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Impact Assessment Agency of Canada
301-10 Barters Hill
St. John's, NL A1C 6M1
Sent Via Email: iaac.nloffshorestudy-etudeextracotieretnl.aeic@canada.ca

Re: Comments on the Discussion Paper on a Ministerial Regulatory Proposal to Designate Offshore Exploratory Drilling East of Newfoundland and Labrador for Exclusion under the *Impact Assessment Act*.

The following is a submission by East Coast Environmental Law on the proposed regulations to exempt offshore exploratory oil and gas drilling projects from impact assessment.

East Coast Environmental Law Association (2007) is an environmental law charity that is based in Halifax, Nova Scotia. We received funding from the Impact Assessment Agency of Canada (formerly the Canadian Environmental Impact Assessment Agency) to participate in the Newfoundland and Labrador Regional Assessment of Offshore Exploratory Oil and Gas (the "Regional Assessment").

Using those funds, our organization engaged with the Regional Assessment Committee (the "Committee") and collaborated with other participants of the process to provide feedback, commentary and information; that included providing commentary on the process to the Agency and Committee, writing letters to the Minister of Environment and Climate Change, participating in Technical Advisory Group meetings, meeting with the Committee in St. John's, Newfoundland, and Halifax, Nova Scotia, participating in a review of the draft recommendations prior to the release of the full draft report, and submitting comments on the Committee's draft report.

As participants of the Regional Assessment process, we have been disappointed by the lack of genuine and meaningful public participation opportunities, and by the Committee's lack of consideration of the information provided to it by us and by other participants of the process. We were also concerned with the short timeline provided to the Committee for the process and remain concerned about the quick pace at which the proposed regulations are being created.

The Committee failed to fully adhere to its mandate and failed to give effect to the intent and objectives of the *Impact Assessment Act*. It is our opinion that it could set a poor precedent with respect to future regional assessments, and we urge the Minister and the Agency not to create regulations with the Regional Assessment as its basis.

Now we are faced with the potential for regulations that exempt offshore exploratory oil and gas drilling projects from impact assessment, using the Regional Assessment as its foundation. This is also seriously concerning because a properly conducted regional assessment is a pre-condition for the proposed regulation.

However, notwithstanding our firm opposition to the use of the Regional Assessment as the foundation for the proposed regulation, we have provided commentary on the Discussion Document and the regulatory

intent behind the proposed regulation. I hope that you will find our comments persuasive, and that you will reconsider any exemptions for exploratory oil and gas from impact assessment.

Sincerely

Mike Kofahl
Staff Lawyer
East Coast Environmental Law

ecelaw
east coast environmental law

APPENDIX A:
SUBMISSION ON THE DISCUSSION PAPER AND PROPOSED REGULATIONS

1. A note on COVID-19 and Meaningful Public Engagement

During the public consultation process for the proposed regulations, we indicated to the Impact Assessment Agency of Canada (the "Agency" or "IAAC") that we felt the COVID-19 pandemic had created unique circumstances that affected the ability of the public, government, and stakeholders to effectively contribute to the process and provide valuable information on the proposed regulation. We also signed onto a letter, sent to IAAC on April 20th, 2020, that expressed our concerns and requested an extension to the process.

The purpose of our letter, and this comment, is to indicate our continued concern with the speed at which the entire process, from the Regional Assessment to this regulatory process, has occurred. A key principle and objective of the *Impact Assessment Act* is to allow for meaningful public engagement and input into important decision-making processes. This current process is the only opportunity for the public to provide input into the proposed regulation, and it is especially concerning given that the Regional Assessment process was rushed.

During the public comment period for the draft report of the Regional Assessment Committee (the "Committee"), our organization, along with others, requested more time from the Committee (and the Minister) to comment on the draft report (more on this below). In response, the Committee rejected that request and indicated specifically that it was on a tight timeline, but that there would be further consultation on the proposed regulation. In light of additional expectations for proper public consultation, it is disheartening to now be facing the same rushed timelines, and at a time of national crisis and historically low oil and gas prices. This is not meaningful public engagement.

Therefore, we urge you, please consider additional public consultation opportunities for both the Regional Assessment Report and for the proposed regulation.

