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December 12, 2020

To the Members of the Impact Assessment Agency of Canada,

Re: Comments on the Draft Terms of Reference for the Follow-up Program of the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador

The East Coast Environmental Law Association, established in 2007 as a non-profit organization, responds to community inquiries, carries out legal and policy research and presents educational resources and opportunities to increase public awareness of environmental laws in Atlantic Canada. Our objective is to build capacity in the public and among legal practitioners so that we can work together to ensure that environmental laws are effectively used and strengthened. East Coast Environmental Law regularly engages on marine environmental law matters throughout the Atlantic region.

The following is East Coast Environmental Law's submission on the draft Terms of Reference (TOR) for the Follow-up Program of the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador ("the Regional Assessment"), in response to the invitation for public comments issued by the Impact Assessment Agency of Canada on October 28, 2020.

Context

As an organization that supports the public interest, we have concerns with the Regional Assessment that forms the basis for the Follow-up Program. East Coast Environmental Law has expressed concerns with the Regional Assessment on multiple occasions. In 2018, we engaged with and submitted comments on the Draft Agreement for the RA where we noted issues with the unclear opportunities for engagement and the short timeline for its completion. During the Regional Assessment process from April 2019 to February 2020, we continued to express our desire to see more effective and meaningful engagement with the public and with participants. During the Regional Assessment, we also pushed for substantive components of the Regional Assessment, including a commitment by the Regional Assessment Committee to conduct a substantive cumulative effects assessment of all anthropogenic and natural activities in the study area; an effective analysis of the impact of oil and gas activities, including exploratory drilling *and* production, on Canada's climate change obligations; stronger protections for valuable and sensitive marine habitats and species, especially for legally protected areas like marine refuges; and greater emphasis and commitment

to the precautionary principle in the face of gaps in knowledge and data about many areas within the study area. We also provided submissions on the subsequent Ministerial Regulations, with an emphasis that in our opinion, the process lacked meaningful public engagement and did not meet the minimal requirements of its own terms of reference.

While we remain committed to our previous comments and submissions on the Regional Assessment and the subsequent Ministerial Regulations, and we do not endorse the outcomes of the Regional Assessment, we believe that ongoing dialogue, communication and engagement are important pillars on which to improve our collective understanding of the environmental impacts in the offshore environment and to strengthen the laws protecting the marine ecosystems upon which we all depend. We are also aware that this may be one of the few opportunities to provide additional input into the process because exploratory oil and gas projects are largely exempted from impact assessment requirements, including engagement with the public and stakeholders. For these reasons, East Coast Environmental Law applied for and received participant funding to provide our comments on the draft TOR. Our submission includes recommendations for changes to the TOR to strengthen the Follow-up Program process.

Cumulative Effects need to be adequately addressed (and assessed) in the Follow-up Program

A persistent issue with the Regional Assessment, which East Coast Environmental Law and many other participants of the RA highlighted and critiqued, was its approach to the assessment of cumulative effects. A regional assessment demands full utilization of its strategic-level scope to evaluate cumulative effects through prediction, implications, and response.¹ The Regional Assessment Committee even noted in its Final Report that “Regional Assessments are, however, often considered to offer a more comprehensive and proactive approach to considering the cumulative effects of multiple, independent activities and disturbances in a region by informing better planning and decision-making processes”.² However, the Committee then concluded that cumulative effects are “inherently complex and challenging to assess and manage” and passed on its responsibility to assess cumulative effects by finding that further work with respect to cumulative effects is necessary:

It is noteworthy that while the Regional Assessment is intended (and has been able) to set out mitigation requirements for future projects, any attempt to manage the spatial and temporal distribution of future drilling activity in the Study Area requires a more proactive and holistic approach through associated policy and planning decisions by the federal and provincial governments if potential adverse effects are to be avoided or minimized.³

In our view, the Regional Assessment failed to provide the basis of an adequate assessment of the relevant cumulative effects by virtue of its narrow scope and the lack of quantitative analysis or assessment. While the Terms of Reference for the Regional Assessment required consideration of “any cumulative effects that are likely to result from offshore exploratory drilling in combination with other physical activities that have been or will be carried out”⁴, the Regional Assessment Committee believed their task was only to identify potential issues, and that cumulative effects would be considered and managed at a later point:

¹ Robert B. Gibson, Meinhard Doelle & A. John Sinclair, “Fulfilling the Promise: Basic Components of Next Generation Environmental Assessment” (2016) 29 Journal of Environmental Law and Practice 257 at 269.

