

EMGS CSEM Western Newfoundland Program, 2017 Draft Scoping Document Review
Comments

REVIEW COMMENTS

Fisheries and Oceans Canada (DFO)

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

Department of National Defence (DND)

- Please identify a specific individual or office to serve as a Point Of Contact (POC) for MARLANT queries and concerns;
- Please ensure the appropriate Notice to Mariners will be issued for all underwater activities and any significant ventures, such as use of flares, buoys, and unconventional night lighting;
- Please ensure the appropriate Notice to Airmen will be issued for all activities that could affect air safety, such as use of balloons, Unmanned Aerial Vehicles (UAVs) or tethered airborne devices; and
- Please ensure engagement of CTF 84, through Director General Naval Strategic Readiness (DGNSR), to ensure de-confliction with possible Allied submarine activities.

Environment and Climate Change Canada (ECCC)

Regulatory Requirements

Fisheries Act

The proponent should be aware of the general applicability of Section 36(3) of the *Fisheries Act* 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, 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). Migratory birds, their eggs, nests, and young are protected under the *Migratory Birds Convention Act* (MBCA). The list of species protected by the MBCA can be found at: <https://www.ec.gc.ca/nature/default.asp?lang=En&n=496E2702-1>. 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

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under the current MBR, no permits can be issued for the incidental take of migratory birds caused by development projects or other economic activities.

Furthermore, Section 5.1 of the MBCA describes prohibitions related to deposit of 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 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.

Species at Risk Act

The proponents should also be reminded that the prohibitions under the *Species at Risk Act* (SARA) are now in force. The complete text of SARA, including prohibitions, is available at <http://laws-lois.justice.gc.ca/eng/acts/s-15.3/>.

It should be noted that Section 79 of the Species at Risk Act states:

“**79. (1)** Every person who is required by or under an Act of Parliament to ensure that an assessment of the environmental effects of a project is conducted, and every authority who makes a determination under paragraph 67(a) or (b) of the *Canadian Environmental Assessment Act, 2012* in relation to a project, must, without delay, notify the competent minister or ministers in writing of the project if it is likely to affect a listed wildlife species or its critical habitat.

(2) The person must identify the adverse effects of the project on the listed wildlife species and its critical habitat and, if the project is carried out, must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.”

Canadian Environmental Protection Act

The proponent should also be aware of the potential applicability of the *Canadian Environmental Protection Act* (CEPA). 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

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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 the above project and has the following comments.

Considerations Specific to Migratory Birds

Migratory birds, their eggs, nests, and young are protected under the federal *Migratory Birds Convention Act* (MBCA) and the complementary regulations (Migratory Bird Regulations, Migratory Bird Sanctuary Regulations). Certain species are recognized to be at risk under the federal *Species at Risk Act* (SARA), provincial endangered species legislation, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), or by the Atlantic Canada Conservation Data Centre.

In conducting the environmental assessment (EA), the vulnerability of individual species/groups of migratory birds to sampling programs must reflect a consideration of the following basic factors:

- Distribution and abundance of species during scheduled project activities;
- Impact pathways;
- Mitigation;
- Cumulative effects; and
- Provisions for follow-up on assessment accuracy and mitigation effectiveness.

The following impact pathways influencing migratory birds must be considered in the analysis of any seismic survey:

- Noise disturbance from equipment including both direct effects (physiological), or indirect effects (foraging behaviour or prey species);
- Physical displacement as a result of vessel presence (e.g., disruption of foraging activities);
- Nocturnal disturbance from light (e.g., increased opportunities for predators, attraction to vessels and subsequent collision, disruption of incubation);
- Exposure to contaminants from accidental spills (e.g., fuel, oils) and operational discharges (e.g., deck drainage, gray water, black water); and
- Attraction of, and increase in, predator species as a result of waste disposal practices (i.e., sanitary and food waste) and the presence of incapacitated/dead prey behind the vessel.

The proponent should refer to any applicable Strategic Environmental Assessments (SEA), where appropriate. For annual updates, the proponent is encouraged to contact ECCC-CWS to ensure that information listed in the SEA is still accurate.

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Considerations Specific to Species at Risk

If a migratory bird species is listed under Schedule 1 of SARA and could be affected by operations, steps must be taken to ensure compliance with both SARA and the *Canadian Environmental Assessment Act* (CEAA).

