

**Public Comment on the Draft Terms of Reference for the Regional Assessment of Offshore
Wind Development in Newfoundland and Labrador and Nova Scotia**

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November 26, 2022

Executive Summary

The valued components that are discussed in this comment are Indigenous Knowledge and Indigenous Fishing Rights. There is room for improvement in the Terms of Reference regarding these two valued components. The province of Newfoundland and Labrador is home to three main Indigenous groups: Inuit, Innu, and Mi'kmaq. Because this is an offshore project, there is potential that all Indigenous groups in the province could be affected.

Indigenous knowledge considerations:

- Indigenous Knowledge (IK) is an important feature in the terms of reference. There are some improvements in how IK is addressed compared to previous projects assessed under the *Environmental Protection Act, 2012*, however, there is still room for improvement.
- IK gathered for this assessment will be kept confidential unless consent is otherwise given to share. Due to the historical context in which IK has been extracted and taken out of context to address consultation requirements, ensuring the confidentiality of the IK obtained from this assessment is welcomed.
- The Indigenous Knowledge and Perspectives advisory group is currently mandated to have a similar composition to the other two advisory groups. The language should be edited to ensure that this advisory group has representatives from all Indigenous groups in the province and that this advisory group is composed primarily of Indigenous peoples.
- The term *weaving* is used to describe how both Indigenous Knowledge and Western Scientific Knowledge will be considered in this assessment. This term should be clarified as it currently reads as a synonymous term with “integration” despite having a different connotation within the Indigenous studies literature.

Indigenous Fishing Rights:

- Fishing is a significant part of Indigenous culture due to its social, ceremonial, and dietary purposes. Indigenous fishing rights are inherent and should be upheld in the context of Newfoundland and Labrador.
- It is recommended that an assessment and report on Indigenous Rights, Titles, and Interests (RTI) be completed with a section dedicated to fishing rights.
- It is also recommended that at least one member from each of the main Indigenous groups in Newfoundland and Labrador participate on the Fisheries Advisory Committee to be created for this assessment.
- It is also recommended that the Impact Statement for this project include a separate assessment and report on the potential impacts for each of the three main Indigenous groups in Newfoundland and Labrador.

Component Critique 1: Evaluation of Indigenous Knowledge Considerations

Background:

Indigenous knowledge (IK) can be referred to as “the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings” (UNSECO, n.d.). Indigenous peoples have occupied territory throughout modern-day Canada since time immemorial and have developed deep connections and knowledge with their surrounding ecosystems (Henri et al., 2020). As Indigenous peoples have sustainably managed their lands for millennia, the United Nations Declaration on the Rights of Indigenous Peoples recognizes that respecting Indigenous knowledge and cultures “contributes to sustainable and equitable development and proper management of the environment” (UNDRIP, 2007, p.4). IK is epistemologically different from Western Scientific Knowledge (WSK), as IK is closely linked to worldview and spirituality. For example, the Mi’kmaq worldview does not see people as distinct from the natural world, but rather, as one life being amongst a natural world of many life beings (Assembly of Nova Scotia Mi’kmaq Chiefs, 2017). While Inuit Qaujimagatunangit (Inuit Knowledge) see everything as related in such a way that nothing can stand alone (Tester & Irniq, 2008). Similarly, the Innu recognize a dependence on each other, the weather, and the animals as a part of their worldview (Ward et al., 2021).

This interdependence and interconnectedness with nature has been highlighted in some of the responses that these groups have had to previous regional assessments. For example, in the *Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of NL*, Indigenous groups raised concerns about marine fish spawning and feeding areas, marine bird numbers, impacts on Atlantic Salmon, and considerations for the complexity of the marine ecosystem and the interrelationships between its various components and areas (Bangay et al., 2020). Similar values were raised in the *Labrador Shelf Offshore Area Strategic Environmental Assessment*, where Indigenous groups in Labrador identified Fish and Fish Habitat, Marine Mammals and Sea Turtles, Marine Birds, and Special & Sensitive areas amongst their valued components (Aivek Stantec Limited Partnership, 2021). In response to the draft Impact Assessment Report and Proposed Conditions for the Valentine Gold project the Qalipu First Nation expressed concerns with the possible impacts of the project on local flora and fauna, as the study area potentially contains medicinal plants and food sources, and altering this habitat remove the ability for future traditional land use. Furthermore, they ended this response with “Mi’kmaq people have no assumptions of superiority over other life forms. All of creation is sacred and should be treated with respect and honor” (Impact Assessment Agency of Canada, 2022b). Miawpukek First Nation’s response to the same report was similar, raising concerns about the potential loss of historic and cultural sites, impact on water quality and changes to water flows, potential for mercury contamination, cumulative impacts on Atlantic Salmon, protection of fish, species at risk, migratory birds, and culturally important species, and the alteration of or loss of traditional lands and resources (Impact Assessment Agency of Canada, 2022c).

