

Regional Assessment of Oil and Gas Exploratory Drilling in the Canada-Nova Scotia Offshore Area

The draft Terms of Reference (ToR) for the Regional Assessment of Oil and Gas Exploratory Drilling in the Canada–Nova Scotia Offshore Area is more comprehensive than many historical offshore assessment frameworks in Canada, particularly in its inclusion of cumulative effects, Indigenous knowledge, Gender-Based Analysis Plus (GBA+), and Two-Eyed Seeing (Etuaptmumk). However, from a legal, conservation, governance, and ethical standpoint, the document contains several significant weaknesses and internal tensions that could undermine the credibility, defensibility, and legitimacy of the Regional Assessment process and any future regulatory decisions flowing from it.

One of the most significant legal concerns is the appearance that the Regional Assessment is partially intended to facilitate future offshore development rather than neutrally evaluate whether such development is environmentally and socially appropriate. This concern is created by language in the Context section emphasizing the need to “create a competitive regime,” “reduce risk of potential future regulatory delays,” “attract investment,” and “accelerate exploration.” While economic development objectives are legitimate public policy considerations, their prominent placement early in the document may create the perception that the assessment outcome has been partially predetermined. Under the Impact Assessment Act, regional assessments are intended to provide objective, evidence-based analysis of cumulative environmental, social, health, and economic effects. The current framing risks allegations of institutional bias or procedural unfairness because it appears to prioritize development facilitation before the assessment itself has occurred. A stronger and more defensible approach would explicitly state that the Regional Assessment may conclude that certain activities, areas, or regulatory streamlining measures are inappropriate or require enhanced protections.

The document also raises important concerns regarding Indigenous rights and consultation obligations under section 35 of the Constitution Act, 1982. Although the ToR repeatedly references consultation, engagement, Indigenous knowledge, and reconciliation, the framework remains largely procedural rather than rights-based. The document does not clearly define how Indigenous rights concerns will influence final recommendations, how accommodation measures will be developed, or how disagreements between Indigenous peoples and federal or provincial authorities will be resolved. Consultation is framed primarily as a process of gathering information and perspectives rather than as a shared governance or decision-making exercise. This creates potential legal vulnerability because Canadian courts have emphasized that the Crown’s duty to consult requires meaningful engagement proportionate to the potential impacts on Aboriginal and Treaty rights. The absence of a dispute resolution process, accommodation framework, or co-governance mechanism may weaken the credibility of the consultation process.

A related concern is the absence of explicit reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principle of Free, Prior and Informed Consent (FPIC). While Canadian law does not currently interpret FPIC as an absolute veto, federal reconciliation policy increasingly emphasizes alignment with UNDRIP principles. The omission of these concepts may be viewed as inconsistent with broader federal commitments to reconciliation and Indigenous self-determination. Although the ToR recognizes the importance of Indigenous knowledge and commits to protecting confidential information, Indigenous peoples remain positioned primarily as participants and knowledge contributors rather than equal partners in governance and decision-making.

From a conservation perspective, the Terms of Reference are notably weaker than they initially appear. The document focuses heavily on managing and mitigating the effects of exploratory drilling activities but provides little discussion of ecological thresholds, ecosystem resilience, biodiversity limits, or long-term marine ecosystem integrity. Most significantly, the ToR contains almost no substantive discussion of climate change implications. There is no requirement for greenhouse gas analysis, no consideration of compatibility with Canada's net-zero commitments, no discussion of carbon budgets, and no examination of how expanded offshore oil and gas exploration aligns with broader climate policy objectives. Given the increasing legal and policy expectation that climate implications be considered in environmental decision-making, this omission represents a substantial weakness in the framework.

The treatment of marine conservation and species protection is similarly limited. Although the study area overlaps marine conservation areas and ecologically sensitive offshore environments, the ToR does not establish ecological limits, exclusion zones, or precautionary thresholds that would identify areas unsuitable for drilling activities. The framework emphasizes mitigation and monitoring rather than prevention of unacceptable harm. There is also limited reference to obligations under the Species at Risk Act or to the protection of marine mammals, migratory species, benthic habitats, or acoustically sensitive ecosystems. The absence of explicit precautionary language is particularly notable given the ecological sensitivity and uncertainty associated with offshore marine environments.

The cumulative effects provisions, while positive in principle, remain underdeveloped. The document requires a cumulative effects assessment but does not define the methodology, significance thresholds, temporal boundaries, or analytical standards that will govern that assessment. Offshore ecosystems in Atlantic Canada are already subject to multiple stressors, including commercial fisheries, shipping, offshore wind development, climate change, underwater noise, and pollution. Without a clear cumulative effects framework, there is a risk that the assessment will become descriptive rather than analytically rigorous. The lack of

ecosystem carrying-capacity analysis or tipping-point evaluation further weakens the conservation credibility of the process.

Governance and conflict-of-interest concerns are also evident in the structure of the Regional Assessment. The involvement of the Canada-Nova Scotia Offshore Energy Regulator, the Nova Scotia Department of Energy, and Natural Resources Canada creates a potential perception problem because these organizations have mandates that include facilitating or promoting offshore resource development. While their technical expertise is clearly relevant, the ToR does not adequately explain how independence, impartiality, or conflict-of-interest safeguards will be maintained throughout the assessment process. International best practices increasingly emphasize separation between development promotion functions and environmental oversight responsibilities. The current structure risks criticism that the assessment is not fully independent.

Perhaps the most controversial element of the Terms of Reference is the repeated reference to the possibility of developing an “exclusion regulation” under the IAA. Such a regulation could potentially exempt certain offshore exploratory drilling projects from full federal impact assessments. While regional assessments can legitimately inform regulatory efficiency, the repeated emphasis on exclusion regulations may reinforce perceptions that the Regional Assessment is intended to streamline approvals rather than critically evaluate whether development should proceed. This creates legal, ethical, and public trust risks. Stakeholders may reasonably question whether future project-specific scrutiny, Indigenous consultation, and cumulative effects analysis could be weakened through regulatory exemptions.

Ethically, the document reflects some meaningful progress compared with older offshore assessment approaches. The inclusion of Indigenous knowledge protections, recognition of knowledge ownership, Two-Eyed Seeing principles, and participant funding mechanisms are important strengths. However, the overall governance structure remains fundamentally state-centered and development-oriented. Indigenous knowledge is incorporated into a framework still controlled by federal and provincial institutions, rather than through shared authority or Indigenous-led governance. In addition, the ToR contains little discussion of intergenerational stewardship, long-term ecological sustainability, or irreversible environmental change. Economic objectives, including competitiveness and energy security, are much more prominent than ecological integrity or precautionary conservation principles.

Despite these weaknesses, the Terms of Reference do contain several positive and potentially valuable components. These include explicit recognition of cumulative effects, acknowledgment of section 35 rights, protection of confidential Indigenous knowledge, inclusion of GBA+, participant funding opportunities, public comment periods, and recognition that Indigenous

knowledge should inform mitigation and monitoring approaches. These provisions provide an important foundation that could be strengthened through more rigorous legal safeguards, stronger conservation standards, clearer Indigenous governance roles, and a more precautionary ecological framework.

Overall, the document reads less like a neutral examination of whether offshore exploratory drilling should proceed within ecological and rights-based limits, and more like a framework intended to identify how such development can proceed more efficiently while managing impacts. That distinction is likely to become the central point of criticism from Indigenous nations, conservation organizations, fisheries interests, and legal experts reviewing the Regional Assessment process.