2. The Regional Assessment as a Precondition to the Proposed Regulations

As a participant of the Newfoundland Offshore Regional Assessment of Offshore Exploratory Oil and Gas Drilling (the "Regional Assessment" or "NFLD RA"), East Coast Environmental Law has serious concerns with the proposed regulation being informed by the body of work conducted during the Regional Assessment.

The proposed regulation to exclude offshore oil and gas drilling projects from impact assessment requirements under IAA is being creating pursuant to section 112(1)(a.2) of the *Impact Assessment Act* (the "IAA"), which gives the Minister the ability to create the regulations "only after considering an assessment referred to in section 92 or 93 that is in relation to that physical activity or class of physical activities".[1] Since the Regional Assessment is a pre-condition to the proposed regulations, it is our opinion that the Regional Assessment must have met all of its terms of reference and the legislative requirements set out within the *Impact Assessment Act*. It did not do this.

We have already indicated, both in correspondence with the Minister, and in our submission on the draft Regional Assessment report, that there were a number of deficiencies in terms of both the process and the Regional Assessment Committee's substantive analysis, including:

[1] *Impact Assessment Act*, s. 112(2).

a) **There was no assessment of the risks of offshore oil and gas:** The Committee acknowledged in its Final Report to the Minister that assessing and evaluating risk of offshore oil and gas drilling was beyond its timing and resources.

b) **The Committee did not consider relevant information:** There are information gaps in risks for marine mammals, benthic species, corals, and sponges. The Committee acknowledged that it did not have access to relevant scientific studies that should have been included in the report, despite sections 53 and 101 of the *Impact Assessment Act* giving it powers to compel that information, and section 100 of the *IAA* requiring federal authorities to provide relevant information, if requested.

c) **The cumulative effects assessment was incomplete:** The Committee largely left assessment of cumulative effects of exploratory oil and gas projects to the future. It identified the land tenure process of the Canada-Newfoundland Offshore Petroleum Board (the "Board" or "CNLOPB") as the point that the spatial and temporal distribution and intensity of future activities (part of cumulative effects) should be considered. The exploratory drilling scenarios presented should at least provide the basis for forecasting reasonable extraction scenarios and conducting a cumulative effects assessment based on an intensity of extraction derived from past experience. These gaps include uncertainties in the effects of noise, seismic drilling, mitigation measures, ice, chronic oil pollution and other activities.

d) **The requirements for meaningful public engagement were not met:** Participants during the Regional Assessment process were frequently given materials and information with little time for preparation and given little time to provide commentary and feedback. Final public comments on the draft report were due only one week before the Final Report was provided to the Minister, making it unlikely (probably impossible) for the Committee to consider and incorporate public feedback into its Final Report. Additionally, the Geographic Information System, which was heavily referenced and cited within the Draft Report (and Final Report), was only opened to the public on February 3rd. Therefore, the public did not have access to all the information relevant to the regional assessment until almost two weeks into the 30-day public commentary period.

e) **No areas within the Study Area are exempt from oil and gas:** The Committee stated that it had no scientific information on which it could recommend possible areas to be excluded from exploratory oil and gas drilling. That is despite the Committee's own findings that special areas within the Study Area might be particularly vulnerable, and submissions from participants in the regional assessment process that special areas should be exempted from exploratory oil and gas drilling. Furthermore, it became clear during a workshop conducted by the Committee on December 3rd, 2019 that it had not requested any information to that effect from relevant federal authorities, despite prompting by participants earlier in the process.

f) **An assessment of impacts on Canada's climate commitments was narrow:** The Committee's assessment of the effects of exploratory oil and gas drilling projects on climate change, and specifically, greenhouse gases emissions, was narrow. Only greenhouse gas emissions from exploratory oil and gas drilling were included (potential emissions from future production projects were excluded) and methane was not included in the assessment. The Committee stated that it was limited to assessing exploratory oil and gas, despite including production facilitates and oil and gas generally when discussing potential benefits. Additionally, the Committee's emissions modelling used 77 exploratory wells as the worst-case scenario, when in fact there are currently over 100 wells already present in the offshore, and the province has frequently contemplated having 100 wells more by 2030 (this was even present in the draft agreement for the Regional Assessment).

