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**REGIONAL ASSESSMENT OF OFFSHORE OIL AND  
GAS EXPLORATORY DRILLING EAST OF  
NEWFOUNDLAND AND LABRADOR: REVIEW OF  
TASK TEAM DRAFT REPORT**

Prepared for: Mi'gmawe'l Tplu'taqnn Incorporated  
February 21, 2020



**Mi'gmawe'l Tplu'taqnn Incorporated (MTI)**

Chief George Ginnish  
Chief Rebecca Knockwood  
40 Micmac Rd  
Eel Ground New Brunswick

c/o Marcy Cloud, Impact Assessment Coordinator

February 21, 2020

Dear Chief George Ginnish and Chief Rebecca Knockwood:

It is our pleasure to provide you with our review of the Draft Report for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador. This review was completed by Allie Mayberry, MA, BSc; Levi Snook, BSc; Meaghan Langille, BSc; and Rachel Speiran, MA of Shared Value Solutions. We look forward to continuing to serve you in consultation and lands and resources protection matters. Please do not hesitate to get in touch with us if you have any questions or concerns with the enclosed report.

With best regards,

<original signed by>

Rachel Speiran, MA  
Regulatory and Negotiations Practice Area Lead and Senior Consultant  
Shared Value Solutions Ltd.



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# 1.0 INTRODUCTION

On January 23, 2020 the Impact Assessment Agency of Canada (IAAC) released the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador Draft Report. The report is subject to a 30-day comment period, with this submission being part of Mi'gmawe'l Tplu'taqnn Incorporated's (MTI) response to that comment period.

MTI retained the services of Shared Value Solutions Ltd. (SVS) to conduct this independent high-level peer review and strategic assessment of the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador Draft Report (Regional Assessment Draft Report). Our review focuses on environmental, cultural and socio-economic factors, and our comments build on previous submissions submitted by MTI regarding the multiple offshore oil and gas exploration projects' environmental impact statements and Agency environmental assessment reports associated with the Regional Assessment Study Area and process to date.

MTI is a not for profit organization created by the Mi'gmaq First Nations of New Brunswick to promote and support the recognition, affirmation, exercise, and implementation of their members' Aboriginal and Treaty rights and title. SVS consultants with expertise in marine water resources, aquatic ecology, migratory birds, fisheries biology, Indigenous Knowledge research, and socioeconomics conducted the review.

## 1.1 REVIEW OBJECTIVES

This report is not intended to be a comprehensive review of the Regional Assessment Draft Report and associated documents. This report identifies concerns, potential impacts and additional protection measures related to seven key issues of concern identified by MTI in communications with SVS, in relation to the rights and key values and interests of MTI member communities. The valued components identified include:

1. Fish and the Marine Environment including Atlantic Salmon and Atlantic Bluefin Tuna
2. Marine Mammals including North Atlantic Right Whale
3. Migratory birds
4. Cumulative effects
5. Integration of Mi'gmaq Indigenous Knowledge
6. MTI Socio-economic impacts

This report provides a summary of our review findings, which are also provided in the form of a Comment and Response Tracking Table in Appendix A, which MTI can provide to the Agency.



## 2.0 PROJECT DESCRIPTION AND REGULATORY PROCESS

### 2.1 REGULATORY CONTEXT

In April 2019 an Agreement to conduct a Regional Assessment was reached between the ministers responsible for the following files:

- Impact Assessment Agency of Canada (IAAC),
- Natural Resources Canada,
- the Newfoundland and Labrador Department of Natural Resources and
- Intergovernmental and Indigenous Affairs for Newfoundland and Labrador.

The Agreement set out the terms of reference for the Committee and other procedural matters related to the completion of the Regional Assessment, as well as defining its scope and various matters that it must consider and address. The Regional Assessment is focused on current and future potential offshore exploratory drilling and associated activities in a defined Study Area off Eastern Newfoundland as outlined in Section 2.2 and Figure 1 below.

The Regional Assessment was launched and initially conducted through the lens of requirements set out under Section 75 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). However, the Regional Assessment was also planned and carried out with an understanding that the use and applications of the results would fall under the new *Impact Assessment Act (IAA)*, namely Section 92 – 103 of the Act. Given the understanding that the results of the Regional Assessment would be applied under the new IAA, the Agreement that set out the terms for the assessment included definitions and factors that were applicable under the new Act. These factors are discussed in greater detail in section 2.3 below.

The group appointed for conducting the Regional Assessment is an independent committee consisting of five members appointed by the federal Minister of the Environment and Climate Change, in consultation with the other Ministers that were signatories to the Agreement. The membership of the committee consists of two co-chairs and three other members, who collectively represent a variety of backgrounds and areas of expertise.

The Committee's mandate includes both planning and conducting the Regional Assessment and its delivery to the Ministers, in a manner that is compliant with the requirements and provisions set out in the legislation and the Agreement referenced above. This included directing the various information gathering, analytical and engagement activities that were undertaken in its preparation and ultimate decisions on structure and content of this Regional Assessment Report including its findings and recommendations. In completing its work, the Committee has been supported by the following entities:

- 1) A Task Team, comprised of provincial and federal government employees representing each of the four parties to the Agreement, and co-chaired by the IAAC and the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB). This group directly supported the planning and completion of the Regional Assessment based on direction from the Committee; and
- 2) A Technical Advisory Group (TAG) comprised of representatives of relevant government departments and agencies, Indigenous groups, industry and stakeholder organizations, and others that have interests, information and expertise related to the Regional Assessment.



## 2.2 STUDY AREA

The Study Area for the assessment, as outlined in the Agreement covers a marine region of nearly 735,000 km<sup>2</sup> offshore Eastern Newfoundland (see Figure 1). The Study Area generally aligns with that of the C-NLOPB's Eastern Newfoundland Strategic Environmental Assessment (SEA), while extending its eastern boundary to Canada's 2013 submission to the United Nations Convention on the Law of the Sea (UNCLOS). The Regional Assessment Study Area is focused on activities that are or may occur in the area, including future exploratory drilling activities within these spatial boundaries.

However, there are some valued environmental components that were assessed beyond the spatial scope of the Study Area. More specifically, these included environmental components that have the potential to be affected by future exploratory drilling activity within the Study Area (e.g., where the zone of influence of a disturbance or effect may go beyond the Study Area, such as for underwater noise, oil spills, etc.). It also includes consideration of the movement patterns and ranges of migratory species, relevant oceanographic processes, and the location and extent of marine activities such as fisheries, and others.

According to the Regional Assessment Draft Report (2020), the overall size of the Study Area has proven to be one of the largest challenges in the completion of this Regional Assessment, due to the extent and the diverse and dynamic nature of this very large offshore environment, and associated considerations of data availability, quality and compatibility across different environmental components and in different parts of the Study Area.

In terms of its temporal scope, the Regional Assessment focusses on and applies to future exploratory drilling and associated activities within the Study Area, and as such the results of the assessment and its use do not have a defined "expiration date". The Committee has recognized, however, that the current Regional Assessment Report is based on information and analysis available at the time of writing. As a result, the assessment will need to undergo periodic updates and revisions as new information becomes available. The process for updating the Regional Assessment. There are several recommendations related to this with one of the primary mechanisms recommended being an establishment of an Oversight Committee for the Regional Assessment. Recommendation 16 outlines the following related to the creation and mandate of this committee:

*The Regional Assessment Committee recommends establishing an Oversight Committee to ensure that new information is identified and examined on an annual basis to determine its applicability to offshore exploratory drilling, and to ensure that the Regional Assessment remains current and valid into the future. It is also recommended that the Oversight Committee have representation from Indigenous groups, environmental groups, the fishing and oil and gas industries and others. Indigenous communities clearly articulated the need for such a committee with Indigenous representation.*



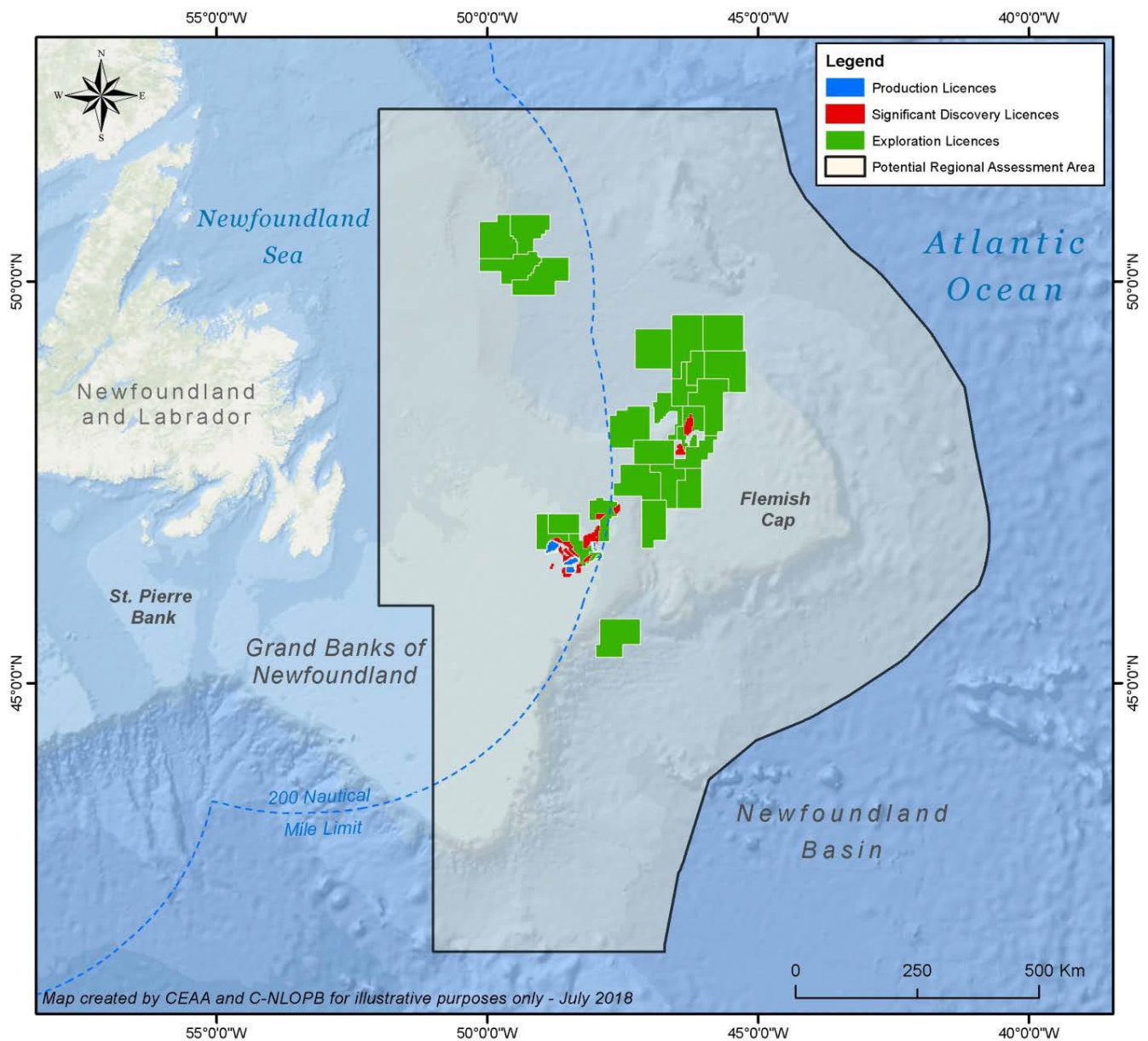


Figure 1 Map of Study Area for the Regional Assessment

## 2.3 SCOPE OF THE ASSESSMENT

The scope of the assessment looks at not only offshore drilling, but also examines associated activities connected to the exploration and development of offshore oil and gas resources. These activities are carried out under the rules and obligations identified in exploration licenses (EL) issued by the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB).

