

# REGIONAL ASSESSMENT OF OFFSHORE WIND DEVELOPMENT IN NEWFOUNDLAND AND LABRADOR AND NOVA SCOTIA

## APPENDIX A

### Draft Terms of Reference

The Committee's Terms of Reference, established under subsection 93(1) of the *IAA*, are as follows:

#### **A1: MANDATE AND ACTIVITIES OF THE COMMITTEE**

A1.1 The Committee will conduct a Regional Assessment in accordance with the *IAA*, the Agreement and this Terms of Reference.

#### **Indigenous Knowledge and Aboriginal and Treaty Rights**

A1.2 The Committee is mandated to receive information from Indigenous peoples on the nature and scope of any Aboriginal or Treaty rights protected by section 35 of the *Constitution Act, 1982* in the Study Area, as well as information on potential adverse impacts that future offshore wind development activities in the Study Area may (individually or cumulatively) have on these rights. Information provided to the Committee as part of this process may also inform Crown efforts to develop and implement meaningful consultation processes with Indigenous peoples in future project-specific impact assessments and other regulatory and decision-making processes.

A1.3 The Committee is not mandated or empowered by this Agreement to make any determination as to the existence or validity of Aboriginal or Treaty rights, the probability of adverse impacts upon any such rights, or whether any duty to consult has arisen and been discharged in any particular context.

A1.4 In conducting its work, the Committee will recognize that, for the purposes of the Regional Assessment, Indigenous Knowledge is an important component of understanding existing conditions, potential effects (both positive and adverse) and mitigation measures, and that regional assessments can provide a means of weaving together scientific information and Indigenous Knowledge to inform future impact assessments.

A1.5 Any Indigenous Knowledge that is provided in confidence is considered confidential and will not knowingly be, or be permitted to be, disclosed without written consent in accordance with section 119 of the *IAA*.

#### **Committee Activities and Requirements**

A1.6 In conducting the Regional Assessment, the Committee will:

### ***Indigenous, Public, and Stakeholder Participation***

- a) Ensure that Indigenous peoples and the public are provided with opportunities to participate meaningfully in the Regional Assessment.
- b) Engage with Indigenous peoples and governmental and non-governmental organizations and individuals that have information, knowledge or interests relevant to the Regional Assessment. This will include members of the public, industry, environmental and community organizations and any other person or group with information and interests related to the Regional Assessment and who wishes to participate in it.
- c) Develop and implement a *Public, Fisheries and Stakeholder Participation Plan* and an *Indigenous Participation Plan*, with advice from the advisory groups referred to in Section 4.0 of the Agreement and described below, if these advisory groups are in place at that time. The Committee will further collaborate with Indigenous peoples on the development and implementation of the *Indigenous Participation Plan*. Once completed these Participation Plans will be posted to the Registry and updated regularly by the Committee, with advice from the advisory groups, to ensure that participants are aware of planned participation approaches and upcoming activities.

### ***Advisory Groups***

- d) Establish, and seek information and advice from advisory groups during the conduct of the Regional Assessment, as outlined in Section 4.0 of the Agreement and in the sections that follow.
- e) These advisory groups will be comprised of individuals or organizations from within or outside of government, including Indigenous peoples, who have knowledge or experience deemed relevant to the Regional Assessment by the Committee. They will be identified by the Committee, including by way of a public call for interest through which interested persons will provide information on their relevant interests, qualifications and affiliations to the Committee. The composition and activities of these advisory groups may vary from time to time in relation to the needs, work or expertise required and requested by the Committee during the course of the Regional Assessment.
- f) The role of these advisory groups will include assisting the Committee in identifying, accessing, analyzing and using information and knowledge that is relevant to the Regional Assessment, as well as in identifying and evaluating information and knowledge gaps and recommending approaches to address any knowledge gaps.
- g) These advisory groups will identify, provide and support the use and weaving together of Indigenous knowledge and scientific and technical information in the conduct of the Regional Assessment, as appropriate.

- h) Each of the advisory groups described below will provide information and advice to the Committee on the topics outlined below, as required and requested:
  - a. Environmental, health, social and economic conditions in the Study Area;
  - b. Future offshore wind development activities in the Study Area, including their:
    - i. Purpose;
    - ii. Associated physical activities;
    - iii. Key areas of interest for future offshore wind development activities in the Study Area (to help focus the Committee's work on locations which are most likely to see future development interest, based on technical and economic factors);
    - iv. Regulatory requirements;
    - v. Potential positive and adverse effects, including cumulative effects;
    - vi. Mitigation measures and follow-up, and other approaches for avoiding or reducing potential adverse effects and creating and maximizing potential positive effects; and
  - c. Other topics relevant to the Regional Assessment, as requested by the Committee.

