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Regional Assessment of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia

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SENT BY EMAIL

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November 26, 2022

To Whom It May Concern,

Re: East Coast Environmental Law Comments on the Draft Agreements and Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia

East Coast Environmental Law is an environmental law charity that provides public-interest environmental law services throughout Atlantic Canada. We envision a future in which laws and legal systems protect ecological health and promote environmental and climate justice in Atlantic Canada, and, to realize that vision, we advocate for progressive environmental law and policy in Atlantic Canada, provide public legal education on environmental law and policy, and share our legal skills to support individuals, communities, and organizations that are working to prevent or redress environmental harms.

The following is our submission on the Draft Agreements and Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia. Recognizing that the Draft Agreements for the two provinces are substantially the same (although necessarily different in some particulars), we have focused some specific comments and recommendations on the Draft Agreement for Nova Scotia, intending for those comments and recommendations to be understood as applying to both Draft Agreements.

Our comments and recommendations draw largely on our experience participating in the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador, from which many lessons were learned. Our comments also reflect our experience to date as participants in the Regional Assessment in the Ring of Fire Area and the Regional Assessment of the St. Lawrence River Area. Among other things, those regional assessment processes demonstrate significant barriers that Indigenous communities have faced when

participating in regional assessments to date. Although we do not speak for Innu, Inuit, and Mi'kmaq in Newfoundland and Labrador, Mi'kmaq in Nova Scotia, or any other Indigenous peoples participating in the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia, our submission makes several comments emphasizing the duties of the Government of Canada and the respective governments of Newfoundland and Labrador and Nova Scotia to ensure that Indigenous rights and Indigenous jurisdiction shape the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia. Our comments in this regard aim to echo and amplify the concerns and requests that we have heard Indigenous communities raising in other regional assessment processes and relevant fora.

We are living in a climate emergency, and East Coast Environmental Law recognizes the significant role that offshore wind development may play in supporting a swift global transition to carbon neutrality. Although we support assessment, planning, and law reform processes that aim to facilitate Canada's necessary departure from fossil-fueled energy systems, we must nevertheless ensure that such processes are designed and conducted in accordance with core principles that shape environmental law in Canada and advance common goals of humankind that are articulated in the United Nations' sustainable development and climate change mitigation regimes. To that end, our submission raises several concerns that we have with the Draft Agreements and Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia and makes several corresponding recommendations. The narrative portion of our submission highlights seven key concerns and corresponding recommendations, and the table included as Appendix A provides comments and recommendations on specific provisions of the Draft Terms of Reference and Draft Agreement for Nova Scotia.

The comments and recommendations presented in our submission reflect the views of the full East Coast Environmental Law staff team, and contributions were made by Executive Director and Senior Lawyer Lisa Mitchell, staff lawyer Mike Kofahl, and staff lawyer Tina Northrup. We hope you find our comments and recommendations helpful, and we look forward to seeing how they are integrated into the final Agreements and Terms of Reference. 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 Submission on the Draft Agreements and Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia

1.0 Overview of Key Concerns and Recommendations

This narrative portion of our submission highlights seven key concerns that we have with the Draft Agreements and Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia, and it makes seven corresponding recommendations for changes to the draft documents.

Our seven key concerns and corresponding recommendations are as follows.

- (1) The Draft Agreements and Draft Terms of Reference create considerable ambiguity concerning the intended scopes of the Regional Assessments, suggesting in some places that the Regional Assessments will be scoped narrowly to include activities that are located exclusively in the offshore, while implying elsewhere that relevant onshore activities (such as activities where offshore transmission cables make landfall) may be included within the Regional Assessments. We recommend that the Draft Agreements and Draft Terms of Reference be amended to clarify that the Regional Assessments must not focus exclusively on offshore activities but must also include relevant onshore activities, including, but not necessarily limited to, onshore activities that are necessary for the transmission of offshore energy to land.
- (2) The Draft Agreements say little about the processes through which the Regional Assessment Committees will be established; moreover, they omit qualifications that will be crucial for strong Regional Assessment processes. We recommend that the Draft Agreements be amended to state that the Regional Assessment Committees will be established following consultation with Indigenous peoples and through transparent public processes. We also recommend that knowledge or experience related to cumulative effects assessment be included as necessary qualifications for both Committees.
- (3) The Draft Agreements and Draft Terms of Reference establish few parameters for the Secretariats that will be established to support the Regional Assessment Committees. We recommend that the Draft Agreements and Draft Terms of Reference be amended to clarify that the Secretariats will work under the direction of the Regional Assessment Committees and must play supportive roles rather than functioning as gatekeepers in the Regional Assessment processes. Additionally, it would be valuable for separate, publicly accessible Terms of Reference to be established for the Secretariats to make their functions clear.
- (4) The Draft Agreements and Draft Terms of Reference are too prescriptive about the establishment of advisory groups. By requiring the Regional Assessment Committees to establish three advisory groups as described in the draft documents, and by implying that the Committees are only empowered to establish the three advisory groups described, the

Draft Agreements and Draft Terms of Reference restrict the Committees' abilities to establish productive advisory structures that will support the Committees' specific needs. We recommend that the Draft Agreements and Draft Terms of Reference be amended to give the Committees flexibility in establishing advisory structures.

- (5) The Draft Agreements and Draft Terms of Reference fail to recognize that cumulative effects assessment is a core purpose of both Regional Assessments. We recommend that the Draft Agreements and Draft Terms of Reference be amended to recognize that cumulative effects assessment is a core purpose of both Regional Assessments and to incorporate references to and requirements concerning cumulative effects assessment throughout.
- (6) The Draft Agreements and Draft Terms of Reference fail to recognize sustainability as a core principle and goal underlying both Regional Assessments, focusing instead on a narrow vision of "sustainable economic development" that does not accord with the *Impact Assessment Act's* broader purpose of fostering sustainability. We recommend that references to "sustainable economic development" throughout the Draft Agreements and Draft Terms of Reference be removed and replaced by references to sustainability, which should be defined and incorporated in accordance with the broader purpose of the *Impact Assessment Act*.
- (7) The proposed timeframes for the Regional Assessments are insufficient to enable meaningful assessment processes (including meaningful stakeholder participation and effective cumulative effects and sustainability assessments). We recommend that the timeframes be extended to allow at least two full years for each Regional Assessment.

Our comments below describe our concerns and the reasoning behind our recommendations in more detail.

2.0 The Intended Scopes of the Regional Assessments

The Draft Agreements and Draft Terms of Reference create considerable ambiguity concerning the intended scopes of the Regional Assessments. The Draft Agreements define "offshore wind development activities" as meaning "the physical activities associated with the construction, including expansion, operation and decommissioning of an offshore wind generation facility and the associated offshore components and activities that support it, are specific to that facility, and are proposed as part of that offshore facility for the purposes of its development and impact assessment". Although the definition goes on to say that "[t]hese physical activities include the transmission of electricity to shore", repeated use of the term "offshore" within the definition suggests that the definition could be interpreted as including only "offshore" transmission infrastructure and not onshore facilities or other onshore activities that are necessary for the transmission of offshore energy to land.

It makes no sense to imagine that activities necessary for the transmission of offshore energy to land, such as the installation and operation of transmission cables, would be included in these Regional Assessments but only to the extent that those activities are conducted in the offshore (i.e., excluding the aspects of transmission that would pass out of the offshore and onto land),

and yet the current definition of “offshore wind development activities” could be interpreted and applied to require nonsensical scoping along such lines.

We therefore recommend that the Draft Agreements and Draft Terms of Reference be amended to make it clear that these Regional Assessments must not focus exclusively on offshore activities but must also include relevant onshore activities, including, but not necessarily limited to, onshore activities that are necessary for the transmission of offshore energy to land.

3.0 The Establishment of the Regional Assessment Committees

The Draft Agreements say little about the processes through which the Regional Assessment Committees will be established; moreover, they omit qualifications that will be crucial for strong Regional Assessment processes.

To the first point, the Draft Agreements refer to the Committees being established by federal ministers in agreement with provincial ministers and do not mention consultation with Indigenous peoples with respect to these significant decisions. Likewise, the Draft Agreements make no mention of public input into the establishment processes, although we know from our communications with the Impact Assessment Agency of Canada (“IAAC” or the “Agency”) that stakeholders have been told they are welcome to submit recommendations for appointment. We therefore recommend that the Draft Agreements be amended to state that the Regional Assessment Committees will be established following consultation with Indigenous peoples and through transparent public processes.

To the second point, we are concerned by the omission of knowledge or experience related to cumulative effects assessment as a necessary qualification that should be held by one or more members of each Committee. Conducting cumulative effects assessment is a core purpose of these Regional Assessments, and the Committees will struggle to carry out that purpose if persons with relevant knowledge and experience are not included in their composition. We therefore recommend that the Draft Agreements be amended to require that knowledge or experience related to cumulative effects assessment be reflected in the membership of each Committee.

4.0 The Roles of the Secretariats

The Draft Agreements and Draft Terms of Reference establish few parameters for the Secretariats that will be established to support the Regional Assessment Committees.

Our perspective as a participant in the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador (the “NFLD RA”) was that the “Task Team” established to assist the Regional Assessment Committee in that process played a significant gatekeeping role. It appeared to us that the Task Team took on the role of deciding what information was and was not relevant for the Committee’s consideration, which raised concerns that potentially relevant information was never brought to the Committee’s attention.

The Draft Agreements and Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia should be amended to

clarify that the Secretariats established for these Regional Assessments will work under the direction of the Regional Assessment Committees and must play supportive roles rather than functioning as gatekeepers. Additionally, it would be valuable for separate and publicly accessible Terms of Reference to be established for the Secretariats to make their functions clear.

5.0 Committee Flexibility to Establish Productive Advisory Structures

These Regional Assessments must provide productive processes and fora through which Indigenous rights-holders and other stakeholders can participate meaningfully. One of the key participation tools being proposed for the Regional Assessments is the establishment of advisory groups.

Under both Draft Agreements, the Regional Assessment Committees must establish three advisory groups: an Indigenous Knowledge and Perspectives Advisory Group, a Scientific and Technical Information and Analysis Advisory Group, and a Fisheries Advisory Group. Subsections A1.6(d) to A1.6(h) of the Draft Terms of Reference further define the tasks of the proposed advisory groups, which include providing information and advice to the Committees by identifying, analyzing, and using information and knowledge. Under the draft documents, the topic areas that the advisory groups may be asked to explore are extensive, including environmental, health, social, and economic conditions, considerations around offshore wind development, regulatory requirements, and cumulative effects.

Advisory structures can be productive fora for stakeholder participation in assessment processes, and we strongly support their use. However, in our view, the Draft Agreements and Draft Terms of Reference impose potentially unproductive restrictions on the Regional Assessment Committees by prescriptively requiring the Committees to establish three specific advisory groups.

Collectively, East Coast Environmental Law staff have considerable experience of engagement in a variety of fora designed to enable stakeholder participation in assessment processes, regulatory reviews, and law reform initiatives. We can point to several examples in which committees and review panels leading such processes designed dynamic and productive advisory structures by establishing creative combinations of advisory committees, knowledge rosters, and roundtables to facilitate dialogue, information-gathering, and input into the processes. Recognizing that some form of advisory structures will be essential to these Regional Assessments, the Regional Assessment Committees should be given flexibility to think creatively about the advisory structures that will serve the Regional Assessments most productively. We therefore recommend that the Draft Agreements and Draft Terms of Reference be amended to give the Committees flexibility in establishing advisory structures.

Having said that, we recognize that it is appropriate for the Draft Agreements and Draft Terms of Reference to set some clear expectations for the Regional Assessment Committees and that certain binding requirements may be necessary. For example, the Crown's legal obligations to Indigenous peoples in Canada and its stated commitment to reconciliation make it advisable for the Draft Agreements and Draft Terms of Reference to require the Committees to establish advisory structures that enable robust Indigenous participation.

We also note more generally that it will be important for the Regional Assessment Committees to avoid siloed approaches when establishing advisory structures for these Regional Assessments. The advisory structures need to support integrated understandings and the weaving together of knowledge and perspectives; otherwise, cumulative effects assessments and sustainability assessments will be impossible.

Ultimately, the advisory structures established by the Regional Assessment Committees should facilitate information sharing and the provision of advice. They should create fora that facilitate mutual learning and collaboration amongst participants. The fora should allow all participants to contribute knowledge about topics that are relevant to the Regional Assessments and should be designed with an eye to cumulative effects assessment and sustainability assessment. The added benefit of mutual learning and collaboration amongst participants is the creation or strengthening of relationships between stakeholders, which can have positive impacts on the efficiency and effectiveness of future processes that may be required for the assessment, licencing, and permitting of offshore wind developments.¹

6.0 Cumulative Effects Assessment

Broadly, regional assessments are processes that are meant to be used together with other assessment and planning processes to inform and guide government decision-making. As processes available under the *Impact Assessment Act* (“IAA”), regional assessments are designed for assessing the potential impacts of designated activities at a regional level. Like impact assessments, regional assessments are guided by the purposes of the *IAA*, some of which include the following: fostering sustainability; protecting components of the environment; protecting health, social, and economic conditions; ensuring respect for the rights of the Indigenous peoples of Canada; taking into account scientific information as well as Indigenous and community knowledge; ensuring projects are considered in a careful and precautionary manner; assessing cumulative effects; and, creating opportunities for meaningful public participation.²

Since the *IAA* is not prescriptive about how regional assessments ought to be conducted, there is an opportunity for these Regional Assessments to be innovative and transformative. They can help shape an effective and efficient decision-making framework to allow all stakeholders and government to work in meaningful and collaborative ways to decide which environmental and socioeconomic risks accord with the public interest.