² Garth Bangay, Wes Foote, Gerald Anderson, Maureen Rustad & Keith Storey, “Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador: Final Report”, February 2020 [Final Report] p. 121.

³ Final Report, p. 150.

⁴ Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador Between Her Majesty the Queen in Right of Canada as represented by the federal Minister of the Environment and the federal

The objective of this component of the Regional Assessment [was] to identify any potential issues with regard to cumulative effects at the regional scale and at an early stage, in order to help facilitate their consideration and future management through appropriate planning processes.⁵

The Regional Assessment Committee included specific recommendations with respect to ongoing treatment of cumulative effects in its Final Report, including that government assume responsibility for conducting their assessment:

It is recommended that government assume responsibility for offshore-related cumulative effects assessment and management through a planning process directed by a dedicated agency. The DFO Marine Spatial Planning initiative might be considered as an appropriate vehicle through which to do this.⁶

The Minister committed to addressing the Regional Assessment Committee’s recommendation on cumulative effects. Unfortunately, that commitment is not substantiated in the draft TOR, which only references cumulative effects twice in its “Objectives” section and once in the “Reporting” section. The objectives of the RA Follow-up Program, with respect to cumulative effects, are to provide advice to relevant government authorities on incorporating outcomes of the program into respective regulatory and planning processes to consider and manage potential effects, including cumulative effects, from exploratory drilling activities; and to regularly review past, ongoing, and planned activities in the study area to consider potential cumulative effects.⁷ In terms of reporting, the draft TOR states that cumulative effects, along with “all relevant information” may be considered when reviewing the Ministerial Regulation; in other words, it is not required that cumulative effects be considered.⁸

In light of all of these cumulative considerations, the significant discretion allowed for the consideration of cumulative effects by the draft TOR is insufficient to addressing cumulative effectiveness. No party identified in the draft TOR is made responsible for reporting on cumulative effects, nor is consideration of cumulative effects required as part of any decision making by the Steering Committee. This further shirks any responsibility to assess cumulative effects of projects that are now effectively exempted from impact assessment under the Regulations. We are left to assume that the only cumulative effects to be considered by the Follow-up Program will be those already “identified”, but not assessed, in the Regional Assessment, regardless of whether new information arises from the Program.

Recommendation #1: Assess Cumulative Effects. Notwithstanding the outcome of the ongoing consolidated judicial review applications of the Regional Assessment and the Ministerial Regulation, East Coast Environmental Law recommends that the final TOR lay out the approach to be taken for considering cumulative effects in greater detail. Details should include what activities will be included in the assessment, how information will be collected and reported, and who is responsible to conduct the assessment.

Minister of Natural Resources and Her Majesty the Queen in Right of Newfoundland and Labrador, as represented by the provincial Minister of Natural Resources and the provincial Minister for Intergovernmental and Indigenous Affairs (2020), Appendix A (Factors to be considered in the Regional Assessment) s. 1(a)(ii).

⁵ Final Report, p. 121.

⁶ Final Report, Recommendation 39, p. 194.

⁷ Regional Assessment of Offshore Exploratory Drilling East of Newfoundland and Labrador: Follow-up Program, Terms of Reference – Draft, October 28 2020 [Draft TOR] p. 6.

⁸ Draft TOR, p. 11.

Consultation and Participation in the Follow-up Program should be enhanced and expanded to align with best practices

The Regional Assessment was heavily criticized for insufficient public consultation and participation. Public engagement must be meaningful and frequent, often requiring support in the form of funding opportunities to realize a community's capacity to fully engage. Unfortunately, the Regional Assessment's engagement with stakeholders and the public fell far short.