3. The Committee's Recommendations and the Government Response

As indicated in the Discussion Paper, the Government of Canada is considering the Committee's other recommendations and expects to provide a response to these recommendations at the same time as it releases the proposed regulation. Considering that many of the Committee's recommendations that were aimed at government departments were related to deficiencies in information and data, and meant to address those gaps, and the committee's failure to gather the relevant information for the Regional Assessment, those considerations should have been made available to the public prior to any further work on the proposed regulation.

4. The Proposed Regulation

What follows are our general submissions on the content of the proposed regulation. Appendix "B" included below is our commentary on some of the specific proposed conditions (reflected in Annex 1 of the Discussion Document).

4.1 – Designation

The physical activity (within the Study Area) set out under section 34 of the Schedule to the *Physical Activities Regulations* (the "Schedule") will be designated under the proposed regulation, and therefore be subject to the exclusion created by it. Projects captured by section 34 include drilling, testing and abandonment of offshore exploratory wells in the first drilling program. A "Drilling Program" as defined in the *Canada Oil and Gas Drilling and Productions Regulations* (the "Production Regulations") includes "any work or activity related to the program".[2]

Together, the proposed regulations and the Production Regulations capture not only offshore drilling, but other activities related to offshore drilling, including testing and abandonment.[3] These activities were not captured by the Newfoundland Regional Assessment, and in fact, some activities like seismic testing and abandonment, were either specifically excluded by the Committee, or examined at a rudimentary level. For example, what follows is the Committee's entire assessment of well abandonment:

> *4.2.1.5 Well Abandonment or Suspension*
>
> *Eventual well abandonment or suspension and the associated removal of the wellhead using mechanical means, if required, results in some short term, low magnitude emissions of noise and light. Wellhead recovery is conducted at depth, and in adherence to the requirements set out under the Newfoundland Offshore Petroleum Drilling and Production Regulations. Individual marine animals that are sensitive to lighting and noise emissions may temporarily avoid the area during these activities.*

4.2 Geographical Scope of the Regulation

4.2.1 – Special Areas

The proposed regulation will apply to the entire Regional Assessment Study Area. Additional information is proposed to be required from proponents when they propose to conduct activities in certain areas with specific environmental characteristics and sensitivities, including other effective conservation measures

[2] *Canada Oil and Gas Drilling and Production regulations,* s. 1(1).
[3] IAA, Schedule, s.34.

("OECMs"), aggregations of habitat-forming corals or sponges, and Northwest Atlantic Fisheries Organization ("NAFO") Fisheries Closure Areas. If a project is proposed to be carried out within a special area, the proponent would also be required to provide the Agency and the Department of Fisheries and Oceans ("DFO") with an outline on how it will address effects within the special area.[4]

With respect, a requirement for the proponent to provide both the Agency and DFO with an outline on how it will address potential project effects within any special area does not provide enough detail on how the regulation would actually work, and how the monitoring and follow-up of these plans would work. Questions remain with respect to non-compliance or conformity with the proponent's plan, and at what threshold or level of effects that work would undermine the objectives of a given special area.

It is also suggested in the Discussion Document that, with respect to special areas, the proponent will have to consult with the Board and the Minister of Fisheries and Oceans prior to commencing drilling to determine an appropriate course of action. That might include additional mitigation measures, for instance, "when the relocation of anchors or wells on the seafloor or the redirect of drill cuttings discharges is not technically feasible".[5] This language – "technically feasible" – is unclear and does not provide any certainty. Furthermore, it is unclear who will decide whether something is not technically feasible.

It is our recommendation that all drilling projects that are proposed for inside any special areas not be captured by the proposed regulations. There is a large body of scientific evidence underpinning each of these special areas, highlighting the particular sensitivity of these areas and their importance for the health of the oceans. Although the Committee suggested that there was not enough information to determine appropriate areas of the Study Area to make off limits to offshore exploratory oil and gas, this is not the case. The fact that the Committee did not pursue this evidence, nor consider the enormous body of scientific data and work that already exists for these areas, is a major failure of the Regional Assessment, and should not influence the proposed regulation.

4.2.2 – International Areas

One of the Committee's terms of reference was to assess the effect of offshore oil and gas exploratory drilling on Canada's international commitments. Unfortunately, it is our opinion that their assessment does not accurately reflect the reality and uncertainty of those international obligations.