The following species at risk may be incidentally found near the project site in migration: Harlequin Duck, Barrow's Goldeneye, Red Knot (*rufa* subspecies), Piping Plover, Olive-sided Flycatcher, Red Crossbill (*perca* subspecies) and Common Nighthawk. Though unlikely to be found within the project footprint, these species may occur within the study area and we request that sightings be reported to ECCC-CWS.

It should be noted that the SARA list may change through the life of the project. Species listed after project approval may require additional mitigations. The proponent is encouraged to annually update the list of SARA species potentially affected by the project.

Cumulative Effects Assessment to be included in the EA

The discussion of cumulative effects must be shaped primarily by the valued ecosystem 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., increase in predation, loss of foraging habitat) on birds from other activities (e.g., other oil and gas activities, fishing, shipping).

Information Sources to be included in the EA

The proponent should be aware of Environment and Climate Change Canada's Eastern Canadian Seabirds at Sea (ECSAS) program. This program has conducted over 4000 surveys covering 7800 km of ocean track in the Newfoundland and Labrador offshore area since 2006. The most up-to-date data for the study area must be included in the EA. This information is available by contacting Carina Gjerdrum (Pelagic Seabird Biologist, ECCC-CWS) at carina.gjerdrum@canada.ca.

The ECSAS program can be cited as follow: Gjerdrum, C., D.A. Fifield, and S.I. Wilhelm. 2011. Eastern Canada Seabirds at Sea (ECSAS) standardized protocol for pelagic seabird surveys from moving and stationary platforms. Canadian Wildlife Service Technical Report Series No. 515. Atlantic Region. vi + 36 pp.

While an EA may conclude that the overall impact of a seabed survey on seabirds is relatively small, it remains important that the opportunity for this activity to impact federally-protected avian species be properly acknowledged in the EA. Accordingly, it is also expected

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that the proponent commit to all reasonable measures to mitigate the potential for such impacts to occur. These measures are outlined below.

Mitigations – General

Mitigation measures related to adverse effects, including cumulative effects, must be identified. Measures must be consistent with the MBCA and SARA and with applicable management plans, recovery strategies and action plans. Mitigation must reflect a clear priority on impact avoidance opportunities. The following specific measures must be among those which are considered in preparing a mitigation strategy:

Should storm-petrels or other species become stranded on vessels, the proponent is expected to adhere to the protocol The Leach's Storm-Petrel: General Information and Handling Instructions (**attached**). A permit will be required to implement this protocol and the proponent must be advised that such a permit must 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.

It is expected that the proponent demonstrate how they will minimize or prevent the release of hazardous substances on board the vessel (e.g. chemicals for equipment repairs, fuels, lubricants) into the marine environment. Attention must be paid to impact avoidance and pollution prevention opportunities and a contingency plan must be developed to enable a quick and effective response in the event of a spill. Other management practices and preventative maintenance plans must be outlined such as a protocol to prevent spill events. This protocol must describe conditions that will allow the sampling program to be conducted without spill incidents (e.g., the range of environmental conditions within which the equipment can operate).

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 incidental take 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.

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- 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.

Non-emergency flaring at night should be avoided. If the proponent is unable to completely avoid flaring activities at night, then the proponent should identify methods to address risks to nocturnally migrating birds and breeding seabirds, particularly storm-petrels. The proponent should identify periods of high risk for bird/flare interactions, measures to avoid incidental take of migratory birds, and monitoring plans which explore how flare timing can be modified. Furthermore, the proponent should investigate the potential to install flare shields to reduce light emissions and potentially reduce bird mortality.

Ellis et al. 2013 state that bird stranding reports on vessels and platforms “cannot directly assess the mortality caused by strikes and flaring because it is unknown how many birds are killed and not recovered. More work is required to relate the numbers of birds found on vessels and platforms to the total number of birds dying from collisions and flaring.” Hence there is a strong need for research and monitoring to quantify mortality events, particularly around flares, and identify conditions leading to mortality events, by implementing a monitoring program incorporating bird detection technology on platforms and mobile drilling ships.

