



Comments on the Draft Report for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador Federal Crown and the Consultation Approach for the Regional Assessment

24 February 2020

By the NunatuKavut Community Council

200 Kelland Drive, PO Box 460, Stn. C

Happy Valley-Goose Bay, NL A0P1C0

<http://www.nunatukavut.ca>

Introduction and Context

The NunatuKavut Community Council (“NCC”) hereby presents its comments on the Draft Report for the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador (“Draft Report” or “Report”) and the Federal Crown and the Consultation Approach for the Regional Assessment (“Consultation Approach document”). These documents were provided to NCC by the Regional Assessment Committee (“RA Committee”) overseeing the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador (“RA”), and constitute the two documents on which we were invited to comment.

In the present submission, we raise a number of serious issues with respect to the consultation on the RA up to this point and the submission is made with the expectation that Canada will take the additional steps necessary to ensure a fulsome consultation as required under its constitutional duty to consult and accommodate. Below, we raise issues relating to both the Draft Report and the Consultation Approach document and have organized our submission primarily according to the two documents, beginning with the Consultation Approach document. Prior to those comments, however, it is important that we underscore the context for the comments in this submission, and this context is provided below.

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 Canada’s impact assessment regime and the regional assessment of offshore oil and gas development. 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 of several companies planning to undertake exploration projects in the Study Area.¹

Brief background: NunatuKavut, NCC and how the environment and ocean are central to our way of life

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 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

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.

and traditions of the past. 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 exploratory drilling in the study area. Additionally, NCC's commercial communal fishery, which harvests in the study area, plays an important role in the life and economy of NunatuKavut communities and is 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.

Comments on the Federal Crown Consultation Approach for the Regional Assessment

To begin, receiving the final draft of the Consultation Approach document, dated Jan 22, 2020, after the RA (but for future updates) has been completed, and after the Draft Report to the Ministers has been prepared, is problematic for reasons that are obvious from a common sense point of view. That said, NCC wishes to highlight five problematic issues in particular.

First, the "Preliminary Consultation Assessment" (made by the Agency with, with other federal departments and agencies) "to understand, in an initial way, the potential for adverse impacts in respect of each Indigenous Group's asserted or established Aboriginal or Treaty rights" concluded that:

"...the environmental effects from such activities have been characterized in several project-specific EAs as being of low magnitude. Therefore, the likelihood of adverse impacts on Indigenous communities as a result of these projects is considered for the preliminary consultation assessment to be low."

NCC is perplexed by and disagrees with this statement because, as the Draft Report admits, there are knowledge gaps concerning migration of salmon and seabirds (including eiders and turrs), which play a large role in the traditional fishing and hunting practices of our people. If research shows the potential for adverse impacts to the populations that migrate between the Study Area and NunatuKavut, the potential impacts of exploratory drilling would not be described as "low", because these species are central to NunatuKavut's asserted Indigenous and Treaty rights to hunt and fish.

This approach of putting the conclusions cart before the horse is also seen in the Draft Report itself and remains a central issue in need of resolution, which must be worked out in collaboration with Indigenous groups if the Consultation on the RA is to be understood as a good faith effort.

Second, the Consultation Approach document's description of the Regional Assessment should make clear, up front in this document, where it describes the nature of the RA, that its underlying purpose is not simply to "create a framework for evaluating and managing the effects of future offshore exploration drilling projects in this region", but also to provide the Environment Minister with the information from which he may create a new Regulation that "would set out the terms and conditions under which a future exploratory drilling project offshore Eastern Newfoundland could be exempted from federal impact assessment." (our emphasis)

While NCC clearly favors objectives like reducing consultation burden on Indigenous communities, and finds objectives like creating more efficient review process for exploration programs to be reasonable, the automatic exemption of future exploratory drilling programs from federal impact assessment (presuming they conform with the conditions for exemption, yet to be determined) is something that NCC cannot easily support, particularly on the basis of an RA founded upon incomplete information concerning issues critical to NCC and its asserted rights. NCC has previously stated in comments on the Project List Discussion Paper² that “federal impact assessments should simply be mandatory for this type of project”. NCC requires significantly greater consultation on this point, which we hope and expect will occur in the context of the post-Report consultation phase.