Evaluation

The draft Terms of Reference (TOR) and Draft Agreements pay considerable attention to the collection and use of IK. For example, Indigenous Knowledge and Aboriginal and Treaty Rights makes up the first section of the mandate, giving it a dominant position in the document. There are some strengths and weaknesses regarding how the TOR and Draft Agreements deals with the

use of IK. It is important to note that there are challenges associated with incorporating IK into the impact assessment process. Eckert et al. (2020) investigated these barriers using a systematic literature review. Major barriers uncovered in this review include the historical extraction of IK by state governments and political power structures that favor western knowledge. For example, Baker & Westman (2018) found in EIAs conducted in the oil sands region, that IK was collected, refined, and distilled to meet consultation requirements, acting as a form of negative reciprocity. This taking of IK out of context to meet bureaucratic requirements is concerning, as this is viewed by some as a continued form of colonization (Eckert et al., 2020). Furthermore, political power structures create imbalances that hinder the incorporation of IK in the impact assessment process and are inherently difficult to overcome. Indigenous worldviews emphasize the interconnectedness of all life, whilst the neoliberal western paradigm emphasizes economic growth and development over environmental protection (Arsenault et al., 2019); thus, overcoming the barriers between these two knowledge systems will “challenge the status quo of Euro-Canadian governance systems and the western cultural assumptions that inform them” (Eckert et al., 2020). Given these barriers it is appropriate to discuss how IK is addressed by the TOR.

Confidentiality in TOR and Indigenous Knowledge

Section A1.5 of the TOR states that “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”. Given the historical context that has led Indigenous groups to be hesitant in sharing their traditional knowledge, the confidential nature of the IK that will be obtained from this regional assessment is welcomed. Furthermore, this confidential nature is in line with Indigenous protocols and procedures, which the Indigenous Knowledge and Perspective Advisory Group has been tasked with using when appropriate as per section A1.6(j) of the TOR. For example, Mi’kmaq talking circles typically start with informing the participants that this is a safe space to express oneself, and that what is said in the talking circle stays in the circle. Having provisions to keep IK confidential unless consent to share is given is an important step forward for environmental assessment in Canada. This provision for confidentiality, present in the newest *Impact Assessment Act*, represents an improvement on the previous act. While the confidential nature of the IK collected for this regional assessment may lead to greater Indigenous participation and knowledge sharing this it is important to note that this is not guaranteed. Given the historical context of IK extraction, many First Nation communities do not trust the EA process and often choose not to participate (Arsenault et al., 2019).

Advisory Group: Indigenous Knowledge and Perspectives

Closely related to the gathering of IK is the Indigenous Knowledge and Perspectives advisory group, which has been tasked with seeking knowledge and perspectives from Indigenous peoples and will advise the Committee on approaches for the collection, sharing, and consideration of IK into the regional assessment. Section A1.6(e) of the TOR states that the 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”. This composition is the same for all three advisory groups. It is important that the Indigenous Knowledge and Perspectives advisory group be composed of predominately Indigenous peoples and should, ideally, have qualified representatives from all

Indigenous groups in the province to ensure all knowledge systems are being held in equal consideration. Furthermore, as Indigenous peoples are often disproportionately impacted by industrial developments (Arsenault et al., 2019), it is important to have members from these communities sitting on Advisory Groups so a holistic picture of the cumulative impacts of development can be obtained. While the inclusion of an Indigenous Knowledge and Perspectives advisory group is an important aspect of the draft mandate it is important to note that simply providing advisory positions to Indigenous peoples is insufficient in ensuring effective participation from Indigenous groups. To ensure the effective participation of Indigenous groups “structures established by [Regional Assessments] must confer on [I]ndigenous participants a real and substantial role in decision making, rather than merely affording them an advisory or titular role” (O’Faircheallaigh, 2007).

