
# Comments on the Environmental Impact Statement for the Bay du Nord Development Project

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## Introduction and Context

The NunatuKavut Community Council ("NCC") is an Indigenous organization serving as the representative governing body for more than 6,000 Inuit of central and southern Labrador (approximately 20% of Labrador's population). NCC is pleased to present its first comments on the Environmental Impact Statement ("EIS") for the Bay du Nord Development Project ("Project") proposed by Equinor Canada Ltd. ("Proponent"). The present comments are made in reference to the full rather than summary EIS.

While NCC has a variety of substantial concerns with the Project, the present submission focuses on NCC's concerns with the sufficiency of the EIS in relation to the Guidelines for the Preparation of an Environmental Impact Statement ("EIS Guidelines" or "Guidelines") issued in September 2018 for the Bay du Nord Development Project. NCC respectfully requests that the Impact Assessment Agency of Canada ("IAAC" or "Agency") consider the comments and questions as input for its Information Requirements and/or Requests to the Proponent.

Please note that it is currently NCC's intention to submit additional comments for consideration in the Agency's analysis of the EIS for its report to the Minister. As such, the contents of the present submission do not represent the complete set of concerns about the project, nor all details in relation to those concerns. NCC will submit its additional comments as soon as possible this fall. NCC and its consultants are, like many in Canada, working under the various constraints and challenges associated with the COVID-19 pandemic, and we greatly appreciate the Agency's flexibility in relation to timelines and timeframes for input.

On September 4, 2019 the Government of Canada signed a Memorandum of Understanding (MOU) on self-determination with NCC, representing a significant step forward in our relationship with Canada on the recognition of our Inuit rights and self-determination. Through the MOU, NCC looks forward to finding shared and balanced solutions to a wide variety of issues – including impact assessments, regional assessments and strategic environmental assessments – that advance reconciliation in a way that respects the interests of the people of NunatuKavut and all Canadians. The MOU, which represents the culmination of formal talks that began in July 2018, further heightens our interest in Nation-to-Nation dealings with Canada in relation to impact assessments.

As the traditional stewards and guardians of our territory of NunatuKavut, our people are in the best position to provide relevant knowledge, and to make decisions, monitor and enforce protections with respect to projects that may affect the natural resources on which we depend, and thus our rights in relation to those resources. NCC asserts its Indigenous and treaty rights to lands and resources within Labrador and also along the Labrador coast, including the rights to hunt, fish and gather. These facts have been referenced in the EIS documents for several exploration projects in NL offshore area.[1]

## Brief Background on NunatuKavut and the NCC

NunatuKavut means "Our Ancient Land." It is the territory of the Inuit of NunatuKavut, the Inuit residing primarily in southern and central Labrador. Our people lived in Labrador long before Europeans set foot on North American soil. As it was in times of old, and still today, we are deeply

[1] See e.g., BP, Newfoundland Orphan Basin Exploration Drilling Program, Environmental Impact Statement, September 2018, Chapter 3, Consultation and Engagement, https://iaac-aeic.gc.ca/050/documents/p80147/125905E.pdf, p. 3.6.

connected to the land, sea and ice that make up NunatuKavut, our home. Today, our people continue to hunt and fish to harvest country food that is important for health and well-being and which connects us to our culture and traditions of the past. Atlantic salmon, turrs (thick-billed murres) and eider ducks are among the species that we harvest for these purposes and that may be affected by offshore drilling projects such as the Bay du Nord Development Project. Additionally, NCC's communal commercial fisheries play an important role in the life and economy of NunatuKavut communities and are a leading source of employment for our people.

NCC serves as the representative governing body for more than 6,000 Inuit of south and central Labrador. A council elected by our membership and comprised of members representing each of the six regions of our territory and led by a President and Vice-President governs the NCC, whose primary function is to ensure the land, ice and water rights and titles of its people are recognized and respected. We are also fully present at the grassroots level in our communities, which are many and remote, the vast majority of which are located along Labrador's coast south of Hamilton Inlet. NCC provides a variety of services to NunatuKavut residents living in over 20 communities[2] in Labrador.

### Comments and Questions on the Sufficiency of the EIS in Light of EIS Guidelines Requirements

Below are NCC's concerns related specifically to the sufficiency of the EIS in light of the EIS Guidelines Requirements. Substantively, most of the points concern Atlantic salmon, migratory birds, accidents (spills), and greenhouse gases, although other issues which may overlap with these, particularly the Proponent's approach to the precautionary principle, are also discussed. These do not represent all of NCC's concerns with the Project, nor the assessment process and, as mentioned above, NCC intends to provide additional information for the Agency's analysis.