If an exploratory drilling program successfully identifies commercially viable petroleum resources it may result in additional activity related to further exploration, and possibly, development and production activities pending the receipt of required approvals and authorizations from the relevant regulatory authorities. As outlined in Chapters 5



and 7 of the Regional Assessment Draft Report, there have been a total of 162 exploration and delineation wells drilled in the Study Area to date, leading to four existing and one proposed oil production projects in this region.

These exploration programs usually include various components and activities, including the following:

- Transporting the drill rig to the planned drilling location,
- Conducting a seabed investigation using a remotely operated vehicle (ROV), sonar (multi-beam or side scan) or other relevant equipment, which is deployed from the drill rig or a support vessel, and
- Drilling of one or more wells using either a semi-submersible drill rig, drill ship or jack-up rig over a period of up to several months.

The key focus of the Regional Assessment is the exploratory drilling activities and the Agreement refers specifically to “offshore oil and gas exploratory drilling east of Newfoundland and Labrador”. More specifically this includes the planned drilling of exploratory wells, including drilling-related activities, such as pre-drilling wellsite seabed surveys themselves that comprise the “designated projects” that have triggered federal EA review requirements to date.

Although not referenced directly in the Agreement, the Draft Report does note that the Committee also recognizes that there are also various types of ancillary activities typically associated with offshore exploratory drilling in the Study Area, which are also relevant to the scope of the Regional Assessment. These ancillary activities can include the following additional actions, depending on the results of an exploration well:

- Confirming the size of the hydrocarbon deposit by drilling delineation wells into different parts of the identified hydrocarbon accumulation.
- Gathering further seismic data through vertical seismic profiling (VSP) surveys to obtain accurate time-to-depth ties to correlate seismic data to well depth.
- Conducting well flow tests if a large hydrocarbon deposit is identified to sample and identify formation fluids and to measure flow rates.
- Abandonment activities at exploration wells that do not result in discovery of oil and gas resources.

Well abandonment, in some circumstances includes suspending the well in place for future re-entry. As a result, the Committee has included and addressed the above activities in the Regional Assessment to ensure a complete assessment is achieved.

In addition to exploratory drilling and its associated activities, the Regional Assessment has also considered the assessment of alternative means of carrying out exploratory drilling activities that have been considered in recent EAs including options considered in the following activities:

- Drilling fluid selection (water based and synthetic bases muds),
- Rig types (semi-submersible, drillship, jack-up),
- Drilling waste management (offshore discharge after treatment, onshore disposal, offshore re-injection),
- Offshore lighting (amounts and types),
- Timing of flaring, and
- Chemical selection.

Evaluating the above alternative means allowed the Committee to establish a base case scenario for conducting the assessment with the understanding and recognitions that “the technologies used in the offshore oil and gas industry are constantly evolving through experience and innovation” (Draft Report, pg 6).

Finally, the Committee determined that the following aspects of offshore oil and gas exploration and development were not to be included in the scope of the assessment:





- On-shore facilities that provide supporting services offshore exploratory drilling such as re-fueling, temporary storage, staging and loading of materials and supplies.
- Offshore seismic surveys that are carried out in the Study Area were only assessed from the perspective their potential cumulative impacts and not assessed as part of the exploratory activities evaluated in the Regional Assessment.
- Any potential future development activities that have yet to be defined or proposed are not included within the scope of the Regional Assessment. The Committee understands that any future proposals for new petroleum production activities in the Study Area would continue to undergo detailed, project specific regulatory review and approval requirements under applicable legislation and processes and be informed by the outcomes of the Regional Assessment.

Rationale for exclusion of these components is outlined in section 1.3.1 of the Draft Report.

## 2.4 FACTORS CONSIDERED IN THE REGIONAL ASSESSMENT

Appendix A of the Agreement reached in April 2019 outlined the factors to be considered in the Regional Assessment. In total there were 17 factors included in the Regional Assessment scope. Those factors included the following:

- a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by offshore exploratory drilling, including
  - i) the effects of malfunctions or accidents that may occur in connection with exploratory drilling,
  - ii) any cumulative effects that are likely to result from offshore exploratory drilling in combination with other physical activities that have been or will be carried out, and
  - iii) the result of any interaction between those effects;
- b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of offshore exploratory drilling;
- c) the impact that exploratory drilling may have on any Indigenous group and any adverse impact that offshore exploratory drilling may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
- d) the purpose of and need for offshore exploratory drilling;
- e) alternative means of carrying out offshore exploratory drilling that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;
- f) Indigenous knowledge provided with respect to offshore exploratory drilling;
- g) the extent to which offshore exploratory drilling contributes to sustainability;



- h) the extent to which the effects of offshore exploration drilling hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
- i) any change to offshore exploratory drilling that may be caused by the environment;
- j) the requirements of the follow-up program in respect of offshore exploratory drilling;
- k) community knowledge provided with respect to offshore exploratory drilling;
- l) comments received from the public;
- m) comments from a jurisdiction that are received in the course of consultations;
- n) any assessment of the effects of offshore exploratory drilling that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to offshore exploratory drilling;
- o) any study or plan that is conducted or prepared by a jurisdiction – or an Indigenous governing body not referred to above - that is in respect of a region related to offshore exploratory drilling and that has been provided with respect to offshore exploratory drilling such as strategic environmental assessments conducted by the C-NLOPB;
- p) the intersection of sex and gender with other identity factors; and
- q) any other matter relevant to the Regional Assessment.

### 3.0 MI'GMAQ RIGHTS AND INTERESTS RELATIVE TO REGIONAL ASSESSMENT STUDY AREA

For this review, Mi'gmawe'l Tplu'taqnn Incorporated represents the rights and interests of eight of its nine member communities: Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgeoŋpetitj (Burnt Church) First Nation, Tjipŋgtŋtjg (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpig'anjig (Eel River Bar) First Nation and Metepenagiag Mi'kmaq Nation.

The Mi'gmaq are the Indigenous people (known to ourselves as L'Nu'g) whose traditional territory, known as Mi'gmaq'i, encompasses the lands and waters of what is currently known as Nova Scotia, Prince Edward Island, New Brunswick, southern and western Newfoundland, the Gaspé area of Quebec, Anticosti Island, the Magdalen Islands, and sections of the Northeastern United States (D. Simon, personal communication, December 14, 2018).

The Mi'gmaq have occupied, relied on, used, and been stewards of the lands and waters in Mi'gmaq'i since time immemorial. The Mi'gmaq entered into Peace and Friendship Treaties with the British Crown, which have been renewed many times and form a covenant chain. These treaties are in the process of being implemented through a Mi'gmaq /New Brunswick/Canada Framework Agreement (Government of New Brunswick, 2011).

The Mi'gmaq have established Aboriginal and Treaty Rights to, amongst others, hunt, fish and gather from the lands and waters of their territory for food, social and ceremonial purposes, as well as to trade and to earn a moderate livelihood all of which have been upheld by the Supreme Court of Canada.



### 3.1 MI'GMAWE'L TPLU'TAQNN'S VISION FOR SUSTAINABLE DEVELOPMENT OF NATURAL RESOURCES

Natural Resources are an integral part of the Lands and Waters of the Mi'gmaq. The Vision for Sustainable Development of Natural Resources states:

“Those Resources belong to Mother Earth. We may use them, but we are also their custodians. Natural Resources are not simply here for the taking, rather they must be managed carefully so as to provide benefits today while guaranteeing the rights and needs of generations yet to come. This requires truly sustainable development.”

**There are four pillars to sustainable development:**

- Environmental Sustainability
- Social Sustainability
- Cultural Sustainability
- Economic Sustainability

Each pillar supports the others. They must be kept in balance. The Mi'gmaq are committed to the cultural, spiritual and social importance and protection of lands, waters and natural resources. Natural resource development must:

- Understand that lands, waters and natural resources are integral to the wellbeing of humanity and are not simply commodities to be exploited;
- Seriously take into account the short and long term ecological costs of natural resource extraction and see those costs as potentially debilitating debts;
- Honour the precautionary principle (in that lack of scientific certainty must not impede conservation efforts and must not enable irresponsible development);
- Guarantee that the benefits of natural resource development are shared equitably with those most in need;
- Protect the environment;
- Ensure biological diversity;
- Maintain ecological balance;
- Commit to the rehabilitation of habitat and species that have been damaged by current and past natural resource extraction practices; and
- Place the needs of future generations on at least an equal footing with the needs of our time.



This Vision, and the rights described above, were the primary guides to undertaking this review considering Mi'gmaq's rights and interests. Also considered, in a more generic sense, are the primary effects of importance to the federal EA process that overlap with the MTI's rights and interests (as per Section 5(1)(c) of CEAA, 2012) are as follows:

Section 5. (1)(c)- *“with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on:*

- (i) health and socio-economic conditions;*
- (ii) physical and cultural heritage;*
- (iii) the current use of lands and resources for traditional purposes; or*
- (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.”*

The proposed activities within the geographic location of the Project's development area have the potential to impact Mi'gmaq's rights to the lands and waters, especially in the Atlantic Ocean shorelines, which are used by some Mi'gmaq for land and water use and socio-economic purposes.

## **3.2 THE INTEGRATION OF MI'GMAQ INDIGENOUS KNOWLEDGE IN THE REGIONAL ASSESSMENT**

Although required by the Factors to be Considered in the Regional Assessment within Appendix A of the Agreement and the following being stated in the Federal Crown Consultation Approach on the Regional Assessment, “The Regional Assessment will use best available science and Indigenous knowledge and will include consideration of the known physical, biological, social and economic characteristics of the Regional Assessment Study Area,” there is seemingly no Mi'gmaq comprehensive Indigenous Knowledge or Socio-Cultural-Economic Baseline Information, from MTI and MTI member communities actually included or integrated into the Regional Assessment Draft Report.

The Draft Report portrays an understanding of the importance of Indigenous knowledge inclusion in the Regional Assessment, leaning heavily on Elder Albert Marshall's concept of 'Two-Eyed Seeing' and holding its principles in very high regard in the body of the Report. Disappointingly, despite repeated attempts to illustrate how the Committee considered and included IK in the Regional Assessment Draft Report, the Committee, like the multiple project proponents within the Region, makes the following statement:

*“In its engagement with Indigenous groups, the Committee was not made aware that any group holds, claims or asserts Aboriginal or Treaty rights or otherwise undertakes traditional activities within the proposed Study Area, pursuant to section 35 of the Constitution Act, 1982. Rather, as discussed above and in more detail in Sections 3.3.2 and 4.2.3, one of the primary interests of Indigenous groups regarding current and future exploratory drilling activities in the Study Area relate to their potential adverse effects on migratory species that are used for traditional (including food, social and ceremonial (FSC)) purposes.”*

However, in a comment letter MTI provided the Agency on December 20, 2019 it is stated that,

*“6.4 states that the committee was not made aware of any group that holds claims or asserts aboriginal and treaty rights in the proposed study area. They go on to reference Section 35 of the constitution. **MTI finds this statement to be untrue. The communities' commercial activities are a modern-day interpretation of the rights***



*given to us through our treaties. Because the federal government chooses to make us use the commercial fishery to exercise these rights doesn't mean they are not the assertion of our Aboriginal and Treaty rights."*

The above is one of several issues MTI has raised pertaining to the incorporation of Mi'gmaq Indigenous Knowledge and land use that is gone wholly unaddressed in the Draft Report. Furthermore, our analysis of the Draft Report found that all of the issues and recommendations raised by MTI in the December 20, 2019 submission were not addressed in any real or substantive manner and as a result we are carrying forward all of those comments once more for the Agency and Committee to address in the Final Report and follow-up action plans and programs.

