ATLANTIC POLICY CONGRESS
OF FIRST NATIONS CHIEFS SECRETARIAT

Comments and Recommendations for the draft Regional Assessment Report for Offshore Wind Development in Newfoundland and Labrador

The Atlantic Policy Congress of First Nation Chiefs Secretariat (APC) advocates on behalf of 33 Mi'kmaq, Wolastoqey, Peskotomuhkati and Innu Chiefs, Nations and communities in Atlantic Canada, Quebec, and Maine. Among other subjects, APC is particularly interested the success and sustainability of Indigenous fisheries, which may be negatively impacted during construction, operation, maintenance and decommissioning of Offshore Wind (OSW) installations.

APC recognizes the Regional Assessment Committees engaged with a great number of Indigenous communities and groups and collected a comprehensive list of suggestions and concerns, which were then discussed in the Committee's reports. We also acknowledge the considerable effort made to collect, review and catalogue recent relevant data and scientific findings in our provinces' offshore waters. We value these efforts and appreciate the spirit and dedication in which they were undertaken. APC also appreciates and strongly endorses both Committees' extensive and detailed recommendations, in particular with respect to on-going Indigenous engagement and participation in recommended scientific research to address the significant data gaps identified in the Regional Assessments.

Following our review of the two Regional Assessments for Offshore Wind draft Final Reports issued in October and November 2024, this letter outlines our thoughts regarding some of the key issues raised in the Reports and provides recommendations for the Committees' consideration.

1. OSW Project Design. Based on information presented in the Reports, it is difficult to visualize the spacing of turbines and size of OSW farms. While we understand these characteristics can vary, a description of these attributes would help readers understand what size of exclusion zones might be needed, and what gear type may be used to fish within an OSW farm.

Recommendation 1: Please indicate what is typical (in terms of OSW farm total size and turbine spacing), based on other jurisdictions, and/or what the range in these characteristics might be expected. The Vineyard 1 OSW farm may present a useful example. How big is the lease area? How many turbines at what spacing? What percentage of their entire lease area is occupied by turbines?

2. Uniqueness. Indigenous fisheries are unique and different: First Nation fishers preferentially use certain gear types, target specific fisheries and have different economic and cultural motivations for fishing. In addition, different fisheries have different economic values thus loss of access to one type of fisheries may be more impactful than loss of another. Finally, the moderate livelihood fishery (like FSC fishing) is culturally unique; the moderate livelihood fishery is not well described in the Regional Assessments.

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Indigenous communities are planning to grow their fisheries, increasing the scale of current activities and expanding into new species not previously fished. This ability to grow and access new species, especially for moderate livelihood purposes, must be protected and maintained over the coming years.

Recommendation 2: The uniqueness and difference of Indigenous fishing activities vs non-Indigenous fishing activities must be recognized and addressed in future project-specific impact assessments and compensation programs. Moreover, Indigenous fishing companies are economic drivers and significant employers in certain Indigenous communities and so potential differential impacts to employment must also be considered. Future impact assessments must also consider both the growth and expansion (taking of new species) of Indigenous fisheries.

3. Weather, Accidents and Set Aside Funding. Indigenous fishers point out that comparisons of North Atlantic metocean conditions to those found in the Baltic and North Seas (where OSW farms have been operational for many years) may have only limited usefulness. They note that even 'normal' north Atlantic winter weather is significantly harsher in offshore eastern Canada, compared to warmer and calmer northern European environments. In addition, cold water is denser and potentially more damaging to OSW farms than warm water.

This in turn speaks to the need to ensure sufficient funds are available for emergency repair or decommissioning following a catastrophic weather event or bankruptcy. Fishers point out that those whose livelihoods are affected by OSW would feel exceptionally dissatisfied if money received by government as royalties or licenses fees (and which is intended for community benefit, job training, infrastructure repair, etc.) was instead used to pay for emergency response or decommissioning following an entirely predictable, yet intense, weather event. Neither the bankruptcy of Open Hydro nor the accidental loss of Shell's drilling riser was anticipated in their respective Impact Assessments, yet Nova Scotian residents, fishers and taxpayers are left with the consequences.

