

## MEMORANDUM OF UNDERSTANDING (MOU)

AMONG:

Natural Resources Canada ("NRCAN")

and

The Nova Scotia Department of Energy ("DoE")

and

The Canada-Nova Scotia Offshore Petroleum Board ("the Board")

Herein after collectively referred to as the "Parties"

**WHEREAS** under the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act* (jointly "the Accord Acts"), the Government of Canada and the Government of Nova Scotia ("the Crown") have joint responsibility for the oil and gas resources in the Canada-Nova Scotia offshore area and for the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB);

**WHEREAS**, pursuant to the Accord Acts, the CNSOPB has responsibility for administering the provisions of these Acts on behalf of the Government of Canada and Government of Nova Scotia, including matters respecting safety, protection of the environment, conservation of petroleum and joint production arrangements;

**WHEREAS** the Crown may use and rely on, where appropriate, existing consultation mechanisms, processes and expertise, such as the CNSOPB's environmental assessment and regulatory approval processes, to assist in discharging the Crown's Aboriginal consultation and accommodation obligations;

**WHEREAS** pursuant to the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), federal environmental assessments shall consider environmental effects and potential impacts on Aboriginal people, and particularly effects on health and socio-economic conditions, physical and cultural heritage, the current use of lands and resources for traditional purposes, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;

**AND WHEREAS** it is appropriate to bring clarity and describe more formally the roles of the Parties in respect of matters relating to Aboriginal consultation and accommodation with respect to the Canada-Nova Scotia Offshore Area;

**THEREFORE**, the Parties agree as follows:

## **1. GENERAL**

- 1.1. The purpose of this MOU is to establish an understanding between the Parties in relation to each Party's role with respect to the Crown's duty to consult and accommodate Aboriginal peoples in relation to offshore oil and gas activities in the Canada-Nova Scotia Offshore Area.
- 1.2. This MOU only applies to the CNSOPB's regulatory actions<sup>1</sup> that may trigger the Crown's duty to consult.
- 1.3. Any terms not otherwise defined have their meaning as set out in the Accord Acts. The term "Aboriginal peoples" has the same meaning as defined by the Constitution Act, 1982, s. 35.
- 1.4. If the name of any Party changes after the signing of this agreement, the new entity is bound by this agreement.

## **2. CNSOPB'S ROLE FOR ABORIGINAL CONSULTATION**

- 2.1. The CNSOPB will establish internal processes to guide CNSOPB's Aboriginal consultation. These processes will include:
  - 2.1.1 a process to determine level of consultation by assessing the degree of potential impact on Aboriginal rights of each of the CNSOPB's regulatory actions;
  - 2.1.2 a protocol for early and ongoing engagement with Aboriginal groups to facilitate relationship building and to improve awareness with respect to the CNSOPB's legislated responsibilities, current and upcoming projects and decisions; and,
  - 2.1.3 a process to conduct Aboriginal consultation in a manner consistent with consultation protocols and processes outlined in the Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process, or other similar protocols, as appropriate.
- 2.2. The CNSOPB will ensure external, public documentation is available to Aboriginal groups providing general information regarding the CNSOPB regulatory and environmental assessment processes, highlighting opportunities for Aboriginal consultation as part of CNSOPB's regulatory process, and indicating the CNSOPB's point(s) of contact for Aboriginal matters.
- 2.3. The CNSOPB will notify the Crown Oversight Committee of each upcoming regulatory action that may trigger the Crown's duty to consult before initiating regulatory action.

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<sup>1</sup> Regulatory actions that may trigger the Crown's duty to consult include but are not limited to: Call for Bids, Licence issuance, Activity authorization and Development plans. Authorizations for physical activities designated under the Canadian Environmental Assessment Act, 2012, for which the CNSOPB is a Responsible Authority, may be subject to this MOU.



- 2.4. Following the Crown Oversight Committee's work under 3.2.1, the CNSOPB will apply the internal processes established under 2.1 to that regulatory action in order to:
- 2.4.1. develop an appropriate Aboriginal consultation plan<sup>2</sup>, including, if necessary, written expectations for engagement by proponents;
  - 2.4.2. consult with potentially affected Aboriginal groups located in Nova Scotia and neighbouring provinces, as identified in the Aboriginal consultation plan;
  - 2.4.3. gather and appropriately consider input from Aboriginal groups;
  - 2.4.4. consider potential impacts on Aboriginal rights,
  - 2.4.5. mitigate and/or accommodate impacts on Aboriginal rights, as required, within the scope of the CNSOPB's statutory and regulatory authorities, including through terms and conditions of authorizations; and,
  - 2.4.6. inform Aboriginal groups in relation to how their comments or concerns were appropriately considered in CNSOPB's regulatory decision.
- 2.5. The CNSOPB will maintain records of its and the proponent's consultation and engagement activities, accommodation and/or mitigation measures and decisions taken pursuant to 2.4.
- 2.6. The CNSOPB will communicate and notify the Crown Oversight Committee on its determination of the level of consultation to be conducted for each regulatory action that may trigger the Crown's duty to consult and, on an ongoing basis, matters related to ongoing Aboriginal consultation processes, including potential consultation or accommodation matters that fall outside the scope of the CNSOPB's statutory authority.
- 2.7. Upon completion of each Aboriginal consultation process, the CNSOPB will provide to the Crown Oversight Committee an Aboriginal consultation/accommodation report, outlining how the CNSOPB has applied its internal Aboriginal consultation processes and describing measures undertaken by the CNSOPB pursuant to 2.4.
- 2.8. The CNSOPB will notify the Crown Oversight Committee and may proceed with its regulatory decision:
- 2.8.1. In cases where the CNSOPB determines that Aboriginal consultation does not need to be conducted; and,
  - 2.8.2. In cases where the CNSOPB determines that its actions under 2.4.2 through 2.4.6 have been satisfactorily completed.
- 2.9. The CNSOPB will notify the Crown Oversight Committee and will not proceed with its regulatory decision until the Crown Oversight Committee has issued its decision report, pursuant to 3.2.3, in all cases where the CNSOPB identifies potentially outstanding Aboriginal consultation/accommodation matters that fall outside the scope of the CNSOPB's statutory authority. The CNSOPB will provide advice to the Crown Oversight Committee on additional consultation and/or accommodation matters.

