

Association de gestion autochtone Mi'kmaq et Malécite (AGHAMM)
Mi'kmaq Maliseet Aboriginal Fisheries Management Association (MMAFMA)

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Comments on the Western Newfoundland & Labrador Offshore Area Strategic Environmental Assessment (SEA) Update Report

Submitted to the Canada–Newfoundland and Labrador Offshore
Petroleum Board (C-NLOPB)

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1. Description of MMAFMA

The Mi'kmaq Maliseet Aboriginal Fisheries Management Association (MMAFMA) is a non-profit organization whose mission is to promote the sustainable management and conservation of aquatic and marine ecosystems on the territories of the Mi'kmaq of Gesgapegiag, the Mi'kmaq of Gespeg, and the Maliseet of Viger, while promoting their interests and participation in co-management processes. The Board of Directors of MMAFMA is composed of the Fisheries Director or Coordinators of each community, who are nominated by their councils. MMAFMA was registered in April 2012, within the framework of the Aboriginal Aquatic Resources and Oceans Management (AAROM) program of the Department of Fisheries and Oceans (DFO). The AAROM program aims to assist Aboriginal groups participating effectively in consultation and decision-making used for the management of aquatic resources and oceans.

MMAFMA contributes to the collaborative management of aquatic and marine natural resources based on the principles of conservation, to ensure the sustainability and integrity of ecosystems for future generations. MMAFMA also constitutes a center of exchange and consultation to the communities it serves, while promoting the development, autonomy and innovation of Mi'kmaq and Maliseet fisheries, as well as focusing on the integration of Traditional Ecological Knowledge to scientific methods.

The territory served by our organization covers the current and ancestral territories of the three community members of MMAFMA, which are the Maliseet of Viger (Première Nation Malécite de Viger), the Mi'kmaq of Gesgapegiag (Micmacs of Gesgapegiag Band), and the Mi'kmaq of Gespeg (Nation Micmac de Gespeg), as well as their areas of fishing and/or aquaculture, following the watershed limits of the Gulf of St. Lawrence and the Atlantic. In this context, their fishing areas include the offshore area concerned by the Canada-Newfoundland Labrador Offshore Petroleum Board (C-NLOPB) for the Western Newfoundland & Labrador Offshore Area Strategic Environmental Assessment (SEA) Update.

2. Aboriginal Coalition

The analysis and writing of this document were developed in close collaboration with the Agency Mamu Innu Kaikuseht (AMIK) and the Gespe'gewaq Mi'gmaq Resource Council (GMRC), two Aboriginal non-profit organizations, also AAROM bodies. The GMRC represents three Mi'gmaq communities: the Mi'gmaq of Listuguj (Quebec) as well as the Mi'gmaq of Pabineau and Eel River Bar (New Brunswick), while AMIK represents seven Innu communities in Quebec: Ekuanitshit, Essipit, Innu Takuaikan Uashat mak Mani-Utenam, Nutashkuan, Pakua Shipu, Pessamit, and Unamen Shipu. MMAFMA has also consulted with the Mawiami Migmawei Secretariat (MMS), which is a formal political alliance of the Chiefs and Councils of the three Mi'gmaq communities of Gesgapegiag, Gespeg, and Listuguj, all located

on the Gaspé Peninsula.

In this context, the MMS, GMRC, AMIK, and MMAFMA have agreed to highlight the major concerns shared by their member communities. The offshore exploration and exploitation of hydrocarbons in the Gulf have trans-boundary impacts that may seriously affect the traditional and commercial activities of all our Nations. Our collaboration on this issue underscores the severity of these impacts and the importance of the Gulf to preserve the lifestyle and culture of our communities.

3. Description of MMAFMA's Served Communities

Although the Mi'kmaq of Gesgapegiag, the Mi'kmaq of Gespeg, and the Maliseet of Viger share the waters along the Estuary and Gulf of St. Lawrence (figure 1), these communities distinguish themselves from each other due to their geographical location, their socio-economic situation, their cultural singularity and their language. The following paragraphs present some brief background information related to these communities and their fishing activities in the Gulf of St. Lawrence.

