



Miawpukek First Nation
Comments on the Regional Assessment of Offshore Wind in
Nova Scotia and Newfoundland and Labrador
DRAFT Agreement and Terms of Reference
Nov 2022



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1.0 Introduction

Interest in offshore wind as a source of renewable electricity has been growing for decades in Atlantic Canada and globally as the world transitions to a cleaner energy supply mix. Wind turbine projects in the offshore environment could benefit from the region's strong and regular wind patterns and provide a large area for such developments. Furthermore, these potential developments could avoid conflicts with land-users and nearby residents, a significant concern and challenge for onshore projects. While offshore wind projects come with their own unique set of impacts, they have proven to be a useful source of electricity generation in other parts of the world, such as northern Europe and China. As the technology matures, other countries, including the United States, are investing in developing offshore wind capacity. In Canada, federal and provincial governments have expressed interest in these technologies to generate low-carbon electricity and support economic development.

In the spring of 2022, it was announced by the federal Minister of Environment and Climate Change that a Regional Assessment (RA) of offshore wind in Nova Scotia (NS) and Newfoundland and Labrador (NL) would occur. The goal of this RA is to inform planning and licencing for future developments and/or project-specific Impact Assessments within the offshore of NS and NL by gathering knowledge about the potential impacts, mitigation measures, and resources. The RA will also enable collaboration by Canada, NS, and NL to ensure an efficient regulatory regime for future developments.

To undertake the RA, draft agreements between Canada-NS and Canada-NL (together the Parties) have been prepared, along with a shared Terms of Reference (ToR). These documents outline how the Parties will participate in the completion of the RA, including sharing of resources, communicating with the public and Indigenous groups, creating the RA committee, and providing resources to the committee. It will be the committee that is responsible for the primary tasks of the RA including evaluating and analyzing information that is provided and preparing a report within 18-months of being formed.

This report has been prepared by Miawpukek First Nation (MFN) based on our review of the draft Agreement between Canada-NL and the ToR to provide comments to the Parties. The focus of MFN is on the regional waters and nearshore areas of the island of Newfoundland, within the areas of NL Regional Assessment Study Area (Figure 1).

It is important to note that the comments and recommendations provided within this report relate only to the *Regional Assessment* and do not reflect MFN's perspectives on wind technologies (both onshore and offshore). Nor are these comments applicable to any current or potential wind development projects. MFN has not taken any official position on offshore or onshore wind projects. However, our community is interested in learning about all new projects and supporting those that are environmentally sustainable and respect our rights.



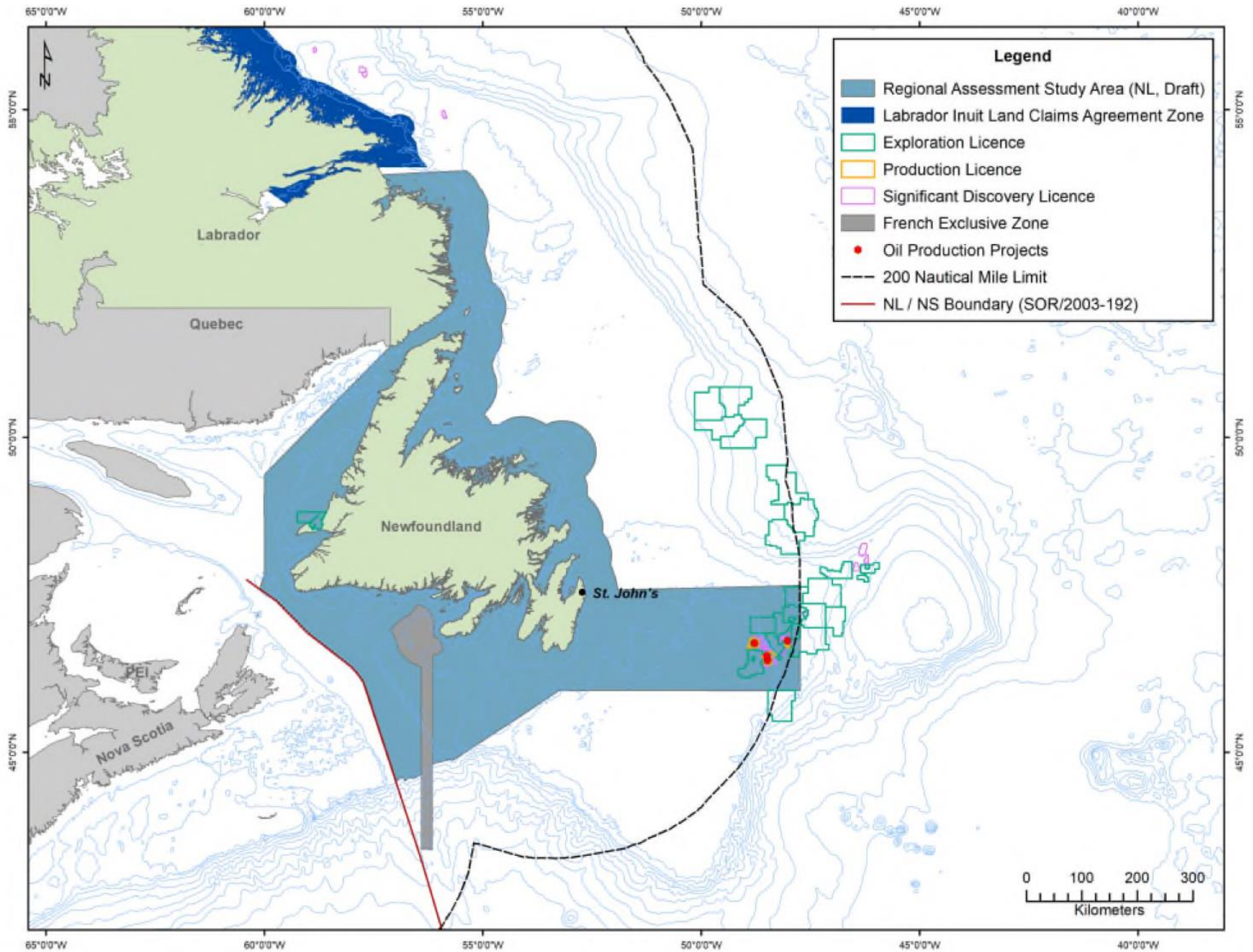


Figure 1. Regional Assessment Study Area for Newfoundland and Labrador (draft Agreement)



1.1 Draft Agreement for a Regional Assessment of Offshore Wind

In order to proceed with the RA for offshore wind development, Canada and NL have prepared a *Draft Agreement to Conduct a Regional Assessment of Offshore Wind Development in Newfoundland and Labrador* (the Agreement). This Agreement is established to allow the Parties to jointly undertake the RA and establish a Regional Assessment Committee (the Committee) which will be responsible for conducting it in accordance with the Agreement and the ToR (see Section 1.2). The Agreement includes provisions for cooperation, cost-sharing, record keeping, and reporting.

