

Please note that the following documents have been attached to this email for inclusion with the outgoing response:

- a) ECCC-CWS Guidance for developing systematic stranded bird survey protocols for vessels and platforms
- b) ECCC-CWS Stranded Birds Data Entry Form (Excel) 2022
- c) Appendix 2 – Infographic and Reference Card – *What to do when you find a stranded bird?*
- d) Appendix 3 – Seabird Identification Photo Card
- e) *Procedures for handling and documenting stranded birds encountered on infrastructure offshore Atlantic Canada*

Specific Recommendations:

Document 1 – “20241003 – MKI 205-2029-PPD-Gov-tl.pdf”, including the Section 79(1) SARA Notification

1. ECCC recommends that Ross’s Gull (*Rhodostethia rosea*) should be added to the list of “Threatened” species and Red-necked Phalarope (*Phalaropus lobatus*) should be added to the list of “Special Concern” species on page 2.

Document 3 – Scoping Document

2. ECCC does not have any additional comments on the Scoping Document.

Document 3– Project Description

3. Quote (page 11) *“In the unlikely event of an accidental release of hydrocarbons during the Project, the measures outlined in MKI’s oil spill response plan will be implemented. The oil spill response plan will be filed with the CNLOPB. In addition, MKI will have an emergency response plan in place.”*

ECCC recommends that the proponent’s oil spill response plan include components related to wildlife response (included in a Wildlife Response Plan). At minimum, a Wildlife Response Plan should include the following information:

- a) Information on the wildlife potentially at risk in the area;
- b) Mitigation measure(s) to deter non-affected wildlife from affected areas;
- c) Mitigation and response measures to be taken if wildlife and/or sensitive habitats become contaminated by the incident (including treatment of oil-affected wildlife), and
- d) The type and extent of wildlife monitoring conducted during and following a pollution incident.

Guidance materials including “Guidelines for Developing Wildlife Response Plans” (ECCC, 2022) are available online at [National Wildlife Emergency Response Framework - Canada.ca](https://www.ec.gc.ca/nature/nr/eng/00000000-0000-0000-0000-000000000000). The proponent should consult ECCC when developing Wildlife Emergency Response Plans.

4. Quote (page 11) *“In addition, the MMOs will conduct a monitoring and release program for seabirds which may strand on Project vessels. Seabird monitoring will include systematic counts based on protocols issued by the Environment and Climate Change*

Canada-Canadian Wildlife Service (ECCC-CWS). Likewise, mitigation measures and monitoring for stranded birds will follow established ECCC-CWS procedures.”

ECCC advises that the area of the Project may be used by Leach’s Storm-petrel (COSEWIC-assessed as Threatened in November 2020), particularly foraging Leach’s Storm-petrel from important breeding colonies at Gull Island and Baccalieu Island, two of the larger colonies in Atlantic Canada. The project has the potential for increased interactions with Leach’s Storm-petrel and other migratory birds, particularly with respect to attraction to artificial lighting and potential strandings on vessels and project infrastructure (per Gjerdrum et al. 2021, storm-petrels are the most commonly stranded species in NL (93%) based on reports from 1998-2018). The location and proposed timing of activities overlap with peak storm-petrel stranding period (mid-September to mid-November) when young Leach’s Storm-petrel fledge and make their first flight offshore.

The prompt location of stranded birds through daily, systematic searches of vessel(s) increases the potential of reducing harm and/or mortality of stranded birds. Gjerdrum et al. 2021 states per reports, 98% of stranded storm-petrels found alive were successfully released back to the ocean.

ECCC recommends that the proponent develop and implement vessel-specific systematic search protocols for stranded birds that will be undertaken by trained, experienced observers, as per the recommendations outlined in the final report of the *Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador*. Additionally, ECCC-CWS advises that new guidance has been developed regarding the development and implementation of systematic stranded bird protocols. Guidance has been attached to the outgoing response for the proponent’s consideration.

ECCC advises that the handling and subsequent release of stranded birds may require an CWS Scientific *Migratory Birds Convention Act* (MBCA) permit. Information on the MBCA permitting process can be found at scf-atlpermis-cws-atlpermits@ec.gc.ca.