To be effective, the Regional Assessments will need to feature cumulative effects assessments and propose frameworks through which long-term sustainability can be assessed with respect to offshore wind developments. Regional assessments are ideally suited amongst the processes found in the *IAA* to consider and assess cumulative effects, because project specific assessments in Canada have typically failed to adequately consider cumulative effects.³

¹ Meinhard Doelle, “The Role of Strategic Environmental Assessments (SEAs) in Energy Governance: A Case Study of Tidal Energy in Nova Scotia’s Bay of Fundy” *Journal of Energy & Natural Resources Law* 27:2 (2009) at page 25.

² *Impact Assessment Act* SC 2019 c 28 s 1 at subsection 6(1) [“IAA”].

³ See Meinhard Doelle and A. John Sinclair, “Regional & Strategic Assessments in the Proposed Federal Impact Assessment Act (IAA)” (25 February 2018), online: <<https://blogs.dal.ca/melaw/2018/02/25/regional-strategic-assessments-in-the-proposed-canadian-impact-assessment-act-ciaa/>>; see also Robert B. Gibson, Meinhard Doelle,

Cumulative effects are not defined in the *IAA* or in the Draft Agreements or Draft Terms of Reference for the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia. However, cumulative effects must, by definition and by necessity, cover a broad range of potential past, present and future effects. We offer our understanding of cumulative effects as follows: the synergetic, compensatory, and additive effects, across spatial and temporal boundaries, of relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes.⁴ Examples of cumulative effects in offshore Nova Scotia might include the possible synergetic effects of vessel noise on marine mammals, the compensatory effects of increased development versus increased marine conservation, or the additive impacts of subsea cables and transmission lines on the environment or human activities like fishing.

Although best practices for regional assessment and 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 that it faced “key challenges” when attempting to comprehensively evaluate cumulative effects, including the “uncertainty around the nature, intensity and spatial and temporal distribution of future activities and their effects”. The Committee recommended that “a more proactive and holistic approach through associated policy and planning decisions by the federal and provincial governments” be adopted.⁵ It also concluded that a planning approach, rather than predictive modeling, was the best avenue to address cumulative effects, and it deferred to future land tenure processes as the “optimal point” at which cumulative effects would be addressed.⁶

We recognize that cumulative effects assessment is challenging, but it is necessary nevertheless, and committees tasked with carrying out regional assessments must be equipped with the expertise, resources, and time required to conduct such cumulative effects assessments.⁷ We believe the NFLD RA Committee ultimately failed to conduct a cumulative effects assessment because it had not been equipped to do so

The NFLD RA Committee’s treatment of cumulative effects assessment fell below expectations for several key reasons: process issues and a short timeline hampered the comprehensiveness of the assessment; many relevant effects and environmental conditions were not considered, and none were assessed; and, no framework to address or assess cumulative effects through a land-

and A. John Sinclair, “Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment”, *Journal of Environmental Law and Practice* 29 [“Gibson *et al*”]; see also Peter N. Duinker and Lorne A. Greig, “The impotence of cumulative effects assessment in Canada: ailments and ideas for redeployment” *Environmental Management* 37:2 (2006) [“Duinker and Greig”].

⁴ See for example the definition set in Canadian Council of Ministers of the Environment, *Canada-wide Definitions and Principles for Cumulative Effects*, PN 1541 (2014), online:

<https://ccme.ca/en/res/cedefinitionsandprinciples1.0e.pdf>.

⁵ 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) at page 121 [“NFLD RA Final Report”].

⁶ *Ibid* at page 150.

⁷ *Ibid* at page *x*.

⁷ We would note, however, that cumulative effects assessments are notoriously more difficult to do at the project level. See for example Duinker and Greig (full citation at footnote 3) at pages 156 -158.

tenure system was produced.⁸ Exacerbating these shortcomings was the subsequent failure to establish or conduct a cumulative effects assessment through the NFLD RA Follow-up Program.

The experience during the NFLD RA is particularly relevant to the Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia for several reasons. First, there will be many overlaps with respect to environmental and socioeconomic conditions because of the focus on the offshore environment (as well as an actual overlap of Study Areas in the Newfoundland and Labrador offshore) and the potential involvement of the Canada-Newfoundland and Labrador Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board. Additionally, the federal government and the respective provincial governments have indicated their intentions to undertake legislative reform to create land tenure licencing regimes like those used for offshore oil and gas.⁹ The major difference between offshore oil and gas and offshore wind is that there is no regime yet for offshore wind, creating an opportunity to learn from the NFLD RA and consider how a potential future land tenure process for offshore wind, and the planning of such a regime, can be viewed through the lenses of cumulative effects and sustainability.

The proposed goals of the Regional Assessments already indicate a desire by the federal and provincial governments to consider impacts from offshore wind developments in a way that informs future planning and decision-making. For example, the Draft Agreement for Nova Scotia states:

1.1 The goal of the Regional Assessment is:

To provide information, knowledge and analysis regarding future offshore wind development activities in the Study Area and their potential effects, in order to inform and improve future planning, licencing and impact assessment processes for these activities in a way that helps protect the environment and health, social and economic conditions while also creating opportunities for sustainable economic development. [emphasis added]

We are encouraged that the Regional Assessments are meant to inform future planning, licencing, and impact assessment processes for offshore wind developments, because regional assessments should be more than information gathering processes. However, cumulative effects assessment must play a central part in both Regional Assessments. As currently described in the Draft Agreements and Draft Terms of Reference, the objectives of the Regional Assessments do not indicate that cumulative effects assessment will feature as the core component of the Committees' work.

Cumulative effects are mentioned twice in the proposed objectives section of the Draft Agreement for Nova Scotia. The relevant provisions are reproduced here:

⁸ NFLD RA Final Report (full citation at footnote 5) at pages 121-156.

⁹ Impact Assessment Agency of Canada, "Regional Assessment of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia: Regional Assessment Planning Workshop" (August 2022), online: <<https://iaac-aeic.gc.ca/050/evaluations/document/145003>>.

1.2 The objectives of the Regional Assessment are to facilitate the above goal by:

[...]

b) Providing an understanding of the regional context that can be used in considering and evaluating the effects of future offshore wind development activities, to inform future planning and licencing processes and impact assessments, including the management of cumulative effects.

c) Identifying and recommending mitigation measures and other approaches for addressing potential positive and adverse effects (both project-specific and cumulative) as part of future decision-making for offshore wind development activities, in a manner that fosters sustainability. [emphases added]

In both instances, cumulative effects are framed as sub-components of other tasks to be completed during the Regional Assessment, rather than as effects that must be considered holistically in their own right. Subsection 1.2(b) talks about the “management” of cumulative effects in relation to future planning, licencing, and impact assessment processes. We find it difficult to understand how the Regional Assessment Committee will set up the regional context in the offshore Study Area and identify ways to manage cumulative effects without first understanding the possible cumulative effects in the offshore. Subsection 1.2(c) treats cumulative effects in a similar fashion by framing cumulative effects as effects that can be addressed through mitigation measures or other approaches. Again, up to this point, neither the goal or objectives mention identification and assessment of cumulative effects, and it is difficult to imagine any scenario where the Committee could comment on ways to manage or address cumulative effects without first identifying and assessing them.

As we have already noted, regional assessments are processes that are used to assess anthropogenic activities and natural processes in a region to inform regional planning. Such processes can identify baselines against which all future activities are measured and provide recommendations and guidance for future decision-making. If the goals of these Regional Assessments will be to inform future planning efforts focused on offshore wind development, if offshore wind developments will be required to undergo impact assessment under the *IAA* as well as other decision-making processes, and if we recognize that cumulative effects must be assessed but that project specific impact assessments are inadequate to that task, we can infer that cumulative effects assessment must play a central role in facilitating the goals of the Regional Assessments.

7.0 Sustainability

The stated intention to have these Regional Assessments inform future planning reflects an important concept that is embedded in the *IAA*: sustainability. As we have already noted, one of the purposes of the *IAA* is to foster sustainability.¹⁰ Additionally, subsection 6(2) of the *IAA* sets out the following mandate:

¹⁰ *IAA* (full citation at footnote 2) at subsection 6(1)(a).

The Government of Canada, the Minister, the Agency and federal authorities, 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. [emphasis added]

Although the Regional Assessment Committees will not be mandated directly under subsection 6(2), it is reasonable to assume that, by virtue of being appointed by the Minister and having a role in the administration of regional assessments being conducted under the Act, the Committees must consider that mandate to extend to their work. Additionally, the IAA requires that all impact assessments of designated activities consider how proposed activities will contribute to sustainability.¹¹ Because these Regional Assessments are meant to inform future planning, including impact assessment, it is imperative that they support the IAA’s objective of fostering sustainability.

The current focus on “sustainable economic development” within the Draft Agreements and Draft Terms of Reference is narrow. As it is defined in the IAA and understood generally, sustainability inherently includes contributions to economic wellbeing as well as requiring environmental protection, long-term social development, and preservation of the wellbeing of future generations. Sustainability should be the focus of these Regional Assessments, not “sustainable economic development”.

Sustainability is defined in the IAA as “the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations”. IAAC’s guidance on sustainability in its *Practitioner’s Guide to Federal Impact Assessment* (the “*Practitioner’s Guide*”) is also informative. In particular, the Agency identifies four guiding sustainability principles that are meant to inform a sustainability analysis. While these principles are not necessarily reflective of the full extent or range of commonly accepted sustainability principles, they are useful for framing sustainability assessment in the context of these Regional Assessments.¹² The four principles set out in the *Practitioner’s Guide* are: recognizing the interconnectedness and interdependence of human-ecological systems; considering the wellbeing of present and future generations; maximizing positive benefits and limiting adverse effects; and, applying the precautionary principle.¹³

¹¹ *Ibid* at subsection 22(1)(h).

¹² For literature discussing sustainability, see: Robert Gibson, “Sustainability assessment: basic components of a practical approach” (2004), online: <https://www.iaia.org/pdf/IAIAMemberDocuments/Publications/Conference_Materials/IAIA04/PapersPDF/SN1.1-Gibson-Sustainability%20Assessment.pdf>; Robert Gibson *et al* “Synthesis at the nexus of sustainability assessment, regional/strategic assessment and Indigenous partnerships” (17 June 2020), online: <https://uwaterloo.ca/applied-sustainability-projects/sites/default/files/uploads/documents/gibson_et_al_ks_rpt_sept_2020.pdf>.

¹³ Impact Assessment Agency of Canada, “Guidance: Considering the Extent to which a Project Contributes to Sustainability” Part 2.2 of the *Practitioners Guide to Federal Impact Assessments* (6 December 2021), online: <<https://www.canada.ca/content/dam/iaac-acei/documents/policy-guidance/pp-pp/guidance-considering-extent-project-contributes-sustainability.pdf>>.

Recognizing the interconnectedness and interdependence of human and ecological systems requires consideration of the interactions and complexities of activities and processes in a way that can be linked to cumulative effects assessment. It is a recognition that projects must not be viewed individually or in a siloed approach, but must instead be viewed holistically in a way that draws together the interrelated components.¹⁴ Consideration of present and future generations is closely tied to the need to maximize positive benefits and limit adverse effects, as well as the need to proceed with precaution in the face of uncertainty. Another similar concept is the need to consider how positive and adverse impacts are equitably distributed for present and future generations. Regardless of the specific principles that might be considered, the underlying foundation of sustainability is the need to consider present activities and proposals in a way that fosters a livable and equitable future.

Sustainability is not about approving development with mitigation measures, but is instead an approach to identifying the projects that can ensure a sustainable future. Yet, the Draft Agreements and Draft Terms of Reference indicate that holistic sustainability assessments will not feature prominently in these Regional Assessment processes. Instead, the focus appears to be an embedded presumption that offshore wind development will lead to sustainability and that adverse effects can simply be mitigated. We need not look further than subsection 1.2(c) to find evidence of this approach to sustainability:

1.2 The objectives of the Regional Assessment are to facilitate the above goal by:

[...]

c) Identifying and recommending mitigation measures and other approaches for addressing potential positive and adverse effects (both project-specific and cumulative) as part of future decision-making for offshore wind development activities, in a manner that fosters sustainability.

d) Describing how the findings or recommendations of the Regional Assessment could be used to inform future planning and licencing processes for these activities and to enhance the effectiveness and efficiency of their impact assessments. [emphases added]

In subsection 1.2(c), the focus is on identification of mitigation measures or other methods to address positive and adverse effects in order to foster sustainability, rather than undertaking an assessment of sustainability to: (a) determine if and how offshore wind development activities will contribute to a sustainable future; and, (b) recommend a framework or set of criteria and mitigation measures that, when used, can be applied in the future to determine whether specific offshore wind developments will foster sustainability.