The Committee will consist of 5 members that are chosen by the by the federal Minister of Natural Resources (the Honourable Jonathan Wilkinson) and the provincial Minister of Industry, Energy and Technology (the Honourable Andrew Parsons), jointly referred to as the Ministers. Support for the Committee will be provided by a Secretariat that will consist of staff from federal and provincial departments (Impact Assessment Agency, Natural Resources Canada, and NL department of Industry, Energy and Technology), along with the Canada-Newfoundland Offshore Petroleum Board (C-NLOPB). The Secretariat will perform the regular activities of the RA for planning, scheduling, communications, and research. This will also include gathering information and presenting it to the committee.

The RA will also establish three advisory groups for provision of advice during the RA. These groups include:

- 1) Indigenous Knowledge and Perspectives Advisory Group
- 2) Scientific and Technical Information and Analysis Advisory Group
- 3) Fisheries Advisory Group

The goal of the RA, as established in the Agreement is to (emphasis added):

*“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.”*

The goal above is supported by four objectives, which are:

- a) Provide information on offshore wind developments related to condition of
 - a. Environment
 - b. Health
 - c. Social
 - d. Economics
- b) Provide regional context for:
 - a. Evaluating effects
 - b. Informing planning, licencing, and impact assessments



- c. Managing cumulative effects
- c) Identifying mitigation measures which can be applied to address effects of future developments
- d) Provide recommendations for planning and licencing of future developments.

The final report for these activities will be completed and submitted to federal and provincial ministers within 18-months of the appointment of the Committee.

For greater clarity, the RA is focused on offshore wind development projects. These are described in the Agreement as “Offshore wind development activities” with the following definition:

“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. These physical activities include the transmission of electricity to shore.”

1.2 Terms of Reference

The ToR for the RA are established under subsection 92(1) of the *Impact Assessment Act*, and provide additional information on the conduct of the Committee and execution of the RA. The ToR are separated into four sections (A1 – A4), briefly described below.

A1 Mandate of the Committee

The committee has been instructed to receive information from Indigenous peoples on Aboriginal and Treaty rights, information on potential effects of future development, and the potential impact that those effects may have on rights. As part of their duties, the committee will engage with Indigenous peoples, including the preparation of an *Indigenous Participation Plan*.

Advisory groups will be established to provide guidance on a variety of topics. The three advisory groups include: Indigenous Knowledge and Perspectives, Scientific and Technical Information and Analysis, and Fisheries Information and Analysis. The individuals who participate in the advisory groups will be determined by the Committee based on experience that is considered relevant.

The information and analysis conducted by the committee will focus on describing existing conditions, identifying knowledge gaps, identifying positive and adverse effects, and identifying mitigation measures, along with some other considerations.



A2 Committee Report

The Committee will be responsible for documenting the RA and preparing a report for the Ministers. This will include information and recommendations related to the goals of the Committee as described in the Agreement.

A3 Schedule of the Regional Assessment

The committee will prepare a report that is divided into two components. The first must be submitted to the Ministers within 12 months of Committee appointment is focused on “Information and analysis to inform future licencing for offshore wind in the Study Area”. The second component of the report must be submitted within 18 months and is focused on “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”.

A4 Clarifications or Amendments to the Terms of Reference

If they elect to do so, the Committee may request additional information and/or changes to the ToR by sending a letter to the Ministers.

2.0 Miawpukek First Nation

2.1 Background, Culture, and History

MFN’s traditional territory—*Mi’kmaki*—encompasses a vast area, stretching from the Gaspé Peninsula in Quebec, through New Brunswick to northern Maine, across Nova Scotia, Prince Edward Island and the Island of Newfoundland. Located in Newfoundland, or *Ktaqamkuk* in our language, MFN’s community members have a shared ancestry with other Mi’kmaq from across *Mi’kmaki*.



Our relationship with the land and surrounding waters of this region has existed since time immemorial. Written records show that Mi'kmaq hunters and fishers travelled to and occupied present-day Newfoundland during warmer months, at least as early as the 1600s (Pastore, 1998), although our oral histories and current research suggest that this occurred much earlier. French and English historical records posit that the Mi'kmaq didn't establish 'permanent residences' on *Ktaqamkuk* until the 1760s (Bartels & Janzen, 1990). Importantly, the concept of 'permanent residences' or 'permanent habitation' is rooted in colonial understandings of *terra nullius* and what constitutes occupation: our own understanding of our Mi'gmaq way of life and occupation differs.

Oral history passed down through generations holds that the ancestors of MFN have lived and travelled *Ktaqamkuk* since time immemorial. Our M'gmaq ancestors' lives followed seasonal patterns and involved regular travel throughout our traditional territory to access resources. This included travel between *Unamaki* (Cape Breton) and *Ktaqamkuk* for hundreds of years before the land became known as Canada, maintaining connections between the island and the mainland. While certainly not the first occurrence, one notable example of such travel occurred in the 1760s when Chief Jeannot Pequidalouet led a group of Mi'kmaq across the Cabot Straight to avoid hostility and mistreatment at the hands of the British (Martijn, 2003).

Frank Speck (1922) who completed ethnographic research on Newfoundland in the summer of 1914 alluded to the length of history our ancestors have on *Ktaqamkuk* when he wrote:

Throughout Newfoundland the [Mi'kmaq] Indians refer to their predecessors as Sa'qawedjkik 'the ancients,' speaking of them as though they were the first inhabitants of the island [...]. The Sa'qawedjkik families are said to have become completely merged with the later [Mi'kmaq] comers from Cape Breton and Labrador. (Speck, 1922, p. 123)

Our ancestors' lifecycles and occupation of these spaces lends credence to our assertion that the island of *Ktaqamkuk* is part of the traditional territory of the Mi'kmaq.

