

December 15, 2021

**Mr. Omkar Lochan**  
**Chair**  
**Environmental Assessment Board**  
**c/o Environmental Protection Agency**  
**Sophia**  
**Georgetown**  
**Guyana**

**Re: Right to Information and Participation in the Environmental Assessment of  
Offshore Oil Exploration Risk to Caribbean States**

We write to challenge the Environmental Impact Assessment (EIA) of the Yellowtail project—a high-risk mining operation planned for the deep-water Stabroek Block offshore Guyana, on two grounds. First, the EIA process fails to meet basic principles of international environmental law, including the right of potentially affected states to participate in the EIA process and provide and access information on the risk of transboundary harm. By failing to respect these basic rights, Guyana has excluded Caribbean states and its communities from public debate on whether the risk associated with the proposed project is acceptable to the region and the appropriate measures to prevent or mitigate that risk. Second, the socioeconomic analysis in the EIA is significantly deficient in that it fails to establish a baseline economic value of the coastal areas of the Caribbean, including Guyana. We therefore call on the EPA to reject the EIA until minimum guarantees are established in Guyana.

It came to our attention by chance on November 9, 2021, that ExxonMobil’s affiliate Esso Exploration and Production Guyana Limited (EEPGL) applied for Environmental Authorization for an offshore FPSO-based oil production project at Yellowtail, and that your Environmental Protection Agency (EPA) had already granted authorization for three such developments for the Stabroek Block offshore area.

As we understand it, EEPGL, the operator of the Stabroek Block with 45 percent interest, Hess Oil (UK)’s Guyana affiliate Hess Guyana Exploration Ltd. with 30 percent interest, and CNOOC Petroleum Guyana Limited, a wholly owned subsidiary of CNOOC Limited, with 25 percent interest have been producing oil offshore of Guyana since 2019 in a high-risk deep-water operation at 1,500m-1,900m depths.

Our review of the relevant EIA documents reveals that Environmental Resources Management (ERM), an American consulting firm registered in Guyana, has conducted all the EIAs for EEPGL for three deep water project developments for which the Government of Guyana has granted Environmental Authorisation: Liza 1, Liza 2, and Payara. This firm is now in the process of submitting an EIA for the fourth deep water development project, Yellowtail.

The Government of Guyana, EEPGL and its British and Chinese partners have been aware of possible transboundary impacts of a potential deep well oil spill since the conduct of the first EIA for the Liza 1 development in 2017. This risk to Venezuela and Caribbean Sea countries was affirmed by successive EIA studies, with the Yellowtail study indicating a potential impact area covering all the Lesser Antilles and reaching as far as the southern and eastern coasts of Jamaica. This is according to ERM’s oil spill modelling, which was done with an unrealistic

worst-case scenario that heavily favours the company at an underestimated 30-day spill window. We know the Macondo deep water well took 87 days to control, and at the very least this sets the precedent for a worst-case scenario.

We are mindful that EEPGL has acknowledged the possibility of oil spill risk and its liability for damages, and that it laid out steps to alert and engage potential transboundary victims in the Liza 1, Liza 2 and Payara EIA studies. The following is the text in the EIA approved for Liza 1 (2017) setting out how EEPGL would treat with transboundary victims of an oil spill from its operations:

“EEPGL will work with representatives for the respective countries to be prepared for the unlikely event of a spill by:

- Establishing operations and communication protocols between different command posts.
- Creating a transboundary workgroup to manage waste from a product release – including identifying waste-handling locations in the impacted region and managing commercial and legal issues.
- Identifying places of refuge in the impacted region where vessels experiencing mechanical issues could go for repairs and assistance.
- Determining how EEPGL and the impacted regional stakeholders can work together to allow equipment and personnel to move to assist in a spill response outside the Guyana EEZ.
- Assigning or accepting financial liability and establishing a claims process during a response to a transboundary event.
- Informing local communities regarding response planning.”

The ERM has copied and pasted this text, with only minor alterations, into Liza 2’s EIA (2018) and Payara’s EIA (2019).<sup>1</sup> However, this was repeatedly done with no reflection or assessment whatsoever as to whether EEPGL had made any effort to honour the steps it had outlined in the previous EIAs regarding potential transboundary victims.

Now, four years after the Liza 1 EIA, and two years into oil production, the same text appears in the Yellowtail EIA, with only slight alterations that reduce the scope of EEPGL’s responsibilities to engage only when an oil spill occurs and in coordination with the Government of Guyana. The text now reads:

“Working jointly with the Government of Guyana and, as appropriate, with the government(s) of other potentially impacted jurisdictions to support bi-lateral oil spill response agreements in the region, in alignment with the principles and protocols of the Guyana National Oil Spill Contingency Plan. In the event that there is an oil spill incident that impacts areas outside the Guyana Exclusive Economic Zone, EEPGL—with support and approval from the Government of Guyana—will work closely with representatives for the respective locations to:

- Coordinate oil spill response operations and communication between different command posts in the region;

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<sup>1</sup> EEPGL Environmental Impact assessment 2018, Assessment and Liza Phase 2 Development Project, Chapter 9 assessment, and mitigation of potential impacts from unplanned events 9-155 and 9-116.

