

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review
Comments

REVIEW COMMENTS

Environment Canada

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). Most of these birds are specifically named in the Environment Canada (EC) publication, *Birds Protected in Canada under the Migratory Birds Convention Act*, Canadian Wildlife Service Occasional Paper No. 1.

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 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.”

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review
Comments

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 responsible authority must be reminded that the *Species at Risk Act* (SARA) amends the definition of “environmental effect” in subsection 2(1) of the *Canadian Environmental Assessment Act* (CEAA) to clarify, for greater certainty, that environmental assessments must always consider impacts on a listed wildlife species, its critical habitat or the residences of individuals of that species.

SARA also requires that the person responsible for a federal EA must, without delay, notify the competent minister(s) in writing if the project being assessed is likely to affect a listed wildlife species or its critical habitat. Notification is required for all effects, including adverse and beneficial effects, and the requirement to notify is independent of the significance of the likely effect. The person must also identify adverse effects of the project on listed species and their critical habitat. If the project is implemented, the person must ensure that measures are taken to avoid or lessen adverse effects and that effects are monitored. Mitigation measures must be consistent with recovery strategies and action plans for the species.

The complete text of SARA, including prohibitions, is available at www.sararegistry.gc.ca . For guidance on SARA and EA, the proponents may wish to make use of the *Environmental Assessment Best Practice Guide for Wildlife at Risk in Canada* available at: http://www.sararegistry.gc.ca/virtual_sara/files/policies/EA%20Best%20Practices%202004.pdf

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 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 Canada (EC-CWS) has reviewed the above documents and offers 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*

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

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 EC-CWS to ensure that information listed in the SEA is still accurate.

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 **Ivory Gull** (*Pagophila eburnean*) is listed as Endangered (Schedule 1) under SARA. The Ivory Gull is usually associated with pack ice and may be found in the project area during winter months. This species must be considered in the environmental assessment.

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

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 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 (EC-CWS) at carina.gjerdrum@ec.gc.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 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*

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

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 EC-CWS via email at Permi.atl@ec.gc.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).

Mitigations - Data Collection

EC-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 EC-CWS on a yearly basis. In an effort to expedite the process of data exchange, EC-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 the EC-CWS office following completion of the study. These data will be centralized for EC-CWS's internal use to help ensure that the best possible natural 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. EC-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 the prior express written consent.

Mitigations - Oil Pollution Incidents

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:

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

- measures for containing and cleaning up spills (of various sizes) either at the drill site or during transport;
- equipment that would be available to contain spills;
- specific measures for the management of large and small spills (e.g., breaking up sheens);
- 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 birds, EC-CWS has prepared a guidance document (attached), as well as a sample protocol document used for oiled birds on beaches (attached). A protocol for handling non-oiled but dead birds found on the vessel is also attached.

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

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

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).

Fisheries and Oceans Canada

With respect to Sections 5.2.2, 5.2.4, 5.2.5, 5.2.6, 5.2.7 and 5.2.10 it is felt that more than a restating of information presented with the Eastern NL Strategic Environmental Assessment (SEA) (C-NLOPB 2014) and other project environmental assessments is required. While the SEA can be used to set the stage it is felt that the project environmental assessment should be an assessment of environmental effects on selected VECs related to the specific project area and specific project being proposed, thereby, providing a comprehensive assessment of potential effects and mitigations applicable to the project (and VECs) being proposed and assessed.

Given the wording for each VEC (page 5-6) that *"The EA shall provide only new or updated information where applicable to address any changes to the following:"* it is not clear if this will be the case. This should be clarified accordingly.

Transport Canada

Transport Canada has reviewed the project description and has determined that 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 National Defence

With respect to possible UXO presence within the proposed ExxonMobil Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs 2015-2024 project area:

- Our records indicate that there are two shipwrecks present within the immediate survey area, the U-658 shipwreck (50.00889N, 46.5333W) and the U-520 shipwreck (47.78334N, 49.8333W);
- Given our understanding of the activities to be conducted and that there will be no interaction with the sea floor, the associated UXO risk is assessed as negligible.

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

Nonetheless, due to the inherent dangers associated with UXO and the fact that the Northwest Atlantic Ocean was exposed to many naval engagements during WWII, should any suspected UXO be encountered during the course of the operations, the Proponent should not disturb/manipulate it. The Proponent should mark the location and immediately inform the Coast Guard. Additional information is available in the 2015 Annual Edition - Notices to Mariners, Section 37. Further UXO general information is available at our website at www.uxocanada.forces.gc.ca;

- 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 surface 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) (Point of Contact for: LCdr Hopkins, DNSO SSO Readiness. Tel: 613-945-0652), to ensure de-confliction with possible Allied submarine activities.

Fish, Food and Allied Workers/Unifor

The Project Area is of such a size that it covers a multitude of harvesting activities throughout a calendar year, this includes the sensitive life cycles of the species found in this area. FFAW-Unifor would like to emphasise that the crew on the vessels engaged in these programs have to be well informed on the operational procedures in Canadian (Newfoundland and Labrador) waters. When it comes to the temporal scope of the work being proposed, FFAW-Unifor emphasises the importance of avoiding the Industry-DFO Collaborative Post-Season Trap Survey for Snow Crab and this needs to be specifically listed in the Scoping Document. This would entail avoidance until the stations have been completed. Section 4.2 of the Scoping Document could include qualification of any change or impact that the project could have on existing commercial activities in the area. FFAW-Unifor would strongly suggest that the Fisheries Liaison Officer be used for the communication with fishing vessel and this duty not be put on the standby/guard vessel as suggested on page 6 of Project Description. In the context of consultation page 8 of the Project Description suggests that “ExxonMobil will meet as necessary ...” Consultation with concerned stakeholders should happen as a matter of fact and not just as necessary. It is worth noting that as there are several activities listed as possible undertakings in relation to this Environmental Process that providing a seasonal temporal scope would be increasingly difficult.

ExxonMobil Canada Ltd Eastern Newfoundland Offshore Geophysical, Geochemical, Environmental and Geotechnical Programs, 2015 – 2024 Draft Scoping Document Review Comments

It is of utmost importance that the proponent diligently pursues the consultation process with all other ocean users. This is especially of importance as this program will have the seismic vessel operating within very active harvesting areas. The Petroleum Industry Liaison with FFAW-Unifor is available to assist in arranging consultation sessions specifically aimed at those active within the fishing industry.

Department of Fisheries and Aquaculture – Government of Newfoundland and Labrador

We suggest also including the Groundfish Enterprise Allocation Council (GEAC) to the list of those to be consulted (page 8 of the project description). GEAC includes offshore fishing operators such as OCI which may conduct harvesting operation in the project area.