

# **Review of 1) Draft Terms of Reference IAA Follow-up Program of Environmental Requirements for NL Offshore Exploratory Drilling and 2) Ministerial Response to the Regional Assessment Committee Report for Offshore Exploratory Drilling East of Newfoundland and Labrador**

**William A. Montevecchi ([mont@mun.ca](mailto:mont@mun.ca))**

**Robert J. Blackmore**

**Sydney M. Collins**

**Marina W. Montevecchi**



**Memorial University of Newfoundland and Labrador**

## **Background**

Here we review and provide constructive feedback on 1) the Draft TOR for the Follow-up Assessment Program of Environmental Requirements for NL Offshore Exploratory Drilling (October 28, 2020) and 2) the Ministerial Response to the Regional Assessment Committee Report for Offshore Exploratory Drilling East of Newfoundland and Labrador (June 4, 2020). We have previously reviewed and provided comments and suggestions on the 1) Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador Final Report (February 29, 2020) and 2) Geographic Information System (GIS) Decision-Support Tool of the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador (May 31, 2020).

## Preamble

We acknowledge that the local IAA committee encouraged input and facilitated an open discussion of all perspectives regarding the proposal for a ministerial regulation to replace a rigorous environmental assessment program. We also acknowledge that they created an impressive GIS-tool to help gauge environmental interactions on the Grand Bank. Yet, in our opinion, the GIS-tool is no substitute for rigorous site-specific environmental assessment. The tool should, however, be complementary to, not a substitute for, comprehensive environmental assessments. For the GIS-tool to be a “living” instrument (as proposed), it is necessary to incorporate new information and data frequently, given the sparseness of our biological and ecological understanding of the Grand Bank. Such a reality check necessitates the need for comprehensive environmental assessments to help fill key information gaps.

As indicated in our input at public meetings and in our submitted reports, we are bewildered and appalled at the bias and bureaucratic machinations involved in the foregoing transformations that have seriously eroded the process of ocean environmental protection.

This review and feedback is consistent with these perspectives and with our previous feedback.

Replacing the process of rigorous ocean environmental assessment with a ministerial regulation brings over-riding ministerial discretion into an environmental assessment process from which it was previously and necessarily buffered. This transformation, which erodes public confidence in environmental protection, has involved considerable bureaucratic wrangling. Lobbying efforts by oil corporations and acquiescence by the provincial and federal governments have relinquished a rigorous program of environmental assessment under the responsibility of the Canadian Environmental Assessment Agency (CEAA) with a process of ministerial decree endorsed by the newly created Impact Assessment Agency (IAA).

Instead of applying the comprehensive analysis involved in an environmental assessment of offshore exploration proposals, we now have impact assessments and regional assessments. The very term “environment” has been removed from both the agency and the assessments involved. The deletion is appropriate because oil development has an overriding and dominant role in the ministerial decision-making processes.

The primary goal of an environmental assessment must be ensuring adequate environmental and wildlife protection in the face of developmental intervention. However, we no longer deal with site-specific environmental assessments but rather with regional and impact assessments, and now a ministerial regulation. Such progression does not engender public trust, nor does it foster confidence in environmental vigilance and protection.

The developmental and industry-driven bias has been evident throughout each step of this process, starting with the IAA’s Terms of Reference. The federal ministers of ECCC and Natural Resources Canada and the provincial ministers of Natural Resources and Intergovernmental and Indigenous Affairs gave IAA an objective to – “...Ensure a more predictable and timely regulatory process

for future offshore exploration drilling projects and their investors, while also ensuring the environment is protected.” This approach undermines the primary focus of an environmental assessment, which should be the environment and biodiversity.

When reporting to the ministers about new regulations and the creation of a federal ministerial response to replace site-specific environmental assessments, the IAA wrote that they were “...ensuring that highest standards of environmental protection continue to be maintained.” This is confusing because input made to the IAA during public meetings and public feedback emphasized that the highest standards of environmental protection had not been applied.

Shortcomings of the regulator – the Canada-Newfoundland Offshore Petroleum Board (C-NLOPB) - are well known. They are manifest in the misreporting of oil spills by Exxon-Mobil, the storm-surge spill at the Sea Rose platform, the lack of scientifically justified information about seabird mortality at platforms, the absence of oil company responses following commitments at C-NLOPB public hearings to mitigate flaring and unnecessary extraneous lighting on platforms, etc.