The *United Nations Convention on the Law of the Sea* ("UNCLOS") is the primary source of many of Canada's international obligations with respect to the ocean. Canada's current jurisdiction ends at the 200 nautical mile limit of the Exclusive Economic Zone (the "EEZ"). Offshore oil and gas wells, including exploratory wells, and other related activities, will have potential consequences related to shipping, including the right of other nations to travel freely through the EEZ. Moreover, there are a number of conventions related to pollution and discharges from ships that also have implications for Canada's international commitments. These need to be more carefully considered prior to exempting all future exploratory oil and gas projects from any sort of impact assessment. We therefore recommend that the proposed regulations not apply to areas outside of Canada's EEZ.

[4] Document, p.5.
[5] Document, p. 6.

4.3 Conditions to Support Environmental Protection

4.3.1 – Mitigation Standards

For an offshore oil and gas drilling project ("drilling project") to be excluded from IAA assessment requirements, it needs to meet conditions set out in the proposed regulation. The proposed regulation will codify all of the current standard mitigation and follow-up requirements that were included as conditions of recent environmental assessment approvals for drilling projects under *CEAA 2012* and will include additional elements to reflect further recommendations from the Committee (found in Annex 1).

While codifying current standard mitigation and follow-up requirements is certainly welcome to ensure consistency and certainty, the conditions do not go far enough to providing environmental protection. As an example, the assessment process under which those conditions were created (*CEAA 2012*) did not include many of the considerations and factors that are now required to be considered under IAA. For example, the following factors to be considered, as per both the IAA and the Committee's mandate, were not present under CEAA 2012[6]:

- the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
- Indigenous knowledge provided with respect to the designated project;
- the extent to which the designated project contributes to sustainability;
- the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;
- considerations related to Indigenous cultures raised with respect to the designated project;
- community knowledge provided with respect to the designated project;
- comments from a jurisdiction that are received in the course of consultations conducted under section 21;
- any relevant assessment referred to in section 92, 93 or 95;
- any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
- any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;
- the intersection of sex and gender with other identity factors;

Many of these factors are not addressed by the regulatory intent document or the proposed conditions found in Annex 1.

It is also concerning to us that the process for ensuring compliance with the mitigation conditions of the regulation will rest with the Canada-Newfoundland Offshore Petroleum Board (the "Board or "CNLOPB"), in addition to their responsibility for ensuring compliance with requirements under the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act and the Canada– Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* (the "Accord Acts").[7] One of

[6] See *Canadian Environmental Assessment Act*, 2012 at s. 19 (repealed), and the *Impact Assessment Act* at s. 22.
[7] Discussion Document, p. 5-6.

the concerns is that there is no transparency with respect to the Board's work, making it difficult for the level of public scrutiny that is necessary to maintain confidence in that process.

4.3.2 - Enforcement of Conditions

The Agency is currently working with the Board to development mechanisms for cooperation, presumably with respect to monitoring adherence to conditions created by the regulations and enforcement. The Discussion Document proposes that this "could" include that the Board, prior to issuing Operations Authorizations (an "OA"), provide the Agency with confirmation that pre-drilling conditions have been met by the proponent, including all related consultation and publication requirements, and that all conditions that must be met by a proponent are incorporated into the OA, and are enforceable under the Accord Acts. It is also suggested that the Agency could post such a confirmation on its website.

In all instances related to confirmation of compliance, information should be mandated to be provided by the Board to the Agency, and all such information should be made publicly available. In part, this will help ensure a rigorous process and enable the public to provide effective commentary during review of the regulations.

Additionally, the suggestion that the Board should be responsible for ensuring that all conditions are enforceable under the Accord Acts is inappropriate. The Minister should ensure this is possible prior to creating regulations that make the Board responsible for enforcing all its conditions, and for ensuring the appropriate authorities are responsible for enforcement of conditions that are not enforceable by the Board under the Accord Acts.

Furthermore, we recommend that the Agency retain all of its powers related to enforcement and compliance, and not designate the Board's enforcement officers in accordance with section 120 of the IAA to secure compliance.[8] The Board already has a dual and conflicting mandate, role, both to protect the marine environment and to promote resource extraction. Real or perceived conflict of interest undermines effective impact assessment and compliance efforts.

5. Existing Projects

The Regional Assessment was designed to meet the requirements of both CEAA 2012 and the IAA. It is being suggested that for projects that have commenced and are still ongoing under CEAA 2012, discussions will occur in the context of each project on how the Regional Assessment could be utilized to support the remaining steps of each assessment process.[9] We recommend that the regulations not apply retroactively.

