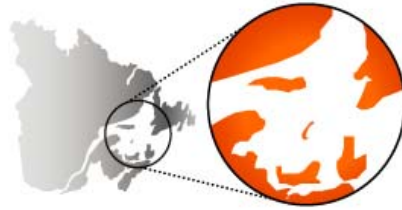


ST-LAWRENCE
COALITION
SAINT-LAURENT



PÉTROLE ET GAZ
POUR UN
MORATOIRE
DANS LE GOLFE

Comments on the draft scoping document
for the

**Strategic Environmental Assessment Update
Western Newfoundland and Labrador Offshore Area**

presented to the

**Canada-Newfoundland and Labrador
Offshore Petroleum Board
(C-NLOPB)**

by

The St. Lawrence Coalition

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THE ST. LAWRENCE COALITION

The St. Lawrence Coalition was created to convince the authorities to declare without delay a moratorium on oil and gas exploration/exploitation in the totality of the Gulf of St. Lawrence. The Coalition's goal is to rally the communities that live around the Gulf of St. Lawrence, and depend on its various renewable natural resources, around this common position. More than sixty-five groups belong to the Coalition, as well as up to 3500 individuals, including First Nations. The St. Lawrence Coalition strives to be interprovincial because five provinces are directly concerned by the future of the Gulf: Prince Edward Island, New Brunswick, Nova Scotia, Québec and Newfoundland and Labrador.

ACKNOWLEDGMENTS

The St. Lawrence Coalition wishes to acknowledge the generous assistance provided by Ecojustice in the preparation of these comments.

EXECUTIVE SUMMARY

The St. Lawrence Coalition submits a series of technical comments on the Western Newfoundland SEA Update draft Scoping Document to the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB). The draft Scoping document is in our view incomplete and does not require the upcoming SEA to provide sufficient or adequate information. Decision makers will rely on this updated SEA for important decisions concerning the Gulf of St. Lawrence, and it therefore needs to be as complete and as specific as possible. Otherwise, unreasonable and irreparable decisions could be made.

The most important omissions can be summarized as follows:

- The working group has no representatives from environmental groups, independent academics, or First Nations. The presence of these important stakeholders is essential and the process should be halted until the working group is re-composed.
- The draft Scoping Document states that the “*area to be studied will not be confined to the SEA Update Area*”. This statement is important, and should be fully implemented; the study area should truly consider the whole of the Gulf of St. Lawrence. It is not the case right now.
- The choice of Valued Ecosystem Components (VECs) is central to the analysis and should be subjected to public scrutiny.
- Certain important aspects should be addressed by the SEA and be fully documented:
 - Inadequate intervention capacity in the Gulf;
 - Dispersants and their toxicity, burning techniques;
 - Routine discharges and their toxicity (produced waters, drilling muds, etc.)
- Cumulative effects analysis should address the whole Gulf and not simply the SEA area.
- Worst-case scenarios should be considered at all times and be better described.
- Consultation sessions should be held in communities around the Gulf of St. Lawrence since all five Gulf provinces are involved in the risks.
- Standards should be established to frame the C-NLOPB’s final decision on whether or not to authorize offshore activities in a specific area.

Introduction

In 2005, the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) released a Strategic Environmental Assessment (SEA) for a portion of the Gulf of St. Lawrence off the western coast of Newfoundland and amended it in 2007 to extend its boundaries and include part of the Old Harry prospect. The 2005 scoping document called for a re-evaluation of the SEA “*in at least five years to determine if an update is required*”

On August 15th 2011 Environment Minister Peter Kent rejected the C-NLOPB’s request for a federal review panel on the Old Harry project and suggested, as part of his “*two-pronged approach*”, that the 2005/2007 Western Newfoundland SEA be updated.

A federal and interprovincial working group was thus convened by the C-NLOPB to draft a Scoping Document for this SEA Update. The draft Scoping Document¹ was released on December 21st, four days before Christmas, and the public has been asked to provide comments. The St. Lawrence Coalition thus takes this opportunity to comment on the draft document in order to make the SEA Update as complete and adequate as possible. Decision makers will rely on this updated SEA for important decisions concerning the Gulf of St. Lawrence and it therefore needs to be as complete and as specific as possible. Otherwise, unreasonable and irreparable decisions could be made.