As the Commissioner of the 2013 Hebron Public Hearing wrote in his report, “The environmental questions surrounding seabird mortality on the NL offshore should be the subject of a publicly transparent process leading to the undertaking of necessary research amongst the Canadian Wildlife Service, industry partners and the wider seabird research community. **A review of the previous intervention by environmentalists has revealed that the same outstanding questions remain unanswered after 20 years of public hearings.**”

The contention that the highest standards of environmental protection have been maintained on the Grand Bank is not an objective assessment. It is, however, now a mantra repeated by federal and provincial ministers. The telling truth about this bias is that the politicians do not actually believe that rigorous environmental protection and development are compatible involvements.

We rest assured that the inconsistent, biased, and weak regulation by the C-NLOPB will continue on the Grand Bank. Seismic exploration with unknown and ignored biological consequences will continue, exacerbated through corporate self-reporting and confidentiality. Corporate bias will continue to permit oil exploration companies to access marine protected and sensitive areas from which fisheries are excluded.

On 4 November 2020, the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) announced that it had accepted a bid from BP Canada for 264,500 hectares of ocean in exchange for a commitment to carry out exploration work worth \$27 million. According to the C-NLOPB, part of BP Canada's bid overlaps with a portion of the Northeast Newfoundland Slope marine refuge. World Wildlife Fund (WWF)-Canada contends that oil company exploration in the marine refuge will put biodiversity in the area at risk: “Efforts to protect marine refuges and the species they support must be meaningful. WWF-Canada calls on the federal government and the C-NLOPB to stop allowing oil and gas exploration and drilling in marine refuges. Biodiversity depends on it.” As usual, the C-NLOPB (and federal and provincial governments) propose to have it both ways and will focus “on the protection of

environmentally significant and sensitive areas" and ... "continue to work closely with DFO and others in this regard." The C-NLOPB states that it will ensure that "the required 'mitigation measures' are in place before any operations can begin.", though it has not stated how. (The information in this paragraph is based on an article by Carl Meyer/Canada's National Observer.)

Our concerns, which are shared by many Canadians, have been raised in the House of Commons. For example, Ms. Monique Pauzé (Repentigny, BQ; 11 November 2020, House of Commons)

"Minister, thank you for joining us. In your document, you talk about oceans and protecting biodiversity. Yet, you have carried out major offshore drilling projects of the project assessment process. For instance, last March, 735,000 square kilometres of drilled wells were exempted. That rule applies even to drilling projects carried out in marine refuges created by the federal government to protect those marine environments. We are being told that those regions will be critical over the next few years, especially for species at risk. In July, it was the same thing for drilling projects in eastern Newfoundland and Labrador. It is said that international standards are clear and that they reject any type of industrial activity in protected areas and those subject to other conservation measures. Even the developer recognizes that the zone overlaps with parts of a marine refuge and an important area in terms of ecology and biology. There are apparently 36 species listed as at-risk or of special concern in terms of conservation. Minister, isn't there a contradiction in the current narrative where the government is favouring oil drilling in protected areas?"

As the government contributes \$320,000,000 in hydrocarbon corporate welfare, we need to refocus our environmental protection objectives rather than fast-tracking oil exploration. The Grand Bank is surely the most credible and long-term financial institution that we can rely on.

## **1) Draft TOR for the Follow-up Assessment Program Follow-up Program of Environmental Requirements for NL Offshore Exploratory Drilling**

Below we detail some concerns, comments and suggestions regarding the draft TOR for the IAA Follow-up Program of Environmental Requirements for NL Offshore Exploratory Drilling.

### **Introduction**

"The Government of Canada subsequently developed the Regulations Respecting Excluded Physical Activities - Newfoundland and Labrador Offshore Exploratory Wells, a Ministerial regulation under the Impact Assessment Act (IAA) that sets out requirements for future exploratory drilling projects in the Study Area."

- It would be useful to outline or at least summarize some of those requirements in this section or provide a link to find and review these requirements.

- There are inherent environmental risks in eliminating project-specific impact assessments. The Grand Bank has many unique and diverse ecosystems as well as many areas of sensitive habitat, project area sensitivities cannot be generalized into one large generic environment or from one specific site to another. This uncertainty highlights the need for project-specific environmental impact assessments.

## **Legislative Authorities**

“In light of joint-management in the Canada-Newfoundland and Labrador offshore, the Agency will undertake the RA Follow-up Program in collaboration with Natural Resources Canada (NRCan), the Government of Newfoundland and Labrador and the C-NLOPB.”

- The primary focus of these organizations is not directed at the protection of biodiversity or environmental sustainability. Organizations that are not biased toward oil production should have at least 50% of this committee’s representation.

