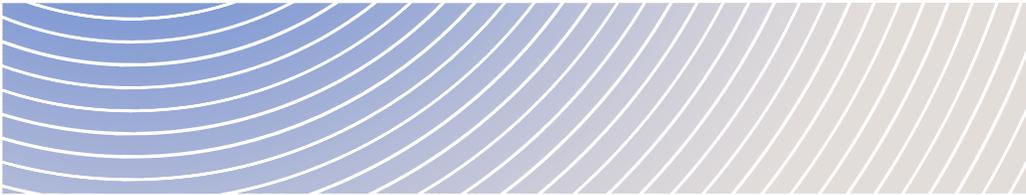


# **Regional Assessment of Offshore Exploratory Drilling East of Newfoundland and Labrador: Follow-up Program**



## **Terms of Reference**

July 2021



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## List of Abbreviations and Acronyms

Abbreviation/Acronym	Definition
C-NLOPB	Canada-Newfoundland and Labrador Offshore Petroleum Board
DFO	Fisheries and Oceans Canada
ECCC	Environment and Climate Change Canada
GIS tool	Geographic Information System Decision Support Tool
Ministerial Regulation	Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells)
Ministerial Response Progress Report	Regional Assessment Ministerial Response Progress Report
Ministerial Response	Ministerial Response to the Regional Assessment Committee Report for Offshore Exploratory Drilling East of Newfoundland and Labrador
NRCan	Natural Resources Canada
Registry	Canadian Impact Assessment Registry
Regional Assessment	Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador
RA Committee	Regional Assessment Committee
RA Final Report	Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador Final Report
RA Follow-up Advisory Committee	Regional Assessment Follow-up Program Advisory Committee
RA Follow-Up Program	Follow-up Program for the Regional Assessment of Offshore Oil and Gas Exploration Drilling East of Newfoundland
Steering Committee	The Regional Assessment Follow-up Program Steering Committee. This committee will include: representatives from the Agency, Natural Resources Canada, the Government of Newfoundland and Labrador's Department of Industry, Energy and Technology, the C-



NLOPB, Environment and Climate Change Canada and  
Fisheries and Oceans Canada.

Study Area

The Regional Assessment Study area as defined in  
Figure 1.1 of the Regional Assessment of Offshore Oil  
and Gas Exploratory Drilling East of Newfoundland and  
Labrador Final Report.

The Agency

Impact Assessment Agency of Canada

## Introduction

On April 15, 2019 the federal Minister of the Environment and Climate Change (ECCC) announced the launch of the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador (the Regional Assessment) and the appointment of a Committee to conduct the Regional Assessment (the RA Committee). The purpose of the Regional Assessment was to improve the effectiveness and efficiency of the federal environmental assessment process for future offshore exploratory drilling projects in the defined offshore Regional Assessment Study Area (the Study Area) while ensuring the highest standards of environmental protection continue to be applied and maintained. After a period of public review, the RA Committee submitted its [Final Report of the Regional Assessment](#) (Final Report) to the Minister on February 29, 2020 and the final version of its associated Geographic Information System (GIS) tool on May 31, 2020.

In its Final Report, the RA Committee made forty-one (41) recommendations aimed at identifying and implementing environmental protection measures for future drilling proposals in the Study Area, as well as to help address key data gaps and other issues and initiatives. This included recommendations directed to the Minister of ECCC and/or the Impact Assessment Agency of Canada (the Agency) related to mitigation and follow-up requirements and review processes for future drilling projects and future updates to the outputs of the Regional Assessment. It also included other recommendations made to various other federal and provincial agencies and non-governmental organizations.

The Government of Canada subsequently developed the [Regulations Respecting Excluded Physical Activities - Newfoundland and Labrador Offshore Exploratory Wells](#) a Ministerial Regulation under the *Impact Assessment Act* (IAA) that sets out requirements for future exploratory drilling projects in the Study Area. This regulation was informed by the findings and recommendations of the RA Committee, as outlined in its Final Report, along with a process of public consultation by government. If future exploratory drilling projects are able to demonstrate conformance with this regulation, they are not required to undergo a project-specific federal impact assessment. This regulation came into force on June 4, 2020.