Over the centuries, MFN's ancestors continued to live, hunt, fish, trap, guide and make a living on the island over the centuries. During the latter part of the 18th century through the 19th century, Mi'kmaq guides helped European explorers visit and map the areas that were already being used by the Mi'kmaq. In 1822, William Cormack, the first European credited with crossing the island, was guided by Sylvester Joe, a Mi'kmaq traveller. During their journey, the two encountered several Indigenous people in areas that were thought by Europeans to be uninhabited (Pastore, 1998). Ironically and unfortunately, to earn a wage and support themselves, our Mi'kmaq ancestors worked on major projects such as the railroad, which ultimately facilitated the expansion of European colonizers.

Because Newfoundland was not part of Confederation until 1949, the Mi'kmaq of Miawpukek were not included under Canada's *Indian Act* of 1876. In many ways, this may have been beneficial because we were not subject to the harmful actions exerted by the federal government through this act. However, by being outside of the *Indian Act*, we were also not afforded the same Aboriginal rights granted to Indigenous Peoples across Canada. This lack of protection, combined with political, economic and



religious pressure, led to the continuous erosion of traditional practices and ways of life (something which MFN has been rebuilding over generations).

In 1984, after years of fighting for recognition, the federal government granted status to MFN under the *Indian Act*. This was followed three years later by the allocation of a 500-hectare reserve in Conne River named by Council as the *Samiajij Miawpukek Indian Reserve*, which translates closely to “too small Indian Reserve.” The larger traditional territory, known as *Mimaju'nnulkwe'kati*, covers an area greater than 17,000km² and has never been surrendered or ceded. This area has been used by the members and ancestors of MFN since time immemorial. Despite repeated land claims and court battles, this area has never been formally recognized. However, our rights have never been extinguished and our people continue the struggle for recognition to this day.

2.2 Historic Land Use and Cultural Values

From their earliest time on *Ktaqamkuk*, our ancestors relied on hunting, fishing and trapping for sustenance. Diet and preferred location changed with the seasons. Spring and summer were typically spent mostly along the coasts of the island, while the fall and winter saw our ancestors travel inland, along rivers and lakes.

Caribou played a special role for our ancestors due to their size and abundance. This species not only provided nutritious food but also hide for clothing and construction. However, the expansion of European colonizers throughout the eighteenth and nineteenth centuries pushed our Mi'kmaq ancestors further and further away from caribou herds, making it more difficult to rely on them for sustenance. Subsequently, large-scale caribou hunting resulted in catastrophic declines of the island population. This pressure nearly caused the extinction of the herd when it declined from an estimated 40,000 individuals in 1900 to approximately 2,000 in the 1930s (Bergerud, 1969).

Adapting to the changing circumstances, MFN's ancestors were forced to shift their diets (although caribou remains to this day an important cultural resource). While fish was always an important part of the Mi'kmaq diet, reduced access to the caribou caused fish—and Atlantic salmon in particular—to become much more important. More recently, with the ongoing decline of salmon, MFN has shifted our efforts to the capture of marine fishes, including shellfish, groundfish and pelagic species.

2.3 Miawpukek First Nation Rights

Any future offshore wind projects in the waters off Newfoundland would occur within the traditional territory of MFN, used historically and currently by community members. The Crown (as represented by IAAC) has a duty to consult and accommodate First Nations pursuant to section 35 of the *Constitution Act, 1982*. This is a legal requirement that has been repeatedly upheld by the Supreme Court of Canada. Moreover, the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, which has been adopted by Canada, requires that states cooperate in good faith with Indigenous Peoples so that they obtain free, prior and informed consent. According to *UNDRIP* Section (2) and (3) of Article 32:



2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

MFN wishes to be meaningfully engaged and consulted in relation to any future project as there is the potential for significant impacts to our rights and interests.

3.0 Comments on the Regional Assessment of Offshore Wind

3.1 Review of Draft Agreement for Regional Assessment Offshore Wind in Newfoundland and Labrador

Table 1. MFN Comments on Draft Agreement for Regional Assessment Offshore Wind in Newfoundland and Labrador.

#	Document Reference	Comment	Request/Recommendation
1	General Comment	<p>Based on our review of the Draft Agreement and Draft ToR for the RA, MFN is concerned that Canada and Newfoundland are using this Regional Assessment to circumvent the impact assessment process to advance political and corporate ambitions for building offshore wind projects, at the expense of meaningful engagement.</p> <p>Overall, the ToR is very general and limited in detail. The timeline for the RA is extremely short, which casts doubt over the extent to which the Report’s findings will be of sufficient detail to meaningfully inform future projects of anything. It is also unclear to what extent Canada and Newfoundland will be able to</p>	<p>a) MFN’s requests that Canada and Newfoundland provide guarantees to MFN, in the form of a negotiated agreement, that our Aboriginal rights and interests will be respected and accommodated for all future offshore wind development projects. This agreement would also incorporate the recommendations of this report. Failing that, MFN requests that Canada cancel the RA, and that any future offshore wind projects be undertaken as a standalone Federal Impact Assessment.</p> <p>b) If Canada insists on advancing the RA, MFN requests that the draft ToR and draft Agreement are discarded and started from scratch working in</p>



		<p>circumvent permitting and approvals that would otherwise be required if an offshore wind project went through a project specific impact assessment without the RA. Furthermore, the ToR and Draft Agreement grant Canada and Newfoundland broad and unrestricted discretion on how to apply the findings of the RA which is highly concerning to MFN.</p> <p>MFN is concerned that Canada and Newfoundland will use the Conditions within the Draft Agreement and ToR to circumvent our Aboriginal rights and advance private corporate interests. Without much stricter terms imposed upon Canada and Newfoundland, Canada and Newfoundland will effectively be funding a process for private corporations to be able to bypass proper regulatory mechanisms that provide essential safeguards to the environment and our Aboriginal rights.</p>	<p>collaboration with MFN.</p> <p>To ensure that the RA is sufficiently rigorous and comprehensive, the template used for the ToR must come from a recent project specific impact assessment ToR.</p> <p>c) The comments and recommendations in this report are provided to inform ToR, or so that the existing ToR can be improved.</p>
2	General Comment	<p>Canada has enacted Bill C-15 which requires that Canadian federal law is consistent with UNDRIP. There are several important aspects of this declaration but two which are particularly relevant include Section (2) and (3) of Article 32:</p> <p><i>2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in</i></p>	<p>a) MFN requests that the committee assess how any proposed changes to future planning, licensing, and impact assessment processes must explicitly consider Canada’s commitment to adopting UNDRIP. This must be explicitly described in the Agreement and ToR.</p> <p>b) MFN requests that the Committee evaluate how such any proposed changes to future planning, licensing, and impact assessment processes would directly impact MFN’s ability to engage and consult with the Crown.</p>