Third, the Consultation Approach document identifies three stages of consultation, but the third stage, “Potential consultations following the Committee’s Final Report” seems by its wording to be uncertain. NCC believes that this third stage is critical and should not be optional, since the purpose of the post-Report consultation activities would be to “focus on identifying any outstanding concerns.....and recommendations from Indigenous groups on how to apply the findings and recommendations in the Report to proposed Ministerial Regulations.”

Fourth, one of the potential accommodation measures mentioned in the Consultation Approach document is “relevant federal laws, regulations, measures” etc. Offering the protection of laws and regulations that already exist as one of the potential accommodation measures, however, offer does nothing – because Indigenous groups cannot be given something that they already have: protection under current laws, regulations, and policies.

Fifth, the Consultation Approach document states that “IGs are encouraged to propose potential mitigation and other accommodation measures that could address potential impacts on Aboriginal and Treaty rights”. NCC asserts that the most effective potential mitigation measure is to wait until potential impacts concerning salmon are known before declaring the RA complete and forming a regulation that could potentially cause adverse impacts to NCC’s asserted Food Social and Ceremonial (FSC) rights. Likewise, the best measure to ensure that the harvest of seabirds in NunatuKavut – an activity providing important source of country food and having cultural significance – is to wait until ongoing research can provide important information on migration patterns.

Comments on the Draft Report

At the outset, NCC wishes to state its intention to provide fine-level details on certain subjects of interest in the context of the comment period for the GIS and modules, ending March 19, 2020. As such, the comments included below are intended to provide only general, high-level comments.

General concern: claims of “minor” or “low impacts” before key studies are complete

NCC is discouraged that the RA Committee’s “default” position on potential impacts of exploratory drilling seems to rely heavily on findings in recent EAs for offshore exploratory drilling programs in the

² NCC, Comments on the Canadian Environmental Assessment Agency’s “Discussion Paper on the Proposed Project List” relating to proposed regulations under the proposed *Impact Assessment Act*. 31 May, 2019, submitted in response to a call for comments on the document at this link: <https://www.impactassessmentregulations.ca/8869/documents/15938/download>.

Study Area rather than through independent analysis on the basis of complete information, where knowledge gaps have been filled. For example, the Report states:

“As noted in Section 4.2 above, recent project-specific EAs for offshore exploratory drilling programs in the Study Area (and their resulting EA decisions) have concluded that their potential effects are relatively well understood, and that these entail relatively minor, localized and temporary disturbances at any one location and time. They have also concluded that, with the implementation of the various mitigation measures summarized above in Section 4.5, these activities are unlikely to result in significant adverse effects on any aspect of the environment.”³

Similarly, in the following passage, while some exceptions are mentioned, the overall impression given by the Draft Report is the potential impacts are minor, and again, NCC finds this unfortunate in light of the existence of numerous knowledge gaps:

“The effects of offshore exploratory drilling activities are often considered to be relatively low in magnitude and localized and short-term in nature, and there is a degree of “natural” temporal and spatial separation between activities due to safety, administrative and logistical factors (including limited global harsh environment rig availability). However, some activities (such as seismic surveys and some fisheries) and disturbances (such as underwater noise) can be quite geographically extensive, which can increase the potential for interactions between effects. The overall ranges and movements that characterize some marine species and activities also increases the potential for them to be affected by multiple disturbances. There is also often an incomplete knowledge about the responses of some environmental components to multiple and accumulating sources of stress (Chapter 5).”⁴

Drawing conclusions about the size and nature of the impacts of exploratory offshore drilling is premature when all the relevant facts are clearly not yet gathered. Doing so seems even less justifiable in light of the fact that, at the end of the day, the RA did not involve a thorough assessment and evaluation of the risks associated with exploratory drilling:

Assigning risk was beyond the timing and resources of the Committee but remains a fundamental requirement to guide future decision making around the sustainable use of offshore resources. The GIS decision support tool for the first time puts within the hands of resource managers a means to identify and analyze the multitude of factors at play in this region. This task is a priority given the expected pace of future petroleum exploration and development. ⁵ (our emphasis).

