



East Coast Environmental Law Association

6061 University Ave., PO Box 15000

Halifax, NS B3H 4R2

K'jipuktuk, Mi'kma'ki

February 01, 2022

Impact Agency of Canada
regionrof-cdfregionale@iaac-aeic.gc.ca
Sent Via Email

Re: Regional Assessment of the Ring of Fire Area – Submission on Draft Agreement

East Coast Environmental Law is an environmental law charity that responds to public inquiries, carries out legal and policy research and analysis, and creates educational resources and opportunities to increase public awareness of environmental laws impacting Atlantic Canada. Our objective is to build capacity in the public and among legal practitioners so that we can work together to ensure that provincial and federal environmental laws are innovative and effective.

The following is East Coast Environmental Law's submission on the **Draft Agreement and Committee Terms of Reference for the Regional Assessment of the Ring of Fire Area** (the "**Draft Agreement**"). Our submission draws on our organization's experience and lessons learned from the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador, and we have framed many of our suggestions within the context of those insights. Our submission also draws on our legal expertise with respect to public interest environmental law, and especially our experience with provincial and federal environmental assessments and impact assessments.

While we have done our best to provide a submission that responds to the Draft Agreement as it currently stands, we feel we must raise a preliminary issue that must be addressed before a fulsome regional assessment process can be achieved: the need for Indigenous Nations in the Ring of Fire region to be directly involved through nation-to-nation dialogue and meaningful consultation.

The sovereign Indigenous Nations in the **Ring of Fire** (the "**ROF**") region, also rights-bearers under Treaty 9, are directly affected by the **Regional Assessment in the Ring of Fire Area** (the "**Regional Assessment**") process. The people and communities of these nations will be those most directly impacted by activities that are being considered and assessed through the Regional Assessment and through subsequent colonial government decision-making that will use the Regional Assessment. Accordingly, there are legal, moral, and practical imperatives that these Nations be directly involved in the governance of the Regional Assessment. It is our position that to date, the concerns and input – coming directly from those Nations – with respect to how the Nations should be involved, have been ignored.

Detailed submissions were made during the informal, early-planning stages of the design phase for the Draft Agreement with respect to how Indigenous Nations and Indigenous Elders should be involved;

these were ignored and are not reflected in the Draft Agreement. Furthermore, despite there being many Nations that govern in the Ring of Fire region, the federal government, and the Impact Agency of Canada, on its behalf, negotiated an agreement with the province of Ontario, and to our knowledge, did not include any of those Nations in its deliberations with respect to how the Regional Assessment will work or the composition of the Committee that will carry out its work. It is our understanding that there remain fundamental differences and challenges with respect to the role (or lack thereof) that Indigenous Nations in the Ring of Fire will play within the governance and decision-making of the Regional Assessment process.

We therefore strongly urge the respective federal and provincial governments who are currently signatories to the Draft Agreement to halt the process until Indigenous jurisdiction within the ROF region is recognized and the process is co-governed by the Indigenous Nations.

If the serious concerns that we have with respect to the failure to include Indigenous Nations in the governance of the Regional Assessment are addressed, the Regional Assessment has the potential to guide decision-making that can open a pathway to long-term sustainability. However, to reach that goal, the process must be carried out in a way that will identify and assess the ways in which future decision-making in the Ring of Fire region will ensure that human development is carried out in sustainable manner.

Our submission focuses on ways that the Draft Agreement can be amended to better reflect a mechanism that can foster sustainability – a key objective of the IAA. As we indicate, this will require the Regional Assessment's scope to be expanded to focus on cumulative effects in the broad Ring of Fire bioregion and in all Indigenous territories. It will also require strong collaboration and meaningful participation with all stakeholders and rightsholders in the region, and a fair and transparent process. We have included a table in Appendix A of our submission, which provides detailed comments and recommendations for each of the provisions of the Draft Agreement.

We hope that you will find our comments and recommendations helpful and look forward to seeing how the Agency has reflected on and integrated all public feedback into the final Regional Assessment Agreement.

Please do not hesitate to reach out if there are questions or concerns, or if there is further information that we may be able to provide.

Sincerely,

<Original signed by>

Mike Kofahl
Staff Lawyer
East Coast Environmental Law

Table Of Contents

Glossary of Terms: 4
Introduction: The Purpose of A Regional Assessment..... 5
The Regional Assessment’s Contribution to Sustainability..... 7
Cumulative Effects in the Ring of Fire 9
The Scope of the Regional Assessment..... 11
Governance And Process..... 15
Meaningful Public Participation 16
Conclusion 17
Appendix A 18

Glossary of Terms:

Agency	Impact Assessment Agency of Canada
ENGO	Environmental Non-governmental Organization(s)
GIS	Geographic Information System
HBL	Hudson's Bay Lowlands
IAA	<i>Impact Assessment Act</i>
NFLD RA	Newfoundland and Labrador Regional Assessment of Offshore Exploratory Oil and Gas Drilling
TAG	Technical Advisory Group (a body created under the NFLD RA)
TOR	Terms of Reference (for the Committee)
UNDRIP	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>

Regional Assessment of the Ring of Fire Area Draft Agreement Comments and Recommendations

Introduction: The Purpose of a Regional Assessment

In a broad sense, a regional assessment is a tool that is meant to be used conjunctively with other assessment and planning tools to help shape and guide government decision-making. As a tool utilized under the *Impact Assessment Act* (the “*IAA*”), regional assessments are meant to assess the impacts of human activity at a broad, regional level. Like project impact assessments, regional assessments are guided by the purposes of the *IAA*, which include fostering sustainability and ensuring opportunities for meaningful public participation.¹ We would note that because the *IAA* provides little guidance about how to conduct a regional assessment, there is an opportunity for regional assessments to be innovative.

The Regional Assessment in the Ring of Fire region could be described as the foundation upon which to build a comprehensive and effective decision-making framework, through which communities and government can work together to decide the environmental, social, and financial risks that they are willing and able to tolerate, and those which they are not. As a tool to assess risks and opportunities in a broad region, the Regional Assessment – if effectively and efficiently utilized – can provide a means to identifying and assessing cumulative effects of natural and anthropogenic processes and activities, and to setting out a framework through which long-term sustainability can be achieved.

However, the Regional Assessment as it is being framed through the Draft Agreement will perpetuate many of the same issues that continue to jeopardize the effectiveness and efficiency of impact assessment and other government decision-making processes. Rather than set a course for stronger decision-making processes and meaningful public engagement in assessing the public utility of development in the Ring of Fire, the Regional Assessment is being used to improve the “effectiveness and efficiency” of project specific impact assessments. This framing is set out in the very goal of the Regional Assessment:

“To provide information, knowledge and analysis regarding mine development activities and other existing and future physical activities in the Ring of Fire and their potential effects, in order to enhance the effectiveness and efficiency of future impact assessments for these activities in a way that helps protect the environment and health, cultural, social and economic conditions while also creating opportunities for sustainable economic development.”²

[Emphasis added]

“Effectiveness” and “efficiency” are measured narrowly within the Draft Agreement, and effectively the Regional Assessment is being framed as a tool to identify common mitigation measures that will make project specific impact assessment less time-consuming. This is not inconsistent with the **Newfoundland**

¹ *Impact Assessment Act* SC 2019 c. 28 s. 1 [IAA] subsection 6(1).

² Canada, Impact Assessment Agency of Canada, *Draft Agreement to Conduct a Regional Assessment in the Ring of Fire Area*, (Ottawa, December 2, 2021) at p 4 <<https://iaac-aeic.gc.ca/050/evaluations/proj/80468>> [Draft Agreement], section 1.1

and Labrador Regional Assessment of Offshore Exploratory Oil and Gas Drilling (the “NFLD RA”), whose primary outcome was a list of recommended mitigation conditions that were subsequently incorporated into a ministerial regulation that exempted future offshore exploratory oil and gas drilling from impact assessment under the *IAA*. The NFLD RA has been consistently pointed to by stakeholders and rightsholders as a flawed process and is currently the subject of ongoing litigation with respect to its ability to meet the very minimum requirements of a regional assessment.

The narrow understanding of “effectiveness” and “efficiency” is not adequate and will prevent the Regional Assessment from being a meaningful contributor to sustainability in the Ring of Fire region. In our view, effectiveness must be measured in terms of the success in achieving long-term sustainability, and fairly and equitably distributed benefits with minimal adverse effects; efficiency must be measured by broad, meaningful engagement, fair process, transparency, and democratic decision-making.³

Recommendation #1: We recommend that the goal of the Regional Assessment must be to conduct cumulative effects assessment of past, existing, and future activities and processes, that will be used to guide regional decision-making that achieves long-term sustainability and lasting positive impacts that are fairly and equitably distributed and keeps adverse effects to a minimum.

As it stands now, the Regional Assessment seems to be focused on improving the efficiency and effectiveness for project level impact assessments under the *IAA*, but not on guiding future decision-making at other levels or for other kinds of decisions, many of which will also be required for developments and development scenarios in the Ring of Fire region. This is evident from the Regional Assessment’s goal, as highlighted above. This is a generally re-occurring theme throughout the Draft Agreement; however, there are exceptions to this theme. For example, one of the objectives in support of the Regional Assessment’s goal is to describe ways it could apply to other government “initiatives”:

“The objectives of the Regional Assessment are to facilitate the above goal by...

Describing how the findings or recommendations of the Regional Assessment could be used to enhance the effectiveness and efficiency of, future impact assessments, as well as other initiatives as applicable.”⁴

And, one the outcomes for the Committee’s report is to identify how the Regional Assessment can be used in government “initiatives” other than impact assessments:

“In its Report, the Committee will, in accordance with the objectives of the Regional Assessment outlined in Section 1.2 of the Agreement, include the following information for consideration and use in impact assessments for future mine development activities in the Assessment Area...

Recommendations on how to consider, implement or otherwise address the Regional Assessment findings in a clear, effective and efficient manner in future impact assessments

³ For a discussion of the need to view efficiency and effectiveness through a sustainability lens, see Robert B. Gibson, Meinhard Doelle, and A. John Sinclair, “Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment”, *Journal of Environmental Law and Practice* Vol 29 [Gibson et al], page 274.

⁴ Draft Agreement, subsection 1.2(d).

*for future mine development activities in the Assessment Area, and/or through other initiatives by governments or other parties."*⁵

[Emphasis added]

The idea that the Regional Assessment will feed into project level impact assessments is known as “tiering”, which means that broader scale “strategic” processes can be used to address broad issues and opportunities, alternatives and cumulative effects that cannot be effectively assessed at the project level.⁶ In a tiering model, a regional assessment is meant to frame issues at the regional level to help decision-makers at the project level. However, tiering does not need to be limited to impact assessments. We note that many decisions are made at the project level that are not impact assessment decisions, and the Regional Assessment should be forward thinking and create a comprehensive framework to help guide these decisions as well as impact assessments.

As we noted above, there is little guidance in the *IAA* about how to conduct a regional assessment. Additionally, the *IAA* does not restrict the outcome of a regional assessment or prevent how a regional assessment can be used in decision-making processes outside of the *IAA*. We see the Regional Assessment as an opportunity to conduct a broad regional cumulative effects assessment that can identify pathways to long-term sustainability that can impact all manner of decision-making processes. It is not necessary to confine the Regional Assessment Committee’s work to creating inputs for future project level impact assessments.

Recommendation #2: We recommend that the outcomes and outputs of the Regional Assessment be scoped broad enough that it can apply to all manner of future decision-making processes, rather than just impact assessments.

The Regional Assessment’s Contribution to Sustainability

The Draft Agreement is heavily focused on identifying mitigation measures for adverse effects. Mitigation is mentioned nine different times (not including the definition for mitigation measures), including in the objective section:

“The objectives of the Regional Assessment are to facilitate the above goal by...

*Identifying and recommending mitigation measures and other potential and innovative approaches for addressing potential positive and adverse effects (both project-specific and cumulative, including potential impacts on Indigenous peoples) as part of future decision-making for mine development activities, in a manner that fosters sustainability”*⁷,

in the Committee’s mandate:

“In conducting the Regional Assessment, the Committee will...

⁵ Draft Agreement, Appendix B, subsection B2.2(i).

⁶ The “tiering” model was endorsed by the Expert Panel on Environmental Assessment. See: Canada, Expert Panel Review of Environmental Assessment Processes, *Building Common Ground: A New Vision for Impact Assessment in Canada* (Ottawa: Canadian Environmental Assessment Agency, 2017), page 22.

⁷ Draft Agreement, subsection 1.2(b).

Identify and consider technically and economically feasible mitigation measures and other approaches for eliminating, reducing, controlling or offsetting potential adverse effects and creating and maximizing potential positive effects resulting from mine development activities in the Assessment Area on the Assessment Priorities specified in Section 2.3 of the Agreement”⁸,

and in the Committee’s report requirements:

“In its Report, the Committee will, in accordance with the objectives of the Regional Assessment outlined in Section 1.2 of the Agreement, include the following information for consideration and use in impact assessments for future mine development activities in the Assessment Area...

*Recommendations on potential mitigation measures and other approaches that are technically and economically feasible for addressing the potential adverse effects or maximizing the potential positive effects of future mine development activities in the Assessment Area on the Assessment Priorities. This may include standard mitigation measures as well as other potential and innovative approaches, technologies and measures that may be required to address particular issues identified through the Regional Assessment”.*⁹

[Emphasis added]

The problem with focusing on identifying ways to mitigate adverse effects is that in setting a standard, it sets a low bar rather than a high bar. Rather than asking the Committee to identify the standards that should guide project decision-making in the Ring of Fire to ensure lasting positive environmental, social, and economic impacts that are fairly and equitably distributed, it asks the Committee to identify mitigation measures that will accommodate industry at the expense of communities most directly impacted.¹⁰ This is fairly evident in the Committee’s mandate in subsection B1.6(h) of the Appendix and the requirements of the Committee report in subsection B2.2(f), which restrict the Committee’s identification and consideration of mitigation measures to those that are “technically and economically feasible”. Feasible for who? Industry.

Recommendation #3: We recommend that the Committee be required to consider all mitigation measures – omitting the phrase “technically and economically feasible” – and to analyze possible scenarios with respect to mining and other development that considers whether it is technically and economically feasible for communities to respond to adverse effects from development if mitigation measures fail. This should include a scenario where development – for example, a mine development activity – does not occur.

Accordingly, we encourage the notion that the Regional Assessment should be about finding ways to strengthen future decision-making by identifying ways to foster sustainability in the Ring of Fire Region. For example, rather than require the Committee to identify mitigation measures, the agreement should require the Committee to identify sustainability-based criteria that would guide decision-makers in the

⁸ Draft Agreement, Appendix B, subsection B1.6(h).

⁹ Draft Agreement, Appendix B, subsection B2.2(f).

