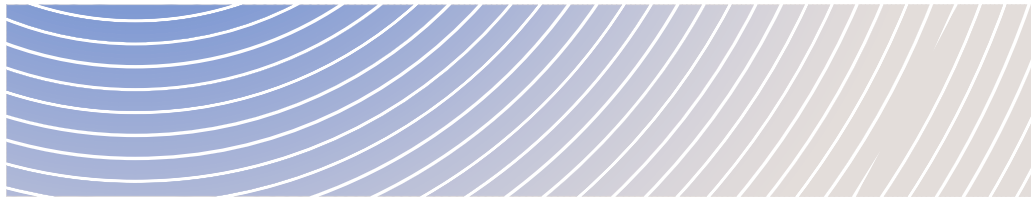


# Analysis Report



WHETHER TO DESIGNATE THE **SMALL MODULAR REACTOR  
DEMONSTRATION PROJECT** IN NEW BRUNSWICK PURSUANT TO THE  
*IMPACT ASSESSMENT ACT*

December 2022



# Contents

Purpose.....	2
Context of Request.....	2
Project Context.....	4
Project Overview.....	4
Analysis of Designation Request.....	6
Authority to Designate the Project.....	6
Existing Legislative Mechanisms.....	8
Potential Adverse Effects within Federal Jurisdiction.....	12
Potential Adverse Direct or Incidental Effects.....	16
Public Concerns.....	17
Potential Adverse Impacts on the Section 35 Rights of Indigenous Peoples.....	18
Other Considerations.....	19
Regional and Strategic Assessments.....	22
Conclusion.....	23



# Purpose

The Impact Assessment Agency of Canada (the Agency) prepared this report for consideration by the Minister of Environment and Climate Change (the Minister) in their response to a request to designate the Small Modular Reactor Demonstration Project (the proposed physical activities referred to as the Project) pursuant to section 9 of the *Impact Assessment Act* (the IAA).

# Context of Request

On July 4, 2022, the Minister received a request to designate the Project from the Coalition for Responsible Energy Development in New Brunswick (the requester), an organization that comprises more than 20 citizen groups and businesses, and more than 100 individuals across New Brunswick. The requester raised concerns regarding the potential effects of the Project on the environment, including cumulative impacts to fish and fish habitat and species at risk, impacts to migratory birds, effects of nuclear waste, potential effects of accidents and malfunctions, as well as potential impacts on Aboriginal and treaty rights. The request included two letters of support from Indigenous organizations, the Passamaquoddy Recognition Group and the Wolastoq Grand Council, as well as 13 letters of support from the following organizations and groups:

- Conservation Council of New Brunswick;
- Sustainable Energy Group - Carleton Chapter;
- Council of Canadians - Fredericton Chapter;
- Rural Action and Voices for the Environment (RAVEN) Project, University of New Brunswick;
- Canadian Environmental Law Association;
- Canadian Coalition for Nuclear Responsibility;
- Prevent Cancer Now;
- Inter-Church Uranium Committee Educational Co-operative;
- Northwatch;
- Ontario Clean Air Alliance;
- Concerned Citizens of Renfrew County and Area;
- Protect Our Waterways - No Nuclear Waste; and
- Council of Canadians - Ottawa Chapter.

Before the Agency was able to begin the designation request process, it had to determine whether or not any of the proposed activities are already described in the *Physical Activities Regulations* (the Regulations). The Minister can only designate a project that is not described on the Regulations.

The requester indicated that Énergie NB Power (the Proponent) is currently exploring two nuclear reactor designs at the Point Lepreau Nuclear Facility in Point Lepreau, New Brunswick. Both are small modular reactor (SMR) commercial demonstration units:

- Advanced Reactor Concepts (ARC) Clean Energy Canada Inc.'s ARC-100 sodium-cooled fast reactor (ARC-100 SMR); and

- Moltex Energy's molten salt reactor and accompanying spent fuel recovery system and fuel reprocessing facility (Moltex SMR).

Based on the information provided by the Proponent, the Agency is of the view that the proposed ARC-100 and Moltex SMR commercial demonstration units are separate projects. Although both are proposed by the same Proponent and both would be located at the Point Lepreau Nuclear Generating Station site, the Agency notes that the two units would be supplied by separate vendors and use different technologies; neither project is subordinate or complementary to the other, nor are they functionally connected; and each would proceed independently. The two projects are also at substantially different phases of development and each is progressing along separate timelines. The Agency also notes the Proponent's intention to submit separate licence applications to the Canadian Nuclear Safety Commission (CNSC) and undergo separate provincial environmental impact assessment (EIA) processes for the two projects.

The Agency is also of the view that:

- the Moltex SMR, should it proceed as the Proponent has described, would likely involve activities that are described in the Regulations<sup>1</sup>, and therefore subsection 9(1) of the IAA cannot apply; and
- the ARC-100 SMR, as described by the Proponent, would not involve activities that are described in the Regulations and therefore, subsection 9(1) can apply.

Therefore, on October 4, 2022, the Agency began the designation request process for the ARC-100 SMR commercial demonstration project.

As part of the designation request process, the Agency prepared advice and recommendations for the Minister. For that purpose, the Agency conducted its assessment on the potential adverse effects within federal jurisdiction, adverse direct or incidental effects, and public concerns as outlined in subsection 9(1) of the IAA. The Agency also considered potential adverse impacts on the rights of Indigenous peoples as outlined in subsection 9(2) of the IAA, and followed the Agency's Operational Guide: Designating a Project under the *Impact Assessment Act*.

The Agency sought input from the Proponent, federal authorities, the Government of New Brunswick, and nine potentially affected Indigenous groups: Kingsclear First Nation, Madawaska Maliseet First Nation, Oromocto First Nation, Saint Mary's First Nation, Tobique First Nation, Woodstock First Nation, Peskotomuhkati Nation at Skutik, Elsipogtog First Nation and Mi'gma'we'l Tplu'taqnn Incorporated<sup>2</sup> (MTI).

The Proponent responded to the Agency with information about the Project, a response to the requester's concerns, and its view that the Project should not be designated.

The New Brunswick Department of Environment and Local Government indicated that the Project would be required to undergo a provincial EIA review in accordance with the *Environmental Impact Assessment*

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<sup>1</sup> Based on information provided by the Proponent, the Moltex SMR would involve recycling spent fuel for use in the reactor, and would require construction and operation of a fuel reprocessing facility. The Proponent has indicated that the recycling of spent fuel and the new fuel reprocessing facility would likely be captured under subsections 26(a) and/or 26(c) of the Regulations.

<sup>2</sup> MTI represents the Mi'gmaq communities in New Brunswick on matters pertaining to Mi'gmaq rights and has been appointed to conduct consultation and accommodation with the Crown on behalf of eight of its nine members.