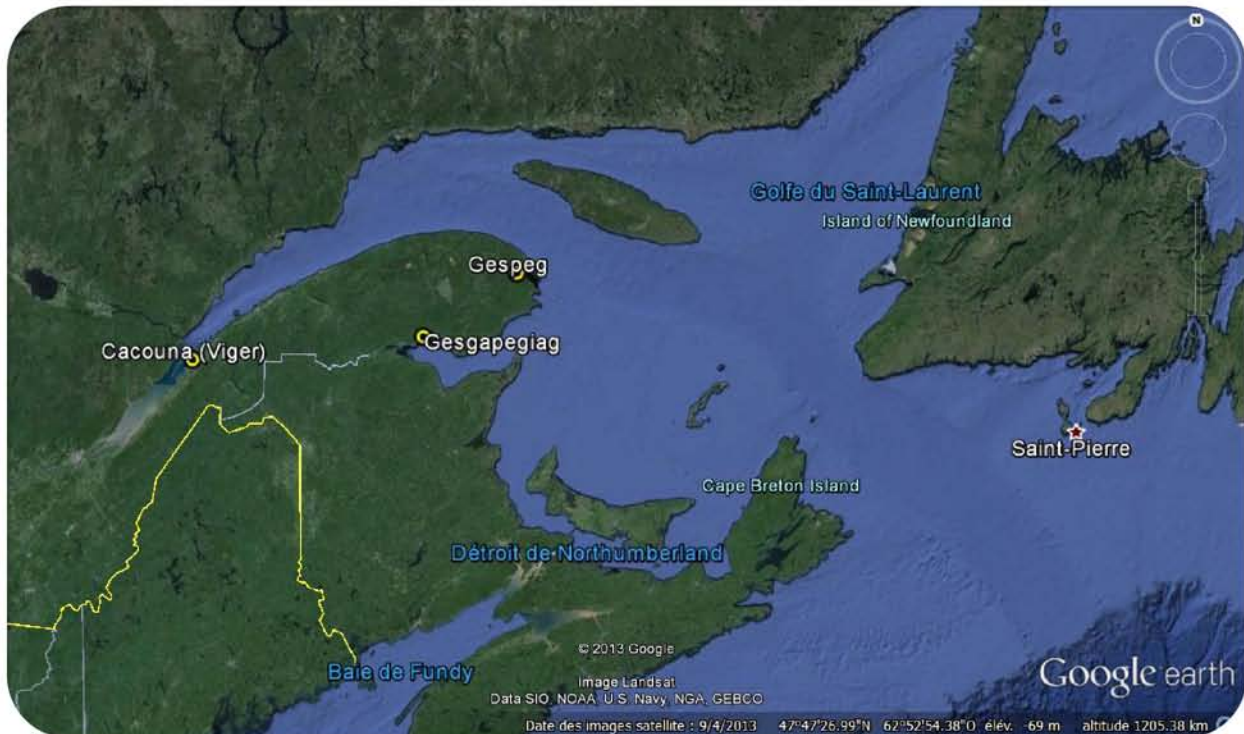


Figure 1. Map locating the Maliseet of Viger, the Mi'kmaq of Gesgapegiag, and the Mi'kmaq of Gespeg band councils in relation with the Gulf of St. Lawrence and the Western Newfoundland Labrador Offshore Area (traditional territory, fishing zones and study area not delimited).

Maliseet Nation

Maliseet people, calling themselves *Wolastogiyik*, which means "people of the beautiful river", originate from the valleys of the St. John River and its tributaries, located at the border separating the current provinces of Quebec and New Brunswick, and also the state of Maine in the United States. The Maliseet were semi-nomadic people who largely depended on hunting and fishing, and also cultivated corn. They have inhabited the region and depended on the shores and waters of the Gulf of St. Lawrence for food, social and ceremonial purposes since time immemorial.