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<sup>2</sup> The nature and level of consultation activities undertaken by the CNSOPB will vary on a project-by-project basis and are dependent on the nature of the potential or established Aboriginal or Treaty rights, and the extent and severity of the potential adverse impacts of the proposed project on those rights. The CNSOPB may determine that, pursuant to 2.1.1, Aboriginal consultation does not need to be conducted.

### **3. THE CROWNS' JOINT ROLE FOR ABORIGINAL CONSULTATION**

- 3.1. NRCan and DoE will create a standing Crown Oversight Committee to ensure that the Crown's duty to consult, and potentially accommodate, Aboriginal groups is discharged for all proposed regulatory actions in Canada-Nova Scotia offshore area for which the CNSOPB has regulatory responsibility pursuant to the Accord Acts and under other federal legislation, including the CEEA 2012.
- 3.2. The Crown Oversight Committee has three roles:
  - 3.2.1. Upon notification by the CNSOPB, pursuant to 2.3, the Crown Oversight Committee will conduct and provide a rights scan analysis in order to enable the CNSOPB's further work under 2.4.
  - 3.2.2. Pursuant to 2.8, the Crown Oversight Committee will review and assess the CNSOPB's determination of adequacy/completeness of its Aboriginal consultation process, in order to ensure the duty to consult has been fully satisfied for each such regulatory action undertaken by the CNSOPB. For this assessment, the Crown Oversight Committee will review all Aboriginal consultation/accommodation reports prepared by the CNSOPB. Following this review, the Crown Oversight Committee may decide that additional consultation is required to fully satisfy the duty to consult. In such cases, the CNSOPB may take its regulatory decision at the time it deems appropriate.
  - 3.2.3. Pursuant to 2.9, the Crown Oversight Committee will review and assess the CNSOPB's determination of adequacy/completeness of its Aboriginal consultation process and to assess potentially outstanding Aboriginal consultation/accommodation matters identified by the CNSOPB, that fall outside its statutory authority (e.g. treaty-related matters, financial accommodation, etc.). For this assessment, the Crown Oversight Committee will review all Aboriginal consultation/accommodation reports prepared by the CNSOPB and any advice provided to the Crown Oversight Committee. The Crown Oversight Committee may decide to assign a federal/provincial authority to undertake and/or coordinate additional required consultations outside the CNSOPB's regulatory processes. The Crown Oversight Committee may also decide that no further consultation is necessary. The Crown Oversight Committee will communicate its decision in a written report to the CNSOPB, no later than 30 days from receiving the CNSOPB's notification and Aboriginal consultation/accommodation report. In such cases, the CNSOPB will not take its regulatory decision until the Crown Oversight Committee has communicated its decision.



**6. EFFECTIVE DATE**

This MOU is effective from and after the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**IN WITNESS WHEREOF** our signatures are hereunto inscribed:

original signed

July 13, 2015

\_\_\_\_\_  
Chair  
Canada-Nova Scotia  
Offshore Petroleum Board  
(or his authorized designate)

\_\_\_\_\_  
DATE

original signed

July 13, 2015

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DATE

original signed

September 16, 2015

\_\_\_\_\_  
Deputy Minister for Nova Scotia  
Department of Energy  
(or his authorized designate)

\_\_\_\_\_  
DATE

original signed

September 16, 2015

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DATE

original signed

JUN 25 2015

\_\_\_\_\_  
Deputy Minister of Natural Resources Canada  
(or his authorized designate)

\_\_\_\_\_  
DATE

original signed

JUN 25 2015

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DATE

#### **4. DESIGNATES FOR NOTIFICATION**

The following is the title of the designate and contact information for all communication matters related to this MOU:

Natural Resources Canada  
Executive Director, Offshore Petroleum Management Division, Natural Resources Canada

Nova Scotia Department of Energy  
Director, Regulatory and Strategic Policy

Canada-Nova Scotia Offshore Petroleum Board  
Chief Executive Officer

A Party may change the designate or contact information by notifying the other Parties in writing.

#### **5. AMENDMENT AND TERMINATION**

5.1. This MOU will come into effect on the date of the last signature.

5.2. A Party may withdraw from this MOU on termination of the MOU or at any time upon presentation of ninety (90) days written notice to the other two parties and must include any outstanding obligations arising under this MOU.

5.3. This MOU may be amended only with the mutual written consent of the Parties.