¹⁰ Gibson *et al.*

Ring of Fire.¹¹ These regionally specific criteria would provide a basis on which developments within the Ring of Fire would be evaluated. Having sustainability-based criteria would allow greater efficiency and effectiveness in decision-making processes because they would create certainty, transparency, and accountability.

Recommendation #4: We recommend that an objective and outcome of the Regional Assessment – including the Committee’s report – should be the identification and assessment of a set of sustainability criteria that can be used to guide future decision-making in determining whether development will lead to long-term regional sustainability.

Cumulative Effects in the Ring of Fire

Regional assessments are ideally suited amongst the various tools found in the *Impact Assessment Act* to consider and assess cumulative effects because project specific assessments in Canada have typically failed to adequately consider cumulative effects.¹²

Cumulative effects can be defined as “a change in the environment caused by multiple interactions among human activities and natural processes that accumulate across time and space.”¹³ Cumulative effects must, by definition and by necessity, cover a broad range of potential past, present and future effects. Examples of cumulative effects include additive effects like the clearing of peatlands on the Ring of Fire region’s watershed systems, and interactive or synergistic effects like the oxidization of trivalent chromium (Cr-III) into hexavalent chromium (Cr-VI).¹⁴ Although best practices for cumulative effects assessment are still being refined, the practical experience of the NFLD RA may prove informative.

In its final report, the NFLD RA Committee noted the “key challenges” it faced in comprehensively evaluating cumulative effects – which included the “uncertainty around the nature, intensity and spatial and temporal distribution of future activities and their effects” – and recommended that “a more proactive and holistic approach through associated policy and planning decisions by the federal and provincial governments” be adopted.¹⁵ It is our position that the Committee effectively failed to conduct an assessment of cumulative effects because of the difficulties of conducting a cumulative effects assessment (we note here that they are inherently more difficult to do at the project level). The Committee concluded that a planning approach, rather than predictive modeling, was the best avenue to addressing cumulative effects, and subsequently deferred to future land tenure processes as the “optimal point” at which cumulative effects would be addressed.¹⁶

¹¹ Gibson *et al*, page 256.

¹² Canadian Council of Ministers of the Environment, *Canada-wide Definitions and Principles for Cumulative Effects*, PN 1541 (Winnipeg: CCME, 2014), online (PDF): <https://ccme.ca/en/res/cedefinitionsandprinciples1.0e.pdf> [CCME]; Meinhard Doelle & A. John Sinclair, “Regional & Strategic Assessments in the Proposed Federal Impact Assessment Act (IAA)” (25 February 2018), online (blog): *Dalhousie University MELAW Blog*, online: <<https://blogs.dal.ca/melaw/2018/02/25/regional-strategic-assessments-in-the-proposed-canadian-impact-assessment-act-ciaa/>>

¹³ CCME.

¹⁴ MiningWatch Canada, “Potential Toxic Effects of Chromium, Chromite Mining and Ferrochrome Production: A Literature Review (May 2012) at 10, online (PDF): <https://miningwatch.ca/sites/default/files/chromite_review.pdf>

¹⁵ Garth Bangay, Wes Foote, Gerald Anderson, Maureen Rustad & Keith Storey, “Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador: Final Report”, February 2020 [NFLD RA Final Report], page 121.

¹⁵ NFLD RA Final Report, page 150.

¹⁶ *Ibid*, page x.

The NFLD RA Committee's consideration (rather than analysis) of cumulative effects assessment fell far below expectations for several key reasons: process issues and a short timeline hampered the comprehensiveness of the assessment; many relevant cumulative effects were not adequately considered, and none were assessed; and no framework for continued cumulative effects assessment was produced¹⁷. Exacerbating these shortcomings was the subsequent failure to establish a cumulative effects assessment framework for the NFLD RA Follow-up Program.

As a result of the experience during the NFLD RA, we encourage approaching cumulative effects as a lens that informs the evaluation of all the assessment priorities that end up forming the focus of the Regional Assessment. Put another way, cumulative effects assessment must be a central pillar of the Committee's work and must not be deferred to future decision-making processes.

Recommendation #5: We recommend that the "Assessment Priorities" that are described in section 2.2 and Appendix A of the Draft Agreement include cumulative effects assessment. This means that a central focus of the Committee's work will be to identify a regionally appropriate framework that can be used to assess cumulative effects in the Ring of Fire region and use it to identify and assess long-term sustainability criteria.

One of the obvious and interconnected elements of a cumulative effects assessment is the effects on development to and by climate change. While the ROF RA Committee will be tasked with identifying and considering the extent to which mine development activities will hinder or contribute to Canada's ability to meet its climate change obligations (which we agree is important),¹⁸ climate change is also an important component of cumulative effects assessment.

The NFLD RA Committee analyzed climate change largely outside of cumulative effects and found that exploratory drilling would not "hinder Canada's ability to meet its other environmental obligations".¹⁹ The Committee did not consider climate change as part of cumulative effects, despite the fact that considering climate change as a cumulative effect was an express recommendation of Indigenous participants consulted on the application of Two-Eyed Seeing to the Regional Assessment's approach.²⁰

Questions for the climate component of cumulative effects might be: Besides greenhouse gas emissions generated within the Ring of Fire, what are the cumulative effects of all the past, present and future activity in the region in the context of climate change? What are the cumulative effects of human activities and natural processes on the region's ability to survive, mitigate and adapt to climate change?

Recommendation #6: We recommend that the Regional Assessment Committee be required to conduct an analysis of climate change as part of its cumulative effects assessment work.

We also need to highlight that Aroland First Nation's request to the Agency for the Regional Assessment identified many cumulative effects issues that need to be considered. For example: the impacts of developing wetlands and peatland areas on climate change; the destruction or alteration of wildlife habitats; infringements on Aboriginal rights; and impacts on community health and socioeconomic

¹⁷ NFLD RA Final Report, pages 121-156.

¹⁸ Draft Agreement, Appendix B, subsection B1.6(i).

¹⁹ NFLD RA Final Report, page 182.

²⁰ *Ibid*, page 160.

conditions.²¹ We reiterate that proper assessment of such cumulative effects cannot properly occur without the insight and leadership of First Nations.

In our view, the NFLD RA Committee’s treatment of cumulative effects on Indigenous communities and activities – which merited one paragraph in Chapter 5 of the Committee final report – was also inadequate: the report claimed that the only real impact on Indigenous communities and activities would be indirect through impacts on migratory species “used by or otherwise important to Indigenous peoples”.²² These claims were not substantiated. Based on our experience and the wording in the Draft Agreement, we are concerned that Draft Agreement as written will not require the Committee to incorporate Indigenous Knowledge into its cumulative effects assessment.

Recommendation #7: We recommend that the Regional Assessment Committee be explicitly required to incorporate Indigenous Knowledge into its cumulative effects analysis.

The Scope of the Regional Assessment

As we have already identified, regional assessments are an important tool to identifying and assessing cumulative effects in a broad region. Therefore, for the Regional Assessment in the Ring of Fire region to produce an efficient and effective cumulative effects assessment that can be used to guide future decision-making and identify long-term sustainability criteria, the scope of the Regional Assessment must be sufficient to allow that work. We submit that the Draft Agreement does not permit or require a scope of sufficient geographic magnitude.

Section 2.1 and 2.5 of the draft terms of reference layout the proposed activity scope of the regional assessment.

Section 2.1 reads as follows:

“Given the known mineral resources and mining potential of the Assessment Area, the Regional Assessment will focus on future mine development activities and their potential effects, as these types of activities are considered the most likely future physical activities to be proposed and carried out in this region in the foreseeable future. Although it is not possible to predict with any certainty the specific nature, location or timing of such mineral development activities, the regional assessment will consider the types of future mining activities that are most likely to occur, based on the mineral deposits that are known to be present and the manner in which they could be developed. In doing so, the Regional Assessment will also consider the relationship of, and potential interactions between, the potential effects of future mine development activities with those of other existing and future activities, including the potential for resulting cumulative effects [...]”.

[Emphasis added]

²¹ Aroland First Nation, “Appendix A – Request for Regional Assessment” (October 2019) at 7-9, online (PDF): *Canadian Impact Assessment Registry – Regional Assessment in the Ring of Fire Area*, online: < <https://iaac-aeic.gc.ca/050/documents/p80468/133833E.pdf> >

²² NFLD RA Final Report, page 130.

Section 2.5 reads as follows:

“It is acknowledged that there are on-going impact and environmental assessments for proposed road developments in Northern Ontario that are not linked to specific mine development activities, which will continue according to their separate legislated processes and timelines. Therefore, the scope, conduct and outcomes of the regional assessment will not duplicate those of these on-going assessments, including their project-specific assessments of effects, analyses of the purpose of and need for these projects, or other factors and components”.

These sections, when read together with the definition of “mine development activities” (the “physical activities associated with the construction, operation, decommissioning, closure and rehabilitation of a mine and the associated facilities that support it, are specific to that mine, and are proposed as part of that mine for the purposes of its development”), indicate that the Regional Assessment is focused only on mining, and that it will neglect or limit assessment of the current road developments – including the Marten Falls Community Access Road, the Northern Road Link, and the Webequie Supply Road – because they are “not linked to specific mine development activities”.²³

Section 2.1 is problematic because it narrows the scope of the Regional Assessment from what was originally intended and what many groups and Indigenous Nations have called for. For example, in the early planning stages, the Impact Assessment Agency of Canada provided a goal for the Regional Assessment that did not mention mining at all:

*“To provide information and analysis regarding future developments in the Ring of Fire area and their potential effects in order to inform and improve impact assessments and other planning and decision-making processes in a way that helps protect the environmental, health, cultural, social and economic conditions of the area while also creating opportunities for sustainable economic development.”.*²⁴

We also note that the language in section 2.1 and the definition of “mine development activities” is vague. For example, what is meant by “other existing and future activities”? Will this include forestry or the proposed processing plant in Sault Ste. Marie that is directly linked to a proposed Noront mine in the Ring of Fire?²⁵ Will work camps or potential towns for workers be considered part of future mine development activities? How “directly” does infrastructure need to be linked to a *specific* mine to fall into the scope of this assessment? The Draft Agreement is unclear about what future mine development activities will be the focus of the Regional Assessment, especially if it will not access the roads that are proposed to be built, at least in part, to facilitate the staking of claims and construction of mines in the region.²⁶

²³ Draft Agreement, section 2.5.

²⁴ Impact Assessment Agency of Canada, *Information Sheet: Planning the Regional Assessment in the Ring of Fire Area* (Ottawa: IAA, 2020) at 1. Online: <<https://iaac-aeic.gc.ca/050/documents/p80468/136708E.pdf>>

²⁵ See: St. Marys River Binational Public Advisory Council “Submission from the Binational Public Advisory Council’s (Sault Ste Marie) Providing Input to Inform the Planning of the Regional Assessment” (March 18, 2021) Public Comment online: <<https://iaac-aeic.gc.ca/050/evaluations/proj/80468/contributions/id/54666>>

²⁶ For example, see: Government of Ontario, “Northern Road link project”, online: <<https://www.ontario.ca/page/northern-road-link-project>>

Scoping out the provincial roads projects will result in a failure to assess and prevent well-known negative impacts of mining and other industrial development in northern communities, especially known negative impacts and violence on Indigenous women and girls. It is a well-understood fact that the risk of sexual violence, sexually transmitted infections, and substance abuse due to rape and human trafficking is particularly high for Indigenous women and children near industrial camps and development.²⁷ A contributor to the serious negative impacts and violence on women and children is that traffic activity along roads between industrial camps and work sites increases beginning with construction, and there are correlations between increased industrial transportation activity and impacts to road safety and health for both workers and locals.²⁸ For example, because of a lack of access to dependable and safe transport, Indigenous women often find themselves hitchhiking or being offered rides by men commuting to and from the work camps. Researchers further found that men seeking sex or alcohol would use their personal vehicles after work to seek these ends in nearby communities that became accessible by roads.²⁹ A regional cumulative effects assessment in northern Manitoba found that the arrival of large transient workforces for hydroelectric development projects resulted in Indigenous women and children being specifically targeted for racial and sexual violence.³⁰

The Final Report from the national inquiry on Missing and Murdered Indigenous Women and Girls found that “federal, provincial, territorial, and Indigenous governments, as well as mining, and oil and gas companies, should do a more thorough job of considering the safety of Indigenous women and children when making decisions about resource extraction on or near Indigenous territories.³¹ Thus, the explicit scoping out of the roads and their cumulative impacts will likely result in a failure to address the serious risks of violence that these roads and associated development pose to vulnerable populations in the area. This is compounded by the fact that mostly non-Indigenous employees of the mines will use these roads.³² Scoping out primary link roads between Indigenous Communities and industrial work camps and development will miss out on fully identifying and assessing the negative cumulative impact that opening the Ring of Fire region to development will have on Indigenous women and children.

Regional assessments should be scoped appropriately so that they can guide and inform future decision-making in coherent ways. The scope of the Regional Assessment must be created using a regional sustainability lens, such that the process will consider all the elements that go towards the Ring of Fire area’s sustainability.

Recommendation #8: We recommend that the activity scope of the Regional Assessment be expanded to include all mining and mining related activities, even if they are not associated with a specific mine. The activity scope should also include other kinds of development.

A long-standing criticism of provincial environmental assessments and federal impact assessments (formerly environmental assessments) is that projects end up scoped so narrowly that their real adverse

²⁷ Adam Bond and Leah Quinlan, *Indigenous Gender-based Analysis for Informing the Canadian Minerals and Metals Plan* (Akwesasne: Native Women's Association of Canada Policy Paper September 2018), page 24.

²⁸ G., K. Yung, L. Chisholm, and H. Quinn with Lake Babine Nation and Nak'azdli Whut'en, *Indigenous Communities and Industrial Camps: Promoting healthy communities in settings of industrial change* (Victoria, B.C.: The Firelight Group, 2017), page 31.

²⁹ *Ibid*, page 32.

³⁰ *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Vancouver, BC: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019) [TRC Report], page 586.

³¹ TRC Report, page 585.

³² *Ibid*.

environmental, social, and economic impacts are not understood until after the impacts have occurred. Similarly, a project-by-project analysis does not and cannot effectively measure and analyze how all development in a region will cumulatively impact the environment. A regional assessment is an opportunity to get ahead of the adverse effects of development. There is a danger that the Regional Assessment as scoped will neglect to account for the roads built to connect mines, the railroads built to transport materials, the processing plants constructed to process the materials, the work camps for workers building the mines, the work camps and towns built for the workers in the mines, or the work camps built for the remediation crews once the mines are closed.