¹ <http://www.cnlopb.nl.ca/news/pdfs/westerndraftscopeen.pdf>

Preliminary remarks

Working group composition. It is quite interesting to notice that the SEA working group is expanded to include representatives from the other four Gulf provinces (Prince Edward Island, New Brunswick, Nova Scotia and Québec). This openness is a welcome recognition that the Gulf of St. Lawrence should be treated as one ecosystem and that the arrival of the petroleum industry can negatively and indiscriminately impact all Gulf provinces. However, only representatives from each province's Natural Resources Dept. were admitted to the working group. We believe that representatives from each province's Environment Depts. should also have been invited to the working group.

We also notice that no non-governmental representatives were invited apart from One Ocean. This group, formed of the oil and fisheries industry, is in our view far from being representative of the whole spectrum of civil society. For instance, no environmental groups, no independent academics, nor any First Nations are present on the SEA working group. The presence of these important stakeholders is essential and the process should be halted until the working group is re-composed

Timing of the comments period. The draft Scoping Document is open for comments during a 4-week period. However, the public notice, as well as the draft Scoping Document, were posted online on Dec. 21st, only four days before Christmas Day. Since most activities in Canada are on hold from Dec. 24th to Jan. 2nd, the effective comments period is reduced to two and a half weeks at the most, and not the required four weeks. The release of the draft Scoping Document only days before the long Christmas/New Year's break is uncalled for and is a sure way to limit the participation of the public.

Comments on the Draft Scoping Document

Note: Section numbers refer to sections in the draft Scoping Document itself.

2.0 Background

- The draft Scoping document states that “*Information from the SEA will assist the Board in determining whether exploration rights should be offered **in whole** or in part within the area.*” It is not clear by which standards the Board will eventually make those decisions. These standards need to be clearly stated and should include, for instance:
 - Possible negative financial effects on communities around the Gulf engaged in renewable resources activities (fishing, tourism, etc.)
 - Environmental data demonstrating negative effects on populations of certain species.

3.0 Objectives

- Species at risk listed under the Species At Risk Act should be specifically addressed in the SEA Update objectives, in particular concerning conflicts that could arise between offshore activities and the species recovery plans.

Gaps in knowledge regarding certain species’ essential habitat need to be specifically addressed, including the following species: beluga, blue whale, North Atlantic right whale, etc.

5.0 Scope of SEA Update

- The second sentence reads “*The report may include consideration of potential project interactions with VECs [Valued ecosystem component] in **adjacent and expanded areas of interest.***” The words in bold need clarification :
 - Do “*adjacent areas of interest*” mean other provinces?
 - What are exactly “*expanded areas of interest*”?

5.1 Spatial and temporal boundary

- The outer limits of the SEA Update Area fall short of the NL-QC interprovincial boundary line on two occasions. The total gap is close to 2 000 km² (see fig. 1, annex) and this area will not be studied by the NL SEA Update. This 2 000 km² area is also not covered by the ongoing Quebec SEA because it is in Newfoundland waters. These gaps should be explained and corrected since they will leave a serious omission in the study of the Gulf.

- It is notable that on p. 6 “*The area to be studied will not be confined to the SEA Update Area*”. This is a step towards considering the Gulf as one vast ecosystem, all of which can be potentially impacted by an accidental event. However, in many parts of the Scoping Document to be pinpointed later, the area studied is specifically confined to the SEA Update Area.

It should be clearly pointed out in the draft Scoping Document that the area studied will consist of the whole Gulf of St. Lawrence.