Until the issues that have been raised by MTI to date are responded to and addressed, then the Crown's duty to consult with the Mi'gmaq in New Brunswick has not been met. The full list of issues raised by MTI in the December 20, 2019 submission is outlined in Appendix B of this report.

## 4.0 REVIEW FINDINGS

### 4.1 MARINE FISH AND FISH HABITAT

#### 4.1.1 EVALUATION AND RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of all marine environment related information within the Draft Regional Assessment report and provides recommendations to resolve these issues.

**Comment 1:** *Regional Assessment Section 1.1 Purpose and Rationale; Section 1.2 Regulatory Context and Governance.* The Agreement that was developed to conduct a Regional Assessment between ministers responsible for the following: Impact Assessment Agency of Canada (IAAC), Natural Resources Canada, the Newfoundland and Labrador Department of Natural Resources and Intergovernmental and Indigenous Affairs for Newfoundland and Labrador. This Agreement set out the terms of reference for the Committee and other procedural matters related to the completion of the Regional Assessment, as well as defining its scope and various matters that it must consider and address. Despite fisheries being a significant component of the Regional Assessment, the Minister responsible for Fisheries and Oceans Canada (DFO) was not included in the development of the Agreement and therefore did not play a significant role in defining the scope and process on the Regional Assessment. Failure to include the DFO Minister in the development of the Agreement and ultimately the conducting of the Regional Assessment means a key policy perspective was missing from the design of the process. Although DFO was involved in the assessment through the Technical Advisory Group, the minister responsible for DFO is not included in the decision-making around the Regional Assessment in its current form.

**Recommendation 1a:** The Agreement that was established between the ministers for Impact Assessment Agency of Canada (IAAC), Natural Resources Canada, the Newfoundland and Labrador Department of Natural Resources and Intergovernmental and Indigenous Affairs for Newfoundland and Labrador should be amended to include the minister responsible for DFO in future decisions. This can be achieved through enacting section 8.1 of the Agreement pertaining to amendments to the Agreement

**Recommendation 1b:** The DFO Minister and Fisheries and Oceans Canada must play an active role in the periodic reviews and updates of the Regional Assessment as referenced in section 1.3.2 of the Regional Assessment Draft Report, including but not limited to holding decision-making authority



alongside the four other ministers regarding amendments and updates to the Regional Assessment and any subsequent policy, guidance, and regulation such as exemption regulations.

**Comment 2:** *Regional Assessment Section 2.5 GIS Decision Support Tool and Section 3.2.1.4 Finfish*

The GIS Decision Support tool was designed to allow users to identify where proposed exploratory drilling projects are situated in proximity to valued components and identify needs for mitigation and avoidance. The tool also provides an ability to monitor change in the offshore environment and the mitigation measures that should be required for specific exploratory drilling proposals. Notably, for issues important to Indigenous groups, the tool is meant to allow users to see and analyze trends in the offshore environment, such as changes in fisheries (such as Atlantic salmon and bluefin tuna). Despite the intended benefits of the GIS Tool, there is no inclusion of Atlantic salmon or bluefin tuna spatial data on the online tool, other than the inclusion of text and figures in the modules pulled from the Regional Assessment.

**Recommendation 2a:** It is acknowledged that the GIS decision Tool does allow a more comprehensive and readable version of the imagery-based data culminating from all the existing information in the Regional Assessment Study Area. As continuously indicated, impacts to Atlantic salmon are of great importance to MTI, and the available data on Atlantic salmon in the region should be incorporated into the interactive elements of the GIS decision tool, on top of the information provided in the modules.

**Recommendation 2b:** In addition to the addition of existing data into the GIS tool, the committee should ensure that future studies (i.e. ESRF-funded programs) be updated and incorporated into the GIS tool as they become available.

**Recommendation 2c:** Indigenous groups including MTI hold food, social and ceremonial (FSC) licenses for a variety of species, including in many cases for migratory species that occur in and/or around the Study Area such as: Atlantic salmon, American eel and other important species. The location of these licenses and any associated fisheries data in or around the Regional Assessment Study Area should be incorporated into the GIS Support tool.

**Comment 3:** *Regional Assessment Section 3.4.1.1 Marine Fish and Fish Habitat:*

MTI remains concerned with the potential impacts of all proposed and existing projects in the Regional Study Area on Atlantic salmon. There remains the potential for Atlantic salmon to pass through the Regional Study Area on route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. MTI have continuously commented on other EIS's within the study area that information on the spatial and temporal distribution of Atlantic salmon at sea is low and much of the information is dated. The Regional Assessment mentions the establishment of the Environmental Studies Research Fund (ESRF) which recently completed a call for Expressions of Interest related to developing a program of research aimed to determine the presence of Atlantic salmon in Eastern Canadian offshore regions. The Committee recommended that DFO increase and accelerate its research on Atlantic salmon to help address this important issue and that DFO develop its research plan in collaboration with Indigenous and stakeholder groups, and communicate its research plan and the eventual findings of that research to these groups.



**Recommendation 3a:** The North Shore Micmac District Council (NSMDC) has established the Anqotum, Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian Fishing Industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute such an Atlantic salmon research program specific to New Brunswick and Salmon populations important to MTI. In addition to the ESRF funding, the Committee and all future Proponents should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic salmon research study is funded and executed. The Committee can require a follow up program that includes such research to fill the current knowledge gaps identified in the Regional Assessment and satisfy MTI concerns regarding New Brunswick-Atlantic salmon impacts.

**Recommendation 3b:** Potential research projects that could be cooperatively carried out between Proponents, the Regional Assessment Committee, MTI and Anqotum may include a tracking study of Atlantic salmon using tags on salmon leaving New Brunswick waters to determine if those populations in fact reach and migrate through the Project Area. Acoustic receivers could be installed on the drilling platforms to monitor for the occurrence of those salmon populations within the Project Area during drilling operations. The Committee and the Impact Assessment Agency should require a follow up program that includes such a tracking study.

**Comment 4:** *Regional Assessment Section 4.5.1 Mitigation*

The Regional Assessment highlights that there are a number of standard mitigation measures that are often applied to offshore exploration drilling activities and that there is a high degree of commonality across projects and assessments in terms of those mitigations that are usually identified and committed by proponents in their Environmental Impact Statement (EIS). The committee then goes on to list these various standard mitigation measures. The committee notes that Proponents must often confirm their intent to participate in research pertaining to the presence of Atlantic salmon in the Eastern Canadian offshore areas and update the Board and Indigenous groups annually on related research activities as part of individual EIS and EA process. However, in the Committees recommendation in the Regional Assessment, the committee does not suggest that this commitment be required under an overarching condition for all Projects that fall under the Regional Assessment.

**Recommendation 4:** The Committee should explicitly recommend that a standard condition for future approvals must include the requirement by Proponents to commit to participate and provide funding towards research pertaining to the presence of Atlantic salmon in the Eastern Canadian offshore areas. This is also of particular concern in consideration of the potential implementation of a Ministerial Regulation that may reduce Proponent accountability over time.

**Comment 5:** *Regional Assessment Section 8.1.1 Recommended Requirements for Future Projects*

Within the Committees recommended requirements for future projects, the Committee recommends that Proponents be required to prepare and submit a Fisheries Communication Plan at the time of the application for an Operations Authorization from the C-NLOPB in order to ensure effective and timely development and implementation.



**Recommendation 5:** Further to the above recommendation, the committee should also make an explicit recommendation to make an over-arching condition of approval that stipulates that indigenous groups are included in the development and implementation of these Fisheries Communication Plans in a meaningful and cooperative way.

## 4.2 MARINE AND MIGRATORY BIRDS

### 4.2.1 EVALUATION AND RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of marine mammals and migratory birds sections of the Draft Regional Assessment report and provides recommendations to resolve these issues.

**Comment 6:** *Regional Assessment Section 8.8.1. Recommendation 27, Pg. 187.*

MTI is concerned that the Committee’s Recommendation 27 (Sect 8.8.1.) focuses only on improvements to visual observation-based marine mammal monitoring. While the implementation of standards / certifications for marine mammal observers (MMOs) will help ensure that MMOs are knowledgeable and experienced enough to detect marine mammals if present, it will not address the general limitations of a visual observation-based approach. For example, it can be challenging to detect marine mammals visually in certain conditions (e.g. inclement weather and low-light), or if marine mammals do not return to the sea surface to breathe in areas where they can be visually detected (Heenehan et al. 2016, Baumgartner et al. 2019). The use of passive acoustic monitoring (PAM) methodologies concurrent with visual surveys, could help address these limitations (Heenehan et al., 2016; Baumgartner et al., 2019) and improve the overall detectability of marine mammals during offshore exploration activities.

**Recommendation 6:** MTI recommends that the Committee revise recommendation 27 accordingly (suggested additions **bolded**):

“It is recommended that DFO develop, communicate and implement standards / certification for marine mammal observers that set out specific training and experience requirements for these personnel. **It is also recommended that DFO develop guidance on best management practices in marine mammal monitoring (e.g. visual observations by marine mammal observers, passive acoustic monitoring) and provide advice to oil and gas industry representatives on which methods and tools will be most effective under specific circumstances in offshore oil exploration projects.**”

**Comment 7:** *Regional Assessment Section 3.4.1.3, Pg 86.*

Baseline data on marine mammal use of the study area was sourced primarily from the DFO Marine Mammals Sightings Database and supplemented by the Ocean Biogeographic Information System (OBIS). While both of these resources provide information on marine mammal occurrence in the project area, these data do not represent the results of standardized surveys, and are subsequently not sufficient to estimate species abundance, density or absence. Considering this, more data should be collected using standardized surveys to adequately inform effects assessments and significance determinations for marine mammal valued components, particularly the endangered North Atlantic Right Whale as a species with a rapidly shifting range in light of changing ocean conditions (Brillant et al., 2015; Plourde et al., 2016; Davis et al., 2017; Meyer-Gutbrod, Greene & Davies, 2017). While the Committee acknowledges this significant data gap in Section 3.4, and recommends that ongoing or planned future study results be incorporated into future Regional Assessment updates (Recommendation 19, pg. 186), and DFO-NL





region's database be made publicly available (Recommendation 26, pg. 187), there is no recommendation that explicitly addresses this concern.

**Recommendation 7:** MTI recommends that the Committee add the following recommendation:

"It is recommended that DFO increase and accelerate its research on North Atlantic Right Whale use of the eastern Newfoundland offshore region to help address the significant baseline data gap related. It is further recommended that DFO develop its research plan in collaboration with Indigenous and stakeholder groups, and communicate its research plan and the eventual findings of that research to these groups."

**Comment 8:** *Regional Assessment Section 8.8.1. Pg. 182 - 188.*

While the Committee recommends improved standards for marine mammal observers (Recommendation 27), MTI is concerned that they do not specify which project activities (e.g. VSP, geotechnical surveys, supply vessel transit, etc.) marine mammal monitoring should apply to. MTI is particularly concerned about the potential cumulative, adverse effects of project supply vessel transit on the endangered North Atlantic Right Whale. North Atlantic Right Whales are a slow-moving species and therefore especially vulnerable to vessel strikes (DFO, 2014). Their mortality and injury is exacerbated when vessels move at high speeds and lack monitoring protocols (Vanderlaan, 2007). Despite this, proponents of projects in the eastern offshore Newfoundland region rarely require marine mammal monitoring to occur during vessel transit (though they often require it in association with VSP and geotechnical surveys).