The preference for mitigation measures over sustainability assessment is perhaps most notable in the instructions to the advisory groups contemplated under the Draft Agreements and Draft Terms of Reference. Under subsection A1.6(h) of the Draft Agreement for Nova Scotia, the

¹⁴ *Ibid* at subsection 4.1.1.

advisory groups will provide information and advice to the Regional Assessment Committee on a range of topics. Mitigation measures are included, but sustainability is omitted.

The focus on using these Regional Assessments to identify and recommend mitigation measures is further narrowed in the Draft Terms of Reference. Subsection A1.6(v) requires the Committees to:

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 offshore wind development activities in the Study Area. [emphasis added]

Likewise, subsection A2.3 of the Draft Terms of Reference requires the Committees to include the following information in their final reports to the Minister, in accordance with and in the context of the objective identified in subsection 1.2(c) of the Agreement:

Recommendations on potential mitigation measures and other approaches that are technically and economically feasible for addressing the potential adverse effects of future offshore wind development activities in the Study Area or creating and maximizing their potential positive effects and the equitable distribution of these benefits. This may include standard measures as well as other potential approaches, technologies and measures that may be required to address particular issues identified through the Regional Assessment. [emphasis added]

In these instructions for the Committees, only technical and economically feasible mitigation measures are proposed for consideration. The problem with focusing only on identifying mitigation measures to minimize adverse effects is that in setting a standard, it sets a low bar rather than a high bar. Rather than mandating the Committees to identify standards or criteria that can guide future decision-making in the Study Areas to ensure lasting positive environmental and socioeconomic effects that are fairly and equitably distributed, the draft documents mandate the Committees to identify mitigation measures that will accommodate industry at the expense of communities most directly impacted.¹⁵ This is fairly evident in the Committees' mandates to identify and consider only mitigation measures that are "technically and economically feasible". Recommendations addressing mitigation measures that are "technically economically feasible" tend to be defined largely by industrial proponents, and conclusions drawn about such feasibility may not reflect the broader public interest in sustainability. Focusing the Committees' attention on technical and economic feasibility for proponents risks diverting the Committees from the fundamental task of assessing whether and how offshore wind development in the Study Areas can foster sustainability.

We are also concerned with the potential implications of the objectives set out in subsections 1.2(d) of the Draft Agreements in light of the focus on mitigation measures, the experience with the NFLD RA, and the nature of the *Physical Activities Regulations* under the IAA, which contemplate offshore wind developments being exempted from the requirement for impact assessment if a regional assessment of such developments has been conducted. "Effectiveness"

¹⁵ Gibson *et al* (full citation at footnote 3).

and “efficiency” are not defined within the Draft Agreements or Draft Terms of Reference, but these Regional Assessments currently appear to have been designed as processes that will identify mitigation measures and make future decision-making for offshore wind developments less time-consuming. This is not inconsistent with the approach taken in the NFLD RA. In that process, one of the primary outcomes 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 assessments. We note at this juncture that the NFLD RA and its ministerial regulation is the subject of ongoing litigation before the Federal Court of Appeal.

A narrow understanding of “effectiveness” and “efficiency” is not adequate and will prevent these Regional Assessments from contributing meaningfully to sustainability. Effectiveness must be measured in terms of success in achieving long-term sustainability, including fairly and equitably distributed benefits with minimal adverse effects; efficiency must be measured by broad, meaningful engagement, fair process, transparency, and democratic decision-making.¹⁶

Rather than requiring the Committees to identify mitigation measures, the final Agreements and Terms of Reference should require the Committees to identify sustainability-based criteria that can guide future decision-makers.¹⁷ These criteria would provide bases on which offshore wind developments will be evaluated in future assessment, licencing, and permitting processes. Having sustainability-based criteria would allow greater efficiency and effectiveness in decision-making processes because they would create certainty, transparency, and accountability.

Finally, we must draw attention to an omission in the Draft Agreements and Draft Terms of Reference. As the draft documents stand now, the Committees will not be required to consider or assess alternatives to offshore wind developments. This is odd, given that one of the purposes of the *IAA* is to ensure that impact assessment considers alternative means of carrying out projects, and that the list of factors that must be considered in an impact assessment includes both the alternative means of carrying out the project and the alternatives to the project.¹⁸ Like cumulative effects, alternatives are not and cannot be effectively assessed at the project-specific impact assessment level.¹⁹ Therefore, as part of a holistic sustainability assessment, the Committees should also consider and assess alternatives to offshore wind development.

8.0 Longer Timeframes Required

We regularly communicate the importance of meaningful public participation and Indigenous consultation and engagement in *IAA* processes, and those messages warrant repeating here. As we have already noted, the purposes of the *IAA* include ensuring opportunities for meaningful public participation and promoting communication and cooperation with Indigenous peoples, along with ensuring respect for the rights of the Indigenous peoples of Canada.²⁰ With the coming into force of the *IAA*, new emphasis on and opportunities for public participation and

¹⁶ *Ibid* at page 274.

¹⁷ *Ibid* at page 256.

¹⁸ *IAA* (full citation at footnote 2) at subsection 6(1)(k) and subsections 22(1)(e) and (f).

¹⁹ The “tiering” model was endorsed by the Canadian Environmental Assessment Agency’s Expert Panel Review of Environmental Assessment Processes. See: Canadian Environmental Assessment Agency, *Building Common Ground: A New Vision for Impact Assessment in Canada* (2017) at page 22.

²⁰ *IAA* (full citation at footnote 2) at subsections 6(1)(f) and (h).

Indigenous consultation and engagement were created, and we encourage the final Agreements and Terms of Reference for these Regional Assessments to reflect that positive development.

As is set out in section 2 of the IAAC'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". Additionally, the integration of Crown consultation into processes conducted under the IAA is framed in part by the Agency's *Policy Context: Indigenous Participation in Impact Assessment*, in which the Agency indicates that meaningful Crown consultation must: be founded on principles of good faith, respect, and reciprocal responsibility; respect the uniqueness of Indigenous communities; be carried out in a timely, efficient, and responsive manner; be collaborative, transparent, predictable, accessible, reasonable, flexible, and fair; and, be accommodating.²¹

We want to acknowledge the Agency's efforts to create opportunities for stakeholders to participate in the early planning of these Regional Assessments to date. These opportunities included educational and introductory webinars during the summer, as well as two in-person workshops. They were also supported by participant funding. We found these opportunities valuable because they allowed us to provide early input into the planning of the Regional Assessment processes, to learn about their anticipated structures, goals, and objectives, to engage with and learn from other participants about the interconnectedness of interests and concerns, and to begin the work of preparing our submissions on the Draft Agreements and Draft Terms of Reference. We also appreciate the regular email correspondence by the Agency about the progress of the process and opportunities to engage, as well as the timely posting of information onto the Agency's registry. Finally, we appreciate the 45-day public commentary period.

We recommend that the Agency continue to provide timely and regular communications about the Regional Assessment processes, continue to provide ongoing public participation funding support, and continue to create opportunities for participants to engage in accessible ways.

We would like to take a moment to highlight the 45-day period set aside to allow the public to comment on the Draft Agreements and Draft Terms of Reference, because it is longer than public commentary periods that were set in previous regional assessment processes. For example, the public commentary periods for the draft agreements and draft terms of reference for the NFLD RA and the Regional Assessment of the Ring of Fire Area were only 30 days. We highlight this because an important component of meaningful public participation is ensuring that participants have the capacity to undertake the necessary work – many hours of paid and unpaid work – to enable those affected and impacted by regional assessment processes to become informed and respond to the full range of issues raised. Public participation funding is critical to enhancing capacity; however, adequate time is also essential to ensure sufficient capacity. It takes significant time to review lengthy technical documents, to become familiar

²¹ Impact Assessment Agency of Canada, "Policy Context: Indigenous Participation in Impact Assessment" (last modified 3 December 2021 and accessed autumn 2022), online: <<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/policy-indigenous-participation-ia.html>>.

with the material, to consult and confer with others, and to gather relevant information to effectively respond to issues and questions. It takes further time to draft and review submissions, share submission with others, and ensure that submissions are reflective of concerns and useful to regional assessment committees. The many stakeholders who participate in such processes have other deadlines, commitments, and pressing concerns. Therefore, sufficient time is needed to create opportunities for meaningful participation.

If participants are provided with sufficient time to engage, the quality of the information, input, feedback, and advice will be higher. Additionally, participants will be better equipped to collaborate and learn about the topics, issues, and challenges that are especially difficult – like cumulative effects and sustainability assessment – and integrate that new information and knowledge in refined and targeted ways.

Not least for these reasons, we recommend that the timeframes for these Regional Assessments be extended to provide at least two full years for each. We recognize that we are living in a climate emergency and that Canada must transition swiftly from our fossil-fueled energy systems; however, allowing insufficient time for these Regional Assessments will curtail meaningful stakeholder participation and risk wasting time and resources on ineffective processes. Among other things, extending the timeframes for these Regional Assessments will also help to ensure that the Committees have adequate time to establish productive advisory structures and carry out cumulative effects and sustainability assessments. As we have already noted, the NFLD RA Committee made it very clear that restrictive timeframes contributed to its inability to conduct cumulative effects assessments. The Government of Canada and the respective governments of Newfoundland and Labrador and Nova Scotia should avoid making the same mistake twice.

APPENDIX A

Table of Comments on the Draft Agreements to Conduct Regional Assessments of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia” and the Accompanying Draft Terms of Reference

Note 1: All underlining, bolding, or other highlighting in the Draft Text section of the table in this appendix is our own. We have occasionally underlined the parts of the draft text on which we have focused our comments and recommendations.

Note 2: We have omitted most of the preambular text and definitions, except those parts for which we have comments. The remainder of the text from both the Draft Agreement and Draft Terms of Reference are included.

Note 3: We have highlighted the provisions contained in the Draft Agreement to Conduct a Regional Assessment of Offshore Wind Development in Nova Scotia, but our comments apply equally to the Draft Agreement to Conduct a Regional Assessment of Offshore Wind Development in Newfoundland and Labrador, with the necessary contextual changes (i.e. references to provincial departments).

Draft Text	Comments	Recommendations
Draft Agreement to Conduct a Regional Assessment of Offshore Wind Development in Nova Scotia		
Preamble		
<p>WHEREAS the Governments of Canada and Nova Scotia acknowledge that sustainable development seeks to attain a balance between economic activity and its benefits, environmental protection, and the health, social and economic well-being of people and communities.</p>	<p>This preambular text fails to mention future generations, despite sustainability analysis being driven by a need to consider future generations.</p> <p>The opening preambular text in the <i>IAA</i> that the Government of Canada is committed to fostering sustainability, which is defined in the Act as “the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations”.</p>	<p>We recommend that the opening preambular text of the Agreement be amended to acknowledge the Government of Canada’s commitment to sustainability (rather than sustainable development), including the need to contribute to the wellbeing of future generations.</p>

<p>WHEREAS the Governments of Canada and Nova Scotia wish to enhance the effectiveness and efficiency of impact assessments for future offshore wind developments in the Canada-Nova Scotia Offshore Area.</p>	<p>“Effectiveness” and “efficiency” should be understood as being contextualized by the IAA’s goal of fostering sustainability.</p>	
<p>Definitions</p>		
<p>“Offshore wind development activities” means the physical activities associated with the construction, including expansion, operation and decommissioning of an offshore wind generation facility and the associated <u>offshore</u> components and activities that support it, <u>are specific to that facility, and are proposed as part of that offshore facility for the purposes of its development and impact assessment.</u> These <u>physical activities</u> include the transmission of electricity to shore.</p>	<p>We have concerns that the definition of “offshore wind development activities” creates considerable ambiguity about the scope of the Regional Assessment. The language “specific to that facility” and references to “offshore components and activities” seems to narrow the scope of the Regional Assessment to infrastructure and activity that is located offshore. That narrow scope could result in a failure to consider the impacts caused by other relevant facilities, activities, and developments that offshore wind developments are reliant on, including, but not necessarily limited to, onshore facilities where transmission cables make landfall.</p> <p>If the ambiguity is not resolved and the focus of the Regional Assessment is only on activities that are located in the offshore, the assessment of cumulative effects of all relevant past, present, and reasonably foreseeable future activities linked to offshore wind developments will be negatively affected. Likewise, sustainability assessment will be restricted.</p>	<p>We recommend the following changes to the definition of “offshore wind development activities”: (a) some references to “offshore” components and facilities should be omitted; (b) the phrase “are specific to that facility and are proposed as part of that offshore facility for the purposes of its development” should be removed; and, (c) additional clarification should be added.</p> <p>Our recommended definition is:</p> <p>“Offshore wind development activities” means the physical activities associated with the construction, including expansion, operation and decommissioning, of an offshore wind generation facility and the associated offshore components and activities that support it. are specific to that facility, and are proposed as part of that offshore facility for the purposes of its development and impact assessment. <u>For clarity, these</u> These physical activities include the onshore components and activities that support an offshore wind</p>