		<p><i>connection with the development, utilization or exploitation of mineral, water or other resources.</i></p> <p><i>3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</i></p> <p>In order for the IAA legislation to be consistent with UNDRIP, there must be adequate mechanisms for consultation with MFN to obtain free, prior, and informed consent. At present, the only practical way this can be accomplished is the federal Impact Assessment process.</p>	
3	Draft Agreement, Preamble	<p>MFN asserts that our members hold Aboriginal rights, as described under section 35 of the Constitution Act.</p> <p>MFN notes that currently the preamble does not mention the Crown’s Duty to Consult and Accommodate, and that the participation of the public and the participation of the public are described in the same capacity. This does not reflect the fundamental difference between the obligations of Canada to Indigenous peoples related to the Duty to Consult and Accommodate and the participation of the public. This issue is reflected throughout the Draft Agreement and ToR as descriptions of public engagement and Indigenous consultation are virtually the same.</p>	<p>The preamble should include separate statements regarding participation of the public and the involvement of Indigenous Peoples. The statement related to the involvement of Indigenous Peoples must include Canada’s commitment to fulfilling the Duty to Consult and Accommodate. This distinction between public engagement and Indigenous consultation must be reflected throughout the Draft Agreement and ToR.</p>



4	Draft Agreement, Preamble,	MFN notes that currently the preamble does not include any mention of the UNDRIP, or the principles of free, prior and informed consent. This is an essential foundation and context for the regional assessment, and should be included in order to be consistent with Canada’s commitments set out in the <i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> .	The section of the preamble addressing the rights of Indigenous peoples should read: <i>the Government of Canada is committed, in the course of exercising and performing its duties and functions in relation to impact, regional and strategic assessments under the Impact Assessment Act, to (1) upholding and protecting the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982, (2) requiring the free, prior and informed consent of Indigenous Peoples consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and (3) pursuing reconciliation with the Indigenous Peoples of Canada.</i>
5	Draft Agreement, Section 1.1	In its description of the goal of the Regional Assessment in Section 1.1, the Draft Agreement includes mention of protecting “ <i>the environment and health, social and economic conditions while also creating opportunities for sustainable economic development.</i> ” However, this important statement of the overall aim of the Regional Assessment does not include any mention of the rights of Indigenous Peoples.	Section 1.1 should be revised to read, “ <i>in a way that helps protect the environment and health, social and economic conditions, <u>serves to protect and uphold the rights of Indigenous peoples, while also creating opportunities for sustainable economic development.</u></i> ” This change should be reflected throughout the ToR, including the requirements for the Regional Assessment Report outlined in Section A2.3 which correspond to the Draft Agreement’s goals and objectives.
6	Draft Agreement, Section 1.2	In the description of the objectives of the Regional Assessment, Section 1.2 of the Draft Agreement includes a statement that both Indigenous knowledge and scientific information will be considered and woven together. However, this statement does not provide enough clarity that traditional knowledge and scientific information will be considered on an equal basis, consistent with the <i>Impact Assessment Act</i> .	Section 1.2 (a) should be revised to read, <i>with consideration on an equal basis and weaving together of both Indigenous Knowledge and scientific information.</i> This change should be reflected throughout the ToR, including the requirements for the Regional Assessment Report outlined in Section A2.3 which correspond to the Draft Agreement’s goals and objectives.
7	Draft Agreement, Section 1.2	MFN notes that the current list of objectives does not include the establishment of a baseline of conditions against which to assess the incremental impacts of future individual projects, despite this being a stated purpose of regional	a) The list of objectives for the Regional Assessment must be revised to include characterizing baseline conditions against which to assess the impacts of future individual projects.



		assessments by the Government of Canada (see Regional Assessment under the <i>Impact Assessment Act</i> , last modified 2022-07-20, link).	b) The timeline for the RA should be extended to allow adequate time for gathering baseline data which would support meaningful characterization of existing conditions.
8	Draft Agreement, Section 1.2	Given that the Draft Agreement’s statement of the goal of the Regional Assessment includes a consideration of sustainable economic development, a clear objective and outcome of the Regional Assessment must include a process for identification and development of sustainable thresholds of wind development over time. MFN views this as an essential potential contribution of the Regional Assessment, as otherwise targets will be subject to market forces and political agendas and not an understanding of the regional context and potential positive and adverse effects on the environment and rights of Indigenous Peoples.	Section 1.2 should be revised to include a statement regarding the identification of process for establishing thresholds of wind development over time as an objective of the Regional Assessment. MFN must be meaningfully involved in this process. This should be reflected in Section A2.4 of the draft ToR, which outlines information for the Committee to include in its Report related to the analysis of the potential of offshore wind development that will occur in the Study Area.
9	Draft Agreement, Section 1.2	In the Draft Agreement’s description of the objectives of the Regional Assessment Section 1.2 states that <i>“the findings or recommendations of the Regional Assessment could be used to inform future planning and licensing processes for these activities and to enhance the effectiveness and efficiency of their impact assessments.”</i> While MFN appreciates that the Regional Assessment may contribute to future impact assessment process, greater clarity must be provided about the proposed interaction between the Regional Assessment and future impact assessment processes. MFN is concerned that the language of increasing the “efficiency of impact assessments” could be understood to envision decreased requirements for the rigor and thoroughness in future impact assessments for individual projects, particularly as it relates to the assessment of environmental	The Draft Agreement must be clear that the results of the regional assessment will in no way lessen the requirements of future impact assessments for individual projects, including requirements for consultation and accommodation of Indigenous groups. In addition, a stated outcome of the Regional Assessment, in keeping with its stated objective to foster reconciliation, should be to facilitate consent-based processes with Indigenous groups for future individual projects.