- **Maliseet of Viger First Nation – Première Nation Malécite de Viger**

Following an incentive of the Government of Canada, the Viger First Nation was established in 1827, when thirty families settled along the St. Lawrence River, near a site now known as Cacouna. The reserve had more than 3000 acres. The incentives of the Canadian Government however failed and in 1869, due to pressures from settlers of European origin for their fertile lands, the reserve of Viger was surrendered. Few years later, in 1876, the federal government created the Whitworth reserve, then the Cacouna reserve was established in 1891. The Maliseet nevertheless resisted a sedentary way of life and none of these reserves are permanently inhabited. It is in 1989 that the Quebec government finally recognized the Maliseet of Viger as a First Nation. Nowadays, the Maliseet of Viger continue to use and occupy the waters of the Gulf, exercising their Aboriginal and treaty rights and the title that they have never surrendered. They are involved in commercial fishing of several species, including northern shrimp, snow crab, some ground fish species, sea urchin, and sea cucumber. They also own a snow crab and fish processing plant in Rimouski, with a portion of their harvest shared with community members on a regular basis. The fisheries of Viger are presented in Table 1.

Mi'kmaq Nation

The Mi'kmaq people have occupied the maritime territory and the Gaspé Peninsula, referred as the *Gespe'gewa'gi*, since time immemorial. Traditionally, the Mi'kmaq lived a semi-nomadic lifestyle, depending mainly on fishing during the summer and game meat during the winter. The Mi'kmaq ingeniously adapted to deep sea fishing activities and they developed the art of building boats intended for this kind of fishing. Salmon is also an integral part of the Mi'kmaq culture, with which they hold a strong spiritual connection.

- **Mi'kmaq of Gesgapegiag - Micmacs of Gesgapegiag Band**

The Mi'kmaq of Gesgapegiag have always fished on the Cascapedia River, whose name is derived from a Mi'kmaq word meaning "strong currents" or "large river". They are also participating in the management of salmon sport fishing on the Cascapedia since several years, which is a very important activity for the community. Today, The Mi'kmaq of Gesgapegiag continue to use and occupy the waters of the Gulf, exercising their Aboriginal and treaty rights and the title that they have never surrendered. They are involved in the commercial fishing of several species, including northern shrimp, snow crab, lobster, rock crab, and some ground fish species. The fisheries of Gesgapegiag are detailed in Table 1.

- **Mi'kmaq of Gespeg - Nation Micmac de Gespeg**

The Mi'kmaq have always been omnipresent on the Gaspé territory, but it is apparently during the sixteenth century that the Mi'kmaq settled permanently in the Bay of Gaspé. Around 1675, the Gespeg village, meaning "end of earth", had maintained ties with European fisherman for several decades and had engaged in commercial trade. Today, the Mi'kmaq of Gespeg continue to use and occupy the waters of the Gulf, exercising their Aboriginal and treaty rights and the title that they have never surrendered.

They are involved in the commercial fishing of several species, including northern shrimp, snow crab, lobster, some species of ground fish, sea cucumber, etc. The fisheries of Gespeg are detailed in Table 1.

4. Subsistence and Commercial Fisheries of the Communities

Mi'kmaq and Maliseet People have relied on fish and sea resources since immemorial times. They have used resources from the sea to fulfill their dietary, medicinal, and ceremonial needs; they have used them to make clothes, build shelters and tools; they have used the waters to travel across their territory and beyond. Although technology has evolved, most of these usages remain today and are an integral part of their way of life. Several marine species are harvested for subsistence, including but not limited to: Atlantic halibut, Atlantic salmon, blue mussel, capelin, cod, harp seal, herring, lobster, mackerel, macro-algae (kelp and other sea weed), northern shrimp, rock crab, scallop, smelt, shore plants, and snow crab.

In 1999, the Supreme Court of Canada delivered the Marshall decision, upholding the aboriginal right under the treaties of peace and friendship that occurred in 1760 and 1761, to hunt, to fish and to harvest in order to ensure a level of reasonable subsistence (moderate livelihood). The decision affected 34 Mi'kmaq and Maliseet First Nations throughout Atlantic Canada and eastern Quebec. Subsequently, DFO has adopted a series of initiatives post-Marshall to negotiate fishing agreement with First Nations.