**Recommendation 8:** MTI recommends that the Committee add the following recommendation:

"It is recommended that representatives of the oil and gas industry are required to implement marine mammal monitoring activities (e.g. MMOs and PAM) for all project activities, including supply vessel transit (not just VSP and geotechnical surveys)."

**Comment 9:** *Regional Assessment Section 3.5 – Committee Findings and Recommendations:*

The Regional Assessment Committee states that "The Committee recommends that ECCC, in partnership with other relevant stakeholders including the oil and gas industry, increase its research into the seasonal presence of Leach's Storm-petrels and other relevant species in the Study Area and on the species' behaviour and susceptibility to lights from drilling platforms and vessels, including the potential role of offshore operations in recently observed population declines" (page 90). This research opportunity does not mention incorporation or participation of First Nation communities and community members.

**Recommendation 9:** The Regional Assessment Committee should incorporate input from MTI community members to participate in research/monitoring activities. This provision of community involvement would provide MTI with greater assurance that robust research into the impacts of exploratory drilling on Leach's Storm Petrel throughout study area.

**Comment 10:** *Regional Assessment Section 4.51 – Mitigation:*

The Regional Assessment Committee stated that mitigation of the effects of supply and servicing vessels will include "Minimizing the amount of associated vessel and aircraft traffic, the use of existing and common travel routes where possible" (page 121). This statement does not include specifics regarding set back distances for vessels to meet provincial regulations.



**Recommendation 10:** The Regional Assessment Committee should specify avoidance measures (e.g. not operating a motorized boat within 100m of a cliff with nesting birds during the breeding season) for the supply and servicing vessels that meet the requirements of the Newfoundland and Labrador Seabird Ecological Reserve Regulations (Government of Newfoundland and Labrador, 2015).

**Comment 11:** *Regional Assessment Section 4.6.1 – Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects:*

The Regional Assessment Committee states that future projects will need “Operators undertaking exploratory drilling activity in the Study Area be required to assign trained (to ECCC-CWS standards, once finalized) and experienced seabird observers on drill rigs and supply vessels, whose primary responsibility is to make observations and collect seabird survey data during these activities. This would include Stranded Seabird Surveys developed and undertaken in collaboration with ECCC-CWS, as well as Stationary Platform Seabird Surveys and Moving Vessel Seabird Surveys according to established ECCC-CWS protocols. The information collected must also be recorded and reported according to data protocols and formats established by ECCC-CWS to help facilitate the integrity of the data and its incorporation and use in regional seabird datasets maintained by ECCC-CWS and others” (page 125). This statement does not include any specifics on whether the observer would be an independent observer and if First Nation communities would be engaged to participate in this program.

**Recommendation 11a:** The Regional Assessment Committee should include that operators should hire independent observers to ensure the integrity of the data, including Mi’gmaq observers and monitors from MTI member communities.

**Recommendation 11b:** The Regional Assessment Committee should include that operators should hire MTI community members and provide them with industry-standard job training if needed. This provision of direct oversight opportunities will provide MTI with greater assurance that ECCC’s protocols are being implemented correctly to monitor impacts on seabird communities throughout study area.

**Comment 12:** *Regional Assessment Section 4.6.1 – Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects:*

The Regional Assessment Committee states that for future projects will need operators to minimize light attraction effects on migratory birds by reducing “the amount of artificial lighting by adjusting the intensity, duration and frequency of the artificial lighting to the extent possible without compromising safety” (page 126). This does not cover mitigation measures that alter the direction of light.

**Recommendation 12:** The Regional Assessment Committee should include that operators should minimize the impact of artificial light by altering the direction of artificial light sources to reduce attraction effects on migratory birds (Reed, 1985).

**Comment 13:** *Regional Assessment Section 4.6.1 – Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects:*

The Regional Assessment Committee states that future projects should “Notify the C-NLOPB at least 30 days in advance of non-emergency flaring to allow the Board to determine whether flaring would occur during a period of migratory bird vulnerability and determine how the operator plans to avoid adverse environmental effects on migratory birds” (page 126). This does not include contacting other agencies to get their input on non-emergency flaring activities.



**Recommendation 13:** The Regional Assessment Committee should include that operators should notify ECCC as well as the C-NLOPB at least in advance of planning flaring activities for guidance on whether planned activities will occur during a period of migratory bird vulnerability.

## 4.3 CUMULATIVE EFFECTS

### 4.3.1 EVALUATION AND RECOMMENDATIONS

The following section describes issues identified by MTI in our scoped review of cumulative effects information in the Draft Regional Assessment report and provides recommendations to resolve these issues.

**Comment 14:** Regional Assessment Section 5.3.4 Cumulative Effects – Key Areas of Potential Activity and Effects Interaction and Overlap: Table 5.6 Potential Overlap of Predicted Exploratory Wells with On-Going and Future Activities in the Study Area. The Regional Assessment currently only assesses the cumulative impacts of existing production facilities and future exploratory drilling, with limited to no assessment of future production facility cumulative impacts. Cumulative effects are only described in terms of existing oil production facilities (Hibernia, Terra Nova, White Rose, Hebron), future *exploratory* drilling projects and one proposed oil production facility (Bay du Nord). There is no effects assessment of the scenario where all of these proposed *exploratory* wells turn into actual oil production facilities. There is no comprehensive cumulative effects assessment for examining the potential environmental impacts in the case where the equivalent amount exploration drills are subsequently developed into full oil production rigs. Acknowledging that the *exploration* drills are relatively short lived, the potential for these exploration wells to turn into production facilities, significantly increases the timeline for activity and potential impacts over time in the region. Further, if all exploration wells transition into production facilities, the potential for simultaneous accidents, malfunctions and general project activities, would significantly increase the potential for cumulative impacts.

**Recommendation 14:** The committee should conduct a more comprehensive cumulative effects assessment in the possible scenario where all of the proposed exploration projects transition in oil production facilities within the Regional Assessment Study Area. The Regional Assessment should examine and assess the potential environmental and cumulative impacts of increased oil production activities including an increase in general oil production operation activities as well as simultaneous accidents, malfunctions and oil spills in the study area.

**Comment 15:** *Regional Assessment Section 5.4 Committee Findings and Recommendations and Regional Assessment Section 8: Summary and Conclusions*

The committee has indicated in the Regional Assessment that the federal Minister of the Environment and Climate Change has stated the intent to make a regulation, informed by the findings of this Regional Assessment which will set out the conditions that future exploratory drilling projects in the Study Area would need to meet in order to be *exempt* from federal impact assessment requirements under the Impact Assessment Act. Although the committee acknowledges that cumulative effects are inherently complex and challenging to assess, the committee does not acknowledge that this regulation is likely a means of increasing regulatory efficiencies, rather than improving the understanding and protections for the Regional Study Area. Furthermore, this type of ministerial regulation may reduce the level of proponent accountability and reduce the level of environmental considerations and protections that



would otherwise be captured in a Project-specific EIS. This may also impede the ability of indigenous groups to express community-specific concerns on project-specific impacts.

**Recommendation 15a:** The Regional Assessment should include an assessment of how a potential ministerial regulation, as suggested, may reduce the environmental oversight on an individual project-specific basis. The committee should examine the potential cumulative assessment gaps and project-specific impacts that may arise due to a blanket regulation that exempts projects from individual environmental review.

**Recommendation 15b:** The committee should also consider the effects of such a ministerial regulation on the opportunities and for indigenous groups to meaningfully engage in individual projects and the ability to express community-specific concerns to project-specific impacts. The committee should make recommendations to the Minister that specifically request that Indigenous engagement and consultation must continue on a project-specific basis in order for communities to continue to discuss and *laissez* directly with Proponents.

## 4.4 SOCIO-ECONOMICS AND COMMUNITY WELL-BEING

### 4.4.1 EVALUATION AND RECOMMENDATIONS

**Comment 16:** *Section 2.5 GIS Support Tool.* Within the Report, the Committee clearly establishes how vital the GIS mapping support tool was in the Regional Assessment, and more importantly, how it will be central to the ongoing ‘evergreen’ evaluation of cumulative effects and regional assessment of the Study Area and beyond. What is not indicated is a term of reference for its use or how Indigenous representatives will be able to engage with the tool.

**Recommendation 16:** MTI requests that select Indigenous representatives and resource managers on the future Regional Assessment Advisory and Oversight Committee have in-depth training on the GIS support tool and be directly involved in the data input and analysis associated with the geo-spatial mapping activities therein.

**Comment 17:** *Section 3.5.1 Incorporating and Adapting to New Knowledge.* MTI agrees with the recommendations put forth, however insists that the Committee be held accountable for addressing the concerns regarding Mi’gmaq Knowledge inclusion into its ongoing ‘evergreen’ regional assessment as outlined in Section 3.2 of this Submission. For instance, there is a continued, carried over focus on Atlantic salmon as a priority species to research and monitor (this mirrors the proponents’ approach within their EISs); however MTI has repeatedly communicated the cultural importance of other species such as tuna and swordfish. Despite the Committee acknowledging other species of importance, their recommendations do not reflect this acknowledgment. As such, there are no commitments for researching and monitoring impacts to other species of cultural importance as part of future Regional Assessment evaluations. Moreover, these recommendations lack explicit conditions that Indigenous representatives be involved in the ongoing regional assessment evaluations.

**Recommendation 17a:** Mi’gmaq Knowledge needs to be reflected in a meaningful, explicit and integrated manner across all value components within future regional assessment evaluations. That Knowledge needs to be updated using clear and accessible feedback mechanisms; not just with DFO but through the wider overarching RA oversight committee such that studies and feedback



mechanisms are coordinated and integrated. The oversight committee needs a clear Terms of Reference as well as a management framework that guides communication, information gathering, monitoring and adaptive management measures and its annual reporting to the IAAC and Minister.

**Recommendation 17b:** In order for Mi'gmaq Knowledge to be reflected in a meaningful, explicit and integrated manner across all value components within future regional assessment evaluations a Mi'gmaq-led Indigenous Knowledge study must be conducted. Adequate capacity funding must be provided by the Government of Canada to conduct this Study and the results from the Study must be used to inform and update the Regional Assessment Report upon the completion of the Study. Integration of the Mi'gmaq knowledge shared must be done in close collaboration with MTI and done so in a manner that adheres to and respects MTI's methodology on the collection and sharing of Indigenous Knowledge.

**Comment 18:** Comment: *Section 4.1 Issues and Interactions.* The Report provides a comprehensive list of scoped issues and interactions yet does not mention the indirect effects and interaction pathways on socio-economic values including those of Indigenous fishers, their families and communities. This demonstrates an overarching disconnection between acknowledging the importance of IK within Regional Assessment, and the process of assessing regional effects that in practice, incorporates the social, cultural and economic value components espoused by Mi'gmaq IK.

**Recommendation 18:** MTI request that the Committee and future Regional Assessment Oversight Committee include this last value to make explicit, the linkages between the bio-physical/marine effect mechanisms and interactions and the human-health and wellbeing pathways to resulting indirect social, cultural and economic effects, especially as they pertain to the Indigenous populations with interests surrounding the Regional Assessment Study Area.

**Comment 19:** *Section 4.5.1. Mitigation.* The Committee lists a series of recommendations including #19, which states: "Active and continuous communications and coordination with other marine users and key agencies and organizations. This includes the preparation of Fisheries Communication Plans by operators to facilitate coordinated communication with fishers, which includes procedures for informing commercial fishers and Indigenous groups of planned activities (including several weeks' notice prior to starting a well), location of safety zones, anticipated vessel schedules and routes, locations of suspended or abandoned wells, determination of fisheries liaison officer (FLO) and guide vessel needs, notifications of an accidental event and any associated health risks, and appropriate response procedures. This plan is developed in consultation with Indigenous groups and commercial fishers". It is not clear however, how the individual operators' Fisheries Communication Plans will relate to or not relate to an overarching proposed Regional Assessment Oversight Committee and/or align with its assumed mandate to meaningfully include Indigenous Knowledge within its ongoing monitoring and adaptive management plans.