Reference: Ellis, J. I., S. I. Wilhelm, A. Hedd, G. S. Fraser, G. J. Robertson, J.-F. Rail, M. Fowler, and K. H. Morgan. 2013. Mortality of migratory birds from marine commercial fisheries and offshore oil and gas production in Canada. *Avian Conservation and Ecology* 8(2): 4.
<http://dx.doi.org/10.5751/ACE-00589-080204>

Mitigations - Data Collection

ECCC-CWS has developed a pelagic seabird monitoring protocol (**attached**) that is recommended for use by experienced observers on all offshore projects. A guide for pelagic seabirds of Atlantic Canada has also been **attached**, for assistance in identifying pelagic seabirds in the area.

A report of the seabird monitoring program, together with any recommended changes, is to be submitted to ECCC-CWS on a yearly basis. In an effort to expedite the process of data exchange, ECCC-CWS recommends that the data (as it relate to migratory birds or Species at Risk) collected from the monitoring program be forwarded in digital format to ECCC-CWS following annual program completion (Contact for data is Josh Mailhiot, ECCC-CWS Environmental Assessment Coordinator: joshua.mailhiot@canada.ca). These data will be centralized for ECCC-CWS’s internal use to help ensure that the best possible natural

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resource management decisions are made for these species in Newfoundland and Labrador. Metadata will be retained to identify source of data and will not be used for the purpose of publication. ECCC-CWS will not copy, distribute, loan, lease, sell, or use of this data as part of a value added product or otherwise make the data available to any other party without prior express written consent.

Mitigations - Oil Pollution Incidents

The assessment of environmental effects which could result from accidents and malfunctions should include a consideration of potential spill events. The assessment should be guided by the need to ensure compliance with the general prohibitions against the deposit of a deleterious substance into waters frequented by fish (Section 36, *Fisheries Act*) and against the deposit of oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (Section 5.1, *Migratory Birds Convention Act*). In addition, it should be focused on potential worst-case scenarios (e.g., concentrations of marine birds, presence of wildlife at risk). Based on this analysis, the environmental assessment should describe the precautions that will be taken and the contingency measures that will be implemented to avoid or reduce the identified impacts.

In developing a contingency plan that would support the assessment of accidents and malfunctions, and a determination that impacts could be avoided or reduced, it is recommended that the Canadian Standards Association publication, *Emergency Planning for Industry CAN/CSA-Z731-95 (Reaffirmed 2002)*, be consulted as a useful reference. All spills or leaks, including those from machinery, fuel tanks or streamers, should be promptly contained, cleaned-up and reported to the 24-hour environmental emergencies reporting system (Phone: 1-800-563-9089).

Spills could result in significant effects on migratory birds in the event that large numbers of birds, or individual species at risk (SAR), are affected. Migratory birds, including bird species at risk, could be significantly affected if spills affect important habitats or critical habitat for SAR. Disturbance resulting from accidental events during the breeding season in the vicinity of SAR or colonial bird nesting areas could also result in significant effects if it results in nesting failure or site abandonment by the birds.

Strategies to minimize or prevent accidental or chronic releases must be emphasized in a mitigation program. Proponents are required to demonstrate response preparedness and to identify provisions for ensuring measures are implemented to eliminate or minimize resulting sheens or slicks in the event of accidents and malfunctions involving the release of oil. The following considerations are requested to be factored into the development of a response plan that would help reduce impacts on seabirds:

- measures for containing and cleaning up spills (of various sizes);
- equipment that would be available to contain spills;
- specific measures for the management of large and small spills (e.g., breaking up sheens);

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- mitigation measures to deter migratory birds from coming into contact with the oil;
- mitigation measures to be undertaken if migratory birds and/or sensitive habitat becomes contaminated with the oil; and
- the type and extent of monitoring that would be conducted in relation to various spill events.

In order to assist proponents in preparing a plan for dealing with an oil spill which would potentially threaten migratory birds, EC-CWS has prepared a guidance document (**attached**), a sample protocol document used for oiled birds on beaches (**attached**), and a protocol for handling non-oiled but dead birds found on vessels (**attached**).

Clarification – Oil-based products in Transmitter and/or Receivers.

It is not stated if oil-based products (e.g. lubricants or fuel) will be used in the transmitter and receivers. The presence or lack thereof of oil-based products in these devices should be stated in the environmental assessment. ECCC-CWS recommends that transmitters and receivers without hydrocarbon-based fluids be used.