Additionally, due to the fragility and importance of the **Hudson's Bay Lowlands** ("HBL") and the fact that full peatland remediation is frequently considered impossible³³, the full cumulative effects on the entire bioregion need to be understood before they happen, or the Regional Assessment will have failed one of its primary roles. In the Ring of Fire region, understanding how the peatlands ecology functions is critical to understanding whether mining for minerals in the region will be in the public interest for Canada, generally, and for Indigenous Nations living in the region, specifically. This is because the Ring of Fire region is situated in the HBL and represents one of the world's largest undisturbed peatland complexes.³⁴

The HBL, which includes the Ring of Fire mineral lease area, is classified as 90-100% covered in bog grade peatlands.³⁵ Bogs, formed over thousands of years, work as carbon sinks because they are ecosystems where the production of plant matter occurs faster than it can decay – this is how "peat" is accumulated and why they are considered peat accumulating ecosystems.³⁶ The bogs of the HBL contain almost 75% of the carbon stored in the north. However, when bogs are disturbed, they not only stop "sinking" carbon, they start to become emitters of carbon and methane stored in the peat.³⁷ Disturbances that cause bogs to begin emitting carbon include draining, flooding, and compressing.³⁸ To add to this severe problem, peatlands classified as bogs are considered functionally impossible to remediate back to peat accumulating ecosystems – if it were possible, it's estimated to take several centuries. A case study on England lowland bogs showed that the climactic conditions under which the bogs had formed were too different from the present, which means that the Ring of Fire and HBL ecosystems would never return to peat accumulating bogs.³⁹

The Regional Assessment as it is current envisioned through the Draft Agreement will create a two-tiered scope: the "Assessment Area" will be the geographical area in which the results of the Regional Assessment will be used to guide and inform future decision-making, while the proposed "Study Areas" will be the areas of influence that input into that Assessment Area. It is not clear why the creation of the

³³ Line Rochefort and Elve Lode "Restoration of Degraded Boreal Peatlands" in Kelman Wieder and Dale Vitt, ed, *Boreal Peatland Ecosystems*, 1st ed. (Berlin: Springer Berlin Heidelberg, 2006), page 383.

³⁴ Wildlife Conservation Society Canada, "Northern Peatlands in Canada: An enormous carbon storehouse", online: <<https://storymaps.arcgis.com/stories/19d24f59487b46f6a011dba140eddb7>>

³⁵ C. Tarnocai, I. M. Kettles, and B. Lacelle, "Surficial geology, peatlands distribution map" (DNR Canada, 2011), online <<https://geoscan.nrcan.gc.ca/starweb/geoscan/servlet.starweb?path=geoscan/fulle.web&search1=R=288786>>

³⁶ Dale H. Vitt, "Functional Characteristics and Indicators of Boreal Peatlands" in Kelman Wieder and Dale Vitt, ed, *Boreal Peatland Ecosystems*, 1st ed. (Berlin: Springer Berlin Heidelberg, 2006), page 9.

³⁷ Jim McLaughlin and Kara Webster "Effects of Climate Change on Peatlands in the Far North of Ontario, Canada; a Synthesis." (2014) 46:1 *Arctic, Antarctic, and Alpine Research*, page 84.

³⁸ Merritt R. Turetsky and Vincent L. St. Louis "Disturbance in Boreal Peatlands" in Kelman Wieder and Dale Vitt, ed, *Boreal Peatland Ecosystems*, 1st ed. (Berlin: Springer Berlin Heidelberg, 2006), pages 363-369.

³⁹ Helmut Meuser, "Rehabilitation of Soils in Mining and Raw Material Extraction Areas" in *Soil Remediation and Rehabilitation: Treatment of Contaminated and Disturbed Land*, 23rd ed (Dordrecht: Springer Netherlands, 2013), pages 111-113.

Study Areas, including their scope, is left entirely to the discretion of the Committee when key geographic and issue areas within the broader Ring of Fire region have been identified through the early planning process for the Regional Assessment. Furthermore, there are no clear criteria, or even guidance, for the Committee or the public on how exactly the Study Areas will work.

Recommendation #9: We recommend that the geographic scope of the Regional Assessment be expanded beyond the “Assessment Area” currently identified in the Draft Agreement. That area must include, at minimum, all the region’s First Nations territory and the James Bay lowlands and associated tributaries and peatlands. This is necessary for an effective and efficient cumulative effects assessment.

Governance and Process

We have already highlighted the need for the Minister to recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region, and the need for Indigenous co-governance in the Regional Assessment on a nation-to-nation basis. This means that the goal of the Regional Assessment will reflect outcomes desired by Indigenous communities living in the region; that the Committee and Secretariat are established together with, and have representation from, Indigenous Nations; and, that Indigenous Nations will have a direct role in the conduct and decision-making during and after the Regional Assessment.

We note that Indigenous-led models of impact assessment have been developed in response to regional circumstances in recent years, providing models for the Ring of Fire Regional Assessment.⁴⁰ It will be crucial that there is genuine and meaningful engagement and participation of Indigenous peoples throughout the process, and that Indigenous Knowledge is incorporated because disregard for Indigenous Knowledge in past impact and environmental assessments has eroded trust in the process for Indigenous participants.⁴¹

Notwithstanding these critical issues, it remains our submission that the governance of the Regional Assessment must be conducted in an open, transparency, and fair manner. The success of the Regional Assessment will depend largely on the conduct of the Committee, and to a lesser extent the Secretariat and Advisory Supports, to ensure a process that meaningfully engages with stakeholders and rightsholders. Therefore, the selection of the Committee, and the membership of the Secretariat and Advisory Supports, must be conducted in an open manner.

Recommendation #10: We recommend that Indigenous Nations have a direct role in the selection of the Committee, and that the process of the Committee’s selection is open to the public. This will mean that the public can recommend members and that reasons are given for the final membership.

Once the Committee has been selected, open and regular communication by the Committee to the Minister, to Indigenous communities, to participants, and to the public, will be key to making the Regional Assessment efficient and effective. By the NFLD RA Committee’s own admission, communication between the Committee and participants was troubled by failures of notification,

⁴⁰ Dayna Scott et al, “Synthesis Report: Implementing a Regional, Indigenous-Led and Sustainability-Informed Impact Assessment in Ontario’s Ring of Fire” (April 2020) at 22, online (PDF): *Osgoode Digital Commons, Faculty Scholarship – Articles* https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3808&context=scholarly_works [Synthesis Report], pages 13-14.

⁴¹ *Ibid* at 14.

awareness, and comprehensibility of outputs.⁴² As we have commented below, communication – including providing information and ensuring dialogue – will be necessary for meaningful participation. Any communications strategies must account for in-community hearings with First Nations communities in their language and according to their procedures.⁴³

Another important element to a successful regional assessment is providing sufficient capacity and time to the Committee. Again, by the NFLD RA Committee’s own admission, that regional assessment faced ongoing logistical and procedural challenges.⁴⁴ One of the most obvious and “often raised” issues was the short timeframe for completion. That process began in the spring of 2019 and was to be completed by the “Fall 2019”; an extension was later granted and the process completed in February 2020.⁴⁵ One of the issues exacerbated by the Committee’s lack of time was that “too often...the science expertise of the federal government was not available or accessible to support the work”.⁴⁶ This was flagged by the Committee as an area of weakness that needs to be addressed as a priority in future regional assessments.⁴⁷ There were also many criticisms from participants – including our organization – that the short timeline resulted in a lack of meaningful participation and was a contributor to the failure of the Committee to conduct an adequate cumulative effects assessment.

Recommendation #11: We recommend that the Regional Assessment be a minimum of two years. As we have noted elsewhere, the Regional Assessment should not commence until Indigenous Nations in the Ring of Fire are no longer in a state of emergency because of the COVID-19 pandemic and can reasonably commit their time and resources to the Regional Assessment.⁴⁸

Meaningful Public Participation

We have already communicated the importance of meaningful public participation to the Agency with respect to the Regional Assessment. In December 2021, we wrote to the Agency to request an extension to the public comment period for the Draft Agreement. At that time, Fort Albany First Nation, in support and with concurrence of the Neskantaga First Nation, the Attawapiskat First Nation, and the Eabametoong First Nation, expressed the need for more time to comment on the Draft Agreement because of the renewed pressures of the Omicron variant of COVID-19. We stood in solidarity with Fort Albany First Nation, Neskantaga First Nation, Attawapiskat First Nation, and Eabametoong First Nation, and offered our strongest support of their request for an extension of the deadline. We did so because it was (and is) necessary for meaningful public participation, to promote cooperation with Indigenous peoples, and to ensure respect for the rights of Indigenous peoples that are recognized and affirmed by section 35 of the *Constitution Act, 1982* (both of which are purposes set out in section 6(1) of the *IAA*).

As set out in section 2 of the *Agency’s Framework: Public Participation Under the Impact Assessment Act*, meaningful public participation is understood by the Agency to mean that “members of the public who wish to participate in an impact assessment have an opportunity to do so and are provided with the information and capacity that enables them to participate in an informed way”. One important component of meaningful public participation is ensuring that the public and Indigenous communities

⁴² NFLD RA Final Report, page xi.

⁴³ Synthesis Report, page 25.

⁴⁴ NFLD RA Final Report, note from Garth Bangay & Wes Foote.

⁴⁵ *Ibid*, page viii.

⁴⁶ *Ibid*, page ix.

⁴⁷ *Ibid*, page x.

⁴⁸ Synthesis Report, page 22.

have the capacity to undertake the work – many hours of paid *and* unpaid work – that is required and necessary to enable those affected and impacted by the Regional Assessment to become informed and respond to all the issues raised through the process. Public participation funds are critical to enhancing capacity; however, as we noted above, adequate time to is also essential to capacity. It takes significant time to review lengthy technical documents, to become familiar with the material, to consult and confer with others and to gather relevant information to effectively respond to the issues identified. It takes further time to draft and review submissions, to share submission with others, and to ensure that submissions are reflective of concerns and useful to the Committee.

The many citizens, nations, communities, and organizations that review and respond in these public participation processes have multiple time pressures. There are other deadlines, other commitments, other pressing issues. So, time is needed. Time is needed to enable sufficient capacity to become informed and to make informed submissions. Time is necessary for meaningful public participation.

Recommendation #12: We recommend that the public receive frequent opportunities to provide input and recommend that funding continue to be made available to participants as needed.

Recommendation #13: We recommend that the Committee seek Indigenous and public input with respect to the development and implementation of the public participation plans, similar to the way the Committee will work with Indigenous peoples with respect to the Indigenous Participation Plan. Participation plans should be implemented as the first step of the Committee’s work, and that draft participation plans be posted onto the registry for comment within 30 days of the Committee’s configuration. Changes to the public participation plans should be communicated in advance to the public with at least 30 days written notice and be posted on the Agency’s registry.

Conclusion

For the Regional Assessment in the Ring of Fire region to be successful, there must be Indigenous leadership within the Regional Assessment process. This means respect for Indigenous jurisdiction and co-governance that allows Indigenous Nations to provide input into every stop of the Regional Assessment.

If Indigenous jurisdiction is respected, then the Regional Assessment in the Ring of Fire region provides an opportunity to conduct regional-scale cumulative effects assessment and to assess development through a sustainability lens, in a manner that can contribute to long-term sustainability in the region. Such an endeavor will require sufficient geographic and activity scoping, a fair and transparent process that encourages and strengthens meaningful public participation, and a willingness to be innovative about how the outcomes from the Regional Assessment will guide and frame future-decision making beyond impact assessments under the *Impact Assessment Act*.

Appendix A

Summary of Comments on the draft Agreement for the ROF RA

Note: All underlining, bolding, or other highlighting in the Draft Text section of the table in Appendix A is our own. We have occasionally underlined the parts of the Draft Agreement text in each section on which we have focused our comments and recommendations.

Draft Text	Comments	Recommendations
Definitions		
<p>“Assessment Area” means the Assessment Area for the Regional Assessment as described in Section 2.2 and Appendix A of this Agreement.</p>	<p>The geographic scope of the regional assessment is too narrow. As we understand the draft agreement, the “Assessment Area” will be the area that the associated regional assessment report, and future decisions using the regional assessment, will apply. While it is anticipated that the Committee will create additional study areas, which may be outside of the Assessment Area, it is not clear how the Committee is meant to incorporate the data from the study areas into recommendations about the Assessment Area.</p>	
<p>“Mine development activities” means the physical activities associated with the construction, operation, decommissioning, closure and rehabilitation of a mine and the associated facilities that support it, <u>are specific to that mine</u>, and are <u>proposed as part of that mine for the purposes of its development</u>.</p>	<p>This definition of mine development activities is narrowly construed. The language “specific to that mine” and “proposed as part of that mine” limits the scope of the Regional Assessment to facilities that are <i>directly</i> associated with a specific mine, and would fail to capture other related facilities, activities, and developments associated with mines more</p>	<p>We recommend that the phrase “are specific to that mine, and are proposed as part of that mine for the purposes of its development” be removed from the definition of “<i>Mine development activities</i>”, as follows:</p>

	<p>generally. For example, provincial road projects, which are being constructed at least in part for access to the mine lease areas, would not be captured in the Regional Assessment based on this definition and subsequent provisions.</p> <p>This will hinder an assessment of cumulative effects of all the associated past, present, and future activities that are necessary for mining projects. It is also not an approach that will lend itself to an assessment of the sustainability of mining projects.</p>	<p>“Mine development activities” means the physical activities associated with the construction, operation, decommissioning, closure and rehabilitation of a mine and the associated facilities that support it. Are specific to that mine, and are proposed as part of that mine for the purposes of its development.</p>
<p>“Study Area” means one or more Study Areas for the Regional Assessment defined by the Committee, as described in Section 2.5 and Appendix A of this Agreement.</p>	<p>It is not clear to us why two separate categories (areas) are necessary for the Regional Assessment.</p>	
<p>Regional Assessment Goal and Objectives</p>		
<p>1.1 The goal of the Regional Assessment that is the subject of this Agreement is:</p> <p>To provide information, knowledge and analysis regarding mine development activities and <u>other existing and future physical activities</u> in the Ring of Fire and their potential effects, in order to <u>enhance the effectiveness and efficiency of future impact assessments for these activities</u> in a way that helps protect the environment and health, cultural, social and economic conditions while also creating opportunities for sustainable economic development.</p>	<p>The purpose of a regional assessment – as a tool to assess development scenarios – must be, at minimum, to assess regional cumulative effects. A cumulative effects assessment must include all <u>past</u>, present, and future activities in an area, including both anthropogenic and natural activities and processes.</p> <p>The proposed goal of the Regional Assessment also fails to mention sustainability. We note that section 6(2) of the <i>Impact Assessment Act</i> requires the following: “<i>The Government of Canada, the Minister, the Agency and federal authorities,</i></p>	<p>The goal of the Regional Assessment <u>must</u> reflect the outcomes desired by the Indigenous First Nations living in the Ring of Fire Region.</p> <p>We recommend that the goal of the Regional Assessment be to conduct cumulative effects assessment of past, existing, and future activities and processes, that will guide regional decision-making to achieve long-term sustainability and lasting positive impacts that are fairly and</p>

