

October 29, 2018

Canada-Nova Scotia Offshore Petroleum Board

Email: [comments@cnsopb.ns.ca](mailto:comments@cnsopb.ns.ca)

Dear Sir/Madam:

**RE: MULTIKLIENT INVEST'S PROPOSED 3D SEISMIC PROGRAM – EA  
SCOPING DOCUMENT – FILE NO. 30,008.35**

Please accept this submission of public comment related to the Draft Scoping Document for the Environmental Assessment of Multiklient Invest's Proposed Seismic Program in the Canada-Nova Scotia Offshore Area (the "Scoping Document") on behalf of Mi'gmawé'l Tpu'taqnn Incorporated. Multiklient Invest is the project Proponent.

Mi'gmawé'l Tpu'taqnn is a not for profit organization whose members are the nine Mi'gmaq First Nations in New Brunswick, including Fort Folly First Nation ("Fort Folly"). Mi'gmawé'l Tplu'taqnn represents eight of our communities in advancing, protecting and implementing our Aboriginal and Treaty Rights and Title, including carrying out consultation and accommodation on their behalf.

CNSOPB has confirmed that a project specific Environmental Assessment ("EA") is required before a Geophysical Work Authorization can be issued under paragraph 142(1) (b) of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, S.C., 1988, c. 28 ("Offshore Act"). The Proponent filed the Project Description ("PD") to initiate the process for CNSOPB to develop an EA Scoping Document, which outlines the requirements and key topic areas that are to be included in the project specific EA.

"The CNSOPB has determined that an EA for this project is required, to determine whether the project may result in significant adverse environmental effects, before issuing any authorization" (page. 2 of Scoping Document). The EA will cover the seismic survey years 2019 to 2028.

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The PD, at page 3, states that the EA for the proposed project will follow a process similar to the EA process under the *Canadian Environmental Assessment Act* ("CEAA"). Pursuant to the CEAA the impacts of the Project require that the effects on Aboriginal rights be taken into account. Section 5(1) (c) expressly provides that environmental effects are to be taken into account:

(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 EA for the proposed project cannot consider each of these factors in isolation, as they are interconnected. The proposed project would occur in waters used for fishing by Fort Folly. Further, the Mi'gmaq have broader concerns which include the ongoing health and stability of the marine environment in and around the project area, as well as species which inhabit or pass through the project area. Species which migrate through the project footprint, which might be affected by the activity, might end up in waters used by any of our communities. With respect to the Mi'gmaq in New Brunswick, the effect on any element outlined in section 5(1) (c) must be taken seriously.

In addition to the environmental factors outlined in the CEAA, the PD correctly states that there other federal legislation relevant to potential environmental impacts of this proposed project, including:

- *Species At Risk Act (SARA)*
- *Oceans Act*
- *Fisheries Act*
- *Navigable Waters Protection Act*
- *Canada Shipping Act*
- *Migratory Birds Convention Act*

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Also, the Scoping Document outlines the following which have requirements the Proponent must adhere to:

- CNSOPB Guidelines;
- Strategic Environmental Assessments (SEAs) prepared by CNSOPB;
- *Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment*; and
- Species assessed as endangered, threatened, or of special concern by the Committee on the Status of Endangered Wildlife of Canada (COSEWIC)

"Based on various previous EAs involving similar surveying and data collection methods, the CNSOPB has focused the scope of the factors to be considered to those that have the potential to have significant adverse environmental effects", including a consideration of the regulations, guidelines and standards to be followed should the project proceed (page. 3 of Scoping Document).

The Proponent must detail how it will meet the various requirements and recommendations under these statutes and guidelines. However, the Scoping Document does not mention any requirement of the Proponent to provide this information in the EA. For example, page 4 of the Scoping Document states that "the Proponent shall indicate whether the project will be in compliance with the SARA prohibitions" and whether any SARA permits will be required, but does not require the Proponent to detail how it will be in compliance or why a section 73 SARA permit would be required.

The Scoping Document also states that "additional mitigation *may* be required should new species-at-risk be added to SARA Schedule 1 during the course of the assessment" (see page. 4 of Scoping Document. Emphasis Added). Section 6 of SARA describes its legislative purpose:

**S.6** The purposes of this Act are to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened

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To ensure compliance with SARA and to ensure Mi'gmaq Rights are protected, additional mitigation measures must be required in the event new species-at-risk are added to Schedule 1 during the course of the EA.

At section 6.0 – Value Components – the Scoping Document states that “a list of the species anticipated, and when they are likely to occur, is required in the EA.” This is inadequate; the location within the Project area where the species are anticipated to be must also be required in the EA. Without that information we cannot fully determine the potential impacts on our rights. Further, details on what species the Mi'gmaq harvest, and where they harvest, must be considered in the EA.

Similarly, page 4 of the PD states: “Specific data acquisition plans for 2D and 3D surveys during 2019-208 are not yet determined and will depend on industry demand.” Before we can fully determine potential impacts on our Aboriginal and Treaty Rights the specific data acquisition plans must be identified.