Important Note on organization of these comments: The specific comments, questions and requests presented below are organized largely according to the section numbers and subtitles in the EIS Guidelines, in the order in which they appear in the Guidelines – *not necessarily in the order of importance to NCC*. In each comment on a Guidelines requirement, references are made to the pertinent sections of the full EIS, per the Table of Concordance presented by the Proponent in Appendix B of the EIS.

## EIS Guidelines Part 1

#### 2.4. Application of the precautionary approach

NCC has identified a number of specific areas in which the EIS does not appear to fulfill the requirement in subsection 2.4 of the Guidelines, and those specific areas will be outlined below. First, however, some background is in order with respect to this requirement.

Subsection 2.4 of the Guidelines requires the Proponent to "demonstrate that all aspects of the project have been examined and planned in a careful and precautionary manner in order to avoid significant adverse environmental effects." While the wording of this requirement does not make reference specifically to the precautionary principle, it is entirely reasonable to expect that the Agency's advice to approach the EIS in a "precautionary manner" is linked to that principle, particularly given the principles importance in section 6(2) of the *Impact Assessment Act* ("IAA" or

[2] For the locations of these communities, please see https://nunatukavut.ca/about/our-communities/.

"Act"), which requires that the government, Minister, agencies and federal authorities apply the precautionary principle in the administration of the Act.[3] It is reasonable to expect that, anticipating the Agency and Minister's need to fulfill this obligation in the context of the assessment process for Bay du Nord, the Guideline requirement in s. 2.4 was designed with the intention to encourage the Proponent to do its part in respect of the precautionary principle. In any case, the Proponent has, in fact, interpreted the requirement in this manner in EIS ss. 2.10.4.1, titled, "Project Planning, Assessment, and Implementation: Application of the Precautionary Principle"[4] (our emphasis).

To better root the present discussion, it is helpful to restate an oft-referenced statement of this principle as it appeared in Principle 15 of the 1991 *Rio Declaration on Environment and Development* (the Proponent makes reference to this statement of the principle in its EIS):

> Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[5]

At its core, the precautionary principle is designed to be applied in the face of scientific uncertainty about environmental harm.[6] In everyday language, the precautionary principle stands for the idea that a lack of certainty about the threat of environmental harm "should not be used as an excuse for not taking action to avert that threat."[7]

Given the importance of the precautionary principle to the IAA and its application in relation to specific project assessments, NCC finds the Proponent's treatment of this requirement to be wholly insufficient.

In order to live up to the spirit and letter of the IAA, any EIS must go well beyond a "box-checking" approach to this requirement. More to the point, it is not enough for the Proponent to claim that it is respecting the precautionary principle and provide some general justifications for its claim, or even examples. Rather, ss. 2.4 of the EIS Guidelines requires that the precautionary approach actually be demonstrated in the EIS with respect to all aspects of the project. As the requirement mentions, the objective of this approach is to avoid significant adverse environmental effects.

Apart from the general discussion about the precautionary principle in EIS ss. 2.10.4.1, the EIS does not make mention of the precautionary approach as it applies to specific aspects of the project except in two places, both in relation to migratory birds: ss. 16.7.5.8 (Ch. 16, Accidental Events, Determination of significance)[8] and ss. 18.6 (Environmental Assessment Summary and Conclusions). Even then, the treatment of the application of the principle is cursory at best.

By relying only upon broad general statements in EIS ss 2.10.4.1 to address the requirement in EIS

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[3] S.C. 2019, c. 28, s.1, https://laws-lois.justice.gc.ca/PDF/I-2.75.pdf. See also *Interim Guidance: Considering the Extent to which a Project Contributes to Sustainability*, especially sections 1.3 and 2, which highlight the highly important nature of the precautionary principle in impact assessment, https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance.html. The *Federal Sustainable Development Act*, S.C. 2008, c. 33, https://laws-lois.justice.gc.ca/PDF/F-8.6.pdf also directs the federal government to prioritize the "precautionary principle" in its sustainable development strategy.

[4] EIS, Ch 2, p. 2-91.

[5] EIS, Ch 2, p. 2-92.

[6] International Union for the Conservation of Nature (Council document), "Guidelines For Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management," 14-16 May 2007, https://www.iucn.org/sites/dev/files/import/downloads/ln250507_ppguidelines.pdf.

[7] Ibid.

[8] EIS, Ch 16, p. 16-161.

Guidelines ss. 2.4., the Proponent has neglected to demonstrate the use of a precautionary approach in relation to numerous serious potential environmental effects. Specifically, the proponent has not, in many cases, demonstrated adherence to the precautionary principle because it is not taking precaution to avoid potential serious where the science is uncertain or lacking.

