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10 Years of Continued Progress

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NUNATSIAVUT
kavamanga Government

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June 20, 2017

Chair and Chief Executive Officer
Canada-Newfoundland and Labrador Offshore Petroleum Board
5th Floor, TD Place
140 Water Street
St. John's, NL
A1C 6H6
Dear Mr. Tessier,

Re: Environmental assessment practices of the Canada-Newfoundland Offshore Petroleum Board

First of all I would like to thank you for the opportunity to meet with you and Board members and staff last week. Further to the presentation the Nunatsiavut Government (NG) is writing to voice its concerns regarding the environmental assessment practices of the Canadian-Newfoundland Offshore Petroleum Board (C-NLOPB). Our repeated requests for the justification of the C-NLOPB's practices have been ignored. In addition, our feedback on specific projects assessments are met with generic responses that do not show consideration of our viewpoint, or with repeated answers that do not value our contribution to improving oil and gas practices in offshore Newfoundland and Labrador.

The U.S.-Canada Joint Statement on Climate, Energy, and Arctic Leadership emphasizes the importance of responsible, science-based leadership, particularly to develop world-class standards in oil and gas practices, in collaboration with indigenous governments and communities. In addition, a recent speech by Right Honorable Prime Minister Justin Trudeau announced a wide review of all federal laws and policies to de-colonize aboriginal relationships. In the spirit of this review, the Nunatsiavut Government emphasizes the importance of respectful inclusion of aboriginal governments in processes governed by federal legislation.

Currently, the Nunatsiavut Government does not have confidence in the environmental assessment practices of the C-NLOPB and we find that the practices do not align with their stated values and mandate. At the same time, the Government of Canada is pursuing an ambitious plan to protect 10% of Canada's marine waters by 2020. The Nunatsiavut Government is currently exploring how it might be able to support this process by initiating our own marine plan, including a possible Indigenous Protected Area designation.

With these points in mind, the NG recommends the following two courses of action:

-Postpone the closing of the 2016 Labrador South Call for Bids until 2020. This timeline corresponds with GoC and NG commitments to marine protected area planning off Labrador's coast. Delaying the closing of bids also allows that sufficient time for the Labrador Shelf SEA Review to be completed. As has been committed to by the C-NLOPB, the SEA Review requires a comprehensive traditional knowledge study to not only be included in the SEA Review, but also

included in a way that informs the recommendations and decisions for how oil and gas exploration and development is conducted off the Labrador coast. Furthermore, we recommend suspending the SEA Review Working Group until a comprehensive plan and financial resources are in place for the TK study. The NG is willing to advise the C-NLOPB on the plan. Specific to engaging with Labrador Inuit, there may be possibilities for coordinating the data collection within our own internal marine planning initiatives.

-Support an independent review of the C-NLOPB's environmental practices in order to ensure that the size, scope, content, environmental monitoring and mitigation measures of exploration projects are in line with other jurisdictions across Canada, as well as best practices globally. Such a review should also consider how concerns raised by indigenous groups and governments like the NG can be adequately addressed and accommodated within the Board's regulatory decision-making process.

It is our hope that this letter leads to open dialogue and a re-setting of the relationship between the Nunatsiavut Government and the C-NLOPB. The C-NLOPB's vision is to be recognized as a world-class regulator – we believe that the inclusion of traditional and scientific knowledge as well as the meaningful incorporation of the Nunatsiavut Government's input into the C-NLOPB's EA processes will be a major step towards this vision. The remainder of this letter outlines the issues regarding the environmental assessment practices of the C-NLOPB and includes specific examples.

