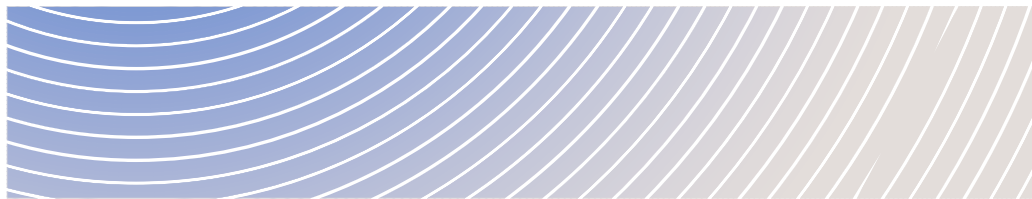


# Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador



FEDERAL CROWN CONSULTATION APPROACH FOR THE  
REGIONAL ASSESSMENT

January 22, 2020



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# 1. Overall Approach

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## 1.1. Purpose

This document sets out the approach for federal Crown consultation with Indigenous peoples<sup>1</sup> in relation to the conduct of a Regional Assessment as described in the [Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador](#) entered into by the Governments of Canada and Newfoundland and Labrador (“the Agreement”).

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## 1.2. Application

This approach applies to all aspects of Crown consultation<sup>2</sup> in respect of this Regional Assessment, from the early planning of the Regional Assessment to the submission by the Regional Assessment Committee (“the Committee”) of its Report to Ministers. As required, this approach also applies to Crown consultation on contemplated federal decision making directly related to the results of this Regional Assessment.

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## 1.3. Regional Assessment

The Governments of Canada and Newfoundland and Labrador are interested in improving the effectiveness and efficiency of the impact assessment process as it applies to oil and gas exploration drilling off Eastern Newfoundland, while at the same time ensuring the highest standards of environmental protection continue to be applied and maintained. This Regional Assessment will create a framework for evaluating and managing the effects of future offshore exploration drilling projects in this region that will:

- build upon the experience and knowledge gained in assessing previous projects;
- enable effective management of environmental effects;
- reduce consultation burden on Indigenous communities and stakeholders; and
- result in more efficient project reviews for exploration programs.

The Regional Assessment will use best available science and Indigenous knowledge and will include consideration of the known physical, biological, social and economic characteristics of the Regional Assessment Study Area (see map at Annex A).

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<sup>1</sup> For this document, “Indigenous” has the same meaning as “Aboriginal” as per the *Constitution Act, 1982*.

<sup>2</sup> References to Crown consultation throughout this document refer to the potential common law duty to consult obligations pertaining the Government of Canada (federal Crown).

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## 1.4. Objectives of Crown Consultation for this Regional Assessment

The approach to Crown consultation for this Regional Assessment has the following objectives:

- build awareness and understanding amongst Indigenous peoples of how the federal Crown intends to meet any potential legal duty to consult that may arise from this Regional Assessment and/or future contemplated Crown conduct in the Study Area with respect to offshore oil and gas exploratory drilling;
- clarify the role of the federal Crown in undertaking consultations with Indigenous peoples in part through reliance on the participation of Indigenous groups in the Regional Assessment;
- delegate procedural aspects of Crown consultation to the Regional Assessment Committee in a manner consistent with the Agreement and the Regional Assessment Committee's Terms of Reference; and
- fulfill any potential duty to consult by:
  - actively encouraging the participation of potentially affected Indigenous groups in the conduct of the Regional Assessment, including as part of the associated Technical Advisory Group;
  - consulting with Indigenous groups on the Committee's draft Regional Assessment Report; and
  - conducting a meaningful and responsive two-way dialogue on issues raised following the conclusion of Regional Assessment, including the potential application of this Regional Assessment to the development of Regulations or future decisions pertaining to exploratory drilling projects in the Study Area.

Crown consultation will be conducted in a manner consistent with the honour of the Crown and at an appropriate level, taking into account the nature and scope of potential or established Aboriginal and Treaty rights and potential impacts on those rights arising from future decisions pertaining to exploratory drilling projects in the Study Area.