On June 4<sup>th</sup>, 2020 the Agency posted on the [Canadian Impact Assessment Registry](#) (the Registry) the [Ministerial Response to the Regional Assessment Committee Report for Offshore Exploratory Drilling East of Newfoundland and Labrador](#) (Ministerial Response). In this document, the Government of Canada responded to the recommendations in the Final Report of the RA Committee and committed to establishing a Regional Assessment Follow-up Program (RA Follow-up Program).

The RA Follow-up Program will monitor and report on the implementation and effectiveness of the various outcomes of the Regional Assessment including

commitments reflected in the associated Ministerial Response. The RA Follow-up Program will also ensure that the information and analysis remain valid and up-to-date, and that it continues to fulfill its intended function of informing decision-making as it pertains to future exploratory drilling and associated activities in the Study Area.

The following Terms of Reference outlines the objectives, legislative authorities, governance structures, as well as roles and responsibilities of the participants in the RA Follow-up Program. This includes the requirements for the establishment of the RA Follow-up Program Advisory Committee (RA Follow-up Advisory Committee).

## Objectives

The RA Follow-up Program will track and report on the implementation and effectiveness of the commitments outlined in the Ministerial Response. Through the RA Follow-up Program, new and updated information will be identified and examined on an annual basis to determine its applicability to offshore exploratory drilling and to ensure that the Regional Assessment remains current and valid into the future. It will also include analysis and engagement opportunities aimed at identifying any potential new or emerging issues or gaps where regulatory amendments or additions may be required.

The RA Follow-up Program will be designed and implemented in order to:

- Carry out regular reviews of, and future updates to the outputs of the Regional Assessment including the GIS tool, including the information and analysis contained therein to increase the collective understanding of the offshore environment and implications of resource management decisions.
- Monitor and report on the status and implementation of all the commitments in the Ministerial Response.
- Evaluate, after an exploratory drilling campaign, the implementation of the conditions in Schedule 2 of the Ministerial Regulation, and if required make recommendations for changes as part of the 5-year review of the Ministerial Regulation.
- Provide advice to relevant government authorities on the incorporation of the outcomes of the RA Follow-up Program into their respective regulatory and planning processes, in order to consider and help manage potential (project-specific and cumulative) effects resulting from future exploratory drilling activities in the Study Area.
- Regularly review past, on-going and planned exploratory drilling activities and other projects and activities in the Study Area to consider potential cumulative effects, and provide advice to the relevant authorities on how these may be managed through applicable regulatory and planning mechanisms.
- To provide on-going and meaningful opportunities and resources for Indigenous groups, stakeholder groups and the public to participate and provide input

throughout the implementation of the RA Follow-up Program, as well as ensuring that the outputs of the RA Follow-up Program are made publicly available.

## Legislative Authorities

The IAA provides the Minister of ECCC with the authority to establish a committee or authorize the Agency to conduct a RA of effects of existing or future physical activities carried out in a region that is entirely on federal lands or in part of federal lands or in a region that is entirely outside federal lands. The Regional Assessment was intended to assess of the effects of existing or future offshore oil and gas exploratory drilling offshore Eastern Newfoundland and Labrador. The Study Area is fully within the Canada-Newfoundland and Labrador Offshore Area where responsibility is shared by the federal and provincial governments through a unique joint management relationship. The *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and mirror provincial legislation (the *Accord Acts*) establish the legal framework under which joint management is achieved. For over 30 years, as the independent joint regulator, the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) has administered the regulatory regime. Its objective is to ensure the health and safety of workers and the protection of the environment prior to the issuance of regulatory authorizations for any offshore activities.

In light of joint-management in the Canada-Newfoundland and Labrador offshore, the Agency will undertake the RA Follow-up Program in collaboration with Natural Resources Canada (NRCAN), the Government of Newfoundland and Labrador and the C-NLOPB. The requirements of the RA Follow-up Program are distinct from other requirements for follow-up as part of the C-NLOPB's authorization requirements for specific offshore exploration projects.