Below, NCC presents several of the most concerning instances of neglecting to apply the precautionary approach. Additionally, most of these instances involve a lack of specific explanation of how the precautionary approach was applied in the face of uncertainty. NCC asserts that explanations at the level of the specific effects are required by s. 2.4 of the EIS Guidelines, because otherwise, the requirement to demonstrate adherence to the precautionary principle becomes meaningless. General comments about things like "standard mitigation measures" simply do not -- and cannot – answer the core matter of the precautionary principle: lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation

NCC proposes that the following question be asked of the Proponent for each of the instances identified below, on this page and through page 6, in relation to the demonstration of a precautionary approach:

**Questions for Proponent re EIS Guideline ss. 2.4.**

Why was the specific action identified as an approach or method or measure that could help mitigate potential risks or harm disregarded? If disregarded due to issues of cost-effectiveness, please provide details. If not, please explain how is the decision to disregard the mitigative approach, method or measure is reconciled with the precautionary approach?

Project description: drilling waste management.
In subsection 2.7.4.5 (Drilling Waste Management), the EIS explains that disposal of drilling wastes at an approved onshore facility rather than discharge to the water column, thus mitigating potential harm to fish and other ocean flora and fauna, was considered but disregarded due to cost and GHG considerations. NCC's concern is with the quality and completeness of these cost considerations.

First, NCC understands that a new Drill Mud Processing Facility has been proposed for Conception Bay and is currently undergoing a provincial environmental assessment. The approval of that facility could affect the costs of disposing of drilling wastes onshore. Additionally, with respect to the issue of GHG emissions connected to the transport of drilling wastes to an onshore facility, the Proponent has not, to the best of our knowledge, quantified these emissions. Finally, there are clearly costs associated with spills of drilling muds, which has happened in recent years (e.g., the spill of drilling muds at the White Rose Project in September 2017 and at the Husky Energy GSF Grand Banks oil rig in 2011). It is not clear that the Proponent has factored in such costs when determining the cost-effectiveness of onshore drilling mud disposal. **In light of all these facts, it is not clear that the Proponent has demonstrated a precautionary approach in relation to drilling muds.**

Marine Fish and Fish Habitat - Environmental Effects Assessment: underwater Sound emissions from vessels.
In subsection 9.3.4.2. (Underwater Sound Emissions from Vessels), the EIS raises the possibility that changes in fish behaviour may arise as a result of underwater sound emissions from supply and service vessels providing services to the Project. Furthermore, the EIS indicates that these effects would be

adverse, albeit short-term.[9] Nonetheless, the Proponent states: "Mitigations to reduce potential effects to Marine Fish and Fish Habitat associated with underwater sound emissions from vessels engaged in Supply and Servicing are not proposed."[10] No justification is presented. **It is not at all clear how this demonstrates a precautionary approach.**

Marine and Migratory birds - Environmental Effects Assessment: lighting.
In subsection 10.1.5.2 (Summary of Mitigation Measures), the EIS indicates that while lighting on the FPSO will be reduced in order to reduce bird attraction "to the extent that worker safety and safe operations…are not compromised",[11] there seem to be no plans for employing lighting mitigations on vessels other than the FPSO. The Proponent mentions that "options for lighting mitigations on drilling installations are not feasible",[12] but no details are provided for this conclusion. Is it a cost consideration? A technical consideration? Have all the many options possible for mitigating lighting been considered, or just some? **There is insufficient information provided in the EIS on this point to demonstrate the application of a precautionary approach.**

Marine and Migratory birds - Environmental Effects Assessment: flaring.
Subsection 10.1.5.2 (Summary of Mitigation Measures) does not include mitigation measures for preventing harm to marine and migratory birds during non-routine flaring except for the use of "Equinor best practices to reduce overall flaring duration, thereby reducing light emissions from flaring."[13] The mitigation measures list does not mention monitoring of bird behaviour during flaring events, or the use of other recommended mitigation measures for use during flaring events, such as water curtains. The absence of mitigation measures such as these beg the question of whether they were considered, and if so, why they were rejected. If this information appears elsewhere in the EIS, it should be crossed-referenced here. Otherwise, **if the information is simply absent, the application of a precautionary approach has not been demonstrated.**

Accidental Events – Spill Prevention - Contingency Planning and Emergency Response: capping stack.
In subsection 16.1.2.2 (Well Capping and Containment Plan), the EIS indicates that if a blowout occurs, a capping stack may well be required in order to stop the well flow while work is done to permanently kill the well through methods such as the drilling of relief wells. The EIS also indicates that it will likely take between 18 to 36 days to acquire and install the capping stack system (CSS) because the CSS would need to be transported from either Brazil or Norway.[14] On its face, 18-36 days is an extraordinarily long time to wait for essential mitigation of a blowout, and great harm could come to ocean life during the time the oil is still flowing into the ocean post-blowout and the time the capping stack is installed. It has been suggested by several Indigenous groups that – as a critical risk mitigation measure – the Proponent should devise a better plan for more rapid capping of the well, such as obtaining a capping stack in advance and locating it much nearer to the Project site (e.g., in NL or elsewhere in Atlantic Canada) and with plans and equipment lined up in advance to ensure that the CSS can be modified as needed and transported rapidly to the site in the event of a blowout. There is no indication in the EIS that such an option has been considered. **As such, is does not appear that a precautionary approach has been demonstrated in relation to contingency planning and emergency response for blowouts.**

