

**Re: Review of the draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador**

The Canadian Environmental Assessment Agency (the Agency), the Canada Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), Natural Resources Canada and the Department of Natural Resources for Newfoundland and Labrador, are proposing to create a framework for evaluating and managing environmental effects of offshore exploration drilling projects. The Agency has requested comments from Indigenous groups on the draft agreement to “*conduct a regional assessment of offshore oil and gas exploratory drilling east of Newfoundland and Labrador*” which includes procedures and timelines for the process, factors to be considered in the assessment and the terms of reference for the Committee that will be appointed to conduct the Regional Assessment. Woodstock First Nation (WFN) has requested that Management and Solutions in Environmental Science (MSES) assist them with developing comments and recommendations on the draft agreement for consideration in the final agreement.

The framework involves the establishment of a Committee of five members that will consist of two co-chairs jointly recommended by the federal Minister of Natural Resources and the provincial Ministers for Newfoundland and Labrador. The remaining three members will be appointed by the federal Minister of Environment in consultation with the other Ministers. A Task Team will be established with technical staff from the Agency, C-NLOPB, Natural Resources Canada and the Newfoundland and Labrador Department of Natural Resources. The Task Team will prepare the Regional Assessment design and assemble the existing information and knowledge relating to offshore exploratory drilling. A Technical Advisory Group will be established by the Task Team to provide support to the Task Team and the Committee, which may include members from within or outside of government. Duties may include gathering relevant data and information, conducting technical analysis, and providing expertise in relation to the Regional Assessment. The draft Agreement includes the Terms of Reference for the Committee (Appendix A) and the Technical Advisory Group (Appendix B), as well as, a description of the factors to be considered in the Regional Assessment (Appendix C). Below, we provide some recommendations for additions to the draft Agreement or requests for further clarity and information.

- **REVIEW COMMENTS AND RECOMMENDATIONS**

- **Issue:** More details needed as to how the study boundaries were determined.

**Reference:** Appendix D Proposed Regional Assessment Study Area, pg. 14

**Comment:** The draft Agreement includes a figure showing the Regional Assessment area that focuses on the offshore area east of Newfoundland and Labrador that was established by the Ministers (Appendix A, Section 2.1, pg. 8). However, there is no discussion as to how the spatial boundaries for the regional assessment were determined or whether Indigenous groups had any input into that decision.

**Information Request/Recommendation:**

- **Describe the factors that were used to determine the study area for the Regional Assessment.**
- **Was Indigenous input included in the decision-making process on the spatial boundaries for the Regional Assessment area?**

- **Issue:** No clear outline on how the Committee, Task Team and Technical Advisory Group will engage with Indigenous communities.

**Reference:** Throughout

**Comment:** The draft Agreement states that there will be engagement sessions with Indigenous groups throughout the development of the Regional Assessment and that the Regional Assessment will consider Indigenous knowledge and considerations related to Indigenous cultures with respect to offshore exploratory drilling (e.g. Appendix A pg. 8, Appendix C Sub-section 1f) pg. 12). Other than a few vague statements, there is no description of how the Indigenous knowledge will be used to inform the Regional Assessment and the draft Agreement does not provide any further details as to what this engagement will look like. As many First Nation communities have limited capacity to deal with the vast number of regulatory review requests they receive, the draft Agreement should outline clear engagement protocols including providing adequate time, funding and access to technical support to allow for continued participation of WFN throughout this process.

**Information Request/Recommendation:**

- **Provide a description in the draft Agreement regarding the development of engagement protocols that would include providing adequate timelines and funding to Indigenous communities for their continued participation in this process.**
- **Issue:** Early engagement is needed to gather sufficient information on factors to be considered in the Regional Assessment.