We would like to acknowledge the positive strides taken by the draft TOR in this respect and provide comment on how public engagement might be further improved. Ensuring that public participation facilitated by the TOR is meaningful bears deeper significance now that exploratory drilling projects will be exempt from impact assessments. The *Regulations Respecting Excluded Physical Activities* details some key components of consultation which we think the Follow-up Program would do well to replicate:

- written notification;
- providing information with time to prepare responses;
- considering all views and information from the consulted party;
- informing the party of how their views and information were considered; and
- consulting with Indigenous groups on how to best achieve these components.⁹

On the positive front, the Advisory Committee has the potential to provide many relevant parties—including Indigenous nations, public interest groups, and fishing industry representatives—with the means to engage and share their insights and recommendations. The ability to meet on a quarterly basis will help to provide opportunities for the public and stakeholders to raise issues, and for the Advisory and Steering Committees to address them in a timely manner. Funding from the Impact Assessment Agency will make participation more accessible. Additionally, the requirement set out in the draft TOR to make Progress Reports and Program Reports publicly available is important for transparency and accountability.

However, East Coast Environmental Law would like to see more explicit requirements for many of these positive aspects. For example, the draft TOR lists which groups will be represented in the Advisory Committee but does not specify or set out its structure. Furthermore, the lack of structure could result in certain interest groups greatly outnumbering others. Since the Advisory Committee plays a key role in providing information to the Follow-up Program and recommendations to the Steering Committee, it is our opinion that the final TOR must clearly set out the composition and role of the Advisory Committee. Its composition should include experts with knowledge about the marine environment, its biological diversity, climate change, and cumulative effects. There should also be an equitable representation of Indigenous communities. The role of the Advisory Committee should be to provide knowledge and science based expertise, analysis and advice to the Steering Committee, and to integrate that knowledge into the evergreen decision-making process and GIS.¹⁰

Selection of Advisory Committee members being at the discretion of select parties from the Steering Committee also raises concerns of impartiality and independence.¹¹ Interest and expertise are the only criteria mentioned, which could lead to inequitable and unequal representation of the oil and gas industry

⁹ *Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells)*, Schedule 2, s 3.

¹⁰ It should not be assumed that Indigenous representation on the Advisory Committee is a substitute for consultations.

¹¹ The Agency, NRCan, and the provincial Department of Industry, Energy and Technology are responsible for selecting members of the Advisory Committee, excluding ECCC and DFO: see Draft TOR, page 7-8.

and prejudice conclusions the Steering Committee already supports. Finally, there are no explicit requirements for the Steering Committee to consider and incorporate the Advisory Committee's recommendations or provide reasons when it rejects any of their recommendations. This is a critical component of adequate consultation which should be included.

Additionally, the lack of a detailed and public communications plan will limit the public's positive perception of the engagement process and fail to set out the expectations and limitations of the engagement processes. It will also limit the Advisory Committee's ability to engage the public and stakeholders or meet frequently enough to address issues promptly. The lack of a public-facing communications strategy or plan, which stakeholders and participants requested during the Regional Assessment, produced many issues that we hope the Follow-up Program can avoid replicating.

Finally, we would also like to encourage the Agency and Government of Canada to meaningfully engage and consult with Indigenous groups and communities pursuant to the Crown's duty under section 35 of the *Constitution Act, 1982*. Offshore petroleum activities affect the rights and interests of Indigenous communities and engages this duty to consult and accommodate.

Recommendation #2: Set out clear details about the Advisory Committee. East Coast Environmental Law recommends that the final TOR fully describe the composition of the Advisory Committee (how many members, which groups will be represented, and if appropriate, which position in an organization will serve as its member) and how its recommendations will be considered by the Steering Committee. We also recommend the Advisory Committee be selected by the entire Steering Committee (not a few select members of it) with input from the public, stakeholder groups, and Indigenous communities. Finally, in light of this recommendation and the ongoing COVID-19 pandemic, we also recommend that the application period for the Advisory Committee be extended to January 31, 2021.

Recommendation #3: Create a Follow-up Programs communications plan. East Coast Environmental Law recommends that the final TOR require the creation of a communications plan for the Follow-up Program.

Recommendation #4: Consult with all Indigenous Nations and Communities. It is the constitutional responsibility of the Government of Canada and all of its agencies and bodies to consult Aboriginal peoples when their rights are or may be affected by government action. As part of this consultation, the Agency should consult all affected Indigenous Nations and Communities in advance of finalizing the TOR to identify "community consultation protocols" for engagement activities and to identify other areas of interest.