I look forward to hearing from you on these matters,

Sincerely,

<Original Signed By>

Darryl Shiwak
Minister

cc. Honorable Siobhan Coady
Minister of Natural Resources
Government of Newfoundland and Labrador

Honorable James Gordon Carr
Minister of Natural Resources Canada
Government of Canada

Detailed issues related to C-NLOPB's practices on project-based Environmental Assessments

1. Length and Area of Project-Based Environmental Assessments

The length of projects under the jurisdiction of the C-NLOPB has increased over time with no scientific justification for this change. Environmental assessments for projects should be spatially and temporally specific. Currently, the C-NLOPB is encouraging proponents to apply for 10 year "projects" that cover the entirety of the area encompassed by the Labrador Shelf Strategic Environmental Assessment (SEA) or in some cases the majority of provincial offshore area. If the proponent cannot determine *specifically* where and how the work will be carried out within the project, then Sec.67(a) of the *Canadian Environmental Assessment Act* cannot be fulfilled:

67. An authority must not carry out a project on federal lands, or exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands, unless (a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects.

The Nunatsiavut Government co-chairs the Labrador Shelf Area SEA with the C-NLOPB with the understanding that the scoping for project-based environmental assessments would be kept within the ten-year time frame (2008-2018). Page 2 of the Labrador Shelf Area SEA (2008) clearly states: "The SEA considers oil and gas activities that may occur in the next 10 years." Most SEAs typically have a 5 to 10 year planning horizon with pre-determined update timelines. However, the Labrador Shelf Area SEA is currently being used for project-based environmental assessments that span into the 2020s and is not yet updated. This is an inappropriate use of the SEA, as the baseline environmental information will change due to research results as well as with the impacts of climate change. Project-based environmental assessments should not rely on the SEA to provide information for timelines which it is not stated to cover.

The Nunatsiavut Government fundamentally disagrees with the practice of encouraging proponents to submit environmental assessments for such long time periods over large, unspecified areas. The C-NLOPB has responded to this concern with the explanation that the C-NLOPB requires annual updates for project-based assessments and any changes and re-assessments can be made during this process. However, these updates and the review processes are not robust enough to incorporate new data and the realities of a changing climate. The C-NLOPB's October 26, 2016 submission to the Expert Panel on the Environmental Assessment Processes (Appendix A) states: "*In the event Canadian legislation of general application does not provide for subsequent monitoring / mitigation, the Accord regulatory framework can accommodate doing so for offshore petroleum proponents.*" However, a response from a recent proponent (Appendix B) states that a "stand-alone monitoring plan per se is not typically required for environmental assessments of proposed geophysical programs" and does not provide details on how this information is used to inform improved mitigation.

It is unclear how and when any monitoring information is incorporated into future activities and cumulative effects assessments to ensure that the annual updates are a useful tool. A 'world-class regulator' would require a robust monitoring program for all EAs, ensure there is baseline data for comparison, apply the information to improve their own EA practices, and use the information to contribute to research that improves mitigation measures for oil and gas activities.

Recommendations

- *As the SEA is used as a major assessment tool in the C-NLOPB's assessment processes, the SEA Update should be meaningfully completed. Funding should be provided commensurate with the SEA initiatives in other Inuit regions. Attention should be paid to the existing information gaps in the current SEA, specifically the meaningful inclusion of Traditional Knowledge. A research plan should be created to begin to fill these gaps.*
- *Monitoring plans should be required for all projects undergoing environmental assessment, and results of the plans should be incorporated into future mitigation measures when applicable.*

2. Cumulative Effects

There is a clear misunderstanding of the concept of a cumulative effects assessment within the C-NLOPB. Cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions.

In many of the C-NLOPB's project-based environmental assessments with 10-year time frames, it is common to see only the first year of activity assessed for impacts, including cumulative impacts, with the excuse from proponents that "*it isn't possible to realistically consider cumulative effects for the entire 10-year period*" (Appendix B). However, the Nunatsiavut Government holds the opinion that if the proponent applies for a 10-year project, they must be able to describe the impacts and cumulative effects for that time period. To assess cumulative effects, the proponents can and should assess the cumulative impacts of a 10-year span of their most likely activities, instead of providing small, annual updates to the C-NLOPB that do not properly assess cumulative impacts. Just because a practice cannot be perfectly completed does not mean it should not be done at all. This type of work requires a 'world-class' regulator that works consistently with proponents and stakeholders to improve cumulative effects assessment (CEA) practices and mitigations.