- Create a spill-specific transboundary workgroup to manage waste from a product release—including identifying waste-handling locations in the impacted regions and managing commercial and legal issues; Work with nominated spill response vessel owners/operators to identify places of refuge in the impacted regions where vessels could go for repairs and assistance;
- Determine how EEPGL and the impacted regional stakeholders can work together during a spill response to allow equipment and personnel to move to assist in a spill response outside the region while still retaining a core level of response readiness within the jurisdictions;
- Determine spill-specific financial liability during a response to a transboundary event; and
- On a spill-specific basis, work with local communities within the impacted areas to raise awareness of oil spill planning and preparations.<sup>2</sup>

Except for efforts to develop an MOU with Trinidad and Tobago, neither the Government of Guyana nor EEPGL have alerted our governments with the specifics of the risk shown in the oil spill modeling or invited them to consult, thus enabling them to consult internally with directed affected parties. The proposed approach in the Yellowtail EIA of engaging us as potential transboundary victims only when a crisis is upon us is prejudicial against our interests. Among other things, it deprives us of the opportunity to participate in preventative efforts and it fails to allow for a fair process for establishing ecological and socio-economic baselines as the basis for damage claims. It is, in fact, a clear violation of our rights under international law.

The InterAmerican Court of Human Rights, in its 2017 advisory opinion on “The Environment and Human Rights,” summarised the status of international law on this point in para 196, which states:

"196. Consequently, the Court concludes that States have the obligation to notify other potentially affected States when they become aware that an activity planned within their jurisdiction could result in a risk of significant transboundary harm. This notice must be timely, before the planned activity is carried out, and must include all relevant information. This duty arises when the State of origin becomes aware of the potential risk, either before or as a result of the environmental impact assessment. Carrying out environmental impact assessments requires time and resources, so in order to ensure that potentially affected States are able to take the appropriate steps, States of origin are required to give this notification as soon as possible, without prejudice to the information transmitted being completed with the results of the environmental impact assessment when this has been concluded."

As noted by the Inter-American Court in para 189, this duty “extends to every case in which there is a possibility of significant transboundary environmental harm ... as a result of activities planned by a State or by private individuals with State authorization. In such cases, notification is usually the first step towards facilitating cooperation and also permits compliance with the duty of prevention [of environmental harm].”

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<sup>2</sup> ESSO Exploration and Production Guyana Limited (EEPGL), EIA Volume III, Appendices Oil Spill Response Plan, pgs. 1-4, 1-5. EEPGL Environmental Impact Assessment 2018, Liza Phase 2 Development Project, Chapter 9 assessment, and mitigation of potential impacts from unplanned events 9-155- 9-116.

Similarly, the International Court of Justice reiterated this duty of notification and consultation in considering certain activities carried out by Nicaragua in the border area (*Costa Rica v. Nicaragua*) and Construction of a road in Costa Rica along the San Juan River (*Nicaragua v. Costa Rica*), in its Judgment of December 16, 2015. Para. 104 of the judgment states that:

"If the environmental impact assessment confirms that there is a risk of significant transboundary harm, the State planning to undertake the activity is required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk."

To date all of the EIAs conducted by ERM, since as early as 2018, have identified the possibility of significant transboundary harm. Yet, all the EIAs conducted by ERM have failed to identify Guyana's legal obligations to notify and consult with potential transboundary victims before a project is undertaken.

Further, we note that the decision not to alert our countries and involve the potential victims of a transboundary spill was taken by EEPGL, its consultant ERM, and Guyana's EPA in full cognizance of international best practice standards on transboundary consultations. The Yellowtail EIA process commenced under international best practice standards reflected in the Guyana 2020 General Guidelines and Petroleum Guidelines in May of 2021. These guidelines alerted the companies and Agency as well as stakeholders to the value of transboundary consultations as reflected in the screen captures, Figures 1 and 2, below.

## 5.11 Transboundary issues

Transboundary impacts are most likely to occur, for oil and gas projects, where a pipeline is planned across countries, where offshore operations leading to oil spills may impact exclusive economic zones of neighbouring countries and in case onshore support facilities in other countries are used, or where offshore activities impact on international maritime traffic, fishermen or fisheries.

Oil and gas terminals located near frontiers may have transboundary impacts, for example, if the air shed extends across the border, or influx/in-migration across borders is predicted or migrant fishermen are impacted.

Other transboundary impacts may be associated with the export of hazardous waste from oil and gas projects or the accidental import/export of alien or invasive species.

Finally, emissions of greenhouse gases (GHG) from oil and gas projects contribute to increasing the global concentration of these gases. Climate change is discussed in section 5.13.

IPIECA has produced guidance on alien and invasive species that can be consulted for more information<sup>30</sup>. Hazardous waste is discussed further in section 5.9.