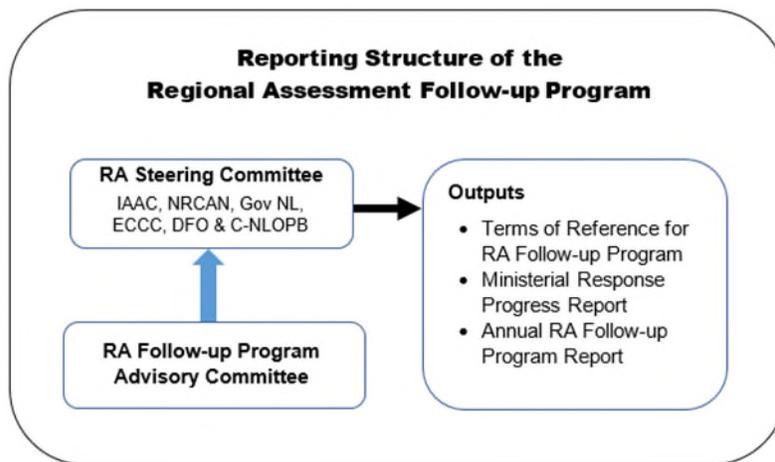


Figure 1: Flowchart of reporting structure for the RA Follow-up Program governance.

## RA Follow-up Steering Committee

The RA Follow-up Steering Committee (Steering Committee) will be responsible for directing the development and implementation of the RA Follow-up Program. The Steering Committee will track and report on the commitments outlined in the Ministerial Response and will be responsible for the production of the Regional Assessment Ministerial Response Progress Report and subsequent annual Regional Assessment Follow-up Program Reports.

The Steering Committee will identify and review new and updated information on an annual basis including best-available science and other sources of knowledge from communities and Indigenous groups. In addition they will review and consider advice received from the RA Follow-up Advisory Committee.

The Steering Committee will be chaired by the Agency and will include NRCan, the Government of Newfoundland and Labrador's Department of Industry, Energy and Technology, the C-NLOPB, ECCC and Fisheries and Oceans Canada (DFO). Decisions made by the Steering Committee will be reached by consensus of the members.

## RA Follow-up Advisory Committee

The RA Follow-up Advisory Committee will provide advice to the Steering Committee on the development and implementation of the RA Follow-up Program consistent with the objectives of the RA Follow-up Program. This could include but would not be limited to:

- Recommendations for the review and update of the information and analysis in the Regional Assessment and its associated GIS tool;
- Recommendations on action plans for fulfilling the commitments made in the Ministerial Response;
- Recommendations on the contents of the RA Follow-up Program Reports and the RA Ministerial Response Progress Report;
- Recommendations for any future changes to the RA Follow-up Program Terms of Reference;
- Recommendations for the review and update of the conditions in Schedule 2 of the Ministerial Regulation as part of the 5-year review process.
- Review information received from Indigenous groups and stakeholders and incorporate this into advice provided to the Steering Committee.

The RA Follow-up Advisory Committee members will be responsible for reviewing technical documents and emerging information. The Committee may solicit third party expertise to inform its advice to the Steering Committee. The advice submitted by the RA Follow-up Advisory Committee will be evidence-based and include considerations of both Western science and Indigenous knowledge (and their integration) and will assist the Steering Committee in updating the outputs of the Regional Assessment as required. Where the RA Follow-up Advisory Committee members are unable to

reach consensus on advice, the members will share non-consensus views to the Steering Committee.

### Conflict of Interest

Members of the RA Follow-up Advisory Committee are expected to conduct themselves in an appropriate manner and provide advice exclusively in their personal capacity; the use of their positions cannot be reasonably construed to be for their private gain or that of any other person, company, or organization. Members are required to avoid real, potential or apparent conflicts of interest, and are expected to recuse themselves on issues, where necessary. A member's recusal from a discussion will be recorded in the meeting minutes.

