

Maritime Aboriginal Peoples Council



The Maritime Regional Aboriginal Leaders
Intergovernmental Council of Aboriginal Peoples
Continuing to Reside on Traditional Ancestral Homelands

Forums

- Leaders Congress
- MAPC Commissions/Projects
- MAARS Secretariate
- IKANAWTIKET SARA
- MAPC Administration

MAPC Regional
Administrative Office
172 Truro Heights Road
Truro Heights, Nova Scotia
B6L 1X1

Tel: 902-895-2982
Fax: 902-895-3844
Toll Free: 1-855-858-7240
Email: frontdesk@mapcorg.ca

Governmental APRO Councils

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

Tel: 902-895-1523
Fax: 902-895-0024
Email: chiefaugustine@ncns.ca

New Brunswick Aboriginal
Peoples Council
320 St. Mary's Street
Fredericton, New Brunswick
E3A 2S4

Tel: 506-458-8422
Fax: 506-451-6130
Email: chief@nbapc.org

Native Council of
Prince Edward Island
6 F.J. McAuley Court
Charlottetown
Prince Edward Island
C1A 9M7

Tel: 902-892-5314
Fax: 902-368-7464
Email: chief@ncei.com

December 16, 2021

Ms. Wright
Communications Advisor
Canada-Nova Scotia Offshore Petroleum Board
1791 Barrington Street
Halifax, Nova Scotia
B3J 3K9

RE: Draft Report for the Strategic Environmental Assessment for the Middle and Eastern Scotian Slope and Sable Island Bank Areas.

Dear Ms. Wright,

The Maritime Aboriginal Peoples Council (MAPC) was established in the late 70s as the intergovernmental leader's forum of the Native Council of Nova Scotia (NCNS), New Brunswick Aboriginal Peoples Council (NBAPC), and Native Council of Prince Edward Island (NCPEI) to share regionally-based information, as well as to conduct research on regional matters. The first research activity produced the seminal work "Our Land: The Maritimes" which traced the history of relationships between the Mi'kmaq and the Crown and established the evidence for the assertion that the three Maritime provinces are no more than tenant governments on lands that were inappropriately expropriated. Each of the three Council's elected Chief and President is automatically confirmed as one of three Board of Directors (Board Members) for MAPC for a term determined by the election process of Chief and President for each Council. The Board provides direction to the MAPC Director(s) on initiatives that it would want to pursue or produce reports to be distributed to the community at large, as well as to decision-makers at the federal and provincial levels of government. MAPC, in keeping its independence from government interference, is not funded by any government department or agency, rather it accrues its funding from a variety of sources which does not compromise the positions taken by the three Native Councils.

MAPC also involves key persons with expertise in certain areas with the United Nations and other international bodies responsible for biodiversity, oceans management, pollution, climate change, and other environmentally-related subject matters, such as the Convention on Biological Diversity. MAPC administers and maintains the DFO-funded Aboriginal Aquatic Resources and Oceans Management

(AAROM) body, the Maritime Aboriginal Aquatic Resources Secretariate (MAARS). MAPC, in the mid-2000s established an environmental charity, incorporated as IKANAWTIKET, to promote an ecocentric world view, particularly through the preservation of the natural environment by educating and informing the public about environmental issues and biodiversity in the Maritime Provinces, and Aboriginal culture, worldviews, and knowledge in relation to the environment.

In our previous letter, sent on behalf of the NCNS on February 24th, 2021, we questioned what type of projects would be excluded from the “project-specific EA” process. Within the *Draft Report*, we have found no further clarification. The dynamic that will occur between the Environmental Assessment (EA) process and the Strategic Environmental Assessment (SEA) still remains unclear. The particular line of concern reads, “special precautions, such as detailed, project-specific EAs, stringent mitigation measures and environmental effects monitoring may be required in some cases.”¹ While it is clear that this document will be used as a precursor, and guide for “project specific EAs” that will be required by both the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB), and Impact Assessment Agency of Canada (IAAC), we still require clarification regarding what projects will or will not require a project-specific EA. Furthermore, we require assurance that no project that would conventionally require an EA, be exempt based on the SEA.

The NCNS would also like to take this opportunity to express the importance of Communal Commercial Fisheries (CCF) to our communities, and our ask that the importance be emphasized within the SEA. While the prominence of the CCF is touched upon in section 9.2.4 of the SEA;

The general fishing effort is widely distributed throughout the Study Area and high value commercial fisheries contribute significantly to employment and income for fishing communities. For Indigenous groups, commercial communal fisheries also provide revenue for services and infrastructure for community members.²

We note that the CCF’s importance to our communities is only briefly mentioned in section 3.3.4, and neglected entirely in section 8.4. In some cases, our communities only source of income and funding is derived from CCFs, and it is imperative that those who will be consulting this SEA grasp the significance of that reality. We would like to see the above quoted sentences from section 9.2.4 be echoed in the earlier sections. Repetition of this sentiment will serve to reinforce the importance of the CCFs to our communities, and enrich future consultation regarding project that utilize the SEA.