It is recommended to study and learn from the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention) which lays down the general obligations of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse impact across boundaries. It provides a comprehensive framework for dealing with activities likely to have significant adverse transboundary impacts.

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<sup>28</sup> IFC (2007a) and IFC (2015)

<sup>29</sup>[http://www.unece.org/trans/danger/publi/ghs/ghs\\_welcome\\_e.html](http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html)

<sup>30</sup> IPIECA (2010)

**Figure 1: Guyana 2020 EIA Guidelines: Offshore Petroleum Exploration and Production**

### 8.8.3 Transboundary Impacts<sup>13</sup>

The borderline between Guyana and its neighbours is in many places defined by rivers which can receive runoff from land-based sources of pollution. The emerging offshore oil/gas sector makes down current territories vulnerable to major oil spills. Therefore, where relevant, potential Transboundary Impacts (TIs) should be considered when establishing the Terms and Scope of ESIA. This can be a sensitive topic due to sovereignty and territoriality issues.

Assessment of TIs would may involve several actions, including:

- Notification by Guyana of an 'affected country' or countries, informing of a planned activity that may have significant environmental effects on the latter's territory (the notification might also provide information on the planned activity, its likely significant transboundary effects and on the permitting and decision making process)
- A response by the affected country, indicating whether it wishes to be consulted further on the matter
- The sharing of information between the countries concerned
- The preparation of ESIA with T&S that addresses transboundary effects
- The distribution of the ESIA documentation, possibly translated, in the affected country
- Consultation between the authorities in the countries concerned
- Participation of the public in the affected country
- The taking of a decision on the activity by the country of origin, taking into account the ESIA documentation and comments received from the authorities and the public in the affected country

<sup>13</sup>Transboundary impact assessment: frameworks, experiences and challenges Wiek Schrage and Nick Bonvoisin, 2008

- The sharing of information with the affected country on the decision taken and, in some instances, the possibility of an appeal from the affected country against the decision, and
- Possibly, and preferably, monitoring and post-Project analysis.

### **Figure 2: Guyana 2020 EIA Guidelines General**

These 2020 EIA Guidelines were consistent with the Environmental Protection Act, which empowers the EPA to require private developers to honour Guyana's obligations under international laws and conventions. Section 13 (1) (c) specifies that: "a developer shall have an obligation to comply with any directions by the Agency where compliance with such directions as necessary for the implementation of any obligations of Guyana under any treaty or international law relating to environmental protection."

All four successive EIAs conducted by ERM not only failed to identify Guyana's legal international obligation but also to acknowledge that Guyana has signed and ratified the Cartagena Convention, which, among other things, sets out the commitments that Caribbean states have made towards each other when it comes to addressing seabed pollution from development activities as well as oil spills.

Another major point of concern is that these EIAs openly lack objectivity. They treat with potential socio-economic impacts primarily as benefits of the proposed investment and there is no proper assessment of potential economic losses to subgroups of stakeholders from the project's routine activities and potential upset conditions. Nowhere do they acknowledge and establish a baseline economic value of the coastal areas of the Caribbean. For example, the Yellowtail EIA document identifies the Portland Bight Protected Area, Jamaica's largest protected area, in the south of Jamaica and other sensitive ecological areas, but fails to identify the numerous fish sanctuaries and other important fishing locations that are the ecological and economic base of the island's fisheries industry. Additionally, there is the Kingston port through which millions of dollars of business is done daily, important coastal tourist areas, and mangrove forests that provide protection in lieu of millions of dollars that would have to be spent for built defence structures to protect the island from storms. There is no effort to assess the socio-economic baselines and potential economic losses even to Guyana, the host country.

Among other things, the present Yellowtail EIA process fails to meet basic standards of international environmental law that were designed to protect our ecosystems and citizens from potentially catastrophic accidents. Given the failures highlighted above, coupled with the high-risk nature of the proposed Yellowtail project, we call upon the Guyana authorities to immediately set aside the current EIA process, alert the Governments of the Caribbean of the specifics of the risks posed by offshore oil production, and re-engage with an EIA process that meets international legal obligations and best practice standards for both transboundary consultation and objectivity.

Yours sincerely,



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Signed: Simone Mangal-Joly on behalf of the following Caribbean Community organizations:

Caribbean Coastal Area Management (C-CAM) Foundation  
Ingrid Parchment, Executive Director

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C-CAM is the Management Authority for the Portland Bight Protected Area, which is comprised of 32 square miles (83 km<sup>2</sup>) of wetlands on the island, and coastlines of mangroves, as well as sea grass beds that serve as a nursery for fish and shellfish breeding and 81 square miles (210 km<sup>2</sup>) of dry limestone forests and human settlements with a population of 50,000.

The Jamaica Fish Sanctuary Network  
Ingrid Parchment, Chairman

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The Jamaican Fish Sanctuary Network (JFSN) is a national network of fish sanctuaries and other partners dedicated to restoring productivity to coral reefs and improving livelihoods of coastal communities in Jamaica and beyond.

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## **Public Communication**