**Reference:** Appendix A Terms of Reference-Committee, Section I Mandate of the Committee, Sub-Section 1.2 pg. 8

**Comment:** The progressive degradation of ecological features, which are fundamental for the practice of Aboriginal and treaty rights, can bring about critical changes in how an ecosystem is functioning, which can then lead to a break-down in the social structure of a community because it depends on a healthy and functioning ecosystem. Ecosystem shifts occur when external forces alter a system so that its organization shifts from one set of processes to another (Gordon et al. 2008). If the environmental variability moves the ecosystem to a different state, then traditional resource use will be unable to withstand that shock and will need to change. Therefore, it is critically important that the Agency collaborate with communities on the scope of the Regional Assessment before the assessment is completed to ensure that it provides meaningful and scientifically rigorous information on the regional impacts to ecological resources that may be culturally or traditionally important to WFN and other Indigenous groups.

WFN should be involved in determining what ecological and social (including cultural and spiritual) parameters should be addressed and measured as part of the design of the Regional Assessment. WFN should also be involved in defining how the significance of environmental and social change will be determined, what the significance thresholds should be and whether or not the surpassing of thresholds can be mitigated. Scoping for the Regional Assessment must be developed with the WFN very early in this process and must consider a social-ecological approach.

**Information Request/Recommendation:**

- **The draft Agreement should outline how the engagement process will include input from WFN concerning the following:**
- **selection of ecological and social/traditional parameters for assessment,**

- **how the significance of environmental and social change will be defined; and,**
  - **what the significance thresholds should be and whether or not the surpassing of thresholds can be mitigated.**
- **Issue:** Assessment should include considering changes in ecological parameters from historical conditions.

**Reference:** Section 4 Conduct of the Regional Assessment, Sub-Section 4.5, pg. 4

**Comment:** In Sub-section 4.5 (pg. 4), it says the Task Team will “assemble the existing information and knowledge relating to offshore exploratory drilling, including the existing environmental conditions in the Regional Assessment Area (proposed in Appendix D), the project works and activities associated with exploratory drilling, the environmental effects of such works and activities, the mitigation measures applied to those effects and monitoring and follow-up requirements and any other existing information to address the Factors to be considered in the Regional Assessment (Appendix C)”. However, there is no discussion as to whether the regional assessment will also compare existing conditions to historical conditions. This comparison is essential for understanding what changes have already occurred and the extent of changes to WFN traditional resources. A pre-development scenario, which would depict the state of the human and natural environment before industrial development occurred, would reveal the current state of degradation on a particular resource. Furthermore, once the rate of change has been determined, this would allow one to evaluate future changes to these resources (if current rates continue) with the addition of any future proposed offshore developments and, more importantly, the rate of change can be used to evaluate how soon any given ecological or social threshold might be surpassed, if they are not surpassed already.

This is a fundamental piece of information that is key to ensuring the Committee and WFN have the necessary understanding to determine how any future projects may alter the ecological integrity of the environment or the social resilience of the WFN. Mitigation measures can then be designed, and management actions prioritized, based on how much the resiliency of the ecosystem might be endangered by future developments.

**Information Request/Recommendation:**

- **Please include as part of the terms that the Task Team or Technical Advisory Group will scientifically quantify regional effects by calculating rates of environmental change from the past to the present and estimating change into the future.**
  - **Please include a term that requires collaboration with WFN and other Indigenous communities in the development of thresholds where an exceedance of this level equates to that resource no longer meeting the needs of future generations of traditional land users.**
- **Issue:** Data to be collected for the Regional Assessment database should include information on the occurrence, magnitude and extent of accidents and malfunctions from projects previously and currently operating in the area.