	<p><i>in the administration of this Act, must exercise their powers in a manner that fosters sustainability, respects the Government’s commitments with respect to the rights of the Indigenous peoples of Canada and applies the precautionary principle.”</i></p> <p>The focus should be beyond “physical activities”, which is implicitly narrowed under the <i>Impact Assessment Act</i> to mean human projects.</p>	<p>equitably distributed and keep adverse effects to a minimum.</p>
<p>1.2 The objectives of the Regional Assessment are to facilitate the above goal by:</p> <p>a) Providing information, knowledge and analysis related to key, regional-scale environmental, health, cultural, social and economic conditions, values, and issues, with consideration and integration of both Indigenous knowledge and scientific information.</p> <p>b) <u>Identifying and recommending mitigation measures and other potential and innovative approaches for addressing potential positive and adverse effects</u> (both project-specific and cumulative, including potential impacts on Indigenous peoples) as part of future decision-making for mine development activities, in a manner that fosters sustainability;</p> <p>c) Providing an understanding of the regional context that can be used in considering and evaluating the effects of future mine</p>	<p>The result of the Newfoundland and Labrador Regional Assessment of Offshore Exploratory Oil and Gas Drilling (the “NFLD RA”) was a report that recommended mitigation measures that were then incorporated into a ministerial regulation. There was, however, no assessment about whether projects or types of projects (in that case, offshore exploratory drilling activities) ought to be approved in the first place. There was also no genuine assessment of alternatives – for example, a scenario where there was no offshore oil and gas exploration.</p> <p>An assessment of sustainability must follow the precautionary approach. The primary way to use a sustainability lens is to focus on identifying types of activities that provide benefits to the people and the environment that are most directly impacted by the activities. Rather than focusing on mitigation</p>	<p>The objectives underlying the Regional Assessment <u>must</u> reflect the outcomes desired by the Indigenous First Nations living in the Ring of Fire Region.</p> <p>We recommend that the objectives of the Regional Assessment include facilitating long-term sustainability by identifying and recommending sustainability criteria for projects, activities, and development scenarios in the Ring of Fire region.</p>

<p>development activities, to inform future impact assessments and the planning and management of cumulative effects; and</p> <p>d) Describing how the findings or recommendations of the Regional Assessment could be used to enhance the effectiveness and efficiency of, future impact assessments, as well as other initiatives as applicable.</p>	<p>measures and measures to reduce adverse effects, sustainability should focus on identifying projects and activities that provide long-term fair and equitable benefits. Direct benefits to those most at risk of adverse effects must take precedence over indirect and diffuse interests to those at less risk of adverse effects.</p>	
<p>2.0 Scope of the Regional Assessment</p>		
<p>2.1 Given the known mineral resources and mining potential of the Assessment Area, the Regional Assessment will <u>focus on future mine development activities and their potential effects</u>, as these types of activities are considered the most likely future physical activities to be proposed and carried out in this region in the foreseeable future. Although it is not possible to predict with any certainty the specific nature, location or timing of such mineral development activities, the regional assessment will <u>consider the types of future mining activities that are most likely to occur</u>, based on the mineral deposits that are known to be present and the manner in which they could be developed. In doing so, the Regional Assessment will also consider the relationship of, and potential interactions between, the potential effects of future mine development activities with those of other existing and future activities, including the potential for resulting cumulative effects (see Appendix B, Section 2.2, Item h).</p>	<p>As discussed above, the proposed definition of “mine development activities” is too narrow. That definition, together with the proposed scope of the Regional Assessment identified in section 2 narrows the focus of the assessment to an untenable degree. The Regional Assessment is already inherently located in a geographic area that includes identified mineral deposits and mineral mining is a reasonably likely activity. However, especially given the fact that there are now multiple provincial road projects underway, it is also reasonable to expect that other kinds of activities could follow.</p> <p>The narrow scope of the NFLD RA was one of that processes’ biggest – and ongoing – criticisms by many Indigenous, fishing, community, scientific, and ENGO participants. Despite that, the Agency has again taken a siloed approach to regional assessment. It was our experience during the NFLD RA that the committee was reluctant</p>	<p>We recommend that the scope of the Regional Assessment should <u>not</u> focus on “future mine development activities” nor further narrow the that focus on “types of future mining activities that are most likely to occur”.</p> <p>We recommend that the scope of the Regional Assessment be refocused to include the broader Ring of Fire region, and to be focused on cumulative effects, which will include all mining and mining related activities.</p>

	to venture outside of the narrow and strict interpretation of its mandate, as set out in the Agreement and its TOR, resulting in a superficial consideration of other activities in the study area. This is an opportunity to have the Regional Assessment be guided by its spatial and temporal boundaries, rather than an industrial agenda.	
<p>2.2 The geographic boundary of the Assessment Area for Regional Assessment will be as follows:</p> <p><u>An area centered on the Ring of Fire mineral deposits</u> in northern Ontario, which reflects the specific underlying geological formations that represent the Ring of Fire mineral deposits as set out in Appendix A. <u>This area encompasses the future mine development activities upon which the Regional Assessment’s analysis of effects and associated recommendations will focus</u> (see Section 2.3 and Appendix B Section 2.2 Items e) to j)).</p>	The original intention for the Regional Assessment was to conduct a process in the Ring of Fire region. It was contemplated that the geographic scope would be much broader than the area set out in Appendix B. The current geographic scope of the process is so narrow that it would no longer be useful in the context of a regional cumulative effects assessment.	We recommend that the geographic scope of the Regional Assessment must include, at minimum, all the region’s First Nations and their territory and the James Bay lowlands and associated tributaries and peatlands.
<p>2.3 In identifying and considering potential positive and adverse effects, the Regional Assessment will focus on the following Assessment Priorities. These represent key environmental, social, cultural and economic components which may be affected by future mine development activities in the Assessment Area, but which are often challenging to address solely through individual project-level assessments and decisions, making a regional-scale approach to effects assessment and management appropriate and beneficial. This focus is intended to enable improved efficiency</p>	Cumulative effects remain the single greatest environmental, social, cultural and economic component that is “often challenging to address solely through individual project-level assessments and decisions, making a regional-scale approach to effects assessment and management appropriate and beneficial”. That was one of the findings of the NFLD RA committee in its report to the Minister, notwithstanding the fact that the committee did not conduct an adequate assessment of those cumulative effects.	<p>We recommend that cumulative effects be an Assessment Priority, and must be listed in section 2.3 of the Agreement, regardless that it is mentioned elsewhere in the Agreement’s provisions.</p> <p>We recommend that climate change be explicitly included as an Assessment Priority.</p>

<p>and effectiveness of future project impact assessments:</p> <ul style="list-style-type: none"> a) Surface and ground water (quality and quantity), including wetlands (peatlands) b) Woodland caribou c) Physical and cultural heritage d) Current use of lands and resources for traditional purposes by Indigenous peoples e) Economy, employment and business f) Community health and well-being 		
<p>2.4 In conducting the Regional Assessment, the Committee will also define one or more Study Areas for the purposes of the description and analysis of the current environmental, health, cultural, social and economic conditions, and for the identification and consideration of potential positive and adverse effects (including cumulative effects) on the Assessment Priorities.</p>	<p>As we commented above, the geographic scope of the Regional Assessment must be expanded beyond the ring of current mineral claims, and so most of the areas that may be contemplated to be a “study area” should become part of the mandatory assessment area.</p> <p>Section 2.4 is not likely to be helpful to the Committee or the public as currently drafted.</p>	<p>Notwithstanding our recommendations above with respect to the goal, objectives, and scope, we recommend that Indigenous Nations and public participants have direct input into identifying and deciding on the Study Areas as contemplated.</p>
<p>2.5 It is acknowledged that there are on-going impact and environmental assessments for proposed road developments in Northern Ontario that are not linked to specific mine development activities, which will continue according to their separate legislated processes and timelines. <u>Therefore, the scope, conduct and outcomes of the regional assessment will not duplicate these on-going assessments, including their project-specific assessments of effects, analyses of the purpose of and need for these projects, or other factors and components.</u></p>	<p>As we commented above, the definition of “mine development activities” fails to include infrastructure that is critical to these mines; these acknowledged road projects are an important example, especially because their primary purpose is to access mines. Therefore, it is crucial that the effects of these projects be assessed within the Regional Assessment. This is necessary for the cumulative effects assessment, at minimum. Without considering the proposed road projects in the context of regional</p>	<p>We recommend that provision 2.5 should be removed, or in the alternative, be modified to be explicit that the Regional Assessment Committee must consider all information related to the acknowledged provincial road projects in the Ring of Fire area.</p>

	<p>mining development, this provision amounts to a form of project splitting.</p> <p>We understand the desire not to duplicate work already being done, but the Committee must still consider these projects. There is a danger that the Regional Assessment will be finalized before one or more of the provincial environmental assessment processes are complete. It was our experience in the NFLD RA that information, including scientific reports, were not considered by the committee in that process because they were not completed (for example, a key Canadian Science Advisory Secretariat paper that was reviewing impacts of exploratory oil and gas drilling on corals and sponges offshore of Newfoundland and Labrador, which was in its final stages but not finalized, was not considered despite being relevant.</p>	
3.0 Establishment, Purpose and Composition of the Committee		
<p>3.1 A Committee will be established pursuant to subsection 93(1) of the <i>IAA</i>. The Committee will conduct the Regional Assessment in accordance with the <i>IAA</i>, this Agreement, and its Terms of Reference outlined in Appendix B of this Agreement.</p>	<p>Section 93(1) of the <i>Impact Assessment Act</i> allows the Minister to enter into an agreement or arrangement with any <u>jurisdiction</u> respecting the establishment of a committee for a regional assessment.</p> <p>Jurisdiction, as defined in section 2 of the <i>IAA</i>, includes:</p>	<p>The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to establish the committee for the Regional Assessment.</p>

	<p><i>(g) an Indigenous governing body that has entered into an agreement or arrangement referred to in paragraph 114(1)(e) [...]</i></p> <p>Section 114(1)(e) of the <i>IAA</i> allows the Minister to create a regulation to enter into an agreement with any Indigenous governing body, and to recognize them as a jurisdiction within the meaning of the Act.</p> <p>Many of the submissions to the Agency on the early planning of the Regional Assessment have pointed to the need for Indigenous nations to be included in the planning and implementation of this process. Section 114(1)(e) provides an avenue through which Indigenous nations – those who will be most directly impacted by any activities in the Ring of Fire region – would be given direct influence on the conduct of the Regional Assessment.</p> <p>Section 6(2) of the <i>IAA</i>, reads:</p> <p>(2) The Government of Canada, the Minister, <u>the Agency</u> and federal authorities, in the administration of this Act, <u>must exercise their powers in a manner that fosters sustainability, respects the Government’s commitments with respect to the rights of the Indigenous peoples of Canada</u> and applies the precautionary principle.</p>	
--	--	--

	Canada has made commitments with respect to the <i>United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”)</i> , and the Truth and Reconciliation Commission’s calls for action.	
3.2 The Committee will be a joint committee between the federal Minister of Environment and Climate Change and the provincial Minister of Northern Development, Mines, Natural Resources and Forestry for Ontario.	This provision fails to reflect the jurisdiction of Indigenous Nations in the Ring of Fire region.	The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to establish the Committee for the Regional Assessment.
3.3 The Committee will consist of five members approved by the Ministers.	Provision 3.3, as well as provision 3.2, do not set out a method of selecting the Committee.	We recommend that there be a public and transparent process for selection of the Committee, and that all records related to this process be made available on the Agency’s registry.
3.4 Should one or more Committee members be unable to complete the Regional Assessment, the Ministers will decide whether to replace the Committee member(s) or to have the Committee proceed to complete the Regional Assessment with the remaining members.	As reflected in our comments above, Indigenous Nations must also be included in this decision-making.	
3.5 The Committee will have all the powers and obligations set out under Sections 97 to 102 of the <i>IAA</i> .	Section 97(2) of the <i>IAA</i> (2) requires the Committee to take into account any scientific information and Indigenous knowledge – including of Indigenous women – provided with respect to the assessment. Section 98 requires the Committee to make all the information it uses when conducting an assessment available to the public. This	We recommend that the powers and obligations set out in sections 97 to 102 of the <i>IAA</i> be included in the Agreement for the sake of efficiency and ease of access for participants. We recommend that a requirement be added to the Agreement that the Committee must show how they

	<p>provision, when read in the context of section 97(2), requires the Committee to make all scientific information and Indigenous knowledge provided during the Regional Assessment available to the public.</p> <p>Section 99 requires the Committee to ensure the public is provided with an opportunity to participate <u>meaningfully</u>.</p> <p>Section 100 requires every federal authority with information or knowledge relevant to the Regional Assessment to make it available upon request by the Committee in the specified time frame, while section 101 gives the Committee the same powers as a review panel to summon a witness before it and order them to produce necessary evidence or records.</p> <p>Section 102 requires the Committee to produce a report to the Minister at the conclusion of the Regional Assessment. We note that section 103 of the IAA, which requires the Agency to post a copy of the report to its registry, is not mentioned.</p>	<p>considered all scientific information and Indigenous knowledge provided during the Regional Assessment.</p> <p>We recommend that the Committee be responsible for ensuring that its final report is posted on the Agency’s website, in a similar manner as its responsibility over ensuring the public is provided with all information that it considers as part of the Regional Assessment.</p>
<p>3.6 The Committee’s mandate and responsibilities, outlined in its Terms of Reference (Appendix B), are established by the Minister of Environment and Climate Change in accordance with Sections 93 and 96 of the IAA.</p>	<p>Section 93(3)(b) requires that at least one member of the Committee be recommended by the jurisdiction(s) that are a party to the Agreement.</p>	<p>We recommend that the Indigenous Nations in the Ring of Fire region be part of the decision-making with respect to selection of the membership of the Committee and its mandate.</p>
<p>3.7 The Committee members will have knowledge or experience relevant to the Regional</p>	<p>The Committee should have amongst its members the requisite knowledge or</p>	<p>We recommend removal of provision 3.7.</p>

