



Environment and
Climate Change Canada

Environnement et
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Environmental Assessment and Marine Programs
Environmental Protection Operations Directorate - Atlantic
Environmental Stewardship Branch
6 Bruce Street
Mount Pearl NF A1N 4T3

15 November 2023

Ian Murphy
Environmental Assessment Officer
Canada-Newfoundland and Labrador Offshore Petroleum Board
Fifth Floor, TD Place
140 Water Street
St. John's, NF A1C 6H6

Dear Mr. Murphy:

**RE: Multiklient Invest Newfoundland Offshore Seismic Program,
2024–2028**

EAS 23-NL-047

As requested in your letter of 27 October 2023, Environment and Climate Change Canada (ECCC) has reviewed the Project Description and Draft Scoping Document of Multiklient Invest AS (MKI) & TGS-NOPEC Geophysical Company ASA (TGS) (the Proponent) for a proposed seismic program within its proposed Project Area (the Canada-Newfoundland and Labrador Offshore Area) in the C-NL Offshore Area in one or more years within the 2024 to 2028 timeframe.

According to the above-mentioned documents, the Proponent is proposing to conduct a ship-borne seismic program that includes two dimensional (2D), three dimensional (3D) and/or dimensional four (4D) surveys. The proponent may use Ocean Bottom Nodes (OBNs) in conjunction with streamers to acquire seismic data. The proponent is also proposing to test a modified activation procedure of the airguns called eSeismic, which involves activating only one airgun at a time, but on a near continuous basis versus every 10–12 seconds in a conventional seismic survey.

ECCC has reviewed the above-mentioned documents in accordance with its mandated interests and expertise stemming from its responsibilities under the *Migratory Birds Convention Act*, the *Species at Risk Act*, Section 36 of the *Fisheries Act*, and the *Canadian Environmental Protection Act*. The following comments and recommendations are intended to assist in further project planning and implementation.

REVIEW COMMENTS

APPLICABLE LEGISLATION (For information)

Fisheries Act

Pollution prevention and control provisions of the *Fisheries Act* (<http://laws-lois.justice.gc.ca/eng/acts/F-14/FullText.html>) are administered and enforced by Environment and Climate Change Canada (ECCC). 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*.

It is the responsibility of the proponent to ensure that all reasonable measures are conducted to prevent the release of substances deleterious to fish from their proposed activities. In general, compliance is determined at the last point of control of the substance before it enters waters frequented by fish, or, in any place under any conditions where a substance may enter such waters.

Additional information on what constitutes a deposit under the *Fisheries Act* can be found at: <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/fisheries-act-registry/frequently-asked-questions.html>.

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 5(1) of the *Migratory Bird Regulations, 2022* (MBR) [updated in July 2022], it is forbidden to capture, kill, take, injure or harass a migratory bird; or to damage, destroy or take a nest or egg of a migratory bird, excluding under the exceptions listed in 5(2) of the MBRs, or under the authority of a permit. It is important to note that under the MBR, no permits can be issued for the harm of migratory birds caused by development projects or other economic activities.

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

- “5.1 (1) No person or vessel shall deposit a substance that is harmful to migratory birds, or permit such a substance to be deposited, in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such an area.
- (2) No person or vessel shall deposit a substance to be deposited in any place if the substance, in combination with one or more substances, result 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 relevant for this project. 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) (<https://laws-lois.justice.gc.ca/eng/acts/C-15.31/>). The *Canadian Environmental Protection Act* enables protection of the environment, and human life and health, through the establishment of environmental quality objectives, guidelines and codes of practice, and the regulation of toxic substances, emissions and discharges from federal facilities, international air pollution, and disposal at sea.

WILDLIFE AND WILDLIFE HABITAT

Specific Comments

- 1) Following the recommendations from the *Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador*, Environment and Climate Change Canada's Canadian Wildlife Service (ECCC-CWS) developed a guidance package for operators regarding the development of site- or vessel-specific systematic stranded bird survey protocols in March 2021. This information has been relayed to operators, but it should be noted that a new "Stranded Birds Data Entry Form" (Microsoft Excel; attached) that replaced the previous "Stranded Birds Datasheet" (PDF) was developed in 2022 and should be provided to operators for their use during daily stranded bird surveys.
- 2) ECCC-CWS notes that although information regarding Wildlife Response Plans is not new information, ECCC-CWS' National Wildlife Emergency Response Framework documents that are relevant for wildlife response have been uploaded onto the Government of Canada website at the following link: [National Wildlife Emergency Response Framework - Canada.ca](#). This updated link should be passed along to the C-NLOPB for their consideration.

General 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 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 should reflect a consideration of the following basic factors:

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

The following impact pathways influencing migratory birds should 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, grey water, black water);
- 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.

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 *Impact Assessment Act* (2019).

The following species at risk may be found near the project site: Ivory Gull (Endangered, SARA Schedule 1), Red-necked Phalarope (Special Concern), Leach's Storm-petrel (COSEWIC-assessed as Threatened). Species at Risk (SAR) sightings should 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.

EFFECTS OF THE ENVIRONMENT ON THE PROJECT (For Information)

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 weather.gc.ca/mainmenu/marine_menu_e.html. Additional information on regional climatology can be found at climate.weather.gc.ca/index_e.html or by contacting ECCC directly (1-833-794-3556; climatatlantique-climateatlantic@ec.gc.ca).

Also, ice information can be found on the Canadian Ice Service website at

www.canada.ca/en/environment-climate-change/services/ice-forecasts-observations/latest-conditions.html.

EFFECTS OF ACCIDENTS AND MALFUNCTIONS (For Information)

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 sensitivities. The Canadian Standards Association (CSA) publication, *Emergency Preparedness and Response, CAN/CSA-Z731-03*¹, is a useful reference for this.

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).

I trust that this information will be of assistance in your review of this proposal. If you wish to discuss these comments or have further questions, please contact me at your convenience.

Yours
truly,

Original Signed by Jerry Pulchan

Jerry Pulchan
Environmental Assessment Analyst
Environmental Protection Operations Directorate

Attachment

cc: Michael Hingston

¹ Canadian Standards Association (CSA). *Emergency Preparedness and Response: A National Standard of Canada (CAN/CSA-Z731-03)*. Toronto: CSA, (R2014).

https://store.csagroup.org/ccrz_ProductDetails?viewState=DetailView&cartID=&sku=Z731-03&isCSRFlow=true&portalUser=&store=&cclcl=en_US