*Regulations of the Clean Environment Act.* Additionally, the CNSC noted that the Project would require licensing in accordance with the *Nuclear Safety and Control Act (NSCA)*.

Advice on potential effects due to the Project, applicable legislative frameworks, and potential limitations to the Minister's ability to designate was received from the CNSC, Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Natural Resources Canada (NRCan), Health Canada, Transport Canada, Crown-Indigenous Relations and Northern Affairs Canada, Infrastructure Canada, the Atlantic Canada Opportunities Agency (ACOA), the Canada Infrastructure Bank, and the Government of New Brunswick.

MTI also provided a response to the Agency's request for input, and indicated their support for designation, in particular due to the potential for impact on Aboriginal and treaty rights. MTI provided information on their rights and current use in the region and raised concerns regarding the Project, including related to operational discharges, the storage of nuclear waste, the risk of contamination to the environment, and the risk of an accident or malfunction.

## Project Context

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### Project Overview

The Proponent is proposing the construction, operation, and decommissioning of an ARC-100 SMR commercial demonstration unit at the existing Point Lepreau Nuclear Generating Station, at Point Lepreau, New Brunswick along the Bay of Fundy (Figure 1). The Point Lepreau Nuclear Generating Station has been in operation since 1983 and underwent a refurbishment in 2012 to extend its operation for another 25 to 30 years. It has one nuclear reactor – a 660 megawatt (MW) (net) CANDU-6.

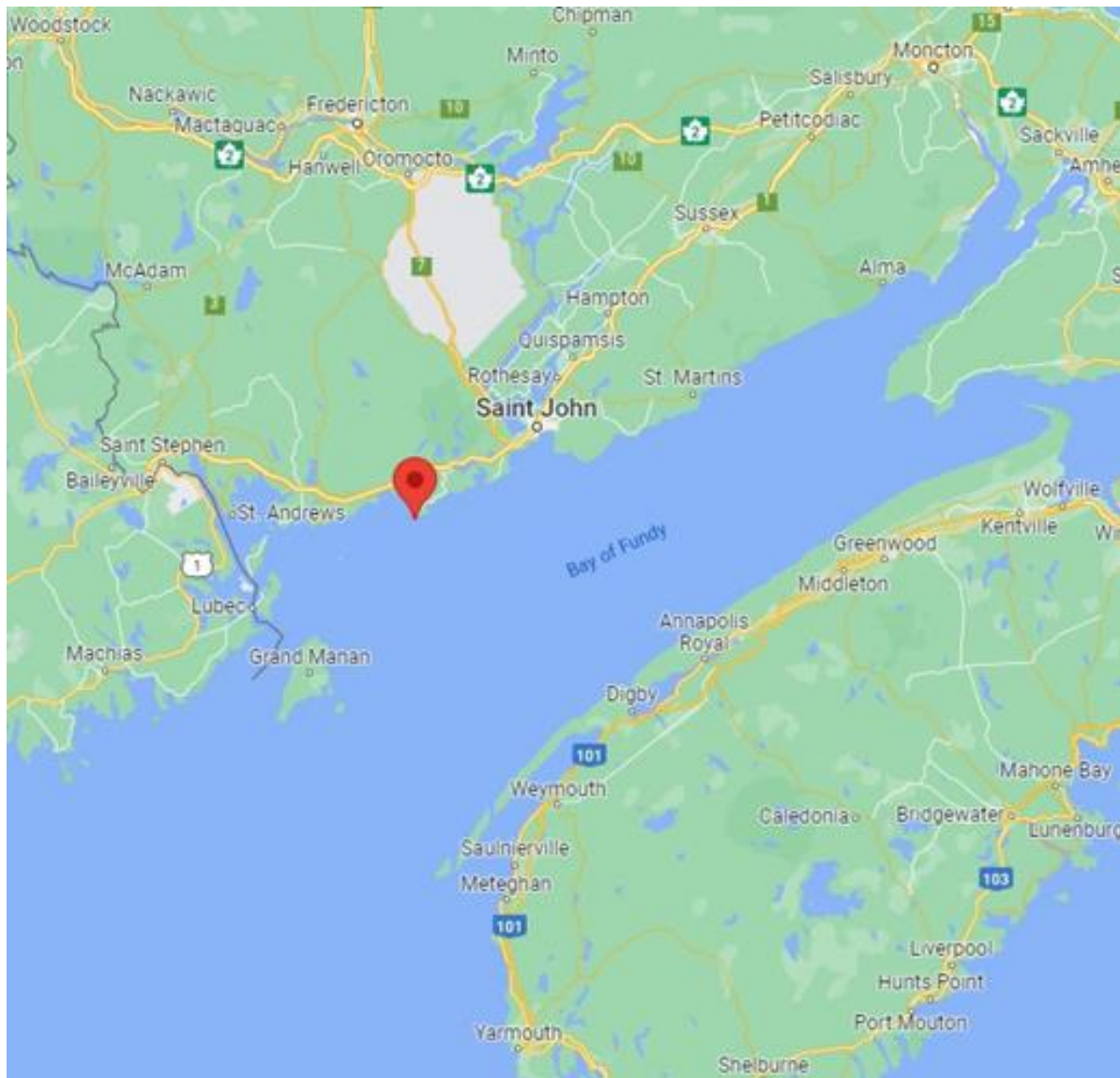
The Project is a sodium-cooled fast reactor that would have a thermal output between 286 to 429 megawatts thermal (MWth) (100 to 150 megawatts electric (MWe)). The Project uses a metallic uranium alloy fuel and is designed to operate for approximately 20 years before refueling. After 20 years, the spent fuel will be stored internally in the periphery of the reactor vessel to cool until it can be withdrawn and loaded into onsite dry-cask storage. The expected operating life of the Project would be approximately 60 years, and the Proponent is currently planning for interim onsite storage of three core loads of used fuel. Upon final shutdown, and as part of decommissioning, the Proponent anticipates that spent fuel would be transported to a deep geological repository<sup>3</sup> for long-term management.

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<sup>3</sup> There is no existing deep geological repository in Canada. The Nuclear Waste Management Organization is legally obligated to provide for the long-term management of Canada's used nuclear fuel. It is currently in the process of selecting a deep geologic repository site for used nuclear fuel. Should a site be selected and a facility approved, it may be deemed suitable for the future disposal of the Proponent's used fuel from this Project (if approved), depending on waste acceptance criteria that have yet to be established and evaluated.



Figure 1: Location of the Project



Source: Google Maps

The Project's proposed layout is based on a typical single unit arrangement for a nuclear power plant. The major buildings and structures associated with the overall site arrangements are divided into two categories:

1. nuclear steam supply which includes:
  - a. reactor building (containment) housing an unpressurized, liquid sodium cooled, pool type reactor and auxiliaries. The reactor has inherent safety characteristics and passive safety features;
  - b. service building and main control room;
  - c. radioactive waste and maintenance building;
  - d. steam generator and auxiliary enclosure; and
  - e. interim spent fuel storage.