5.2 Factors and issues to be considered

- The Scoping document states that “*VECs will be determined based on consultations with interested stakeholders, **the public** and regulatory agencies*”. However, no details are given as to how this consultation will be done. It is essential that independent academics, environmental groups, First Nations, or other interested stakeholders be involved in the selection of VECs.
- A section is supposed to be devoted to an “*overview of typical offshore petroleum activities*”. This important section should be expanded to include :
 - Information on routine discharges and their toxicity (produced waters, drilling muds, etc.)
 - Information on treatment, pre-treatment, or transport of hydrocarbons extracted during exploration or production activities.
 - Information on the extremely limited liability cap of \$30 million.
- The 2005 Scoping Document (p. 6) stated : “*Project-environment interactions of the activities included above on those Valued Ecosystem Components (VECs) most likely to be in the Study Area will be identified and qualitatively assessed, **with consideration of the unique physical oceanographic characteristics of Gulf of St. Lawrence that influences the study area.***”. This reference to the “*unique*” characteristics of the Gulf has been dropped in the draft 2012 version. This reference to the uniqueness of the Gulf of St. Lawrence must be kept in the Scoping Document.
- The draft Scoping Document calls for “*General discussion of effects and mitigation of potential accidental events*”. This section must be expanded to include :
 - Information on emergency intervention capacity in the Gulf. The Auditor General recently reported that this capacity is clearly inadequate.
 - Knowledge gaps, such as the inadequacy of intervention techniques in the case of a spill in the presence of ice.
 - Information on dispersants and their toxicity, as well as problems with surface oil burning techniques, etc.
- The draft Scoping Document should address the question of spill modeling and simulations in the SEA Update Area. This section should include the best available information upon which any spill modeling should be modeled, including: flow rate anticipated, calculation methods, method for surrogate oil type selection, etc.

- The draft Scoping Document requires the SEA to consider “*potential cumulative effects associated with multiple activities in the SEA Update Area*” (p. 7). Considering that other provinces could eventually engage in oil/gas activities in the Gulf, the cumulative effects analysis should not be confined to the SEA Update Area, but should consider the whole Gulf of St. Lawrence.

In addition, it is impossible to consider cumulative effects until a clear understanding of the nature, location, and number of future projects is determined. Otherwise, the cumulative effects analysis will remain theoretical.

- The draft Scoping Document examines “Physical Environment” (sect. 5.2.1) and “Biological Environment” (sect. 5.2.2). Human activities (fisheries, aquaculture, tourism, marine traffic, submarine cables, etc.) are all considered under “Biological Environment” and are somewhat lost in the process. A separate section should address all human activities, which are quite extensive in the SEA Update Area.

5.2.1 Physical Environment

- Climatic change has started to become apparent in the Gulf with many physical factors slowly changing (increasing storm frequency, fragmented ice cover, iceberg condition, etc.). All these changes will make offshore drilling a riskier business in the future and they should be specifically addressed, possibly under the single heading “Climatic change”.

Any perceptible or measured changes must be documented.

- Location of explosive dumping grounds or submerged artefacts (wrecks, etc.) need to be documented.

5.2.2 Biological Environment

- According the draft Scoping Document, the majority of items (coastal environments, marine invertebrates, commercial fisheries, water birds, sea turtles, etc.) are required to be documented “*within the SEA Update Area*”. This clearly contradicts section 5.1 (spatial and temporal boundaries), where it is clearly stated that “*The area to be studied will not be confined to the SEA Update Area*”.

The biological environment needs to be addressed for the totality of the Gulf of St. Lawrence and not just for the Sea Update area.

- In the fisheries section, the following sentence is incomplete: “*Description of commercial, recreational and aboriginal fisheries in;*”
- In the fisheries section, **all** fishing activities should be documented, whether the landings occur in Newfoundland or in other provinces.
- Information on migration corridors and essential habitats is required for **all** groups of species, and not only for “*finfish and marine invertebrates*” as requested by the draft Scoping Document.

- The Species at Risk section needs clarification. The draft Scoping Document requires only the “*habitat... that have been identified or are believed to be present*”. Who decides if a habitat is “believed to be present” and if so, under what criteria? The critical habitats of many species at risk are currently under study in the Gulf of St. Lawrence. This knowledge gap is problematic, and oil/gas activities should be postponed until scientific knowledge is adequate.
- Species at Risk should be described in all of the Gulf of St. Lawrence and not only in the SEA Update Area.
- In the Special/Sensitive Area section, we find only a definition of the terms and no spatial extent requirement. The draft Scoping Document should require identification of these areas in all of the Gulf of St. Lawrence.
- In the Special/Sensitive Area section, it is written that a **sensitive area** does not automatically require restrictions on oil/gas activities, nor special mitigation measures. This is unacceptable, and all sensitive areas should *de facto* be off-limit to oil/gas activities.
- Sensitive areas should include any areas where fish stock rebuilding or habitat restoration is ongoing.
- The draft Scoping Document calls for “*substantive uncertainties or information gaps [to be] identified*” (p. 7). There is considerable subjectivity in the term “**substantive**”. All information gaps must be pointed out, specifically those crucial to project-environment interactions.