## **RA Follow-up Steering Committee**

“The Steering Committee will be chaired by the Agency and will include NRCan, the Government of Newfoundland and Labrador’s Department of Industry, Energy and Technology, the C-NLOPB, ECCC and Fisheries and Oceans Canada (DFO).”

- How will individuals from these agencies be selected for the Follow-up Steering Committee to avoid bias?
- We suggest the inclusion of other non-governmental organizations that promote the protection of biodiversity and environmental sustainability, such as the inclusion of members of the Canadian Environmental Network (RCEN) and the Canadian Parks and Wilderness Society (CPAWS) on this committee.

## **RA Follow-up Advisory Committee**

- What is the intended composition of the RA Follow-up Advisory Committee? How will these committee members be selected to avoid bias?

## **Composition and Meetings**

“Members, including the chair, will be selected by the Agency, NRCan and the Government of Newfoundland and Labrador’s Department of Industry Energy and Technology.”

- As these three agencies are industry rather than environmentally focused, this is a recipe for a biased committee. Why do DFO, ECCC or others not get to choose who sits on this committee?
- Committee members should elect the chair to give the committee at least the appearance of some independence from the agencies.

“Currently, it is intended that these meetings will take place virtually, with the potential for face-to-face meetings in the future.”

- Planning a virtual meeting of the RA Follow-up Advisory Committee, with the potential for future face-to-face meetings, is a prudent plan at present.

## **Roles and Responsibilities - C-NLOPB**

“It will review advice from the RA Follow-up Advisory Committee and results of studies conducted in the Study Area to recommend whether updates are needed to the GIS tool or the Regulation.”

- Clearly, updates are needed, as the information available is sparse. The best means to enhance relevant environmental knowledge is through the execution of site-specific environmental assessments.
- Comprehensive and continuous reviews of publications and databases will be needed to minimize gaps in the information and to prevent the potential for cherry-picked information to be used in advice moving forward.
- As well, data collection and assessment should be prioritized with a focus on forage species, endangered species, and indicator species.

## **Roles and Responsibilities - ECC and DFO**

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

- If commitments cannot be met, then the project must be stopped. What is the plan for disallowing the exploratory drilling activities? Will there be a relevant timeline for developing the “action plan” to achieve commitments, or will drilling projects continue irresponsibly and indefinitely while the federal authorities work on their plan?
- There is a clear bias in this document and the regional assessment towards fast-tracking exploratory drilling projects.

## **Reporting**

If commitments are not, or have yet to be met, the report will outline steps for the development and implementation of an action plan to address these outstanding commitments including anticipated timelines.

- Work should not begin until these commitments can be adhered to

## **Engagement - Objectives**

“Ensuring that comments received from Indigenous groups and stakeholders have been thoughtfully considered and taken into account. Responses to concerns will be provided.”

- This objective was not met for the regional assessment. The committee was provided with far too little time to review feedback and update the report appropriately. As a result, there were vital gaps in the report and the regulations that no longer required full impact assessments were pushed forward against the advice of stakeholders.

## **Review, Amendment, and Termination - Termination**

“The RA Follow-up Program can be terminated once it is determined that the commitments made by the parties in the Ministerial Response have been met.”

- Is this not contradictory to the objective to continuously monitor and update information relating to the project? New information and an ever-changing environment do not allow for any certainty that the commitments have been met. The GIS-tool and its assessment process vowed to act as a “living” adaptive process, and we recommend adopting a similar method of feedback to this program as well.

## **2) Ministerial Response**

### **Introduction**

“To further strengthen environmental protection in the offshore...”

- There is no strengthening of environmental protection of the offshore with these regulations, let alone ‘further strengthening’ environmental protection. This regulation is a massive step back from rigorous environmental impact assessments. Statements that claim that environmental protection is strengthened are false. They show clearly the government’s bias toward fast-tracking oil and gas production at the expense of the natural environment.

### **Requirements to be met prior to the commencement of a project**

“Proponents will be required to demonstrate compliance throughout the lifecycle of their projects.”

- How will corporate compliance be monitored? How rigorously will proponents be expected to comply with the regulations? If a proponent does not continue to comply with the regulations, what steps will be taken?

### **Committee Recommendations in Relation to the Regulation**

“Effects entail minor, localized and temporary disturbances, and are unlikely to be significant with the implementation of standard mitigation measures.”