Salmon (Marine Fish and Fish Habitat)

The Draft Report accurately reflects the fact that Indigenous groups consulted during Indigenous engagement sessions to date have indicated that Atlantic salmon plays an important role in traditional activities, such as the salmon harvest through FSC licenses as well as in the cultural life of communities as well.⁶ As well, it recognizes that while salmon “may transit through the Study Area between offshore feeding migrations and their natal rivers”,⁷ specific information about salmon movements after they leave their natal rivers for purposes of migration and overwintering at sea is lacking at present.⁸ More

³ Draft Report, p. 112.

⁴ Draft Report, p. 168.

⁵ Draft Report, p. 117.

⁶ E.g. Draft Report, p. 20.

⁷ Draft Report, p. 53.

⁸ E.g., Draft Report, p. 54.

specifically, the Draft Report indicates that, “While there is some information available on the spatial and temporal distribution of Atlantic salmon at sea, the resolution of this information is low and much of the information currently available is quite dated.”⁹

While NCC is pleased to see the RA Committee recommend that research underway by DFO and ESRF be considered and incorporated into the RA (and GIS) once results are available,¹⁰ we believe the question of potential adverse effects on salmon must be resolved prior to the finalization of RA information upon which any federal regulation on exploratory offshore drilling might be based. This is necessary in order to fully understand any potential impacts to our asserted Indigenous and Treaty rights in relation to food, social and ceremonial harvest of salmon.

NCC plans to make specific comments on the issue of Atlantic salmon in the context of the comment period ending March 19 on the GIS and modules.

Seabirds (Migratory and Marine Birds)

As NCC explained in its submission to the RA Committee last fall (2019) concerning the draft literature reviews, the harvesting of marine birds and ducks such as turrs and common eiders provide an important source of country food, while at the same time connecting our people to the traditions of the past and providing important social and cultural benefits. These species, and others hunted by those in NunatuKavut communities are mentioned in the Draft Report,¹¹ but never in the context of the important resource they provide for our people. As such, NCC believes that the Draft Report has omitted the consideration of key potential impacts connected to our Indigenous rights to hunt birds. Put simply, if the migratory birds we rely upon come to be negatively impacted by exploratory drilling activities in the RA Study Area, then our ability to hunt them will be similarly impacted.

NCC notes that the Draft Report mentions, for example that approximately one-third of Eastern Canada’s population of thick-billed murrelets (known to us as turrs) overwinter in the waters off Eastern Newfoundland,¹² and common eiders have been observed in the Study Area as well.¹³ The report also mentions that the Canadian Wildlife Service (CWS) is working to produce density models for turrs in summer and fall that would cover most of the study area, although the results may not be available soon. Be that as it may, NCC asserts that, given the importance of birds as a resource of cultural importance, we believe that the RA should fill the knowledge gaps about the migration patterns of these birds between the Study Area and coastal Labrador before conclusions are drawn about the potential impacts of exploratory drilling projects.

NCC will provide additional comments on the issue of migratory birds that are found in the Study Area and which also serve as an important country food for our people in the context of the comment period ending March 19 on the GIS and modules.

Commercial communal fisheries

⁹ Draft Report, p. 84.

¹⁰ E.g., Draft Report, pages 89-90.

¹¹ See e.g., Draft Report, pages 34 (Table 2.5), 56, 59-60 and 86.

¹² Draft Report, p. 60.

¹³ Draft Report, pages 34 and 59.

NCC plans to make specific comments on the issue of potential effects of oil spills and blowouts in the context of the comment period ending March 19 on the GIS and modules, especially Module 12. For now, we underscore that NCC holds commercial communal fishing licenses in several NAFO areas adjacent to or within the Study Area, including in 2J, 3K and 3L. The discussion of NCC's commercial communal fishing activities in the Study Area, however, omits to mention the importance of these fisheries to NunatuKavut's economic well-being. As mentioned above in this submission, NunatuKavut's commercial communal fisheries are a leading source of employment for our people and in the region.

Oil spills and blowouts (Potential effects and their management)

NCC plans to make specific comments on the issue of potential effects of oil spills and blowouts in the context of the comment period ending March 19 on the GIS and modules, especially Module 3. That said, there is one important point that must be raised on this topic in relation to the Draft Report.