		effects, the development of mitigation measures and consultation and accommodation of Indigenous groups.	
10	Draft Agreement, Section 1.4	Section 1.4 of the Draft Agreement sets out the proposed Study Area for the Regional Assessment. However, the Agreement does not include any methodology or sufficient justification for how the extents of the Study Area were established, other than a general statement that the area includes portions of the offshore area “ <i>where future offshore wind development activities may be technically and economically feasible.</i> ” MFN is also deeply concerned that no consultation has taken place with our leadership related to the development of the Study Area, and no record of how other Indigenous groups were meaningfully engaged in the development of the proposed Study Area is otherwise included. MFN does not agree that the extents of the Study Area should be limited to only where wind development activities may be feasible, but should include the broader extents of where effects of such development may occur on the environment and the rights of Indigenous Peoples.	The Study Area must not be considered final until its extents are confirmed to be suitable in collaboration with Indigenous groups. The Draft Agreement must set out in more detail the methodology for determining the extents of the Study Area for review.
11	Draft Agreement, Section 1.4	MFN notes that across the vast extents of the currently proposed Study Area there is great variety in terms of the interests of Indigenous Peoples, aquatic species, habitat, ecological sensitivity, cumulative effects, and other dynamics and therefore generalizations about the entirety of the currently proposed Study Area in the Regional Assessment Report would be of limited planning use and even directly counterproductive to the objectives of the Regional Assessment.	The Study Area must be subdivided into several smaller local study areas, developed in collaboration with Indigenous groups, with the consideration of the unique features of those local study areas considered on a smaller scale in relation to the whole Study Area. This would also facilitate the development of more locally specific mitigations and recommendations.
12	Draft Agreement Section 1.2(d)	While never stated explicitly in the Draft Agreement or draft ToR, several sections of both documents imply that	It is MFN’s strong preference that the RA be cancelled, and that any future offshore wind



	<p>the RA will be used to streamline permitting and approval processes for offshore wind development. For example, Section 1.2(d) of the Draft Agreement states that the RA will describe <i>“how the findings or recommendations of the Regional Assessment could be used to inform future planning and licensing processes for these activities and to enhance the effectiveness and efficiency of their impact assessments.”</i></p> <p>As stated in other comments from MFN, we are concerned that the RA is being used to circumvent the rigorous impact assessment of future offshore wind projects and effectively serves as a subsidy to private corporate interests that intend to construct and operate future offshore wind projects.</p> <p>MFN will be particularly impacted by the RA effectively circumventing otherwise required permitting and approval processes, as any offshore wind projects will be within our Traditional Territory where we continue to exercise our Aboriginal rights as we have since time immemorial. Offshore wind projects also have the potential to significantly impact aquatic life and fisheries, which are important to MFN member livelihoods and which MFN holds commercial licenses for harvesting. Given the substantial historic impacts to the fisheries within the study area and the extent to which MFN depends on fish harvesting, MFN will be highly impacted by future offshore wind projects. MFN requires certainty around the implications that the RA has on future regulatory processes and the implications for our Aboriginal rights for us to consider active</p>	<p>projects be undertaken as a standalone Federal Impact Assessment.</p> <p>If the RA proceeds, MFN requests that:</p> <ul style="list-style-type: none"> a) An additional section is added to the draft Agreement that states some means by which Canada anticipates that future offshore wind project impact assessments may be made more efficient based on the Committee’s Report. Some examples of items to be included in the additional section are: <ul style="list-style-type: none"> i. Whether a Federal Impact Assessment may be entirely avoided based on the findings of the RA ii. Whether any future projects may be exempted from other Federal and Provincial permits or approvals iii. Whether the Duty to Consult and Accommodate may be determined to be either inapplicable for future projects iv. Whether a Federal Impact Assessment may be conducted under an accelerated timeline. <p>This information will give MFN and other Indigenous Nations clarity on the implications of the findings of the RA on future projects, a stronger commitment from Canada and Newfoundland on the outcomes of the RA and a basis of free, prior and informed consent for MFN’s engagement in the RA.</p> <ul style="list-style-type: none"> b) Canada commits to requiring all future offshore wind projects to require a Federal Impact Assessment.
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		engagement and participation in the RA.	
13	Draft Agreement Section 2.2	Section 2.2 of the Draft Agreement states that members of the Committee will be <i>“appointed by the federal Minister of Environment with the agreement of the federal Minister of Natural Resources and the provincial Minister of Industry, Energy and Technology.”</i> MFN notes that there is no clear criteria for Committee members, other than <i>“knowledge or experience relevant to the Regional Assessment”</i> (Section 2.6), and that there is also no process set out for the appointment of these individuals in a manner that will be informed by and transparent to Indigenous groups and avoid any conflicts of interest.	Section 2.2 should be revised to outline in more detail the criteria and process for the appointment of members of the Committee, in a manner that is transparent, informed by Indigenous groups, and avoids any potential conflicts of interest.
14	Draft Agreement Section 2.2	Section 2.2 states that <i>“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 Industry, Energy and Technology.”</i> There is no mechanism to guarantee First Nation representation on the Committee. Committee selection is left entirely to the discretion of federal and provincial Ministers. This is a major oversight that must be addressed, as this is inconsistent with the currently stated purpose of the Draft Agreement to foster reconciliation with Indigenous Peoples and Canada. This approach is not representative of the Nation-to-Nation approach between Canada and First Nations.	First Nation viewpoints are essential for creating a balanced and inclusive RA process. It is critical that the Committee has at least one First Nation representative from MFN. Indigenous representation on the committee is vital to ensure that Indigenous perspectives are incorporated into the RA’s process, decisions and outcomes. The Draft Agreement should also include a mechanism whereby First Nations from Newfoundland and Labrador will be involved in the selection of Committee Members for the RA.
15	Draft Agreement Section 2.6	Section 2.6 of the Draft Agreement states that <i>“The Committee will have knowledge or experience relevant to the Regional Assessment, including with respect to offshore wind</i>	MFN strongly requests that an MFN member is nominated to be on the Committee. MFN is willing to work with the Minister of Environment or his delegates to identify a member of our Nation who satisfies the



		<p><i>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.”</i></p> <p>MFN notes that the interests and concerns of MFN can only be properly assessed by MFN members or by meaningful engagement with them. Given the significant impacts of future offshore wind projects on MFN Aboriginal rights, it will be essential for at least one member of the Committee to be an MFN member who can properly assess and represent our interests and concerns.</p>	<p>requirements stated in draft Agreement Sections 2.6 – 2.8.</p>
16	Draft Agreement Section 3.0	<p>There is no First Nation representation in the Committee Secretariat for MFN’s government. Indigenous Knowledge and MFN community perspectives are integral for a successful RA process.</p> <p>MFN Government holds data that provincial and federal governments do not have access to that can help to inform the RA. Furthermore, Indigenous Knowledge is held by MFN members directly, often in oral format.</p> <p>There needs to be a role for MFN in the Committee Secretariat to support in work planning and scheduling, communications, administration and compiling/providing information and knowledge (both Indigenous and scientific).</p>	<p>IAAC must add a role for MFN on the Committee Secretariat to enhance information sharing and communication related to the RA specific to MFN. It is important that MFN has a role in that data collection/compilation process for the RA.</p> <p>MFN staff are well versed in conveying information, community meetings and collecting data for major projects. This would ensure proper collection of Indigenous Knowledge and good communication with the First Nations.</p> <p>There also needs to be consideration of Indigenous knowledge sharing, confidentiality (see comment #29).</p>
17	Draft Agreement Section 4.0	<p>Section 4.0 of the Draft Agreement outlines the Advisory Groups that will be established to support the RA. Section A1.6(e) of the ToR states that Advisory Group members will be determined at the sole discretion of the Committee. The method by which</p>	<p>If the RA proceeds, MFN requests that:</p> <ul style="list-style-type: none"> a) Draft ToR Section A1.6(e) is revised to state: <i>“These advisory groups will be comprised of individuals or organizations from within or outside of government, including Indigenous peoples, who have knowledge or</i>