The Steering Committee must not include the C-NLOPB because of its conflict of interest

The Steering Committee is comprised of multiple federal and provincial bodies as well as the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB or "the Board"). The Board is an independent regulator with membership determined by the federal and provincial governments, predominantly chosen from the oil and gas industry. The C-NLOPB's role in the offshore, set out on its website, includes, to "facilitate the exploration for and development of petroleum resources" in a manner consistent with its mandate, which is to interpret and apply the *Atlantic Accord* and its associated legislation

to operators and oversee their compliance.¹² The *Atlantic Accord*—which governs the joint management of offshore petroleum between the federal and provincial governments—states that its primary purpose is “to provide for the development of oil and gas resources offshore Newfoundland”.¹³ Environmental Protection is not one of the *Atlantic Accord’s* purposes.

It is inappropriate for the C-NLOPB to have a seat on the Steering Committee as a non-government body that facilitates the development of petroleum extraction in the offshore area. Given that the Steering Committee is tasked with tracking and reporting on the commitments outlined in the Ministerial Response¹⁴, which includes considering cumulative effects and implementing environmental protections, a conflict of interest arises with respect to the competing mandate of the C-NLOPB for resource extraction and environmental protection.¹⁵

The development of petroleum resources in the Regional Assessment study area will have impacts on the marine environment. The Follow-up Program and its objectives would be better served if led and managed by government bodies and advised by stakeholders and the public. The C-NLOPB already plays an outsized role in the deployment of the Ministerial Regulation and in facilitating oil and gas development. It could continue to provide effective advice and information, when appropriate, as a member of the Advisory Committee.

Recommendation #5: Remove the C-NLOPB from the Steering Committee. East Coast Environmental Law recommends that the final TOR not include the C-NLOPB as a member of the Steering Committee. It may still be a member of the Advisory Committee; if so, its responsibilities in the TOR should be updated to reflect this change.

The draft TOR fail to utilize the Geographic Information System

The Geographic Information System (GIS) for the RA has been referenced often and is one of the key pillars of the Follow-up Program. Designed to be accessible to the public, open to updates, and utilized in decision-making, significant weight rests on its shoulders. While the GIS is a useful and promising tool, we believe the draft TOR lacks critical information on its maintenance and use.

One of the objectives of the Follow-up Program identified in the draft TOR is to review and update the Regional Assessment and the GIS, including the information it houses.¹⁶ The Advisory Committee is tasked with making recommendations to this end, although the responsibility to do so lies with the Impact Assessment Agency, as chair of the Steering Committee, in collaboration with signatories.¹⁷

Although it would be undesirable and inefficient to constantly update the GIS, we are concerned that all updates for the GIS are at the discretion of the Impact Assessment Agency and signatories of the Regional

¹² Canada-Newfoundland and Labrador Offshore Petroleum Board, Mandate page, online < <https://www.cnlopb.ca/about/mandate/> >

¹³ Atlantic Accord: Memorandum of Agreement Between the Government of Canada And the Government of Newfoundland and Labrador On Offshore Oil and Gas Resource Management and Revenue Sharing, February 11, 1985 online < <https://www.gov.nl.ca/dgsnl/files/printer-publications-aa-mou.pdf> > s. 2(a)

¹⁴ Draft TOR, p. 7

¹⁵ Ministerial Response to the Regional Assessment Committee Report for Offshore Exploratory Drilling East of Newfoundland and Labrador (June 4, 2020), p. 10

¹⁶ Draft TOR, p. 6

¹⁷ Draft TOR, pp. 8 & 9. We raise the issue of whether or not the Agency serves as the final decision-maker in Table 1.

Assessment agreement.¹⁸ Circumstances could potentially arise in which a lack of consensus among the Advisory Committee or Steering Committee results in new and available information not being added onto the GIS. This would be a detriment to the public's interest in environmental protection, accountability and good decision-making based on best available science and knowledge.

The lack of details about the mechanisms for updating the GIS are also concerning. Most notably, the draft TOR does not require change logs or public notification of updates. Such measures would serve the public interest in future reviews as well as present an opportunity to remain engaged with the public. Despite all of the discussion about "updating" the GIS and adding "new information" into the system, it is not clear what either of those terms entail. Can the GIS be considered "updated" if it has merely had its user interface adjusted, though none of the information has changed? Does "new information" replace old information by default, or is it selectable by the user and identified as new? For the GIS to be effective and facilitate public engagement and information, these gaps must be addressed in the TOR.