Today, the Maliseet of Viger, the Mi'kmaq of Gespeg, and the Mi'kmaq of Gesgapegiag hold communal commercial licenses for several species, listed in Table 1. These three communities keep moving forward and developing capacity in their respective fisheries. It is likely that additional licenses, in fisheries and possibly in aquaculture, throughout the Gulf of St. Lawrence, will be held in the future.

Table 1. List of species and DFO fishing areas for which a communal commercial fishing license is held.

Species	Fishing area	Community
Atlantic halibut	4RST	Gesgapegiag
	4RST	Gespeg
	4RST	Viger
Cod	4RST	Gesgapegiag
	4RST	Gespeg
	4RST	Viger
Harp seal	Gulf (experimental)	Gesgapegiag
Herring	16B	Gesgapegiag
	16A, 16B	Gespeg
	16A	Viger
Lobster	21A	Gesgapegiag
	20A, 17B	Gespeg
Mackerel	16	Gesgapegiag
	16	Gespeg
	16	Viger
Marine macro-algae	Baie-des-chaleurs (soon)	(soon)
Northern shrimp	9, 10, 12	Gesgapegiag
	9, 10, 12	Gespeg
	9, 10, 12	Viger
Rock crab	12Y	Gesgapegiag
	12F	Gespeg
Sea cucumber	C (exploratory)	Gespeg
	B (exploratory)	Viger
Sea urchin	1 (experimental)	Gesgapegiag
	8E	Viger
Snow crab	12	Gesgapegiag
	12, 12A	Gespeg
	17	Viger
Turbot (Greenland flounder)	4RST	Gesgapegiag
	4RST	Gespeg
	4RST	Viger
Whelk	12	Viger
Winter flounder	4RST	Gesgapegiag

5. Comments on the SEA Update Report

In general, MMAFMA finds the SEA Update Report well laid-out and comprehensive, covering several aspects that needed to be considered. MMAFMA however identified few gaps and has several concerns regarding hydrocarbons exploration and exploitation in the Western Newfoundland Labrador Offshore Area.

Consultation Process

MMAFMA appreciated the deadline extension to comment the SEA Update Report, and deemed it necessary given the previously short time provided. As a relatively new organization, in autumn 2012, when the C-NLOPB held consultations, MMAFMA was still busy setting up its headquarters and recruiting staff. As such, no one from MMAFMA could participate in consultations held in Gesgapegiag or Gaspé. As an Aboriginal organization serving three communities with active fisheries within the SEA Update Area and throughout the Gulf region, MMAFMA would appreciate to be notified by the C-NLOPB of future consultations related to hydrocarbons exploration and exploitation in the Gulf.

The consultation report (Appendix A of the SEA Update Report) states that a letter was sent on September 26, 2012 to the Micmacs of Gesgapegiag Band Council, la Nation Micmac de Gespeg, and la Première Nation Malécite de Viger. As far as we can tell, no telephone or email follow-up has been made with the Mi'kmaq and Maliseet communities to ensure their participation, although they are right holders and are not merely stakeholders. This obligation to consult with First Nations has been recognized by the Supreme Court of Canada in various judgements and should be further emphasized in the report.

Importance of the Gulf for the Mi'kmaq and Maliseet Communities

The activities and way of life of the Mi'kmaq and Maliseet communities are strongly connected to the Gulf of St. Lawrence. The subsistence and commercial fishing activities of the communities have not been adequately taken into account in the SEA Report Update.

As presented in section 4 of this document, the Mi'kmaq of Gesgapegiag, the Mi'kmaq of Gespeg, and the Maliseet of Viger possess many commercial fishing licenses in or near the SEA Update Area. Species that can be fished within the SEA Update Area include:

- Atlantic halibut (OPANO area 4RST);
- Cod (OPANO area 4RST);
- Lobster (area 17B);
- Mackerel (area 16);
- Northern shrimp (area 9);
- Winter flounder (OPANO area 4RST).