6. Five- Year Review of the Proposed Regulations

The proposed regulation will be reviewed every five years and will include consideration of any cumulative effects that result from projects in the area. It is being suggested that for projects that have already provided notice ahead of any updated regulation, these projects would continue to be subject to the requirements in place at the time of notification.

This "grandfathering" of projects does not adhere to the precautionary principle, nor reflect the use of a precautionary approach to project management and decision-making, as required under section 6 of the *Impact Assessment Act*. Cumulative effects from any projects in the Study Area, other scientific

[8] *Ibid,* p. 7.
[9] *Ibid,* p. 7.

information, and Indigenous and public knowledge and information play an important role in ensuring that decisions about projects, whether operating or proposed, are made with the most reliable and best available scientific information and that environmental effects are mitigated to the best extent possible.

As suggested by the Committee in its Final Report, the Regional Assessment should be an "evergreen" process, whereby additional information that becomes available is incorporated into the processes relying on that information. We, therefore, recommend that a precautionary approach be applied to the proposed regulations by requiring that all new, best available science be used in the formation of conditions, and that upon each review of the regulations, that new information be incorporated into the conditions for new and existing projects. This will ensure that the regulations capture the clear parliamentary and legislative intent of the *Impact Assessment Act*.

We also recommend that public participant funding be provided for all future reviews of the proposed regulations. This is especially so in light of the fact that there will be no further opportunities to allow for public commentary or input into decision-making processes for exploratory oil and gas projects.

7. Exemption from the Statutory Instruments Act

Given that this regulation is exempted from the *Statutory Instruments Act* pursuant to ss.112(4) of the IAA, the regulation will not be published in the Canada Gazette or on the Department of Justice website. It will instead be published on the Agency's Registry.

As we have already indicated, we have serious apprehensions about this being the final opportunity for the public to engage and be consulted on all offshore exploratory oil and gas projects. Additional time and opportunities should be provided, including public consultation on the actual text of the regulations.

8. The Geographic Information System

Noticeably absent from proposed regulations is the Geographic Information System (the "GIS") and all of the information that it houses. The Committee spent time and capacity during the Regional Assessment to develop the GIS as a "decision-support tool". The GIS was meant to be used to compile information to be made publicly available through an interactive system. The GIS was also meant to be an "evergreen" product that must be regularly updated as new information and knowledge becomes available.[10]

The Committee's draft and final reports were supplemented by a series of technical documents and mapping that provide additional information and analysis in support of the Regional Assessment and its findings; this content is located in the GIS and takes the form of a series of "modules".[11] The GIS was stated as being a "key element" of the section devoted to summary descriptions of the existing physical, biological and socioeconomic settings of the Study Area.[12] The Committee viewed the development and maintenance of the GIS as "integral to the successful implementation of the regulation that it understands will be derived from the Regional Assessment Report".[13]

The Committee also recommended the creation of an Oversight Committee to ensure new information is identified and examined on an annual basis to determine its applicability to offshore exploratory drilling.[14]

[10] Regional Assessment Final Report, p. xiii.
[11] *Ibid*, 12.
[12] *Ibid*, 12.
[13] *Ibid*, p. viii.
[14] *Ibid*, p. 117.

The Oversight Committee is recommended to have representation from Indigenous groups, environmental groups, fishing and oil and gas industries and others.

It is concerning that the proposed regulation would be created using the Regional Assessment final report, and all of the Committee's recommendations, but not also include the mechanism that the Committee intended as guiding the use of that Regional Assessment, including for the creation of the proposed regulations.

9. Conclusion

The objective of the proposed Ministerial regulation, similar to the regional assessment, is to improve the efficiency of the assessment processes of offshore oil and gas exploratory drilling, while maintaining the high standards of environmental protection of these projects. However, the purpose of the IAA is not to facilitate efficient or streamlined project approvals; rather, its purpose is to provide an efficient process that allows for careful and precautionary consideration of projects, to ensure that only those projects that are in the best interests of Canada are allowed to proceed. This includes a consideration of the benefits of projects for present and future generations, and a thoughtful assessment of climate change implications and cumulative effects.