The Government of Canada remains committed to the approach outlined in the February 2018 *Consultation Paper on Approach to Revising the Project List*<sup>3</sup>, and reflected again in the May 2019 *Discussion Paper on the Proposed Project List*<sup>4</sup>. The approach proposed in these consultation papers is to exempt offshore exploratory wells from undergoing a project-specific federal impact assessment in areas where a regional assessment has been carried out and where the proposed project conforms with the conditions for exemption as approved by the Minister for that regional assessment.

Crown consultation for this Regional Assessment will remain flexible based on any feedback received from Indigenous groups. The aim is to ensure the overall approach to Crown consultation takes into account that the Regional Assessment could serve as a strategic planning tool to inform future decisions pertaining to offshore exploratory drilling in the Study Area.

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<sup>3</sup> <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/consultation-paper-approach.html>

<sup>4</sup> <https://www.impactassessmentregulations.ca/8869/documents/15938/download>



## 2. Roles and Responsibilities

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### 2.1. Regional Assessment Committee

As described in the Agreement to conduct the Regional Assessment, a Committee has been established by the federal Minister of the Environment, with the mandate to carry out a Regional Assessment under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). The Committee has all the powers and obligations set out under section 77 of CEAA 2012.<sup>5</sup>

The Committee will use its knowledge and experience to conduct a Regional Assessment of the effects of existing and anticipated exploratory drilling in the eastern portion of the Canada - Newfoundland and Labrador Offshore Area. Pursuant to s.4.18 of the Agreement, the Committee may receive information from Indigenous peoples on the nature and scope of any rights protected by section 35 of the *Constitution Act, 1982*, in the area of the Regional Assessment, as well as information on the potential adverse effects that exploratory drilling may have on these rights.

Assisted by a Task Team and Technical Advisory Groups, the Committee will carry out the following activities described in further detail in the Agreement, as well as consider the specific factors outlined in Appendix A of the Agreement:

- engage Indigenous groups and others that have knowledge relevant to the Regional Assessment or whose interests and uses may be affected by exploratory drilling;
- analyse all information received from Indigenous communities and other participants and identify potential effects, mitigation measures, any information gaps and recommendations to address these gaps, as appropriate;
- document the results of the Regional Assessment in a Report including provision of advice to Ministers on how the results of the Regional Assessment could be used to inform future decisions related to offshore exploration drilling in the region; and
- consider comments received from the public and Indigenous groups on the draft Report to federal and provincial Ministers.

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<sup>5</sup> On August 28, 2019, the Impact Assessment Act (the Act) came into force, creating the new Impact Assessment Agency of Canada (the Agency) which replaces the former Canadian Environmental Assessment Agency.

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## 2.2. Impact Assessment Agency of Canada

The Impact Assessment Agency of Canada (Agency) is responsible for ensuring an appropriately scaled and flexible Crown consultation process is applied with respect to this Regional Assessment. The Agency is also responsible for documenting and communicating the consultation process on behalf of the Government of Canada (federal Crown) in anticipation that the Regional Assessment will be relied upon by decision makers in future, to inform federal policies, regulations or project-based decision making in respect of exploratory drilling projects proposed within the Study Area.

The Regional Assessment conducted by the Committee is the primary means by which the Crown intends to gather information about the potential impacts of proposed offshore oil and gas exploratory drilling projects in the Study Area on the exercise of existing or asserted Aboriginal and Treaty rights. As part of the Committee's Task Team, Agency staff will support the Committee in engaging Indigenous communities, and will coordinate the participation of other federal government departments as required.

As Crown Consultation Lead on behalf of the Government of Canada, the Agency will also coordinate research and analysis required to inform whether and to what extent, a legal duty to consult may apply to the conduct of the Regional Assessment itself, or to potential future federal decisions that may rely on aspects of the Committee's findings and recommendations. As required, the Agency may compile a separate summary report of Crown consultations to advise Ministers following the conclusion of the Regional Assessment. The Agency would consult Indigenous groups on the content of that report as appropriate.

