

GENERAL COMMENTS

Environment and Climate Change Canada (ECCC)

APPLICABLE LEGISLATION

Fisheries Act

The proponent should be aware of the general applicability of Section 36(3) of the Fisheries Act (<http://laws-lois.justice.gc.ca/eng/acts/F-14/FullText.html>) which states: “no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substances or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water”. Environmental protection and mitigation measures should reflect the need to comply with Section 36(3) of the Fisheries Act. For example, measures should be taken to prevent substances such as lubricating fluids, fuels, etc. from being deposited into water frequented by fish, and drainage from construction and operational drainage must not be harmful to fish.

Migratory Birds Convention Act

Migratory Birds

Migratory birds, their eggs, nests, and young are protected under the Migratory Birds Convention Act (MBCA). Migratory birds protected by the MBCA generally include all seabirds (except cormorants and pelicans), all waterfowl, all shorebirds, and most landbirds (birds with principally terrestrial life cycles). The list of species protected by the MBCA can be found at <https://www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection/convention-act.html>. Bird species not listed may be protected under other legislation.

Under Section 6 of the Migratory Birds Regulations (MBR), it is forbidden to disturb, destroy, or take a nest or egg of a migratory bird; or to be in possession of a live migratory bird, or its carcass, skin, nest or egg, except under authority of a permit. It is important to note that under the MBR, no permits can be issued for the harm of migratory birds caused by development projects or other economic activities.

Furthermore, Section 5.1 of the MBCA describes prohibitions related to depositing substances harmful to migratory birds:

“5.1 (1) No person or vessel shall deposit a substance that is harmful to migratory birds, or permit such a substance to be deposited, in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such an area.

(2) No person or vessel shall deposit a substance or permit a substance to be deposited in any place if the substance, in combination with one or more substances, results in a substance – in waters or an area frequented by migratory birds or in a

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place from which it may enter such waters or such an area - that is harmful to migratory birds.”

It is the responsibility of the proponent to ensure that activities are managed so as to ensure compliance with the MBCA and associated regulations.

Canadian Environmental Protection Act

The proponent should also be aware of the potential applicability of the Canadian Environmental Protection Act (CEPA) (<https://laws-lois.justice.gc.ca/eng/acts/C-15.31/>). The Canadian Environmental Protection Act enables protection of the environment, and human life and health, through the establishment of environmental quality objectives, guidelines and codes of practice, and the regulation of toxic substances, emissions and discharges from federal facilities, international air pollution, and disposal at sea.

MIGRATORY BIRDS & SPECIES AT RISK

The Canadian Wildlife Service of Environment and Climate Change Canada (ECCC-CWS) has reviewed BP Canada Energy Group ULC’s *Ephesus Prospect Controlled Source Electromagnetic Survey Project Description* and offers the following comments.

Please note, the following two documents are **attached** for inclusion with the outgoing response:

- Environment and Climate Change Canada’s Canadian Wildlife Service (2017). Birds and Oil – CWS Response Plan Guidance
- Environment and Climate Change Canada’s Canadian Wildlife Service. (2016). Procedures for handling and documenting stranded birds encountered on infrastructure offshore Atlantic Canada.

Additionally, ECCC-CWS requests that the C-NLOPB include Ross’s Gull (*Rhodostethia rosea*), listed as Threatened on Schedule 1 of the Species at Risk Act, and Red-necked Phalarope (*Phalaropus lobatus*), listed as Special Concern on Schedule 1 of the Species at Risk Act to the “Species at Risk – Section 79(1) Notification of the Competent Minister” in the C-NLOPB’s letter requesting expert advice.

Accidental Events

The proponent must ensure that all precautions are taken by the contractors to prevent fuel leaks from equipment, and that a contingency plan in case of oil spills is prepared. Furthermore, the proponent should ensure that contractors are aware that under the MBR, “no person shall deposit or permit to be deposited oil, oil wastes or any substance harmful to migratory birds in any waters or any area frequented by migratory birds.” Biodegradable alternatives to petroleum-based chainsaw bar oil and hydraulic for heavy machinery are commonly available from major manufacturers. Such biodegradable fluids should be

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considered for use in place of petroleum products whenever possible, as a standard for best practices. Fueling and servicing of equipment should not take place within 30 meters of environmentally sensitive areas, including shorelines and seabird colonies.

The document “Birds and Oil – CWS Response Plan Guidance” is **attached** and is provided to offer guidance on the development of wildlife response activities.

Light Attraction and Migratory Birds

Attraction to lights at night or in poor visibility conditions during the day may result in collision with lit structures or their support structures, or with other migratory birds. Disoriented migratory birds are prone to circling light sources and may deplete their energy reserves and either die of exhaustion or be forced to land where they are at risk of depredation.

To reduce risk of harm of migratory birds related to human-induced light, ECCC-CWS recommends implementation of the following beneficial management practices:

- The minimum amount of pilot warning and obstruction avoidance lighting should be used on tall structures. Warning lights should flash, and should completely turn off between flashes.
- The fewest number of site-illuminating lights possible should be used in the project area. Only strobe lights should be used at night, at the lowest intensity and smallest number of flashes per minute allowable by Transport Canada.
- Lighting for the safety of the employees should be shielded to shine down and only to where it is needed.
- LED lights should be used instead of other types of lights where possible. LED light fixtures are less prone to light trespass (i.e. are better at directing light where it needs to be, and do not bleed light into the surrounding area), and this property reduces the incidence of migratory bird attraction.