On “weaving” Indigenous and Western Knowledge Systems

The “integration” of IK and WSK is difficult to equitably achieve due to the epistemological differences between the two systems and political power structures that favor WSK. When integration does occur, it is typically at the disadvantage of Indigenous peoples and their knowledge systems (Johnson et al., 2015). For example, there is a tendency in Western science to validate IK before it is accepted as legitimate (Arsenault et al., 2019). While IK is holistic and interconnected, it is often used by government agencies as simple facts or observations, ultimately “extracting” data from its socio-cultural context to be used to supplement western science (Arsenault et al., 2019). This is unfortunate as Indigenous observations about their ecosystems can provide valuable data for establishing baselines that more accurately describe environmental and social conditions prior to development (Arsenault et al., 2019).

As for how “integrating” the two knowledge systems is addressed in the TOR, section A1.4 states that “regional assessments can provide a means of weaving together scientific information and Indigenous Knowledge to inform future impact assessments”. The term “weaving” should be clarified within the TOR. Weaving knowledge systems can refer to

“a process through which multiple types of knowledge are equitably brought together to enable the reciprocal exchange of understanding for mutual learning and application. This notion implies a dynamic and co-evolving process of knowledge co-production through which the integrity of each knowledge system is respected and maintained” (Henri et al., 2021).

If this is the definition of weaving used in the TOR, then this is an appropriate term to use. However, if “weaving” is simply being used as a synonym for “integration”, this should be changed. While there are challenges with “integrating” WSK and IK, the two knowledge systems can still be considered in tandem. The process of weaving is one method of bridging these knowledge systems. Another framework for bridging these gaps is Etuaptmumk/Two-eyed Seeing. Coined by esteemed Mi’kmaq Elder Albert Marshall, Two-eyed Seeing is a guiding principle that refers to “learning to see from one eye with the strengths of (the best in) Indigenous knowledges and ways of knowing, and from the other eye with the strengths of (the best in) Western knowledges and ways of knowing, and to using both these eyes together, for the benefit of all” (Bartlett, Marshall & Marshall, 2007, p. 14).

Recommendations

In recognizing the power imbalances present between IK and WSK it is important that the TOR clarifies what is meant by the process of “weaving” these two knowledge systems together. If this term is simply used as a synonym for “integrating” then the process of considering both knowledge systems is likely to favor the use of WSK, while IK is simply extracted and used as “complementary” data. Fully considering the two knowledge systems is important in the impact assessment process as IK provides important place-based data that is effective in both establishing baseline conditions and monitoring the impacts of development.

Component Critique 2: Insufficient Recognition of Indigenous Fishing Rights

Background

The province of Newfoundland and Labrador is home to three main Indigenous groups, Inuit, Innu, and Mi’kmaq, all of whom have the inherent right to fish. Because this is an offshore project, I believe all Indigenous groups in the province could be affected, and therefore should all be adequately consulted. Fishing is a significant part of Indigenous culture as it was one of their main sources of sustenance but was quickly controlled by colonizers upon European contact (Anspach, 1819; Prins, 1997). Today, fishing remains a significant part of Indigenous culture because it holds social and ceremonial purposes and remains a continued source of sustenance (Brattland, 2010). In relation to Indigenous fishing rights, the Marshall decision of 1999 reaffirmed the right of Indigenous groups in Atlantic Canada to fish and sell marine resources (Davaia & Jentoft, 2001, p. 225). Although the Marshall Decision does not apply to Newfoundland and Labrador, Miawpukek First Nations initiated their own Commercial Fisheries Strategy in which the same conditions of the Marshall Decision do apply and they have developed a working relationship with the Department of Fisheries and Oceans (Brattland, 2010, pp. 14-15), thus the Indigenous right to fish in Newfoundland is upheld.