2. balance of plant
  - a. turbine generator hall and auxiliaries;
  - b. warehouse;
  - c. water and sewage;
  - d. fire water storage; and
  - e. cooling water.

The Project's footprint is approximately 6,825 square metres<sup>4</sup>, and is entirely within the boundaries of the existing licensed nuclear facility. The buildings described above would be within this footprint. The Project is mostly expected to occur on land that is already cleared, but additional clearing may be required depending on the exact location of all facilities, which has not yet been finalized. The Project will require cooling water, and currently two saltwater options are being reviewed for feasibility. Freshwater and sewage infrastructure will be required to support the facility. An electrical output study is also underway to determine the capability of the existing switchyard and transmission lines to distribute the electricity that will be generated. Space has also been allocated for spent fuel dry storage. The first interim spent fuel dry storage module will not be required until several years after the first refueling (20-year core) of the reactor.

## Analysis of Designation Request

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### Authority to Designate the Project

The Regulations of the IAA identify the physical activities that constitute designated projects. The items of the Regulations most applicable to the Project are:

26. The construction, operation and decommissioning of one of the following:
  - (a) a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;
  - (b) a new facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more;
  - (c) a new facility for the processing or use, in a quantity greater than 1015 Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.
27. The site preparation for, and the construction, operation and decommissioning of, one or more new nuclear fission or fusion reactors if
  - (a) that activity is located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 900 MWth; or
  - (b) that activity is not located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 200 MWth.

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<sup>4</sup> The entire licensed area of the Point Lepreau Nuclear Generating Station, which includes security protected and controlled areas, is approximately 5 million square metres. The nuclear generating station itself is approximately 122,687 square metres while the existing waste facility is approximately 30,384 square metres.

28. The construction and operation of either of the following:

- (a) a new facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing nuclear facility, as defined in section 2 of the Nuclear Safety and Control Act, other than a facility for the on-site storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors that have a combined thermal capacity of less than 200 MWth;
- (b) a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste.

29. The expansion of an existing facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste, if the expansion would result in an increase in the area of the facility, at ground level, of 50% or more.

The Project, as described in the information prepared by the Proponent, is not included in the Regulations because:

- it would not involve the construction, operation and decommissioning of a new facility for the processing, reprocessing, separation, manufacture or use of isotopes of or a product derived from uranium, thorium, or plutonium with a capacity or in quantities greater than those described in item 26 of the Regulations;
- it would be located within the licensed boundaries of an existing Class IA nuclear facility and the new reactor would have a maximum thermal capacity of 429 MWth, which is well below the threshold of 900 MWth described in item 27;
- it would not involve the construction and operation of a new storage facility outside the licensed boundaries of an existing nuclear facility or the construction and operation of a new facility for the long-term management or disposal of irradiated nuclear fuel or waste as described in item 28; and
- it would not involve the expansion of an existing facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste as described in item 29.

Under subsection 9(1) of the IAA the Minister may, by order, designate a physical activity that is not prescribed in the Regulations. The Minister may do this, if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

The Minister cannot designate a physical activity if the carrying out of the physical activity has substantially begun, or a federal authority has exercised a power or performed a duty or function in relation to the physical activity (subsection 9(7) of the IAA). The carrying out of the Project has not substantially begun and the Agency is of the view that no federal authority has exercised a power or performed a duty or function that would permit the Project to be carried out, in whole or in part. The Proponent has received funding from ACOA to undertake activities to prepare for deployment of SMR technologies at the Point Lepreau Nuclear Generating Station. ACOA noted that this funding was provided and used for foundational activities, such as establishing baseline site designs and addressing environmental and regulatory requirements. ACOA did not include construction or operation of the Project in the list of activities for which it provided funding to the Proponent.





Given this understanding, the Agency is of the view that the Minister may consider designating the Project pursuant to subsection 9(1) of the IAA.

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## Existing Legislative Mechanisms

Key federal and provincial legislative mechanisms that are or may be relevant to the Project are summarized below. This is followed by the Agency's analysis of potential adverse effects within federal jurisdiction or adverse direct or incidental effects, and public concerns related to those effects, as outlined in subsection 9(1) of the IAA, and potential adverse impacts on the rights of Indigenous peoples as outlined in subsection 9(2) of the IAA.

### Federal Legislative Mechanisms

#### *Nuclear Safety and Control Act*

Under the NSCA, the CNSC has a mandate to regulate the use of nuclear energy and materials in order to protect health, safety, security and the environment and to implement Canada's international commitments on the peaceful use of nuclear energy. The CNSC reports to Parliament through the Minister of Natural Resources. The Commission<sup>5</sup>, which is part of the CNSC, is an independent, quasi-judicial administrative tribunal and court of record. In Canada, licensing decisions for nuclear power plants are made by the Commission.

The Project would require a licence issued by the CNSC under powers conferred by the NSCA. In particular, the Project would be subject to the *Class I Nuclear Facilities Regulations* under the NSCA, which outlines licence applications, timelines, obligations of licensees, and records to be kept and made available. The licensing process would ensure, among other things, the proposed site is suitable, the Proponent conforms with regulatory requirements, appropriate safety management systems, plans and programs are established, and the Proponent is qualified to carry out the Project.

As part of the CNSC licensing process, the Proponent would have to evaluate potential impacts of the Project to the health and safety of the public, the environment, and any potential or established Aboriginal or treaty rights. The Proponent would also have to demonstrate adequate engagement with stakeholders as well as Indigenous groups and consideration of their views. The CNSC would evaluate the potential environmental effects of the Project, and conduct public and Indigenous consultation. To fulfill its mandate, the CNSC relies on the expertise of other federal departments and agencies through memoranda of understanding, including memoranda of understanding with DFO and ECCC. The CNSC would also ensure that its licensing decisions uphold the honour of the Crown and consider Indigenous peoples' potential or established Aboriginal or treaty rights pursuant to section 35 of the *Constitution Act, 1982*. The CNSC would consult Indigenous groups and ensure they have meaningful opportunities to participate in all aspects of the environmental review and licensing process.

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<sup>5</sup> This term is not used when the intention is to refer to both the Commission and CNSC staff.



The CNSC interacts with Indigenous groups, members of the public, non-governmental organizations, and other stakeholders by maintaining transparency and engagement throughout the regulatory review process, including by holding public Commission hearings, which provide an opportunity for the public and Indigenous groups to communicate their interests and concerns about the Project. The CNSC also provides funding to Indigenous groups as well as the public to participate through its Participant Funding Program.