In addition, several commercial licenses held by the communities provide access to waters near or adjacent to the SEA Update Area boundaries. Some of these species include:

- Harp seal (Gulf);
- Herring (areas 16A, 16B);
- Lobster (areas 20A, 21A);
- Marine macro-algae (Baie-des-Chaleurs);
- Northern shrimp (areas 10, 12);
- Rock crab (areas 12F, 12Y);
- Sea cucumber (areas B, C);
- Sea urchin (areas 1, 8E);
- Snow crab (areas 12, 12A, 17);
- Whelk (area 12).

In terms of migratory birds, some species hunted by members of the communities pass through the SEA Update Area, for example: scoter, eider duck, mallard, etc. A decline in the waterfowl population, or a contamination related to oil and gas activities, could be severely felt by some community members.

In terms of subsistence fisheries, these traditional activities are essential to preserve the way of life of the communities, both in regards with food and culture. Hunting and fishing provide income and food to many people in the communities, in addition to allowing the continuity of cultural activities and the preservation of Mi'kmaq and Maliseet traditional knowledge.

In terms of commercial fisheries, they provide valuable jobs to hundreds of people in the communities. Additionally, the fisheries income from these communal licenses represents important financial contributions to the communities, thereby benefiting them as a whole. For all three communities, revenues from the fisheries help fund communal programs like health services, school and educational programs, surveillance and security, interpretation centers (e.g. Gespeg). For example, the Maliseet of Viger have a transformation plant and regularly donate some of their catch to their members, hereby improving the diet and livelihood of their people.

It is important to note that the communities are fishing and hunting throughout the year. As such, there is no period that can be considered "insensitive". Furthermore, the SEA Update Report outlines how the Gulf is a region featuring a complex profile of fishing activities, in both space and time. Faced with this situation, it is difficult to consider how the development of offshore hydrocarbons could be compatible with the hunting and fishing activities of First Nation communities.

In addition, it is worth noting that the activities of the communities in relation to the Gulf are not limited to fisheries. The communities have also developed related economic activities like plants, fish retail sales, and a distribution network for the export of marine products. In their development strategy, some communities may consider aquaculture, or tourism based activities such as whale-watching or kayaking. All these activities are integral to the communities' economic development, contribute to job creation, and build partnerships. The sea and shore environment is integrant to the identity of Mi'kmaq and Maliseet since thousands of years, and the well-being of these ecosystems is strongly linked to the well-being of the First Nation physical, cultural, and spiritual life. The negative impacts of hydrocarbon

exploration and exploitation (e.g. spills, disturbances to marine life, etc.) would therefore not only be felt in fisheries, but in all those other spheres.

Fragility and Biological Importance of the Gulf

The SEA Update Report indicates several (N=10) Ecologically and Biologically Significant Areas (EBSA) in the Gulf, among which the West Coast of Newfoundland is located almost entirely within the SEA Update Area. As such, the near totality of the SEA Update Area constitutes an EBSA, which highlights its biological importance for the Gulf. As detailed in the report, several endangered and threatened species occur through the area. Furthermore, it provides:

- Huge areas of importance for marine mammals (section 5.3.3.2);
- Essential and unique areas for cod, redfish, flounder (spawning, juvenile migration) (Sec. 4.2.1.7);
- Unique wintering areas for herring and capelin (section 4.2.1.7);
- Sites of importance for lobster, krill, etc.. (Sec. 4.2.1.8);
- Feeding grounds and migratory route for Atlantic salmon.

Atlantic salmon, a highly emblematic species for Mi'kmaq and Maliseet communities, intertwined with their culture and diet, migrate through the SEA Update Area.

Despite the biological importance and richness of the SEA Update Area, and the Gulf of St. Lawrence in general, it is subject to several stressors, including human related activities and changes in climatic conditions. MMAFMA would like to emphasize the fragility of this ecosystem.

Risk of a Blowout or Spills

The mean circulation pattern in the Gulf is cyclonic, with transport directed to the northeast along the western coast of Newfoundland, and to the southwest along the coast of Québec in the north (section 4.1.4.1). This means that a spill would affect virtually all fishing zones and all coastal environment of the Gulf, with major impacts throughout the region and for all communities. Extreme winds and climate events, sea ice, and icebergs in the SEA Update Area (sections 4.1.5 & 4.1.6) are also likely to challenge any offshore infrastructure and increase the risk of an accidental spill. These risks appeared to be understated in the SEA Update Report.