Recommendation #6: Clarify the role, mechanisms, and upkeep of the GIS. East Coast Environmental Law recommends that the final TOR for the Follow-up Program include clear definitions of what constitutes updates and new information to the GIS. With respect to its mechanisms, the TOR should require regularly and consistently scheduled updates of new information for the GIS without Impact Assessment Agency or Committee discretion, for example: oil spills, cumulative effects, oceanographic conditions, fish species distribution, seabird colonies, species sightings (especially those listed under the *Species at Risk Act* or the *Migratory Birds Convention Act*), special or protected areas, new editions of existing scientific literature, petroleum-related activity, and explosive dumpsites. With respect to upkeep, the GIS should include change logs for any updates and relevant parties should be notified of changes that affect their interests or ongoing decision-making; parties can self-select what information in what regions is relevant to them, receiving emails when changes are made to information in those regions.

The draft TOR do not provide sufficient details about components of the Follow-up Program

The draft TOR consistently lacks important details about various components of the Follow-up Program. Because the TOR serve as the foundation for the Program and guide its conduct, the degree of ambiguity on key issues within the draft TOR is neither in the public interest nor protects the environment. Table 1 (below) highlights multiple instances where the draft TOR lacks details and where important components of the Follow-up Program are left unanswered. We have provided recommendations to strengthen the TOR.

Generally, the ambiguities beg questions such as: Who will facilitate aspects of the Follow-up Program? Or how undertakings will be implemented in practice? Without sufficient clarity we anticipate that important aspects of the Program will slip through the cracks or be under realized, increasing the likelihood that issues go unresolved or are not resolved with transparency and accountability to the public. It also increases the likelihood that internal disputes over responsibility will delay the Program in achieving its objectives. Many of these ambiguities are related to other issues identified in greater detail in our comments.

Recommendation #7: Resolve Key Ambiguities. East Coast Environmental Law recommends that the final TOR clarify or resolve the ambiguities we have identified in Table 1, to provide greater clarity and accountability to the RA Follow-up Program.

¹⁸ Draft TOR, p. 9

Table 1. Recommendations related to clarity of terms and provisions of the Follow-up Program draft TOR

Provision from draft TOR (quoted)	Page	Recommendation & Commentary
<p>“The RA Follow-up Program will track and report on the implementation and effectiveness of the commitments outlined in the Ministerial Response.”</p>	6	<p>Recommendation: The final TOR should clearly state that the objective to report on the implementation and effectiveness of commitments applies to all commitments in the Ministerial Response.</p> <p>Each of the commitments should be clearly identified, as they are not always marked. This objective should apply to all commitments made, including those in response to the Regional Assessment Committee’s recommendations in relation to the Regulation (see example below), and not only to commitments specific to recommendations related to the follow-up program.</p> <p>For example, in the Ministerial Response to Committee Recommendation #2, the Minister committed the following: “Environment and Climate Change Canada will work with the C-NLOPB to develop a standard training program for seabird observers on drilling installations and support vessels. Before the end of March 2021, Environment and Climate Change Canada will complete the guidance required to support the development of a training program. It will also provide a definition of "trained observers" to ensure that a consistent approach is applied across all facilities and vessels in the Canada-Newfoundland and Labrador offshore.”</p>
<p>“Through the RA Follow-up Program, new and updated information will be identified and examined on an annual basis to determine its applicability to offshore exploratory drilling and to ensure that the Regional Assessment remains current and valid into the future.”</p>	6	<p>Recommendation: The final TOR must clarify who will identify and examine new and updated information on an annual basis. This work should incorporate the best-available science and other sources of knowledge from communities and Indigenous nations.</p> <p>The role of the GIS tool should be clarified with respect to this objective.</p>
<p>“The RA Follow-up Program will be designed and implemented in order to: carry out regular reviews of, and future updates to,</p>	6	<p>Recommendation: New scientific information that changes the committee’s recommendations and findings with respect to adverse effects and risks in the study area, particularly sensitive ocean areas and protected areas, should be</p>