	<p>information provided to the committee from the Advisory Groups will be integrated into the Committee’s Report is not included in the ToR.</p> <p>Given the fact that the Committee is not required to follow any guidelines to incorporate feedback from the Advisory Groups and that they will be selecting the Advisory Group members (and can change them at any time at their discretion), MFN is concerned that the Advisory Groups do not serve a meaningful role in the findings in the Report beyond providing general information to the Committee that could be easily compiled without an RA and indeed would be done anyways under a standalone Federal Impact Assessment.</p> <p>MFN has knowledge and information that would be essential for the Indigenous Knowledge and Perspectives Advisory Group and the Fisheries Information and Analysis Advisory Group to have meaningful and representative findings to provide to the Committee. However, MFN is hesitant to provide our knowledge to the Advisory Groups without much greater certainty on how the information will be utilized by the Advisory Groups, the Committee and by Canada and Newfoundland. MFN is concerned that providing information to the Advisory Groups will imply meaningful consultation or even consent for the Committee’s Report and how the Committee’s Report is implemented. Given our concerns with the structure and role of the Advisory Groups as described in the draft ToR, it appears that the RA is set up to actively facilitate further infringement upon MFN rights.</p>	<p><i>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 Committee will publish the criteria upon which Advisory Group members are selected, and strong preference for selection will be provided to members of impacted Indigenous Nations.</i></p> <p>b) Section 3.2 of the Draft Agreement be revised to state: <i>“The Secretariat will be co-managed by the Agency and the Newfoundland and Labrador Department of Industry, Energy and Technology and comprised of staff assigned from the Agency, C-NLOPB, Natural Resources Canada, Miawpukek First Nation Lands and Resources Department and the Newfoundland and Labrador Department of Industry, Energy and Technology.”</i></p> <p>c) Substantial details are added that clarifies how information from the Advisory Groups will be gathered, documented and reported to the Committee, and how the Committee will incorporate the findings into their Report. These details can and should be developed collaboratively with MFN.</p>
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18	Draft Agreement, Section 6.2	<p>Section 6.2 of the Draft Agreement states that <i>“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.”</i> MFN is concerned that 18 months of time is wholly insufficient to properly carry out all the work and consider all the parameters set out in the Draft Agreement and Appendix A in a fair and comprehensive manner. Given the stated objective of the Draft Agreement to inform future impact assessment processes and regulatory decision-making, it is critical that sufficient time is granted for the Committee and Advisory Groups to carry out and analyze the research necessary, and that sufficient time is given to consultation with Indigenous groups, including their review of information presented and their own gathering, presentation, and incorporation of additional information.</p>	<p>The description of the timeline for the Regional Assessment should be amended to</p> <ol style="list-style-type: none"> 1) allow for a timeline of at least 36 months, and 2) set out in more detail a proposed monthly timeline, including the development of Participation Plans, completion of research, review periods, etc. which Indigenous groups must confirm are suitable. <p>Given the uncertainty of the nature of issues that will be encountered in the Regional Assessment process, include more general commitments to timeliness and balancing the various interests of environmental protection, Aboriginal rights and consultation and sustainable development, without identifying a specific timeline.</p>
19	Draft Agreement Section 7.0	<p>Section 7.0 of the Draft Agreement outlines the terms of Interjurisdictional cooperation between Canada and Newfoundland, including after the Committee’s Report has been submitted to <i>“implement the findings and recommendations resulting from the Regional Assessment”</i>.</p> <p>MFN is an Indigenous Nation which can and should be recognized by Canada and Newfoundland as requiring a Nation-to-Nation relationship with the Crown. Given our Aboriginal rights and the obligation of Canada to uphold the constitutional duty of the Crown, it would be most appropriate for MFN to be seen as an additional jurisdiction to work cooperatively with Canada</p>	<p>MFN requests that</p> <ol style="list-style-type: none"> a) Draft Agreement Section 7.2 should be rewritten as: <i>“Within 90 days of the submission of the Committees Report, the parties to this Agreement will publish an implementation and action plan on the Canadian Impact Assessment Registry with firm commitments on how the parties will implement the agreement.”</i> b) MFN be included as a party to the Agreement and Canada work with MFN to revise the text to support the collaborative role that MFN wishes to play in the RA. The preamble of the Agreement should include the following clauses: <i>“WHEREAS Miawpukek First Nation holds and exercises Aboriginal rights</i>



		<p>and Newfoundland in accordance with the terms of Section 7.0 of the Draft Agreement.</p> <p>In particular, MFN is concerned with the decisions that may be made under Draft Agreement Section 7.2 wherein Canada and Newfoundland will determine how to respond to and implement the findings of the Committee’s Report. Section 7.2 of the Draft Agreement gives Canada and Newfoundland immense discretion on how the RA is applied to future Projects without any input from impacted Indigenous Nations.</p> <p>As an Indigenous Nation that will be impacted by future offshore wind development, MFN finds Section 7.2 of the Draft Agreement to be immensely paternalistic in formulation and gives Canada and Newfoundland excessively broad authority to apply the RA in a way that advances their political agenda at the expense of our Aboriginal rights.</p>	<p><i>throughout its Traditional Territory which the Regional Assessment falls within. Miawpukek First Nation is an Indigenous people pursuant to Section 35 of the Constitution Act, 1982 and Article 32 of the United Nations Declaration on the Rights of Indigenous People.</i></p> <p><i>WHEREAS the Governments of Canada and Newfoundland and Labrador are committed to reconciliation and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act and are willing to undertake collaborative regulatory processes upon request by impacted Indigenous Nations as envisioned within the Impact Assessment Act.”</i></p> <p>Note that these recommendations will require conformity revisions throughout the Agreement.</p>
20	Draft Agreement, Section 8	<p>MFN notes that while Section 8.0 includes the costs of the Committee, the Agency, Natural Resources Canada, and the Newfoundland and Labrador Department of Industry, Energy and Technology for the completion of the Regional Assessment, the draft agreement makes no mention of the costs associated with the participation of Indigenous groups in the regional assessment. The Crown’s Duty to Consult and Accommodate will not be satisfied unless consultation with Indigenous groups is made in good faith and with good intent, and this includes ensuring Indigenous groups have the resources necessary to be fulsomely engaged with commitments to funding.</p>	<p>The Draft Agreement must include a commitment to the development of funding agreements with Indigenous groups participating in the regional assessment in order to facilitate and support their fulsome involvement, including the costs of engagement, reviews of information provided, completion of independent studies, and staff time spent in support of the Secretariat and Advisory Groups.</p>