The Report observes that while large spills "have a low probability of occurrence", if they do occur, they "could affect abundance of affected species" and thus impact biodiversity in the Study Area.¹⁴ While this alone is serious enough, impacts of subsea leaks and blowouts could also potentially trigger large releases of methane which, in turn, can create impacts for biota in and around the underwater region of the spill. The Deepwater Horizon blowout catastrophe reportedly led to an estimated 1 million-ton deficit in dissolved oxygen attributed to bacterial consumption of escaped methane.¹⁵ Since then, scientists have continued to study how methane leaks and natural seeps can result in deoxygenation, yet we see not a single mention of this phenomenon nor this literature in the Draft Report. NCC has gathered a number of scientific sources on this topic and will include them in its comments on Module 3 in the GIS.

Since climate change is already causing some deoxygenation in our oceans, it is imperative that we not add to the problem through accidental subsea releases of methane. A precautionary approach that reflects the urgency of the climate crisis requires careful study of the possibility of deoxygenation from a blowout and its potential impact on ocean flora and fauna in the Study Area.

Special areas

The Draft Report states that:

"No supporting scientific basis has been provided through the Regional Assessment process upon which to define specific locations, times or other situations where additional or enhanced mitigation or follow-up requirements should be applied. Consequently, the Committee has not recommended that any portions of the Study Area be excluded from exploratory drilling activities at this time."¹⁶

NCC views this rationale for excluding Special Areas from oil and gas development to be unwarranted, or at least premature. The fact that the RA Committee recommends that responsible government agencies

¹⁴ Draft Report, p. 171, Table 7.1.

¹⁵ See e.g., Kessler, J. D., Valentine, D. L., Redmond, M. C., Du, M., Chan, E. W., Mendes, S. D., Quiroz, E. W., Villanueva, C. J., Shusta, S. S. & Werra, L. M. (2011). "A persistent oxygen anomaly reveals the fate of spilled methane in the deep Gulf of Mexico", *Science* 331(6015): 312-315, https://www.researchgate.net/publication/49734598_A_Persistent_Oxygen_Anomaly_Reveals_the_Fate_of_Spilled_Methane_in_the_Deep_Gulf_of_Mexico.

¹⁶ Draft Report, p. ix.

accelerate study and policy in this area to see whether or not additional environmental protection is needed would seem to indicate that a more cautious approach is in order. NCC prefers that conclusions about how to treat Special Areas be postponed until the agencies, who may well not have had sufficient time to respond to the RA Committee given the tight timeframe for the assessment, are able to provide a fulsome response on this important issue.

Social, economic and cultural impacts

NCC finds the information on social, economic and cultural impacts to be extremely limited in scope, particularly in relation to Indigenous peoples potentially affected by the exploratory drilling projects, and hence insufficient. That said, it appears that there is a substantial amount of information contained in Module 13 (Overview of potential effects: health, social and economic conditions), thus NCC will reserve the bulk of its comments on this topic for March 19.

It is worth noting, however, that we were not able to locate in the Draft Report any discussion of the potential social, economic and cultural impacts to Indigenous peoples stemming from impacts to species highly valued for cultural and social reasons. For example, as we noted in our comments on the literature review of the migratory birds module last fall, there is no mention at all of the harvesting of marine birds such as eiders and turrs, and the meaning of that harvest to the health, cultural and economic well-being of persons in NunatuKavut. The harvest of “country foods” in NunatuKavut is a highly valued activity for several reasons, including health, cultural significance and social activities. Yet no details are provided, which is unfortunate in light of the fact that baseline information is needed if we are to accurately understand the potential impacts on NunatuKavut traditional hunting practices if key species like common eider or thick-billed murres are impacted by new exploratory drilling.

For now, NCC underscores the importance of looking not just at potential impacts on marine animals in isolation, but also how impacts on key species may, in turn, affect the social, economic and/or cultural well-being of Indigenous groups like NCC.