Previous letters from the Nunatsiavut Government (Appendix C) have refuted points and provided references that are helpful in completing cumulative effects assessments, only to receive the same response from the proponent (Appendix D). We expect, in this situation, to be supported by the C-NLOPB when asking for proper assessment practices. Instead proponents have indicated that they are encouraged by the C-NLOPB to apply for 10-year projects.

One of the major reasons behind creating strategic environmental assessments is to avoid significant cumulative effects within a regional development strategy, such as the Labrador Shelf SEA, for which the C-NLOPB is responsible. In the Labrador SEA Update Scoping Document, the C-NLOPB plans to examine multiple impacts over a long-term period over the entire Labrador Shelf. If it is possible to assess cumulative effects for the SEA, it is possible to do so for a project-based EA.

In the C-NLOPB's October 26, 2016 submission to the Expert Panel on the Environmental Assessment Processes, EA is stated as being an *early planning tool*. To plan for a 10-year project, the proponent must assess the impacts over 10 years. By its very nature, cumulative effects assessments cannot be done on a year by year basis for the duration of the project. This is unacceptable cumulative effects assessment practice and contradicts the definition of CEA. The Nunatsiavut Government questions how this practice evolved, including its scientific basis. The C-NLOPB is condoning a proponent's incomplete cumulative effects assessment by stating that current cumulative effects assessment practice is inadequate; this statement is false and unacceptable, especially without providing a concrete commitment to work with proponents, government agencies, and researchers to improve the practice.

Recommendations

Sections 42(1) of the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act allows the federal and provincial ministers to write directives regarding (a) fundamental decisions and (e) studies to be conducted by the Board and advice with respect to policy issues to be given by the Board to the Federal Minister and the Provincial Minister.

- *The Nunatsiavut Government recommends that a study be completed with specific focus on:*
 1. *The appropriateness of the informal policy of approving seismic for 10 year timeframes and approving projects past timelines stated within Strategic Environmental Assessments.*
 2. *A review of the C-NLOPB's practices in environmental assessment, particularly with regards to cumulative effects and the adoption of best practices.*
- *If the C-NLOPB continues to approve 10-year 'projects,' then the requirements for those projects should be held to the same standards as other environmental assessments in Canada and should include a proper cumulative effects assessment. If cumulative effects cannot truly be assessed, long-term projects should not be approved.*
- *The C-NLOPB should provide scientific justification for their permitting of 10-year EAs, or should return to permitting projects in 1-2 year windows where spatial and temporal details are available.*

3. Adaptation of Best Practices

As the designated body for oil and gas environmental assessments in the Newfoundland and Labrador offshore, the C-NLOPB does not promote best practices. There is no precedent for long-term approvals of seismic programs in other Canadian jurisdictions, and no clear regulatory guidance exists on approving projects past stated SEA timelines. Section 46(1) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* requires the C-NLOPB to provide effective coordination with federal and provincial departments and agencies. The C-NLOPB's practices are not consistent with the best practices of the Canadian Environmental Assessment Agency or the National Energy Board. For example, the C-NLOPB encourages proponents to reference previous EAs to validate their conclusions, instead of providing clear evidence (Appendix E, pg. 3). This then requires a reviewer to find each of the referenced EAs and look for the justification in past environmental assessments. This is very poor EA practice and should be discouraged by the regulator.

