

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

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DATE: Oct. 19/18

Fax Cover _____

Email Cover

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| TO: <u>Jill Adams</u> | ^{email:} FAX # <u>jill.adams@canada.ca</u> |
| ^{cc:} TO: <u>Luc Desroches</u> | ^{email:} FAX # <u>luc.desroches@canada.ca</u> |
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Number of pages faxed including cover: 3

FROM: Twila Gaudet On behalf of: KmkNO

- Confidential/Privileged
- Review and/or Comment & Reply
- For Your Information
- Other: _____

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RE: Draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploration Drilling East of NFLD & Lab.



Our Rights. Our Future.

October 19th, 2018

Jill Adams
Head, NL Satellite Office
Canadian Environmental Assessment Agency
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10 Barters Hill
St. Johns, Newfoundland A1C 6M1
jill.adams@canada.ca

Re: Draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploration Drilling East of Newfoundland and Labrador

Ms. Adams,

I write in response to the letter dated September 6th, 2018 on the above noted. KMKNO has taken this opportunity to review the Draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploration Drilling East of Newfoundland and Labrador. At this time, we wish to provide you with our comments, concerns and recommendations.

KMKNO wishes to provide the following recommended changes to the draft agree, including the following:

- Page 3 – Constitution of Committee – Must include Indigenous Decision Maker as a representative;
- Page 3 – Task Team – should include indigenous representation (org.);
- Page 5 – Clause 4.17 – needs to include more than engagements – opportune time for review and written comments identifying gaps (if any) to be addressed;
- Page 6 – 6.1. – Must also reference Indigenous Decision Makers and/or Authorities;
- Page 8 – again under clause 1.2 – include providing reasonable time for Indigenous technical groups to review and ID gaps (if any) prior to making publicly accessible;
- Page 8 – 2.1 – should include potential impacts on Indigenous rights as defined under S.35 of the Constitution;
- Page 8 – 2.2. – last bullet should provide for a “detailed” summary of any comments and concerns received;
- Page 11 – 2.1 – Must include Indigenous representation and expertise;
- Page 12 – 1 (f) Indigenous cultures, including practices and species of cultural significance

Lastly, I wish to note that the Agreement and the two sets of Terms of Reference and the Factors are fairly straightforward. The most significant concern is the conflation of public and Indigenous consultation. One (public engagement and consultation) is a function of open and transparent governance. The other – consultation with the Mi'kmaq (and Inuit) – is a

constitutional duty which brings with it duties to consider mitigation and accommodation of rights and title. Therefore, it is recommended that all documents related to the Regional Assessment should clearly distinguish between the good governance undertakings and the constitutional duty to consult.

Yours in Recognition of Mi'kmaq Rights and Title,

<Original signed by>

Twila Gaudet, BA, LL.B.
Director of Consultation
Kwilmu'kw Maw-Klusuaqn Negotiation Office

cc:

Luc Desroches, CEAA

luc.desroches@canada.ca