<p>Assessment, including with respect to the types of mine development activities that may occur in the Assessment Area, the potential positive and adverse effects that are associated with these, and/or of the interests and concerns of Indigenous peoples that are relevant to the Regional Assessment.</p>	<p>experience relevant to the Regional Assessment, but if those requirements extend to each individual member of the Committee, it will limit the eligibility of membership unnecessarily. As it currently stands, each member of the Committee would need to have knowledge or experience with the types of mine development activities that may occur in the Assessment Area. This differs from the approach taken in provision 3.8, and is in part redundant, since mine development activities is also set out as a possible requirement there.</p>	<p>In the alternative, we recommend that the wording of provision 3.7 be changed in the following way: <i>“The Committee members will have knowledge or experience relevant to the Regional Assessment, including with respect to the types of mine development activities that may occur in the Assessment Area, the potential positive and adverse effects that are associated with these, andfor of the interests and concerns of Indigenous peoples that are relevant to the Regional Assessment.”</i></p>
<p>3.8 The Committee members will also have knowledge or experience related to one or more of the following: impact and/or environmental assessment; regional assessment; environmental, health, cultural, social or economic effects (positive and adverse) and their management; sustainability; Indigenous and public participation; Indigenous peoples and their communities, activities, interests, perspectives and knowledge; mine development activities; economic development and infrastructure in northern regions.</p>	<p>It is disappointing that Committee members are not required to have knowledge or experience with cumulative effects assessment.</p> <p>Our experience from the NFLD RA process was that the committee found the cumulative effects assessment difficult, and it would have been advantageous for one or more members of that committee had relevant experience with conducting a cumulative effects assessment.</p>	<p>We recommend that the wording of provision 3.8 be changed in the following way: <i>“The Committee members will also have knowledge or experience related to one or more of the following: impact and/or environmental assessment; regional assessment; environmental, health, cultural, social or economic effects (positive and adverse) and their management; sustainability; Indigenous and public participation; Indigenous peoples and their communities, activities, interests, perspectives and knowledge; mine development activities; economic development and infrastructure in northern regions.”</i></p>

		We recommend that the Committee’s candidateship criteria align with the Regional Assessment’s “Assessment Priorities”, and that there be experience on the Committee with respect to cumulative effects assessment.
3.9 The Committee members will be unbiased and free from real or perceived conflict of interest with respect to the Regional Assessment.	It is impossible for anyone to be unbiased.	We recommend that a comprehensive policy be drafted, with public input, which sets out the process to deal with real or perceived conflicts of interest, including provisions that create a complaint process available to the public and participants, and provisions dealing with the resolution of conflicts that arise during the Regional Assessment.
4.0 Committee Secretariat		
4.1 A Secretariat will be established to provide administrative and technical support to, and at the direction of, the Committee during the conduct of the Regional Assessment.	We note that the secretariat has the same role as the “Task Team” created under the NFLD RA.	
4.2 The Secretariat will be co-managed by, and comprised of staff assigned from, the Agency and the Government of Ontario.		The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to ensure that there is Indigenous representation on the Secretariat.

		We recommend that all Indigenous representatives on the Secretariat be compensated by the Agency.
4.3 The activities and responsibilities of the Secretariat will include: work planning and scheduling, communications, administration and record keeping, compiling and providing information and knowledge (both Indigenous and scientific) that is relevant to the Regional Assessment; support for public and Indigenous participation activities, and the drafting of documents and other materials at the direction of the Committee.	There is a danger that the Secretariat may act as a gatekeeper and prevent key information from reaching the Committee. This is especially so given the perceived conflict of interest of the province of Ontario being involved in the Secretariat's work when it also has interests tied to development in the Ring of Fire region.	We recommend that provision 4.3 be amended to require that all records – including correspondence, submissions, and information – that the Secretariat receives be considered knowledge or information relevant to the Committee's work and be made available to the public on the Agency's registry in a timely manner (no more than 14 days after being received).
4.4 The Secretariat will identify, compile and provide to the Committee existing and available information that is relevant to the Regional Assessment including information related to: environmental, health, cultural, social and economic conditions; mine development activities and their potential effects; mitigation measures; monitoring and follow-up measures; and other information as applicable subject to any limits on the use of such information or the need to update or otherwise verify the information.		We recommend that all the records that the Secretariat identifies, compiles and provides to the Committee be considered knowledge or information relevant to the Committee's work and be made available to the public.
4.5 Existing information includes but is not limited to that contained in any past or ongoing impact or environmental assessments conducted under federal or provincial legislation, and information provided by government, industry, academia, Indigenous peoples or the public.	It was our experience during the NFDL RA process that past or ongoing environmental and impact assessments of exploratory offshore drilling projects were taken at face value and used to supplement the committee's own analysis of key issues.	

5.0 Advisory Supports to the Committee		
<p>5.1 The Committee will establish, and seek information and advice from, a number of advisory supports during the conduct of the Regional Assessment, as outlined in the sections that follow and in Appendix C of this Agreement.</p>	<p>We note that the Advisory Supports to the Committee are similar to the Technical Advisory Group (“TAG”) that was created under the NFLD RA.</p>	
<p>5.2 The role of these advisory supports will include assisting the Committee in identifying, accessing, analyzing and using information and knowledge that is relevant to the Regional Assessment, as well as in identifying and evaluating information and knowledge gaps and recommending approaches to address these.</p>	<p>The role of the TAG during the NFLD RA was to “support the Task Team and the Committee, once established, to gather relevant data and information, conduct technical analysis, and provide expertise in relation to the Regional Assessment.” The TAG process was limited to a series of 3-hour meetings on various topics, with no follow-up meetings, and no opportunities for members of the TAGs to identify, evaluate, and analyze information or data beyond the preliminary, introductory level of those meetings. This was in part due to the limited time allowed for the NFLD RA’s completion and the fact that the TAG only met for the first (and only) time approximately half-way through the process.</p>	<p>We recommend that the process for the Advisory Supports begin as soon as possible, but no later than 30 days after the Committee is struck.</p>
<p>5.3 These advisory supports will be comprised of individuals or organizations from within or outside of government, including Indigenous peoples, who have knowledge or experience deemed relevant to the Regional Assessment by the Committee. They will be identified by the Committee, including by way of a public call for interest through which interested persons will provide information on their relevant interests, qualifications and affiliations to the Committee.</p>	<p>The phrase in provision 5.3 “affiliations to the Committee” seems to imply a conflict-of-interest check.</p> <p>The phrasing in provision 5.3 gives the Committee discretion with respect to the knowledge or experience that is relevant for the purpose of qualifying to be an advisory support.</p>	<p>We recommend that the process for the Advisory Supports begin as soon as possible, with the Committee making its public call for interest within 30-days of being convened.</p> <p>We recommend that the selection process for advisory supports be transparent, and that all decisions related to final membership be</p>

		made public and available on the Agency's website.
5.4 These advisory supports will identify, provide and support the use and integration of Indigenous knowledge and scientific, technical and socio-economic information in the conduct of the Regional Assessment.		<p>We recommend that the information and knowledge identified, provided and created by the advisory supports be provided to the Committee and that all of that information and knowledge be considered a part of the materials considered by the Committee as part of its work, and therefore, be made available to the public on the Agency's registry.</p> <p>We also recommend that the deliberations and work of the advisory supports be made public, including meeting minutes.</p>
5.5 The composition and activities of these advisory supports may vary from time to time in relation to the needs, work or expertise required and requested by the Committee during the course of the Regional Assessment.		We recommend that the public and Regional Assessment participants have an opportunity to review the work of the advisory supports.
5.6 Involvement in, and the provision of information and input through, one or more of these advisory supports will not restrict any individual's or organization's participation in the public and Indigenous participation activities undertaken by the Committee, nor the ability to make separate submissions to the Committee during the Regional Assessment process.	This is an important provision that ensures the on-going ability of the advisory supports to conduct work independent from the Committee.	We recommend funding be made available to advisory supports.

<p>5.7 The Committee will seek knowledge and perspectives from Indigenous peoples on matters relevant to the conduct of the Regional Assessment.</p> <p>5.8 This will include sharing Indigenous knowledge and perspectives on some or all of the topics listed in Appendix C Section C1.1, in accordance with the principles and requirements set out in Appendix B and in keeping with established Indigenous protocols and procedures as applicable.</p>	<p>This provision does not require the Committee to follow or use knowledge and perspectives from Indigenous peoples on matters related to the process' conduct.</p> <p>We have commented below on the need to remove Appendix C, or in the alternative, to clarify that the topics listed are only meant as guidance to the Committee. There should be no limitation on what knowledge and perspectives Indigenous peoples share with respect to the Ring of Fire region because it is all relevant.</p>	<p>The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to ensure their participation in the conduct and decision-making of the Regional Assessment.</p>
<p>5.9 The Committee will seek scientific, technical and socio-economic information and advice from representatives of federal and provincial government, departments, agencies and ministries, industry and non-governmental organizations and individuals (both Indigenous and non-Indigenous) on matters relevant to the conduct of the Regional Assessment.</p>	<p>This provision is too narrowly constructed, and may limit the ability of the Committee to seek other kinds of information; for example, knowledge or expertise, or information on procedural matters.</p>	<p>We recommend that provision 5.9 be amended to allow for more flexibility for the Committee to seek information as follows:</p> <p><i>“The Committee will seek information, knowledge, and advice, including on scientific, technical and socio-economic information and advice matters from representatives of federal and provincial government, departments, agencies and ministries, industry and non-governmental organizations and individuals (both Indigenous and non-Indigenous) on matters relevant to the conduct of the Regional Assessment.”</i></p>
<p>5.10 This advisory support will assist the Committee in gathering and analyzing relevant data and information and in conducting scientific,</p>		<p>We recommend changing provision 5.10 to require the Committee to</p>

<p>technical and socio-economic analysis, and will provide expertise in relation to the Regional Assessment. This will include sharing information and expertise on some or all of the topics listed in Appendix C Section C1.2.</p>		<p>seek assistance from the advisory supports, as follows:</p> <p>“This advisory support will assist the The Committee, in gathering and analyzing relevant data and information and in conducting scientific, technical and socio-economic analysis, and will seek assistance from the advisory supports to provide expertise in relation to the Regional Assessment. This will include sharing information and expertise on some or all of the topics listed in Appendix C Section C1.2.”</p>
<p>5.11 In addition to participation through the above described advisory supports, federal authorities and provincial authorities having specialist or expert information or knowledge with respect to the Regional Assessment may be required to make that information or knowledge available to the Committee in an acceptable manner and within a specified period.</p> <p>5.12 This may include providing information, knowledge or advice to the Committee related to the topics listed in Appendix C, or any other matter relevant to the Regional Assessment as requested by the Committee.</p>	<p>Section 100 requires every federal authority with information or knowledge relevant to the Regional Assessment to make it available upon request by the Committee in the specified time frame, while section 101 gives the Committee the same powers as a review panel to summon a witness before it and order them to produce necessary evidence or records.</p> <p>Provision 5.11of the Agreement is essentially redundant because of the obligations and powers already set out in the IAA, although there is potential to strengthen the ability of the Committee to gather information from provincial authorities.</p>	<p>We recommend that provision 5.11 be modified to require provincial authorities to provide relevant information for the Regional Assessment, as follows:</p> <p><i>“In addition to participation through the above described advisory supports, federal authorities and provincial authorities having specialist or expert information or knowledge with respect to the Regional Assessment may shall be required to make that information or knowledge available to the Committee in an acceptable manner and within a specified period.”</i></p>

6.0 Indigenous Talking/Sharing Circle		
<p>6.1 Recognizing and acknowledging the Indigenous ties to and use of lands and waters to conduct traditional and cultural activities that may be affected by future mine development activities in the Assessment Area, an Indigenous Talking / Sharing Circle may be established.</p> <p>6.2 The Circle would allow participants, respecting and valuing their relationship to the land and creation, to bring forward and share traditional knowledge, information and perspectives in a collaborative manner for consideration by the Committee in its conduct of the Regional Assessment.</p> <p>6.3 Further details on the Circle are provided in Appendix D of this Agreement.</p>	<p>Recognition and acknowledgement of the Indigenous ties and uses of lands and waters in the Ring of Fire area should be a guiding principle of the Regional Assessment, not relegated to this section. True recognition of Indigenous ties to and uses of their traditional territory would be better served through a process whereby impacted Indigenous nations had a direct role in the conduct and decision-making within the Regional Assessment.</p>	<p>The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to determine the most appropriate way for each Nation to bring forward and share their knowledge in culturally appropriate ways, and to have a direct role in the conduct and decision-making within the Regional Assessment.</p> <p>We further recommend that the establishment of one or more Indigenous talking or sharing circles be at the discretion of Indigenous communities, rather than at the discretion of the Committee.</p> <p>We recommend that the conduct and process of any Indigenous talking or sharing circles be guided by the participating Indigenous communities, not set out in Appendix D of the Agreement.</p>
7.0 Reports and Records		
<p>7.1 The Committee will submit regular status updates to the Ministers during the conduct of the Regional Assessment.</p>	<p>It would be helpful if there was more specificity with respect to the regularity of the Committee’s updates to the Minister.</p>	<p>We recommend that all the Committee’s reports to the Minister</p>

	<p>It was our experience from the NFLD RA that updates provided to the Minister were not consistent with the experiences of many participants, and that in fact, the Committee had changed the direction of its work (for example, its increased focus on creating a geographic information system (“GIS”).</p>	<p>be made available to the public on the Agency’s registry.</p> <p>We recommend that regular status updates be made to the Minister every 60 days.</p>
<p>7.2 The Committee will describe the conduct, and document the results, of the Regional Assessment in its Report.</p>		<p>We recommend that the Committee be required to provide a summary of how the information gathered from the public and from the advisory supports was incorporated into its findings.</p>
<p>7.3 The Report will contain information as outlined in the Committee’s Terms of Reference (Appendix B).</p>	<p>It is not enough that the Committee’s final Report only contain information. There must be an assessment based on the information it has gathered.</p>	<p>We recommend that provision 7.3 be amended to ensure that the Committee’s Report may contain information not outlined in its TOR, if there was in fact information that became relevant during the process. We further recommend that the Committee’s Report be required to include an assessment of information gathering through the process, as follows:</p> <p><i>“The Report will contain all information and analysis as outlined in the Committee’s Terms of Reference (Appendix B) and all other relevant information and analysis gathered in the Regional Assessment.”</i></p>

<p>7.4 The Report will take into account and reflect the views of all Committee members. Any areas of non-consensus and associated dissenting viewpoints will be reflected in the Report.</p>	<p>It was our experience that the need for consensus during the NFLD RA process resulted in a Report that did not accurately reflect the varied opinions and advice of the Committee's members. Therefore, it is our position that this provision will be helpful to the public and future decision-makers.</p>	
<p>7.5 The Committee will make its draft Report available for an Indigenous and public review and comment period, including review by Indigenous peoples, and will advise the public that the draft Report is available on the Canadian Impact Assessment Registry Internet site.</p>	<p>The review period for the draft report of the NFLD RA committee was only held for 30 days, which was a short amount of time to review a lengthy technical document and provide meaningful feedback and input.</p> <p>Following the 30-day public commentary period for the draft NFLD RA report, the committee finalized its report to the Minister within 5 business days. The final report did not reflect how the committee considered the extensive public commentary that it received on its draft.</p>	<p>We recommend that a minimum of 60-days be allotted for a public commentary period for the draft report and associated materials.</p> <p>We recommend that the Committee provide a summary of how the public commentary on its draft report was considered in its final Report.</p>
<p>7.6 The Committee will submit its final Report to the Ministers within 18 months of the public announcement of the appointment of its members by the federal Minister of Environment and Climate Change.</p>	<p>The period for the NFLD RA was too short; this criticism was echoed repeatedly by many participants throughout the process. It was also noted by the Committee in its letter to the Minister accompanying its Final Report: "Completing the Regional Assessment did present some challenges. One was the abbreviated time given to the Committee to fulfill its task. This not only limited the Committee's ability in preparing the Report but also reduced public confidence in the Committee's work and the opportunities for others to contribute".</p>	<p>We recommend that a minimum of two years be allotted to the Committee to complete its work for the Regional Assessment.</p>

