

October 12, 2018

Canadian Environmental Assessment Agency
10 Barbers Hill, Suite 301
St. Johns, NL A1C 6M1
E-mail: ceaa.nloffshorestudy-etudeextracotieretnl.acee@canada.ca

Re: Mekap'sk Mi'kmaq Band Comment on the Draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador

The Canadian Environmental Assessment Agency (CEAA), along with the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), Natural Resources Canada (NRCAN) and the Department of Natural Resources for Newfoundland and Labrador, have developed a draft agreement for a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador and have invited comments from the public and Indigenous groups.

In its capacity as an Indigenous group, mandated to represent approximately 1,200 Mi'kmaq rights holders living on the Northern Peninsula of Newfoundland, the Mekap'sk Mi'kmaq Band submits the following comments on the draft agreement, the procedures and timelines for the process, the factors to be considered in the assessment, and the Terms of Reference for the Committee.

The Mekap'sk Mi'kmaq Band notes that no capacity funding of any kind was provided by CEAA for the development of these comments, and as such should not be considered to be comprehensive in nature. We request that prior to the publication of any subsequent drafts of the agreement, the Mekap'sk Mi'kmaq Band receives a written response to each of the comments below.

1. Including the Mekap'sk Mi'kmaq Band as an Indigenous group in the Regional Assessment process

It is absolutely crucial that the Mekap'sk Mi'kmaq Band is involved and meaningfully engaged as an Indigenous group in this Regional Assessment process. Mekap'sk's leadership and membership are aware and deeply concerned about the massive scope of what's coming in terms of offshore oil and gas exploration - demonstrated in the results of an independent resource assessment identifying the potential for 11.7 billion barrels of oil and 60 trillion cubic feet of gas between the Orphan Basin and Jeanne D'arc Basin that will be going up for bid to exploration companies in November, the contents of Newfoundland's Advance 2030 plan, and language in the Draft Agreement that the Government of Newfoundland and Labrador is looking to encourage the drilling of up to 100 new exploratory wells by the year 2030.

Mi'kmaq rights holders who are members of the Mekap'sk Mi'kmaq Band, and who the Mekap'sk Mi'kmaq Band is mandated to represent, hold and use commercial fishing licenses in Northwest Atlantic Fisheries Management Divisions that overlap with existing and anticipated exploratory drilling projects in the eastern Newfoundland and Labrador offshore, and fall within the proposed Regional Assessment Study Area. They also hold and exercise rights to fish and harvest wildlife for food, social and ceremonial purposes in areas that would be impacted by any environmental impacts resulting from these existing and anticipated exploratory drilling projects.

If environmental assessment processes for the quantity of offshore oil and gas exploration projects anticipated in the next 10-20 years are going to hinge on the results of this Regional Assessment (including characterizations of the existing environment that include Indigenous traditional knowledge, representations of baselines for Indigenous traditional land and sea use, and the comprehensive assessment of the impacts of oil and gas exploration projects on the rights and interests of Indigenous peoples), and if the Canadian Environmental Assessment Agency and the Federal Ministers and Agencies listed in the Draft Agreement intend to uphold the Honour of the Crown in its consultation and accommodation of Indigenous peoples who hold established and asserted rights, the Mekap'sk Mi'kmaq Band simply cannot be excluded from this process and from the list of Indigenous groups whose meaningful participation is wholeheartedly welcomed and supported.

We ask that the Agency reconsider its determination that the Duty to Consult has not been triggered by the Mekap'sk Mi'kmaq Band's Aboriginal Title assertion. We also request that we are included in writing amongst the Indigenous groups who are meaningfully engaged as a part of the Regional Assessment process and provided capacity funding from the Agency to facilitate our meaningful participation.

2. Constitution of the Committee

An express commitment to Indigenous representation on the committee should be included in the Draft Agreement in order to reflect the Indigenous governments who have an interest in and exercise jurisdiction over the Regional Assessment Study Area.

3. Conduct of the Regional Assessment, Task Team responsibility

Subsequent to the comment above, the Task Team should be the joint responsibility of the Ministers and the represented Indigenous governments of the Committee.

4. Spatial and temporal extents of the Regional Assessment

Appendix D of the draft agreement depicts the proposed Regional Assessment Study Area. The agreement does not include any methodology or justification for the determination of the spatial extents of the proposed Regional Assessment Study Area, nor a record of how Indigenous groups were meaningfully engaged in the development of the proposed Regional Assessment Study Area. The Mekap'sk Mi'kmaq Band also notes that no temporal scope has been assigned to the Regional Assessment.

5. Assembly of existing information and knowledge relating to offshore exploratory drilling

4.5 of the draft agreement states, "the Task Team will assemble the existing information and knowledge relating to offshore exploratory drilling, including the existing environmental conditions in the Regional Assessment Area..." Mekap'sk requests that the scope of "existing environmental conditions" are made available for comment by Indigenous groups prior to the Task Team commencing its assembly of this information. The scope of existing environmental conditions must include existing traditional sea and land uses of Indigenous groups in the region, and traditional ecological knowledge of the same Indigenous groups of the offshore and nearshore environment.

6. Consideration of potential impacts to Indigenous rights

In its description of Indigenous groups that will be engaged by the Committee, the draft agreement does not include reference to Indigenous groups whose Aboriginal rights may be affected by exploratory drilling. 4.17 of the draft agreement should be amended to read: "The Committee will meaningfully

engage with Indigenous groups and any others that have knowledge relevant to the Regional Assessment or whose rights, interests and uses may be affected by exploratory drilling.”

7. Factors to be considered in the Regional Assessment

The Mekap'sk Mi'kmaq Band requests the following additions and amendments to the proposed *Factors to be considered in the Regional Assessment* in Appendix C:

- The addition of a description of the existing conditions of the physical, biological and human environments, including a discussion of climate change, seasonal conditions, current modelling, sub-sea methane and permafrost, species of cultural interest, species conservation, socio-economic conditions, and the socio-economic significance of the Regional Assessment Study Area to the public and Indigenous groups
- The addition of an assessment of both direct and indirect impacts to commercial fisheries resulting from offshore oil and gas exploration
- The addition of possible exploration scenarios, inclusive of activities, equipment and infrastructure, financial and human resources, and potential accidents and malfunctions
- The assessment of effects and changes likely to be caused by offshore exploratory drilling should be amended to assess impacts and effects on each of a local (project footprint), regional and transboundary level
- The assessment of “any cumulative effects that are likely to result from offshore drilling in combination with other physical activities that have been or will be carried out” should be amended to include cumulative effects that likely to result from offshore drilling in combination with the effects of changes to weather conditions and climate, including effects on water quality, fish and fish habitat, waterfowl, benthic flora and fauna and marine sediment quality
- The addition of an assessment of potential local employment and business opportunities resulting from offshore oil and gas exploration activity

Sincerely,



Chief Mildred Lavers

Northern Peninsula (Mekap'sk) Mi'kmaq Band, Inc.
P.O. Box 308
Port Saunders, NL
AOK 4H0
norpenband@hotmail.com

CC:

Catherine McKenna, Minister of the Environment & Climate Change, ec.ministre-minister.ec@canada.ca
Sean Darcy, Aboriginal Affairs and Northern Development Canada, sean.darcy@canada.ca
Bruce Clarke, Burchells LLP, bclarke@burchells.ca