Greenhouse gas emissions (Atmospheric Emissions section)

NCC is mindful of the serious impacts that climate change is already bringing to its territory and does not support the Draft Report’s approach to the greenhouse gas (GHG) emissions from exploratory drilling, which restricts estimation of potential GHGs to those created during exploration alone. While the Report recognizes that GHG emissions will arise during the production that will likely follow some exploration programs, it has decided to leave its estimation and the question of risk to NL’s ability to reach its 2030 emissions target to “to other, more appropriate venues.” The resistance to consideration of production emissions because they flow from a subsequent stage of operations is somewhat disingenuous for the following reason: the same restriction does not seem to apply to discussion of economic benefits (jobs etc.) that arise from oil and gas development...which includes production.

Additionally, NCC is highly concerned that the RA Committee has not seen fit to include any information in the Draft Report on methane emissions from oil and gas drilling platforms or from seabed leaks of methane in shallower operations, which can occur when natural methane at the seabed is disturbed by oil and gas drilling, during exploratory or production and rises to the surface where it is released to the atmosphere. The measurement, monitoring and mitigation of methane from oil and gas operations, including those offshore, has been discussed widely in the scientific literature. As such, NCC finds it incomprehensible that nowhere in the entire Draft Report does the word “methane” appear once.

Even a cursory review of the literature reveals that a substantial body of knowledge currently exists on prevention, leak detection and mitigation of fugitive emissions and other methane releases in relation to offshore platforms, whether for exploratory or production work. NCC would be pleased to share this body of literature with the Agency in the context of the March 19th comments on the GIS and modules.

In a recent study, Princeton researchers found that offshore oil and gas rigs in the North Sea leak more than twice as much methane as they report to the British government, and they did this using measurements from fishing boats downwind of offshore rigs when they were in stand-by mode (e.g., no flaring, no transfer to storage or offloading).¹⁷

Research also indicates that in shallow water drilling (i.e., depths of approximately less than 150m), methane can also escape to the atmosphere as a result of continuous discharges of smaller amounts of gas from active or old and abandoned wells.¹⁸ As a 2017 summary of one study announced, “boreholes in the North Sea could constitute a significantly more important source of methane, a strong greenhouse gas, than previously thought.”¹⁹ While many of the exploration drilling projects anticipated for the Study Area may occur in deep water, such as those planned for the Flemish Pass, NCC observes that at least three of the projects already proposed elsewhere in the Study Area would occur in shallow water (depths of between 61m and 115m).²⁰ As a result, this problem must be taken seriously and studied appropriately within a properly executed RA.

NCC believes that the proponent, particularly as a part of the gas and oil industry, has a responsibility to minimize methane releases of all kinds. In the words of a Princeton University researcher: “The fastest way to reduce the effects of greenhouse gases significantly is by decreasing methane emissions”.²¹ As recently as February 19, 2020, the issue of methane emissions from oil and gas production, including offshore, were major news stories in the New York Times²² and The Guardian,²³ which highlighted

¹⁷ Riddick, S. N. et al (2019) "Methane emissions from oil and gas platforms in the North Sea", *Atmos. Chem. Phys.*, 19, 9787–9796, <https://doi.org/10.5194/acp-19-9787-2019>.

¹⁸ Helmholtz Centre for Ocean Research Kiel (GEOMAR), (2017) “Oil and gas wells as a strong source of greenhouse gases: New study demonstrates methane leaks around North Sea boreholes”, *Science Daily*, 28 August 2017, <https://www.sciencedaily.com/releases/2017/08/170828102707.htm>. For the full scientific study, see Vielstädte, L. et al. (2017) "Shallow Gas Migration along Hydrocarbon Wells—An Unconsidered, Anthropogenic Source of Biogenic Methane in the North Sea", *Environ. Sci. Technol.* 2017, 51, 17, 10262-10268, <https://pubs.acs.org/doi/full/10.1021/acs.est.7b02732>.

¹⁹ Helmholtz Centre for Ocean Research Kiel (GEOMAR), (2017) “Oil and gas wells as a strong source of greenhouse gases: New study demonstrates methane leaks around North Sea boreholes”, *Science Daily*, 28 August 2017, <https://www.sciencedaily.com/releases/2017/08/170828102707.htm>.

²⁰ These include the Husky Energy Exploration Drilling Project (ELs 1151, 1152, 1155), Suncor’s Tilt Cove Exploration Drilling Project (EL 1161), and one area of ExxonMobil Canada’s Eastern Newfoundland Offshore Drilling Project (EL 1137).