The CNSC environmental protection requirements will consider impacts to Indigenous peoples and lands, species at risk, fish and fish habitat, and risk to human health of Indigenous peoples. CNSC licences include conditions for the licensee in relation to any matter deemed necessary under the CNSC mandate. CNSC requires licensees to have environmental protection programs that consist of control and mitigation measures and monitoring for releases to the environment, which are informed by an iterative five-year environmental risk assessment cycle.

When a project requires a federal or provincial impact or environmental assessment, the CNSC cannot issue a license related to that project until a decision has been issued that allows the project to proceed. Given that a provincial EIA review would be required for the Project, the CNSC would not issue a licence until the provincial EIA decision has been issued allowing the Project to proceed. The CNSC may begin the licence application review concurrent with the provincial EIA or following the EIA process.

### *Nuclear Fuel Waste Act*

The *Nuclear Fuel Waste Act* provides the framework for progress on a long-term strategy for the management of nuclear fuel waste in Canada. It established the oversight that the Government of Canada and the Minister of Natural Resources will exercise in regards to the long-term management of radioactive wastes, and clarifies the responsibilities of the Nuclear Waste Management Organization and the nuclear energy corporations.

### *Nuclear Liability and Compensation Act*

The *Nuclear Liability and Compensation Act* establishes a compensation and liability regime in the unlikely event of a nuclear accident resulting in civil injury and damages. Under this Act, the Proponent is already liable to pay up to one billion dollars for civil damages resulting from an accident at the Point Lepreau Nuclear Generating Station. The Project would fall within the jurisdiction of this Act and would be designated as a nuclear installation, either within the existing authorization for the Point Lepreau facility or as a stand-alone facility.

### *Fisheries Act*

The Fish and Fish Habitat Protection Program of DFO reviews projects for their impacts to fish and fish habitat by ensuring compliance with the *Fisheries Act* and *Species at Risk Act* (SARA). Through this program, DFO may provide information to the Proponent in order to avoid and mitigate the negative impacts of the Project. The requirement for authorization under the *Fisheries Act* would be confirmed during the provincial EIA process.

A *Fisheries Act* Authorization would be required if the Project is likely to cause harmful alteration, disruption, or destruction to fish habitat and/or is likely to result in the death of fish. The *Fisheries Act* also prohibits the



deposit of deleterious substances into waters frequented by fish, unless authorized by regulations or other federal legislation. Consideration of the issuance of a *Fisheries Act* Authorization includes consultation with Indigenous groups. If granted, a *Fisheries Act* Authorization would include legally-binding conditions for avoidance, mitigation, and offsetting requirements commensurate with project impacts. Monitoring to validate impacts, and verify efficacy of mitigation measures and offsetting are also part of Authorization conditions.

ECCC administers and enforces subsection 36(3) of the *Fisheries Act*, which prohibits the deposit of deleterious substances into waters frequented by fish, or to any place, under any conditions, where they may enter waters frequented by fish.

### *Migratory Birds Convention Act, 1994 and the Species at Risk Act*

The *Migratory Birds Convention Act, 1994* protects migratory birds and their eggs and nests. Prohibitions under the *Migratory Birds Convention Act, 1994* and the SARA would apply to the Project. For example, the *Migratory Birds Convention Act, 1994* prohibits the disturbance or destruction of migratory bird nests and eggs, including for those species also listed under the SARA. It also prohibits the deposit of harmful substances into waters or areas frequented by migratory birds or in a place from which the substance may enter such waters or such an area.

### *Canadian Navigable Waters Act*

The *Canadian Navigable Waters Act* applies to projects that will interfere with navigation waters. The Proponent has stated that potential application of the *Canadian Navigable Waters Act* would be confirmed during the provincial EIA process.

## Provincial Legislative Mechanisms

### *Environmental Impact Assessment under the Clean Environment Act*

The Project would require a provincial EIA as it is considered an undertaking under items (b) (all electric power generating facilities with a production rating of three megawatts or more) and (w) (all facilities for the processing of radioactive materials) of Schedule A of the *Environmental Impact Assessment Regulation*.

The New Brunswick Department of Environment and Local Government would coordinate the review of the Project and Indigenous consultation/engagement would also be required as part of this review. The Province of New Brunswick indicated that the provincial EIA process would be expected to address a wide range of issues, including the concerns that have been expressed by the requester and members of the public. Any specific benchmarks and/or standards established for the EIA review would be based on the requirements and recommendations provided by the appropriate members of a technical review committee. This would include input from both provincial and federal representatives for many of the issues considered, although some of them would rely heavily (if not exclusively) on federal input, such as long-term management of radioactive wastes and non-proliferation of nuclear weapons.

### *EIA Registration and Determination Review*

The Proponent will first be required to submit an EIA Registration Document to the Province of New Brunswick, which would include a description of the Project and associated activities. The EIA Registration Document must also contain a description of the existing environment, including biophysical and cultural features and existing and historic land uses, and identify the anticipated impacts of the Project on these features as well as any proposed mitigation measures. The Proponent will also have to demonstrate that the potentially affected Indigenous groups, public, and stakeholders have been given the opportunity to review and comment on the Project, and indicate in the EIA Registration Document how input from the public and Indigenous groups has been or will be sought and considered.

The New Brunswick Department of Environment and Local Government would coordinate the review of the Proponent's submission, which would be conducted with the assistance of a specially constituted Technical Review Committee comprised of representatives of federal, provincial, and municipal agencies who have either a mandate or expertise related to the Project. The determination review is an interactive and iterative process, and proponents are generally asked to provide supplementary studies and information to address identified concerns and questions.

The determination review would lead to one of the following outcomes: a Certificate of Determination is issued allowing the Project to proceed; the Project is denied; or further study is required (i.e., a Comprehensive EIA is required). If a Project is allowed to proceed, it may be subject to conditions as part of the Certificate of Determination.

### *Comprehensive EIA Review*

If it is determined that a Comprehensive EIA is required, the Technical Review Committee would draft guidelines which would identify the environmental issues that must be considered further and specify the general approach the Proponent must follow in conducting the Comprehensive EIA. The draft guidelines would be released for a public comment period before being finalized and issued to the Proponent.

Based on the requirements of the guidelines, additional information would be gathered by the Proponent about the Project's socio-economic, biological and physical setting, and further evaluating potential interactions between the environment and the activities associated with the Project. The Proponent would submit an EIA Report, which would be made available for public review and comment. At least one public meeting would also be held near the location of the Project. A Panel of independent experts may be retained by the government of NB to chair the meeting, receive public input, and respond to questions and concerns.

After receiving all relevant information generated through the Comprehensive EIA, the provincial Minister of Environment and Local Government will submit a report and a recommendation to the Lieutenant-Governor in Council, who would then either issue an EIA approval or deny any approval of the Project. If an approval is granted, terms and conditions may be stipulated that the Proponent must adhere to in implementing the Project. The EIA authorization conditions could address any of the wide range of issues that could be raised during the EIA.