In regards to section 8.4 “Indigenous Fisheries”, we find it necessary to clarify the true availability of the CCF’s information. The Department of Fisheries and Oceans (DFO) is very much in possession of CCFs information via log books, which mirrors the information that is submitted by the conventional commercial fisheries. This information, while difficult to obtain and decipher, can indeed be disaggregated. While this section does encourage communication with Indigenous groups, section 8.4 is written in a passive tone that is dismissive of the available data; mentioning that “potential effects on Indigenous commercial communal fishing and Aboriginal and Treaty rights by Indigenous group may not be possible without direct input from Indigenous Groups.”³ We find it paramount that this

¹ Canada-Nova Scotia Offshore Petroleum Board, Strategic Environmental Assessment Middle and Eastern Scotian Slope and Sable Island Bank Areas, (2021), 1.

² Canada-Nova Scotia Offshore Petroleum Board, Strategic Environmental Assessment Middle and Eastern Scotian Slope and Sable Island Bank Areas, (2021), 302.

³ Canada-Nova Scotia Offshore Petroleum Board, Strategic Environmental Assessment Middle and Eastern Scotian Slope and Sable Island Bank Areas, (2021), 295.

section be reformatted, and emphasis put on proponent's need to acquire both the CCF information from DFO, in addition to seeking input from Indigenous groups.

We would like to take this opportunity to reiterate that it is important for all proponents of projects to understand that the Off-Reserve Aboriginal Community represented by the NCNS, NBAPC, and NCPEI, is included within the definition of the word "Indian" of Section 91(24) of the *Constitution Act*, 1982. The Supreme Court of Canada in a landmark decision in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, declared that "the exclusive Legislative Authority of the Parliament of Canada extends to all Indians, and Lands reserved for the Indians", and that the "word 'Indians' in s. 91(24) includes Métis and non-Status Indians".⁴ Since 2004, in multiple decisions passed by the Supreme Court of Canada: *Haida Nation*⁵, *Taku River Tlingit First Nation*⁶, and *Mikisew Cree First Nation*⁷, has established that,

Where accommodation is required in making decisions that may adversely affect as yet unproven Aboriginal rights and title claims, the Crown must balance Aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests.⁵

We assert the Off-Reserve Aboriginal Communities, as 91(24) Indians, are undeniably heirs to treaty rights and beneficiaries of Aboriginal rights as substantiated by Canada's own Supreme Court jurisprudence. As such, there is absolutely an obligation to consult with the off-reserve community through their elected representative body of the NCNS, NBAPC, and NCPEI. The Crown's duty to consult with all Indians extends beyond that with Indian Act Bands, or as through the truncated Terms of Reference for a Mi'kmaq Nova Scotia Canada Consultation Process.

We invite the CNSOPB to meet with us over a virtual meeting or conference call to discuss and learn more about the communities we represent. We also remain prepared to clarify any of the questions or concerns that may arise from our commentary regarding the *Strategic Environmental Assessment for the Middle and Eastern Scotian Slope and Sable Island Bank Areas*.

Advancing Aboriginal Fisheries & Oceans Entities
Best Practices, Management, and Decision Making



Jesse MacDonald
Habitat Impact Assessment Manager
Maritime Aboriginal Aquatic Resources Secretariate

⁴ *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99

⁵ *Haida Nation v. British Columbia (Minister of Forests)*, (2004), 3 S.C.R. 511.

⁶ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, (2004), 3 S.C.R. 550.

⁷ *Mikisew Cree First Nations v. Canada (Minister of Canadian Heritage)*, (2005), 3 S.C.R. 388.

Cc: Lorraine Augustine, Chief and President, NCNS
Barry LaBillois, President and Chief, NBAPC
Lisa Cooper, Chief and President, NCPEI
Tim Martin, Commissioner, Netukulimkewe'l Commission
Jordan Crane, President, L'nu Fisheries Ltd
Bruce Harquail, Vice-President, Aboriginal Seafood Network
Roger Hunka, Director of Intergovernmental Affairs, MAPC
Vanessa Mitchel, Executive Director, MAARS & Projects
Joshua McNeely, Director, IKANAWTIKET