[9] EIS, Ch 19, pp. 9-88 to 9-89.
[10] Ibid., p. 9-89.
[11] EIS, Ch 10, p. 10-15.
[12] EIS, Ch 2, p. 2-70.
[13] EIS, Ch 10, p. 10-16.
[14] EIS, Ch 16, p. 16-6.

**Comment on the use of the precautionary approach with Atlantic salmon**

For NCC, and indeed for a number of Indigenous groups who may be affected by the Bay du Nord Development Project, the issue of potential impacts on Atlantic salmon is highly important, if not critical, and this is in no small part because it connects to the issue of the Constitutionally protected right to fish for food, social and ceremonial purposes. For this reason, it is absolutely essential that the precautionary approach, described above in this submission, be applied with great care and diligence in relation to the EIS for this Project. To reiterate an important point, the Precautionary Principle is – in the context of environmental protection – a tool for dealing with uncertainty. With respect to project impacts on a migratory species like salmon, a fundamental question is whether salmon migration movements will intersect with Project activities and to what extent, in terms of duration. If the science is uncertain on this point, then the Precautionary Principle must be respected and applied.

While the Proponent suggests that salmon are unlikely to spend time within the Project Area,[15] can sometimes detect and avoid oiled areas,[16] and – in the case of the Labrador salmon population – are unlikely to pass through the Project area as they head to feeding and overwintering areas,[17] NCC asserts that the science is far from definitive on these matters. In fact, when one looks at the sources the Proponent has used to arrive at these conclusions, we often see single studies cited, and/or outdated information. For these reasons alone, certainty is not present on matters of migration and other aspects of the Labrador salmon population.

The need to apply the precautionary approach with respect to potential Project impacts on salmon, however, is even more striking when we consider that the 2019 Stock Status Update by the DFO Canadian Science Advisory Secretariat (CSAS) on Atlantic salmon stocks in NL[18] indicates that: "Overall, multiple stock indicators show negative trends for Atlantic Salmon in NL. DFO Science remains concerned about the status of these stocks."[19]

**The situation is somber with respect to the Labrador salmon population. Four rivers in Labrador were monitored for the 2019 stock status update, with three of them located in southern Labrador near NunatuKavut coastal communities. Of the three rivers in NunatuKavut territory, two were in the "Critical Zone" for health of the salmon population, while the third was in the "Cautious Zone".**

**Additionally, the stock status report states that" Of the 16 assessed rivers for which there is information on returns over the previous three generations, total returns in 2019 were lower on all four rivers in Labrador and on seven of 12 rivers in Newfoundland."[20] For the three rivers in NunatuKavut, total returns of large and small salmon (combined) declined 76% (Paradise River), 11% (Muddy Bay Brook) and 47% (Sand Hill River) over three generations.[21]**

The CSAS 2019 update report also states that: **"Marine survival continues to be the major factor limiting the abundance of Atlantic Salmon in the NL Region."[22]** Hence, a serious precautionary approach is essential when considering the potential impacts of the Bay du Nord Development Project.

[15] See e.g., EIS, Chapter 7, p. 7-152.

[16] EIS, Chapter 16, p. 16-138.

[17] EIS, Chapter 9, p. 9-162.

[18] DFO. 2020. 2019 Stock Status Update for Atlantic Salmon in Newfoundland and Labrador. DFO Can. Sci. Advis. Sec. Sci. Resp. 2020/045, https://dfo-mpo.gc.ca/csas-sccs/Publications/ScR-RS/2020/2020_045-eng.pdf.

[19] Ibid. p. 5.

[20] Ibid.

[21] Ibid. Table 2, p. 25.

[22] Ibid. p. 5.

**It is highly unfortunate that the 2019 Stock Status Report by the DFO Canadian Science Advisory Secretariat (CSAS) was not utilized in the EIS.** Instead, the EIS relied on old 2012 and 2015 stock status reports by CSAS in both of the key chapters in which fish and fish habitat were discussed in the EIS – namely, chapters 6 and 9. Specific information concerning the use of outdated information with respect to Atlantic salmon stocks, and in particular the Labrador population of Atlantic salmon, is discussed below in the points discussing sections 7.1.3 and 7.3.1 of the EIS Guidelines.