Effects of the Project on Migratory Birds - Stranded Birds

Many migratory birds' foraging ranges (e.g. Leach's Storm-petrel) overlap directly with the Project Area and may be attracted to artificial lighting in the offshore environment. There is the potential for migratory birds to be attracted to and potentially be stranded on the survey vessels associated with the Project activities.

Should birds become stranded on the survey vessels, both during construction and operations phases, the proponent is recommended to adhere to Procedures for handling and documenting stranded birds encountered on infrastructure offshore Atlantic Canada (**attached**). Systematic deck searches for stranded birds undertaken by trained observers are more effective as mitigation than opportunistic searches. These systematic searches should occur at least daily (preferably at dawn) on installations and supply vessels, with search efforts documented and observations recorded (including notes of efforts when no birds are

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found). ECCC has expertise in this area and should be consulted in the development of systematic monitoring protocols that are specific to each installation, vessel, etc. If species at risk are found stranded on the vessels, the proponent should immediately contact ECCC-CWS for further instructions. The contact is Sabina Wilhelm (ECCC-CWS Marine Issues Biologist) at sabina.wilhelm@ec.gc.ca or 709-764-1957.

A seabird handling permit will likely be required to implement the instructions in this reference document and the proponent must be advised that such a permit would have to be in place prior to the initiation of proposed activities. Please note that MBCA permit applications can be obtained from ECCC-CWS via email at ec.scfatlpermis-cwsatlpermits.ec@canada.ca.

Fish, Food and Allied Workers/Unifor (FFAW/Unifor)

We don't have any comments on the project description provided but I will provide specialist/expert information or knowledge (fisheries related) for this assessment going forward.

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SPECIFIC COMMENTS

Environment and Climate Change Canada (ECCC)

Section 2.5 – Accidental Events (pg. 9)

The proponent should include a statement in this section to clarify that the timing and location of potential spills can affect the magnitude of the effect of accidental events on marine and migratory birds.

Cumulative Effects

The proponent has not included a discussion of cumulative effects in the project description. The discussion of cumulative effects must be shaped primarily by the valued components under consideration. While an accounting of past, present and future projects and activities is a starting point in a cumulative effects assessment, the analysis must consider how impacts from the proposed project will combine with impacts from other projects and activities. In the context of marine birds, for example, the proponent must consider how the project will contribute to existing impacts (e.g., attraction, increase in predation, loss of foraging habitat) on birds from other activities (e.g., other oil and gas activities, fishing, shipping). ECCC requests that the proponent update the cumulative effects section to include information relating to VC-specific cumulative effects.

EFFECTS OF THE ENVIRONMENT ON THE PROJECT

Operations will be somewhat sensitive to environmental conditions (e.g., wind, waves, ice). The environmental review should include considerations on how such conditions acting on the project could have consequences for the environment (e.g., increased risk of spills and impacts on valued ecosystem components). Marine weather information can be found on the Meteorological Service of Canada website at www.weatheroffice.gc.ca/marine. Additional information on regional climatology can be found at www.climate.weatheroffice.ec.gc.ca, or by contacting Environment and Climate Change Canada directly. Also, ice information can be found on the Canadian Ice Service website at www.ice-glaces.ec.gc.ca.

EFFECTS OF ACCIDENTS AND MALFUNCTIONS

Proponents are encouraged to prepare contingency plans that reflect a consideration of potential accidents and malfunctions and that take into account site-specific conditions and sensitivities. The Canadian Standards Association (CSA) publication, Emergency Preparedness and Response, CAN/CSA-Z731-03¹, is a useful reference for this.

¹ Canadian Standards Association (CSA). Emergency Preparedness and Response: A National Standard of Canada (CAN/CSA-Z731-03). Toronto: CSA, (R2014).
https://store.csagroup.org/ccrz_ProductDetails?viewState=DetailView&cartID=&sku=Z731-03&isCSRFlow=true&portalUser=&store=&cclcl=en_US

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All spills or leaks of petroleum or other hazardous materials, including those from machinery, fuel tanks or streamers, should be promptly contained, cleaned-up and reported to the 24-hour environmental emergencies reporting system (St. John's 709-772-2083; other areas 1-800-563-9089).

Fisheries and Oceans Canada (DFO)

Section 3.1 Scope of Project (page 1) – The total anticipated number of CSEM seabed receivers should be described and provided in the project EA.

Section 5.1.2 Temporal Boundaries (page 4) – The scheduling of project activities should also consider the timing (and location) of active commercial fishing activities and other marine users.

Section 5.2.2 Biological Environment (page 5) – This section of the Scoping Document should indicate that the project EA will acknowledge data gaps identified in the Eastern NL Strategic Environmental Assessment (SEA; 2014) relative to marine fish/fish habitat, species at risk, sensitive areas, and commercial fisheries, as well as how the project EA will describe the relevance of such gaps to the project.

Section 5.2.8 “Sensitive” Areas (page 7) – EL 1145 and EL 1146 are located in the Northeast Newfoundland Slope Closure. Prohibitions for this marine refuge include all bottom contact fishing activities. Other considerations include: no human activities that are incompatible with the conservation of the ecological components of interest may occur or be foreseeable within the area. The ecological components of interest for this refuge are cold-water corals and sponges. The project EA should include specific mitigation measures for the placement of receiver anchors within the Northeast Newfoundland Slope Closure to protect cold-water corals and sponges.

Section 5.2.14 Biological and Follow-up Monitoring (page 9) - It is not clear how (or if) monitoring and/or auditing of adherence to applicable mitigations committed to by the Proponent in the project EA will be undertaken. This section of the Scoping Document should be clarified to indicate how such monitoring will be accomplished either as part of or separate from the project EA.