		generation facility, including but not necessarily limited to the components and activities required for the transmission of electricity to shore.
1.0 Regional Assessment Goal, Objectives, and Scope		
<p>1.1 The goal of the Regional Assessment is:</p> <p>To provide information, knowledge and analysis regarding future offshore wind development activities in the Study Area and their potential effects, in order to inform and improve <u>future planning, licencing and impact assessment processes</u> for these activities in a way that helps protect the environment and health, social and economic conditions while also creating opportunities for <u>sustainable economic development</u>.</p>	<p>Regional assessments are assessment tools that are used to assess anthropogenic activities and natural processes in a region to inform regional planning. Such a process will identify a baseline against which all future activities are assessed and provide recommendations and guidance for future decision-making.</p> <p>Regional assessment must be used, at minimum, to assess regional cumulative effects. A cumulative effects assessment must assess synergetic, compensatory, and additive effects, across spatial and temporal boundaries, of all relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes.</p> <p>We are encouraged that the Regional Assessment is meant to inform future planning, licencing, and impact assessment processes for offshore wind developments, because regional assessments should be more than information gathering processes. However, the current scope of the Regional Assessment is a missed opportunity to examine and assess broader planning in the offshore, and to assess planning within the context of offshore wind developments <i>and</i> any other anticipated projects.</p>	<p>We recommend that the goal of the Regional Assessment reflect the outcomes desired by the Indigenous rights-holders in the offshore areas.</p> <p>We recommend that the goal of the Regional Assessment be amended so that assessments of cumulative effects and sustainability are its primary foci. This requires a shift in the scope of the Regional Assessment goal away from “sustainable economic development” and towards “sustainability”.</p> <p>Based on the context above, we recommend the following changes to Section 1.1:</p> <p>To provide <u>assess regional cumulative effects, and to provide</u> information, knowledge and analysis regarding future offshore wind development activities in the Study Area and their potential effects, in order to inform and improve future planning, licencing and impact assessment processes for these activities in a way that helps protect the environment and health, social and economic conditions; <u>and to evaluate the</u></p>

	<p>The Regional Assessment should be conducted within the context of planned federal legislative reforms, including amendments to the federal <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i>, the federal <i>Canada-Newfoundland and Labrador Offshore Petroleum Resources Atlantic Accord Implementation Act</i>, and their mirror provincial legislation (together, the “Accord Acts”) to expand the mandate of the Canada-Newfoundland and Labrador Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board (the “Petroleum Boards”) to include responsibilities over offshore renewable energy, and proposed regulations under the <i>Canadian Energy Regulator Act</i>.</p> <p>The proposed goal of the Regional Assessment fails to mention sustainability outside of the lens of “economic development”. We note that section 6(2) of the <i>IAA</i> requires the following: “The Government of Canada, the Minister, the Agency and federal authorities, in the administration of this Act, must exercise their powers in a manner that <u>fosters sustainability</u>, respects the Government’s commitments with respect to the rights of the Indigenous peoples of Canada and applies the precautionary principle.”</p> <p>Additionally, as we noted above, sustainability is defined in the Act as “the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations”. Since economic wellbeing is a component of sustainability, the</p>	<p><u>contributions of offshore wind development to long-term sustainability.</u> while also creating opportunities for sustainable economic development.</p> <p>Additionally, “cumulative effects” and “sustainability” should be defined within the Agreement. We recommend the following definition:</p> <p><u>“Cumulative effects” means the synergetic, compensatory, and additive effects, across spatial and temporal boundaries, of all relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes.</u></p> <p><u>“Sustainability” means the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations.</u></p>
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	<p>focus on only the economic portion (development) of sustainability is limiting. Therefore, the goal of the Regional Assessment should also be to identify ways that the Government, Minister, Agency, and federal authorities can foster sustainability.</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 environmental, health, social and economic conditions and the potential effects of offshore wind development activities in the Study Area, with <u>consideration and weaving together of both Indigenous knowledge and scientific information</u>.</p> <p>b) Providing an understanding of the regional context that can be used in considering and evaluating the effects of future offshore wind development activities, <u>to inform future planning and licencing processes and impact assessments</u>, including the <u>management of cumulative effects</u>.</p> <p>c) Identifying and recommending mitigation measures and other approaches for addressing potential positive and adverse effects (both project-specific and cumulative) as part of future decision-making for offshore wind development activities, in a <u>manner that fosters sustainability</u>.</p> <p>d) Describing how the findings or recommendations of the Regional Assessment could be used to inform future planning and</p>	<p>First, a general note of caution: the result of the Newfoundland and Labrador Regional Assessment of Offshore Exploratory Oil and Gas Drilling (the “NFLD RA”) was a report that recommended standard mitigation measures for future exploratory oil and gas projects. These were incorporated into a ministerial regulation that subsequently exempted all future offshore oil and gas exploratory drilling from project impact assessments. The IAA allows offshore wind developments, which otherwise require project impact assessments (10 turbines or more) to be exempted if a regional assessment has been conducted. Exemption from impact assessment is not the purpose of a regional assessment, and such an outcome should be avoided.</p> <p>With respect to subsection 1.2(b), regional assessment must be about assessment, not “management”, of cumulative effects.</p> <p>With respect to subsection 1.2(c), we note that the Regional Assessment will require an assessment of sustainability. We note that the Agency’s guidance on considering sustainability (in the <i>Practitioner’s Guide to the Impact Assessment Act</i>) points to four sustainability principles: (a) the interconnectedness and interdependence of human-ecological systems; (b) the well-being of</p>	<p>We recommend that the objectives of the Regional Assessment reflect the outcomes desired by the Indigenous peoples who are rightsholders in the offshore areas.</p> <p>We recommend that Subsection 1.2(b) be amended to reflect the need to undertake cumulative effects assessment, as follows:</p> <p>b) Providing an understanding of the regional context that can be used in considering and evaluating the effects of future offshore wind development activities, <u>to inform future planning and licencing processes and impact assessments, including the management of by assessing cumulative effects</u>.</p> <p>We recommend that Subsection 1.2(c) be amended to reflect that assessment of sustainability requires consideration of existing sustainability principles, and that mitigation measures may be part of – but not the entire substance – of such an analysis. We suggest the following language:</p>

<p>licencing processes for these activities and to enhance the effectiveness and efficiency of their impact assessments.</p>	<p>present and future generations; (c) maximizing positive effects and reducing adverse effects; and, (d) the precautionary principle that considers uncertainty and the risk of irreversible harm. While we acknowledge that one of the outcomes from a sustainability assessment may be the identification of mitigation measures, they cannot be and are not the mechanism to achieve sustainability.</p> <p>An analysis of sustainability should also focus on identifying the ways that benefits and risks of development are equitably distributed in the long term. 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. We note that the language of equitable distribution of benefits and risks is present in the Draft Terms of Reference (“Draft TOR”) and suggest this language be incorporated into the Agreement as well.</p> <p>With respect to subsection 1.2(d), we understand that the Regional Assessment will be closely linked to planned federal and provincial legislative reform to create a land tenure licencing regime like that used for offshore oil and gas.²² These reforms should be noted more explicitly in the Agreement.</p>	<p><u>c) Assessing the sustainability of offshore wind development by considering the equitable distribution of benefits and risks (including project-specific and cumulative effects) to present and future generations, and uncertainty and risks of irreversible harm, and which may include identification of mitigation measures.</u></p> <p>We recommend that the Agreement identify the planned federal and provincial legislative reform meant to establish a land tenure licencing regime.</p>
<p>1.3 The Regional Assessment will <u>focus on future offshore wind development activities in</u></p>	<p>Although the focus of the Regional Assessment will be on the Study Area, as set out in Appendix</p>	<p>We recommend Section 1.3 be amended to make the focus of the Regional</p>

²² The intent to create a land tenure system was presented to public participants during pre-planning engagement sessions. See: Impact Assessment Agency of Canada, “Regional Assessment of Offshore Wind Development in Newfoundland and Labrador and Nova Scotia: Regional Assessment Planning Workshop” (August 2022), online: <<https://iaac-aeic.gc.ca/050/evaluations/document/145003>>.

<p>the Study Area, and the potential effects of these activities. In doing so, it will also consider the relationship of and potential interactions between the effects of future offshore wind development activities and those of other existing and future physical activities, including the potential for resulting cumulative effects (see Appendix A, Section A.2).</p>	<p>A, section A.2, there must be room for the Committee to assess related activities and impacts on activities outside of the Study Area.</p> <p>We note that this provision does two things: it attempts to focus the Regional Assessment on offshore wind developments, while simultaneously expanding the scope of the Regional Assessment to other "existing and future" activities in the context of cumulative effects.</p> <p>This section of the Agreement is encouraging because it provides the Committee with flexibility to focus on cumulative effects of onshore and offshore activities and infrastructure that is associated with and closely tied to wind development (see our comments on the definition of "offshore wind development activities", above).</p>	<p>Assessment be assessment of cumulative effects, as follows:</p> <p>1.3 The Regional Assessment will be an <u>assessment of regional cumulative effects, with a focus on the relationship between potential offshore wind development activities within the Study Area and other relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes in the region (see Appendix A, Section A.2).</u></p>
<p>1.4 The Study Area for the Regional Assessment is as defined in Figure 1.1 below. The Study Area comprises portions of the Canada-Nova Scotia Offshore Area where future offshore wind development activities may be technically and economically feasible, based on current and foreseeable technologies. It does not include or exclude specific locations or features based on potential environmental, health, social or economic effects, in order to allow the Regional Assessment to provide a complete and fulsome analysis of these issues across this region, to inform future decision-making. For greater clarity, the inclusion or exclusion of specific portions of the Canada-Nova Scotia Offshore</p>	<p>We note that there are multiple kinds of marine protected areas ("MPAs") and fishing areas used by settler and Indigenous fishers in the Study Area, which are not reflected in the map.</p> <p>The phrase "subject to" in the second paragraph of Section 1.4 is unclear. This language suggests there may be particular locations or projects within the Study Area which will not be "subject" to future licencing processes, which is likely not the intended meaning of this provision. We assume that the intended meaning is to highlight that certain areas may be identified as being suitable to be made available for future licencing processes.</p>	<p>We recommend that the second paragraph of Section 1.4 be amended to clarify that the Regional Assessment will be used to identify possible, feasible locations where offshore wind developments may occur, but that all offshore wind developments occurring in the Study Area will be subject to future licensing processes.</p> <p>One way of resolving the ambiguity might be to replace the phrase "subject to future licencing processes" with "available for future licencing processes".</p>

<p>Area in the Study Area does not reflect whether particular locations will or should be subject to future offshore wind development activities.</p> <p>The Study Area therefore comprises the geographic region within which the Regional Assessment will help inform <u>future decisions around whether particular locations will be subject to future licencing processes</u> for offshore wind development activities, as well as the impact assessments of any such developments.</p>		
<p>1.5 The Regional Assessment will also consider the environmental, health, social and economic components and systems that may be affected by future offshore wind development activities within the Study Area but which <u>extend beyond its boundaries, including the likely geographic extent of potential effects resulting from these activities.</u></p>	<p>This provision is important because it provides appropriate space for the Committee to examine elements of offshore wind development that extend beyond the boundaries of the Study Area; however, it seems at odds with the current definition of “offshore wind development activities” set out in the draft Agreement.</p>	<p>We recommend adoption of our suggested definition of “offshore wind development activities” and our associated recommended changes to Section 1.3.</p>
<p>2.0 Establishment, Purpose and Composition of the Committee</p>		
<p>2.1 A Committee will be established pursuant to subsection 93(1) of the IAA. The Committee will conduct the Regional Assessment in accordance with the IAA, this Agreement, and its Terms of Reference contained in Appendix A of this Agreement.</p>	<p>Section 2.1, like Section 2.2 below, does not set out the process for selecting the Committee in adequate detail.</p>	<p>We recommend that the Agreement be amended to state that the Committee will be established following consultation with Indigenous peoples.</p> <p>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 through the Registry.</p>
<p>2.2 The Committee will consist of five members, appointed by the federal Minister of Environment with the agreement of the federal Minister of Natural Resources and the provincial Minister of Natural Resources and Renewables.</p>	<p>Section 2.2, like Section 2.1 above, does not set out the process for selecting the Committee in adequate detail.</p> <p>We have provided commentary below explaining our recommendation that members of other</p>	<p>We recommend that the Committee be independent, and that this be explicitly</p>

	<p>government departments must be included in the management of the Regional Assessment, to the extent necessary, as part of the Secretariat.</p>	<p>reflected in Subsections 2.1 and 2.2, as follows:</p> <p>2.1 An <u>independent</u> Committee will be established pursuant to subsection 93(1) of the IAA. The Committee will conduct the Regional Assessment in accordance with the IAA, this Agreement, and the Committee’s Terms of Reference contained in Appendix A of this Agreement.</p> <p>2.2 The <u>independent</u> Committee will consist of five members, appointed by the federal Minister of Environment with the agreement of the federal Minister of Natural Resources and the provincial Minister of Natural Resources and Renewables <u>following consultation with Indigenous rights-holders</u>.</p>
<p>2.3 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.</p>	<p>As noted above, there is no written policy or guidance with respect to the selection (or replacement) of an independent Committee.</p>	<p>We recommend that the process for selecting the Committee include provisions related to replacement of its members.</p>
<p>2.4 The Committee will have all the powers and obligations set out under sections 97 to 102 of the IAA.</p>	<p>Section 97(2) of the IAA requires the Committee to take into account any scientific information and Indigenous knowledge, including knowledge 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</p>	<p>We recommend that the powers and obligations set out in sections 97 to 103 of the IAA be included in the Agreement for the sake of efficiency and ease of access for participants.</p> <p>We recommend that the Committee be responsible for ensuring that its final</p>