*Advisory Group: Indigenous Knowledge and Perspectives*

- i) The Committee will seek knowledge and perspectives from Indigenous peoples on matters relevant to the conduct of the Regional Assessment, including through the Advisory Group described in this section.
- j) This will include sharing Indigenous Knowledge and perspectives on some or all of the topics listed above during the conduct of the Regional Assessment, in accordance established Indigenous protocols and procedures as applicable.
- k) This Advisory Group will also provide information, knowledge and perspectives on Indigenous peoples and their communities, activities and other interests, including Aboriginal or Treaty rights protected by section 35 of the *Constitution Act, 1982*.
- l) This Advisory Group will also advise the Committee on approaches for the collection, sharing and consideration of such knowledge and its incorporation into the Regional Assessment.

*Advisory Group: Scientific and Technical Information and Analysis*

- m) This Advisory Group will seek scientific and technical information and advice from representatives of federal and provincial government, departments and agencies and non-governmental organizations and individuals (both Indigenous and non-Indigenous) on matters relevant to the conduct of the Regional Assessment. This will include information and advice related to

environmental, health, social and economic components and issues.

- n) This Advisory Group will assist the Committee in gathering and analyzing relevant data and information and in conducting scientific and technical analysis, and will provide expertise in relation to the Regional Assessment. This will include sharing information and expertise on some or all of the topics listed above, as requested by the Committee during the conduct of the Regional Assessment.

*Advisory Group: Fisheries Information and Analysis*

- o) This Advisory Group will seek knowledge, information and advice from fishing industry representatives and fishers regarding current and potential fishing activity, as well as potential interactions between fishing activity and offshore wind development activities in the Study Area and approaches for avoiding or minimizing adverse effects and creating or maximizing opportunities for positive effects.

**Information and Analysis**

*Description of Existing Conditions*

- p) Identify, compile, review and present information on existing environmental, health, social and economic conditions within the Study Area.

As noted in Section 3.5 of the Agreement, this will include information contained in any past or ongoing impact or environmental assessments (including strategic environmental assessments), and information provided by government, industry, academia, Indigenous peoples or the public.

*Identification of Information and Knowledge Gaps*

- q) Identify and evaluate information and knowledge gaps, with a focus on any associated gaps with relevance to, and implications for, future planning, licencing and impact assessments for offshore wind development activities in the Study Area.
- r) Make recommendations to address such information and knowledge gaps as appropriate.

*Analysis of Effects, Mitigation and Follow-up*

- s) Identify and consider the potential positive and adverse effects of future offshore wind development activities in the Study Area.

This will include consideration of: potential malfunctions or accidents; any cumulative effects that may result from the effects of offshore wind

development activities in the Study Area in combination with other physical activities that have been or will be carried out; and the result of any interaction between the effects referenced above.

- t) In identifying and considering potential positive and adverse effects, the Committee will focus on the following environmental, health, social and economic components:
- i. Marine Fish and Fish Habitat
  - ii. Marine and Migratory Birds
  - iii. Marine Mammals and Sea Turtles
  - iv. Protected and Special Areas
  - v. Indigenous Communities, Activities and Rights
  - vi. Fisheries and Other Ocean Uses
  - vii. Visual Aesthetics / Viewscapes
  - viii. Physical and Cultural Heritage (including structures, sites or things of historical, archaeological, paleontological or architectural significance)
  - ix. Communities and Economy

The Committee may, based on its analysis and engagement activity, further refine or add to the list of components listed above. If that is the case, the Committee will clearly document in its Report the rationale for doing so, including how public, stakeholder and/or Indigenous input have informed and influenced this.

- u) Identify and consider the effects, both positive and adverse, that offshore wind development activities in the Study Area may have on any Indigenous peoples, and any impact that they may have on the rights of the Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- v) Identify and consider technically and economically feasible mitigation measures and other approaches for eliminating, reducing, controlling or offsetting potential adverse effects and creating and maximizing potential positive effects resulting from offshore wind development activities in the Study Area.
- w) Identify and consider existing legislation, regulations, guidelines and standards, and associated approvals or authorizations, that are relevant to avoiding or reducing their adverse effects.