**Recommendation 19:** MTI requests that a clear commitment be made through the Regional Assessment's Oversight and Advisory Committee, and within its future Regional Assessment evaluations and reporting terms of reference, that a coordinated approach to communications, monitoring, feedback mechanisms and in turn, adaptive management decisions is needed in order to put the concept of 'Two Eyed Seeing' into practice.

**Comment 20:** *Section 4.6 Committee Findings and Recommendations.* Building on the comment above, MTI is concerned with the inconsistent nature of messaging and lack of clarity around how cumulative effects will be monitored, and how and to what extent will processes be put into place to ensure that Indigenous Knowledge is integrated through the regional assessment. For instance, in section 4.6.1



Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects, in recommendations #3 and #4, the Committee recommends timing related conditions for the standard operator – driven Fisheries Communication Plan. However, there is no acknowledgement or reiteration of the importance of accessible and inclusive processes for Indigenous involvement in the creation of these plans, nor the creation of, and involvement in, environmental monitoring and adaptive management measures. The comments reflect an agreement with the need for low level engagement through ‘notification only’ measures. However, this is incongruent with other comments and recommendations within the RA that allude to more meaningful Indigenous involvement and knowledge being important - clarity, consistency and commitment is needed on this topic.

**Recommendation 20:** MTI requests that the comment above is incorporated into its recommendations - at individual project *and* regional level through the RA oversight and advisory committee with a clear, collaboratively development Terms of Reference and management framework.

**Comment 21:** *Section 4.6.3 Identifying Other Initiatives and Requirements.* The Committee states “The GIS decision support tool for the first time puts within the hands of resource managers a means to identify and analyze the multitude of factors at play in this region. This task is a priority given the expected pace of future petroleum exploration and development.” MTI agrees with the statement and requests that additional commitments be made by the Committee, the IAAC and associated task forces to better reflect Indigenous representation and Knowledge inclusion.

**Recommendation 21:** MTI supports this recommendation and deems it an urgent, critical priority for the IAAC to mandate within a Terms of Reference and management framework for a Regional Assessment Oversight and Advisory Committee. Additionally, the GIS tool needs to be made accessible to all representatives on the Committee, including its Indigenous representatives – a basic level of awareness of its functioning and results at a bare minimum; and more in depth training for those who have most direct involvement on the committee and within Marine Planning initiatives.

**Comment 22:** *Section 6.3.1.1 Assessing and Managing Cumulative Effects.* The Committee reported that: “Participants at the workshop suggested the following measures to address cumulative effects through the lens of Two-Eyed Seeing:

- Assess multiple industry effects through marine spatial mapping and identify interactions between effects on species of concern;
- Create a multi-stakeholder- / -rights-holder research group to integrate research and shift away from research being conducted in silos;
- Expand current thinking on cumulative effects to consider climate change (e.g., effects from large icebergs, large storms and waves, increasing water temperature/ocean acidity and concern about the impact of projects, and subsequent development, on emission levels); and
- Address cumulative effects and associated thresholds (i.e., level where impacts may be significant) of unreportable spills/allowable releases in an increasing industrial environment. “

MTI agrees with these suggested measures however this list is missing a process component that reflects Indigenous fishers and other knowledge holders’ role in these activities.

**Recommendation 22:** MTI requests that the Regional Assessment Advisory Committee include direct involvement of Indigenous Knowledge throughout short, medium and long term environmental and cultural monitoring and adaptative management measures.

**Comment 23:** *Section 6.3.1.2 Addressing Power Imbalances.* The Committee reports that:



*“Participants at the workshop suggested the following additional measures to address power imbalances through the lens of Two-Eyed Seeing:*

- *Educate people on the Indigenous context in Canada (such as rights and identity);*
- *Include Indigenous people alongside government when writing policy;*
- *Provide capacity to be meaningfully included in the process (attend meetings, preparation and debrief time) including funding for independent technical experts;*
- *Responsible Ministers should be accountable when making decisions that are not in line with consensus decisions made by committees such as this;*
- *Having direct involvement of Indigenous groups at the beginning of a process rather than at the draft or final report stage. This would require Indigenous representatives on the Committee and Indigenous people should have a say in who sits on the Committee, including using a consensus-based approach when doing Committee work; and*
- *Ensure that an obligation exists to share information promptly, for example on oil spills.”*

**Recommendation 23a:** MTI agrees with these recommendations and suggests that other measures can be taken to help rectify power imbalances.

**Recommendation 23b:** MTI also suggests alternative forms of engagement - formats that take planners and decision makers out of conference and meeting rooms and into the marine environment with Indigenous Fishers, and into informal community settings where dialogues can be held within the context of where Indigenous Knowledge is sourced from.

**Recommendation 23c:** Provide specific capacity funding for in depth training and a full time position for Indigenous community members to interact with, and be a part of the team that uses and applies the GIS tool that will, according to this RA and as acknowledged by MTI, be vital to the ongoing evaluation of regional, cumulative effects.

**Comment 24:** *Section 6.3.1.2 Addressing Power Imbalances*

The Committee states that “Recognizing that eliminating power imbalances requires institutional change beyond the reach of this Regional Assessment, the Committee has recommended Indigenous representation on a Regional Assessment Oversight Committee as a means to directly involve Indigenous people in reviewing and updating the Regional Assessment as well as having input into Regional Assessment procedures and policies going forward. The Committee also recommends establishing links between the Regional Assessment Oversight Committee and the Impact Assessment Agency of Canada (IAAC) Indigenous Advisory Committee. The recommendation requiring a Diversity Plan is a further mechanism for providing additional power to under-representative groups, one being Indigenous groups.” Another factor is the coordination of each Proponent’s Indigenous Fisheries Communication Plan – this particular engagement measure has, to this point, been the sole tangible measure agreed to by individual proponents and endorsed by the regulators, and yet it is being planned exclusively as a notification tool.

**Recommendation 24:** The Regional Assessment Oversight Committee and the IAAC need to play a role in oversight of the individual operators’ Fisheries Communication Plans, and ensure that these notification based plans are not the sole engagement and consultation activity that will take place in the face of the regional and cumulative implications of the multiple offshore oil operations currently underway.



## 5.0 SUMMARY AND RECOMMENDATIONS

This independent review Draft Report for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador focuses on areas integral to Mi'gmaq rights and interests. With this lens, the review strategically assesses how valued components that intersect with MTI's rights and interests were considered in the Regional Assessment Draft Report as described in Section 4.0 of this report.

The review documents issues and interests relevant to MTI, and provides 24 recommendations that ensure Mi'gmaq knowledge, rights, and concerns are wholly and completely considered in this Regional Assessment, as well as all future Regional Assessment evaluations and proposed annual Reporting. In particular, the review provides recommendations for considerations and measures to be applied to future project assessments and approvals that would be subject to provisions under the Regional Assessment. This includes accommodations related to the Mi'gmaq Indigenous fishery, and accommodations related to future involvement of Indigenous nations, including MTI members communities in follow-up environmental and cultural monitoring and adaptive management in the Study Area.

The Committee has not integrated Mi'gmaq comprehensive Indigenous Knowledge or Socio-Cultural-Economic Baseline Information into the Draft Regional Assessment Report to date, despite concerns regarding this gap being raised by MTI in the December 20, 2019 submission. As a result, the Crown's duty to consult, via integration of adequate and meaningful engagement, consultation, and accommodation with the Mi'gmaq in New Brunswick, has not been met.

MTI puts forward the following additional accommodations as potential means of addressing the issues and comments raised in this review of the Draft Report for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador:

1. The Final Regional Assessment Report and follow up plans, mechanisms, and activities need to better integrate Indigenous Knowledge information, including information related to the exercising of rights through food, social, and ceremonial (FSC) fisheries licenses.
  - a. In order for Mi'gmaq Indigenous Knowledge to be reflected in a meaningful, explicit and integrated manner an MTI-led Indigenous Knowledge study must be conducted. Adequate capacity funding must be provided by the Government of Canada to conduct this Study and the results from the Study must be used to inform and update the Regional Assessment Report upon the completion of the Study. Integration of the Mi'gmaq knowledge shared must be done in close collaboration with MTI and done so in a manner that adheres to and respects MTI's methodology on the collection and sharing of Indigenous Knowledge.
2. The Agency, the Committee, Technical Advisory Group, and any other entities tasked with the completion and implementation of the Regional Assessment should continue to engage MTI, including measures to involve the expertise of Anqotum Fisheries Resource Centre in designing and conducting a focused Atlantic salmon research project that seeks to fill data gaps related to Atlantic salmon use and existence in the Study Area.
3. Establish a forum and process where MTI and other Indigenous communities can continue to meet with the Agency and be involved in providing data, resolving issues, and participating in follow-up program decision-making regarding the Regional Assessment. This includes continually integrating Mi'gmaq Indigenous Knowledge and socio-economic information.





4. Ensure MTI and other Indigenous Nations and governing bodies are provided with adequate capacity funding to participate in ongoing engagement, data collection, and decision making through the provision of capacity funding to support and participate in an equal capacity in this process.
5. The Agency and the Crown must engage in direct, meaningful consultation with all Mi'gmaq First Nations of New Brunswick to ensure that its legitimate concerns are understood and reflected throughout any follow up action plans and activities related to or informed by the Regional Assessment. This is particularly important as the Regional Assessment will exempt the Duty to Consult from future projects in the Study Area, as a result ensuring a mechanism for ongoing communication and issue resolution is critically important for ensuring the constitutionally-protected rights are protected now and into the future.
  - a. The Agency and MTI should develop a consultation and communication plan for enhanced and ongoing engagement and consultation with MTI and its member communities related to offshore exploration activities, applying the whole of government approach that was taken in conducting the Regional Assessment. This includes the development of an annual report should also be submitted to MTI which summarizes the implementation and results of all consultation and engagement activities.
6. The Agency should mandate that going forward any future exploration projects include a requirement to develop an agreement or memorandum of understanding between MTI, the Crown and the Proponent to support MTI and MTI member communities' participation in environmental, socio-economic and cultural monitoring of drilling and associated activities throughout the life of the Project. This may also require:
  - a. Training, involvement, employment of Mi'gmaq First Nations of New Brunswick environmental and cultural monitors for all Project phases.
  - b. Involvement in emergency preparedness planning and appropriate notifications and consultations in the event of a significant accident or malfunction.

We also recommend that issues related to key concerns expressed by MTI in this report be the focus of subsequent meetings with the Agency, the Committee, the Technical Advisory Committee and other associated Crown agencies to ensure all issues are properly and fully addressed in the Final Regional Assessment Report and subsequent follow up actions.