Recommendation 3a: The Regional Assessments would benefit from a more comprehensive treatment of the potential effects of extreme weather on OSW projects. As the NL report points out, 6% of turbines are expected to buckle in a Category 2 hurricane, and as wind strength increases the buckling frequency increases exponentially. It would be useful to understand how often damaging storms currently transit the Nova Scotia Focus Area as well as the expected frequency of damaging storms over the next 10-50 years. In addition, if possible, it would be helpful to understand how OSW developers plan to address the issue of extreme weather events (and their increasing frequency): what preparation is possible and what response is likely?

Recommendation 3b: Accident and malfunction assessment and preparation, including the requirement that monies be set aside by the proponent to address unforeseen incidents, need to be transparently addressed in the impact assessment process, and in the regulations and requirements that guide project permits and authorizations.

Recommendation 3c: Government and the Energy Regulator should consider requiring proponents to hold insurance products that can compensate Indigenous commercial fishing enterprises in the event of sudden catastrophic impacts affecting these businesses.

4. Impact Thresholds. Indigenous fishers support the application of the precautionary principle as outlined in the Nova Scotia Regional Assessment report. Fishers suggests that every project must establish an "upper threshold" for project impacts which, if exceeded, would trigger project abandonment and decommissioning. For example, if a wind farm license area measures 15 km x 15 km, and impacts are predicted to be not measurable at 5 km beyond this boundary, a project would be halted if impacts were in fact detected outside the predicted zone. This application of the precautionary principle is also consistent with recommendations related to transparency and decision accountability below.

Recommendation 4: APC recommends that application of the precautionary principle is carried into the project-specific impact assessment and permitting phase; specifically, that the proponent defines an impact or set of impacts that, if realized, would require an immediate halt and project decommissioning.

5 Expertise and Decision Making. The Energy Regulator has no apparent expertise in fisheries and marine biology. Yet, through its authorizations to allow site assessment, construction, installation, operation and decommissioning, the Energy Regulator has decision making power to affect fisheries. Indigenous fishers seek to understand the basis upon which fisheries-related decisions will be made.

Indigenous fishers and Indigenous research organizations such as CMM and UINR wish to participate in the ocean research recommended by both RA Committees. In fact,, Indigenous organizations are seeking to build research capacity and create technical skills that will support their fishing industries.

Recommendation 5: The Regional Assessments should expand their sections on Energy Regulator to include descriptions of the Regulator's fisheries experience and expertise and/or source of the fisheries expertise they will rely upon in their decision making. Ideally, this would include Indigenous representation in decisions that may affect Indigenous fishing rights and activity. Recommendations should also emphasize a commitment to funding Indigenous-led research to build capacity, help fill data gaps and provide early access to research licenses.

6. Coastal Labrador. Currently, the NL Regional Assessment has excluded coastal Labrador from potential OSW development due to a combination of icebergs and water depth. However, with changing climate and evolving OSW technology, it is possible that these constraints may no longer hold in future years.

Recommendation 6: If in future neither of these constraints remain applicable as they are today, this area must be subject to a second focused Regional Assessment to assess the constraints that may apply to OSW development at that time. Policy decisions in this area should be based on site specific information collected in the future, rather than on the current Regional Assessment.

7. OSW Land Infrastructure. The Regional Assessments do not assess impacts of activities related to land-based infrastructure, such as onshore hydrogen plants, port facilities, and transmission lines on land. This means that land-based Indigenous interests and activities which may be affected by new construction or expansion of existing facilities are not assessed in the Regional Assessments. Importantly, this raises the possibility that there are unknown but tangible and significant data gaps and knowledge limitations (just like the Committees found for the offshore components). Given they have not been raised in the RA, *these gaps might not be identified and addressed in the time available before full-scale project development*, as the Committees recommend with respect to data gaps in the offshore.