#### *Other Considerations and Requirements*

- x) Identify and consider the extent to which offshore wind development activities in the Study Area and their potential effects, would: a) contribute to sustainability; and b) hinder or contribute to the federal and provincial governments' ability to meet their environmental obligations and commitments in respect of climate change, and make recommendations on the manner in

which future licencing decisions and/or impact assessments should consider and address these factors.

- y) Consider the intersection of sex and gender with other identity factors and make recommendations on the manner in which future impact assessments should consider and address these factors.
- z) Take into account any scientific information, Indigenous knowledge — including the knowledge of Indigenous women — and community knowledge provided with respect to the Regional Assessment.
- aa) Ensure that the information that it uses in conducting the Regional Assessment is accessible to the public through the Canadian Impact Assessment Registry or by other means. If the Committee receives information that it has agreed to keep confidential, the Committee shall keep that information confidential unless required to disclose the information by law.

### ***Administration and Reporting***

- bb) Submit monthly status reports to the Ministers during the conduct of the Regional Assessment.
- cc) Undertake its work in accordance with the budget established under Section 8.0 of the Agreement. The Committee may request a change to the budget by way of a written request to the parties listed in Section 8.0 of the Agreement.
- dd) Complete a draft Report in accordance with these Terms of Reference and make it available for an Indigenous and public review and comment period, prior to the submission of the final Report to the Ministers. The Committee will advise the public that the draft Report is available on the Canadian Impact Assessment Registry Internet site.
- ee) If requested, provide copies of the draft Report in paper or electronic formats to participating individuals and organizations in addition to posting the draft Report on the Canadian Impact Assessment Registry Internet site. In addition, the Committee will include a summary of its Report in plain language and available in English, French and the Indigenous languages specified in the Agreement.

## **A2: COMMITTEE REPORT**

A2.1 The Committee will provide the Ministers with a Report, as outlined in the Agreement, which will describe the conduct, and document the results, of the Regional Assessment including the information outlined below.

A2.2 The Report will take into account and reflect the views of all Committee members. Any areas of non-consensus and associated dissenting viewpoints will be reflected in the Report.

A2.3 In its Report, the Committee will, in accordance with the goal, objectives and scope of the Regional Assessment outlined in Section 1.0 of the Agreement, include the following information for consideration and use in future planning, licencing and impact assessments for offshore wind development activities in the Study Area:

*Goal: To provide information, knowledge and analysis regarding future offshore wind development activities in the Study Area and their potential effects, in order to inform and improve future planning, licencing and impact assessment processes for these activities in a way that helps protect the environment and health, social and economic conditions while also creating opportunities for sustainable economic development.*

*Objective A: Providing information, knowledge and analysis related to environmental, health, social and economic conditions and the potential effects of offshore wind development activities in the Study Area, with consideration and weaving together of both Indigenous knowledge and scientific information.*

- a) A description of environmental, health, social and economic conditions of the Study Area, based on the identification, compilation and review of existing and publicly accessible scientific information and Indigenous knowledge for the Study Area. This description will be presented in a manner to be determined by the Committee, which in addition to the Committee's Report may include information in an electronic format (such as through a Geographic Information System (GIS) application).
- b) An identification and analysis of key information gaps, requirements and opportunities, with a focus on those with relevance to, and implications for, future licencing and impact assessments for offshore wind development activities in the Study Area.
- c) Recommendations to address such information and knowledge gaps as appropriate.
- d) Identification of potential changes to the environment or to health, social or economic conditions that may result from offshore wind development activities in the Study Area, and the potential positive or adverse consequences of these changes. This will include consideration of the nature, degree and distribution of potential effects at the local, regional, national and international scales, as applicable.

*Objective B: Providing an understanding of the regional context that can be used in considering and evaluating the effects of future offshore wind development activities, to inform future planning and licencing processes and impact assessments, including the management of cumulative effects.*

- a) An identification and analysis of key environmental, health, social or economic components in the Study Area that should be considered in future licencing or impact assessments for offshore wind development activities in the Study Area. This will include identifying and highlighting:
  - i. Any components, values, locations or times that may be susceptible to effects (direct or indirect, positive or adverse) from future offshore wind development activities in the Study Area and/or from other past, on-going or future activities and other natural or human-induced disturbances; and
  - ii. Any circumstances where the nature, location, timing and potential accumulation of these effects may result in potential cumulative effects (positive or adverse).