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# APPENDIX A - COMMENT TRACKING TABLE: REGIONAL ASSESSMENT OF OFFSHORE OIL AND GAS EXPLORATORY DRILLING EAST OF NEWFOUNDLAND AND LABRADOR

Table 1. Comment Tracking Table

COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
<b>MARINE FISH AND FISH HABITAT</b>			
1	<i>Regional Assessment Section 1.1 Purpose and Rationale; Section 1.2 Regulatory Context and Governance.</i>	The Agreement that was developed to conduct a Regional Assessment between ministers responsible for the following: Impact Assessment Agency of Canada (IAAC), Natural Resources Canada, the Newfoundland and Labrador Department of Natural Resources and Intergovernmental and Indigenous Affairs for Newfoundland and Labrador. This Agreement set out the terms of reference for the Committee and other procedural matters related to the completion of the Regional Assessment, as well as defining its scope and various matters that it must consider and address. Despite fisheries being a significant component of the Regional Assessment, the Minister responsible for Fisheries and Oceans Canada (DFO) was not included in the development of the Agreement and therefore did not play a significant role in defining the scope and process on the Regional Assessment. Failure to include the DFO Minister in the development of the Agreement and ultimately the conducting of the Regional Assessment means a key policy perspective was missing from the design of the process. Although	<p>1a: The Agreement that was established between the ministers for Impact Assessment Agency of Canada (IAAC), Natural Resources Canada, the Newfoundland and Labrador Department of Natural Resources and Intergovernmental and Indigenous Affairs for Newfoundland and Labrador should be amended to include the minister responsible for DFO in future decisions. This can be achieved through enacting section 8.1 of the Agreement pertaining to amendments to the Agreement</p> <p>1b: The DFO Minister and Fisheries and Oceans Canada must play an active role in the periodic reviews and updates of the Regional Assessment as referenced in section 1.3.2 of the Regional Assessment Draft Report, including but not limited to holding decision-making authority alongside the four other ministers regarding amendments and updates to the Regional Assessment and any subsequent policy, guidance, and regulation such as exemption regulations.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		<p>DFO was involved in the assessment through the Technical Advisory Group, the minister responsible for DFO is not included in the decision-making around the Regional Assessment in its current form.</p>	
2	<p><i>Regional Assessment Section 2.5 GIS Decision Support Tool and Section 3.2.1.4 Finfish</i></p>	<p>The GIS Decision Support tool was designed to allow users to identify where proposed exploratory drilling projects are situated in proximity to valued components and identify needs for mitigation and avoidance. The tool also provides an ability to monitor change in the offshore environment and the mitigation measures that should be required for specific exploratory drilling proposals. Notably, for issues important to Indigenous groups, the tool is meant to allow users to see and analyze trends in the offshore environment, such as changes in fisheries (such as Atlantic salmon and bluefin tuna). Despite the intended benefits of the GIS Tool, there is no inclusion of Atlantic salmon or bluefin tuna spatial data on the online tool, other than the inclusion of text and figures in the modules pulled from the Regional Assessment.</p>	<p>1a: It is acknowledged that the GIS decision Tool does allow a more comprehensive and readable version of the imagery-based data culminating from all the existing information in the Regional Assessment Study Area. As continuously indicated, impacts to Atlantic salmon are of great importance to MTI, and the available data on Atlantic salmon in the region should be incorporated into the interactive elements of the GIS decision tool, on top of the information provided in the modules.</p> <p>1b: In addition to the addition of existing data into the GIS tool, the committee should ensure that future studies (i.e. ESRF-funded programs) be updated and incorporated into the GIS tool as they become available.</p> <p>1c: Indigenous groups including MTI hold food, social and ceremonial (FSC) licenses for a variety of species, including in many cases for migratory species that occur in and/or around the Study Area such as: Atlantic salmon, American eel and other important species. The location of these licenses and any associated fisheries data in or around the Regional Assessment Study Area should be incorporated into the GIS Support tool.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
3	<i>Regional Assessment Section 3.4.1.1 Marine Fish and Fish Habitat</i>	MTI remains concerned with the potential impacts of all proposed and existing projects in the Regional Study Area on Atlantic salmon. There remains the potential for Atlantic salmon to pass through the Regional Study Area on route to and from their maturation and winter-feeding grounds in the Labrador Sea and off Greenland. MTI have continuously commented on other EIS's within the study area that information on the spatial and temporal distribution of Atlantic salmon at sea is low and much of the information is dated. The Regional Assessment mentions the establishment of the Environmental Studies Research Fund (ESRF) which recently completed a call for Expressions of Interest related to developing a program of research aimed to determine the presence of Atlantic salmon in Eastern Canadian offshore regions. The Committee recommended that DFO increase and accelerate its research on Atlantic salmon to help address this important issue and that DFO develop its research plan in collaboration with Indigenous and stakeholder groups, and communicate its research plan and the eventual findings of that research to these groups.	<p><b>2a:</b> The North Shore Micmac District Council (NSMDC) has established the Anqotum, Fisheries Resource Centre, which is an Aboriginal Aquatic Resources and Oceans Management (AAROM) Program. Anqotum has been formed to establish a permanent Indigenous presence in the Canadian Fishing Industry by developing a strategy focused on capacity building, combining resources, and strengthening relationships with all stakeholders. Anqotum has the knowledge, skills and expertise to develop and execute such an Atlantic salmon research program specific to New Brunswick and Salmon populations important to MTI. In addition to the ESRF funding, the Committee and all future Proponents should work directly with MTI and Anqotum to ensure that a comprehensive Atlantic salmon research study is funded and executed. The Committee can require a follow up program that includes such research to fill the current knowledge gaps identified in the Regional Assessment and satisfy MTI concerns regarding New Brunswick-Atlantic salmon impacts.</p> <p><b>2b:</b> Potential research projects that could be cooperatively carried out between Proponents, the Regional Assessment Committee, MTI and Anqotum may include a tracking study of Atlantic salmon using tags on salmon leaving New Brunswick waters to determine if those populations in fact reach and migrate through the Project Area. Acoustic receivers</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
4	<i>Regional Assessment Section 4.5.1 Mitigation</i>	<p>The Regional Assessment highlights that there are a number of standard mitigation measures that are often applied to offshore exploration drilling activities and that there is a high degree of commonality across projects and assessments in terms of those mitigations that are usually identified and committed by proponents in their Environmental Impact Statement (EIS). The committee then goes on to list these various standard mitigation measures. The committee notes that Proponents must often confirm their intent to participate in research pertaining to the presence of Atlantic salmon in the Eastern Canadian offshore areas and update the Board and Indigenous groups annually on related research activities as part of individual EIS and EA process. However, in the Committees recommendation in the Regional Assessment, the committee does not suggest that this commitment be required under an overarching condition for all Projects that fall under the Regional Assessment.</p>	<p>could be installed on the drilling platforms to monitor for the occurrence of those salmon populations within the Project Area during drilling operations. The Committee and the Impact Assessment Agency should require a follow up program that includes such a tracking study</p> <p>The Committee should explicitly recommend that a standard condition for future approvals must include the requirement by Proponents to commit to participate and provide funding towards research pertaining to the presence of Atlantic salmon in the Eastern Canadian offshore areas. This is also of particular concern in consideration of the potential implementation of a Ministerial Regulation that may reduce Proponent accountability over time.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
5	<i>Regional Assessment Section 8.1.1 Recommended Requirements for Future Projects</i>	Within the Committees recommended requirements for future projects, the Committee recommends that Proponents be required to prepare and submit a Fisheries Communication Plan at the time of the application for an Operations Authorization from the C-NLOPB in order to ensure effective and timely development and implementation.	Further to the above recommendation, the committee should also make an explicit recommendation to make an over-arching condition of approval that stipulates that indigenous groups are included in the development and implementation of these Fisheries Communication Plans in a meaningful and cooperative way.

#### MARINE MAMMALS & MIGRATORY BIRDS

6	<i>Regional Assessment Section 8.8.1. Recommendation 27, Pg. 187</i>	MTI is concerned that the Committee’s Recommendation 27 (Sect 8.8.1.) focuses only on improvements to visual observation-based marine mammal monitoring. While the implementation of standards / certifications for marine mammal observers (MMOs) will help ensure that MMOs are knowledgeable and experienced enough to detect marine mammals if present, it will not address the general limitations of a visual observation-based approach. For example, it can be challenging to detect marine mammals visually in certain conditions (e.g. inclement weather and low-light), or if marine mammals do not return to the sea surface to breathe in areas where they can be visually detected (Heenehan et al. 2016, Baumgartner et al. 2019). The use of passive acoustic monitoring (PAM) methodologies concurrent with visual surveys, could help address these limitations (Heenehan et al., 2016; Baumgartner et al., 2019) and improve the overall	MTI recommends that the Committee revise recommendation 27 accordingly (suggested additions <b>bolded</b> ): “It is recommended that DFO develop, communicate and implement standards / certification for marine mammal observers that set out specific training and experience requirements for these personnel. <b>It is also recommended that DFO develop guidance on best management practices in marine mammal monitoring (e.g. visual observations by marine mammal observers, passive acoustic monitoring) and provide advice to oil and gas industry representatives on which methods and tools will be most effective under specific circumstances in offshore oil exploration projects.</b> ”
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COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		detectability of marine mammals during offshore exploration activities.	
7	<i>Regional Assessment Section 3.4.1.3, Pg 86.</i>	Baseline data on marine mammal use of the study area was sourced primarily from the DFO Marine Mammals Sightings Database and supplemented by the Ocean Biogeographic Information System (OBIS). While both of these resources provide information on marine mammal occurrence in the project area, these data do not represent the results of standardized surveys, and are subsequently not sufficient to estimate species abundance, density or absence. Considering this, more data should be collected using standardized surveys to adequately inform effects assessments and significance determinations for marine mammal valued components, particularly the endangered North Atlantic Right Whale as a species with a rapidly shifting range in light of changing ocean conditions (Brillant et al., 2015; Plourde et al., 2016; Davis et al., 2017; Meyer-Gutbrod, Greene & Davies, 2017). While the Committee acknowledges this significant data gap in Section 3.4, and recommends that ongoing or planned future study results be incorporated into future Regional Assessment updates (Recommendation 19, pg. 186), and DFO-NL region’s database be made publicly available (Recommendation 26, pg. 187), there is no recommendation that explicitly addresses this concern.	MTI recommends that the Committee add the following recommendation:  “It is recommended that DFO increase and accelerate its research on North Atlantic Right Whale use of the eastern Newfoundland offshore region to help address the significant baseline data gap related. It is further recommended that DFO develop its research plan in collaboration with Indigenous and stakeholder groups, and communicate its research plan and the eventual findings of that research to these groups.”





COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
8	<i>Regional Assessment Section 8.8.1. Pg. 182 - 188.</i>	While the Committee recommends improved standards for marine mammal observers (Recommendation 27), MTI is concerned that they do not specify which project activities (e.g. VSP, geotechnical surveys, supply vessel transit, etc.) marine mammal monitoring should apply to. MTI is particularly concerned about the potential cumulative, adverse effects of project supply vessel transit on the endangered North Atlantic Right Whale. North Atlantic Right Whales are a slow-moving species and therefore especially vulnerable to vessel strikes (DFO, 2014). Their mortality and injury is exacerbated when vessels move at high speeds and lack monitoring protocols (Vanderlaan, 2007). Despite this, proponents of projects in the eastern offshore Newfoundland region rarely require marine mammal monitoring to occur during vessel transit (though they often require it in association with VSP and geotechnical surveys).	MTI recommends that the Committee add the following recommendation:  “It is recommended that representatives of the oil and gas industry are required to implement marine mammal monitoring activities (e.g. MMOs and PAM) for all project activities, including supply vessel transit (not just VSP and geotechnical surveys).”
9	<i>Regional Assessment Section 3. 5 – Committee Findings and Recommendations</i>	The Regional Assessment Committee states that “The Committee recommends that ECCC, in partnership with other relevant stakeholders including the oil and gas industry, increase its research into the seasonal presence of Leach's Storm-petrels and other relevant species in the Study Area and on the species' behaviour and susceptibility to lights from drilling platforms and vessels, including the potential role of offshore operations in recently observed population declines” (page 90). This research opportunity does	The Regional Assessment Committee should incorporate input from MTI community members to participate in research/monitoring activities. This provision of community involvement would provide MTI with greater assurance that robust research into the impacts of exploratory drilling on Leach's Storm Petrel throughout study area.