We, therefore, recommend that the Minister and the Agency stop the process to create the proposed regulations and reconsider effecting the completion of the Regional Assessment, so that cumulative effects and climate change impacts are carefully considered and assessed.

And we also recommend that the Minister and the Agency consider the strong public comments and submissions that could not possibly have been considered within the one-week period between the closing of public comments on the Committee's draft report and submission to the Minister of the final report.

Now is the time - during this COVID-19 pandemic and the resulting economic crisis – to reconsider fast-tracking oil and gas projects, and to stop this process before exploratory oil and gas projects are exempted from impact assessments.

APPENDIX B:
COMMENTARY ON ANNEX I "PROPOSED CONDITIONS TO SUPPORT MITIGATION"

Annex 1 – Proposed conditions to support mitigation of environmental effects

What follows are our submissions on a number of the proposed conditions to support mitigation of environmental effects from projects that will be exempted from impact assessment under the proposed regulation. Emphasis within the proposed conditions has been added for convenience and parts of the conditions may have been omitted.

1. The Proponent shall ensure that its actions in meeting the conditions set out in this regulation during all phases of the Project are considered in a careful and precautionary manner, promote sustainable development, are informed by the best information and knowledge available at the time the Proponent takes action, including community and Indigenous knowledge, are based on methods and models that are recognized by standard-setting bodies, are undertaken by qualified individuals, and have applied the best available economically and technically feasible technologies.

- There is no clarity as to how community and Indigenous knowledge are to be taken into consideration, or how that information will be provided to the Proponent.
- Vague and unclear language around best available, economically and technically feasible technologies should be removed or carefully defined.

2. The Proponent shall, where consultation is a requirement of this regulation

a) provide a written notice of the opportunity for the party or parties being consulted to present their views and information on the subject of the consultation;

b) provide sufficient information on the scope and the subject matter of the consultation in a period of time that allows the party or parties being consulted, to prepare their views and information;

d) advise in a timely manner the party or parties being consulted on how the views and information received have been considered by the Proponent.

- The regulation should specifically address what information is "sufficient" and the Agency should have a hand in reviewing this information.
- The period of time for provision of information should be at least 30 days, and proponents must provide their information to parties within 30 days.

3. The Proponent shall, where engagement with Indigenous groups is a requirement of a condition, communicate with each Indigenous group with respect to the manner by which to satisfy the engagement requirements referred to in condition 2, including methods of notification, the type of information and the period of time to be provided when seeking input, the process to be used by the Proponent to undertake impartial consideration of all views and information presented on the subject of the engagement, the period of time to advise Indigenous groups of how their views and information were considered by the Proponent and the means by which Indigenous groups will be advised.

- Engagement or consultation with Indigenous groups should not be proponent driven. Indigenous groups should be provided with an opportunity to provide information in an appropriate manner and should be provided with at least 30-days to present that information.
- Additionally, the Crown always maintains the duty to consult pursuant to section 35 of the *Constitution Act, 1982*. This should be specifically addressed and indicated by the regulations.

4. The Proponent shall, where a follow-up program is a requirement of a condition, determine the following information, for each follow-up program:

d) the technically and economically feasible mitigation measures to be implemented by the Proponent if monitoring conducted as part of the follow-up program shows that the levels of environmental change have reached or exceeded the limits referred to in condition 4 c).

- The Agency should be responsible for determining the information that is required for a follow-up program, not the proponent. This will lead to greater environmental protections and prevent conflicts of interest created by self-monitoring.
- Vague and unclear language around best available, economically and technically feasible technologies should be removed or carefully defined.

6. The Proponent shall, where a follow-up program is a requirement of a condition:

a) conduct the follow-up program according to the information determined pursuant to condition 4;

b) undertake monitoring and analysis to verify the accuracy of the environmental assessment as it pertains to the particular condition and/or to determine the effectiveness of any mitigation measure(s);

c) determine whether modified or additional mitigation measures are required based on the monitoring and analysis undertaken pursuant to condition 6 b); and

d) if modified or additional mitigation measures are required pursuant to condition 6 c), develop and implement these mitigation measures in a timely manner and monitor them pursuant to condition 6 b).

- The Agency, not the proponent, should be responsible for determining whether mitigation measures are effective and whether additional or modified mitigation measures are required, since it is responsible for ensuring compliance with the proposed regulation.
- A proponent must develop or implement mitigation measures within 30-days. Remember, the highest standards of environmental protection must be maintained.