### Composition and Meetings

The RA Follow-up Advisory Committee will be composed of a variety of interests and areas of expertise, including representatives of Indigenous groups, the fishing industry, oil and gas industry, non-government organizations, and academics.

Committee membership terms will be of two years with the potential for reappointment for subsequent terms. Members will be assessed and selected based on their merit, depth of knowledge, experience and how applicants fit within the eligibility criteria set out in the [call for application](#). Members will be selected by the Agency, NRCan and the Government of Newfoundland and Labrador's Department of Industry, Energy and Technology.

Regular meetings will be organized to provide a forum by which Committee members can meet to discuss, align views, establish priorities and collaborate on advice to be provided to the Steering Committee in line with the objectives of the RA Follow-up Program. The co-chairs will be appointed by the other members of the Committee. Co-chairs will have additional responsibilities including co-chairing committee meetings, collaborating with the Agency to develop a forward agenda, coordinating the development of reports and any other deliverables, as required, and ensuring delivery of the Committee's advice to the Steering Committee. The co-chairs may request to attend Steering Committee meetings to present the views and perspectives of the RA Follow-up Advisory Committee. When deemed appropriate, the Steering Committee will extend an invitation to the co-chairs to attend meetings.

The Agency and the co-chairs of the Committee will send out an agenda and any documents which require review ahead of meetings. It is anticipated that the RA Follow-up Advisory Committee will meet up to four times per year. The frequency of Committee meetings will depend on when and how often new information is made available for review, and progress made in regards to the commitments outlined in the Ministerial Response. Currently, it is intended that these meetings will take place virtually, with the potential for face-to-face meetings in the future.

## Roles and Responsibilities

### The Agency

The Agency will chair the Steering Committee, which is responsible for directing development and implementation of the RA Follow-up Program including these Terms of Reference. In addition, the Agency, in collaboration with NRCan and the Government of Newfoundland and Labrador's Department of Industry, Energy and Technology, will lead the process of establishing the RA Follow-up Advisory Committee.

The Agency will support the activities of the RA Follow-up Program which will include:

- Providing secretariat support to the RA Follow-up Advisory Committee and the Steering Committee;
- Undertaking a collaborative review and reporting on the implementation of the commitments made in the RA Ministerial Response;
- Tracking and reporting on the implementation of the of project mitigation and follow-up measures proposed in the Regulation;
- Updating the GIS tool when it has been determined, in collaboration with the other signatories to the RA agreement and with input from the RA Follow-up Advisory Committee, that new or updated information is available and should be incorporated;
- Making the RA Follow-up Program and any other relevant information accessible to the public on the Registry;
- Drafting the annual Regional Assessment Ministerial Response Progress Report and the Regional Assessment Follow-up Program Report; and
- Leading the Indigenous and public engagement on the outputs of the RA Follow-up Program.

The Agency will prepare a work plan that outlines how its respective commitments in the Ministerial Response will be met, including timelines as appropriate. In the event that commitments have not been met it will develop an action plan to advance the achievement of these commitments.

### Natural Resources Canada and the Government of Newfoundland and Labrador Department of Industry, Energy and Technology

These parties will be part of the Steering Committee and will play a key role in planning and implementing the RA Follow-up Program. In addition, they will support the establishment of the RA Follow-up Advisory Committee by reviewing applications and making recommendations for the selection of Committee members.

These parties will review advice from the RA Follow-up Advisory Committee and the results of studies conducted in the Study Area to recommend whether updates are needed to the GIS tool or the Ministerial Regulation. In addition, they will review and provide input to the Agency on the Ministerial Response Progress Report and the annual RA Follow-up Program Reports.

These parties will be responsible for the development of workplans that outlines how their respective commitments in the Ministerial Response will be met, including timelines as appropriate. In the event that commitments have not been met, they will develop action plans to advance the achievement of these commitments.