- This unlikelihood of effect was assumed in the report, but these activities’ effects are poorly understood. The focus needs to be on uncertainty, not unlikelihood. This claim is false. Evidence-based decision making is required for appropriate action. Ongoing studies of these activities’ impacts should be conducted to help gauge the various impacts and to better inform future guidelines for the assessment of oil and gas exploratory activities.

## **Trained Seabird Observers**

- We commend the Ministers for having accepted this recommendation and that a plan is in place to bring it into action. How will this be enforced? How will these data be reported? How these data be used to inform future activities in the study area? Will the observers' data be made public? Are there seabird observers on exploratory rigs and vessels currently operating in the area?

## **Training on Seabird Strandings**

“Operators include general awareness regarding seabird strandings as part of their overall training / orientation programs for offshore workers.”

- “General awareness” is a very vague statement. How will operators be trained regarding seabird strandings? Section 21m of the Ministerial Regulation is equally vague and provides no clarification on this point. The training program on seabird observations and strandings for operators should be developed in partnership with Environment and Climate Change Canada to ensure that the most up-to-date and accurate information is provided to operators.

## **Activities in marine refuges and closure areas**

- **No exploratory activities should be conducted in marine refuges.** Marine refuges are vital to the protection of biodiversity. The effects of exploratory activities are largely unknown, and oil and gas production, which is the goal of exploratory activities, will negatively impact these marine refuges.

## **Ministerial Response—Regional Assessment Follow-up Program**

“An action plan will be developed and implemented for any commitments that are not being/have not been met.”

- A plan cannot be substituted for a solution. If the conditions are not being met, the companies are not following the highest standards of environmental protection, and the project is causing environmental disturbance/damage. As these effects are immediate and potentially long-lasting, a prompt response, including the temporary or permanent termination of the exploratory activities, is required until the conditions can be met.

## **Use of Scientific Studies and Scientific Reviews**

- “Certain studies” implies that some studies will be excluded from consideration. Which studies will be included? What are the inclusion criteria? There should be no restrictions.



## Scope of factors for assessment of designated projects

“The impact assessment of a designated project must take into account the factors specified in subsection 22(1) of the Impact Assessment Act.”

- If a project does not meet the specifications, a full environmental assessment should be conducted to determine the effects of the activity in the study area.
- This accounting should also include relevant information on past, on-going and planned exploratory drilling activities and project **outside** the Study Area as well
- **The GIS-tool is NOT a sufficient substitute for an environmental assessment**, especially when the activity violates the vague conclusions of a literature review.

## Atlantic Salmon and Special Areas Initiatives

There are numerous mentions that research (e.g. seabirds, salmon, etc.) is to be accelerated.

- **Comprehensive research cannot be rushed.** This is especially true when the long-term impacts of activities are unknown and are being investigated. Research projects can be prioritized and funded to help expedite the process, but comprehensive research will still take time. Any attempts to accelerate data collection or time-scales ( i.e. by shortening the length of the studies, collecting less data, etc.) will compromise and likely invalidate any results. Subsequent action plans stemming from such research could potentially cause more harm than good.
- Instead, the government could work with non-government affiliated research scientists in Newfoundland and Labrador for assistance with projects and data access to accelerate this without rushing valuable research.

## Availability of Spill Imagery

“The C-NLOPB will work with Fisheries and Oceans Canada to consider how proponents could make any associated imagery around the nature and extent of an offshore spill available to Indigenous and stakeholder groups while upholding confidentiality restrictions.”

- Publicly available but subject to confidentiality requirements is contradictory and requires clarification about the confidentiality agreements.
- It was recommended to the IAA committee that this information be made public. Confidentiality agreements should not buffer transparency about oil pollution events in the study area, as has been the case in the past [e.g. Hibernia spill 2013-2014]. Withholding information such as imagery and information on affected marine species from the general public allows corporate stakeholders to misconstrue and alter any information that affects their outlook.
- **There should be no corporate confidentiality restrictions concerning oil spills in the marine environment.**

## **Leach's Storm-Petrels and other relevant species**

- What does “other relevant species” include?

## **Greenhouse gas emissions**

“The Committee does recognize, however, that exploratory drilling is the “thin edge of the wedge” and successful exploration may lead to oil and gas production with concomitant GHG emissions.”

- This is a critical consideration. Suppose a regional assessment deems an area safe for exploratory drilling, and a further environmental assessment is not required. What are the next steps if an exploratory well is to be expanded into an oil production platform? Exploratory drilling is being treated as separate from oil production when the primary goal of exploratory drilling is to locate oil production sites. If these activities are going to be separated, rigorous assessment of EACH stage is required.