	<p>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 non-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 meaningfully.</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. It was our experience during the NFLD RA that the Committee in that process did not exercise the powers to compel relevant government authorities with the information it required to complete its work, despite explicitly acknowledging that their work suffered as a result.</p> <p>Section 102 requires the Committee to produce a report to the Minister at the conclusion of the Regional Assessment.</p> <p>We note that section 103 of the <i>IAA</i>, which requires the Agency to post a copy of the report in the Registry, is not mentioned.</p>	<p>report is posted in the Registry, in a similar manner to its responsibility to ensure the public is provided with all information that it considers while carrying out the Regional Assessment.</p>
<p>2.5 The Committee’s mandate and responsibilities, outlined in its Terms of Reference (Appendix A), are established by the</p>		

federal Minister of Environment in accordance with subsection 93(3) of the IAA.		
2.6 The Committee will have knowledge or experience relevant to the Regional Assessment, including with respect to offshore wind development activities that may occur in the Study Area, the potential effects that may be associated with these, and of the interests and concerns of Indigenous peoples, stakeholder groups or the public that are relevant to the Regional Assessment.	<p>It is unclear why Sections 2.6 and 2.7 are separate.</p> <p>The requirement for the Committee to have knowledge or experience in cumulative effects assessment is missing from Sections 2.6 and 2.7. It was our experience from the NFLD RA process that the Committee in that process found the cumulative effects assessment difficult, and it would have been advantageous if one or more members of that Committee had had relevant experience with conducting a cumulative effects assessment.</p> <p>We welcome the requirement for the Committee members to have knowledge or experience related to Indigenous and public participation.</p>	<p>The Committee as a whole must have knowledge or experience in all of the listed areas (including cumulative effects assessment), and we recommend the following provision to replace Sections 2.6 and 2.7:</p> <p><u>2.6 The Committee must have knowledge or experience relevant to the Regional Assessment, including with: offshore wind development activities that may occur in the Study Area and the potential effects that may be associated with these; impact assessment; regional assessment; environmental, health, social or economic effects (positive and adverse) and their management; cumulative effects assessment; sustainability assessment; Indigenous and public participation; and Indigenous peoples and their communities, activities, interests, perspectives and knowledge. Each member of the Committee with have knowledge or experience related to one or more of these areas.</u></p>
2.7 The Committee members will have knowledge or experience related to one or more of the following: impact assessment; regional assessment; environmental, health, social or economic effects (positive and adverse) and their management; sustainability; Indigenous and public participation; and/or Indigenous peoples and their communities, activities, interests, perspectives and knowledge.		
2.8 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. The Agreement should recognize that all members of the Committee will bring bias to the process, and that steps should be taken to minimize and counter that bias by fostering the selection of a diverse Committee and creating a transparent and inclusive process.	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 for Committee members. The policy should create a complaint process available to the public and participants, as well as a

		process to resolve conflicts that arise during the Regional Assessment. We recommend that such a policy be established prior to the appointment of the Committee.
3.0 Committee Secretariat		
3.1 A Secretariat will be established to provide administrative and technical support to the Committee during the conduct of the Regional Assessment.	We note that the Draft Agreement and Terms of Reference for the Regional Assessment in the Ring of Fire Area required the Secretariat to work at the direction of the Committee, and we suggest that the Committee (as an independent body) ought to be the sole body responsible for managing all aspects of the Regional Assessment.	We recommend that Section 3.1 be amended to clarify the Secretariat's role as a supporting body that acts only at the direction of the independent Committee, as follows: 3.1 A Secretariat will be established to provide administrative and technical support to the Committee, <u>at the Committee's direction</u> , during the conduct of the Regional Assessment.
3.2 The Secretariat will be co-managed by the Agency and the Nova Scotia Department of Natural Resources and Renewables and comprised of staff assigned from the Agency, <u>CNSOPB</u> , Natural Resources Canada, and the Nova Scotia Department of Natural Resources and Renewables.	Staff from the Petroleum Boards should not be part of the Secretariat. The Petroleum Boards currently have no jurisdiction over offshore wind or other renewable energy projects, and any proposal to have their mandates changed in the future should be part of the factors considered by the Committees. An advisory structure, described below, is the appropriate place for participation by the Petroleum Boards. We are concerned that the Secretariat as proposed will be primarily comprised of staff from departments that are heavily industry focused, which may lead to risks of regulatory capture.	We recommend that staff from relevant government departments and agencies that have a direct interest in the Regional Assessment and access to information and expertise that is relevant to it, including Environment and Climate Change Canada, Fisheries and Oceans Canada, and Transport Canada, and respective provincial departments responsible for environment and climate change, be included on the Secretariat. We recommend that the Secretariat include staff from relevant Indigenous organizations if their leadership desires participation at that level.

	<p>The Secretariat should include staff from relevant government departments and agencies that have a direct interest in the Regional Assessment and access to information and expertise that is relevant to it, including Environment and Climate Change Canada and the Nova Scotia Department of Environment and Climate Change, since these departments are responsible for federal impact assessment and provincial environmental assessment, respectively, and are knowledgeable with respect to issues such as climate change and environmental protection.</p> <p>Other federal departments, including Fisheries and Oceans Canada and Transport Canada, will also have relevant expertise, and staff from these departments would be crucial to ensuring information is shared in a timely and efficient manner throughout the Regional Assessment process.</p> <p>Considering that the activities and responsibilities also include compiling and providing Indigenous knowledge (set out below in Provision 3.3), it is crucial that relevant Indigenous organizations also be provided the opportunity to be part of the Secretariat.</p>	
<p>3.3 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, including that received from participants as per Section 3.5 below; support</p>	<p>There is a danger that the Secretariat, or its individual members, may act as a gatekeeper and prevent key information from reaching the Committee.</p> <p>All of the Secretariat's activities and responsibilities must be at the Committee's</p>	<p>We recommend that Section 3.3 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 through the Registry in a timely</p>

<p>for public and Indigenous participation activities; and the drafting of documents and other materials at the direction of the Committee.</p>	<p>direction, or the Committee cannot be said to be independent.</p>	<p>manner (no more than 14 days after being received).</p> <p>We also recommend that the Secretariat's activities and responsibilities all be at the direction of the Committee.</p> <p>Based on these two points, we recommend the following amendments:</p> <p>3.3 The activities and responsibilities of the Secretariat, <u>to be directed by the Committee</u>, 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, including that received from participants as per Section 3.5 below; support for public and Indigenous participation activities; and the drafting of documents and other materials at the direction of the Committee.</p>
<p>3.4 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, social and economic conditions; offshore wind development activities and their potential effects; mitigation measures; monitoring and follow-up measures; and other information as applicable subject to any limits</p>	<p>It is the role of the Committee, not the Secretariat, to identify and make decisions with respect to information that may be relevant to the Regional Assessment and to incorporate that information as appropriate.</p> <p>The limits of the use of information should be clearly identified. We note that Indigenous groups in the Atlantic region have expressed concerns</p>	<p>We recommend that all the records that the Secretariat compiles and provides to the Committee be considered knowledge or information relevant to the Committee's work and be made available to the public, while respecting appropriate limits around confidentiality. Therefore, Section 3.4 should be amended as follows:</p>

<p>on the use of such information or the need to update or otherwise verify the information.</p>	<p>about the adequacy of legislated confidentiality provisions in the <i>IAA</i>, and we suggest that the Agency and Committee, as appropriate, seek guidance from Indigenous leadership on ways to strengthen protections for Indigenous Knowledge.</p>	<p>3.4 The Secretariat will identify, assist the Committee with compiling and provide to the Committee existing and available information that is relevant to the Regional Assessment including information related to: environmental, health, social and economic conditions; offshore wind development activities and their potential effects; mitigation measures; monitoring and follow-up measures; and other information as applicable, subject to any <u>legislated</u> limits on the use of knowledge or information that is not Indigenous Knowledge or the need to update or otherwise verify the information. <u>All records received from the public and stakeholders directly by the Secretariat pertaining to the Regional Assessment are relevant to the Committee's work and must be made available in the Canadian Impact Assessment Registry within 14 days of receipt.</u></p>
<p>3.5 Existing information includes but is not limited to that contained in any past or ongoing impact or environmental assessments, including strategic environmental assessments, and information and knowledge provided by Indigenous peoples, government, industry, academia, or the public.</p>		
<p>3.6 Funding will be made available by the Agency to facilitate the involvement of Indigenous communities and organizations, non-</p>	<p>We are pleased that the Impact Assessment Agency of Canada and the other signatories to the Agreement will make funding available to</p>	<p>We recommend that the Agency provide support to potential public participants</p>

<p>government organizations and individuals in the Regional Assessment through the Agency’s Participant Funding Program.</p>	<p>facilitate involvement of groups impacted or potentially impacted by the Regional Assessment. Participant funding is an important component of enabling members of the public to engage in the Regional Assessment. We note that the <i>IAA</i> requires “meaningful public participation”, not “involvement”, and that funding alone cannot assure meaningful 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 once they became more informed because of the process.</p> <p>It has been our experience that potential participants are often unsure about whether they are eligible to apply for participant funding, or how to go about doing so.</p>	<p>to help applicants complete public participation funding applications.</p> <p>We recommend that participant funding made available under Section 3.6 be provided on an ongoing basis to promote accessibility for individuals or groups who may be identified through the Regional Assessment process.</p> <p>We recommend that participant funding be available for participants in the advisory groups.</p>
<p>4.0 Advisory Groups</p>		
<p>4.1 Advisory groups will be established by the Committee to provide it with information and advice during the conduct of the Regional Assessment, as follows:</p> <p><i>1) Indigenous Knowledge and Perspectives Advisory Group</i> <i>2) Scientific and Technical Information and Analysis Advisory Group</i> <i>3) Fisheries Advisory Group</i></p>	<p>We are concerned that the Draft Agreement and Draft TOR, and specifically Section 4.1, are overly prescriptive about the composition and nature of the advisory structures that the Committee can use to solicit expert information and advice on relevant matters.</p> <p>It is our opinion that the Committee should have the flexibility to establish the advisory structures that best enable it to conduct its work, while</p>	<p>We recommend that the Committee be required to establish one or more advisory structures to enable its work, but that the specific structures be left to the discretion of the Committee.</p> <p>We recommend that advisory structures created by the Committee be required to have representation able to provide community knowledge and information,</p>

<p>Further information on the establishment, composition and functioning of these advisory groups is provided in the attached Terms of Reference (Appendix A).</p>	<p>recognizing that it will be necessary for the Committee to establish one or more advisory bodies or forums that are reflective of all relevant demographics and sectors, including Indigenous community leaders, fishers and members of fishing communities, and those with scientific, community, and technical information.</p> <p>Regardless of the specific design of the advisory structures that the Committee establishes, we note that any advisory structure must avoid taking a siloed approach to identifying and assessing information and providing advice. All relevant information and advice must, ultimately, be synthesized in a holistic way that fosters effective cumulative effects and sustainability assessments.</p> <p>Both cumulative effects and sustainability assessments rely on the understanding that effects and activities are interconnected; therefore, to understand the full regional context, information must be addressed in such a way that those interconnections are clearly set out and understood.</p>	<p>in addition to Indigenous, scientific, and technical knowledge and information.</p> <p>We recommend that the advisory structures be established in a way that recognizes the interconnectivity of human-ecological systems and fosters collaborative learning and dialogue amongst those giving advice in a holistic way to facilitate strong and effective cumulative effects and sustainability assessments.</p> <p>We recommend that the establishment of advisory structures be required to begin as soon as possible, but no later than 30 days after the Committee is appointed.</p> <p>We recommend that the deliberations and work of the advisory structures be made public, including meeting minutes.</p> <p>We recommend that the public and Regional Assessment participants have an opportunity to review the work of the advisory structures.</p>
<p>4.2 Involvement in, and the provision of information and input through, one or more of these advisory groups 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 during the Regional Assessment process.</p>	<p>This is an important provision that ensures the ongoing ability of the advisory structures to conduct work independent from the Committee's oversight or direction.</p>	<p>We recommend that all references to advisory groups be amended to reflect the Community's discretion as to the specific design of advisory structures (see our recommendation above).</p>