The Proponent has indicated that it expects a Comprehensive EIA will be required.

## Clean Water Act

A Watercourse and Wetland Alteration Permit may be required under the *Watercourse and Wetland Alteration Regulation* pursuant to the *Clean Water Act* if the project involves any ground-disturbance activities within 30 metres of a watercourse or wetland. The Watercourse and Wetland Alteration Permit conditions would be limited to impacts on the watercourses and/or wetlands impacted by the project.

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## Potential Adverse Effects within Federal Jurisdiction

The Agency's analysis identified the potential for adverse effects within federal jurisdiction that may result from carrying out the Project. The Agency notes that the Project would occur within the boundaries of an existing licensed nuclear facility. The Agency is of the view that existing legislative mechanisms and processes provide a framework to address the potential adverse effects within federal jurisdiction.

## Fish and Fish Habitat

The Agency considered information provided by the Proponent, DFO, ECCC, the Government of New Brunswick, the requester, MTI, and the public.

The Agency is of the view that existing legislative mechanisms, including the NSCA, *Fisheries Act*, and provincial *Clean Environment Act* and *Clean Water Act*, provide a framework to consider potential adverse effects on fish and fish habitat, including aquatic species as defined in subsection 2(1) of the SARA and other marine animals as defined in subsection 2(1) of the *Fisheries Act*.

Concerns expressed by the requester included:

- potential effects of radiological contaminants;
- potential effects of non-radiological contaminants (e.g., metals and heavy metals);
- impacts to marine mammal species at risk; and
- cumulative effects.

The Proponent indicated that there may be interaction with fish and fish habitat from cooling water intake and discharge components of the Project. The Proponent predicted that these effects would not be significant at a population level and would be mitigated by consulting DFO during design planning. The Proponent stated that DFO is expected to review the Project to identify the potential risks to the conservation and protection of fish and fish habitat. In addition, the Proponent indicated that a request for review by DFO may be required under the SARA if the Project may have adverse effects to an aquatic species at risk or its habitat.

In reviewing information provided by the Proponent, ECCC also advised that reactor cooling water discharge has potential for effects on the receiving environment. If there are adverse effects to water quality from the water discharge, these could in turn result in effects to sensitive ecosystem receptors.

DFO indicated that it may have a power, duty or function under the *Fisheries Act* and/or the SARA for the water intake component of the Project. If the Project has the potential to result in the death of fish, the harmful



alteration, disruption or destruction of fish habitat, or any of the prohibitions of SARA, DFO could issue an authorization under subsections 34.4(2) and/or 35(2) of the *Fisheries Act* and/or a permit under sections 73 and 74 of the SARA.

The CNSC noted that it would consider all areas of environmental protection and radiation protections under the NSCA, including in relation to potential impacts on fish and fish habitat and other aquatic species, including species at risk.

The Province of New Brunswick noted that both the EIA authorization and any potential Watercourse and Wetland Alteration Permit would set conditions. The EIA authorization conditions could address any of the wide range of issues that could be raised during the EIA review, including effects on fish and fish habitat, marine mammals, or aquatic species. If required, conditions set by a Watercourse and Wetland Alteration Permit would address impacts on the watercourses and/or wetlands impacted by the Project.

## Migratory Birds and Terrestrial Species at Risk

The Agency considered information provided by the Proponent, ECCC, the Government of New Brunswick, the requester and the public.

The Agency is of the view that effects on migratory birds and terrestrial species at risk would likely be limited given the small footprint of the Project and because it would occur within the licenced boundaries of an existing nuclear generating station. Existing legislative mechanisms, including the NSCA and provincial *Clean Environment Act*, also provide a framework to consider any potential effects to migratory birds and terrestrial species at risk. The Proponent will also be required to adhere to applicable federal legislation, such as the *Migratory Birds Convention Act, 1994* and the SARA.

Concerns expressed by the requester included:

- potential effects of radiological and non-radiological emissions; and
- potential effects of light emissions.

The Proponent indicated that potential interaction of birds with cooling towers or lighting is possible. It stated that effects would likely be minimized since the site is not located on a main flight route and the existing nuclear power plant already co-exists with migratory birds and habitat for species at risk. The Proponent stated that they have operational experience and that effects can be mitigated through compliance with general breeding bird windows and project engineering and design.

ECCC does not expect that it will be required to exercise a power or perform a duty or function related to the Project to enable it to proceed. ECCC advised that the activities linked to the construction of the Project and associated infrastructure could have negative effects on terrestrial wildlife, migratory birds, and species at risk (e.g., amphibians, arthropods, birds, lichens, terrestrial mammals, mosses, reptiles, and vascular plants) listed on the SARA and their habitat (e.g., wetlands) and critical habitat. ECCC further noted however that the Project would have a small footprint and is sited immediately adjacent to an existing nuclear power plant, so these effects are unlikely.



In addition, the CNSC noted that it would consider all areas of environmental protection and radiation protections under the NSCA, including in relation to potential impacts on migratory birds and terrestrial species at risk.

The Government of New Brunswick also considers impacts to avian species, including migratory birds and bird species at risk as part of the provincial EIA process, and would provide recommendations to mitigate potential adverse effects on migratory birds.

## Indigenous Peoples

The Agency considered information provided by the requester, including the two letters from Indigenous organizations that supported designation of the Project, the Proponent, the Government of New Brunswick, the CNSC, other federal authorities, and the public. The Agency also sought views from nine potentially impacted Indigenous groups, and considered the information received from MTI.

The Agency is of the view that existing legislative mechanisms will provide a framework to consider the potential impacts of the Project on Indigenous peoples, including health and safety, as well as potential impacts on Aboriginal and treaty rights and interests. Existing legislative mechanisms would also provide a framework to consider any impact resulting from any change to the environment on physical and cultural heritage, the current use of lands and resources for traditional purposes, or on any structure, site, or thing that is of historical, archaeological, paleontological or architectural significance. In particular, potential effects to Indigenous peoples will be considered during assessments under the NSCA and the provincial EIA process, which both include engagement with Indigenous groups.

Concerns expressed by the Passamaquoddy Recognition Group Inc. and the Wolastoq Grand Council included:

- potential impacts on the health and wellbeing of the environment and communities;
- long-term effects and intergeneration risks;
- cumulative effects;
- the need to consider alternatives to the Project; and
- the need to attain Free, Prior and Informed Consent (FPIC).

Concerns expressed by MTI included:

- potential impacts to MTI's Aboriginal and treaty rights;
- the need to consider Indigenous Knowledge in any decision-making and the view that a federal impact assessment would allow for a fulsome consideration of this knowledge;
- potential impacts of discharged water on the marine environment and fisheries;
- risk of contamination to resources and the environment;
- the storage of nuclear waste; and
- potential effects, such as the release of radiation, caused by an accident or malfunction, into the Bay of Fundy.