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		not mention incorporation or participation of First Nation communities and community members.	
10	<i>Regional Assessment Section 4.51 – Mitigation:</i>	The Regional Assessment Committee stated that mitigation of the effects of supply and servicing vessels will include “Minimizing the amount of associated vessel and aircraft traffic, the use of existing and common travel routes where possible” (page 121). This statement does not include specifics regarding set back distances for vessels to meet provincial regulations.	The Regional Assessment Committee should specify avoidance measures (e.g. not operating a motorized boat within 100m of a cliff with nesting birds during the breeding season) for the supply and servicing vessels that meet the requirements of the Newfoundland and Labrador Seabird Ecological Reserve Regulations (Government of Newfoundland and Labrador, 2015).
11	<i>Regional Assessment Section 4.6.1 – Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects</i>	The Regional Assessment Committee states that future projects will need “Operators undertaking exploratory drilling activity in the Study Area be required to assign trained (to ECCC-CWS standards, once finalized) and experienced seabird observers on drill rigs and supply vessels, whose primary responsibility is to make observations and collect seabird survey data during these activities. This would include Stranded Seabird Surveys developed and undertaken in collaboration with ECCC-CWS, as well as Stationary Platform Seabird Surveys and Moving Vessel Seabird Surveys according to established ECCC-CWS protocols. The information collected must also be recorded and reported according to data protocols and formats established by ECCC-CWS to help facilitate the integrity of the data and its incorporation and use in regional seabird datasets maintained by ECCC-CWS and others” (page 125). This statement does not include any specifics on whether the observer would be an independent observer and if First Nation	<p>10a: The Regional Assessment Committee should include that operators should hire independent observers to ensure the integrity of the data, including Mi’gmaq observers and monitors from MTI member communities.</p> <p>10b: The Regional Assessment Committee should include that operators should hire MTI community members and provide them with industry-standard job training if needed. This provision of direct oversight opportunities will provide MTI with greater assurance that ECCC’s protocols are being implemented correctly to monitor impacts on seabird communities throughout study area.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
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communities would be engaged to participate in this program.

12	<i>Regional Assessment Section 4.6.1 – Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects</i>	The Regional Assessment Committee states that for future projects will need operators to minimize light attraction effects on migratory birds by reducing “the amount of artificial lighting by adjusting the intensity, duration and frequency of the artificial lighting to the extent possible without compromising safety” (page 126). This does not cover mitigation measures that alter the direction of light.	The Regional Assessment Committee should include that operators should minimize the impact of artificial light by altering the direction of artificial light sources to reduce attraction effects on migratory birds (Reed, 1985).
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13	<i>Regional Assessment Section 4.6.1 – Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects</i>	The Regional Assessment Committee states that future projects should “Notify the C-NLOPB at least 30 days in advance of non-emergency flaring to allow the Board to determine whether flaring would occur during a period of migratory bird vulnerability and determine how the operator plans to avoid adverse environmental effects on migratory birds” (page 126). This does not include contacting other agencies to get their input on non-emergency flaring activities.	The Regional Assessment Committee should include that operators should notify ECCC as well as the C-NLOPB at least in advance of planning flaring activities for guidance on whether planned activities will occur during a period of migratory bird vulnerability.
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**CUMULATIVE EFFECTS**

14	<i>Regional Assessment Section 5.3.4 Cumulative Effects – Key Areas of Potential Activity and Effects Interaction and Overlap:</i>	The Regional Assessment currently only assesses the cumulative impacts of existing production facilities and future exploratory drilling, with limited to no assessment of future production facility cumulative impacts. Cumulative effects are only	The committee should conduct a more comprehensive cumulative effects assessment in the possible scenario where all of the proposed exploration projects transition in oil production facilities within the Regional Assessment Study Area.
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COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
	<p><i>Table 5.6 Potential Overlap of Predicted Exploratory Wells with On-Going and Future Activities in the Study Area</i></p>	<p>described in terms of existing oil production facilities (Hibernia, Terra Nova, White Rose, Hebron), future <i>exploratory</i> drilling projects and one proposed oil production facility (Bay du Nord). There is no effects assessment of the scenario where all of these proposed <i>exploratory</i> wells turn into actual oil production facilities. There is no comprehensive cumulative effects assessment for examining the potential environmental impacts in the case where the equivalent amount exploration drills are subsequently developed into full oil production rigs. Acknowledging that the <i>exploration</i> drills are relatively short lived, the potential for these exploration wells to turn into production facilities, significantly increases the timeline for activity and potential impacts over time in the region. Further, if all exploration wells transition into production facilities, the potential for simultaneous accidents, malfunctions and general project activities, would significantly increase the potential for cumulative impacts.</p>	<p>The Regional Assessment should examine and assess the potential environmental and cumulative impacts of increased oil production activities including an increase in general oil production operation activities as well as simultaneous accidents, malfunctions and oil spills in the study area.</p>
15	<p><i>Regional Assessment Section 5.4 Committee Findings and Recommendations and Regional Assessment Section 8: Summary and Conclusions</i></p>	<p>The committee has indicated in the Regional Assessment that the federal Minister of the Environment and Climate Change has stated the intent to make a regulation, informed by the findings of this Regional Assessment which will set out the conditions that future exploratory drilling projects in the Study Area would need to meet in order to be <i>exempt</i> from federal impact assessment requirements under the Impact Assessment Act. Although the committee acknowledges that cumulative effects are inherently complex and</p>	<p>14a: The Regional Assessment should include an assessment of how a potential ministerial regulation, as suggested, may reduce the environmental oversight on an individual project-specific basis. The committee should examine the potential cumulative assessment gaps and project-specific impacts that may arise due to a blanket regulation that exempts projects from individual environmental review.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		challenging to assess, the committee does not acknowledge that this regulation is likely a means of increasing regulatory efficiencies, rather than improving the understanding and protections for the Regional Study Area. Furthermore, this type of ministerial regulation may reduce the level of proponent accountability and reduce the level of environmental considerations and protections that would otherwise be captured in a Project-specific EIS. This may also impede the ability of indigenous groups to express community-specific concerns on project-specific impacts.	14b: The committee should also consider the effects of such a ministerial regulation on the opportunities and for indigenous groups to meaningfully engage in individual projects and the ability to express community-specific concerns to project-specific impacts. The committee should make recommendations to the Minister that specifically request that Indigenous engagement and consultation must continue on a project-specific basis in order for communities to continue to discuss and <i>laissez</i> directly with Proponents.

**SOCIO-ECONOMICS AND COMMUNITY WELL-BEING**

16	<i>Section 2.5 GIS Support Tool</i>	Within the Report, the Committee clearly establishes how vital the GIS mapping support tool was in the Regional Assessment, and more importantly, how it will be central to the ongoing ‘evergreen’ evaluation of cumulative effects and regional assessment of the Study Area and beyond. What is not indicated is a term of reference for its use or how Indigenous representatives will be able to engage with the tool.	MTI requests that select Indigenous representatives and resource managers on the future Regional Assessment Advisory and Oversight Committee have in-depth training on the GIS support tool and be directly involved in the data input and analysis associated with the geo-spatial mapping activities therein.
17	<i>Section 3.5.1 Incorporating and Adapting to New Knowledge</i>	MTI agrees with the recommendations put forth, however insists that the Committee be held accountable for addressing the concerns regarding Mi’gmaq Knowledge inclusion into its ongoing ‘evergreen’ regional assessment as outlined in Section 3.2 of this Submission. For instance, there is a continued, carried over focus on Atlantic salmon as a priority species to research and monitor (this	17a: Mi’gmaq Knowledge needs to be reflected in a meaningful, explicit and integrated manner across all value components within future regional assessment evaluations. That Knowledge needs to be updated using clear and accessible feedback mechanisms; not just with DFO but through the wider overarching RA oversight committee such that studies and feedback



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		<p>mirrors the proponents' approach within their EISs); however MTI has repeatedly communicated the cultural importance of other species such as tuna and swordfish. Despite the Committee acknowledging other species of importance, their recommendations do not reflect this acknowledgment. As such, there are no commitments for researching and monitoring impacts to other species of cultural importance as part of future Regional Assessment evaluations. Moreover, these recommendations lack explicit conditions that Indigenous representatives be involved in the ongoing regional assessment evaluations</p>	<p>mechanisms are coordinated and integrated. The oversight committee needs a clear Terms of Reference as well as a management framework that guides communication, information gathering, monitoring and adaptive management measures and its annual reporting to the IAAC and Minister.</p> <p>17b: In order for Mi'gmaq Knowledge to be reflected in a meaningful, explicit and integrated manner across all value components within future regional assessment evaluations a Mi'gmaq-led Indigenous Knowledge study must be conducted. Adequate capacity funding must be provided by the Government of Canada to conduct this Study and the results from the Study must be used to inform and update the Regional Assessment Report upon the completion of the Study. Integration of the Mi'gmaq knowledge shared must be done in close collaboration with MTI and done so in a manner that adheres to and respects MTI's methodology on the collection and sharing of Indigenous Knowledge.</p>
18	<i>Section 4.1 Issues and Interactions</i>	<p>The Report provides a comprehensive list of scoped issues and interactions yet does not mention the indirect effects and interaction pathways on socio-economic values including those of Indigenous fishers, their families and communities. This demonstrates an overarching disconnection between acknowledging the importance of IK within Regional Assessment, and the process of assessing regional effects that in practice,</p>	<p>MTI request that the Committee and future Regional Assessment Oversight Committee include this last value to make explicit, the linkages between the bio-physical/marine effect mechanisms and interactions and the human-health and wellbeing pathways to resulting indirect social, cultural and economic effects, especially as they pertain to the Indigenous populations with interests surrounding the Regional Assessment Study Area.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
19	<i>Section 4.5.1. Mitigation</i>	<p>incorporates the social, cultural and economic value components espoused by Mi'gmaq IK.</p> <p>The Committee lists a series of recommendations including #19, which states: "Active and continuous communications and coordination with other marine users and key agencies and organizations. This includes the preparation of Fisheries Communication Plans by operators to facilitate coordinated communication with fishers, which includes procedures for informing commercial fishers and Indigenous groups of planned activities (including several weeks' notice prior to starting a well), location of safety zones, anticipated vessel schedules and routes, locations of suspended or abandoned wells, determination of fisheries liaison officer (FLO) and guide vessel needs, notifications of an accidental event and any associated health risks, and appropriate response procedures. This plan is developed in consultation with Indigenous groups and commercial fishers". It is not clear however, how the individual operators' Fisheries Communication Plans will relate to or not relate to an overarching proposed Regional Assessment Oversight Committee and/or align with its assumed mandate to meaningfully include Indigenous Knowledge within its ongoing monitoring and adaptive management plans.</p>	<p>MTI requests that a clear commitment be made through the Regional Assessment's Oversight and Advisory Committee, and within its future Regional Assessment evaluations and reporting terms of reference, that a coordinated approach to communications, monitoring, feedback mechanisms and in turn, adaptive management decisions is needed in order to put the concept of 'Two Eyed Seeing' into practice.</p>
20	<i>Section 4.6 Committee Findings and Recommendations</i>	<p>Building on the comment above, MTI is concerned with the inconsistent nature of messaging and lack of clarity around how cumulative effects will be monitored, and how and to what extent will</p>	<p>MTI requests that the comment above is incorporated into its recommendations - at individual project <i>and</i> regional level through the RA</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		<p>processes be put into place to ensure that Indigenous Knowledge is integrated through the regional assessment. For instance, in section 4.6.1 Identifying and Implementing Generic Requirements for All Future Exploratory Drilling Projects, in recommendations #3 and #4, the Committee recommends timing related conditions for the standard operator – driven Fisheries Communication Plan. However, there is no acknowledgement or reiteration of the importance of accessible and inclusive processes for Indigenous involvement in the creation of these plans, nor the creation of, and involvement in, environmental monitoring and adaptive management measures. The comments reflect an agreement with the need for low level engagement through ‘notification only’ measures. However, this is incongruent with other comments and recommendations within the RA that allude to more meaningful Indigenous involvement and knowledge being important - clarity, consistency and commitment is needed on this topic.</p>	<p>oversight and advisory committee with a clear, collaboratively development Terms of Reference and management framework.</p>