5.0 Participation of Government Departments and Agencies		
<p>5.1 In addition to participation through the above referenced advisory groups, 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>Section 100 of the <i>IAA</i> 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>We recommend combining Sections 5.1 and 5.2 for grammatical consistency, as follows:</p> <p>5.1 In addition to participation through the above referenced advisory groups, 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, <u>as required by section 100 of the IAA. This may include providing information, knowledge or advice related to any matter relevant to the Regional Assessment as requested by the Committee.</u></p>
<p>5.2 This may include providing information, knowledge or advice related to any matter relevant to the Regional Assessment as requested by the Committee.</p>	<p>Provision 5.1 is partially redundant because of the obligations and powers already set out in the <i>IAA</i>, although it may be useful to clarify the Committee’s power to gather information from provincial authorities.</p>	
6.0 Report and Records		
<p>6.1 The Committee will describe the conduct, and document the results, of the Regional Assessment in its Report as outlined in its Terms of Reference (Appendix A). In addition, the Committee will include a summary of its Report in plain language and available in English, French and Mi’kmaw.</p>	<p>We note the absence of a status reporting requirement, which was part of the terms of reference and agreement for the NFLD RA and the draft agreement for the Regional Assessment in the Ring of Fire Area (“ROF RA”), which read:</p> <p>“7.1 The Committee will submit regular status updates to the Ministers during the conduct of the Regional Assessment.” [ROF RA Draft Agreement]</p>	<p>We recommend that the Committee be required to include a summary in its Report that discusses how information gathered from the public and from the advisory structures was incorporated into its findings and recommendations.</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>6.2 The Committee will complete its work and submit its Report (all components) to the Ministers within 18 months of the public announcement of the appointment of its members. Further information on the timing of particular aspects of the Committee’s work and associated reporting on these is provided in Appendix A.</p>	<p>The period for the NFLD RA was too short, and 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”. At one point in that process, the committee requested an extension for its work, but this was denied. Eventually, the Minister granted an extension to the Committee.</p> <p>We acknowledge that the time given to the Committee for its work on the Regional Assessment has increased as compared to the time that was given to the NFLD RA Committee, and consider that to be a necessary and positive change. However, it is still unreasonable to expect the Committee to complete its work in an 18-month period, especially where some deliverables are expected from the Committee within a year.</p>	
<p>6.3 Upon receiving the Committee’s Report, the Ministers will make it available to the public and Indigenous groups and will advise the public and Indigenous groups that it is available on the Canadian Impact Assessment Registry Internet site.</p>		
<p>6.4 The Canadian Impact Assessment Registry, which is comprised of project files and an Internet site, will be maintained by the Agency</p>		

<p>on behalf of the Committee during the conduct of the Regional Assessment in a manner that provides for convenient public access.</p>		
<p>6.5 The Canadian Impact Assessment Registry will include public announcements, the Committee’s Report, and submissions and comments received by the Committee from the public or Indigenous groups during the Regional Assessment.</p>	<p>It is unclear why there are limitations on the information being posted to the Registry; that is not the case with project assessments.</p>	<p>We recommend that any work, input, or advice provided by the advisory structures also form part of the public record available through the Registry.</p> <p>We recommend that the participation plans also be explicitly required to be posted in the Registry.</p>
<p>6.6 After the Committee’s Report is submitted, the information outlined above will remain publicly available on the Canadian Impact Assessment Registry.</p>		<p>We recommend the following amendment to Section 6.6 for the sake of clarity:</p> <p>6.6 After the Committee’s Report is submitted, the information outlined <u>in Section 6.5</u> above will remain publicly available on the Canadian Impact Assessment Registry.</p>
<p>7.0 Interjurisdictional Cooperation</p>		
<p>7.1 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:</p> <p>a) Any public submissions, including questions or comments, that may be received by the Ministers or by their respective departments or agencies during and regarding the conduct of the Regional Assessment; and</p>	<p>During the NFLD RA process, our organization sent several letters to the federal Minister of Environment and Climate Change, asking for clarification of the Terms of Reference and requesting other information. We did not receive a response to these letters, nor any indication from the Minister that they were received.</p> <p>During the NFLD RA, the Committee requested, to our knowledge, at least two extensions – which amounted to a modification to its Agreement and</p>	<p>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 in the Registry, and that the Minister(s) commit to responding to inquiries and questions about the Regional Assessment within 30 days of receipt.</p>

<p>b) Any request from the Committee for clarification or amendments to its Terms of Reference (Appendix A) or other related matters, including the regular status updates provided by the Committee.</p>	<p>Terms of Reference – but these requests were not posted in the Registry or made available to the public otherwise.</p>	
<p>7.2 Once the Committee’s 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 inform provincial environmental assessment or other decision-making processes for future projects related to offshore wind developments (like hydrogen development projects or electricity transmission infrastructure).</p> <p>The Committee ought to provide participants with the capacity to comment on how the Regional Assessment findings and recommendations can be implemented.</p>	<p>We recommend that in the Final Report, the Committee be required to include a summary of how Indigenous peoples and other members of the public want to see the findings and recommendations of the regional assessment be implemented.</p>
<p>8.0 Costs</p>		
<p>8.1 The Agency, Natural Resources Canada, and the Nova Scotia Department of Natural Resources and Renewables will develop and agree upon a budget for the completion of the Regional Assessment, including the manner in which these costs will be shared between the parties to this Agreement.</p>		<p>We recommend that the Agency provide opportunities for members of the public and Indigenous individuals, groups, and communities to apply for funding on an ongoing, <i>ad hoc</i> basis, rather than limiting applications for funding to specific application periods.</p>
<p>8.2 This budget will be communicated to the Committee at the commencement of the Regional Assessment. In accordance with its Terms of Reference (Appendix A), the Committee will complete the Regional Assessment within the budget developed in accordance with Subsection 8.1.</p>		<p>We recommend that the budget, as well as any modifications to the budget, be made available to the public.</p>

<p>8.3 The Committee may request an amendment to the budget referred to in Subsection 8.1, in accordance with Section A4 of its Terms of Reference (Appendix A). The Committee must receive prior written approval of any amendment to its budget before proceeding with any associated expenditures.</p>		
<p>8.4 Any costs incurred by the Committee must be submitted for payment within 30 days of submission of its final Report.</p>		
<p>9. Amending the Agreement</p>		
<p>9.1 The terms and provisions of the Agreement may be amended by written memorandum executed by the Ministers.</p>	<p>The terms of the NFLD RA agreement and committee TOR were amended, but the written memorandum regarding that amendment was never made public.</p>	<p>We recommend that Section 9.1 require that any amendments to the Agreement be made publicly available through the Registry.</p>
<p>9.2 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.</p>	<p>While we understand and acknowledge the need for parties to an agreement to have an option to terminate the agreement, the <i>IAA</i> does not require the province to agree to the Regional Assessment.</p> <p>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 the Agreement by a province would require early termination of the Regional Assessment.</p>	<p>We recommend that provisions be added that would set out the process under which the Regional Assessment would continue if a province were to terminate the Agreement.</p>
<p>10. Signatures</p>		
<p>11.1 This Agreement may be signed by the parties in counterpart.</p>		

Appendix A – Draft Terms of Reference

A1: Mandate and Activities of the Committee

<p>A1.1 The Committee will conduct a Regional Assessment in accordance with the IAA, the Agreement and this Terms of Reference.</p>	<p>As noted above, the primary sections of the IAA that are relevant to the Regional Assessment are sections 97 to 103. If they are not incorporated into the Agreement, they should be incorporated into the final Terms of Reference (“final TOR”).</p> <p>There is currently a typo in this provision.</p>	<p>The typo in this provision should be corrected: “this” should be “these”.</p>
<p><i>Indigenous Knowledge and Aboriginal and Treaty Rights</i></p>		
<p>A1.2 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 <i>Constitution Act, 1982</i> in the Study Area, as well as information on potential adverse impacts that future offshore wind development activities in the Study 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 and decision-making processes.</p>		
<p>A1.3 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.</p>	<p>If the Committee is not mandated to carry out Crown consultation and accommodation with respect to the constitutionally protected Aboriginal and treaty rights (asserted and established) that will be considered during the regional assessment processes covered by these Draft TOR, IAAC and Environment and Climate</p>	<p>We query whether the IAAC and ECCC have been consulting with Indigenous peoples in Newfoundland and Labrador and Nova Scotia to determine their preferred approaches to the consultation and accommodation that will be required as part of these regional assessment</p>

	<p>Change Canada must ensure that any required consultation and accommodation are carried out appropriately before the Crown engages in any conduct that could affect those Aboriginal and treaty rights adversely. This is a constitutional imperative.</p> <p>We are concerned by the possibility that the regional assessment processes covered by these draft TOR could ultimately be used to circumvent meaningful Crown consultation and accommodation processes that would otherwise be required when offshore wind developments are proposed. Specifically, if these regional assessment processes lead to certain offshore wind developments being exempted from the impact assessment requirements of the <i>IAA</i> through the establishment of regulations exempting such developments, authorization processes for such developments would be more streamlined and offer fewer opportunities for meaningful Indigenous engagement and consultation. Although Crown consultation and accommodation would still be constitutionally required before such authorization decisions were made, there is clear cause for concern that the streamlined authorization processes would curtail Indigenous involvement.</p>	<p>processes and subsequent regulatory changes that may follow them. If the IAAC and ECCC have not been consulting in that regard, we recommend that they do so without delay.</p>
<p>A1.4 In conducting its work, the Committee will recognize that, for the purposes of the Regional Assessment, Indigenous Knowledge is an important component of understanding existing conditions, potential effects (both positive and adverse) and mitigation measures, and that regional assessments can provide a means of</p>	<p>We welcome provisions such as this one that are designed specifically to emphasize the importance of Indigenous Knowledge and require its incorporation into the Regional Assessment when it is willingly shared by Indigenous peoples.</p>	

<p>weaving together scientific information and Indigenous Knowledge to inform future impact assessments.</p>	<p>We would note, however, that in contrasting Indigenous Knowledge with “scientific and technical” knowledge, the Draft TOR (and Draft Agreements) not only imply that Indigenous Knowledge is not relevant to scientific and technical knowledge but also fail to recognize the relevance of local knowledge that may be held by non-Indigenous communities.</p> <p>It may therefore be more suitable to distinguish between “Indigenous Knowledge” and “non-Indigenous knowledge” throughout the final TOR and final Agreements and to have relevant provisions clarify that “non-Indigenous knowledge” includes, <i>inter alia</i>, scientific, technical, and local knowledge reflecting western methods and non-Indigenous community knowledge and perspectives.</p>	
<p>A1.5 Any Indigenous Knowledge that is provided 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>(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.</p> <p>(2) Despite subsection (1), the Indigenous knowledge referred to in that subsection may be disclosed if</p> <p>(a) it is publicly available;</p>	<p>We recommend that section 119 of the IAA be incorporated directly into Section A1.5.</p> <p>We also note again that Indigenous groups in the Atlantic region have expressed concerns about the adequacy of the legislated confidentiality provisions in the IAA, and we therefore recommend that the Agency and Committee, as appropriate, seek guidance from Indigenous leadership on ways to strengthen protections for Indigenous Knowledge.</p>

	<p>(b) the disclosure is necessary for the purposes of procedural fairness and natural justice or for use in legal proceedings; or</p> <p>(c) the disclosure is authorized in the prescribed circumstances.</p>	
<i>Committee Activities and Requirements</i>		
<p>A1.6 In conducting the Regional Assessment, the Committee will:</p>		
<p><i>Indigenous, Public, and Stakeholder Participation</i></p> <p>a) Ensure that Indigenous peoples and the public are provided with opportunities to participate <u>meaningfully</u> in the Regional Assessment.</p> <p>b) Engage with Indigenous peoples and governmental and non-governmental organizations and individuals that have information, knowledge or interests relevant to the Regional Assessment. This will include members of the public, industry, 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>c) Develop and implement a Public, Fisheries and Stakeholder Participation Plan and an Indigenous Participation Plan, <u>with advice from the advisory groups referred to in Section 4.0 of the Agreement and described below, if these advisory groups are in place at that time.</u> The Committee will further collaborate with</p>	<p>As set out in section 2 of the Agency’s <i>Framework: Public Participation Under the Impact Assessment Act</i>, 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”.</p> <p>One important component of meaningful public participation is ensuring that participants, including Indigenous groups, have 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 process. Public participation funds are critical to enhancing capacity; however, adequate time is also essential to capacity. It takes significant time to gather information and consult and confer with others to effectively respond to the issues. It takes further time to draft and review submissions, to share them with Elders and community members, and to</p>	<p>We recommend that the public receive frequent opportunities to provide input.</p> <p>We recommend that funding continue to be made available to participants as needed, on an ongoing and case-by-case basis.</p> <p>We recommend that the Committee seek Indigenous and public input, in addition to input from all advisory structures, as part of the process of developing the participation plans.</p> <p>We recommend that the Public Participation Plan and Indigenous Participation Plan be implemented as the first step of the Committee’s work, and that draft participation plans be posted in the Registry for input within 60 days of the Committee’s appointment.</p> <p>We recommend that any changes or opportunities for additional meaningful public participation be communicated in</p>