### Appendix A to the Scoping Document

Appendix A states that an assessment of potential effects on certain species of fish can be excluded from the EA, provided the Proponent adheres to mitigation measures outlined in the *Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment*.

- How can mitigation measures be adequate if an assessment on the potential impacts of a species is not performed?

The ecosystem is interconnected. Species do not exist in isolation. Impacts on one aspect of the marine environment can have a ripple effect.

### Section 6.2 – Special Areas

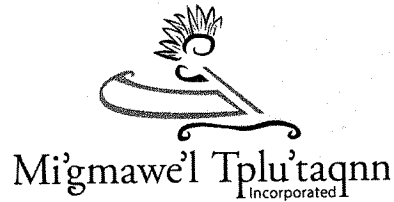
Page 5 of the Scoping Document provides that the EA must include an assessment of potential effects on areas designated of special interest due to their ecological and/or conservation sensitivities that could potentially be affected. The Scoping Document then includes a list of areas. Sable Island National Park is included in the list and is within the Project area. This is designated as a migratory bird sanctuary and critical habitat for at-risk species.

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As per section 142.01(1) of the Offshore Act, if the Board receives an application for an authorization for proposed activity in Sable Island National Park, it shall provide a copy of the application to the Parks Canada Agency. The EA should include any response received from the Parks Canada Agency.

The EA must consider the entire seismic study area in detail, and for multi-year projects such as this one, the EA must be updated from time-to-time with addendums as appropriate. Seismic program authorizations have expiry dates as set by the CNSOPB, and are typically valid for 6-12 months. Proponents must renew their applications in order to continue or recommence operations: section 142(2) of the Offshore Act provides that operating licences must be renewed annually. As neither the environment nor our Aboriginal rights are static, we must be consulted prior to the renewal of the Proponents operating licences, as consultation is not a one-time obligation – especially if the project is long-term such as this proposed seismic activity.

#### Section 6.6 – Other Ocean users

The Scoping Document then cites the potential interaction the Project may have with various fisheries in the Project Area, including Indigenous fisheries. “Therefore, an assessment of the potential effects of the project on other ocean users in the project area, including any new activities that develop during the life of the program, shall be included in the EA” (page. 7 of Scoping Document). The Proponent cannot unilaterally make an assessment of the potential effects on Indigenous fisheries unless consulting with and including the Mi'gmaq in the assessment.

#### Section 7.1 – Indigenous Engagement

Section 7.1 of the Scoping Document states that “to support CNSOPB consultation efforts, the Proponent is *expected* to engage with Indigenous Groups as early as possible in the EA process and establish an engagement process with Indigenous Groups” that provides: opportunities to learn about the project and its effects; opportunities for Indigenous groups to make their concerns known, and; opportunities for Indigenous groups to put forward and discuss mitigation measures (emphasis added). Engagement with the Mi'gmaq must be at the outset

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of the EA process, and it must be made clear which institution/department is consulting with Mi'gmawe'l Tplu'taqnn.

Further, "information provided by the Proponent related to Indigenous consultation will be considered by the CNSOPB with respect to the discharge of the Crown's consultation and accommodation obligations" (page. 9 of Scoping Document). At the outset of the EA process, it must be made clear as to who will be consulting with us for each aspect and phase of the proposed project.

### Indigenous Knowledge

The Scoping Document states that the EA shall include a consideration of a list of factors, including: the environmental effects of the project; the significance of those environmental effects; and any comments received from the public and Indigenous groups (page. 2-3 of Scoping Document). The EA must not be limited in focus to the effects on the physical environment. As noted above, environmental effects that may cause change to the environment or our communities' health and socio-economic conditions, physical and cultural heritage, current use of lands and resources for traditional purposes, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance must be included by the Proponent in the EA. Page 8 of the Scoping Document explains that "the Proponent will make reasonable efforts to integrate Indigenous traditional knowledge into the assessment of environmental impacts." To adequately determine this, the EA must be inclusive of Mi'gmaq Indigenous Knowledge (MIK) from our member communities.

Related to MIK, Section 7.1 of the Scoping Document states that the EA will identify concerns raised by Indigenous groups, how such concerns were addressed, and "where and how Indigenous traditional knowledge was incorporated in the EA." The EA must also include details regarding when and why MIK was not incorporated into the EA.

The Scoping Document repeatedly states that the EA shall note any data gaps existing, and shall describe the relevance of such gaps for the conduct of the Project (see section 6.4 and 6.5 for example). For this reason, Mi'gmaq Indigenous Knowledge must be included to ensure adequate information, which may assist in filling these potential gaps.

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Finally, page 8 of the Scoping Document states that within the EA the Proponent will outline all engagement activities with Indigenous groups, and include: "each group's identified potential or established Indigenous or Treaty rights and the potential adverse impacts of each of the project components on potential or established Aboriginal or Treaty rights." The EA must be fully inclusive of the potential impacts on Indigenous peoples and their rights. Therefore, this sentence should be replaced with the following to ensure this:

"Each Indigenous group's identified potential, asserted and established Aboriginal and Treaty rights and the potential adverse impacts of each of the project components on potential, asserted and established Aboriginal and Treaty rights."

Yours in Peace and Friendship,

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