## EIS Guidelines Part 2

### 1.4. Regulatory framework and the role of government

Section 1.4. of Part 2 of the EIS Guidelines stipulate that the EIS must identify, among other things, "legislation and other regulatory approvals that are applicable to the project at the federal, provincial, regional and municipal levels." NCC is concerned that the Proponent has neglected to include reference to a federal regulation on methane reduction that we believe applies to the Bay du Nord project. In light of the fact that we are in a climate crisis and that the Government of Canada has seen fit to take strong action to reduce methane emissions, one of the most powerful greenhouse gases (approximately 80 times more heat-trapping capability than carbon dioxide), it is incumbent on the Proponent to address the applicability of this regulation to the Project, and if it applies, to include reference to in in its EIS.

Specifically, Canada has issued new federal regulations on reducing methane at facilities in the oil and gas sector and these regulations, originally tabled in 2018, came into effect on January 1, 2020 (most provisions).[23] The regulations apply to offshore as well as onshore oil and gas facilities that extract, process and/or transport hydrocarbon gas (see Part 2 for offshore facilities). It is not necessary that, to be covered by the regulation, the facility's primary purpose is extraction, processing or transport of natural gas – just that certain other triggers are met. NCC believes that the new regulation applies to the Bay du Nord Development project because although the gas extracted will not be marketed as a product, it will be utilized on site.[24]

Despite these facts, the Proponent has not included reference to the *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector* in the section of the EIS that is supposed to address the requirement in s. 1.4 of the EIS Guidelines, which NCC presumes to be ss. 1.3, "Regulatory Framework and the Role of Government". It would seem that, at a minimum, the regulation should be mentioned in ss. 1.3.4 of the EIS ("Other Potential Regulatory Requirements and Interests").

**Question for Proponent re EIS Guideline ss. 1.4.**

Why is the new federal regulation on methane reduction that applies to offshore as well as onshore oil and gas facilities not mentioned in the EIS? Please address why you believe it does or does not apply to the Bay du Nord project.

### 2.1. Purpose of the project

Subsection 2.1 of the EIS Guidelines requires the Proponent to "describe the purpose of the project by providing the rationale for the project, explaining the background, the problems or opportunities that

[23] *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector*, SOR/2018-66, https://laws-lois.justice.gc.ca/PDF/SOR-2018-66.pdf.
[24] EIS, Chapter 2, at p. 2-37.

the project is intended to satisfy and the stated objectives from the perspective of the proponent."[25] NCC asserts that the Proponent has not fulfilled this requirement of the Guidelines, because it describes its purpose in one sentence and further because the one-sentence description is, with all due respect, both circular and self-serving and as such does not sufficiently answer the question: what is the purpose of the project.

Specifically, the Proponent describes, in ss. 2.2 of the EIS, the purpose of the project as follows: "The purpose of the Project is to develop the Core BdN Development which includes Bay du Nord, Bay de Verde and Baccalieu."[26] This is comparable to saying "the purpose of the Bay du Nord project is to develop the Bay du North Project", which of course is not remotely informative and which cannot reasonably be seen as fulfilling the requirements of ss. 2.1 of the Guidelines.

Providing information about potential benefits of the project, as the Proponent does in ss. 2.2 of the EIS, is not a substitute for explaining the purpose of the project. The purpose of the project is to drill and sell oil: creation of jobs, etc. may be one of the results of the project, but it is not the purpose of the project.

Given that large, long-duration oil and gas projects like Bay du Nord can potentially cause a myriad of effects to the environment and to Indigenous peoples (or why even have an assessment process?), NCC believes that it is not too much to ask for the Proponent to explain why this large disruption to the ocean and other aspects of the environment and potentially to Indigenous and other human communities is to be made. Put another way, before a project with potentially substantial and adverse impacts goes forward, those in society who may suffer harm have a right to be provided a full explanation of why the project/potential disruption is to happen – in other words, the purpose of the project.

**Questions for Proponent re EIS Guideline ss. 2.1.**

Since the true purpose of any offshore oil and gas development project is to produce oil and or gas that will be sold and delivered to customers at specific market destinations, why are no details provided anywhere in the EIS on the intended markets for the oil to be produced at Bay du Nord? Please provide a description of the various potential market destinations for the oil to be produced, either in the EIS itself or as a market study, as is often provided by proponents of large-scale fossil fuel projects (e.g., Trans Mountain Expansion Project[27]). At a bare minimum, could the Proponent please describe the how the potential market destinations compare to the existing picture of where crude oil produced offshore NL currently goes, in terms of market destinations? From our own research, it appears that most NL offshore crude is exported rather than sent to Canadian refineries.[28] Based on a review of 2019 and 2020 data in the Canadian International Merchandise Trade Database,[29] it appears that most NL offshore crude crude is