Prosper et al. (2011) argue that “[s]ystemic discrimination across Canadian institutions significantly obscures the potentials of equitable co-existence, inclusive knowledge mobilization, collaborative strategies for cultural alignment and, most importantly, Indigenous sovereignty” (p. 2). This argument, along with the “federal government[‘s] ... history of suppressing, violating, ignoring and minimising [*sic*] treaty rights” (Davaia & Jentoft, 2001, p. 226) significantly emphasizes the importance of not only recognizing Indigenous rights, but also including Indigenous knowledge in institutional discussion and decisions, such as this environmental assessment.

Evaluation

In the TOR, there is a brief mention of Indigenous consultation (Section A1.2), but nothing specific to the project, there is also mention of the impact this project could have on fisheries, but nowhere is there any mention of the effects on Indigenous fishing rights. There is no acknowledgement of this right nor is there any mention of the potential impacts this project could have on this inherent right. Although section A1.6(i-1) of the TOR discusses the creation of an Indigenous Advisory Group for this project, there is also a separate Fisheries Advisory Group to be created as per Section A1.6(o). However, there is no detail explaining how Indigenous participation will be incorporated in the Fisheries Advisory Group. The TOR does mention that Indigenous participation should be included in the Fisheries Advisory Group, but this statement

is vague and does not describe in what capacity Indigenous participants will be involved in the advisory group.

The Blackwater Gold Project assessment in British Columbia was completed with the active involvement and recognition of Indigenous groups. During the assessment period, multiple assessments and reports on Aboriginal Rights, Titles, and Interests (RTI) were completed (*Assessment of Impacts on the Carrier Sekani First Nations' Aboriginal Title, Rights, and Interests from the Blackwater Gold Project*, 2019 & Keefer Ecological Services Ltd, 2019). These assessments and reports were completed in collaboration with Indigenous groups in the area and detailed the impacts of the project that could affect Indigenous rights, with a specific section dedicated to fishing rights. Based on the TOR for this regional assessment, there is no specific plan to consider and discuss Indigenous fishing rights, therefore, in comparison to the Blackwater Gold Project assessment, this project is inadequately recognizing Indigenous fishing rights.

Another environmental impact assessment, the GCT Deltaport Expansion – Berth Four project in British Columbia, displays adequate Indigenous involvement and recognition. The Draft Joint Guidelines for this project stipulate that there should be individual assessments completed on the potential impacts of Indigenous interests in each Indigenous nation that could be affected (Impact Assessment Agency of Canada & B.C. Environmental Assessment Office, 2021, p. 118). Providing potential impacts for each nation highlights the variation among Indigenous groups that should be recognized while evaluating impacts that could affect these groups. Separate reports on each Indigenous group ensures that each group is adequately represented throughout the impact assessment process and reduces the ability of the assessment to lump all Indigenous groups together, presenting them as having identical knowledge systems, interests, and beliefs. While some of these may be similar across Indigenous groups, they remain unique to each group, as highlighted separate assessments and reports on the impacts that each group could experience.

Recommendations

An assessment and report on Aboriginal Rights, Titles, and Interests (RTI Report) should be completed in collaboration with Indigenous groups in Newfoundland and Labrador similar to the reports produced for the Blackwater Gold Project in 2019. The report would focus on the impacts that offshore wind developments could have on Indigenous fishing rights, as well as highlight any other rights and interests that could be affected.

Additionally, it is important to have adequate Indigenous representation on the Fisheries Advisory Group and more details on Indigenous inclusion in the TOR. Although Indigenous participation is mentioned under the section on the Fisheries Advisory Group, it is important to include at least one member from each main Indigenous group in the province. This will help weave Indigenous knowledge and settler knowledge on the topic of fisheries and broaden the perspectives of this project and its potential effects on the industry and inherent rights.

Finally, the Impact Statement of this project should contain three separate assessments and reports of potential impacts on Indigenous groups, one for each main group in Newfoundland and Labrador. This will allow for diversity among the reports and allow for any differences in

terms of knowledge systems, interests, and beliefs between the three Indigenous groups be expressed and evaluated in the impact statement.

About the Authors

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