3.2 Review of Terms of Reference for Offshore Wind Regional Assessment

Table 2. MFN Comments on Regional Assessment ToR.

#	Document Reference	Comment	Request/Recommendation
21	ToR Section A1.3	<p>The committee is not mandated to determine existence or validity of Aboriginal or Treaty rights. Yet the RA process may create a process for exemption of future projects from the Impact Assessment Act, something which will undermine MFN’s ability to protect and assert our rights.</p> <p>As MFN does not have provincially recognized rights (a situation that MFN strongly disputes and is actively working to change) any exemption from the federal Impact Assessment process will force us to deal exclusively with the province on the topic of Aboriginal rights. History and experience have shown that the province does not engage or consult with MFN on resource development projects. Conversely, MFN has a much higher degree of confidence that the federal Crown will act with honour in dealings with our Nation.</p>	Any exemption of offshore developments from federal impact assessments would eliminate the opportunity for meaningful engagement and consultation with MFN. For this reason, the Committee must not be given the opportunity to create such an exemption.
22	Appendix A - Draft ToR, A1: Mandate and Activities of the Committee	Section A1.4 of the draft ToR states the Committee will recognize that <i>“Indigenous Knowledge is an important component of understanding existing conditions,</i>	Section A1 should be revised to outline a clear framework and approach for how the input of Indigenous groups and Indigenous Knowledge will be integrated with western science in the work of the Committee and



		<p><i>potential effects (both positive and adverse) and mitigation measures, and that regional assessments can provide a means of weaving together scientific information and Indigenous Knowledge to inform future impact assessments.</i>” While MFN appreciates this has been acknowledged in the ToR, a much clearer commitment and framework must be set out in the ToR for how Indigenous Knowledge will not only be shared and reviewed in a general sense, but specifically and meaningfully integrated in to the work of the Committee and the Regional Assessment.</p>	<p>the outcomes of the Regional Assessment. If it is a function of the Indigenous Knowledge and Perspectives Advisory Group to develop such an approach, a clear commitment should be made that this will be developed and approved of by Indigenous groups prior to any other work being completed on the Regional Assessment, as this is foundational to all subsequent steps.</p>
23	Appendix A - Draft ToR,	<p>While the ToR describes an Indigenous Knowledge and Perspectives Advisory Group and their work to <i>“advise the Committee on approaches for the collection, sharing and consideration” of Indigenous Knowledge “and its incorporation into the Regional Assessment”</i>, insufficient information is provided about the nature of the relationship between Advisory Groups and the Committee to determine if these Advisory Groups will fulfill the stated objectives of the Draft Agreement related to the incorporation of Indigenous Knowledge and consideration of Aboriginal rights.</p>	<p>The ToR must set out in detail the relationship between the Advisory Groups and the Committee, including how the input of Advisory Groups will be considered, approaches to disagreement and dispute resolution, requirements for the verification of Advisory Groups that their input has been appropriately incorporated, and a commitment that where input and views of Advisory Group members dissent from the conclusions of the Committee, these perspectives will be recorded in the Report.</p>
24	Appendix A - Draft ToR, Mandate and Activities of the Committee	<p>In Section A1.6(p), the ToR describes the information that will be included in the Report’s Description of Existing Conditions, which states <i>“information on existing environmental, health, social and economic conditions within the Study Area”</i> will be identified, compiled, reviewed and presented. MFN notes this does not set out in sufficient detail the characteristics of information that must be included in the Report, and does not include any characterization of traditional land use or the exercise of rights by Indigenous Peoples.</p>	<p>Given that one of the critical purposes of a regional assessment is to establish a baseline against which to assess the incremental impacts of discrete projects, the requirements for information that will be included in the Report’s description of Existing Conditions must be revised to include requirements for the description of existing conditions related to traditional land use and Indigenous Peoples’ exercise of rights.</p>