[25] EIS Guidelines, ss. 2.1, p. 14.
[26] EIS, Chapter 2, p. 2-6.
[27] Muse Stancil, *Market Prospects and Benefits Analysis of the Trans Mountain Expansion Project*, September 2015, https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2825642/B427%2D2_%2D_2a_Muse_Stancil%2C_Market_Prospects_and_Benefits_Analysis_of_the_TMEP%2C_September_2015_%2D_A4T6E8.pdf?nodeid=2825856&vernum=-2.
[28] To the best of our knowledge, Canadian refineries taking NL offshore crude include the Come by Chance refinery in NL, the Irving Oil refinery in NB and the Suncor refinery in QC, but NL offshore crude appears to make up only a small to very small part of the feedstock at those refineries. This information is based mainly on a study of public documents available online from the refining companies.
[29] Statistics Canada, Canadian International Merchandise Trade Database, data on NL crude oil exports: https://www5.statcan.gc.ca/cimt-cicm/topNCountries-pays?lang=eng&getSectionId()=0&dataTransformation=0&refYr=2020&refMonth=1&freq=12&countryId=0&getUsaState()=0&p

exported to countries including the US, UK, the Netherlands, Italy, Spain, China, Germany and Ireland. Does market plan for Bay du Nord oil include any or all of these destinations? Additionally, please indicate any changes to the market strategy that would occur if the refinery located at Come by Chance, NL, ceases operations permanently, as is now being discussed.[30]

**6. Impacts to potential or established aboriginal or treaty rights**

Section 6 of the EIS Guidelines states clearly the requirement that, "with respect to potential adverse impacts of the project on potential or established Aboriginal or Treaty rights (Section 35 Rights), the EIS will document for each group identified in Part 2, Section 5 of these guidelines (or in subsequent correspondence from the Agency"[31] (our emphasis) the extensive series of details concerning Section 35 rights and potential impacts to these rights described on page 25 of the Guidelines. NCC asserts that a reasonable understanding of the phrase "for each group" is that the Proponent would provide a group-by-group description and analysis of these rights. Lumping all Indigenous groups together would not be reasonable or appropriate where the rights of individual, Indigenous groups are potentially affected by a development project.

Unfortunately, however, the information provided in the EIS as identified in the Concordance Table for Guideline s. 6, does not provide descriptions and detailed analyses of Section 35 rights and how they might be impacted for each individual group. Thus, in NCC's view, the basic requirements of EIS Guideline s. 6 have not been met.

The Concordance Table indicates that the s. 6 of the Guidelines are addressed in Chapter 14, Section 7.3 of Chapter 7, Section 3.3 generally and 3.3.1 specifically in Chapter 3, and Section 15.7 in Chapter 15. Unfortunately, however, none of these chapters or sections of the EIS contain the required group-by-group breakdown in relation to potential impacts on potential or established Section 35 rights.

Chapter 14 contains only a discussion of Indigenous groups and their potentially affected rights in the aggregate: specific Indigenous communities are not examined in this chapter.

Chapter 7 presents a table (Table 7.10) containing a profile on the individual groups, and contains a row for "Asserted or Established Aboriginal and/or Treaty Rights" at the end of each group's profile. More importantly, specific references to Section 35 rights are mentioned only for two Indigenous groups (Nunatsiavut and Qalipu) and discussed briefly in a textual description of "The Mi'kmaq People of Eastern Canada" in ss. 7.3.3. With all due respect to the Proponent, where Indigenous rights are concerned – rights that may be affected by a development project – it is reasonable to expect more care and analysis on the issue than a single row in a table provides.

**Question for Proponent re EIS Guideline s. 6.**

Why is there no analysis of potential or established aboriginal or treaty rights provided for each individual Indigenous group identified in Part 2, Section 5 of the EIS Guidelines? Since this is a clear, plain-language requirement of EIS Guideline s. 6, please provide this information. With respect to NCC in particular, please consult directly with NCC for information pertaining to this requirement to ensure up-to-date information and to understand how the MOU signed by NCC and the federal government in 2018 pertains to potential section 35 rights.

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[30] CBC, "North Atlantic Oil Refinery in Come by Chance could close permanently", October 5, 2020, https://www.cbc.ca/news/canada/newfoundland-labrador/refinery-closing-irving-1.5751203.

[31] EIS Guidelines, s. 6, p. 23.