	<p>At one point, the committee requested an extension for its work, but this was denied. Eventually, the Minister granted an extension to the Committee, but the entire process was conducted in approximately one year.</p> <p>During the current process, many groups – and particularly Indigenous groups – have already indicated their desire to have more time to provide input into the process (on the Draft Agreement), in light of the ongoing COVID-19 emergency. We have added our voice to this call for more time.</p>	
<p>7.7 Upon receiving the Committee’s Report, the federal Minister of Environment and Climate Change will make the final Report available to the public and will advise the public that the final Report is available on the Canadian Impact Assessment Registry Internet site.</p>		
<p>7.8 The Committee will ensure that the information that it uses when conducting the Regional Assessment is made available to the public through the Canadian Impact Assessment Registry or by other means.</p>	<p>It was our experience during the NFLD RA that information was often delayed in being posted onto the Agency’s registry, and there were examples of information being posted many months later. Some information was never posted onto the registry, as was highlighted in the recent judicial review of the final report and subsequent ministerial regulations. This is unacceptable.</p> <p>For there to be meaningful public participation, as well as transparency in decision-making during and after the Regional Assessment, the information being</p>	<p>We recommend that all information and knowledge submitted to the Committee, and used by it, including all information and knowledge identified, analyzed, produced, or considered by the secretariat or the Advisory Supports, be posted onto the Agency’s registry within 30 days of receipt.</p>

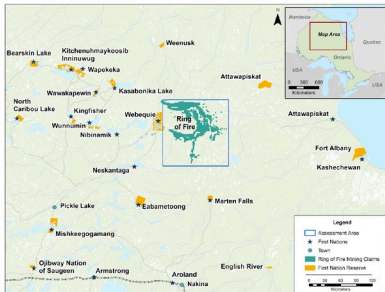
	used must be made available to the public in a reasonable amount of time.	
7.9 The Canadian Impact Assessment Registry, which is comprised of project files and an Internet site, will be maintained by the Secretariat on behalf of the Committee during the conduct of the Regional Assessment in a manner that provides for convenient public access.	One of the outcomes of the NFLD RA was the creation of a GIS which was housed on a website. The GIS took up a considerable amount of the Committee’s precious time and resources to develop. The result was a product that was difficult to access on the internet and more difficult to use, and which to our knowledge, has been abandoned.	
8.0 Interjurisdictional Cooperation		
8.1 The parties to this Agreement will work cooperatively, in accordance with this agreement, in the conduct of the Regional Assessment, including in considering and responding to: a) Any public submissions, including questions or comments, that may be received by the federal Minister of Environment and Climate Change or provincial Minister of Northern Development, Mines, Natural Resources and Forestry during and regarding the conduct of the Regional Assessment; and b) Any request from the Committee for clarification or amendments to its terms of reference (Appendix B) or other related matters, including the regular status updates provided by the Committee.	During the NFLD RA process, our organization sent several letters to the federal Minister of Environment and Climate Change Canada, to which we did not receive a response. During the NFLD RA, the Committee requested, to our knowledge, at least two extensions – which amounted to a modification to its Agreement and Terms of Reference – but these requests were not posted onto the website or made available to the public otherwise.	The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations with respect to the conduct of the Regional Assessment. We recommend that all correspondence or submissions to the respective federal and provincial Ministers with respect to the Regional Assessment, including from the Committee, be posted onto the Agency’s website, and that the Minister(s) commit to responding to each inquiry, question, or commentary on the Regional Assessment within 30 days of receipt.

<p>8.2 Once the Committee’s final Report has been submitted, the parties to this Agreement will continue to work together to consider and determine whether and how to respond to and implement the findings and recommendations resulting from the Regional Assessment.</p>	<p>There is an opportunity for the regional assessment to better inform provincial environmental assessment for future projects, as well as other government decision-making for various development scenarios, in the Ring of Fire area, especially if this provision 8.2 were to be expanded to ensure some mandatory requirements of the provincial government.</p> <p>The public, as well as the Indigenous nations within the Ring of Fire area, should be able to comment on how the regional assessment findings and recommendations can be implemented.</p>	<p>The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and consult on a nation-to-nation basis with each of those Indigenous Nations to implement the findings and recommendations of the Regional Assessment.</p> <p>We recommend that the final report include a summary of how the public and Indigenous first nations want to see the findings and recommendations of the regional assessment be implemented.</p>
<p>9.0 Costs</p>		
<p>9.1 Funding will be made available by the Agency to facilitate the involvement of Indigenous peoples, including Indigenous communities and Indigenous organizations, non-government organizations and individuals in the Regional Assessment through the Agency’s Participant Funding Program</p>	<p>Participant funding is an important component of enabling members of the public to engage in the Regional Assessment, although funding alone cannot assure <u>meaningful</u> public participation.</p> <p>Participant funding has been made available to individuals, organizations, and Indigenous communities to participate in the early planning component of the regional assessment, but there may be others who wish to participate later in the process, either because they were not aware of the regional assessment, or because they only became invested in the regional assessment</p>	<p>We recommend that the Agency provide opportunities for the public, organizations, and first nations communities to apply for funding on a rolling basis, rather than creating hard deadlines for participant funding.</p>

	<p>once they became more informed because of the process.</p> <p>During the NFLD RA, there were multiple rounds of funding, but the second round of funding seemed to be targeted at individuals and organizations that were already actively participating. Furthermore, there were deadlines on the applications for this funding.</p>	
10. Amending the Agreement		
10.1 The terms and provisions of the Agreement may be amended by written memorandum executed by the Ministers.	The terms of the NFLD RA agreement and committee TOR were amended, but the written memorandum regarding that amendment were never made public.	We recommend that provision 10.1 require that any amendments to the Agreement be made publicly available on the Agency's registry.
10.2 The Agreement may be terminated by either party at any time by written notice signed by either one of the Ministers with 30 days notice of termination.	While we understand and acknowledge the legal need for parties to an agreement to have an option to terminate the agreement, the <i>Impact Assessment Act</i> does not require the province (in this case, Ontario) to agree to the Regional Assessment. Subsection 93 (1)(a) of the <i>IAA</i> provides the Minister the discretion to enter into an agreement or arrangement with any jurisdiction regarding a regional assessment, but there is no requirement that unilateral termination of a jurisdiction then requires termination of the Regional Assessment.	Notwithstanding our comments and recommendations with respect to the need for Indigenous governance being formalized within the Agreement, we recommend that provisions be added that would set out the process under which the Regional Assessment would continue if the province of Ontario were to terminate the Agreement.
11. Signatures		
11.1 This Agreement may be signed by the parties in counterpart.		

Appendix A

A1.1 The maps below illustrate the “Assessment Area” for the Regional Assessment, which is an area centered on the Ring of Fire mineral deposits in northern Ontario and which reflects the specific underlying geological formations that represent the Ring of Fire mineral deposits. This area encompasses the future mine development activities upon which the Regional Assessment’s analysis of effects and associated recommendations will focus (See Agreement Section 2.3 and Appendix B Section 2.2 Items e) to h)).



We disagree with the narrow geographic scope for the Regional Assessment of the Ring of Fire area. There are currently no roads connecting Indigenous communities or potential mineral claims to other provincial transports systems. Accordingly, the scope of the assessment must be broad enough to include an assessment of the impacts in the broader region – especially the infrastructure that will be necessary for development to occur. See our comments above related to the need to expand the definition of “mine development activities”.

We recommend that the geographic scope of the Regional Assessment must include, at minimum, all the region’s First Nations and their territory and the James Bay lowlands and associated tributaries and peatlands.

We recommend that the scope of the Regional Assessment be refocused to include the broader Ring of Fire region, and to be focused on cumulative effects, which will include all mining and mining related activities.

A1.2 In conducting the Regional Assessment, the Committee will also define one or more Study Areas for the purposes of the description and analysis of the current environmental, health, cultural, social and economic conditions, and for the identification and consideration of potential positive and adverse effects (including cumulative effects) on the Assessment Priorities.

It is unclear why a distinction has been made between the Assessment Area and Study areas, or why the Committee will be given the discretion to define these Study Areas.

B1: Mandate and Activities of the Committee

<p>B1.1 The Committee will conduct a Regional Assessment in accordance with Sections 92-94 and 96-103 of the <i>IAA</i>, this Agreement and its Terms of Reference (this Appendix).</p>	<p>Section 97(2) of the <i>IAA</i> (2) requires the Committee to take into account any scientific information and Indigenous knowledge – including of Indigenous women – provided with respect to the assessment.</p> <p>Section 98 requires the Committee to make all the information it uses when conducting an assessment available to the public. This provision, when read in the context of section 97(2), requires the Committee to make all scientific information and Indigenous knowledge provided during the Regional Assessment available to the public.</p> <p>Section 99 requires the Committee to ensure the public is provided with an opportunity to participate <u>meaningfully</u>.</p> <p>Section 100 requires every federal authority with information or knowledge relevant to the Regional Assessment to make it available upon request by the Committee in the specified time frame, while section 101 gives the Committee the same powers as a review panel to summon a witness before it and order them to produce necessary evidence or records.</p> <p>Section 102 requires the Committee to produce a report to the Minister at the conclusion of the Regional Assessment. We</p>	<p>We recommend that the powers and obligations set out in sections 97 to 102 of the <i>IAA</i> be included in the Agreement for the sake of efficiency and ease of access for participants.</p> <p>We recommend that a requirement be added to the Agreement that the Committee must show how they considered all scientific information and Indigenous knowledge provided during the Regional Assessment.</p> <p>We recommend that the Committee be responsible for ensuring that its final report is posted on the Agency’s website, in a similar manner as its responsibility over ensuring the public is provided with all information that it considers as part of the Regional Assessment.</p>
---	--	---

	note that section 103 of the <i>IAA</i> , which requires the Agency to post a copy of the report to its registry, is not mentioned.	
B1.2 The Committee is mandated to receive information from Indigenous peoples on the nature and scope of any Aboriginal or Treaty rights protected by Section 35 of the Constitution Act, 1982 in the Assessment Area and Study Area(s), as well as information on potential adverse impacts that future mine development activities in the Assessment Area may (individually or cumulatively) have on these rights. Information provided to the Committee as part of this process may also inform Crown efforts to develop and implement meaningful consultation processes with Indigenous peoples in future project-specific impact assessments and other regulatory decision-making processes.	Meaningful consultation and accommodation with Indigenous peoples are required under section 35 of the <i>Constitution Act, 1982</i> .	The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations with respect to the conduct of the Regional Assessment.
B1.3 The Committee is not mandated or empowered by this Agreement to make any determination as to the existence or validity of Aboriginal or Treaty rights, <u>the probability of adverse impacts upon any such rights</u> , or whether any duty to consult has arisen and been discharged in any particular context.	It is unclear how the Committee can conduct a meaningful participatory process with Indigenous participants without commenting on the likelihood of effects, adverse and positive, on Aboriginal or Treaty rights identified during the regional assessment process.	We recommend that provision B1.3 be amended to clarify that the Committee can, and must, identify claimed Aboriginal or Treaty rights, and the potential adverse and positive impacts on those rights, but that such identification of the possible existence or validity of these rights does not replace the federal or provincial governments' duty to consult.
B1.4 In conducting its work, the Committee will recognize that Indigenous Knowledge is an important component of understanding potential effects (both positive and adverse), and that regional assessments can provide a means of	Recognition of the importance of Indigenous Knowledge is not enough. The Committee should be required to incorporate that knowledge into its assessment in the same	We recommend that provision B1.4 be amended, as follows: "In conducting its work, the Committee will recognize that incorporate Indigenous Knowledge is

<p>integrating scientific information and Indigenous Knowledge for use in future impact assessments.</p>	<p>manner as scientific information (and public input).</p> <p>This provision also fails to recognize the existence of other kinds of knowledge (for example, legal or community knowledge held by non-Indigenous communities).</p>	<p>an important component of understanding into its assessment of potential effects (both positive and adverse), and that regional assessments can provide a means of integrating scientific information and Indigenous Knowledge for use in future impact assessments."</p>
<p>B1.5 Any Indigenous Knowledge that is provided to the Minister, the Agency, or the Committee in confidence is considered confidential and will not knowingly be, or be permitted to be, disclosed without written consent in accordance with Section 119 of the IAA.</p>	<p>Section 119 of the IAA reads as follows:</p> <p><i>119 (1) Any Indigenous knowledge that is provided to the Minister, the Agency, a committee referred to in section 92, 93 or 95 or a review panel under this Act in confidence is confidential and must not knowingly be, or be permitted to be, disclosed without written consent.</i></p> <p><i>(2) Despite subsection (1), the Indigenous knowledge referred to in that subsection may be disclosed if</i></p> <p><i>(a) it is publicly available;</i></p> <p><i>(b) the disclosure is necessary for the purposes of procedural fairness and natural justice or for use in legal proceedings; or</i></p> <p><i>(c) the disclosure is authorized in the prescribed circumstances.</i></p>	

