

**Comments on the Draft Regional Assessment of Offshore Oil and  
Gas Exploratory Drilling East of Newfoundland and Labrador**

**Submitted by**

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## **Introduction**

There were high expectations of this, the first Regional Impact Assessment under the new federal Impact Assessment Act.

This was especially true of those of us aware of the failings of the previous environmental assessment process for extractive developments – that it was dominated by the perspective of proponents, that it privileged industry-funded research over truly independent and disinterested research, that it failed to put public interest intervenors on an equal footing with proponents, that it failed to serve the precautionary approach, that it ignored cumulative effects of industrial activity by focusing on individual projects in isolation, that it overlooked impacts on Canada’s climate change obligations, that it served a facilitative mandate and, thus, rarely if ever rejected a proposal, to name only a few concerns.

The danger of this first attempt at regional assessment was that it might fall short of what is required and set a harmful precedent for future such efforts. It is hard to conclude that this report is anything but a failure on so many fronts. The fact that it explicitly sees itself as providing the pretext for absolving specific projects from a project-specific assessment in future makes its inadequacies all the more worrying. Its emphasis on “efficiency” in the assessment process is an indicator of over-sensitivity to the perspective of project proponents.

If we were to ask ourselves whether we are better off with, rather than without, this Regional Impact Assessment, the answer is that it would be better had it not been written. Its misuse in the hands of those who have a vested interest in less regulation, are politically short-sighted and opportunistic, or simply ignorant, is predictable.

The following critique is not comprehensive, but rather, indicative of the report’s fatal flaws.

## **A Failure to Employ the Precautionary Principle**

Despite the Committee's claim that it adopts a precautionary approach, there isn't a single serious example of that being the case.

The Committee relies on a definition of the precautionary principle that falls short of the standard set by National Institutes of Health almost 20 years ago, which we provide here:

***“The precautionary principle, proposed as a new guideline in environmental decision making, has four central components: taking preventive action in the face of uncertainty; shifting the burden of proof to the proponents of an activity; exploring a wide range of alternatives to possibly harmful actions; and increasing public participation in decision making.”*** Source: National Institutes of Health, Kriebel, Tickner et al, “The precautionary principle in environmental science”, Environmental Health Perspectives, Vol 109 (9), Sept. 2001.

On almost every difficult issue, rather than take a precautionary position, “taking preventive action in the face of uncertainty”, which might involve denying project approval, the Committee has declined to make recommendations. Too often, it has punted the decision elsewhere – this is true of assessing cumulative impact, the exclusion of special areas, climate change concerns, the impact of seismic surveys, addressing the lack of crucial baseline data and more.

If there is one characteristic a Regional Impact Assessment should portray above all others it is surely to embody the precautionary principle. This draft report does nothing of the sort.

As a basis for comparison, consider the conclusion of the Report of the 1999 Georges Bank Review Panel which resulted in the current moratorium on oil and gas exploratory drilling in that critical fishing ground:

***“In considering the risks to Georges Bank, the unacceptability of potential harm is the most important factor....The arguments that point to the great value of Georges Bank, ecologically and as a fishery, weighed against a lack of public need for and limited benefits from petroleum exploration are persuasive.”***

Implicit in that panel’s conclusion is a wealth of knowledge on everything from risk assessment to the socio-economic returns to exploratory drilling compared to its alternatives, knowledge that is, surprisingly, ignored by this Regional Impact Assessment, despite twenty additional years of research it might have relied on.

## **Risk Assessment**

The question of risk, so fundamental to the application of the precautionary principle is embarrassingly played down in the report. The Committee relies on assurances of past project environmental assessments (EAs) and the purported adequacy of current regulatory requirements to reach the following unjustifiable conclusion regarding the potential for a catastrophic spill:

***“Fortunately, based on the history of offshore exploration drilling, as well as numerous control mechanisms in place to prevent and respond to such incidents, this scenario is considered unlikely to occur as the risks have been reduced to as low as reasonably practicable.” (page xi)***

We need only mention the conclusion of one of the world’s leading oil industry risk assessment experts, Dr. Robert Bea, that BP recently underestimated the risk of a catastrophic spill at its drill site in offshore Nova Scotia by a factor between 10 and 100, to underline the need for skepticism.

Naturally, the consequences of such a spill, for which the industry is unprepared – witness Husky’s recent failure to recover any of its significant spill off NL – are unimaginable. They loom too large to

justify the inadequate treatment of risk assessment in the Regional Impact Assessment, or its conclusion:

***“Assigning risk was beyond the timing and resources of the Committee, but remains a fundamental requirement to guide future decision-making around the sustainable use of offshore resources.” (page 117)***

## **Climate Change Considerations**

The failure of the Committee to take its mandate seriously regarding both climate change impacts and cumulative effects could not be more clearly demonstrated than in the following statement:

***“The Committee’s mandate to examine only exploration drilling then leaves the broader issue of GHG emissions, and associated climate change considerations from the overall oil and gas sector to other, more appropriate venues.” (page xi)***

This reads like an abdication of the responsibility implicit in a Regional Impact Assessment, the responsibility to deal with those concerns that do not arise on a project-by-project basis, and the potential cumulative impact of not just exploratory drilling, per se, but the consequences of discoveries.