### 7.1.3. Fish and fish habitat (baseline)

Subsection 7.1.3. of the EIS Guidelines stipulates that the EIS "describe fish and fish habitat within areas that could be affected by routine project operations or by accidents and malfunctions", by providing details on a number of specific aspects of fish and fish habitat. The first of these aspects requires "a characterization of fish populations' species and life states, including information on the surveys carried out (e.g., location of sampling stations, catch methods, dates of catches, species, catch per-unit effort) and the source of data available (e.g. government and historical databases, commercial fishing data, NAFO)."[32]

The Concordance Table indicates that most of the response to the requirement in ss. 7.1.3. is contained primarily in Chapter 6 of the EIS. As such, baseline information on various salmon populations is contained in Chapter 6, including details on feeding, overwintering, migration, etc. Table 6.1 in Chapter 6 lists key information sources used to describe marine fish and fish habitat in the Proponent's assessment. Among the sources are CSAS studies and documents that, unfortunately, do not represent the latest available knowledge. Specifically, the Table includes CSAS reports from 2012 and 2013 that do not cover the Labrador population, and the 2013 stock assessment of NL salmon published in 2015[33] but not the 2019 assessment, published in 2020.[34] Another section of the EIS Guidelines, subsection 4.1., advises the Proponent to "consult relevant guidance from other federal departments and ensure that the most up to date version is being used".[35] As such, the Proponent should have been aware that an updated stock assessment for Atlantic salmon was available from DFO.

**Question for Proponent re EIS Guideline ss. 7.1.3.**

Why was the 2019 Stock Status Update by the DFO Canadian Science Advisory Secretariat (CSAS) on Atlantic salmon stocks in NL[36] not relied upon in the compilation of baseline data for Atlantic Salmon? The use of up to date information is critical to presenting proper information regarding salmon stocks, hence please revise Chapter 6 and any sections in other parts of the EIS that rely on Chapter 6 according to the information in the latest CSAS report on salmon stocks in NL.

Special note concerning the Proponent's Concordance Table and subsection 7.1.3: NCC wishes to point out that the Concordance Table (EIS, Appendix B) omits reference to a requirement made in the last paragraph of the EIS Guidelines s. 7.1.3., specifically:

> Any sampling survey methods used by the proponent will be described in order to allow experts to ensure the quality of the information provided. If previous studies on the habitat in the study area were conducted, they are to be submitted with the EIS.

**Additional Question for Proponent re EIS Guideline ss. 7.1.3.**

Please provide the specific location in the EIS of the information that fulfills this part of Guidelines requirement subsection 7.1.3.

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[32] EIS Guidelines, ss. 7.1.3., p. 26.
[33] CSAS. 2015. Stock assessment of Newfoundland and Labrador salmon – 2013. DFO Can. Sci. Advis. Sec. Sci. Resp. 2014/023.
[34] DFO. 2020. 2019 Stock Status Update for Atlantic Salmon in Newfoundland and Labrador. DFO Can. Sci. Advis. Sec. Sci. Resp. 2020/045, https://dfo-mpo.gc.ca/csas-sccs/Publications/ScR-RS/2020/2020_045-eng.pdf.
[35] EIS Guidelines, ss. 4.1., p. 7.
[36] DFO. 2020. 2019 Stock Status Update for Atlantic Salmon in Newfoundland and Labrador. DFO Can. Sci. Advis. Sec. Sci. Resp. 2020/045, https://dfo-mpo.gc.ca/csas-sccs/Publications/ScR-RS/2020/2020_045-eng.pdf.

### 7.3.1. Fish and fish habitat (predicted effects on)

Subsection 7.3. of the EIS Guidelines stipulates that, based on the predicted changes to the environment identified in subsection 7.2. of the EIS Guidelines, the proponent assess the environmental effects of the project on a number of VCs, including fish and fish habitat. Subsection 7.3.1. on fish and fish habitat enumerates a number of aspects of fish and fish habitat that the proponent must address in the EIS, including "any modifications in migration or local movements during and after project activities".[37]

The Concordance Table indicates that most of the response to the requirement in ss. 7.3.1 is contained primarily in Chapter 9 of the EIS. While subsection 9.5.5. on Atlantic salmon addresses the various populations of Atlantic salmon that could be impacted by the Project, including the Labrador population, its bases its discussion of migratory behavior on a single source -- the CSAS stock assessment of 2013[38] -- which, by itself is problematic. A single source cannot provide certainty on a finding. Furthermore, as it does in Chapter 6 of the EIS, it omits the updated information available in the 2019 stock assessment.

**Question for Proponent re EIS Guideline ss. 7.3.1.**

Why was the 2019 Stock Status Update by the DFO Canadian Science Advisory Secretariat (CSAS) on Atlantic salmon stocks in NL[39] not relied upon in the analysis of predicted effects on Atlantic Salmon? The use of up to date information is critical to presenting proper information regarding potential Project effects on salmon stocks, hence please revise Chapter 9 and any sections in other parts of the EIS that rely on Chapter 9 according to the information in the latest CSAS report on salmon stocks in NL.