<p>the Regional Assessment and associated GIS tool, including the information and analysis contained therein to increase the collective understanding of the offshore environment and implications of resource management decisions.”</p>		<p>immediately flagged for consideration to amend the regulation to reflect the new information. Regular reviews should occur annually.</p> <p>The Regional Assessment Committee recommended that the Regional Assessment and the GIS must be viewed and used as a “living” and “Evergreen” product that is reviewed annually and updated.¹⁹</p>
<p>“The RA Follow-up Program will be designed and implemented in order to: Monitor, evaluate and report on the status and implementation of the various commitments in the Ministerial Response.”</p>	6	<p>Recommendation: The objective of the follow-up program, to report on the implementation and effectiveness of commitments, must apply to all commitments in the Ministerial Response.</p> <p>We suggest remove the phrase “the various” and replacing it with “all”: <i>Monitor, evaluate and report on the status and implementation of all commitments in the Ministerial Response.</i></p>
<p>“The RA Follow-up Program will be designed and implemented in order to: Provide advice to relevant government authorities on the incorporation of the outcomes of the RA Follow-up Program into their respective regulatory and planning processes, in order to consider and help manage potential (project-specific and cumulative) effects resulting from future exploratory drilling activities in the Study Area” and “Regularly review past, on-going and planned exploratory drilling activities and other projects and activities in the Study Area to consider potential cumulative effects, and provide advice to the relevant authorities on how these may be managed</p>	6	<p>Recommendation: The language in this objective should be changed to reflect that potential effects (including project and cumulative) should not just be considered or managed, but also must feed into an ongoing assessment of the risks of exploratory drilling activities in the study area.</p> <p>As noted elsewhere, there continues to be a lack of clarity, structures, or process about how new information will be used to assess risks of offshore exploratory drilling activities in the study area.</p>

¹⁹ Final Report, Recommendation 13, p. 190-191.

through applicable regulatory and planning mechanisms.”		
“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).”	7	<p>Recommendation: The Steering Committee should include a representative from Transport Canada and Indigenous representation and should NOT include representatives from the CNLOPB.</p> <p>It is unclear how many representatives of each body will sit on the Steering Committee or who will represent these departments. It is also unclear who the final decision-maker will be or whether the Steering Committee will need to make consensus-based decisions.</p>
“The RA Follow-up Advisory Committee will be composed of a variety of interests and areas of expertise, including representatives of Indigenous groups, the fishing industry, oil and gas industry, non-government organizations, and academics.”	8	<p>Recommendation: Science-based organizations or individuals must form part of the composition of the Advisory Committee, and at least one representative must represent the public interest. There should be a public recommendation period, during which any member of the public or stakeholders may recommend individuals for a position on the Advisory Committee.</p> <p>Recommendation: A conflict of interest policy should be created and made public, and all members of the Advisory Committee must adhere to the policy.</p> <p>The draft TOR is unclear about how many representatives in total will be included on the Advisory Committee, or whether certain interests will get more than one representative.</p> <p>The Advisory Committee should solicit recommendations and input from the public, stakeholders, and Indigenous communities to identify an appropriate pool of candidates. Additionally, a strict conflict of interest policy must be created and made available publicly.</p>
“Committee membership terms will be of two to three years with the potential for reappointment for subsequent terms.”	8	<p>Recommendation: Membership on the Advisory Committee should be two years, with the possibility of reappointment for at most one additional term.</p>

		The criteria for the memberships of the Advisory Committee should have been submitted to the public for consideration. The application period for the committee should only have opened following consideration of public submissions, rather than run simultaneously with the draft TOR public submission period.
“It is anticipated that the RA Follow-up Advisory Committee will meet up to four times per year. The frequency of Committee meetings will depend on the progress made in regard to the commitments outlined in the Ministerial Response.”	8	<p>Recommendation: A minimum of two annual Advisory Committee meetings must be mandated and the committee must have flexibility to meet as often as is necessary and not be limited to four meetings.</p> <p>The language is discretionary and does not ensure meaningful public participation or engagement. It is also unclear who decides how much progress has been made. This passage seems antithetical to the primary purpose of the Advisory Committee and the Follow-up program, which is to ensure that progress on commitments is made.</p>
“In its role as chair of the Steering Committee, the Agency will support the activities of the RA Follow-up Program which will include... [u]pdating the GIS tool when it has been determined, in collaboration with the other signatories to the RA agreement and with input from the RA Follow-up Advisory Committee, that new or updated information is available and should be incorporated...”	9	<p>Recommendation: All new and updated information must be placed onto the GIS or otherwise incorporated.</p> <p>Does “new information” include any information not currently contained within the GIS?</p>
“These parties [NRCan and Newfoundland and Labrador’s Department of Industry, Energy and Technology] will be part of the Steering Committee and will play a key role in planning and implementing the RA Follow-up Program... The C-NLOPB will be part of the Steering Committee and will	9-10	<p>Recommendation: Neither the CNLOPB, nor the Newfoundland and Labrador’s Department of Industry, Energy and Technology, should be part of the Steering Committee. Their input should be sought as part of the Advisory Committee or as third-party expertise, as appropriate.</p> <p>The fact that government counterparts that are responsible for developing industry will play a “key role” in planning and implementing the program is concerning. Best</p>