#### Canada-Newfoundland and Labrador Offshore Petroleum Board

The C-NLOPB will be part of the Steering Committee and will provide its views in planning and implementing the RA Follow-up Program. It will review advice from the RA Follow-up Advisory Committee and results of studies conducted in the Study Area to recommend whether updates are needed to the GIS tool or the Regulation. It will also contribute to the development of RA Follow-up Program Reports.

The C-NLOPB may be called on by the Agency to provide expert technical advice regarding the effectiveness of mitigation measures outlined in the Regulation and any required additions or amendments to the conditions in the Regulation which would apply to future projects.

The C-NLOPB will be responsible for the development of a workplan that outlines how its commitments in the Ministerial Response will be met, including timelines as appropriate. In the event that commitments have not been met, the C-NLOPB will develop an action plan to advance the achievement of these commitments.

#### Environment and Climate Change Canada and Fisheries and Oceans Canada

ECCC and DFO will be part of the Steering Committee and will play a key role in planning and implementing the RA Follow-up Program. These parties will also contribute to the development of the RA Follow-up Program Reports as well as contribute new and emerging information for the Study Area, as it becomes available. These federal authorities may be called on by the Agency to provide expert technical advice regarding the effectiveness of mitigation measures outlined in the Regulation and any required additions or amendments to the conditions in the Regulation which would apply to future projects.

ECCC and DFO will review advice from the RA Follow-up Advisory Committee and results of studies conducted in the Study Area to recommend whether updates are needed to the GIS tool or the Ministerial Regulation. They will be responsible for the development of workplans that outline how their respective commitments in the Ministerial Response will be met, including anticipated timelines, when appropriate.

In the event that commitments have not been met, these federal authorities will develop an action plan to advance the achievement of these commitments.

#### Indigenous Groups

Indigenous participation in the RA Follow-up Program will include engagement on the Terms of Reference and the annual Follow-up Program Report, participation and representation of Indigenous views and knowledge on the RA Follow-up Advisory Committee, and other opportunities during the conduct of the RA Follow-up Program,

as they arise. Indigenous groups will have the opportunity to suggest and provide information for review and consideration by the RA Follow-up Advisory Committee at any time.

### Stakeholders

Opportunities for engagement on the Terms of Reference, the annual Follow-up Program Report and other reports that are produced as part of the Follow-up Program will be provided to the public and stakeholders including non-government organizations, academic interest groups, and the fishing and oil and gas industries.

### Governance

Governance of the RA Follow-up Program will be overseen by the Steering Committee. The RA Follow-up Program will operate in an open and transparent manner, with information made publicly available, subject to confidentiality requirements under legislation or governmental policies.

### Reporting

The first Regional Assessment Ministerial Response Progress Report will be released on or before March 31<sup>st</sup>, 2021. This report will be made accessible to Indigenous groups and the public through the Registry and will track and report on the commitments of the parties outlined in the Ministerial Response. If commitments are not, or have yet to be met, where appropriate, the report will outline steps for the development and implementation of an action plan to address these outstanding commitments including anticipated timelines. This first report will also outline plans for the long-term housing, maintenance and use of the GIS tool.

In subsequent years, the Ministerial Response Progress Report will be integrated in the Regional Assessment Follow-up Program Report (RA Follow-up Program Report). The outputs of the Regional Assessment, including the GIS tool and the predictions of effects and mitigation measures, will be reviewed and reported on through the RA Follow-up Program Report.

All relevant information, including that related to cumulative effects, may be considered in the context of the periodic review of the Ministerial Regulation, including reviewing and updating the GIS tool.

The RA Follow-up Program Report will be published on the Registry by the end of each fiscal year. When posting the draft annual RA Follow-up Program Report to the Registry, a public comment period will be held.

### Indigenous Engagement

The Agency will engage with Indigenous communities to support the development and implementation of the RA Follow-up Program. The Agency has provided capacity funding for this activity.