Furthermore, the fact that **diadromous species** use both freshwater and ocean environments makes them vulnerable to the adverse effects of human activities on lakes and rivers adjacent to expanding port facilities, new transmission lines, etc. Thus, non-assessed terrestrial activities may in fact have impacts on Indigenous fishing activity and by extension, Indigenous inherent rights.

Recommendation 7: Once potential OSW license areas are identified, effort must be made to understand potential impacts from likely land-based development scenarios on Indigenous activities and interests. These impacts can be appended onto the Regional Assessment reports so that potential data gaps can be filled before project-specific impact assessments are begun, and likely impacts can be addressed in future impact assessments

8. OSW Need and Use. The Regional Assessments do not consider eventual use of the electricity produced by OSW projects. As noted in the NL Regional Assessment, "participants have rightly observed that eventual use of the electricity dictates project design and location, and potential effects are tied to design elements (e.g., foundation type) and location". Indigenous fishers also seek clarity on the *need* for OSW, given its potential risk to fishing rights, as well as the potential *benefits* that might be realized by Indigenous communities. Indigenous fishers note "these projects affect our land but do the benefits land here? What is the scope of royalties or other benefits can we expect, relative to the impacts we are risking?" Ultimately, Indigenous fishers are seeking both transparency and fairness.

Recommendation 8a: APC strongly supports the NL Regional Assessment Committee's recommendation that the provincial and federal governments, in collaboration with experts in offshore wind development in emerging markets, undertake initiatives to demonstrate the need for an offshore wind industry and communicate the results of these studies with the public to increase public knowledge of the role of offshore wind in each province's energy mix and economy.

Recommendation 8b: Provincial and federal governments should consider a separate royalty regime for Indigenous peoples. A reliable, predetermined royalty stream would benefit all communities and may help to simplify and streamline proponent-led impact and benefits agreements.

9. Fisheries Data Gaps. By necessity, the fishing density maps used to create recommended offshore license and development areas exclude small boat fishing activity (<35 ft) and, if there are less than five vessel IDs, license IDs, and fisher IDs the data is screened out to protect commercial privacy. These exclusions mean that certain fishing activity, including potential Indigenous fishing, is not captured in the maps that show the final 'low conflict areas' most suitable for OSW.

Recommendation 9: Once potential submerged land license areas are identified, provincial and federal governments must continue engagement with Indigenous fishery organizations to identify specific fisheries impacts (by vessel size, gear type, and species) within the license areas. At the same time, a dialogue on fisheries compensation must begin, so that the expectations of all participants can be shared before project specific IAs are started.

10. Path to OSW. The Regional Assessments have inconsistent and incomplete descriptions of the path to OSW; that is, the timeline, project milestones and regulatory/permitting steps that will be taken between early 2025 and "first wind". This is understandable since the path to OSW was not defined at the time the Reports were prepared. However, there is an emerging expectation (among Indigenous fishers at least) that a "preliminary reference timeline" can be established in early 2025, then modified as needed in the future. Fishers wish to understand how fast this industry will emerge, the key steps that will be completed, and how much time is available to accommodate the recommended research needed to address data gaps. This is also related to recommendations made to encourage transparency and accountability in decision-making.

Recommendation 10: As a next step following submission of the final Regional Assessment reports, federal and provincial governments should release a timeline illustrating the path to OSW. The timeline would show the estimated start and finish of the key milestones of OSW; for example coming into force of any remaining regulatory changes, publication of OSW Roadmaps, publication of CER guidance materials on the Environmental and Socio-Economic Assessment referenced in the ORER Technical Requirements document, selection of license areas by government, start/finish of the call for bids process, start/finish of a project specific impact assessment, issuance CER authorizations, start/finish of the proponent's site assessment process, issuance of major federal and provincial permits, fisheries compensation discussions, start of fisher exclusion, start/finish construction, etc.