MMAFMA is highly concerned about the potential effects that an oil spill or blow out would have on this fragile ecosystem. The historical records provided for both the United States and Newfoundland (section 3.2.6) do not indicate or suggest any declining trend through time in the volume or number of spills in the region. Just in 2011, there were 39 spills in the Newfoundland offshore area. Furthermore, between 1997 and 2012, an average of 29 322L were spilled in the area. MMAFMA finds these statistics very alarming. More alarming is the statement in the report that “an accidental event or malfunction is an unlikely, [...], occurrence” (section 3.2.6, p. 50). Given the frequency and severity of offshore spills reported in Newfoundland, across the country, and all over the world, it would be more accurate and honest for the SEA Update Report to admit that a spill is a likely occurrence.

Unfortunately, despite all mitigation measures listed in section 5 of the SEA Update Report, it is not clear how the proposed measures would be effective as an emergency response to a major spill. As far as MMAFMA can tell, as shown in the 2010 oil spill in the Gulf of Mexico, even the most current technology can fail to timely stop a leakage and avoid serious harm to the ecosystem.

Cumulative Impacts

The Gulf ecosystem is an already fragile environment due to a wide variety of human uses and related stressors. Fish, fish habitat, and marine birds in the SEA Update Area and in the larger Gulf of St. Lawrence have been and may also be affected by a wide variety of other natural and anthropogenic factors and processes, including past and future fishing activity, general vessel traffic, industrialization, tourism-related pressures, toxic releases, bacterial contamination, other human activities, as well as effects of climate change and other processes. The widespread and migratory nature of many species also increases the potential for fish populations to be affected by multiple (unrelated) perturbations, and therefore, for cumulative environmental effects to occur.

This environment would be subject to further stress and degradation should the Board continue to promote oil exploration and drilling within the area, with a potential for irreparable damage to the ecosystem and the Mi'kmaq & Maliseet way of life.

6. Recommendations and Conclusion

WHEREAS the major findings that emerge from reading the SEA Update report regarding the Western Newfoundland Labrador Offshore Area:

- High biological importance and sensitivity of the territory;
- High importance in fisheries and tourism;
- Gaps in biological knowledge and in the levels of impact of oil and gas activities;
- Uncertainty about the effectiveness of mitigation measures;
- Actual impacts of huge spills (despite the fact that the report minimizes the probability of occurrence);
- Very low social acceptability, in the five provinces of the Gulf;

WHEREAS the low response capability in the Gulf in case of a major spill, as revealed by the latest report of the Commissioner of the Environment and Sustainable Development;

WHEREAS the limit of liability of companies in the Gulf, which is still set to \$ 30 million (this limit may be increased to \$ 1 billion, according to the Minister Oliver, an amount that is well below the potential costs of a major spill – which was over \$ 40 billion in the Gulf of Mexico);

WHEREAS the potential of hydrocarbon exploration and extraction to have severe impacts and irreparable damage to the Gulf ecosystem and the Mi'kmaq & Maliseet way of life;

WHEREAS the major negative impacts that could affect not only the Mi'kmaq and Maliseet First Nations, but also other First Nations and people across all provinces of the Gulf of St. Lawrence;

WHEREAS a comprehensive environmental assessment of the entire Gulf of St. Lawrence has not been completed;

The Mi'kmaq Maliseet Aboriginal Fisheries Management Association recommends that the Canada-Newfoundland and Labrador Offshore Petroleum Board:

- Suspend the issuance of new exploration licenses in the offshore area of Newfoundland and Labrador;
- Withdraw the tender launched on May 16, 2013 for four parcels in the Offshore Newfoundland;
- Do not allow projects currently underway in the Gulf, including projects lead by Corridor Resources (Old Harry) and Shoal Point Energy (west coast of Newfoundland), without agreements being signed with Aboriginal communities in order to protect the exercise of their treaty and asserted rights.

Sincerely,

Sébastien Thibeault, President

&



Catherine Lambert Koizumi, Ph.D., Executive Director