Agency staff will lead and coordinate any Crown consultation on behalf of the Government of Canada to ensure continuity and consistency with existing Crown-Indigenous relationships. The Agency's National Programs and Crown Consultation Operations Divisions will offer strategic advice and support throughout the Regional Assessment.

The Agency's Crown Consultation Lead will be the principal Government of Canada official consulting with Indigenous groups in respect of the Regional Assessment. The Agency tasks its Crown consultation practitioners to maintain accurate records of each discussion with an Indigenous group. The Crown Consultation Lead may use a variety of means to consult with groups such as written correspondence, observation of Committee-led Indigenous engagement sessions, provision of opportunities to review and comment on draft documents such as the Committee's Report, and teleconferences or in-person meetings as appropriate. To ensure an effective and efficient process for all participants, the Crown intends to rely on Indigenous participation in the Regional Assessment as well as any information provided by Indigenous groups to the Committee during the Regional Assessment.

In support of the Committee's work, the Crown Consultation Lead will be authorized by the Agency to discuss any matter raised by an Indigenous group during this Regional Assessment, including concerns with proposed exploratory drilling projects and their potential effects, potential impacts on Aboriginal and Treaty rights, potential accommodation measures for those impacts, and any other interests.



## 3. Details of the Approach

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### 3.1. Evolution of the Approach

The Agency recognizes that each Indigenous group may have unique interests regarding the Regional Assessment and any potential future decisions relating to proposed offshore exploratory drilling projects. The Agency's approach is to consult proactively and broadly with all potentially interested Indigenous groups in the Atlantic Region and eastern Québec, in a spirit of collaboration and mutual understanding.

The Agency began considering its approach to Crown consultation in 2017 when it first contacted Indigenous groups throughout Atlantic Canada to introduce the Regional Assessment, proposed as the first Regional Assessment conducted under CEAA 2012.

The application of the Regional Assessment concept to the eastern portion of the Canada - Newfoundland and Labrador Offshore Area offers a proactive planning tool that can be used to gain a better understanding of the potential effects of exploratory drilling projects on the environment, and on the interests of Indigenous peoples, the public and other stakeholders in the region.

Given the high degree of interest expressed by Indigenous groups in the proposed Regional Assessment, in September 2018 the Agency provided a draft version of the Agreement and formally requested comments from Indigenous groups and the public. To support this review, the Agency provided funding to each Indigenous group identified as potentially having an interest in the Regional Assessment. Comments received from Indigenous groups on the draft Agreement were considered during the finalization of the Agreement and posted on the Canadian Impact Assessment Registry.

Following the establishment of the Committee in April 2019, the Agency shared a draft version of this Consultation Approach document with the Committee to help inform its own program of Indigenous engagement for the Regional Assessment. In May 2019, the Agency wrote to each Indigenous group identified by the Crown for consultation during the Regional Assessment, and invited comments on the draft Consultation Approach. The Agency also shared the draft Consultation Approach with the Government of Newfoundland and Labrador in May 2019. No specific comments were received as of the end of 2019.

The Agency updated the Consultation Approach to reflect the evolution of legislation and anticipated regulations in respect of Regional Assessments pursuant to the *Impact Assessment Act*, and shared the updated Consultation Approach with Indigenous groups participating in the Regional Assessment.

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### 3.2. Crown Consultation in Relation to the Committee's Work

The Government of Canada has adopted a whole-of-government approach to Crown consultation. This approach involves federal authorities working together, and with other jurisdictions where appropriate, to



ensure the legal duty to consult with Indigenous groups is fulfilled in advance of federal decisions which may adversely impact the exercise of Aboriginal and Treaty rights recognized and affirmed under Section 35 of the *Constitution Act, 1982*. The Crown also consults for good governance such as to inform sound policy-making and the drafting of regulations, as well as for a variety of other relationship building and reconciliation objectives.