### 7.3.7. Indigenous peoples (predicted effects on)

Section 7.3.7. of the EIS Guidelines requires the Proponent to "provide a description and analysis, for **each Indigenous group**, of how changes to the environment caused by the project will affect the health and socio-economic conditions, physical and cultural heritage including any structure, site or thing of historical, archaeological or paleontological importance, and current use of lands and resources for traditional purposes."[40] (bold highlighting per the EIS Guidelines). As we stated in connection with the EIS Guideline s. 6, NCC asserts that a reasonable understanding of the phrase "for **each Indigenous group**" is that the Proponent would provide a group-by-group description of the information required by the Guidelines. Once again, to lump all Indigenous groups together is neither reasonable nor appropriate, particularly where Indigenous rights of specific Indigenous groups are concerned.

The Concordance Table indicates that the s. 7.3.7 of the Guidelines is addressed in various sections of Chapters 14 and 15 in the EIS. Unfortunately, however, neither of these chapters contain the required Indigenous group-specific information on the potential effects of the Project on the various factors mentioned in s. 7.3.7. Thus, in NCC's view, the basic requirements of EIS Guideline s. 7.3.7. have not been met.

**Question for Proponent re EIS Guideline ss. 7.3.7.**

Why are there no group-by-group descriptions of potential effects of the project on Indigenous groups in the parts of the EIS that the Concordance Table indicates are supposed to address ss.

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[37] EIS Guidelines, ss. 7.3.1., p. 33.

[38] CSAS. 2015. Stock assessment of Newfoundland and Labrador salmon – 2013. DFO Can. Sci. Advis. Sec. Sci. Resp. 2014/023.

[39] DFO. 2020. 2019 Stock Status Update for Atlantic Salmon in Newfoundland and Labrador. DFO Can. Sci. Advis. Sec. Sci. Resp. 2020/045, https://dfo-mpo.gc.ca/csas-sccs/Publications/ScR-RS/2020/2020_045-eng.pdf.

[40] EIS Guidelines, ss. 7.3.7., p. 35.

7.3.7. of the Guidelines – namely Chapters 14 and 15 of the EIS? Subsection 7.3.7 is extremely clear in its requirement that such potential impact information be provided for "each Indigenous group". Please provide the required information. With respect to NCC in particular, please consult directly with NCC for information pertaining to this requirement.

**7.3.8.1. Air quality and greenhouse gas emissions (predicted effects on valued components)**

Subsection 7.3 of the EIS Guidelines instructs that, based on the predicted changes to the environment that may arise (as identified in Guidelines ss. 7.2), "the proponent is to assess the environmental effects of the project on the following VCs", and furthermore, "all interconnections between VCs and between changes to multiple VCs will be described".[41] Subsection 7.3.8. of the Guidelines goes on to explain that "if the project will result in the generation of greenhouse gas emissions, the EIS should include a description of the project's greenhouse gas emissions in a regional, provincial, national or international context if applicable."[42] Then, in ss. 7.3.8.1, the Guidelines specifically identify "Air quality and greenhouse gas emissions" as a valued component.[43]

The Proponent, however, indicates that air quality and greenhouse gas emissions "have not been considered as a specific, individual VC per se in the environmental effects assessment but rather aspects of the atmospheric environment were addressed as part of the overall discussion of potential Project related environmental emissions and their management (Section 2.8.1)"[44] (our emphasis). Given the critical nature of greenhouse gas emissions and climate change at this time in history, NCC finds that a full treatment of air quality and greenhouse gas emissions as a valued component is justified and should be required in this case.

Given that Canada and the rest of the world are now battling the climate crisis, and that climate change affects everything from biodiversity to ocean chemistry and ocean levels to human health and the economy, it is more important than ever before that proponents of large development projects like Bay du Nord take the utmost care in fully examining the potential air quality and greenhouse gas impacts of such projects.

**Question for Proponent re EIS Guideline ss. 7.3.8.1**

Given the high level of importance attached to the issue of greenhouse gases in the context of the present climate crisis, please provide a fulsome, detailed justification for the decision to examine air quality and greenhouse gas emissions outside of the VC framework. Please go beyond the current description in EIS ss. 4.2 (Identification and Selection of Valued Component), because simply pointing to the places in the EIS such issues are discussed does not substitute for a full justification of why the Proponent decided not to treat air quality and greenhouse gas emissions as a VC, as suggested by the EIS Guidelines.

[41] EIS Guidelines, p. 36.
[42] EIS Guidelines, p. 37.
[43] EIS Guidelines, p. 38.
[44] EIS, Chapter 4, p. 4-7.