*Objective C: Identifying and recommending mitigation measures and other approaches for addressing potential positive and adverse effects (both project-specific and cumulative) as part of future decision-making for offshore wind development activities, in a manner that fosters sustainability.*

- a) Recommendations on potential mitigation measures and other approaches that are technically and economically feasible for addressing the potential adverse effects of future offshore wind development activities in the Study Area or creating and maximizing their potential positive effects and the equitable distribution of these benefits. This may include standard measures as well as other potential approaches, technologies and measures that may be required to address particular issues identified through the Regional Assessment.
- b) Recommendations on potential approaches and measures to address regional-scale and non-project specific (including cumulative) effects. This may include potential policy, plan, program, regulatory or other initiatives by governments or other relevant parties.

*Objective D: Describing how the findings or recommendations of the Regional Assessment could be used to inform future planning and licencing processes for these activities and to enhance the effectiveness and efficiency of their impact assessments.*

- a) Recommendations on how to consider, implement or otherwise address the Regional Assessment findings in a clear, effective and efficient manner in future licencing and in impact assessments for future offshore wind development activities in the Study Area, and/or through other initiatives by governments or other parties.
- b) Recommendations for a Regional Assessment follow-up program to consider and incorporate any new or updated information that becomes available after submission of the final Report by the Committee, in order to help ensure that the Regional Assessment remains current and useful into the future and continues to



fulfill the goal and objectives of the Regional Assessment as outlined in this Agreement.

A2.4 The Committee will also include the following in its Report:

- a) A high-level, generic description of the types of offshore wind development activities that may occur in the Study Area, including their construction including expansion, operations and decommissioning phases as applicable. This will include fixed technologies (i.e., pile-driven platforms) as well as newer floating technologies and associated activities.
- b) The purpose of and need for offshore wind development activities in the Study Area, including their potential environmental, health, social and economic benefits.
- c) An identification and analysis of any change to offshore wind development activities in the Study Area that may be caused by the environment.
- d) A description of the public and Indigenous participation activities undertaken by the Committee during the conduct of the Regional Assessment, including a summary of any comments received and of where and how these were considered in the Regional Assessment.
- e) An overview of how the Committee took into account and used any Indigenous Knowledge provided during the Regional Assessment. In doing so, the Committee must obtain consent to disclose any confidential Indigenous Knowledge provided as per section 119 of the IAA unless otherwise required by law.

### A3 SCHEDULE

A3.1 The Committee will complete its work in a phased manner and will, following the public review of drafts as referenced in Section A1.6 above, submit the various components of its Report to the Ministers as follows:

Report Component	Overview	Relevant Components (From Sections A2.3 and A2.4 Above)	Submission to Ministers
1	Information and analysis to inform future licencing for offshore wind in the Study Area	Section A 2.3 Objective A, items a) to d) Objective B, item a) Objective D, item a) Section A 2.4 Items a) to e)	12 months from Committee appointment *
2	Identification of, and recommendations on, mitigation and other approaches to address potential effects, to inform future impact assessments	Section A 2.3 Objective C, items a) to b) Objective D, items a) to b) Section A 2.4 Items d) to e)	18 months from Committee appointment *

Report Component	Overview	Relevant Components (From Sections A2.3 and A2.4 Above)	Submission to Ministers
	for offshore wind in the Study Area		
<p>* As noted above, the Committee may choose to present its description of current environmental, health, social and economic conditions in an electronic format, such as through a geographic information system (GIS) application. While this information is part of Component 1 (and any such GIS is therefore to be submitted with 12 months, it is recognized that the system may continue to be refined during the remainder of the Regional Assessment process, and that an updated version may be included in the Committee's final deliverable (at 18 months)</p>			

A3.2 The Committee will submit its final Report (all components outlined in the above table, including final GIS application as applicable) to the Ministers within 18 months of the public announcement of the appointment of its members by the federal Minister of Environment.

#### **A4: CLARIFICATION OF OR AMENDMENT TO TERMS OF REFERENCE**

A4.1 The Committee may request clarification of, or an amendment to, its Terms of Reference by sending a letter to the Ministers setting out the request. Upon receiving such a request, the Ministers will provide the Committee such clarification or a response to the requested amendment in a timely manner.

A4.2 Subject to the above, the Committee will continue with the Regional Assessment to the extent possible while waiting for a response in order to adhere to the timelines of this Agreement.