<p>B1.6 In conducting the Regional Assessment, the Committee will:</p> <p><i>Public and Indigenous Participation</i></p> <p>a) Ensure that the public is provided with an opportunity to participate meaningfully in the Regional Assessment.</p> <p>b) Engage with Indigenous peoples and governmental and non-governmental organizations, the mining industry, and individuals that have information, knowledge or interests relevant to the Regional Assessment. This will include members of the public, industry associations and companies, environmental and community organizations and any other person or group with information and interests related to the Regional Assessment and who wishes to participate in it.</p> <p>The Committee will develop and implement Participation Plans, including an Indigenous Participation Plan, with advice from the advisory supports referred to in Section 5.0 of the Agreement, if these advisory supports are in place at that time. The Committee will collaborate with Indigenous peoples on the development and implementation of the Indigenous Participation Plan. Once completed these Participation Plans will be posted to the Registry and updated regularly by the Committee, with advice from the advisory supports, to ensure that participants are aware of</p>	<p><i>Public and Indigenous Participation</i></p> <p>As set out in section 2 of the Agency’s Framework: <i>Public Participation Under the Impact Assessment Act</i>, <u>meaningful</u> public participation is understood by the Agency to mean that “members of the public who wish to participate in an impact assessment have an opportunity to do so and are provided with the information and capacity that enables them to participate in an informed way”.</p> <p>One important component of <u>meaningful</u> public participation is ensuring that the public and Indigenous communities (Nations), have capacity to undertake the work – many hours of paid <i>and</i> unpaid work – that is required and necessary to enable those affected and impacted by the regional assessment to become informed and respond to all the issues raised by the draft agreement. Public participation funds are critical to enhancing capacity; however adequate time to is also essential to capacity. It takes significant time to gather information and to consult and confer with others and to gather relevant information to effectively respond to the issues identified. It takes further time to draft and review a submission, to share that submission with others with whom you engage, and to ensure that the submission is reflective of concerns, and useful to the Agency.</p>	<p><i>Public and Indigenous Participation</i></p> <p>We recommend that the public receive frequent opportunities to provide input and recommend that funding continue to be made available to participants as needed.</p> <p>We recommend that the Committee seek Indigenous and public input with respect to the development and implementation of the public participation plans, similar to the way the Committee will work with Indigenous peoples with respect to the Indigenous Participation Plan.</p> <p>We recommend that the public participation plans and Indigenous participation plans be implemented as the first step of the Committee’s work, and that draft participation plans be posted onto the registry for comment within 30 days of the Committee’s configuration.</p> <p>We recommend that changes to the public participation plans be communicated in advance to the public with at least 30 days written notice, to be posted on the Agency’s registry.</p> <p><i>Description of Existing Conditions</i></p>
---	---	--

<p>planned participation approaches and upcoming activities.</p> <p><i>Description of Existing Conditions</i></p> <p>c) Identify, compile, review and present information on existing environmental, health, cultural, social and economic conditions within the Study Area(s) referenced in Appendix A. As noted in Section 5.5 of the Agreement, this will include information contained in any past or ongoing impact or environmental assessments conducted under federal or provincial legislation, and information provided by government, industry, academia, Indigenous peoples or the public.</p> <p><i>Identification of Information and Knowledge Gaps</i></p> <p>d) Identify and evaluate information and knowledge gaps, with a focus on the Assessment Priorities, and on any associated gaps with relevance to, and implications for, impact assessments for future mine development activities in the Assessment Area.</p> <p>e) Make recommendations to address such information and knowledge gaps as appropriate.</p> <p><i>Analysis of Effects, Mitigation and Follow-up</i></p> <p>f) Identify and consider the potential positive and adverse effects of future mine development activities in the Assessment Area on the</p>	<p>We see the requirement for the Committee to develop and implement public participation and Indigenous participation plans as an important step to ensuring that the public and Indigenous groups are informed about when and how they can participate.</p> <p><i>Description of Existing Conditions</i></p> <p>While identifying, compiling, reviewing, and presenting information on <u>existing</u> conditions within the Study Areas is helpful, the Committee must also be required to assess the cumulative effects of those existing conditions.</p> <p><i>Identification of Information and Knowledge Gaps</i></p> <p>During the NFLD RA, one of the greatest shortcomings of the process was the inability or unwillingness of the committee to conduct a cumulative effects assessment because of the difficulty of doing such an assessment, which was due in part to gaps in knowledge and information about the many factors that are part of such an assessment.</p> <p>We also note that there are already legal principles – for example, the precautionary principle, the principle of inter-generational equity, and the polluter pays principles –</p>	<p>We recommend that provision B1.6 subsection (c) be amended to require the Committee to assess cumulative effects of existing conditions within the Study Areas, as follows:</p> <p><i>“Identify, compile, review and present assess information on existing environmental, health, cultural, social and economic conditions within the Study Area(s) referenced in Appendix A, including the cumulative thresholds and burdens on each of these components. As noted in Section 5.5 of the Agreement, this will include information contained in any past or ongoing impact or environmental assessments conducted under federal or provincial legislation, and information provided by government, industry, academia, Indigenous peoples or the public.”</i></p> <p><i>Identification of Information and Knowledge Gaps</i></p> <p>We recommend that the Committee be required to address the information and knowledge gaps that are required to conduct a cumulative effects assessment.</p>
---	---	---

<p>Assessment Priorities identified in Section 2.3 of the Agreement.</p> <p>This will include consideration of: potential malfunctions or accidents; any cumulative effects that may result from the effects of mine development activities in the Assessment Area in combination with other physical activities that have been or will be carried out; and the result of any interaction between the effects referenced above.</p> <p>g) Identify and consider the effects, both positive and adverse, that mine development activities in the Assessment Area may have on any Indigenous peoples, and any impact that they may have on the rights of the Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982.</p> <p>h) Identify and consider technically and economically feasible mitigation measures and other approaches for eliminating, reducing, controlling or offsetting potential adverse effects and creating and maximizing potential positive effects resulting from mine development activities in the Assessment Area on the Assessment Priorities specified in Section 2.3 of the Agreement.</p> <p><i>Other Considerations and Requirements</i></p> <p>i) Identify and consider the extent to which mine development activities in the Assessment Area</p>	<p>that provide guidance on how decisions should be made in the absence of information and knowledge.</p> <p><i>Analysis of Effects, Mitigation and Follow-up</i></p> <p>The Committee’s work should not be limited to identifying and “considering” knowledge and information, but must at minimum, include an assessment of cumulative effects. Assessment of cumulative effects is one of the primary and fundamental objectives of a regional assessment.</p> <p>With respect to mitigation and alternative measures, one of the scenarios or contexts that is often ignored or not considered and assessed, is the scenario whereby development does not go ahead – so, for instance in the Ring of Fire, a scenario whereby mine development activities do not occur.</p> <p><i>Other Considerations and Requirements</i></p> <p>Similar to our comment above, the Committee’s work should not be limited to identifying and considering effects but should include an assessment of those effects.</p> <p>During the NFLD RA, there were concerns that information which the committee was receiving was not being made available to</p>	<p>We recommend that the Committee be mandated to adopt a precautionary approach with respect to its work and with respect the creation of its recommendations related to decisions made in the absence of knowledge or information. This mandate would be adopted through the following language, derived from subsection 6(2) of the <i>Impact Assessment Act</i> (the purpose section):</p> <p>The Committee, in the administration, development, and implementation of the Agreement and the Regional Assessment, must exercise their powers in a manner that fosters sustainability, respects the Government’s commitments with respect to the rights of Indigenous peoples of Canada, and applies the precautionary principle.</p> <p><i>Analysis of Effects, Mitigation and Follow-up</i></p> <p>We recommend that provision B1.6 subsections (f) and (g) be amended to require the Committee to consider and assess cumulative effects of future mine development activities, as well as associated</p>
--	---	---

<p>and their potential effects, would: a) contribute to sustainability; and b) hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, and make recommendations on the manner in which future impact assessments should consider and address these factors.</p> <p>j) Consider the intersection of sex and gender with other identity factors and make recommendations on the manner in which future impact assessments should consider and address these factors.</p> <p>k) Take into account any scientific information, Indigenous knowledge — including the knowledge of Indigenous women — and community knowledge provided with respect to the Regional Assessment.</p> <p>l) Ensure that the information that it uses in conducting the Regional Assessment is accessible to the public. If the Committee receives information that it has agreed to keep confidential, the Committee shall keep that information confidential unless required to disclose the information by law.</p> <p>m) Describe how the findings or recommendations of the Regional Assessment could be used to inform future impact assessments for proposed mine development</p>	<p>the public. At one point in the process, the Committee sent out input forms to participants which included an option for participants to opt out of information being made public. The forms were later changed following our organization raising the issue. The Committee should not be allowed the discretion to agree to keep information confidential unless required to do so by law.</p>	<p>activities, and other anthropogenic and natural processes in the Assessment Area and Study Areas, as follows:</p> <p><i>“Identify and consider the potential positive and adverse and cumulative effects of future mine development activities in the Assessment Area on the Assessment Priorities identified in Section 2.3 of the Agreement.</i></p> <p><i>This will include consideration of: potential malfunctions or accidents; any cumulative effects that may result from the effects of mine development activities in the Assessment Area in combination with all other anthropogenic and natural activities and processes other physical activities that have been or will be carried out; and the result of any interaction between the effects referenced above.</i></p> <p><i>g) Identify and consider the effects, both positive and adverse, positive, adverse and cumulative effects that mine development activities in the Assessment Area may have on any Indigenous peoples, and any impact that they may have on the rights of the Indigenous peoples recognized</i></p>
--	--	--

<p>activities in the Assessment Area as well as other initiatives as applicable.</p> <p><i>Administration, Review and Reporting</i></p> <p>n) Submit regular status reports to the Ministers.</p> <p>o) Provide a public review and comment period on a draft Report prior to the submission of the final Report to the Ministers.</p> <p>p) If requested, provide copies of the draft Report in paper or electronic formats to participating communities, organizations and industry in addition to posting the draft Report on the Canadian Impact Assessment Registry Internet site. In addition, the Committee will include a summary of its Report translated into Ojibway, Oji-Cree and Cree.</p> <p>q) Finalize and submit the final Report to the Ministers.</p>		<p><i>and affirmed by section 35 of the Constitution Act, 1982.</i></p> <p>We recommend that provision B1.6 subsection (h) be amended to require the Committee to consider a scenario where mine development activities are not carried out, as follows:</p> <p><i>“Identify and consider technically and economically feasible mitigation measures and other approaches for eliminating, reducing, controlling or offsetting potential adverse effects and creating and maximizing potential positive effects resulting from mine development activities in the Assessment Area on the Assessment Priorities specified in Section 2.3 of the Agreement, including consideration and assessment of a scenario whereby mine development activities do not occur in order to prevent adverse impacts on existing conditions and the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982.”</i></p> <p><i>Other Considerations and Requirements</i></p>
--	--	---

		<p>We recommend that provision B1.6 subsection (i) be amended to require the Committee to conduct an assessment of potential effects, as follows:</p> <p>i) Identify and, consider and assess the extent to which mine development activities in the Assessment Area and their potential effects, would: a) contribute to sustainability; and b) hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, and make recommendations on the manner in which future impact assessments should consider and address these factors.</p> <p>We recommend that provision B1.6 subsection (k) be amended to require the Committee to consider scientific information, and Indigenous and community knowledge, and to show how those considerations affected its final recommendations, as follows:</p> <p><i>“Take into account Consider any scientific information, Indigenous knowledge — including the knowledge of Indigenous women —</i></p>
--	--	--

		<p><i>and community knowledge provided with respect to the Regional Assessment and to show how that information and knowledge was considered with respect to its final recommendations.</i></p> <p>We recommend that Provision B1.6 subsection (l) be amended to remove the ability of the Committee to agree to keep information confidential, unless it is required to do so by law, as follows:</p> <p><i>Ensure that the information that it uses in conducting the Regional Assessment is accessible to the public. If the Committee receives information that it has agreed to keep confidential, The Committee shall keep that only keep information confidential if required to do so by law, and will unless required to disclose any the information as required by law.</i></p> <p><i>Administration, Review and Reporting</i></p> <p>We recommend that all regular status reports to the Minister be made available to the public on the Agency's registry.</p>
--	--	---

		<p>We recommend that the public review and comment period on the draft Report be made available for at least 90 days.</p> <p>We recommend that the Committee be required to summarize the public comments received, including on the draft Report, and to indicate how those comments influenced the Final Report.</p>
B2: Committee Report		
<p>B2.1 On completion of the Regional Assessment, the Committee will provide the Ministers with a Report, as outlined in the Agreement, which will describe the conduct, and document the results, of the Regional Assessment including the information outlined below.</p>		
<p>B2.2 In its Report, the Committee will, in accordance with the objectives of the Regional Assessment outlined in Section 1.2 of the Agreement, include the following information for consideration and use in impact assessments for future mine development activities in the Assessment Area:</p> <p><i>Objective A: Providing information, knowledge and analysis related to key, regional-scale environmental, health, cultural, social and economic conditions, values, and issues, with consideration and integration of both Indigenous knowledge and scientific information.</i></p>	<p><i>Objective A: Providing information, knowledge and analysis related to key, regional-scale environmental, health, cultural, social and economic conditions, values, and issues, with consideration and integration of both Indigenous knowledge and scientific information.</i></p> <p>Regional assessment, as a tool, is meant to be used within a tiered decision-making structure, alongside strategic assessment and project-specific impact assessment. As such, the Regional Assessment must be more than an information gathering exercise. It must be used to assess regional-</p>	<p><i>Objective A: Providing information, knowledge and analysis related to key, regional-scale environmental, health, cultural, social and economic conditions, values, and issues, with consideration and integration of both Indigenous knowledge and scientific information.</i></p> <p>We recommend that, if a GIS or other electronic format, is used to house information, that that process be completed before the regional assessment is finalized, and that the public have sufficient time to review</p>

<p>a) An inventory and compilation of existing and publicly accessible scientific, technical, Indigenous and cultural information and knowledge for the Assessment Area and Study Area(s).</p> <p>b) A description of current environmental, health, cultural, social and economic conditions of the Assessment Area and Study Area(s). This description will be presented in a manner to be determined by the Committee, which in addition to the Committee’s Report may include information in an electronic format (such as through a Geographic Information System (GIS) application).</p> <p>c) An identification and analysis of key information gaps, requirements and opportunities, with a focus on those with relevance to, and implications for, impact assessments for future mine development activities in the Assessment Area.</p> <p>d) Recommendations to address such information and knowledge gaps as appropriate.</p> <p><i>Objective B: Identifying and recommending mitigation measures and other potential and innovative approaches for addressing potential positive and adverse effects (both project-specific and cumulative, including potential impacts on Indigenous peoples), to support sustainability considerations as part of future decision-making</i></p>	<p>scale cumulative effects for various development scenarios.</p> <p>One of the pieces of the NFLD RA which was heavily emphasized as part of that process, was the development and (partial) implementation of a GIS, which was meant to be a repository of all the information, maps, data, and studies that the Committee gathered as part of its work. There was a fair amount of nervous optimism with respect to a database that could be used to house information and knowledge, and then to assess regional-scale cumulative effects to inform decision-making. However, the GIS became problematic because it was never fully implemented, in part because the Committee’s recommendations with respect to maintaining the GIS as part of an “evergreen” process, replete with an oversight body to maintain the GIS, were never realized. We also remain critical about the amount of time that was taken to create a GIS in the Committee’s documented absence of sufficient time to complete other mandatory work (for example, cumulative effects assessment).</p> <p>An inventory not a sufficient outcome for a regional assessment; the Committee must make use of that inventory and draw some regional-scale conclusions and assessment based on the information and knowledge</p>	<p>the GIS as part of the public participation for the Regional Assessment.</p> <p>We recommend that provision B2.2 subsection (c) be removed or amended to broaden the scope of the Committee’s identification and analysis of key information gaps, requirements and opportunities to all anthropogenic and natural activities in the region as part of a cumulative effects assessment.</p> <p><i>Objective B: Identifying and recommending mitigation measures and other potential and innovative approaches for addressing potential positive and adverse effects (both project-specific and cumulative, including potential impacts on Indigenous peoples), to support sustainability considerations as part of future decision-making for mine development activities in the Assessment Area.</i></p> <p><i>Objective C: Providing an understanding of the regional context that can be used in considering and evaluating the effects of future mine development activities in the Assessment Area to inform future impact and the</i></p>
--	--	--

