'s GrandSPAN 2D-3D Seismic, Gravity and Magnetic Survey, 2014-2018, 2018 Environmental Assessment Amendment (Wood Environment & Infrastructure Solutions May 2018).

These “policies, practices, recommendations and procedures” included a requirement to maintain a temporal and spatial separation between seismic operations and the Industry-DFO Collaborative Post-Season Trap Surveys, of

seven days and 30 kilometres, respectively. Conformance with these commitments is a requirement of authorization 48120-020-004, as described in Condition 11 and Condition 19, attached thereto.

The C-NLOPB reviewed information provided by GXT during the program in the course of normal regulatory oversight and identified two occasions when the *Hai Yang Shi You 760* was operating in close proximity to crab pots set for Industry-DFO Collaborative Post-Season Trap Survey purposes:

- 16 September 2018 – contact was made with crab fishing vessel *Lady Teresa* to obtain position of their crab survey sets, which were not in the path of survey line. GXT reported no negative affect on fishing or seismic operations.
- 03 October 2018 – contact was made with the crab fishing vessel *August Gale* which had just laid ten snow crab pots as part of their survey sets. The skipper provided all ten sets of coordinates, with the closest set being 4.5 kilometres south of the survey line. GXT reported that no intervention was required.

I have reviewed your report, *Hai Yang Shi You 760 Snow Crab Survey Potential Close Encounter 3 October 2018 ION/GXT Investigation Report*, provided by GXT on 14 November 2018 and make the following comments:

- The C-NLOPB accepts the information in the *Hai Yang Shi You 760 Snow Crab Survey Potential Close Encounter 3 October 2018 ION/GXT Investigation Report* respecting relative positions and times related to that encounter; and
- The C-NLOPB accepts that, as reported on page 8 of the *Hai Yang Shi You 760 Snow Crab Survey Potential Close Encounter 3 October 2018 ION/GXT Investigation Report*, the *Hai Yang Shi You 760* may have passed, while in acquisition mode, within “approx. half mile” or one kilometre of the reported position of deployed fishing gear associated with the Industry-DFO Collaborative Post-Season Trap Surveys.

The C-NLOPB does acknowledge that GXT:

- Made information about its planned routes for data acquisition available via a number of media, and through FFAW/Unifor with the intent of avoiding conflict with the fishing industry;
- Employed a Picket Vessel and a dedicated Fisheries Liaison Officer (FLO), provided by the FFAW/Unifor, to facilitate at-sea communication between GXT and commercial fishing interests; and that
- Although it knew the sample locations for the Industry-DFO Collaborative Post-Season Trap Surveys in June 2018, GXT did not know the timing of fishing at individual survey stations as the fishers involved set their own schedule based on individual enterprise considerations and other factors.

In spite of the efforts to coordinate communications between GXT and fishers, and based on the facts available to the C-NLOPB, I have concluded that the commitments in the environmental assessments related to activities authorized under Geophysical Authorization 48120-020-004 - to maintain a temporal and spatial separation between seismic operations and the Industry-DFO Collaborative Post-Season Trap Surveys, of seven days and 30 kilometres, respectively – were not complied with. Further, I believe that this may have occurred on 16 September 2018, and that it did occur on 03 October 2018, and on that basis, GXT is issued this Notice of Non-Compliance.

Further to this notice, the C-NLOPB is also concerned that personnel responsible for maintaining the course of the *Hai Yang Shi You 760* and for determining whether or not active data acquisition would occur at a given time and location appear to have been unaware, or did not acknowledge their awareness, of the required spatial and temporal separations described in the environmental assessments. Furthermore, those personnel did not take action to stop data acquisition or alter course when they became aware that data acquisition would occur in close proximity to an active Industry-DFO Collaborative Post-Season Trap Survey site.

GXT must take steps to prevent recurrence of such non-compliances. In particular, GXT must take steps to ensure that personnel responsible for determining the course of the seismic vessel and whether or not active data acquisition will occur at a given time and location, are aware of and understand the requirement to comply with commitments made in the environmental assessments associated with the activity. GXT should report to the C-NLOPB on the steps taken to accomplish this prior to seeking an authorization for additional seismic work.

Failure to meet mitigations described in an environmental assessment associated with an activity authorized by the C-NLOPB may constitute an offence under paragraph 194(1)(e) of the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* (S.C. 1987, c. 3) and 190(1)(e) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*, R.S.N.L. 1990, c. C-2. GXT should note that any incident of non-compliance could prompt the Board to consider additional enforcement measures, including:

- suspension or revocation of your authorization under paragraph 138(5)(a) of S.C. 1987, c. 3, and 134(7)(a) of R.S.N.L. 1990, c. C-2; and/or
- initiation of prosecution under paragraph 194(1)(e) of S.C. 1987, c. 3, and 190(1)(e) of R.S.N.L. 1990, c. C-2.

Should you have any questions or wish to discuss these matters further please contact the undersigned at 709-778-1475 or ktaylor@cnlopb.ca.

Sincerely,



Ken Taylor
Environmental Compliance Officer
Conservation Officer
t. 709-778-1475