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Canada – Newfoundland & Labrador Offshore Petroleum Board
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September 25, 2013

Dear Mr. Tessier:

Thank you for the opportunity to provide input on the draft Western Newfoundland & Labrador Offshore Area Strategic Environmental Assessment Update (SEA).

Responsible Energy Action is a group centred in Antigonish, Nova Scotia, concerned with how we obtain and use energy. We are a broad-based community group comprising academics, business people, researchers, students, and participants in the agricultural, tourism and cultural economies.

Consultation Process

Antigonish County borders St. George's Bay, an Ecologically and Biologically Sensitive Area (EBSA) comprising a sub-basin of the Gulf of St. Lawrence. As such, energy-related developments in the Gulf are of ongoing interest to us. It is unfortunate that we missed notification of the consultation's one public open house held in Nova Scotia, as it was advertised only in Cape Breton. We note that this Sydney session (October 11, 2012) attracted only 19 participants, with 4 invitees participating in a meeting the following day: a distressingly low level of public engagement for an entire province with a Gulf coastline. Further, only one public open house was held in PEI and one in New Brunswick, with total participation of 55 attendees. It is difficult to consider this meaningful and representative consultation for the Maritime region.

Whatever the limitations of the process, the *Consultation Report* (Appendix A) documents the overwhelming concern of those who did participate with preventing damage to the marine environment. Very few comments and submissions presented a positive view of potential petroleum activities in the Gulf of St Lawrence.

First Nations Engagement

Throughout the report, numerous references are made to "aboriginal engagement." A close examination of the consultation report and the C-NLOPB website, however, suggests that this interaction was minimal. The C-NLOPB "wrote to various aboriginal communities and organizations" throughout the region to "extend an invitation for them to contact the C-NLOPB if the group had interests related to the SEA Update" (p.368), thus placing all onus for engagement on the First Nations themselves. This would appear to comply with neither the intent nor the spirit of the "duty to consult" recognized at federal and provincial levels. The report and website suggest that four indigenous groups responded in writing: meetings were held with only two of these groups, both located in Quebec. One First Nations representative participated in a stakeholder meeting in Corner Brook, NL. This again seems an unacceptably low level of consultation.

Disturbingly, there is no documentation of engagement with Kwilmu'kw Maw-klusuaqn (Mi'kmaq Rights Initiative), the organization responsible for negotiation around indigenous peoples' rights

and interests, though this organization did directly request consultation. In fact, the report explicitly declines comment on the topic of aboriginal treaty rights to natural resources (p. 367).

Findings

The process notwithstanding, the draft report does present many significant observations and analysis of the environment in the study area.

Sensitive Sectors

The report acknowledges that the area has many sensitive and unique sectors vital to the health of the Gulf of St. Lawrence ecosystem. Section 4.2.1.1 documents the ongoing need to research marine species as part of a complete ecosystem, including species deemed insignificant from a commercial perspective.

The report further notes the West Coast of Newfoundland is designated one of ten Ecologically and Biologically Significant Areas (EBSAs) in the Gulf of St. Lawrence, but also includes a number of areas already under exploration licenses (Figure 4.25). This is a highly problematic scenario, especially given that the report highlights important information gaps for the coastal zone (p.133).

Other aspects of concern to Responsible Energy Action noted in the report include the significant potential impacts of petroleum-related activities on the sensitive tourism and fisheries sectors, the presence and vulnerability of species at risk, and the fact that “a number of marine and coastal areas within the SEA Update Area have been designated as protected under provincial, federal and/or other legislation and processes, due to their ecological, historical and/or socio-cultural characteristics and importance” (p. 428). A precautionary approach is therefore needed, as mandated by the *Oceans Act* (S.C., 1996, c.31).

Mitigation

The objectives of the assessment include a concentration on mitigation measures rather than a focus on precaution and protection of vulnerable and inadequately understood ecosystems. There is acknowledgement that a significant accident could have widespread and serious impact, but the authors frequently reiterate the low likelihood of such an event. Little attention is paid to the effects of contamination from routine operations, including any potential implications for recovery of species at risk.

Although a catastrophic spill is asserted to be unlikely, Figures 3.10 and 3.11 document ongoing annual spills in the current NL Offshore industry: these include a significant 39 spills in 2011, and an annual average of 29,322 litres of oil spilled per year. It is further noted that hurricane events can exacerbate the number of spills, and that this may have implications for drilling projects. Climate change should clearly be taken into account, and the report states that “ever-changing environmental conditions will continue to be a possible compounding factor” (p. 52).

Despite the fact that numerous environmental mitigation measures are presented in Chapter 5 of the report, it is clearly stated that the effectiveness of particular proposed mitigation measures is not known (p. 427). Another very serious omission is the absence of a Spill Response Gap Study, which would estimate the percentage of time a spill response option could not be implemented due to adverse environmental conditions.

Data and Information Gaps

One of the most significant aspects of the SEA Update is its identification of serious data and information gaps.

To name just a very few, those identified in the report include:

- limited and outdated bird studies (p. 414)
- incomplete understanding of the specific effects of some activities and disturbances (such as seismic energy) on marine animals (p. 427)
- lack of specific information and knowledge regarding the distribution and behaviours of some species (p. 427)
- lack of relevant types and levels of information for a number of areas of special interest or sensitivity (p. 432).

To proceed with petroleum development activities in the absence of current and rigorous scientific data on these important aspects would seem irresponsible.

Conclusion and Recommendation

Responsible Energy Action asserts that potential petroleum development in the Gulf of St Lawrence is subject to the precautionary principle, described by the Canadian Environmental Law Association as “a duty to prevent harm, when it is within our power to do so, even when all the evidence is not in.” This principle is firmly encoded in Canada’s *Oceans Act*, which attests that “Canada promotes the wide application of the precautionary approach” to the marine environment, and makes this explicit by stating the fundamental necessity of a “precautionary approach, that is, erring on the side of caution” (S.C., 1996, c.31, s.30(c)).

Given the SEA Update Draft Report’s recognition of significant information gaps, compounded by inadequate attention to First Nations’ input and evidence of grave, widespread public concern over livelihood and conservation issues, this report appears to represent an inadequate base on which to proceed with drilling permits.

Consequently, Responsible Energy Action respectfully recommends a moratorium on oil and gas exploration and development in the Gulf of St. Lawrence, pending remediation of these serious concerns.

Sincerely,