On this basis, Crown consultation will rely on the information gathered through the Committee-led Regional Assessment, with additional consultation activities as appropriate following the Regional Assessment Report. Crown consultation in the context of this Regional Assessment represents a new form of Crown-Indigenous engagement, with different approaches used than for consultations integrated into regulatory and project-based environmental assessment processes.

For this Regional Assessment, the Crown will be guided by federal policies including the [Updated Guidelines for Federal Officials to Fulfill the Duty to Consult \(2011\)](#) as well as the [Principles respecting the Government of Canada's relationship with Indigenous peoples \(2017\)](#). These policies recognize that the honour of the Crown must guide the conduct of the Crown in all of its dealings with Indigenous peoples.

The Crown anticipates that the Regional Assessment will provide an open and transparent venue for Indigenous groups to bring concerns, comments and/or information forward to the Committee in a spirit of shared interest and mutual respect and understanding. Indigenous groups are therefore encouraged to bring information forward for the Committee's consideration on the nature and scope of any applicable rights protected under Section 35 of the *Constitution Act, 1982*, as well as information on the potential adverse impacts that exploratory drilling may have on the exercise of Aboriginal and Treaty rights.

Indigenous groups are also invited to propose appropriate measures to avoid, eliminate or mitigate such potential impacts on Aboriginal and Treaty rights. Information provided to the Committee will be used in consideration of the impacts that exploratory drilling in the Study Area may have on any Indigenous group and on the exercise of their rights. This information may also inform the Crown for consultation purposes, currently or in the future.

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### 3.3. Specific Consultation Features

Crown consultation takes place on a continuum, and this Regional Assessment represents an early planning process, which may inform future Government decisions about offshore exploratory drilling projects in the Study Area. Table 1 summarizes the three phases of consultation in respect of the Regional Assessment, with specific features of each phase described below.

#### 1. Consultation on the process:

- potentially interested Indigenous groups are identified, and their input is sought on the draft Regional Study Agreement and Terms of Reference for the Regional Assessment Committee and Technical Advisory Group;



- ongoing feedback and dialogue with the Crown may include sharing views on the Crown's overall approach to consultation for the Regional Assessment (i.e. previous draft of this document); and
- financial support to participate in the process is provided through the Agency's participant funding program.

**Note:** this period commenced in 2017 when the Agency initially contacted Indigenous groups to introduce the Regional Assessment and offer funding, and concluded in March 2019.

## 2. Indigenous community participation opportunities during the Regional Assessment:

- financial support provided through the Agency's participant funding program;
- Indigenous community representatives may participate in discussions of and receive and provide information through the associated Technical Advisory Group;
- engagement of Indigenous groups by the Committee may include participation in community meetings, open houses or other forms of engagement to be defined through discussions between the Committee and Indigenous groups; and
- opportunity will be provided to review the draft Regional Assessment Report and submit comments to the federal Crown (and share with the Committee for its consideration).

**Note:** this period commenced in April 2019 with the finalization of the Agreement and the appointment of the Regional Assessment Committee, and this period will conclude once the Committee's Final Report is released.

## 3. Potential consultations following the Committee's Final Report:

After the Committee submits its Final Report to Ministers, Crown consultation will include notifying Indigenous groups when the Report is available, as well as any potential follow-up to the Report. The Agency will provide advance notification of consultation opportunities, and may develop a separate summary report and/or briefing for Ministers based on the results of these consultations.

The intent of post-Committee Report consultations carried out by the Agency on behalf of the federal Crown will not be to repeat or duplicate the work of the Committee. Post-Committee Report consultation activities will focus on identifying any outstanding concerns, seeking input from Indigenous groups on their experience participating in the Regional Assessment and engagement process, and recommendations from Indigenous groups on how to apply the findings and recommendations in the Report to proposed Ministerial Regulations.

It is anticipated that the federal Minister of the Environment will use the Report and the results of consultation, to inform a proposed Ministerial Regulation. The Regulation would set out the terms and conditions under which a future exploratory drilling project offshore Eastern Newfoundland could be exempted from federal impact assessment.

