



Netukulimkewe'l Commission

The Natural Life Management Authority for the Large Community of Mi'kmaq / Aboriginal Peoples who continue to reside on Traditional Mi'kmaq Territory in Nova Scotia undisturbed to Indian Act Reserves.

October 13, 2006

P.O. Box 1320
Truro, Nova Scotia
B2N 5N2

Tel: 902-895-7050
Toll Free: 1-877-565-1752
Fax: 1-902-895-8182

E-Mail:
netcomm@ncnsnetcomm.ns.ca

Mr. Eric Theriault
Advisor, Environmental Affairs
Canada-Nova Scotia Offshore Petroleum Board
1791 Barrington Street, 6th Floor, TD Centre
Halifax, Nova Scotia
B3J 3K9

and

Mr. Malcolm Weatherston
Deep Panuke Project General Manager
EnCana Corporation
Suite 700 Founders Square
1701 Hollis Street
Halifax, Nova Scotia
B3J 3M8

- Netukulimkewe'l Commission
- Mi'kmaq Harvest Management Office
- Netukulimk Prefects
- Aboriginal Fisheries Public Relations Facilitator
- Regional Netukulimk Advisory Councils
- Protocol Secretariat
- Mi'kma'ki Environments Resources Development Secretariat (MERDS)

From the Office of:

Re: Scope of the Environmental Assessment for the Proposed EnCana Corporation Deep Panuke Offshore Gas Development Project

The Mi'kmaq/Aboriginal Peoples continuing to live on traditional ancestral homelands throughout Nova Scotia organized the Native Council of Nova Scotia (NCNS) in 1974. Both the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) and EnCana Corporation (the Proponent) are aware of the mandates, work and services of the NCNS. The NCNS, as administrators responsible for the NCNS Netukulimkewe'l Commission and its Aboriginal Communal Commercial Fishery Entity, Mime'j Seafoods Limited, through its Mi'kmaq Environments Resources Developments Secretariate (MERDS), respond to the CNSOPB and the Proponent with some issues, concerns, needs and interests, including comments on the proposed Deep Panuke Offshore Gas Development Project (the Project) Scoping document placed on the public registry for public comment.

CNSOPB Rec'd	
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We request that both the Proponent and the CNSOPB direct communications on these matters, both throughout the project review process and the project term, as required, to the offices of the Commissioner of the Netukulimkewé'l Commission, Tim Martin, and the undersigned, Roger Hunka, MERDS facilitator.

Without limiting the NCNS or its commissions and other NCNS resources entities' rights throughout any stage of the regulatory, review, decision and approval process or during the implementation stage of any "project, works or activities" associated with the Project or any matter or issue necessary and permitted under the Accords Acts or other applicable Acts, we request the Proponent and CNSOPB to consider the following as factors to be expanded upon in the Scope as identified in the September 21, 2006 draft Scope document produced for public comment.

Page 2 1. Purpose

There is a procedural obligation binding the CNSOPB, as a federal and provincial government regulatory decision-making body and a regulatory authority (RA) under the Canadian Environmental Assessment Agency, to ensure that the "duty to consult" with Aboriginal Peoples is honored. A recent judicial decision of the Supreme Court of Canada ruled that where Aboriginal Peoples express and/or have an interest in an environmental review process, that interest is a trigger for RAs to honor the duty to consult with Aboriginal Peoples. The duty to consult is both a "procedural and substantive rights obligation" which must be included in the Environmental Assessment (EA).

Page 2 2. Regulatory Decisions

Aside from the legislative approvals, "procedural evidence of a consultation process" between the Proponent and the NCNS is required to be identified in the EA.

Page 3

We suggest that the Proponent address the matter of the Eastern Scotian Shelf Integrated Management (ESSIM) Plan. The key objectives of the ESSIM Plan and the development of ESSIM strategies throughout the Project term cannot be ignored. The EA report and review process should have a separate section discussing ESSIM and should provide a clear and concise analysis of the subject. The EA reader should derive a general level of comfort, as should decision makers, that the Proponent is both aware of ESSIM and understands the need to have a process established for Plan developments to accommodate the key elements and strategies of the Plan as an environmental effects factor throughout the life of the Project.