<p><i>for mine development activities in the Assessment Area.</i></p> <p>e) An identification and analysis of potential changes to the environment or to health, cultural, social or economic conditions that may result from mine development activities in the Assessment Area, and the potential positive or adverse consequences of these changes on the Assessment Priorities.</p> <p>f) Recommendations on potential mitigation measures and other approaches that are technically and economically feasible for addressing the potential adverse effects or maximizing the potential positive effects of future mine development activities in the Assessment Area on the Assessment Priorities. This may include standard mitigation measures as well as other potential and innovative approaches, technologies and measures that may be required to address particular issues identified through the Regional Assessment.</p> <p>g) Recommendations on potential approaches and measures to address regional-scale and non-project specific effects on the Assessment Priorities. This may include potential policy, plan, program, regulatory or other initiatives by governments or other relevant parties.</p> <p><i>Objective C: Providing an understanding of the regional context that can be used in considering and evaluating the effects of future mine</i></p>	<p>gathered, in part to help guide its final recommendations.</p> <p><i>Objective B: Identifying and recommending mitigation measures and other potential and innovative approaches for addressing potential positive and adverse effects (both project-specific and cumulative, including potential impacts on Indigenous peoples), to support sustainability considerations as part of future decision-making for mine development activities in the Assessment Area.</i></p> <p>As we commented above, one of the scenarios that the Committee should address as part of the potential mitigation measures, considering the need to address effects in the area using a sustainability lens, is a scenario where mine development activities do not occur, which eliminates all potential adverse effects, and will also lead to some positive effects and possibilities in the region. Any assessment of mitigation measures that are “technically and economically feasible” should go through a cumulative affects lens that includes a consideration of the counter measures that would be necessary if these measures fail: for instance, what are technically and economically feasible ways to address the lost carbon and carbon-sequestration functions of peatlands in the region if they were destroyed?</p>	<p><i>planning and management of cumulative effects in a manner that fosters sustainability.</i></p> <p><i>Objective D: Describing how the findings or recommendations of the Regional Assessment could be used to inform, and enhance the effectiveness and efficiency of, future impact assessments as well as other initiatives as applicable.</i></p> <p>We recommend that the Committee be asked explicitly to include a cumulative impacts assessment to be used to guide future impact assessments.</p>
---	--	--

<p><i>development activities in the Assessment Area to inform future impact and the planning and management of cumulative effects in a manner that fosters sustainability.</i></p> <p>h) An identification and analysis of key environmental, health, cultural, social or economic components, values and issues with respect to potential effects on the Assessment Priorities, that should be considered in impact assessments for future mine development activities and other physical activities in the Assessment Area. This will include identifying and highlighting:</p> <p>i. Any components, values, locations or times that may be particularly susceptible to further change as a result of past, on-going or future mine development activities and other natural or human-induced disturbances; and</p> <p>ii. Any circumstances where the nature, location, timing and potential accumulation of these effects may result in potential cumulative effects (positive or adverse), and potential approaches to avoiding, creating, reducing or maximizing such effects, as applicable.</p> <p><i>Objective D: Describing how the findings or recommendations of the Regional Assessment could be used to inform, and enhance the effectiveness and efficiency of, future impact assessments as well as other initiatives as applicable.</i></p>	<p>As noted throughout our submission, an assessment of potential approaches and measures to address regional scale impacts on assessment priorities must be conducted through sustainability and cumulative effects lenses.</p> <p><i>Objective C: Providing an understanding of the regional context that can be used in considering and evaluating the effects of future mine development activities in the Assessment Area to inform future impact and the planning and management of cumulative effects in a manner that fosters sustainability.</i></p> <p>As noted above, there is a need not only to identify and analyze possible environmental health, cultural, social, or economic components, but to assess these cumulative effects.</p> <p><i>Objective D: Describing how the findings or recommendations of the Regional Assessment could be used to inform, and enhance the effectiveness and efficiency of, future impact assessments as well as other initiatives as applicable.</i></p> <p>The scope of this objective for the Committee is too narrowly focused on “mine development activities” and should be broadened to include all natural and</p>	
---	--	--

<p>i) Recommendations on how to consider, implement or otherwise address the Regional Assessment findings in a clear, effective and efficient manner in future impact assessments for future mine development activities in the Assessment Area, and/or through other initiatives by governments or other parties.</p>	<p>anthropogenic activities and processes in the area.</p>	
<p>B2.3 The Committee will also include the following in its Report:</p> <p>a) A description of the existing impact assessment processes and other regulatory requirements that apply to mine development activities in the Assessment Area.</p> <p>b) A high-level, generic description of the types of mine development activities that may occur in the Assessment Area, including their construction, operations and decommissioning, closure and rehabilitation phases as applicable.</p> <p>c) The purpose of and need for such mining activities, including their potential benefits at the local, regional and national scales and role in providing access to critical minerals.</p> <p>d) A description of the public and Indigenous participation activities undertaken by the Committee during the conduct of the Regional Assessment, including a summary of any comments received and of where and how these were considered in the Regional Assessment.</p>	<p>The term “critical minerals” is vague and unhelpful, and is based on a constantly shifting political target, which results in “lists” of critical minerals constantly being changed. There is no scientific or legal definition of this phrase.</p> <p>The requirement for the Committee to recommend a follow-up program assumes that mine development activities will move forward.</p>	<p>We recommend that provision B2.3 subsection (a) also require a description of the existing provincial, national, and international legal requirements that pertain to mine development activities (as well as other anthropogenic and natural activities and processes), including laws respecting climate change obligations, migratory birds, species at risk, and biodiversity.</p> <p>We recommend that provision B2.3 subsection (b) be amended to require the Committee to provide information about all the anthropogenic and natural activities and processes that occur in the Assessment Area and Study Areas, as follows:</p> <p><i>“A high-level, generic description of the types of mine development anthropogenic and natural activities and processes that may occur in the Assessment Area, including their</i></p>

<p>e) An overview of how the Committee took into account and used any Indigenous Knowledge provided during the Regional Assessment. In doing so, the Committee must obtain consent to disclose any confidential Indigenous Knowledge provided as per Section 119 of the IAA unless otherwise required by law.</p> <p>f) Recommendations for a Regional Assessment follow-up program to consider and incorporate any new or updated information that becomes available after submission of the final Report by the Committee, in order to help ensure that the Regional Assessment remains current and useful into the future and continues to fulfill the goal and objectives of the Regional Assessment as outlined in this Agreement.</p>		<p><i>construction, operations and decommissioning, closure and rehabilitation phases as applicable. “</i></p> <p>We recommend that the phrase “critical minerals” be removed from provision B2.3 subsection (c).</p> <p>We recommend that provision B2.3 subsection (d) be amended to require the Committee to provide information about how public and Indigenous feedback were used (not just considered) in the Regional Assessment and the Committee’s final report.</p>
<p>B2.4 The Committee may request clarification of, or an amendment to, its Terms of Reference by sending a letter signed by the co-chairpersons to the President of the Agency setting out the request. Upon receiving such a request, the President of the Agency, in collaboration with the provincial Deputy Minister of Northern Development, Mines, Natural Resources and Forestry for Ontario, will provide the Committee such clarification or a response to the requested amendment in a timely manner.</p>	<p>During the NFLD RA, multiple funded participants, including our organization, requested clarification of the Committee’s Terms of Reference, with respect to issues like public participation, deadlines, cumulative effects assessment, and climate change obligations. These requests were repeatedly ignored by the Committee, even when it became clear that the Committee itself was not equipped to provide clarity.</p> <p>We do not understand why the federal Minister of Environment, who is responsible for the <i>Impact Assessment Act</i>, is not part of the decision-making process under that Act. This current process creates a conflict of interest between the President of the</p>	<p>We recommend that provision B2.4 be amended such that any member of the public can request clarification of the Committee’s Terms of Reference from the Committee or its secretariat, and if that body cannot provide a sufficient answer, that the Committee then forward that request for clarification to the federal Minister of Environment and Climate Change Canada, who provide a response without 30 days.</p> <p>We recommend that any requests for amendments to the Committee’s Terms of Reference be addressed to the federal Minister of Environment,</p>

	Agency and the agency that is acting as secretariat to the Committee. In the NFDL RA committee's TOR, the committee was able to request clarification of its Terms of Reference by sending a letter signed by the committee's co-chairs to the federal Minister of Environment, and the Minister, in collaboration with the federal Minister of Natural Resources and provincial Ministers, was mandated to provide a response.	and that the final decision-making be conducted by the Minister in consultation with Indigenous Nations in the Ring of Fire region.
B2.5 Subject to the above, the Committee will continue with the Regional Assessment to the extent possible while waiting for a response in order to adhere to the timelines of this Agreement.		We recommend that all responses to the Committee, or the public, with respect to clarification or amendments of the Committee's Terms of Reference be provided within 30 days and be made available to the public on the Agency's registry.
Appendix C: Topics for Which Input from Advisory Supports May be Sought by the Committee		
C.1.1 The Indigenous advisory supports referenced in Section 5.0 of the Agreement will provide the Committee with Indigenous Knowledge and perspectives on some or all of the topics listed below, as requested by the Committee during the conduct of the Regional Assessment. It will also advise the Committee on approaches for the collection, sharing and consideration of such knowledge and its incorporation into the Regional Assessment. a) Indigenous peoples and their communities, activities and other interests in the Study Area(s),	The language in this provision is inappropriate.	Notwithstanding our comments and recommendations above with respect to the need for Indigenous Nations to be part of the conduct and governance of the Regional Assessment, we recommend that provision C.1.1 of Appendix C be amended to require the Committee to seek input from Indigenous advisory supports, rather than command the supports to provide information, as follows:

<p>including Aboriginal or Treaty rights protected by section 35 of the Constitution Act, 1982;</p> <p>b) Environmental, health, cultural, social and economic conditions in the Study Area(s);</p> <p>c) Future mine development activities in the Assessment Area, including their:</p> <ul style="list-style-type: none"> a. Purpose; b. Associated physical activities; c. Regulatory requirements and applicable standards; d. Potential positive and adverse effects, including cumulative effects, on the Assessment Priorities; e. Relevant mitigation measures and follow-up, and other approaches for eliminating, reducing, controlling or offsetting potential adverse effects and creating and maximizing potential positive effects on the Assessment Priorities; and <p>d) Other topics relevant to the Regional Assessment, as requested by the Committee.</p>		<p><i>“The Indigenous advisory supports referenced in Section 5.0 of the Agreement will provide the The Committee with will seek Indigenous Knowledge and perspectives from Indigenous advisory supports on some or all of the topics listed below, as requested by the Committee during the conduct of the Regional Assessment. It will also advise the The Committee will also seek advice from the Indigenous advisory supports on approaches for the collection, sharing and consideration of such knowledge and its incorporation into the Regional Assessment.”</i></p>
<p>C.1.2 The scientific, technical and economic advisory supports referenced in Section 5.0 of the Agreement will provide the Committee with information and advice on some or all of the topics listed below, as requested by the Committee during the conduct of the Regional Assessment.</p>	<p>The wording of this provision is similarly inappropriate.</p>	<p>We recommend that provision C.1.2. of Appendix C be amended to require the Committee to seek input from the scientific, technical, and economic advisory supports, as follows:</p>

<p>a) Environmental, health, cultural, social and economic conditions in the Study Area(s);</p> <p>b) Future mine development activities in the Assessment Area, including their:</p> <ul style="list-style-type: none"> a. Purpose; b. Associated physical activities; c. Regulatory requirements and applicable standards; d. Potential positive and adverse effects, including cumulative effects, on the Assessment Priorities; e. Relevant mitigation measures and follow-up, and other approaches for avoiding or reducing potential adverse effects and creating and maximizing potential positive effects on the Assessment Priorities; and <p>c) Other topics relevant to the Regional Assessment, as requested by the Committee</p>		<p><i>“The Committee will seek advice from the The scientific, technical and economic advisory supports referenced in Section 5.0 of the Agreement will provide the Committee with information and advice on some or all of the topics listed below, as requested by the Committee during the conduct of the Regional Assessment. “</i></p>
--	--	--

Appendix D: Indigenous Talking / Sharing Circle

<p>D1.1 The Committee will provide the opportunity to establish, and will seek information and advice from, an Indigenous Elder(s)-led Talking/Sharing Circle during the conduct of the Regional Assessment.</p>		<p>The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to determine the most appropriate way for each Nation to bring forward and share their knowledge in culturally appropriate ways, and</p>
--	--	---

		to have a direct role in the conduct and decision-making within the Regional Assessment.
D1.2 The Circle would be comprised of individual community members from Matawa-member First Nations and Mushkegowuk-member First Nations who exercise traditional and cultural activities in the Assessment Area, and would allow a broad spectrum of Indigenous community members (Elders, youth, women, land users) an opportunity to participate in, and provide input to, the conduct of the Regional Assessment. There would be no limitations on the number of community members who could participate if they wish, all voices would be welcome.		The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to determine the most appropriate way for each Nation to bring forward and share their knowledge in culturally appropriate ways, and to have a direct role in the conduct and decision-making within the Regional Assessment.
D1.3 Under the guidance of one or more Elders, the Circle would allow participants to share information, knowledge and perspectives that are relevant to the Regional Assessment. The format and function of the Circle, and the manner in which its outcomes would be documented and provided to the Committee, will be determined by its participants.		The Minister <u>must</u> recognize and respect the jurisdiction of Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to determine the most appropriate way for each Nation to bring forward and share their knowledge in culturally appropriate ways, and to have a direct role in the conduct and decision-making within the Regional Assessment.
D1.4 Once created by its participants, the Circle will hold an introductory meeting with the		The Minister <u>must</u> recognize and respect the jurisdiction of

<p>Committee to discuss and plan the nature and conduct of its work, the process and timelines within which it will meet with, and provide input to, the Committee, and the manner in which this input may be used in the conduct of the Regional Assessment in accordance with the timelines and other provisions of this Agreement.</p>		<p>Indigenous Nations governing in the Ring of Fire region and negotiate on a nation-to-nation basis with each of those Indigenous Nations to determine the most appropriate way for each Nation to bring forward and share their knowledge in culturally appropriate ways, and to have a direct role in the conduct and decision-making within the Regional Assessment.</p>
---	--	---