21 *Section 4.6.3 Identifying Other Initiatives and Requirements*

The Committee states “The GIS decision support tool for the first time puts within the hands of resource managers a means to identify and analyze the multitude of factors at play in this region. This task is a priority given the expected pace of future petroleum exploration and development.” MTI agrees with the statement and requests that additional commitments be made by the Committee, the IAAC and associated task forces to

MTI supports this recommendation and deems it an urgent, critical priority for the IAAC to mandate within a Terms of Reference and management framework for a Regional Assessment Oversight and Advisory Committee. Additionally, the GIS tool needs to be made accessible to all representatives on the Committee, including its Indigenous representatives – a basic level of awareness of its functioning and results at a bare minimum; and more in depth training for those who have most direct involvement





COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		better reflect Indigenous representation and Knowledge inclusion.	on the committee and within Marine Planning initiatives.
22	Section 6.3.1.1 <i>Assessing and Managing Cumulative Effects</i>	<p>The Committee reported that:  <i>“Participants at the workshop suggested the following measures to address cumulative effects through the lens of Two-Eyed Seeing:</i></p> <ul style="list-style-type: none"> <li><i>• Assess multiple industry effects through marine spatial mapping and identify interactions between effects on species of concern;</i></li> <li><i>• Create a multi-stakeholder- / -rights-holder research group to integrate research and shift away from research being conducted in silos;</i></li> <li><i>• Expand current thinking on cumulative effects to consider climate change (e.g., effects from large icebergs, large storms and waves, increasing water temperature/ocean acidity and concern about the impact of projects, and subsequent development, on emission levels); and</i></li> <li><i>• Address cumulative effects and associated thresholds (i.e., level where impacts may be significant) of unreportable spills/allowable releases in an increasing industrial environment. “</i></li> </ul> <p>MTI agrees with these suggested measures however this list is missing a process component</p>	MTI requests that the Regional Assessment Advisory Committee include direct involvement of Indigenous Knowledge throughout short, medium and long term environmental and cultural monitoring and adaptative management measures.



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
		that reflects Indigenous fishers and other knowledge holders' role in these activities.	
23	<i>Section 6.3.1.2 Addressing Power Imbalances</i>	<p>The Committee reports that:  <i>“Participants at the workshop suggested the following additional measures to address power imbalances through the lens of Two-Eyed Seeing:</i></p> <ul style="list-style-type: none"> <li><i>• Educate people on the Indigenous context in Canada (such as rights and identity);</i></li> <li><i>• Include Indigenous people alongside government when writing policy;</i></li> <li><i>• Provide capacity to be meaningfully included in the process (attend meetings, preparation and debrief time) including funding for independent technical experts;</i></li> <li><i>• Responsible Ministers should be accountable when making decisions that are not in line with consensus decisions made by committees such as this;</i></li> <li><i>• Having direct involvement of Indigenous groups at the beginning of a process rather than at the draft or final report stage. This would require Indigenous representatives on the Committee and Indigenous people should have a say in who sits on the Committee, including using a consensus-based approach when doing Committee work; and</i></li> </ul>	<p>22a: MTI agrees with these recommendations and suggests that other measures can be taken to help rectify power imbalances.</p> <p>22b: MTI also suggests alternative forms of engagement - formats that take planners and decision makers out of conference and meeting rooms and into the marine environment with Indigenous Fishers, and into informal community settings where dialogues can be held within the context of where Indigenous Knowledge is sourced from.</p> <p>22c: Provide specific capacity funding for in depth training and a full time position for Indigenous community members to interact with, and be a part of the team that uses and applies the GIS tool that will, according to this RA and as acknowledged by MTI, be vital to the ongoing evaluation of regional, cumulative effects.</p>



COMMENT #	REGIONAL ASSESSMENT SECTION REFERENCE	ISSUE	QUESTION/RECOMMENDATION
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- *Ensure that an obligation exists to share information promptly, for example on oil spills.”*

24	<i>Section 6.3.1.2 Addressing Power Imbalances</i>	<p>The Committee states that “Recognizing that eliminating power imbalances requires institutional change beyond the reach of this Regional Assessment, the Committee has recommended Indigenous representation on a Regional Assessment Oversight Committee as a means to directly involve Indigenous people in reviewing and updating the Regional Assessment as well as having input into Regional Assessment procedures and policies going forward. The Committee also recommends establishing links between the Regional Assessment Oversight Committee and the Impact Assessment Agency of Canada (IAAC) Indigenous Advisory Committee. The recommendation requiring a Diversity Plan is a further mechanism for providing additional power to under-representative groups, one being Indigenous groups.” Another factor is the coordination of each Proponent’s Indigenous Fisheries Communication Plan – this particular engagement measure has, to this point, been the sole tangible measure agreed to by individual proponents and endorsed by the regulators, and yet it is being planned exclusively as a notification tool.</p>	<p>The Regional Assessment Oversight Committee and the IAAC need to play a role in oversight of the individual operators’ Fisheries Communication Plans, and ensure that these notification based plans are not the sole engagement and consultation activity that will take place in the face of the regional and cumulative implications of the multiple offshore oil operations currently underway.</p>
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**APPENDIX B - MI'GMAWE'L TPLU'TAQNN'S  
SUBMISSION ON THE INTEGRATING INDIGENOUS  
KNOWLEDGE DRAFT CHAPTER AND DRAFT  
RECOMMENDATIONS TO THE MINISTER OF THE DRAFT  
REGIONAL ASSESSMENT REPORT FOR OFFSHORE OIL  
AND GAS EXPLORATORY DRILLING EAST OF  
NEWFOUNDLAND AND LABRADOR**



December 20, 2019

VIA EMAIL: [IAAC.NLOFFSHORESTUDYETUDEEXTRACOTIERETNL.AEIC@CANADA.CA](mailto:IAAC.NLOFFSHORESTUDYETUDEEXTRACOTIERETNL.AEIC@CANADA.CA)

Canadian Environmental Assessment Agency

**RE: Mi'gma'w'e'l Tplu'taqnn's submission on the *Integrating Indigenous Knowledge* draft chapter and draft Recommendations to the Minister of the Draft Regional Assessment Report for Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador**

Mi'gma'w'e'l Tplu'taqnn Incorporated (MTI) is pleased to present the following comments regarding the *Integrating Indigenous Knowledge* draft chapter and the draft Recommendations to the Minister of the Draft Regional Assessment Report:

**Chapter 6- Integration Indigenous Knowledge:**

- 6.1 states that the committee has collaborated with Indigenous groups to integrate Indigenous Knowledge (IK) into the Regional Assessment. The committee has collaborated with Indigenous groups on how Indigenous Knowledge can be incorporated into the Regional Assessment but has not actually integrated Indigenous Knowledge.
- 6.2 states that where specific guidance for the collection and use of IK has not been developed by a particular Indigenous community, other protocols have been used. MTI does not believe the listed Protocols are adequate. They were not created with collaboration from Indigenous groups.
- 6.3 references an Indigenous Knowledge Study completed by First Nations Engineering Services Ltd., a desktop review where there are not any true studies does not fill the gap, it only points out that there are not any true studies.
- 6.4 states that the committee was not made aware of any group that holds claims or asserts aboriginal and treaty rights in the proposed study area. They go on to reference Section 35 of the constitution. MTI finds this statement to be untrue. The communities' commercial activities are a modern-day interpretation of the rights given to us through our treaties. Because the federal government chooses to make us use the commercial fishery to exercise these rights doesn't mean they are not the assertion of our Aboriginal and Treaty rights.
- 6.4.1 lacks mention of the cumulative effects of underwater noise there. This is a big concern as it is often looked at in total isolation and not well understood by the scientific





## Mi'gma'we'l Tplu'taqnn

community. The situation at the Gully next to sable island is a perfect example. Underwater sounds were thought to have no effect to the local environment outside the

- lethal zone of the MODU and its sound cannons. Yet adjacent to the project area we see a significant effect on the dolphin species that inhabit the Gully and a complete change in their behaviour due to the amplification of underwater noise by the benthic topography of that area.
- 6.4.1 in the section “Assessing and Managing Cumulative Effects” the Environmental Studies Research Fund (ESRF) study that is underway for Atlantic salmon is referenced. Is Indigenous Knowledge being considered and being undertaken as part of the study?
- 6.4.1 in the section “Addressing Power Imbalances” the report states that it was important to have Indigenous representation as part of the Regional Assessment Committee. MTI does not agree that having a single Indigenous member as part of the Committee addresses power imbalances. With no specific groups represented, Indigenous groups are being treated as a single cohesive entity.
- 6.4.1 under the additional measures to address power imbalances through the lens of Two-Eyed Seeing, there is a line about the Responsible Minister should be accountable when making decisions that are not in line with making consensus decisions. MTI does not agree that this is addressing the power imbalance. To be meaningfully involved, Indigenous groups should be involved in the decision-making process.
- 6.4.1 in the section “Need to Value Environment Over Economy” MTI would like to make a clarification; There currently doesn't exist a situation where environmental health trumps the exploration of oil and gas. We have not seen situation where an operation was ceased because of the potential environmental effects. The consultants paid to conduct the EIA or EIS are there to reference literature that supports their view that all effects are temporary and minimal. They put weight on the probability of occurrence and not the totality of the potential effect. Putting so much weight on the statistics of failures or damages is playing the game of it is going to happen, we just think it's not going to be us this time. Environmental management should occur in a way that puts a value on how much damage will occur should an error occur. The view of effects being temporary is very narrow minded. Almost all environmental effects can be viewed as temporary, but those effects will displace and harm our ways of life and teachings.

### **Draft Recommendations:**

- Recommendation 3: Why does the burden fully fall to the Department of Fisheries and Oceans to increase and accelerate its research on this topic while collaborating with Indigenous groups and stakeholders? The responsibility should be that of the Proponents.





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- Comment that the committee is not recommending any portions of the Study Area be excluded from future exploratory drilling activities: MTI finds this to be problematic and inconsistent with Chapter 6. Though there are currently no exclusion zones, there should be something in place.
- Recommendation 25: Indigenous groups need to be more involved in monitoring and still response directly rather than just being notified.
- Recommendation 31: The Indigenous groups should be co-developing and not just consulting on the Ministerial Regulation, informed by the findings of this Regional Assessment.
- Recommendation 32: If an operator is exempt what is the requirement for Indigenous consultation?
- Recommendation 33: When the Ministerial Regulation is reviewed and updated as required, the process should include consultation as well as engagement with the Indigenous groups.

MTI is providing this submission as preliminary feedback on the chapter, with the expectation that the Regional Assessment Report will not be finalized until our concerns are included.

In Peace and Friendship,

<original signed by>

Marcy Cloud  
Impact Assessment Coordinator  
Mi'gma'we'l Tplu'taqnn Inc.