Terms and conditions for exemption may include specific mitigation measures and follow-up requirements for future projects in the Study Area. Once a Regulation is put in place, an offshore exploratory drilling project that conforms with the terms and conditions specified by Regulation would not require a federal impact assessment as it would not be considered a designated project under the *Impact Assessment Act*.

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## 3.4. Indigenous Groups to be Consulted during the Regional Assessment

The Agency has established a broad scope of consultation for the Regional Assessment based on a good governance approach, and in recognition that Indigenous communities throughout the Atlantic Provinces and eastern Québec exercise potential or established Aboriginal and Treaty rights that may be affected by exploratory oil and gas drilling and associated activities offshore Eastern Newfoundland Labrador.

The following Indigenous groups have been identified as having a potential interest in this Regional Assessment:

### **Nova Scotia**

- Kwilmu'kw Maw-Klusuaqn Negotiation Office (representing 11 Mi'kmaq First Nations of Nova Scotia: Acadia First Nation, Annapolis Valley First Nation, Bear River First Nation, Eskasoni First Nation, Glooscap First Nation, Membertou First Nation, Paqtnkek Mi'kmaw Nation, Pictou Landing First Nation, Potlotek First Nation, Wagmatcook First Nation, We'koqma'q First Nation)
- Millbrook First Nation
- Sipekne'katik First Nation

### **New Brunswick**

- Mi'gmawe'l Tplu'taqnn Inc. (representing 8 Mi'gmaq First Nations of New Brunswick: Fort Folly First Nation, Eel Ground First Nation, Pabineau First Nation, Esgenoôpetitj First Nation, Buctouche First Nation, Indian Island First Nation, Eel River Bar First Nation, Metepenagiag Mi'kmaq Nation)
- Elsipogtog First Nation
- Wolastoqey Nation in New Brunswick (representing 6 Maliseet First Nations: Kingsclear First Nation, Madawaska Maliseet First Nation, Oromocto First Nation, Saint Mary's First Nation, Tobique First Nation and Woodstock First Nation)
- Peskotomuhkati Nation at Skutik (Passamaquoddy)

**Prince Edward Island**

- Mi'kmaq Confederacy of Prince Edward Island (representing Abegweit First Nation and Lennox Island First Nation)

**Newfoundland and Labrador**

- Innu Nation;
- Nunatsiavut Government
- NunatuKavut Community Council
- Qalipu First Nation\*
- Miawpukek First Nation\*

**Québec**

- Mi'gmawei Mawiomi Secretariat (representing the Mi'gmaq of Québec: Listuguj Mi'gmaq Government, La Nation Micmac de Gespeg, and Micmacs of Gesgapegiag)
- Première Nation des Innus de Nutashkuan
- Conseil des Innu de Ekuanitshit

The Indigenous groups identified for consultation may change as more information becomes available during the Regional Assessment.

## 4. Preliminary Consultation Assessment

A preliminary consultation assessment was undertaken by the Agency based on publicly available information, recent environmental assessments in the Atlantic Region, and in collaboration with other federal departments and agencies. The purpose of this preliminary assessment is to understand, in an initial way, the potential for adverse impacts of offshore exploratory drilling projects in the Study Area, in respect of each Indigenous group's asserted or established Aboriginal or Treaty rights. Crown consultation is not a process through which the Government of Canada will recognize asserted Aboriginal rights.

The Agency's preliminary assessment is a planning tool used to inform the initial scope and design of the consultation process. Any new information made available to the Crown by Indigenous groups throughout the Regional Assessment or other consultation processes may require modifications to the Crown

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\* Note: The Qalipu and Miawpukek First Nations have been identified by the federal Crown as asserting Aboriginal rights, and as such will be included in the overall scope of consultation in respect of a good governance approach.



consultation approach. Any changes will be clearly documented and shared with the applicable Indigenous groups.