5. Given the high potential for migratory bird strandings, particularly Leach’s Storm-petrel in mid-September to mid-November, ECCC recommends that the proponent consider including stranded seabird awareness training for all members on the vessel, to ensure that individuals are adequately informed of potential impacts to migratory birds. ECCC is able to provide awareness materials for the proponent’s consideration, if desired.

Applicable Legislation and Standard Recommendations

Migratory Birds Convention Act

The federal *Migratory Birds Convention Act* (MBCA) and its [regulations](#) protect migratory birds and their eggs and prohibit the disturbance, damage, destruction or removal of migratory bird nests that contain a live bird or a viable egg. Migratory birds are protected at all times; all migratory bird nests are protected when they contain a live bird or viable egg; and the nests of 18 species listed in [Schedule 1 of the MBR 2022](#) are protected year-round. These general prohibitions apply to all lands and waters in Canada, regardless of ownership. For more information, please visit: <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>.

For migratory birds that are listed as Endangered, Threatened or Extirpated on Schedule 1 of the *Species at Risk Act* S.32 (protection of individuals) and S.33 (protection of residences) apply to all land tenure types in Canada. For some migratory bird species listed under the *Species at Risk Act* (SARA), the residence prohibition will protect nests that are not active but are re-used in subsequent years (please note that the residence of a migratory bird may not necessarily be limited to their nest).

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.”

The proponent is responsible for ensuring that activities are managed to ensure compliance with the MBCA and associated regulations.

- Considerations Specific to Migratory Birds

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;
- Mitigations;
- 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, 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.

Species at Risk

The *Species at Risk Act* (SARA) “General Prohibitions” apply to this project. In applying the general prohibitions, the proponent, staff and contractors, should be aware that no person shall:

- Kill, harm, harass, capture or take an individual;
- Possess, collect, buy, sell or trade an individual, or any part or derivative;
- Damage or destroy the *residence* of one or more individuals.

General prohibitions only apply automatically:

- On all federal lands in a province;
- To aquatic species anywhere they occur;
- To migratory birds protected under the *Migratory Birds Convention Act* (MBCA) 1994 anywhere they occur.

Section 33 of SARA prohibits damaging or destroying the residence of a listed threatened, endangered, or extirpated species. For migratory bird species at risk (SAR), the prohibition immediately applies on all lands or waters (federal, provincial, territorial, and private) in which the species occurs.

In federal environmental assessment (EA), ss.79(2) of SARA required that persons responsible for an EA: 1) identify adverse effects on all listed species; 2) if the project is carried out, ensure that measures are taken to avoid or lessen those effects; and, 3) monitor them. ECCC advocates a similar approach for non-federal forms of environmental assessment.

ECCC-CWS advises that all comments it provides concerning species at risk that are not migratory birds derive from federal recovery/management plans as posted on the Species at Risk Registry (<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html>), and thus comments may not be comprehensive to the body of knowledge for the species. The Province of Newfoundland and Labrador’s Department of Fisheries, Forestry and Agriculture - Wildlife Division holds expertise and authority regarding mitigations and management of birds that are not protected by the MBCA in Newfoundland and Labrador. For species which are not listed under SARA but are listed under provincial legislation only or that have been assessed and designated by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), it is best practice to consider these species in EA as though they were listed under SARA.

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 82(a) or (b) of the *Impact Assessment Act* 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.

- 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), Ross' Gull (Threatened, 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.

General Recommendations

- The breeding season for most birds within the project area (Zone "D3-4") occurs between mid-April and mid-August in this region, however some species protected under the MBCA nest outside of this time period. Information regarding regional nesting periods can be found at <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods.html>.
- Most migratory bird species construct nests in trees (sometimes in tree cavities) and shrubs, but several species nest at ground level (e.g., Common Nighthawk, Killdeer, sandpipers), in hay fields, pastures or in burrows. Some bird species may nest on cliffs or in stockpiles of overburden material from mines or the banks of quarries. Some migratory birds (including certain waterfowl species) may nest in headponds created by beaver dams. Some migratory birds (e.g., Barn Swallow, Cliff Swallow, Eastern Phoebe) may build their nests on structures such as bridges, ledges, or gutters.
- One method frequently used to minimize the risk of destroying bird nests consists of avoiding certain activities, such as clearing, during the regional nesting period for migratory birds.
- The risk of impacting active nests or birds caring for pre-fledged chicks, discovered during project activities outside the regional nesting period, can be minimized by measures such as the establishment of vegetated buffer zones around nests, and minimization of activities in the immediate area until nesting is complete and chicks have naturally migrated from the area. It is incumbent on the proponent to identify the best approach, based on the circumstances, to comply with the MBCA.