The Proponent noted that the Project would be within the licenced boundaries of an existing nuclear generating station. The Proponent is not aware of any current traditional land use in the immediate area.

Construction would not occur outside the Proponent's property, with a possible exception being aquatic work, which if required, would be planned in consultation with government agencies and Indigenous groups. The Proponent also advised that it has an Indigenous engagement and inclusion program. The program includes activities such as the conduct of Indigenous Knowledge/Indigenous Resource and Land Use Studies, which are currently underway. In addition, environmental studies are being scoped through an Indigenous lens and the aquatic and terrestrial studies are Indigenous-led.

Health Canada noted that there may be potential adverse effects on human health from Project-related changes to the biophysical environment (e.g., degradation of the quality of air, soil, water, country foods, and elevated noise levels) during the construction, operation, and/or decommissioning phases of the Project. However, it noted that there is insufficient detail and information available at this time to confirm this, including whether there are potential impacts in areas under federal jurisdiction (i.e., effects to Indigenous peoples). Information gaps include, but are not be limited to, a lack of information on potential adverse health effects of sensitive human receptors (e.g., daycares, schools, long-term care facility), and on how the Project would differentially impact diverse groups of people, including vulnerable subgroups. Specific information gaps noted by Health Canada also included impacts on water quality, noise and air quality, risk of accidents and malfunctions, Indigenous peoples and their use of the land, and mitigation and monitoring measures to reduce potential impacts.

ECCC advised that the construction and decommissioning activities could result in the minor emission of air contaminants that could result in local or regional degradation of ambient air quality.

The Province of New Brunswick noted that Indigenous engagement would be required as part of the EIA.

In its review process, the CNSC would consider all areas of environmental protection and radiation protections under the NSCA, including those with links to impacts on human health and Indigenous lands and resources used by Indigenous peoples. It also noted that it has a duty to consult Indigenous groups during its decision-making process if there is a potential impact on Aboriginal and treaty rights. The CNSC will initiate its consultation and engagement activities, including the development of Indigenous community-specific consultation plans and arrangements, the completion of community-specific rights impact assessments, meetings, gathering and consideration of Indigenous Knowledge, workshops, and funding support through the CNSC's Participant Funding Program. The CNSC has a well-established Indigenous consultation and engagement program that is in line with best practices across the Government of Canada. In addition, the CNSC has well-established relationships with all of the potentially affected Indigenous groups and their representative organizations in relation to the Proponent's existing Point Lepreau site, where the Project is proposed to be situated. The CNSC would also require that the Proponent engage with potentially impacted Indigenous groups.

## Federal Lands

The Proponent noted that the Project is not located on federal lands, and no federal lands would be directly impacted by the Project. The Agency is of the view that any change to the environment occurring on federal lands would be unlikely, but that existing legislative mechanisms provide a framework to consider any downstream or indirect effects.





## Transboundary Effects

The Agency is of the view that existing legislative mechanisms will provide a framework to consider the potential of the Project to cause a change to the environment that would occur in a province other than the one in which the Project is being carried out or outside Canada.

The requester raised concerns regarding potential effects of an accident or malfunction on lands outside New Brunswick and outside Canada.

ECCC noted that the construction and decommissioning activities could result in the minor emission of air contaminants that could result in local or regional degradation of ambient air quality. Given the available information, it is unlikely that these emissions would have effects outside of Canada or in another province. The construction of the Project may result in minimal greenhouse gas (GHG) emissions; however, the overall purpose of the Project is to provide a non-GHG emitting source of electricity, which will displace coal-fired electric power.

The Proponent indicated that no lands outside of New Brunswick or Canada would be directly impacted. Potential impacts are expected to be the same as currently present. The CNSC licensing process will manage potential indirect impacts relating to accidents and malfunctions and safety will be built into the design process (e.g., units shut themselves down).

The Proponent stated that the impacts would be positive regarding GHG emissions, since the purpose is to support GHG reduction.

The Project will be subject to federal GHG emissions reporting requirements, pursuant to the *Canadian Environmental Protection Act, 1999*, if ten kilotonnes or more of GHGs are emitted in carbon dioxide equivalent units per year. The Point Lepreau site is currently well below this threshold.

Health Canada indicated the potential for changes to air quality, but did not comment on the potential extent of such effects.

The provincial EIA process requires characterization of air emissions, including GHGs.

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## Potential Adverse Direct or Incidental Effects

Direct or incidental effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity, or to a federal authority's provision of financial assistance for the purpose of enabling that physical activity to be carried out, in whole or in part.

The entire Project would require a licence issued by the CNSC under powers conferred by the NSCA. In addition, as the Project may include a water intake and outfall/discharge pipe to Indian Cove, it may require a *Fisheries Act* authorization from DFO if it could cause harmful alteration, disruption, or destruction of fish habitat or death of fish. It may also require a *Canadian Navigable Waters Act* approval from Transport Canada for the water intake and outfall/discharge pipe.

Federal funding may also be provided for the Project. The Proponent has applied for funding through the Strategic Innovation Fund, and Innovation, Science and Economic Development Canada and NRCAN are reviewing the funding proposal. The Project is also under assessment by the Canada Infrastructure Bank, which has not made a decision whether or not to invest in the Project.

The carrying out of the Project has the potential to cause adverse effects which are directly linked or incidental to a federal authority's exercise of a power or performance of a duty or function. However, the Agency is of the view that existing legislative mechanisms provide a framework to sufficiently consider these adverse direct or incidental effects, as appropriate. The Agency also notes that the Project would occur within the boundaries of an existing licensed nuclear facility.

As part of the NSCA licensing process, the CNSC would consider, among other things, the potential impacts of the Project on the health and safety of the public and ensure appropriate safety management systems, plans and programs are established. The Province of New Brunswick also has authority to consider many of the potential adverse direct or incidental effects of the Project, and it noted that the concerns raised by the requester, including impacts to rural communities and local economies (and potentially more), would be expected to be addressed as part of the provincial EIA.

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## Public Concerns

As described above, the designation request was accompanied by letters of support from two Indigenous organizations and 13 other environmental- or health-based organizations. The Minister also received separate letters supporting the designation from the New Brunswick Anti-Shale Gas Alliance and Imaginons la Péninsule acadienne autrement.

The Minister and the Agency also received over 300 submissions from members of the public regarding the Project and designation request process. The majority of these submissions supported the request to have the Project designated, with many of those being identical form letters.