The following is an example of the contradictions between the C-NLOPB's October 26, 2016 submission to the Expert Panel on the Environmental Assessment Process and the actions of the C-NLOPB. The submission stated "*The Board has many tools which have been developed for environmental protection, including guidelines that are based on international best practices, for such things as waste treatment, chemical selection, and the mitigation of seismic sound in the marine environment.*" The C-NLOPB is currently applying the minimum standards from the *Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment* (SOCP) to its reviews. It is difficult to understand what international best practices were taken into account when other countries have more stringent mitigations. For example, the U.S.A. uses sound modeling to estimate the received decibel levels for marine mammals, resulting in a safety zone based on recent science,

unlike the 500m radius in the SOCP. This decision remains unjustified in the responses we have received, such as the response in your letter dated Nov. 22, 2016 (Appendix F).

A recent Science Advisory Report (CSAS, 2015/005) from Fisheries and Oceans Canada (DFO) states that the “implementation of the multiple measures of the SOCP as a whole is likely to be more effective than any one measure on its own, and the SOCP provides flexibility for enhancing mitigation measures to meet *Species at Risk Act* (SARA) requirements as it states that operators may be required to put in place additional or modified mitigation measures for species of concern.” This report uses examples of Atlantic SARA species – therefore it is disappointing that the C-NLOPB does not ask proponents to consider further measures to mitigate seismic impacts using this document, nor to develop specific monitoring plans that will help to improve mitigation measures in the future.

The C-NLOPB’s Oct. 26, 2016 submission to the Expert Panel on the Environmental Assessment Process states that “*Operators are required to mitigate risk as low as practically possible,*” and that “*Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence.*” The C-NLOPB’s actions in the above example contradict these statements. Being a ‘world class regulator’ means working closely with researchers within departments such as DFO to improve mitigations and guidelines. It also means collecting traditional knowledge incorporating local resource users, such as local fishermen, into decision-making. There are major gaps identified in the SOCP’s supporting document (*Habitat Status Report 2004/002*). These gaps could be filled through the C-NLOPB’s facilitation between researchers, traditional knowledge holders, and the oil and gas industry to create world class, modern policies.

Despite repeated responses from proponents and the C-NLOPB that mitigation measures will be adapted as they come available, this example contradicts these statements. The Nunatsiavut Government is concerned that best practices will not be adopted if they are not in the best interests of the proponent, despite clear scientific-based mitigations being adopted elsewhere. It is the C-NLOPB’s responsibility to enforce the implementation of best practices, as worker safety and the environment are their top two stated priorities.

The Nunatsiavut Government is also expressing disappointment with the C-NLOPB’s lack of monitoring and support for Marine Mammal Monitoring (MMO) programs on seismic programs. The C-NLOPB expresses the desire to promote economic benefits for Newfoundland and Labrador. Despite this, we find that there is a deterioration of pay and value of MMO employment in the industry. As this is a factor in Labrador Inuit employment in offshore oil and gas activities, we encourage the C-NLOPB to actively monitor employment statistics and pay levels for MMO programs, ensuring that the highest quality of wildlife monitoring programs is not sacrificed for the proponent’s bottom line.

Recommendations

- *Updated scientific and traditional knowledge should be incorporated into mitigation, and global best practices should be reviewed to ensure that best practices are applied in Newfoundland and Labrador offshore oil and gas activities.*
- *A review of proponents’ practices surrounding MMOs should be initiated and should include a review of training, fair wages, and worker safety and rights.*

4. Working with Other Jurisdictions

In the C-NLOPB's October 26, 2016 submission to the Expert Panel on the Environmental Assessment Process it was stated that they are a "*Member of the International Regulators Forum and the International Offshore Petroleum Environmental Regulators, which provide fora to consult with other international regulators to ensure best practices are used, and lessons learned in other countries are shared and utilized.*" The Nunatsiavut Government would like to understand what specific practices and lessons learned have emerged from these consultations.