10. The Proponent shall treat all discharges from offshore drilling into the marine environment which, at a minimum, will meet the volumes and concentration limits identified in the Offshore Waste Treatment Guidelines, issued jointly by the National Energy Board, the Canada-Newfoundland and Labrador Offshore Petroleum Board, the Canada-Nova Scotia Offshore Petroleum Board, and any other legislative requirements, where applicable. The proponent shall also install and use of oil water separators to treat contained deck drainage, with collected oil stored and disposed of properly.

- All applicable legislative requirements should be explicitly identified.

13. The Proponent shall treat all discharges from supply vessels into the marine environment in accordance with the International Maritime Organization's International Convention for the Prevention of Pollution

from Ships and any other legislative requirements, where applicable. The proponent shall conduct inspections of ship hulls, drill rigs and equipment for alien invasive species and associated follow-up maintenance, as well as maximize the use of local vessels, rigs and equipment where possible.

- All applicable legislative requirements should be explicitly identified, including the requirements of the *Canada Shipping Act*, which sets out the requirements created under MARPOL. Applicable regulations include the *Prevention of Pollution from Ships and for Dangerous Chemicals Regulations* and the *Ballast Water Control and Management Regulations*.

16. If the survey(s) conducted in accordance with condition 15 confirm(s) the presence of aggregations of habitat-forming corals or sponges, or if other environmentally sensitive features are identified by a qualified individual, the Proponent shall change the location of the anchor(s) or well on the seafloor or redirect drill cuttings discharges to avoid affecting the aggregations of habitat-forming corals or sponges or other environmentally sensitive features, unless not technically feasible, as determined in consultation with the Board. If not technically feasible, the Proponent shall consult with the Board and Fisheries and Oceans Canada prior to commencing drilling to determine an appropriate course of action, subject to the acceptance of the Board, including any additional mitigation measures that must be implemented. Consultation with Fisheries and Oceans Canada shall include mitigation options to reduce any identified risk to habitat-forming coral and sponge aggregations or other environmentally sensitive features in accordance with the provisions of the Fisheries Act.

- If redirecting drill cuttings discharges to avoid affecting aggregations of habitat-forming corals or sponges or other environmentally sensitive features is not technically feasible, then drilling should not occur.
- Notwithstanding the inappropriateness of drilling in areas that affect corals or sponges, or other environmentally sensitive features, any appropriate courses of action should be subject to acceptance from both the Board *and* Fisheries and Oceans Canada.

18. The Proponent shall develop, in consultation with Fisheries and Oceans Canada and the Board, a marine mammal monitoring plan that shall be submitted to the Board at least 30 days prior to the commencement of any vertical seismic survey. The Proponent shall implement the plan during the conduct of vertical seismic surveys. As part of the plan, the Proponent shall:

d) submit the results of the activities undertaken as part of the marine mammal observation requirements to the Board within 60 days of the end of the vertical seismic surveys.

- The results of the activities undertaken as part of the marine mammal observation requirements should be submitted within 60 days, or sooner if possible, and should also be submitted to Fisheries and Oceans Canada.

19. The Proponent shall implement measures to prevent or reduce the risks of collisions between supply vessels and marine mammals and sea turtles, including: […]

- Supply vessels must avoid transiting through all environmentally sensitive marine areas and special areas.

21. The Proponent shall develop and implement follow-up requirements, pursuant to condition 4, to assess the effects of the Project as they pertain to fish and fish habitat, including marine mammals and sea turtles, and to determine the effectiveness of mitigation measures identified under conditions 10 to 20. As part of these follow-up requirements, for the duration of the drilling program, the Proponent shall: […]

a) for every well, measure the concentration of synthetic-based drilling fluids retained on discharged drill cuttings as described in the Offshore Waste Treatment Guidelines to verify that the discharge meets, at a minimum, the performance targets set out in the Guidelines and any applicable legislative requirements, and report the results to the Board;