Effects of the Environment on the Project

Seismic 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 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

The mandatory assessment of environmental effects that result from accidents and malfunctions should include a consideration of potential spill events. The assessment should be guided by the need to ensure compliance with the general prohibitions against the deposit of a deleterious substance into waters frequented by fish (Section 36, *Fisheries Act*) and against the deposit of oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (Section 35, *Migratory Birds Regulations*). In addition, it should be focused on potential worst-case scenarios (e.g., concentrations of marine birds, presence of wildlife at risk). Based on this analysis, the environmental review should describe the precautions that will be taken and the contingency measures that will be implemented to avoid or reduce the identified impacts.

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

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sensitivities. The Canadian Standards Association publication, Emergency Preparedness and Response, CAN/CSA-Z731-03, is a useful reference.

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).

Transport Canada

All project vessels must comply with the applicable regulations under the *Canada Shipping Act, 2001* (CSA 2001) and applicable International Maritime Organization (IMO) standards.

More specifically, project vessels registered in Canada must comply with all applicable provisions of the Regulations pursuant to the CSA 2001. In addition, the operation must comply with provisions under the Maritime Occupational and Health Regulations pursuant to Part II of the Canada Labour Code.

Department of Fisheries and Aquaculture (Government of Newfoundland and Labrador)

The Department suggests adding the Groundfish Enterprise Allocation Council (GEAC) to the consultation list. They have a redfish interest in the area.

There is a cod conservation measure that overlaps with the project area. The protection of Cod during the April 1 to June 23 spawning period is a priority that the Department (DFO) and the industry consider very important for the reconstruction of the Cod stock in the northern Gulf of Saint Lawrence. The following conservation measure will apply:

Closure of part of the NAFO Division 4R offshore from St. Georges Bay and Port au Port Bay to all groundfish fishing and all gear types. Cod Spawning Box is defined by straight lines drawn from the following coordinates:

- 48 degrees 15" North, 59 degrees 20" west, to
- 49 degrees 10" North, 59 degrees 20" west, to
- 49 degrees 10" North, 60 degrees 00" west, to
- 48 degrees 15" North, 60 degrees 00" west, to
- 48 degrees 15" North, 59 degrees 20" west.

St. Lawrence Coalition

The St. Lawrence Coalition recommends that the upcoming EMGS Inc. Environmental Assessment report be translated in French.

EMGS Inc. should describe not just the technical purpose of the project but also the ultimate reasons why it is proposed.

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Section 4.7 Report on Consultation: This section of the draft scoping calls for a report on consultations undertaken by EMGS “with interested other oceans users (...) and/or the general public”. This request is particularly vague on many aspects and calls for a much stricter framing of the consultation process in the final scoping document:

- Ocean users from other provinces, particularly Quebec and Nova Scotia, who are located quite close to the project area should be advised in priority. As it stands, only Newfoundland ocean user organizations have been formally invited to participate in the process;
- As is often the case, “consultations” organised by industry proponents often amount to no more than a “public information session”. Real possibility of interaction needs to be provided to the public; and

Another frequent problem is that the opposition voiced by participants in industry-held consultations is often downplayed in the final reports, specially if the reports are written by the proponent himself.

The EMGS Inc. project area is clearly delineated in the proponent project description (section 2.1, figure 1). However, there are no further indications as to the location of the three spatial boundaries described in the draft scoping document: “project area”, “study area” and “regional area”. These various boundaries need to be fully addressed in the EMGS Inc. Environmental Assessment Report and not limited to the simple outline specified in the project description.

The EMGS Inc. “project area” boundaries fall exactly on the Quebec-Newfoundland as well as on the Nova Scotia-Newfoundland limits. The Gulf of St. Lawrence is an entirely different political environment than the one EMGS Inc. is used to work in (i.e. the Grand Banks and Atlantic offshore): there are five provincial jurisdictions, as well as First Nations offshore land claims. The environmental assessment absolutely needs to acknowledge these various administrations, including First Nations, and EMGS Inc. should not only notify them of the project, but also adequately consult them.

Save Our Seas and Shores Coalition

Endangered species migrate through the Laurentian Channel: the endangered blue whale is one example. Harlequin duck are endangered as are Right whales. The endangered Leatherback Turtle has been on this earth for one hundred million years. Given the endangered species that live and migrate through the Gulf of St Lawrence every year, it is our coalition’s position that the survival of these rare species takes precedence over EMGS surveys and seismic surveys.

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

As pointed out in the document, thorough consultation with FFAW and membership is necessary. I would just like to reiterate the importance of this consultation and our hope that the operator will indeed fulfil this obligation.