Page 3 3. Definitions

The Accord Acts have expanded the meaning of (b) (i) for the Canada-Nova Scotia offshore area. The Proponent is required to prepare a "benefits plan". We request that a current socio-economic conditions assessment be included in the EA with special note of the socio-economic condition of the NCNS traditional ancestral homeland community and other disadvantaged groups of peoples in Nova Scotia.

In addition, the divergence of opinion as to the authority of the CNSOPB to bilaterally develop a benefits plan for a development project between itself and the Proponent without public input or comment remains a contentious issue. At minimum, the EA should address the subject of a benefits plan and a benefits plan should be part of the public record on the registry. The NCNS contends that the practice of a bilaterally developed benefits plan, without public input, and its subsequent isolation from the public registry violates the intent of a Canadian Environmental Assessment Act (CEAA) EA assessment of an Accord Acts Canada-Nova Scotia offshore gas development project and the intent and purpose of (b) (i) in the CEAA. Is the benefits plan not a mitigation measure, which should be public information?

Page 4 4. Scope of the Project

The Proponent will have to engage with the NCNS to learn about our community uses of land and aquatic resources, as well as our expanded Aboriginal Communal Commercial Fishery in the proposed offshore development area. The EA should address how the Proponent proposes to engage with the NCNS community to learn about our uses of lands and waters on, in and offshore.

Page 5 5. Factors to be Considered

The development of a follow-up monitoring environmental protection program must include direct input from impacted interests and the NCNS community of Mi'Kmaq/Aboriginal Peoples. In addition, public interests and/or Aboriginal communities' interests identified and expressed should be allowed the opportunity to comment on the Environmental Protection Plan prior to its final approval or acceptance by the decision-makers.

Page 6 6. Scope of the Factors to be Considered

Accidental Releases

The EA should analyze and address separately the probability or potential for equipment failure on the mobile offshore production unit in the oceans environment and what contingency plans should be developed.

Presence of New Subsea Infrastructure

The EA must address the proposed exclusion zones. In addition, the EA must address how the Proponent intends to deal with the loss of access to fisheries and compensation to the fishers for loss of income. This subject is particularly relevant in the case where the Aboriginal fisheries are communal commercial fisheries. Also, plans to address damage to equipment and trespasses on traditional fishing grounds must be identified for all fisheries. The impact on the Aboriginal communal commercial fishery must be discussed clearly and factually in a separate section of the EA.

Near-shore and Onshore Effects

The issue of gas capacity landed onshore must be addressed in the EA. The cumulative activities bringing gas to Nova Scotia from all sources and by all different means must be clearly identified and discussed in the EA. The subject matter should also be cross-referenced to the EA discussion section on the project purpose and need for the project and project viability.

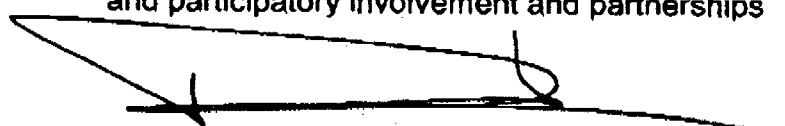
Wildlife and Habitat

The EA must clearly address the NCNS Mi'kmaq/Aboriginal Peoples community harvesting of land based and aquatic resources for food, social and ceremonial purposes. How will that information be gathered and how will the NCNS community be engaged? In addition, how will that information be reported in the EA?

Species at Risk

The proponent must consider and discuss in the EA the effects of the Project on species proposed to be listed under the Species at Risk Act (SARA) at this time, i.e. the winter skate, as well as those already listed. What process or plan is the Proponent prepared to develop and support to address the mitigation of the Project effects on SARA species listed, identified for listing or to be listed throughout the term of this project?

Progress through consultation, accommodation
and participatory involvement and partnerships



Roger J. Hunka
MERDS Advisor/Facilitator

cc: Derek McDonald, CEAA
Tim Martin, NCNS Netukulimkewe'l Commissioner
Grace Conrad, Chief & President, NCNS
Amanda Facey, MAARS OARB