**Reference:** Appendix A Terms of Reference -Committee, Section 2 Reporting, Sub-section 2.4, pg. 9

**Comment:** Regional data should be available to WFN and other Indigenous communities to support empirical, scientifically rigorous analyses of environmental change in the region. Therefore, we are encouraged to see that the Terms of Reference includes a provision to consider the

development of a publicly available digital, spatially based system to house data generated during the Regional Assessment. The database may “include all pertinent spatially-derived information and knowledge on the Regional Assessment area including physical characteristics (geology, geomorphology, and oceanography), biophysical, chemical, and socioeconomic” (pg. 9). The Terms of Reference also states that the Committee will consider how this database could be used to link operational decision criteria including oil spill trajectory modelling and oil spill response. Along these lines, we recommend that data on the occurrence, magnitude and extent of accidents, malfunctions and spills be included in the database to understand what the past effects were from these incidences and how they were mitigated.

**Information Request/Recommendation:**

- **Include to Sub-section 2.4, that the regional database may also include data on the occurrence, magnitude and extent of accidents, malfunctions and spills for the Regional Assessment area.**
- **Issue:** More details are required on the criteria for considering recovery of a population or ecological component to an impact.

**Reference:** Appendix A Terms of Reference -Committee, Section 2 Reporting, Sub-section 2.1, pg. 9

**Comment:** Reporting requirements of the Committee will involve taking into account “the natural variation of a population or ecological component” and “the time required for a population or ecological component to recover from an impact and return to a pre-impact condition, including the estimated degree of recovery” (pg. 9). Although some environmental resources may have available data, in many cases, particularly species of special management concern, data on population abundance and variability in abundance or responses to disturbances may be limited. Therefore, it is unclear what criteria the Committee will use to determine recovery from an impact, as responses can vary based on species, type, magnitude and extent of the impact. Will results be compared against known ecological thresholds, or thresholds that are meaningful to the traditional land users?

**Information Request/Recommendation:**

- **Please describe the criteria or approach to collecting sufficient information that the Committee will use when considering the time required for a population or ecological component to recover from an impact and return to pre-impact conditions. How will the criteria or approach change if the population/ecological component is data deficient?**
- **The Terms of Reference Sub-section 2.0 should include a statement requiring that the Committee also take into account how the results from the Regional Assessment compare against known ecological thresholds, or thresholds that are meaningful to the traditional land users.**
- **Issue:** Committee should consider the effectiveness of mitigation measures in the Regional Assessment.

**Reference:** Appendix C Factors to be considered in the Regional Assessment, Section 1 b), pg. 12

**Comment:** The Regional Assessment will include a consideration of “mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of offshore exploratory drilling” (pg. 12). Although a mitigation may be technically feasible and considered industry standard, this does not necessarily mean that the mitigation is effective at minimizing impacts to the environment. Therefore, there should be some consideration as to whether the mitigation measures

have scientific evidence that, if implemented correctly, they will achieve the predicted reductions in impacts.

**Information Request/Recommendation:**

- **Under Section 1b, in Appendix C, we recommend that the Regional Assessment also take into account “mitigation measures that are technically and economically feasible and have scientifically based results indicating the effectiveness of the measures at mitigating adverse effects of offshore exploratory drilling.”**
- **Issue:** Communications on how Indigenous input is or is not used during the Regional Assessment.

**Reference:** Appendix C Factors to be considered in the Regional Assessment Section 1 c), pg. 12

**Comment:** In Appendix C, Section 1c), factors to be considered in the Regional Assessment include “*the impact that exploratory drilling may have on any Indigenous group and any adverse impact that offshore exploratory drilling may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982*” (pg. 12). It is not clear how each of the factors listed in Appendix C, including impacts to Treaty rights, will be considered in the decision-making process. Although the draft agreement has provisions for the Technical Advisory Group, Task Team and Committee to consider input from Indigenous communities, it is important that these communities understand how that input is or is not used. Any input provided during this process, should have a response from the Team and/or Committee as to which information was used, how it was used and a rationale for any recommendations not accepted by the Team and/or Committee.

**Information Request/Recommendation:**

- **As part of the reporting requirements, the draft Agreement should require follow up reporting to Indigenous communities describing how Indigenous knowledge and recommendations from reviews were used and the rationale for why recommendations may not have been accepted.**