<p>Indigenous peoples on the development and implementation of the Indigenous Participation Plan. Once completed these Participation Plans will be posted to the Registry and <u>updated regularly</u> by the Committee, with advice from the advisory groups, to ensure that participants are aware of planned participation approaches and upcoming activities.</p>	<p>ensure that submissions are reflective of all concerns and advice.</p> <p>We see the requirement for the Committee to develop and implement a Public, Fisheries and Stakeholder Participation Plan and Indigenous Participation Plan as an important step to ensuring that the public, stakeholders and Indigenous groups are informed about when and how they can participate.</p> <p>It is unclear why the title of the Public Participation Plan specifically refers to “Fisheries” or “Stakeholders”, both of which are “Public” within the context of the Regional Assessment and for the purposes of the IAA.</p>	<p>advance to the public with at least 30 days’ written notice, to be posted in the Registry.</p> <p>We recommend that the name of the “Public, Fisheries and Stakeholder Participation Plan” be changed to the “Public Participation Plan”.</p>
<p>Advisory Groups</p> <p>d) Establish, and seek information and advice from advisory groups during the conduct of the Regional Assessment, as outlined in Section 4.0 of the Agreement and in the sections that follow.</p> <p>e) These advisory groups 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. The composition and activities of these advisory groups may vary from time to time in relation to</p>	<p>In keeping with our recommendations above concerning the need for Committee flexibility to establish advisory structures, we offer the following comments, which are not intended to detract from our recommendation that the final TOR should avoid being overly prescriptive with respect to advisory structures.</p> <p>We recognize that it will be crucial for the Committees to establish advisory structures that are capable of providing input and advice on the topics that the Draft TOR have identified, and we offer the following comments on those topics:</p> <p>a) <u>Environmental, health, social, and economic conditions</u>: The advisory structures must be capable of providing input and advice on how the environmental, health, social and economic</p>	<p>We recommend that the Committee be required to establish advisory structures that are capable of providing input and advice on the topics of cumulative effects and sustainability of offshore wind developments and associated activities; we therefore suggest the following additions to the topics listed under paragraph A1.6(h):</p> <p><u>(c) cumulative effects, including synergetic, compensatory, and additive effects, across spatial and temporal boundaries of all relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes in the Study Area;</u></p>

<p>the needs, work or expertise required and requested by the Committee during the course of the Regional Assessment.</p> <p>f) The role of these advisory groups 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 any knowledge gaps.</p> <p>g) These advisory groups will identify, provide and support the use and weaving together of Indigenous knowledge and scientific and technical information in the conduct of the Regional Assessment, as appropriate.</p> <p>h) Each of the advisory groups described below will provide information and advice to the Committee on the topics outlined below, as required and requested:</p> <ul style="list-style-type: none"> a. Environmental, health, social and economic conditions in the Study Area; b. Future offshore wind development activities in the Study Area, including their: <ul style="list-style-type: none"> i. Purpose; ii. Associated physical activities; 	<p>conditions factor into cumulative effects assessment.</p> <p>b) <u>Future offshore wind development:</u></p> <ul style="list-style-type: none"> i) <u>Purpose:</u> in addition to providing input and advice on the purpose of offshore wind, advisory structures must be capable of commenting on the need for, and alternatives to, offshore wind developments. ii) <u>Associated physical activities:</u> The advisory structures must be capable of providing advice about which activities ought to be included in the scope of the Regional Assessment. See also our comments on the definition of “offshore wind development activities” and the goal and objectives of the Regional Assessment as set out in the Draft Agreement (above). iii) <u>Key areas of interest:</u> The Regional Assessment should not be, and is not intended to be, a vehicle through which offshore wind development is planned, or through which a land tenure system is created. Rather, the focus of the Committee’s work should be on assessing regional cumulative effects. To the extent that it is reasonable, in light of the goal and objectives of the Regional Assessment, input and advice on key areas to be avoided could be provided through advisory structures. 	<p><u>(d) the sustainability of offshore wind developments and associated activities in the Study Area, including the equitable distribution of benefits and adverse effects to present and future generations; and</u></p>
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<p>iii. Key areas of interest for future offshore wind development activities in the Study Area (to help focus the Committee’s work on locations which are most likely to see future development interest, based on technical and economic factors);</p> <p>iv. Regulatory requirements;</p> <p>v. Potential positive and adverse effects, including cumulative effects;</p> <p>vi. Mitigation measures and follow-up, and other approaches for avoiding or reducing potential adverse effects and creating and maximizing potential positive effects; and</p> <p>c. Other topics relevant to the Regional Assessment, as requested by the Committee.</p>	<p>iv) <u>Regulatory requirements</u>: We agree that it would be valuable for input and advice on the regulatory requirements that will or may apply to offshore wind developments to come from the advisory structures.</p> <p>v) <u>Potential effects, including cumulative effects</u>: An assessment of cumulative effects should be its own topic, rather than a subset of offshore wind development activities.</p> <p>vi) <u>Mitigation</u>: The advisory structures should be capable of providing input and advice on sustainability analysis, which may include, but not be limited to, mitigation measures.</p>	
<p><i>Advisory Group: Indigenous Knowledge and Perspectives</i></p> <p>i) The Committee will seek knowledge and perspectives from Indigenous peoples on matters relevant to the conduct of the Regional Assessment, including through the Advisory Group described in this section.</p>	<p>We agree that the Committee should be required to seek knowledge and perspectives from Indigenous peoples. Our recommendations above concerning the need for Committee flexibility with respect to the establishment of advisory structures are not intended to challenge this requirement. In our view, if the Draft TOR are amended to enable more Committee flexibility with respect to the establishment of advisory</p>	

<p>j) This will include sharing Indigenous Knowledge and perspectives on some or all of the topics listed above during the conduct of the Regional Assessment, in accordance established Indigenous protocols and procedures as applicable.</p> <p>k) This Advisory Group will also provide information, knowledge and perspectives on Indigenous peoples and their communities, activities and other interests, including Aboriginal or Treaty rights protected by section 35 of the Constitution Act, 1982.</p> <p>l) This Advisory Group will also advise the Committee on approaches for the collection, sharing and consideration of such knowledge and its incorporation into the Regional Assessment.</p>	<p>structures, it would be advisable for the final TOR to retain a requirement along these lines.</p>	
<p><i>Advisory Group: Scientific and Technical Information and Analysis</i></p> <p>m) This Advisory Group will seek scientific and technical information and advice from representatives of federal and provincial government, departments and agencies and non-governmental organizations and individuals (both Indigenous and non-Indigenous) on matters relevant to the conduct of the Regional Assessment. This will include information and advice related to environmental, health, social and economic components and issues.</p> <p>n) This Advisory Group will assist the Committee in gathering and analyzing relevant</p>	<p>The advisory structures should be designed to maximize information sharing, not only with the Committees but amongst all stakeholders as well. Rather than take an industry-by-industry or stakeholder-by-stakeholder approach to gathering knowledge, the processes should facilitate collaboration and sharing. This will help with cumulative effects assessment and sustainability assessment, which must be the primary goals of the Regional Assessments.</p>	<p>See our earlier comments and recommendations concerning the need for Committee flexibility with respect to the establishment of advisory structures.</p>

<p>data and information and in conducting scientific and technical 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 above, as requested by the Committee during the conduct of the Regional Assessment.</p>		
<p><i>Advisory Group: Fisheries Information and Analysis</i></p> <p>o) This Advisory Group will seek knowledge, information and advice from fishing industry representatives and fishers regarding current and potential fishing activity, as well as potential interactions between fishing activity and offshore wind development activities in the Study Area and approaches for avoiding or minimizing adverse effects and creating or maximizing opportunities for positive effects.</p>	<p><i>Advisory Group: Fisheries Information and Analysis</i></p> <p>See our earlier comments and recommendations concerning the need for Committee flexibility with respect to the establishment of advisory structures.</p>	
<p><i>Information and Analysis</i></p> <p><i>Description of Existing Conditions</i></p> <p>p) Identify, compile, review and present information on existing environmental, health, social and economic conditions within the Study Area.</p> <p>As noted in Section 3.5 of the Agreement, this will include information contained in any past or ongoing impact or environmental assessments (including strategic environmental assessments), and information provided by government,</p>	<p>While identifying, compiling, reviewing, and presenting information on existing conditions within the Study Areas is helpful, the Committee must also be required to assess the cumulative effects of those existing conditions.</p>	<p>We recommend that Subsection A1.6(p) be amended to require the Committee to assess cumulative effects of existing conditions within the Study Areas, as follows:</p> <p>p) Identify, compile, review and present <u>assess</u> information on existing environmental, health, social and economic conditions within the Study Area, <u>including the cumulative thresholds and burdens on each of these components.</u></p>

<p>industry, academia, Indigenous peoples or the public.</p>		
<p>[Information and Analysis]</p> <p><i>Identification of Information and Knowledge Gaps</i></p> <p>q) Identify and evaluate information and knowledge gaps, with a focus on any associated gaps with relevance to, and implications for, future planning, licencing and impact assessments for offshore wind development activities in the Study Area.</p> <p>r) Make recommendations to address such information and knowledge gaps as appropriate.</p>	<p>One of the greatest shortcomings of the NFLD RA 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.</p> <p>We point to the precautionary principle, which provides guidance on how decisions should be made in the absence of information and knowledge. The precautionary principle guides the administration of the <i>IAA</i> and exercise of powers under the Act. The relevant section reads:</p> <p>6(2) The Government of Canada, the Minister, the Agency and federal authorities, 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.</p>	<p>We recommend that the Committees be required to address information and knowledge gaps as part of cumulative effects assessment.</p> <p>We recommend that the Committees be mandated explicitly to use a precautionary approach when recommending a course of action impacted by gaps in knowledge or information. This mandate would be adopted by incorporating the following language, derived from subsection 6(2) of the <i>IAA</i> as a new subsection of Section A1.6, as follows:</p> <p><u>The Committee, in the administration, development, and implementation of the Regional Assessment, must exercise its 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.</u></p>
<p>[Information and Analysis]</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. The Committee must use knowledge and information to conduct assessments of cumulative effects and sustainability.</p>	<p>We recommend that Subsection A1.6(s) be amended to require the Committee to identify and assess positive and adverse effects. Furthermore, we recommend that the assessment of cumulative effects be a standalone subsection, as follows:</p>

<p>s) <u>Identify and consider</u> the potential positive and adverse effects of future offshore wind development activities in the Study Area.</p> <p>This will include consideration of: potential malfunctions or accidents; any cumulative effects that may result from the effects of offshore wind development activities in the Study 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>t) In identifying and considering potential positive and adverse effects, the Committee will focus on the following environmental, health, social and economic components:</p> <ul style="list-style-type: none"> i. Marine Fish and Fish Habitat ii. Marine and Migratory Birds iii. Marine Mammals and Sea Turtles iv. Protected and Special Areas v. Indigenous Communities, Activities and Rights vi. Fisheries and Other Ocean Uses vii. Visual Aesthetics / Viewscapes viii. Physical and Cultural Heritage (including structures, sites or things of historical, archaeological, paleontological or architectural significance) ix. Communities and Economy <p>The Committee may, based on its analysis and engagement activity, further refine or add to the list of components listed above. If that is the</p>	<p>As we have already identified elsewhere, there are several proposed legislative reforms planned for the period in which the Regional Assessment will proceed, and these should be included in the scope of the Committee’s work to understand the legislative framework that will govern offshore wind developments. This exercise should include all legislation that is relevant to the development, operation, and decommissioning of offshore wind developments, as well as general governance of the marine areas in which offshore wind developments may occur.</p>	<p>s) Identify and consider <u>assess</u> the potential positive and adverse effects of future offshore wind development activities in the Study Area. This will include consideration of: potential malfunctions or accidents; any cumulative effects that may result from the effects of offshore wind development activities in the Study 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><u>t) Identify and assess the cumulative effects of future offshore wind development activities in the Study Area in combination with all relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes, and the result of any interactions between them.</u></p> <p>We recommend that Subsection A1.6(t) be amended to include “communities” as one of the environmental, health, social, and economic components</p> <p>We recommend that Subsection A1.6(v) be amended to remove the reference to technical and economic feasibility, as follows:</p> <p>v) Identify and consider technically and economically feasible mitigation</p>
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<p>case, the Committee will clearly document in its Report the rationale for doing so, including how public, stakeholder and/or Indigenous input have informed and influenced this.</p> <p>u) Identify and consider the effects, both positive and adverse, that offshore wind development activities in the Study 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>v) 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 offshore wind development activities in the Study Area.</p> <p>w) Identify and consider existing legislation, regulations, guidelines and standards, and associated approvals or authorizations, that are relevant to avoiding or reducing their adverse effects.</p>		<p>measures and other approaches for eliminating, reducing, controlling or offsetting potential adverse effects and creating and maximizing potential positive effects resulting from offshore wind development activities in the Study Area.</p> <p>We recommend a new subsection be added that requires the Committee to consider a scenario where offshore wind developments are not carried out, as follows:</p> <p><u>w) Identify and consider a scenario whereby offshore wind 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.</u></p> <p>We recommend that Subsection A1.6(w) be amended to omit the term “regulations” because it is redundant, to require the Committee to consider proposed legislation, guidelines, and standards in addition to existing ones, and to broaden the scope of the Committee’s review of legislation, as follows:</p> <p>w) Identify and consider existing <u>and proposed</u> legislation, regulations, guidelines and standards, and associated approvals or authorizations, that are relevant to avoiding or reducing their</p>
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		<p>adverse effects, the construction, operation, and decommissioning of offshore wind developments and associated activities.</p>
<p>[Information and Analysis]</p> <p><i>Other Considerations and Requirements</i></p> <p>x) <u>Identify and consider the extent to which offshore wind development activities in the Study Area and their potential effects</u>, would: a) contribute to sustainability; and b) hinder or contribute to the federal and provincial governments’ ability to meet their environmental obligations and commitments in respect of climate change, and make recommendations on the manner in which future licencing decisions and/or impact assessments should consider and address these factors.</p> <p>y) 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>z) 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>aa) Ensure that the information that it uses in conducting the Regional Assessment is accessible to the public through the Canadian</p>	<p>During the NFLD RA, there were concerns that information that the Committee was receiving was not being made available to 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 to agree to keep knowledge and information that is not Indigenous Knowledge confidential during a public process unless it is required to do so by law.</p>	<p>We recommend that Subsection A1.6(x) be amended to require the Committee to assess potential effects, as follows:</p> <p>x) Identify and <u>consider and assess</u> the extent to which offshore wind development activities in the Study 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 Subsection A1.6(z) 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>z) Take into account <u>Consider</u> any scientific information, Indigenous knowledge — including the knowledge of Indigenous women — and community knowledge provided with</p>