²¹ Steven Schultz, “Q & A: Princeton U. researchers say controlling methane leads can ‘pay off quickly’ to lessen effects of climate change”, *State Impact Pennsylvania*, Sept. 22, 2019, <https://stateimpact.npr.org/pennsylvania/2019/09/22/qa-princeton-u-researchers-say-controlling-methane-leaks-can-pay-off-quickly-to-lessen-effects-of-climate-change/>.

²² Hiroko Tabuchi, “Oil and Gas May Be a Far Bigger Climate Threat Than We Knew”. *New York Times*, February 19, 2020, <https://www.nytimes.com/2020/02/19/climate/methane---flaring---oil---emissions.html>.

²³ Jonathan Watts, “Oil and gas firms ‘have had far worse climate impact than thought’”. *The Guardian*, February 19, 2020, <https://www.theguardian.com/environment/2020/feb/19/oil---gas---industry---far---worse---climate---impact---than---thought---fossil---fuels---methane>.

important new research findings indicating that methane emissions from the oil and gas industry have been systematically underestimated by up to 40%.²⁴

Cumulative effects

NCC observes that the information on cumulative effects, particularly in Chapter 5, is substantially insufficient and problematic. This is regretful because while, as the Draft Report points out, Regional Assessments can be better suited to the evaluation of cumulative effects than individual assessments, the approach of this particular RA does not serve well the objective of analyzing cumulative effects.

The analysis is insufficient and problematic because it misses one of the main points of cumulative effects analysis which is to look at the additive and interactive effect of the new activity, in this case *new* oil and gas exploratory drilling, on the valued components such as marine fish and fish habitat, fisheries, migratory birds, etc.

We can see from one example the type of flaw that happens throughout the cumulative effects analysis. Taking the example of commercial fisheries, the Report describes the various impacts to fish stocks from different types of activities in the Study Area, including current oil and gas activities, commercial fishing activities, etc., but it does not analyze sufficiently how the *new* exploratory drilling activity is likely to interact with those existing activities, and what the impact of the added activity might be.

The cumulative effects analysis also neglects a critical source of interaction with new activities that must not be ignored: climate change. So, to take the example of marine fish and fish habitats, it is critical to evaluate the interaction between the new exploratory activity and -- for example -- migratory Atlantic salmon stressed whose habitats may be impacted by climate change (e.g., increased water temperatures). There is research to suggest that the petroleum leaks or spills may be more toxic in warmer waters, and this kind of research must be taken into account in the evaluation of potential interactions and additive effects of new exploratory drilling. A 2016 review of management strategies relating to environmental impacts of the deep-water oil and gas industry stated: “At the most basic level, experimental work has shown that increased temperature generally increases the toxicity of petroleum hydrocarbons and other compounds [internal references omitted], which suggests that the ecological impacts that have been recorded to date may expand in magnitude and distance as climate change proceeds”.²⁵

The impacts of climate change on marine life are well-known enough now that any cumulative effects analysis should include an evaluation of how the new, added activity (e.g., exploratory drilling) might interact with climate change to affect a valued component like marine fish and habitat, commercial fisheries, etc.

Another problem with the cumulative effects section is that an inordinate amount of emphasis has been placed on predicting future oil and gas activities in the Study Area, and while this is useful if done properly, the information does not assist the overall cumulative effects analysis because it is never tied back properly to the question of impacts on specific valued components.

²⁴ Benjamin Hmiel et al., “Preindustrial CH₄ indicates greater anthropogenic fossil CH₄ emissions”. Nature. 19 February 2020, <https://www.nature.com/articles/s41586-020-1991-8>.

²⁵ Cordes et al., “Environmental Impacts of the Deep-Water Oil and Gas Industry: A Review to Guide Management Strategies,” Front. Environ. Sci., 16 September 2016, <https://doi.org/10.3389/fenvs.2016.00058>.