What’s more, the report quotes approvingly the Government of NL’s predictions for the growth of the oil industry in that province, which are based on the assumption of major growth in production. To do so, without attempting to assess the environmental and climatic consequences of such development, is irresponsible.

## **Special Areas**

Once again, the lack of detailed discussion concerning the purpose of and essential criteria for successful marine set-asides for conservation

and rebuilding of marine populations and protection of endangered species is a fundamental flaw in the report. To then make the excuse that no one provided evidence in support of excluding oil and gas activity from such areas (hardly credible), is worse than making no mention of special areas at all. It's as if such arguments do not exist, which is patently false.

The Committee almost sounds sorry for itself in saying that it was

***“faced with the dilemma of whether or not to recommend that certain areas within the Study Area should be closed to exploratory drilling, as was advocated by a number of participants.” (page 189)***

One might ask, “What dilemma?” A dilemma involves a choice between two equally undesirable options. What is so undesirable about conservation?

But the report compounds its failure on special areas protection by then relying on industry EAs to arrive at the complacent conclusion that:

***“the overall and defining features and characteristics of any special areas that overlap with or occur in the vicinity of a proposed drilling project will not be materially and adversely affected by such activities, as these activities are characterized by small footprints and are temporary in nature. In addition, the implementation of mitigation measures is intended to avoid or reduce any disturbances and resulting effects to overlapping or adjacent special areas.” (page 104)***

The conclusion is without justification and misleading. The failure to do the work needed to designate key areas for exclusion from drilling is amongst the most serious drawbacks in the report. The responsibility of the Committee is punted elsewhere:

***“it is recommended that the relevant authorities accelerate scientific review and analysis of these areas to determine if their various***

*components and characteristics warrant additional protection, mitigation or follow-up measures for any future exploratory activity that may take place within them .” (page 187)*

Not good enough!

## **Effects of Seismic Surveys**

Canada’s Statement of Canadian Practice regarding seismic surveys dates from 2004, ignoring 16 years of subsequent research findings. Those findings are available to the Committee, as are a number of home-grown experts on the subject.

One such expert is Dr. Lindy Weilgart of Dalhousie University. She describes seismic surveys as follows:

*“the loudest human-produced noise right after nuclear and chemical explosions. Airguns are shot every 10 seconds around the clock for usually months at a time.....The noise travels through sometimes thousands of meters of ocean before penetrating into the sea floor. Further, the airgun shots are so intense, they can penetrate into the ocean bottom for over 100 kilometers. The entire marine ecosystem is degraded by this noise, which can form the loudest part of the background noise even 4,000 kilometers away. Airguns are so powerful they can take your arm off if fired close by. An airgun array can cover 26 square kilometers of sea surface at any one moment, which is about twice the size of the peninsula of Halifax.”*

The failure of the regulatory boards to treat the impact of seismic surveys with the seriousness it deserves has been in part a result of the project-by-project approach to impact assessment of drilling activity. It should be an essential feature of a Regional Impact Assessment, but it is missing in this report.

As if we needed to provide the reasons for including this critical source of negative impact, Dr. Weilgart enlarges on the impact of seismic activities:

*“Almost all marine animals are highly dependent on sound for all of their life functions like mating, feeding, orienting, communicating, and detecting predators, hazards, and overall, sensing their environment. They use their hearing like we use sight, so degrading their environment with noise is like blinding us with light.*

*With seismic noise, whales stop calling, which means they likely cannot find mates nor food anymore, cannot orient, or can't stay in touch with their calves or group members. They try and avoid the seismic survey and as such, are chased out of important habitat or their migration is altered, putting them in harm's way. Some become entrapped in ice and die. Seismic noise can produce signs of stress which interferes with reproduction and immunity. Sounds of importance to them are “masked” or obliterated. Models of seismic noise show that for the critically endangered right whales in particular, their calls are masked nearly entirely. Masking can also cause whales to blunder into fishing gear or in the paths of ships, killing them. These are the main contributors of right whale deaths. This is why, in 2016, 28 right whale experts declared that “The additional stress of widespread seismic airgun surveys may well represent a tipping point for the survival of this endangered whale, contributing significantly to a decline towards extinction.” Seismic noise has also been found to kill whales and dolphins outright, either by stranding or deaths at sea.*

*In lobsters, seismic noise interferes with their ability to avoid predators. It causes permanent damage to their sense organs and their immunity suffers. Scallop larvae do not develop normally and show body malformations. Their death rate is dramatically higher, 60%, rising even higher the longer the seismic survey goes on. Most alarmingly, even plankton, the base of the whole food web, are killed*