<p>Impact Assessment Registry or by other means. 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>respect to the Regional Assessment, <u>and show how that information and knowledge was taken into account in its final recommendations.</u></p> <p>We recommend that Subsection A1.6(aa) be amended to remove the ability of the Committee to keep information that is not Indigenous Knowledge confidential, unless it is required to do so by law, as follows:</p> <p>aa) Ensure that the information that it uses in conducting the Regional Assessment is accessible to the public through the Canadian Impact Assessment Registry or by other means. <u>If the The Committee receives information that it has agreed to keep confidential, the Committee shall only keep that information that is not Indigenous Knowledge confidential unless if the Committee is required to disclose the information do so by law.</u></p>
<p><i>Administration and Reporting</i></p> <p>bb) Submit monthly status reports to the Ministers during the conduct of the Regional Assessment.</p> <p>cc) Undertake its work in accordance with the budget established under Section 8.0 of the Agreement. The Committee may request a change to the budget by way of a written request</p>		<p>We recommend that all regular status reports to the Minister be made available to the public through the 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 public</p>

<p>to the parties listed in Section 8.0 of the Agreement.</p> <p>dd) Complete a draft Report in accordance with these Terms of Reference and make it available for an Indigenous and public review and comment period, prior to the submission of the final Report to the Ministers. The Committee will advise the public that the draft Report is available on the Canadian Impact Assessment Registry Internet site.</p> <p>ee) If requested, provide copies of the draft Report in paper or electronic formats to participating individuals and organizations 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 in plain language and available in English</p>		<p>comments on the draft Report, and to indicate how those comments influenced the Final Report.</p>
A2: Committee Report		
<p>A2.1 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>A2.2 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 members. We therefore welcome this provision and believe that it will be helpful to the public and future decision-makers.</p>	

<p>A2.3 In its Report, the Committee will, in accordance with the goal, objectives and scope of the Regional Assessment outlined in Section 1.0 of the Agreement, include the following information for consideration and use in future planning, licencing and impact assessments for offshore wind development activities in the Study Area:</p> <p><i>Goal: To provide information, knowledge and analysis regarding future offshore wind development activities in the Study Area and their potential effects, in order to inform and improve future planning, licencing and impact assessment processes for these activities in a way that helps protect the environment and health, social and economic conditions while also creating opportunities for sustainable economic development.</i></p>		<p>We recommend that the outcomes of the Regional Assessment reflect the outcomes desired by the Indigenous rights-holders in the offshore areas.</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 offshore Study Areas.</p>
<p><i>Objective A: Providing information, knowledge and analysis related to environmental, health, social and economic conditions and the potential effects of offshore wind development activities in the Study Area, with consideration and weaving together of both Indigenous knowledge and scientific information.</i></p> <p>a) A description of environmental, health, social and economic conditions of the Study Area, based on the identification, compilation and review of existing and publicly accessible scientific information and Indigenous knowledge for the Study Area. This description will be presented in a manner to be determined by the Committee, which in addition to the</p>	<p>The NFLD RA committee spent considerable time and capacity on 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.</p> <p>There was a fair amount of initial 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</p>	<p>We recommend that Subsection A1.6(a) be amended to include space for community knowledge and information.</p> <p>We recommend that, if a GIS or other electronic tool is used to house information, that that process be completed before the regional assessment is finalized and that Indigenous peoples and other members of the public have sufficient time to review the GIS as part of the public participation for the Regional Assessment.</p>

<p>Committee’s Report may include information in an electronic format (such as through a Geographic Information System (GIS) application).</p> <p>b) An identification and analysis of key information gaps, requirements and opportunities, with a focus on those with relevance to, and implications for, future licencing and impact assessments for offshore wind development activities in the Study Area.</p> <p>c) Recommendations to address such information and knowledge gaps as appropriate.</p> <p>d) Identification of potential changes to the environment or to health, social or economic conditions that may result from offshore wind development activities in the Study Area, and the potential positive or adverse consequences of these changes. This will include consideration of the nature, degree and distribution of potential effects at the local, regional, national and international scales, as applicable.</p>	<p>with an oversight body to maintain the GIS, were never realized.</p> <p>We 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). We caution against the creation of a GIS if the Regional Assessment will only be 18 months long.</p> <p>An inventory is not a sufficient outcome for a regional assessment; the Committee must make use of that inventory and draw conclusions and conduct a cumulative effects assessment based on the information and knowledge contained in the inventory.</p> <p>We note again that in addition to identification, review, and assessment of Indigenous, scientific, and technical information and knowledge, the value of community information and knowledge that is non-scientific and non-technical, must also be recognized and integrated.</p>	<p>We recommend that the length of the Regional Assessment be increased to 30 months if creation of a GIS will be part of the process.</p> <p>We recommend that subsection A1.6(b) be removed or amended to broaden the scope of the Committees’ identification and analysis of key information gaps, requirements, and opportunities to all relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes in the region as part of a cumulative effects assessment.</p>
<p><i>Objective B: Providing an understanding of the regional context that can be used in considering and evaluating the effects of future offshore wind development activities, to inform future planning and licencing processes and impact assessments, including the management of cumulative effects.</i></p> <p>a) An identification and analysis of key environmental, health, social or economic components in the Study Area that should be considered in future licencing or impact</p>	<p>As we noted above, there is a need not only to identify and analyze possible environmental health, cultural, social, or economic components, but to assess cumulative effects.</p>	

<p>assessments for offshore wind development activities in the Study Area. This will include identifying and highlighting:</p> <p>i. Any components, values, locations or times that may be susceptible to effects (direct or indirect, positive or adverse) from future offshore wind development activities in the Study Area and/or from other past, on-going or future 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).</p>		
<p><i>Objective C: Identifying and recommending mitigation measures and other approaches for addressing potential positive and adverse effects (both project-specific and cumulative) as part of future decision-making for offshore wind development activities, in a manner that fosters sustainability.</i></p> <p>a) Recommendations on potential mitigation measures and other approaches that are technically and economically feasible for addressing the potential adverse effects of future offshore wind development activities in the Study Area or creating and maximizing their potential positive effects and the <u>equitable distribution of these benefits</u>. This may include standard measures as well as other potential approaches, technologies and measures that may</p>	<p>As we commented above, one of the scenarios that the Committee should address as part of identifying and assessing potential mitigation measures (within a broader sustainability analysis), is a scenario where offshore wind development activities do not occur. This would create a baseline against which to measure and weigh potential adverse effects and positive effects from these activities in the region.</p> <p>Any assessment of mitigation measures that are “technically and economically feasible” should be part of cumulative effects and sustainability assessments that consider a worst-case scenario where mitigation measures fail.</p> <p>As noted throughout our submission, an assessment of potential approaches and measures to address regional scale impacts on assessment</p>	

<p>be required to address particular issues identified through the Regional Assessment.</p> <p>b) Recommendations on potential approaches and measures to address regional-scale and non-project specific (including cumulative) effects. This may include potential policy, plan, program, regulatory or other initiatives by governments or other relevant parties.</p>	<p>priorities must be conducted through sustainability and cumulative effects lenses, and gaps in knowledge or information must be viewed in light of the precautionary principle.</p>	
<p><i>Objective D: Describing how the findings or recommendations of the Regional Assessment could be used to inform future planning and licencing processes for these activities and to enhance the effectiveness and efficiency of their impact assessments.</i></p> <p>a) Recommendations on how to consider, implement or otherwise address the Regional Assessment findings in a clear, effective and efficient manner in future licencing and in impact assessments for future offshore wind development activities in the Study Area, and/or through other initiatives by governments or other parties.</p> <p>b) 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>A2.4 The Committee will also include the following in its Report:</p> <p>a) A high-level, generic description of the types of offshore wind development activities that may occur in the Study Area, including their construction including expansion, operations and decommissioning phases as applicable. This will include fixed technologies (i.e., pile-driven platforms) as well as newer floating technologies and associated activities.</p> <p>b) The purpose of and need for offshore wind development activities in the Study Area, including their potential environmental, health, social and economic benefits.</p> <p>c) An identification and analysis of any change to offshore wind development activities in the Study Area that may be caused by the environment.</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>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>We welcome the broad approach taken with respect to the possible outcomes and uses of the Regional Assessment, both as a tool to inform future project-specific impact assessments and to inform other decision-making in the offshore.</p> <p>There is a typo in subsection A2.4(a).</p>	<p>We recommend that Section A2.4 require the Committees to describe all of the existing or proposed provincial, national, and international legal requirements that pertain to offshore wind development activities (as well as other anthropogenic and natural activities and processes), including laws respecting climate change mitigation, migratory birds, species at risk, and biodiversity.</p> <p>We recommend that subsection A2.4(a) be amended to require the Committee to provide information about all relevant past, present, and reasonably foreseeable future anthropogenic activities and natural processes in the Study Areas, as well as to fix the highlighted typo, as follows:</p> <p>a) A high level, generic description of the types of offshore wind development activities, <u>other anthropogenic activities, and natural processes</u> that may occur in the Study Area, including their <u>the</u> construction, including expansion, operations and decommissioning phases as applicable. This will include fixed technologies (i.e., pile-driven platforms) as well as newer floating technologies and associated activities.</p> <p>We recommend that subsection A2.4(d) be amended to require the Committee to provide information about how public</p>
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and Indigenous information and knowledge was used (not just considered) in the Regional Assessment and the Committee’s final report.

A.3: Schedule

A3.1 The Committee will complete its work in a phased manner and will, following the public review of drafts as referenced in Section A1.6 above, submit the various components of its Report to the Ministers as follows:

Report Component	Overview	Relevant Components (From Sections A2.3 and A2.4 Above)	Submission to Ministers
1	Information and analysis to inform future licencing for offshore wind in the Study Area	Section A 2.3 Objective A, items a) to d) Objective B, item a) Objective D, item a) Section A 2.4 Items a) to e)	12 months from Committee appointment *
2	Identification of, and recommendations on, mitigation and other approaches to address potential effects, to inform future impact assessments for offshore wind in the study area	Section A 2.3 Objective C, items a) to b) Objective D, items a) to b) Section A 2.4 Items d) to e)	18 months from Committee appointment *

* As noted above, the Committee may choose to present its description of current environmental, health, social and economic conditions in an electronic format, such as through a geographic information system (GIS) application. While this information is part of Component 1 (and any such GIS is therefore to be submitted with 12 months, it is recognized that the system may continue to be refined during the remainder of the Regional Assessment process, and that an updated version may be included in the Committee’s final deliverable (at 18 months)

A3.2 The Committee will submit its final Report (all components outlined in the above table, including final GIS application as applicable) to the Ministers within 18 months of the public announcement of the appointment of its members by the federal Minister of Environment.

The period for the NFLD RA was too short, and this criticism was echoed by participants throughout the process. It was also noted by the Committee in its Final Report to the Minister: “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”.

At one point, the committee requested an extension for its work, but this was denied.

We recommend that a minimum of two years be allotted to the Committees to complete their work for each Regional Assessment.

	Eventually, the Minister granted an extension to the Committee, but the entire process was conducted in approximately one year.	
A4: Clarification of or Amendments to Terms of Reference		
A4.1 The Committee may request clarification of, or an amendment to, its Terms of Reference by sending a letter to the Ministers setting out the request. Upon receiving such a request, the Ministers will provide the Committee such clarification or a response to the requested amendment in a timely manner.	<p>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.</p> <p>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 in the Registry or made available to the public otherwise.</p>	<p>The Minister must recognize and respect the jurisdiction of Indigenous peoples in the region and negotiate on a nation-to-nation basis with each of them with respect to the conduct of the Regional Assessment.</p> <p>We recommend that all public correspondence or submissions to the respective federal and provincial Ministers with respect to the Regional Assessment, including from the Committee, be posted in the Registry and that the Minister(s) commit to responding to inquiries and questions about the Regional Assessment within 30 days of receipt.</p>
A4.2 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.		