



Kwilmu'kw Maw-klusuaqn Negotiation Office  
**Mi'kmaq Rights Initiative**

Our Rights. Our Future.

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**Re: Draft Western Scotian Shelf and Slope Strategic Environmental Assessment**

Ms. Wright,

I write to acknowledge receipt of CNSOPB's Draft Western Scotian Shelf and Slope Strategic Environmental Assessment. KMKNO wish to provide you with the following concerns, comments and/or recommendations.

The Mi'kmaq of Nova Scotia depend on the lands, waters, and resources in Nova Scotia and the Mi'kmaw Nation has never surrendered, ceded, or sold title to any of its lands and waters in Nova Scotia. We are traditionally a people of the water and we continue to rely on fish for Food, Social and Ceremonial (FSC) purposes and to provide us with the moderate livelihood promised in the Treaties of 1760-1761 — as yet unimplemented 20 years after the decision in R. v. Marshall. Aboriginal fishing rights are guaranteed and protected by the Supreme Court of Canada and we engage in in Food, Social and Ceremonial fisheries to feed our families and non-rights based commercial fisheries through Aboriginal communal commercial licences. Consequently, any legislation, regulation, policy or guideline, or project which affects marine areas, fish, fish habitat, or the fisheries is of grave concern to us. Nova Scotia and Canada are aware of the title and rights claims of the Mi'kmaq and that any potential impacts to asserted rights and title are subject to the duty to consult.

This Strategic Environmental Assessment is meant to examine potential environmental effects that may be associated with oil and gas exploration projects on the Western Scotian Shelf and identify mitigation and monitoring measures to reduce these potential effects. The assessment does not directly assess Aboriginal rights and Treaty rights and groups Mi'kmaw rights with commercial and recreational fishing. For instance, page 8 of the draft SEA states, "As the regulator of the Canada-Nova Scotia Offshore Area, the CNSOPB recognizes that in carrying out the regulatory processes, it is important to engage with Indigenous groups and the public". The role and place of the Indigenous Peoples of Canada is separate from that of stakeholders and the public and the Crown's duty to act honourably in relation to Indigenous Peoples. The duties owed to Indigenous Peoples are separate and distinct from any social policy/good governance

obligation the government owes to non-s.35 rights holders.

The SEA also conflates the terms “engagement” and “consultation” throughout the draft document. For instance, page 207 of the draft SEA states “Engagement with Indigenous groups and consultation with stakeholders will play an important role in mitigating environmental effects, identifying key issues to be addressed in the EIS/EA, and demonstrating diligence during the regulatory review process”. Our rights are paramount and must be separated out from engagement with interested parties. Furthermore, as a best practice, consultation should only have one meaning when speaking of relations with Indigenous rights-holders: the constitutionally mandated duty of the Crown to consult with Indigenous rights-holders when those rights may be affected by or infringed by actions, policies, decisions, etc. of the Crown. The words consult or consultation should only be used when speaking about fulfilling the Crown duty to consult.

Aside from the 30-day public comment period the CNSOPB has not engaged with the Mi’kmaq of Nova Scotia during the drafting of this SEA. In the SEA, CNSOPB states that

“A SEA does not trigger the Crown’s duty to consult because it does not result in any regulatory action or activity that could potentially impact Aboriginal or Treaty Rights. Nevertheless, the CNSOPB recognizes and understands the importance of engaging with Indigenous communities to ensure the CNSOPB is making informed decisions and that their interests and concerns will be considered in the assessment process.”

KMKNO contends that this SEA will impact Aboriginal and Treaty rights by guiding future oil and gas exploration that may adversely impact Mi’kmaq fishing. This area is also along migration routes for Atlantic salmon and American eel, which are species of concern and culturally significant to the Mi’kmaq of Nova Scotia.

Below we include several key concerns and considerations identified by the Mi’kmaq Conservation Group:

- Shellfish fisheries in this area have a high commercial catch value (sea scallops, lobster, crab, etc.), and the Study Area includes shellfish, pelagic, and groundfish fisheries.
  - Further consultation needed on potential impacts to the various Mi’kmaq fisheries, both current and future.
- Seismic sound has been noted to cause potential side-effects on marine life. There are studies to suggest that sound pressure levels (SPL) above 150-160 decibels (dB) re 1  $\mu$ Pa can cause behavioural disturbances in marine mammals. Some are notable, others are less understood including: physiological stress (e.g. change in dive patterns, feeding times/rates, mating disruption, call rates, etc.)
  - For this reason, there needs to be further research done on the dB levels of any potential seismic activities on any marine animals in the study area, as well as modelling/measuring of the propagation of the sound source and an estimation of the area ensonified by sound.
- Sound in water travels much farther and approximately 5 times faster in water than in air. Airgun noise from seismic air gun arrays have been known to be  $\geq 160$  dB re 1  $\mu$ Pa at

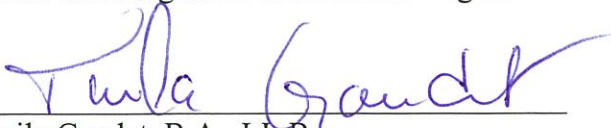
distances of 2.5km away, potentially even further. Understanding exactly where the airgun noise is traveling to is critical to understanding the potential negative impacts on marine life.

- We suggest that any activity involving sound is authenticated with a sound source verification, after preliminary modelling, within the study area to understand the full potential reach of the sound traveling through the water.
- Unfortunately, in Canada, there is little protection to species that are not directly listed under the *Species at Risk Act* (SARA). While it is critical to protect these species, the area studied in the SEA, it is also imperative to the Mi'kmaq to consider any and all marine life that may be negatively impacted by activities planned in that area.
- There currently exists very little mitigation and caution taken regarding the timing of any seismic activities within Canadian nautical borders. Where this area is a very productive marine habitat, we are requesting the following:
  - CNSOPB develop a precautionary approach to any seismic activity, and any future developments in this area.
  - This can include but is not limit to:
    - Timing airgun noise to mitigate impacts on spawning, feeding, or breeding times of species in the potential area of impact;
    - Develop an exhaustive list of species within the area of impact of any activities developed in partnership with the Mi'kmaq Conservation Group;
    - Prepare a schedule of any planned activities to share with the Mi'kmaq of Nova Scotia through the Consultation process for feed back of acceptability for level of impact;
    - Developing potential area closures to mitigate impact on any potential special species of concerns;
- At no point should this SEA be used to replace individual Environmental Assessments for other proponents and their planned activities in this area.

For KMKNO to adequately review a strategic environmental assessment requires additional participatory funding to allocate internal resources and fund expert advise. Further, KMKNO requests that the Mi'kmaq Conservation Group lead a study in the George's Bank area to better understand the impacts to marine life in the region.

We look forward to further discussion on this matter with the CNSOPB.

Yours in Recognition of Mi'kmaq Rights and Title,



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