Potential exploratory drilling projects in the Study Area would be located far offshore and not within any known traditional territories. The environmental effects from such activities have been characterized in several project-specific environmental assessments as being of low magnitude. Therefore, the likelihood of adverse impacts on Indigenous communities as a result of these projects is considered for the preliminary consultation assessment to be low. The Agency has therefore identified consultation at the lower end of the *Haida* spectrum to be an appropriate starting point for the Regional Assessment.

## 5. Potential Accommodation Measures

Consideration of potential accommodation measures for Indigenous groups is an important element in meeting the duty to consult when there exists the potential for impacts to occur on Aboriginal and/or Treaty rights as a result of contemplated Crown conduct.

Should it be determined that the Regional Assessment could enable decisions that would result in potential adverse impacts on Aboriginal or Treaty rights, the Government of Canada will seek to ensure that recommended accommodation measures are appropriate to address these potential impacts.

Potential accommodation measures could include:

- proposed regulatory terms and conditions specific to projects in the Study Area;
- relevant federal laws, regulations, measures, policies or practices; and
- industry-wide and/or region-specific commitments and/or project-based mitigation.

Throughout the Regional Assessment and Crown consultation process, Indigenous groups are encouraged to propose potential mitigation and other accommodation measures that could address potential impacts on Aboriginal and Treaty rights.



## 6. Conclusion

The Agency will implement this Approach on behalf of the federal Crown in a manner that fulfills the principles and commitments outlined, along with the related Government of Canada objective of strengthening and renewing its relationships with Indigenous peoples in Canada.

The Agency looks forward to supporting the Committee in its work, and carrying out a meaningful, informative, respectful and collaborative dialogue with Indigenous groups as part of the planning, completion and eventual use of this Regional Assessment.

**Table 1: Crown Consultation with respect to the Regional Assessment**

Key Process Step	Timeline	Activities
Regional Assessment and Consultation Planning	Fall 2017 – Spring 2019	<ul style="list-style-type: none"> <li>• Participant funding offers and grants</li> <li>• Review of the Draft Agreement to Conduct a Regional Assessment, and associated Terms of Reference for the Regional Assessment Committee and Technical Advisory Group</li> <li>• Development of and sharing of proposed Crown Consultation Approach</li> <li>• Final Agreement and Appointment of Regional Assessment Committee</li> </ul>
Conduct of the Regional Assessment by Committee	Spring 2019 – Fall 2019	<ul style="list-style-type: none"> <li>• Agency shares draft Consultation Approach with Committee, Government of Newfoundland and Labrador and invites comments from potentially affected Indigenous groups</li> <li>• Committee plans its program of Indigenous engagement, informed by Crown’s proposed approach to consultation</li> <li>• Indigenous groups invited to identify potential members to serve on the Committee’s Technical Advisory Group</li> <li>• Technical Advisory Committee membership confirmed</li> </ul>



Key Process Step	Timeline	Activities
Committee-led Indigenous Engagement Sessions	Begins late Spring 2019	<ul style="list-style-type: none"><li>• Committee engages with Indigenous groups to build relationships, and to invite input on the scope of issues as well as information and Indigenous knowledge to inform the Regional Assessment</li><li>• In-person engagement in Newfoundland and Labrador, Nova Scotia, New Brunswick, Prince Edward Island and Quebec</li></ul>
Review of Draft Regional Assessment Report	January – February 2020	<ul style="list-style-type: none"><li>• Agency updates Consultation Approach and shares with Committee, Government of Newfoundland and Labrador and potentially affected Indigenous groups</li><li>• The Committee will release a draft Regional Assessment Report for comment</li><li>• Consultation on the draft Report</li></ul>
Public Release of Final Regional Assessment Report	End of February 2020	<ul style="list-style-type: none"><li>• On completion of the Regional Assessment, the Committee provides its Report to Ministers</li><li>• The federal Minister of the Environment advises the public of the availability of the Report</li></ul>
Follow-up on Regional Assessment, including development of Ministerial Regulation	March 2020	<ul style="list-style-type: none"><li>• Consultation to inform potential Government Response and/or development of Ministerial Regulation</li></ul>



# Annex A – Study Area for the Regional Assessment