Further information can be found at: <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds.html>.

Fuel Leaks

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

products whenever possible, as a standard for best practices. Fueling servicing of equipment should not take place within 30 metres of environmentally sensitive areas, including shorelines and wetlands.

Provisions for wildlife response activities should be identified in the Oil Spill Prevention and Response Plan to ensure that pollution incidents affecting wildlife are effectively and consistently mitigated. The document “Guidelines for effective wildlife response plans” is provided to offer guidance on the development of wildlife response plans. Documents can be downloaded from [National Wildlife Emergency Response Framework - Canada.ca](http://www.ec.gc.ca/nwec/necm/eng/00000000-0000-0000-0000-000000000000/Guidelines_for_wildlife_response_plans.pdf) “Guidelines for wildlife response plans”.

The following information should be included in any Oil Spill Prevention and Response Plan:

- 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.
- The type and extent of monitoring that would be conducted in relation to various spill events.

Noise Disturbance

Anthropogenic noise produced by construction and human activity can have multiple impacts on birds, including causing stress responses, avoidance of certain important habitats, changes in foraging behaviour and reproductive success, and interference with songs, calls, and communications. Activities that introduce loud and/or random noise into habitats with previously no to little levels of anthropogenic noise are particularly disruptive.

ECCC recommends the following best management practices:

- The proponent should develop mitigations for programs that introduce very loud random noise disturbance (e.g., blasting programs) during the migratory bird breeding season for their region.
- The proponent should, where possible, prioritize construction works in areas away from natural vegetation while working during the migratory bird breeding season. Conducting loud construction works adjacent to natural vegetation should be completed outside the migratory bird breeding season.
- The proponent should keep all construction equipment and vehicles in good working order and loud machinery should be muffled if possible

Lighting 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 with other migratory birds. Disoriented migratory birds are prone to circling light sources and may deplete their energy reserve and either die of exhaustion or be forced to land where they are at risk of depredation.

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

- The minimum amount of pilot warning and obstruction lighting should be used on tall structures. Warning lights should flash and should completely turn off between flashes.
- The fewest number of site-illuminated lights possible should be used in the project area. Only strobe lights should be used at night, at the lower intensity and smallest number of flashes per minute allowable by Transport Canada.

Effects of Construction/Operations on Migratory Birds – Stranded Birds

Due to the propensity of seabirds from nearby colonies to be attracted to light, it is possible that migratory birds may be attracted to and potentially be stranded on the site. ECCC-CWS recommends that a site monitoring plan be developed for the migratory bird breeding season as well as the spring and fall migration periods and implemented while floodlights are being used during nighttime hours. A site monitoring plan could include protocols such as dusk and dawn site inspections to look for stranded birds that may have landed on site, and/or inclusion of migratory bird searches into standard occupational health and safety daily inspections, etc. ECCC recommends, at minimum, daily searches during early morning hours, particularly during early September to late November, to search for migratory birds that may become stranded on-site.

Should birds become stranded on the project site, both during construction and operations phases, the proponent is recommended to adhere to *Procedures for handling and documenting stranded birds encountered on infrastructure offshore Atlantic Canada* (attached; it should be noted that this reference document has been developed for offshore vessels and may require modification for use on an onshore facility). ECCC-CWS should be notified if bird stranding incidents occur. A seabird handling permit will be required to implement the instructions in this reference document and the proponent must be advised that such a permit would have to be in place prior to the initiation of proposed activities. Please note that MBCA permit applications can be obtained from ECCC-CWS via email at scf-atlpermis-cws-atlpermits@ec.gc.ca.

If any birds are found stranded on-site, the proponent should immediately contact ECCC-CWS for further instructions. The contact is Sabina Wilhelm (ECCC-CWS Marine Issues Biologist) at sabina.wilhelm@ec.gc.ca or 709-764-1957.