5.2.3 Project-environment interactions

- The first sentence calls for a “*description of the interactions of petroleum **exploration activity** with the environment*” with no mention of exploitation/production activities. Yet, the third bullet mentions **production** activities. The opening sentence should be changed to include production activities.
- The draft Scoping Document restricts the cumulative effects analysis to activities strictly conducted within the SEA Update Area. This is in clear contradiction to section 5.1 (spatial and temporal boundaries) where it is clearly stated that, “*The area to be studied **will not be confined** to the SEA Update Area*”. The cumulative effects analysis should be expanded to consider potential oil/gas activities conducted in other provinces.
- The main potential “project-environment interaction” is a major oil spill. However, the draft SEA Scoping document does not once use the word “spill”. Only on two occasions does the document even hint at an accident and uses very soft wording: “*effects and mitigation of **potential accidental events***” (p. 6) and “***Accidental events** – including offshore and coastal interactions*” (p. 10).

The Scoping document should be much more specific and accurate. It should require the Updated SEA to review the implications of a worst case scenario spill, including all impacts on the environment and the Gulf communities. The Scoping Document should

also require a review of the impacts of any countermeasure used such as dispersants or oil burning.

- The Cabinet Directive on SEAs² states that an SEA should consider follow-up measures to monitor any adverse environmental effects resulting from implementing the policy (in the present case opening up the Gulf to oil/gas activities). The SEA should provide clear directives as to how the SEA's conclusions and recommendations will be followed in any future environmental assessment

5.2.4 Environment-project interactions

- Section 5.2.3 (Project-environment interactions) calls for an analysis that includes both exploration and production activities. However, section 5.2.4 (Environment-project interactions) restricts the analysis to exploration activities only. This is incoherent.

Impacts of the environment (storms, ice, etc.) on **production** activities should also be addressed since production occurs year-round and is bound to be influenced by sea ice, winter storms, or iceberg presence.

5.3 Conclusions and recommendations

- If the Gulf of St. Lawrence is found to be too sensitive to support offshore oil/gas activities, a final recommendation of the SEA could be that exploration rights should not be offered within the SEA Update Area. This is consistent with section 2, which says: "*Information from the SEA will assist the Board in determining whether exploration rights should be offered **in whole** or in part within the area*".

Yet exploration rights that have already been given (EL 1105) would be unaffected and would continue to be evaluated under the CEAA screening process. This, in our view, is a contradiction and is unacceptable. All exploration activities should be postponed until the end of the SEA process.

- Standards should be established to frame the C-NLOPB's final decision on whether or not to authorize offshore activities in a specific area.
- The results of the SEA will, in the future, be used to inform specific environmental assessments as they are being conducted. The SEA should provide clear directives as to how the SEA's conclusions and recommendations are to be followed by any future environmental assessment.

5.4 Consultations

- The draft Scoping Document states that consultations will be held "*in communities **in and around** the Gulf of St. Lawrence*". This wording implies that communities in all provinces around the Gulf will be consulted. Yet the following sentence states that

² The Cabinet Directive on the Environment Assessment of Policy, Plan and Program Proposals" (1990, updated 1999 and 2004) online: Canadian Environmental Assessment Agency <http://www.ceaa.gc.ca/default.asp?lang=En&n=A4C57835-1> [Directive].

*“consultation sessions will be held in communities **adjacent** to the SEA Update Area”*. This restricts consultations to the Western Coast of Newfoundland. This section is not coherent.

It should be clearly specified that consultation sessions will be held in communities around the Gulf of St. Lawrence (i.e. in five provinces).

- Issues and concerns expressed by stakeholders during the consultations should be reported accurately in the SEA Report, to give an idea of the social acceptance of opening the Gulf to oil/gas activities. This is in clear respect of the Cabinet Directives on SEAs. However, the draft Scoping Document states that *“Issues and concerns within the scope of the report will be taken under consideration and incorporated into the draft SEA Update report **if appropriate**”*. The words *“if appropriate”* should be dropped and a special part of the final SEA Report should specifically address stakeholder concerns.

Western Newfoundland and Labrador Offshore Area SEA Update Area

Gaps between Update Area and Interprovincial Line