The C-NLOPB's October 26, 2016 submission to the Expert Panel on the Environmental Assessment Process states that "*the C-NLOPB's role in federal EA either should be as an accepted substitute EA jurisdiction or as a CEAA Responsible Authority for all offshore related activities in our jurisdiction that trigger federal assessment.*" The Nunatsiavut Government does not support this position due to the major differences in practice between the C-NLOPB and the other two major agencies that perform oil and gas environmental assessments: the Canadian Environmental Assessment Agency and the National Energy Board. The *Draft Memorandum of Understanding on Effective, Coordinated and Concurrent Environmental Assessment and Regulatory Processes for Offshore Petroleum Projects in the Newfoundland and Labrador Offshore Area* was created to ensure effective public participation, avoid regulatory duplication, and promote certainty and predictability of process. Until the C-NLOPB adopts a higher standard of EA practice, the Nunatsiavut Government does not support the C-NLOPB as a regulatory authority for the offshore related activities currently under CEAA jurisdiction.

The Nunatsiavut Government is also concerned with the C-NLOPB's promotion of the oil and gas industry. Neither the C-NLOPB's mandate nor the *Atlantic Accord* mandate the C-NLOPB to contribute to the growth of the oil and gas industry. Despite this, there is disconcerting language used by the C-NLOPB that contradicts this; a recent job advertisement stated that "The C-NLOPB is looking for talented people to contribute to the oversight and growth of the oil and gas industry in Newfoundland and Labrador." Overseeing and growing an industry are incompatible values. In fact, the C-NLOPB website explicitly states that its mandate does NOT include promoting the industry. The Nunatsiavut Government believes this wording to be a symptom of a larger mindset at the C-NLOPB that requires a shift towards more responsible regulatory implementation. There is a need to draw a boundary between agencies that promote the oil and gas industry and those that regulate it.

Recommendation

Both the CEAA and the NEB are undergoing modernization reviews to ensure that their practices are based on science and respect for the environment and indigenous peoples. A recent review of the *Canadian Petroleum Resources Act*, elements of which are largely incorporated into the *Atlantic Accord*, has also been completed. A key area in these reviews is exploring how indigenous interests can be better included in decision-making processes.

- *The Nunatsiavut Government recommends that the C-NLOPB, under the oversight of the Canadian Environmental Assessment Agency, undergo a similar review of both their applicable legislation and their activities.*

The Nunatsiavut Government understands the importance of the C-NLOPB's role in providing regulation and environmental protection for offshore oil and gas development; it is the practices of the C-NLOPB within these regulatory structures that requires review so that it may eventually become a 'world-class regulator.'

Conclusion

The Nunatsiavut Government requests that the issues in this letter be discussed within the next meeting of the Oil

and Gas Administration Advisory Council, which is made up of the chairs of each of the Boards responsible for oil and gas in Canada. The MOU is attached (Appendix G) and states the participants will cooperate and communicate regarding best practices and guidelines. Currently, the C-NLOPB's practices are not consistent with high quality environmental assessments.

The intention of this letter is to emphasize the Nunatsiavut Government's concerns over the need for further transparency, accountability, improved communication, and meaningful participation within the C-NLOPB's environmental assessment processes. Transparency and accountability is not just posting EA documents on a registry – it is open communication, working directly with stakeholders and proponents, and facilitating the continual evolution of EA practices within the oil and gas industry.

List of Appendices

Appendix A – C-NLOPB Submission to the Expert Panel on Environmental Assessment Processes

Appendix B – Environmental Assessment of Seitel's East Coast Offshore Seismic Program, 2016-2025
Addendum, August 2016

Appendix C – NG Response to Seitel Environmental Assessment 2016-2025 Addendum, Sept 2013

Appendix D – Environmental Assessment of Seitel's East Coast Offshore Seismic Program Addendum, Dec 2016

Appendix E – NG response to Seitel Environmental Assessment Report, April 2016

Appendix F – C-NLOPB Response regarding Environmental Assessment of Seitel Canada Ltd. East Coast
Offshore Seismic Program, 2016 to 2025, Nov 22, 2016

Appendix G – Memorandum of Understanding between the National Energy Board, the Canada-Newfoundland
and Labrador Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board