<p>25</p>	<p>ToR Sections A1.6(p), A1.6(s), A1.6(t) and A1.6(u)</p>	<p>In ToR Section 1.6(p), 1.6(s), 1.6(t) and 1.6(u), Canada states the information that the Committee is required to compile in its Report, including existing conditions and potential positive and adverse impacts from the Project. MFN notes that the level of detail provided in the ToR to guide the development of the report is extremely limited, especially when considered in relation to the ToR for proponent-driven projects under the IAA.</p> <p>MFN is concerned that the lack of specific information gathering required under the ToR will result in findings being of limited utility in informing future project-specific impact assessments. This is compounded by the fact that the RA has an aggressive timeline for completion, which will allow for limited baseline data gathering, especially for environmental data that requires several seasons to gather data, and for Indigenous Knowledge which can take time for Indigenous Nations such as MFN to obtain consent and support from the Nation on the input from the community into the RA.</p> <p>With the aggressive timeline to gather the required information for the RA, it appears likely that the RA will either provide little useful information to inform a project-specific IA, or will be used as a justification to avoid a fulsome assessment of future projects.</p> <p>Given the stated priorities of Canada regarding renewable energy, it appears probable that this RA is a justification to avoid a comprehensive impact assessment of future specific projects. MFN is very concerned about</p>	<p>MFN requests that Canada add the following text as Section 6.7 of the Draft Agreement: <i>“The Committee’s Report will not include recommendations to reduce the Crown’s Indigenous consultation obligations or the level of detail required of a proponent in their impact statement is equivalent to similar projects currently undertaking a Federal Impact Assessment under IAA 2019. The Report will not recommend that the Federal Impact Assessment process for future offshore wind projects within the RA study area are streamlined in any way. The Committee may identify gaps where additional Crown consultation obligations beyond those required through the permitting and approval process and make recommendations around addressing these gaps.”</i></p>
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		<p>this possibility as offshore wind projects are likely to have significant adverse impacts to our ability to exercise our Aboriginal rights. These impacts now appear to be far less likely to be properly assessed through the regulatory process than if the RA was not conducted.</p>	
26	ToR Section A1.6(c) and Draft Agreement Section 2.5	<p>ToR section A1.6(c) states that Canada will develop and implement an Indigenous Participation Plan (IPP) for the RA. MFN notes that the IPP is still in the conceptual phase and that the IPP will be developed and implemented in collaboration with Indigenous Nations.</p> <p>Considering the extremely limited timeframe to complete the RA, MFN is concerned that the timeline for establishing an IPP following the approval of the ToR will result in a relatively limited window of time for consultation and engagement on the RA. As stated previously, MFN has serious reservations about the regulatory implications of the RA as proposed and will require substantial engagement with Canada to address our concerns about the process prior to active engagement in the RA. It is important to note that MFN engagement and participation in the RA is essential if the findings of the RA will be meaningful and useful for information future projects.</p>	<p>MFN requests that:</p> <ol style="list-style-type: none"> Canada confirm that it will be possible for MFN to develop a Nation-specific IPP, if MFN wishes. The IPP provide specific detail on how input from Indigenous Nations will be incorporated into the Committee’s Report, and how the input from Indigenous Nations will inform the implementation of the Report. MFN notes that we may choose to not provide input into an RA that may infringe upon our rights or be used in a tokenistic fashion to advance an agenda we do not support. ToR Section A3.2 is revised to state: <i>“The Committee will submit its final Report (all components outlined in the above table, including final GIS application as applicable) to the Ministers within 36 months of the public announcement of the appointment of its members by the federal Minister of Environment. This schedule is considered tentative and will be revised based on consultation and engagement with impacted Indigenous Nations to determine the required time to obtain and incorporate input from impacted Indigenous Nations in accordance with the wishes and protocols of the Nations.”</i>
27	ToR Section A1.6(u)	ToR Section A1.6(u) states that the Committee’s Report must “ <i>identify</i>	MFN requests that:



		<p><i>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.”</i></p> <p>MFN notes that impacts to Aboriginal rights, both positive and adverse, are defined solely and exclusively by the rights holding Nation. Given this fact, input from MFN will be essential for the accuracy and validity of the Committee’s Report. The legitimacy of the Committee’s Report and any decisions based upon the Committee’s Report by Canada and Newfoundland will necessarily require input provided by MFN, as our Aboriginal rights span all aspects of the RA and any future offshore wind development in the RA Study Area.</p> <p>MFN is concerned that the ToR as currently worded will allow the Committee, Canada and Newfoundland to further infringe upon our rights if it does not require the Committee to work collaboratively with MFN to draft sections of the Committees Report which impact MFN.</p>	<p>a) The following text is added as Section A2.5 of the ToR: <i>“The Committee will allow interested Indigenous Nations to collaboratively author any sections of the Committee Report which has implications on their Aboriginal rights. The specific sections which may be co-authored by interested Indigenous Nations would be specified in a Nation-Specific Indigenous Participation Plan. The Committee will not commence drafting of chapters which Indigenous Nations have expressed an interest in co-authoring until their Nation-Specific Indigenous Participation Plan is approved.”</i></p> <p>b) The following text is added as Section A2.4(f) of the ToR: <i>“If an Indigenous Nation chooses to undertake the RA collaboratively with Canada and Newfoundland, an assessment of potential impacts to Aboriginal rights.”</i></p>
28	ToR -Advisory Groups	<p>In Section A1.6(e), the ToR state that <i>“advisory groups will be comprised of individuals or organizations from within or outside of government, including Indigenous peoples”</i> with no requirements for qualifications or representation other than <i>“having knowledge or experience deemed relevant to the Regional Assessment by the Committee.”</i> The ToR currently grants unilateral decision-making regarding the makeup of Advisory Groups to the Committee, without</p>	<p>MFN must have a permanent seat on the Advisory Group members for the Indigenous Knowledge and Perspectives. This is consistent with a Nation-to-Nation relationship and appropriate given the mandate of the Advisory group.</p>



		<p>sufficient guidance or requirements that their appointment decisions can be assessed by.</p> <p>Given MFN’s unique standing as one of two First Nation’s on the island of Newfoundland, a more permanent role is justified on the Advisory Group. There is no guarantee under the proposed structure that MFN would have a seat on the Advisory Committee.</p>	
29	ToR - General	<p>There is no mechanism described to properly share Indigenous Knowledge with the Crown in confidential or protected manner.</p>	<p>MFN’s “Indigenous Knowledge” is governed by the First Nations principles of ownership, control, access, and possession – more commonly known as OCAP®. MFN asserts that First Nations have control over data collection processes, and that they own and control how this information can be used.</p> <p>A protocol or information sharing agreement will need to be developed between the Crown and MFN.</p>



4.0 Concluding Remarks

MFN has reviewed the draft Agreements and the ToR and prepared comments and recommendations for submission to IAAC. Any future projects in the waters off Newfoundland would occur within or adjacent to the traditional territory of MFN, therefore it is essential that MFN be consulted and accommodated meaningfully.

As noted above, MFN is concerned that Canada and Newfoundland will use the RA to create regulatory processes to circumvent our Aboriginal rights and advance private corporate interests. Without much stricter terms imposed upon Canada and Newfoundland, Canada and Newfoundland will effectively be funding a process for private corporations to be able to bypass proper regulatory mechanisms that provide essential safeguards to the environment and our Aboriginal rights. **MFN requests that Canada and Newfoundland provide guarantees to MFN, in the form of a negotiated agreement, that our Aboriginal rights and interests will be respected and accommodated for all future offshore wind development projects.** This agreement would also incorporate the recommendations of this report. Failing that, MFN requests that Canada cancel the RA, and that any future offshore wind projects be undertaken as a standalone Federal Impact Assessment.

Should the RA proceed as currently described in the Agreement and ToR, MFN wishes to have our objections formally recorded so that they may be included in any disputes regarding the implementation of the RA, outcomes of the RA, and any subsequent exemptions to future offshore wind projects.

It is our hope that the perspectives we have provided will help create projects that are less impactful to the environment and will feature significant involvement of our community. To this end, MFN requests that the Crown incorporate the recommendations within this report though appropriate modifications to the draft Agreements and ToR. Furthermore, it is recommended that this document be provided to the Committee to inform the completion of the RA and the final report.



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