## Objectives

The objectives in the engagement process for the RA Follow-up Program include:

- Ensuring Indigenous groups have adequate time and capacity funding to engage with the Agency and review and provide comments on key documents;
- Ensuring there is clear, open, and transparent communication between the Agency and Indigenous groups during the engagement process;
- Ensuring that comments received from Indigenous groups have been thoughtfully considered and taken into account. Responses to concerns will be provided.

## Engagement Methods

The Agency will work with Indigenous groups to determine preferred methods of engagement during the RA Follow-up Program. Examples of engagement methods include:

- Opportunity to participate on the RA Follow-up Advisory Committee by responding to the call for applicants;
- Seeking comments (minimum of 30 days comment periods) on key documents (including annual RA Follow-up Program Reports);
- Teleconference or video-conference calls with Indigenous groups to engage on key documents;
- Outreach with Chief/President and Council and other community leadership, Elders, youth, and women; and,
- In-community visits<sup>1</sup>, which will be made with the permission and guidance of the Indigenous organization/government overseeing those communities.

## Crown Consultation

The Crown has a duty to consult when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights, and, as appropriate, accommodate. The Agency is committed to consulting Indigenous groups as part of the five-year review of the Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells). As part of the consultation process, the Agency will follow Indigenous community consultation protocols (e.g. Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference), as requested.

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<sup>1</sup> At the time of writing the Terms of Reference, all in-person engagement activities have been suspended due to the Covid-19 pandemic. Future in-person engagement will depend on whether the pandemic has been resolved and both the Government of Canada and Indigenous groups and stakeholders have determined it is safe and appropriate.

## Public Engagement

The Steering Committee will engage with the public and stakeholders throughout the implementation of the RA Follow-up Program. Public comment periods will be available for reviewing and providing comments on the annual draft RA Follow-up Program Report. Any review, amendment or termination of the Terms of Reference will trigger a public comment period. Public comment periods in the context of the RA Follow-up Program will last a minimum of 30 days. As part of the RA Follow-up Program, interested parties will have the opportunity to suggest and provide information for review by the RA Follow-up Advisory Committee at any time.

## Timing of Activities

The following table provides an overview of the timing of activities as they relate to the development and implementation of the RA Follow-up Program, including establishing the RA Follow-up Advisory Committee.

### Timing of Activities in the RA Follow-up Program

Activity	Timing of Activity
Comment Period for the RA Follow-up Program Terms of Reference, including preferred methods of engagement	October – December 2020.
Application period for participants of the RA Follow-up Advisory Committee	October – December 2020
Committee Member Notification	July 2021
Posting of Final Terms of Reference on the Registry	July 2021
First Draft Ministerial Response Progress Report	July 2021
First Draft Annual RA Follow-up Program Report	March 2022

Table 1: Activities, timing and responsible authorities in the development and implementation of the RA Follow-up Program.

## Review, Amendment and Termination

### Review

Where appropriate, the Steering Committee may review the effectiveness of the Terms of Reference including their structure and content. The RA Follow-up Advisory Committee may provide advice to the Steering Committee on the effectiveness of these Terms of Reference, including their structure and content.



### Amendment

If it is determined that the Terms of Reference for the RA Follow-up Program are not achieving the stated objectives, the Steering Committee will seek views of the RA Follow-up Advisory Committee for any proposed amendments and receive advice on whether the changes should trigger a public comment period.

### Termination

The RA Follow-up Program may be terminated once it is determined that the commitments made by the parties in the Ministerial Response have been met. In the event that it is decided that the RA Follow-up Program should be terminated, the Steering Committee will determine whether and how some elements of the RA Follow-up program would continue (e.g. ongoing update of the GIS Tool, collection and management of information pertaining to potential cumulative effects).

### Funding

Participant and Indigenous funding will be provided by the Agency to support the development and implementation of the RA Follow-up Program. Funding will be available as grants to Indigenous groups and other stakeholders for the review of the Terms of Reference for the RA Follow-up Program as well as for the review of the RA Follow-up Program Reports and the Ministerial Response Commitment Progress Report (Fiscal years 2020-2022). Members of the RA Follow-up Advisory Committee will also receive remuneration for their work on the committee.