Furthermore, we question how the predictive analysis undertaken for purposes of the Draft Report squares with what the companies themselves have indicated in their own EIS and other documents. Specifically, we count approximately nine (9) exploratory drilling projects currently in various stages of environmental or impact assessment,²⁶ that – collectively – say they plan to drill a maximum of 144 wells. Instead, the Draft Report refers to three scenarios – minimum, medium and maximum – in which the maximum scenario would see 77 exploratory wells drilled across all exploratory projects. The Draft Report needs to explain how the maximum scenario could be 77 wells when the stated plans for the nine major exploratory projects already planned and under assessment would amount to 144 wells.

Finally, NCC is discouraged to learn of the RA Committee’s recommendations that the subject of cumulative effects be managed, more or less, by C-NLOPB. We do not believe that the Board has the requisite expertise to take on the tracking of all cumulative impacts in the way that we have discussed here. Our hesitations are confirmed by the fact that Module 15, which was supposed to address cumulative effects, appears at this point to simply contain a document prepared by C-NLOPB (Dec. 2019) comprising a predictive study of potential exploration oil and Gas Activity 2020-2028 that seems to serve as the basis for the three scenarios discussed above.

Conclusions

With respect to the Federal Crown Consultation Approach for the Regional Assessment, NCC asserts that the third stage of consultation, described in the document as “Potential consultations following the Committee’s Final Report” should be obligatory and not optional, as the word “potential” suggests. NCC has previously stated its belief that federal environmental (or impact) assessments should be mandatory for all proposed exploratory drilling projects. Thus, this and any discussions about possible conditions for exemption from federal assessment comprise critical issues for us that will require further consultation during the post-Final Report phase and beyond.

With respect to both the Federal Crown Consultation Approach for the Regional Assessment and the *Draft Report*, NCC strongly holds the view that conclusions about potential impacts on our asserted Indigenous and Treaty rights should not be drawn until such time as sufficient information is available from studies planned or underway, in particular concerning migration patterns of Atlantic salmon, and seabirds including common eider, thick-billed murre (turr), and common murre are complete. Since it is possible that research could point to potential adverse effects on these species if they migrate between the Study Area and NunatuKavut and suffer impacts of exploratory drilling in the Study Area, conclusions about the seriousness and adverse nature of impacts, in the absence of research results, are simply premature.

With respect to the Draft Report, NCC holds a similar view in connection with the inclusion/exclusion of Special Areas from future exploration drilling activity: stating that there is “no supporting scientific

²⁶ BHP Canada Exploration Drilling Project (ELs 1157 & 1158); BP’s Newfoundland Orphan Basin Exploration Drilling Project (ELs 1145, 1146, 1148, 1149); Chevron’s West Flemish Pass Exploration Drilling Project (EL 1138); CNOOC International Flemish Pass Exploration Drilling Project (ELs 1144 & 1150); ExxonMobil Canada’s Southeastern Newfoundland offshore Exploration Drilling Project (EL 1136); Husky Energy Exploration Drilling Project (ELs 1151, 1152 & 1155); Suncor’s Tilt Cove Exploration Drilling Project (EL 1161); Exxon Mobil Canada’s Eastern Newfoundland Offshore Exploration Drilling Project (ELs 1135 & 1137); and Equinor’s Flemish Pass Exploration Drilling Project (ELs 1139, 1140, 1141, 1142).

basis” for excluding Special Areas from oil and gas development is completely premature in the absence of complete information. The

With respect to other areas in the Draft Report, NCC holds the position that the information and analysis concerning the following topics is particularly insufficient for purposes of informing the Minister of Environment in relation to a proposed regulation that could have far-reaching effects on the ocean environment and those who depend upon it for years to come:

- Marine fish and fish habitat
- Marine and migratory birds
- Special areas
- Commercial fisheries
- Greenhouse gas emissions (under “atmospheric emissions”)

For the reasons above, NCC asserts that the Draft Report is incapable, in its present state, of providing the complete and accurate information that the Minister needs and should have prior to proposing and/or drafting a new regulation on exploratory offshore drilling. Furthermore, NCC asserts that a Final Report of the RA Committee prepared prior to the completion of research on migratory patterns of species that form a central part of the rights held by Indigenous persons in NunatuKavut under FSC Licences would suffer the same defects as the Draft Report, and would be unacceptably premature for presentation to the Minister.

NCC would be pleased to discuss and detail our concerns further in the context of continuing consultation meetings.