provide its views in [sic] planning and implementing the RA Follow-up Program.”		available evidence must be used in all decision-making, and the departments responsible for producing that information (DFO, ECCC) must take the lead.
“The RA Follow-up Program will operate in an open and transparent manner, with information made publicly available, subject to confidentiality requirements under legislation or governmental policies.”	11	<p>Recommendation: All information must be made available to the public within 30 days of being received or produced.</p> <p>During the Regional Assessment process, public comments were often put on the public registry after long delays, or sometimes, never appeared on the registry. All legislation or government policies related to confidential information should also be clearly identified to ensure transparency to the public and stakeholders with interests in that confidential information.</p>
“The Agency will engage with Indigenous groups and stakeholders to support the development and implementation of the RA Follow-up Program.”	11	<p>Recommendation: Engagement with Indigenous groups and stakeholders should include meetings with the Steering Committee and Advisory Committee.</p>
“Where appropriate, the Steering Committee may review the effectiveness of the Terms of Reference including their structure and content. RA Follow-up Advisory Committee may provide advice to the Steering Committee on the effectiveness of these Terms of Reference, including their structure and content.”	13	<p>Recommendation: The final TOR should clearly set out the process of reviewing the TOR, and this process should include opportunities for further public engagement.</p> <p>It would be helpful if “effectiveness” was defined or criteria were provided. It would also be valuable for the Steering Committee and Advisory Committee to consider public feedback on the effectiveness of the TOR.</p>
“If it is determined that the Terms of Reference for the RA Follow-up Program are not achieving the stated objectives, proposed amendments should be presented to the President of the Agency, the Deputy Minister of NRCan, and the Deputy Minister	13	<p>Recommendation: The Minister responsible for the <i>Impact Assessment Act</i> should be responsible for all decisions with respect to the Regional Assessment Follow-up program and proposed amendments to its TOR. All proposed amendments should be presented to the entire Steering Committee and the Minister. All proposed amendments must be made available on the registry and the public must have opportunities to provide input.</p>

of the Newfoundland and Labrador Department of Industry, Energy and Technology.”		It is unclear who, and on what criteria, a decision will be made with respect to whether stated objectives are being achieved. It is also unclear who will create and propose amendments to the TOR.
“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.”	13	<p>Recommendation: There should be no termination date for the RA Follow-up Program.</p> <p>Part of the objective of the Follow-up Program is to give purpose to the intent of the Regional Assessment Committee’s recommendation that the Regional Assessment be an “evergreen” process (i.e. – that it is continually updated). It is important for the biodiversity, health, and productivity of the offshore area that new information, and particularly best-available science and Indigenous knowledge, be continuously added to the GIS (or other components of the Regional Assessment) to inform decision-making.</p>

The Follow-up Program is the last opportunity to remedy the shortcomings of the Regional Assessment and its TOR must provide an adequate structure and outline for its objectives and work

East Coast Environmental Law has identified multiple areas of the draft TOR for the Follow-up Program which limit its capacity to meaningfully fulfill its objectives, and to ensure that the Minister's commitments are upheld. We have proposed seven recommendations to amend the TOR to address a range of substantive and process shortcomings, internal tensions and ambiguities, and logistical issues. We hope the authors of the TOR consider these recommendations and implement them to strengthen the Follow-up Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Kofahl". The signature is fluid and cursive, written in a professional style.

Mike Kofahl
Staff Lawyer
East Coast Environmental Law