Issues and concerns raised by the public in relation to the Project included:

- Environmental risks: Impacts on waterways and all animal species; concerns for the environment and health; and the potential for significant cumulative effects.
- Aboriginal and treaty rights: the need to fully engage Indigenous groups; and the need for Indigenous rights and concerns to be considered and honored.
- Climate change: Existing technologies such as wind, solar, existing hydro and geothermal are more readily available to help against climate change, while nuclear projects will take a long time to contribute to power generation and divert investment from better alternatives.
- Experimental technology: Unproven technology involves long-term, intergenerational risks.
- Nuclear waste and proliferation: Unknowns relating to the characteristics and stewardship of long-lasting nuclear waste streams with no approved long-term storage facilities anywhere in Canada; use of plutonium and enriched uranium as fuels require new levels of safety and security beyond those for existing CANDU reactors and more extensive decommissioning procedures; consideration of the danger of nuclear weapons proliferation with the use of plutonium-based fuels; false claims that the project will “recycle” nuclear waste. This decision will set a precedent for future nuclear proposals and must be assessed to the highest standards.

- Economic risk: Industry-supplied cost data shows 16.3 cents per kilowatt hour for a proposed SMR; 3.8 to 5.5 cents for solar power, 3.4 to 7.0 cents for onshore wind power and 11.2 cents for offshore wind power. Building SMRs is unlikely to generate jobs by growing export markets due to the cost. New (and existing) nuclear is not competitive with the low cost of renewable sources such as wind, solar and hydro.
- Insufficient alternate process: The provincial EA process is insufficient to cover federal jurisdiction and public consultation; the CNSC licensing process is too narrow in scope to cover cumulative social, cultural, Indigenous and human rights impacts. There is a lack of rigorous scientific review for federally funded SMR research and development projects.

The Agency is of the view that existing legislative mechanisms provides a framework to consider the concerns within federal jurisdiction and adverse direct or indirect effects, and include opportunities for public participation and consideration of public comments related to those effects.

The province of New Brunswick confirmed that the public will be provided with an opportunity to comment on the Project as part of the provincial EIA. For the determination review, the Proponent will have to demonstrate that the potentially affected public and stakeholders have been given the opportunity to review and comment on the Project, and that it has engaged Indigenous groups. If a Comprehensive EIA is required, the public would be given the opportunity to comment on draft guidelines and the Proponent's EIA Report, and at least one public meeting would be held.

In addition, the CNSC would hold public Commission hearings. These hearings provide an opportunity for the public to communicate their interests and concerns directly to the Commission, who would be making a decision on the licence application. This public consultation process occurs through both written and oral interventions as part of the Commission's decision-making process. The CNSC has also recently started to make use of an e-consultation platform for receiving comments on such items as discussion papers, reports, and regulatory documents. Informal opportunities, such as open house information sessions, virtual webinars, and regular and ad hoc meetings (typically with Indigenous Nations) occur throughout the review of a project.

The Proponent also noted that it has developed a public engagement strategy with the primary goal to ensure information related to the health, safety, and security of the persons and environment, the potential benefits in terms of economy and climate change action, as well as any other topics associated with SMRs, are effectively communicated to Indigenous rights-holders and public stakeholders. The Proponent tracks public concerns related to SMRs through the media, surveys, and direct correspondence. Primary concerns relate to safety, waste management, and cost.

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## Potential Adverse Impacts on the Section 35 Rights of Indigenous Peoples

The Project is located within the traditional territories of the Wolastoqey, the Mi'gmaq, and the Peskotomuhkati Nation in New Brunswick. The Passamaquoddy Recognition Group Inc. and the Wolastoq Grand Council submitted letters that were attached to the designation request and supported the request that the Minister designate the Project.



The Agency sought views from nine potentially impacted Indigenous groups and received input from one, MTI. MTI raised concern that the Project could potentially impact the Aboriginal and treaty rights and title of its members, and supported the request that the Minister designate the Project.

The Agency also considered submissions from the requester, including the letters from the Passamaquoddy Recognition Group Inc. and the Wolastoq Grand Council, and relevant advice from federal and provincial authorities. In relation to subsection 9(2) of the IAA, the Agency is of the view that, while there is the potential for the Project to cause adverse impacts on rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982* (section 35 rights), existing legislative mechanisms applicable to the Project would trigger the duty to consult, thereby providing a framework to address potential impacts.

Potential adverse impacts on the section 35 rights of Indigenous peoples will be considered in the CNSC process under the NSCA, which includes consultation with Indigenous groups. The process would include Commission hearings, which would provide an opportunity for Indigenous groups to communicate their interests and concerns directly to the Commission, who would be making a decision on the licence application as well as whether the Duty to Consult and Accommodate has been upheld. The provincial EIA process and potential *Fisheries Act* Authorization may also involve consultation and/or accommodation on potential impacts on Aboriginal or treaty rights.

NRCan also informed the Agency that it established an Indigenous Advisory Council as part of its SMR Action Plan, which was created to support a coordinated, national Indigenous lens on SMR policies, programs, and decisions as the SMR Action Plan develops. The Council is comprised of members from First Nations, Metis, and Inuit Communities and seeks to ensure the Rights of Indigenous peoples are protected, and that Indigenous communities are consulted and engaged with early on as proposals develop. In the vicinity of the Project, several Indigenous communities participated in the SMR Roadmap engagement session in Saint John, New Brunswick in 2018, including MTI, Elsipogtog First Nation, and Mawiw Council Inc. NRCan also met with the Wolastoqey Nation in New Brunswick for an engagement session in 2020 and with the Peskotomuhkati Nation at Skutik (Passamaquoddy) in New Brunswick to discuss the SMR Action Plan and SMRs more broadly.

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## Other Considerations

### Cumulative Effects

The Agency considered information provided by the Proponent, the requester, including two Indigenous organizations that provided letters in support of the designation request, and the CNSC in relation to effects set out in subsection 9(1) of the IAA, and is of the view that existing legislative mechanisms provide a framework to consider cumulative effects.

The requestor expressed concern regarding the potential combination of the effects of the Project with existing effects of the Point Lepreau Nuclear Generating Station.

The Proponent noted that a cumulative effects assessment will be included as part of the provincial EIA review. The Proponent stated that the EIA will follow the spirit of the federal guidance regarding cumulative



effects assessment, and mitigation and monitoring will take such effects into account. The Province of New Brunswick confirmed that it expects cumulative effects would be addressed as part of the provincial EIA.

The Proponent also stated that the CNSC licenses will consider cumulative effects, and the CNSC noted that this would include the potential cumulative effects on Aboriginal or treaty rights, as appropriate. The CNSC noted that the Proponent would be required to submit an environmental risk assessment as part of its licence application. If the Project was allowed to proceed, the CNSC requires licensees to have environmental protection programs that consist of control and mitigation measures and monitoring for releases to the environment, which are informed by an iterative five-year environmental risk assessment cycle. Cumulative effects are captured indirectly through the periodic environmental risk assessment reviews.