b) for the first well in each exploration licence, and for any well where drilling is undertaken in an area determined by seabed investigation surveys to be sensitive benthic habitat, and for any well located within a special area designated as such due to the presence of sensitive coral and sponge species, or a location near a special area where drill cuttings dispersion modelling predicts that drill cuttings deposition may have adverse effects, develop and implement, in consultation with Fisheries and Oceans Canada and the Board, follow-up requirements to assess the effects of the Project and verify the effectiveness of mitigation measures as they pertain to the effects of drill cuttings discharges on benthic habitat. Follow-up shall include: […]

c) for the first well in each exploration licence, develop and implement, in consultation with Fisheries and Oceans Canada and the Board, follow-up requirements to assess the effects of the Project as they pertain to underwater sound levels. As part of the development of these follow up requirements, the Proponent shall determine how underwater sound levels shall be monitored through field measurement by the Proponent during the drilling program and shall provide that information to the Board prior to the start of the drilling program.

- The proponent should not be responsible for determining or verifying the effectiveness of its mitigation measures, as this presents a clear conflict of interest; rather, the Agency should be responsible for ensuring the effectiveness of mitigation measures.
- Results obtained respecting the effectiveness of mitigation measures should be reported to the Board, the Agency and made publicly available.
- The proponent should not be responsible for determining how underwater sound levels should be monitored; rather, guidelines for that monitoring need to be created, based on the best available science.

31. The Proponent shall develop, in consultation with the Board and Environment and Climate Change Canada, and implement for the duration of the drilling program, a physical environment monitoring program, in accordance with the Newfoundland Offshore Petroleum Drilling and Production Regulations that meets or exceeds the requirements of the Offshore Physical Environmental Guidelines (September 2008). The physical environmental monitoring program shall be submitted to the Board for acceptance prior to commencing the start of the drilling program.

- The Offshore Physical Environment Guidelines must be referenced in such a way in the proposed regulation, that when they are updated or amended, that those updated or amended guidelines immediately apply to the project, whether or not the project's conditions were approved when the former guidelines were in effect.

36. The Proponent shall prepare a Spill Response Plan and provide a draft of the plan to Indigenous groups for comment, taking into consideration these comments prior to submitting the plan to the Board for acceptance. The plan shall be submitted to the Board for acceptance prior to the start of the drilling program. The Spill Response Plan will include the following: […]

- A draft of a Spill Response Plan should be provided for comment from the public and stakeholders as well, and those comments should be required to be considered by the Board before acceptance of the plan.

39. In the event of a spill or unplanned release of oil or any other substance that may cause adverse environmental effects, the Proponent shall notify the Board and any other relevant authorities as soon as possible, and implement its Spill Response Plan, including procedures for notification of Indigenous groups and commercial fishers developed in condition 26 c). As required by and in consultation with the Board, this may include monitoring the environmental effects of a spill on components of the marine environment until specific endpoints identified in consultation with relevant authorities are achieved. As applicable, this may include: […]

- The language requiring the proponent to provide notification "as soon as possible" should be changed to language requiring more urgency. Notification should be provided immediately upon discovery of any spill or unplanned release or oil or other substances.
- Notification should also be provided to the public, to Fisheries and Oceans Canada, and to the Coast Guard.

41. The Proponent shall provide Indigenous groups with the results of the exercise conducted pursuant to condition 37, following its review by the Board. The Proponent shall provide the final Spill Response Plan to Indigenous groups prior to the start of the drilling program and any updates to the Spill Response Plan pursuant to condition 38.

- The proponent's final Spill Response Plan should also be provided to the public and to other stakeholders, including commercial fishers.

46. The Proponent shall submit to the Board a schedule for each condition set out in this regulation at least 30 days prior to the start of drilling program. This schedule shall detail all activities planned to fulfill each condition and the commencement and estimated completion month(s) and year(s) for each of these activities.

47. The Proponent shall submit to the Board a schedule outlining all activities required to carry out all phases of the Project no later than 30 days prior to the start of the drilling program. The schedule shall indicate the commencement and estimated completion month(s) and year(s) and duration of each of these activities.

48. The Proponent shall submit to the Board in writing an update to schedules referred to in conditions 46 and 47 every year until completion of all activities referred to in each schedule.

49. The Proponent shall provide to the Board revised schedules if any change is made to the initial schedules referred to in condition 46 and 47 or to any subsequent update(s) referred to in condition 48, upon revision of the schedules.

- All of the proponent's schedules, including any changes, should also be submitted to the Agency, and made available to the public on the Agency's registry.