*by seismic noise. Death rates are 3 times higher with seismic noise. Squid fatally strand, their organs unrecognizable with massive injuries. Snow crabs exhibit stress and abnormal development. Fish also show stress responses and deafness, and fisheries catch rates drop by 50-85%.*

*Incredibly, Canada offers only guidelines for seismic surveys, no real prohibitions. The guidelines use words such as “encourages” to promote better practices, rather than laws to prevent damage. To expect marine life to withstand such an assault on their environment, along with the many other threats the ocean is facing, is folly. Canada needs to stop catering to an industry that can cause such devastation in our oceans, and the marine life and human livelihoods that depend on it. And improving, not weakening, the Environmental Assessment process is a crucial step toward that end. (October, 2017)”*

Given the importance of regulating seismic activity, the Committee’s evasion of responsibility for recommendations here is both baffling and completely unacceptable. It should be rectified before a final report is issued. To pretend, as the Committee does, that federal authorities have not had time enough to review the research is egregiously misleading.

### **Socio-Economic Effects**

Another example of the report’s inadequacies is the lop-sided assessment of socio-economic impact of drilling (and, in this case, the Committee chooses to include the production it leaves out of its impact assessment elsewhere). Here, the Committee enthusiastically adopts the proponents’ own claims of their beneficial impact, with no suggestion that there might be alternative investments that might have equally beneficial effects (without the externalities or risks), economically and, certainly, in terms of health, welfare and environmental sustainability.

There is no discussion of the potential impact of rebuilding and restoring the fishery, or investment in the inevitable and unavoidable transition to a clean energy, post-fossil fuel, economy. Both are examples of

oversights by the Committee that indicate the failure to see beyond the mandate it accepts uncritically of enabling a dying economic sector with enormous influence, despite its deleterious impact.

## **Sustainability**

Finally, it bears mentioning that the Committee has completely subverted the meaning of the term “sustainable”, relegating it to a concern for the future fortunes of the oil industry, when its true meaning has to do with its environmental supportability. Witness its talk of the *“fundamental requirement to guide future decision-making around the sustainable use of offshore resources.”* (page 117)

This too is unforgiveable. The term was never intended to apply to the sustainability of oil industry profits. Used in this way its currency is completely devalued.

## **Misplaced Faith in the Regulator**

Canada’s new Impact Assessment Act grew out of a cross-country consultation with Canadians on what was wrong with environmental assessment and what to do about it. One of the most widely held critiques related to “captive” regulatory agencies, dominated by industry veterans and marinated in the industry culture, having responsibility for impact assessment, as well as responsibility for regulation, and promotion of the industry.

To deal with this conflict of interest, the government wisely relieved the National Energy Board and its nuclear counterpart of responsibility for impact assessment. Unfortunately, the logic of that move elsewhere in the country was not followed in the case of the CNLOPB and its Nova Scotia twin, the CNSOPB. They remain a dominant influence in impact assessment while they continue to serve the industry and undervalue competing claims on our marine environment and resources. The conflict of interest is alive and well in regulation of the oil and gas industry in the Atlantic offshore.

That being the case, anyone sincerely seeking a public interest outcome in determining whether and under what conditions development should proceed in the offshore, would never suggest, as the Committee does, that *“the C-NLOPB specifically consider overall information availability, data gaps and associated environmental risks in future decisions around whether and when to issue licences in data deficient areas as part of its scheduled land tenure process (Section 4.6.2, p 115)”*

It sounds good, but history suggests that the CNLOPB will be the last body to update and act on the latest science, should that science dictate exclusion of oil and gas activity from sensitive zones, for example, or should it conclude that no fail-safe response to a catastrophic spill exists (as is the general conclusion from the lessons of BP’s Macondo well blow-out in the Gulf of Mexico).

The fact that the CNLOPB and the Committee continue to pretend that the use of dispersants, in the event of a catastrophic spill, is a viable response, speaks volumes about what science they consult and what science they ignore. The lack of thorough analysis by the CNLOPB and CNSOPB of the Gulf disaster and its implications for offshore Atlantic Canada is inexcusable, but understandable, given their pro-industry bias.

All the more reason for a robust RIA that takes responsibility for such essential research and analysis out of the hands of the conflicted regulator. The current RIA falls woefully short of that requirement.

## **Conclusion**

The Committee concludes by patting itself on the back, saying its Regional Impact Assessment will increase the efficiency of the impact assessment process. Efficiency is in the eye of the beholder.

If, indeed, impact assessment has as its main objects, not the enabling of the industry, but the protection of our environment, the quality of the air

and water, the diversity of species, the sustainability of our renewable resources, and the elimination or mitigation of risk to those values, among other important social goals, then this report will serve the cause of inefficiency, not efficiency.

This is not what Regional Impact Assessment should be. The Committee has done us all a disservice.