## Accidents and Malfunctions

The requester raised concerns regarding the potential effects of an accident or malfunction, including one caused or exacerbated by an extreme weather event which may be influenced by climate change. The requester noted that sodium-fueled reactors have had issues with accidents or malfunctions in the past, particularly related to sodium leaks and fires and corrosion control. An accident or malfunction could result in adverse effects within areas of federal jurisdiction.

The Proponent indicated that potential indirect impacts relating to accidents and malfunctions will be managed through the CNSC licensing process and safety will be built into the design process (e.g., units can shut down independent of operator actions). In addition, the Proponent noted that the provincial EIA will consider potential accidents and malfunctions of the Project. The Province of New Brunswick confirmed that it expects accidents and malfunctions would be addressed as part of the provincial EIA.

The CNSC indicated that its regulatory framework covers accidents and malfunction scenarios to verify that the effects on the environment from credible nuclear accidents involving the reactor are within safety goal limits. The following information would be considered:

- identification and classification of accidents;
- identification of limiting credible accidents;
- analysis of the radiological releases from the plant; and
- credible demonstration of meeting the safety goals limits.

NRCan also indicated that the Project would likely fall within the jurisdiction of the *Nuclear Liability and Compensation Act* and would be designated as a nuclear installation, either within the existing authorization for the Point Lepreau Nuclear Generating Station or as a stand-alone facility. The *Nuclear Liability and Compensation Act* establishes a compensation and liability regime in the unlikely event of a nuclear accident resulting in civil injury and damages.

## Need for and Alternatives to the Project



The requester, including the two Indigenous groups that provided letters in support of the designation request, and the public raised concerns regarding the need for and alternatives to the Project, including its economic feasibility and whether other technologies or solutions exist to fulfil the same goal or provide the same benefits or results.

The Province of New Brunswick expects that alternatives to the Project would be addressed as part of the provincial EIA.

The Proponent stated it anticipates a Comprehensive level provincial EIA review would be required, which would include an evaluation of the purpose, rationale and need for the undertaking and an assessment of alternatives. The Proponent has also stated that the assessment completed per the provincial EIA would comply with the spirit of the federal Tailored Impact Statement Guidelines template, which includes consideration of project purpose, need, and alternatives.

## Nuclear Waste

The requester, including the two Indigenous organizations that provided letters in support of the designation request, raised concerns regarding the long-term management of nuclear waste. The Project would not involve construction and operation of a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste. During the Project's operation, spent nuclear fuel would be stored onsite. Upon final shutdown of the Project and as part of decommissioning, the Proponent anticipates that spent fuel can be transported to a deep geological repository for long-term disposal; however, the Agency notes that no such deep geological repository currently exists in Canada.

The CNSC is responsible for the regulatory oversight of the management of radioactive waste, including, as applicable, handling, processing, transport, storage, and disposal of that waste. The CNSC evaluates a proponent or licensee in various subject areas, including with respect to waste management. It also covers the planning for decommissioning. Topics covered in depth consist of:

- waste characterization;
- waste minimization;
- waste management practices; and
- decommissioning plans.

The Province of New Brunswick also indicated that the management of nuclear waste would be expected to be addressed as part of the provincial EIA, although it would rely heavily (if not exclusively) on federal input.

More broadly, Canada's approach to radioactive waste management is founded upon the Government of Canada's Policy Framework for Radioactive Waste. The Framework sets out principles governing the institutional and financial arrangements for disposal of radioactive waste by waste producers and owners. The Policy is supported by three primary pieces of legislation: the NSCA, the *Nuclear Fuel Waste Act* and the IAA. The *Nuclear Fuel Waste Act* establishes the oversight that the Government of Canada and the Minister of Natural Resources will exercise in regards to the long-term management of nuclear fuel waste in Canada. It



also establishes the Nuclear Waste Management Organization, which is responsible for designing and implementing Canada's plan for the long-term management of used nuclear fuel.

The Proponent noted that it expects it will be required to set aside funds (i.e., financial guarantees) that ensure the safe disposal of waste during all stages of the Project's life cycle.

## Non-Proliferation of Nuclear Weapons

The requester raised concerns regarding the proliferation of nuclear weapons. The CNSC is responsible for implementing Canada's nuclear non-proliferation policy, which contains two broad, long-standing objectives:

- to assure Canadians and the international community that Canada's nuclear exports do not contribute to the development of nuclear weapons or other nuclear explosive devices; and
- to promote a more effective and comprehensive international nuclear non-proliferation regime.

The CNSC evaluates a proponent or licensee in various subject areas, including with respect to security, safeguards and non-proliferation, and packaging and transport.

The Province of New Brunswick also indicated that the non-proliferation of nuclear weapons would be expected to be addressed as part of the provincial EIA, although it would rely heavily (if not exclusively) on federal input.

## Use of a Novel Technology

The requester stated that, since the Project would involve relatively novel technology, a federal impact assessment is warranted. Based on available information, the Project would be the first of its kind in Canada.

The Proponent noted that the Project is designed based on the 30-year operation of the Experimental Breeder Reactor-II. According to information on ARC Clean Energy Canada Inc.'s website, the Experimental Breeder Reactor-II was a sodium-cooled fast-reactor developed by the United States government's Argonne National Labs, and successfully supplied energy to the grid for thirty years.

The CNSC noted that, for several years, ARC Clean Energy Canada Inc. has been engaged in an optional, pre-licensing vendor design review, which enables the CNSC to provide feedback early in the design process based on the proposed reactor technology. The CNSC licensing process itself will ensure, among other things, the suitability of the proposed site, conformity with regulatory requirements, the establishment of appropriate safety management systems, plans and programs, in addition to the evaluation of potential environmental effects.

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## Regional and Strategic Assessments

There are no regional or strategic assessments pursuant to sections 92, 93, or 95 of the IAA that are relevant to the Project.



## Conclusion

The Agency took into account the information it received as part of the designation request process for the Project to inform its analysis. The Agency notes that the Project would occur within the boundaries of an existing licensed nuclear facility. The Agency is of the view that existing legislative mechanisms provide a framework to consider the potential for adverse effects, and public concerns related to those effects, as described in subsection 9(1) of the IAA.

The Agency also considered the potential adverse impacts the Project may have on the section 35 rights of Indigenous peoples, as described in subsection 9(2) of the IAA. The Agency is of the view that existing legislative mechanisms provide a framework to address potential impacts to section 35 rights that may be caused by the Project.

The CNSC would evaluate the potential environmental effects of the Project, and conduct public and Indigenous consultation; in particular, the Project would be subject to the NSCA and its regulatory framework. Other federal legislative mechanisms include potential authorization under the *Fisheries Act*, which would include additional Indigenous consultation activities. The provincial EIA process under the *Clean Environment Act*, which may include enforceable terms and conditions to mitigate potential environmental effects for all stages of the development, would also be applicable to the Project.