11 Project Specific Impact Assessments. Project specific Impact Assessments (IAs) are strongly recommended throughout both Regional Assessments. APC strongly supports these recommendations and is confident that project specific IAs will be undertaken. However, it is not clear whether an IA under the federal Impact Assessment Act (led by the Impact Assessment Agency of Canada) will be undertaken or whether the Environmental and Socio-Economic Assessment as envisioned in the Canadian Energy Regulator Act (managed the CER) will be substituted instead.

Recommendation 11: The uncertainty regarding project specific impacts must be clarified: will OSW projects be subject to assessments under the Impact Assessment Act or the Canadian Energy Regulator Act, as well as the difference between the two processes. In addition, it should be clarified whether land-based components such as hydrogen facilities, port expansions and new transmission lines would be included in a project specific Impact Assessment.

12. Expressed Concerns. Both Regional Assessments collected a substantial archive of Indigenous questions, concerns and suggestions. This archive represents a significant investment of energy, resources, and good faith on the part of Committee members as well as Indigenous participants and other contributors. Engagement is time-consuming yet will be required (and hopefully welcomed) as OSW planning moves forward. Given that this valuable collection of 'recently expressed concerns' already exists, there is no reason why it should not be used as a starting point for future engagement and discussions, saving time, effort, and participant frustration. The thinking here is that future engagement should not begin anew but should continue on from what has already been compiled.

Recommendation 12: The NL "Indigenous Engagement - What We Heard Report" should be flagged as a critical document, used as a starting point for next phase engagement, and made available to proponents for future project specific Impact Assessments. A similar compilation of submissions by Indigenous groups in Nova Scotia should be compiled to be used as a starting point for engagement purposes and given to proponent for future project specific Impact Assessments. During the course of future Impact Assessments, proponents should be tasked by the CER with addressing these concerns in a systematic and transparent manner to the satisfaction of Indigenous communities.

Report Outcomes. Each Regional Assessment Report describes substantial and legitimate data and knowledge gaps, both in terms of the baseline data available, as well as in the effectiveness of mitigation measures to minimize impacts. Both Reports strongly recommend additional research to ensure impacts can be accurately assessed and mitigated with sufficient confidence. For Indigenous fishers, this means that *until this missing data is collected, most project specific impacts in the marine environment can be neither be properly assessed nor adequately mitigated*. As a result, the outcomes of any impact assessments undertaken in the absence of the recommended new data cannot be seen as legitimate.

APC also understands that both Committees' recommendations are not binding on the federal and provincial Ministers who commissioned these reports. Given this, we are concerned that the valuable and detailed recommendations made throughout the Reports will not be fully adopted, and in particular, the critical recommendations relating to additional research and data gathering will be incompletely addressed. To repeat, should this be the case, the legitimacy of future impact assessments would be doubtful.

The provincial and federal governments have initiated an industrial transformation in offshore Nova Scotia and Newfoundland; the Regional Assessments are just a first step. The overarching concerns going forward relate to transparency with respect to fulfilling the recommendations made in the Regional Assessments and accountability with respect to decision making over the next two years, five years, and fifteen years to first wind, then extending past that time as project impacts begin to be felt in our offshore.

Below, we pose a series of questions for the Committees' and the Ministers' consideration.

Timing

- How, by whom and when will the data gaps be addressed?
- Can the data and knowledge gaps be filled with sufficient confidence in the time available before first wind?

Funding

- Are government agencies such as DFO, ECCC and others who will be tasked with much of this work currently planning to undertake it? Will these agencies be sufficiently funded?
- Will sufficient funding be available for other researchers, including Indigenous participants, to contribute to this work?

Coordination, Decision Making and Accountability

- How will APC know which (non-binding) recommendations will be adopted by the Ministers and which will not? Will there be a way to track this?
- Who will track which data gaps have been addressed and which remain, coordinate additional work, and disseminate results?
- What approaches will be used to determine that sufficient work has been undertaken; that is, who's to judge the data gap research is conclusive?

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