

## Comment Index

### Point Tupper Green Hydrogen/Ammonia Project – Phase I

Publication Date: February 7, 2023

#### Government

Number	Source	Date Received
1	Health Canada	December 12, 2022
2	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Water and Industrial Facilities )	December 12, 2022
3	Nova Scotia Department of Agriculture	January 9, 2023
4	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Protected Areas and Ecosystems Branch)	January 10, 2023
5	Impact Assessment Agency of Canada	January 10, 2023
6	Nova Scotia Department of Municipal Affairs and Housing	January 11, 2023
7	Nova Scotia Department of Natural Resources and Renewables (Subsurface Energy Development Branch)	January 17, 2023
8	Nova Scotia Office of L'nu Affairs	January 17, 2023
9	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Resource Management Unit)	January 17, 2023
10	Nova Scotia Department of Public Works	January 17, 2023
11	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division, Water Resources Management Unit (Groundwater)	January 17, 2023
12	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Air Quality Unit)	January 18, 2023
13	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Air Quality Unit – Noise)	January 18, 2023
14	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Wetlands)	January 18, 2023
15	Nova Scotia Department of Environment and Climate Change – Climate Change Division	January 18, 2023
16	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division, Water Resources Management Unit (Surface Water Quantity)	January 18, 2023

17	Nova Scotia Department of Fisheries & Aquaculture	January 18, 2023
18	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division, Water Resources Management Unit (Surface Water Quality)	January 18, 2023
19	Nova Scotia Department of Environment and Climate Change - Inspection, Compliance and Enforcement Division	January 18, 2023
20	Nova Scotia Department of Environment and Climate Change - Sustainability and Applied Science Division (Environmental Health & Food Safety)	January 18, 2023
21	Environment and Climate Change Canada	January 18, 2023
22	Nova Scotia Department of Natural Resources and Renewables (Land Services, Geoscience, Minerals, Parks and Wildlife)	January 18, 2023
23	Nova Scotia Department of Labour Skills and Immigration (Technical Safety/ Fuel Safety)	January 19, 2023
24	Nova Scotia Department of Natural Resources and Renewables (Clean Energy)	January 19, 2023
25	Transport Canada	January 19, 2023
26	Fisheries and Oceans Canada	January 20, 2023
27	Nova Scotia Department of Communities, Culture, Tourism and Heritage	January 25, 2023

**Mi'kmaq of Nova Scotia**

<b>Number</b>	<b>Source</b>	<b>Date Received</b>
1	Kwilmu'kw Maw-Klusuaqn Negotiation Office (KMKNO)	January 17, 2023
2	Sipekne'katik First Nations	January 17, 2023

**Public**

<b>Number</b>	<b>Source</b>	<b>Date Received</b>
1	Anonymous	December 9, 2022
2	Anonymous	December 11, 2022
3	Anonymous	January 15, 2023
4	Ecology Action Centre	January 17, 2023
5	East Coast Environmental Law	January 18, 2023
6	Anonymous	January 18, 2023



**Environment and Climate Change**

**From:** Chappell, Ellen (HC/SC) <ellen.chappell@hc-sc.gc.ca> **On Behalf Of** IA-ATL / EI-ATL (HC/SC)  
**Sent:** December 12, 2022 4:13 PM  
**To:** Mageste da Silva, Renata <Renata.MagestedaSilva@novascotia.ca>  
**Subject:** RE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

**\*\* EXTERNAL EMAIL / COURRIEL EXTERNE \*\***

Exercise caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien

Hello Renata,

As per your email below regarding EverWind Hydrogen & Ammonia Project, please identify any project-related human health impacts to which you require advice and guidance from Health Canada.

HC's role in Impact/Environmental Assessment is founded in statutory obligations under the Canadian Impact Assessment Act, and its knowledge and expertise can be called upon by reviewing bodies (e.g., Impact Assessment Agency of Canada, review panels, Indigenous groups and/or other jurisdictions). In the absence of such a request from one of the above noted groups, HC is unable to carry out a comprehensive review of the project. **However, HC is able to accommodate specific requests for human health advice and guidance related to provincial environmental assessments within a reasonable timeframe.**

Health Canada currently possesses expertise in the following areas related to human health: air quality, recreational and drinking water quality, traditional foods (country foods), noise, and methodological expertise in conducting human health risk assessment.

To help with your review of human health impacts, I have attached a document of common human health considerations in project reviews and links to Health Canada's guidance documents.

Kind regards,  
Ellen

Ellen Chappell, MES (she | elle)  
Regulatory Operations and Enforcement Branch  
Health Canada / Government of Canada  
[ellen.chappell@hc-sc.gc.ca](mailto:ellen.chappell@hc-sc.gc.ca) / Cell: 902-237-7478

Direction générale des opérations réglementaires et de l'application de la loi  
Santé Canada / Gouvernement du Canada  
[ellen.chappell@hc-sc.gc.ca](mailto:ellen.chappell@hc-sc.gc.ca) / Cellulaire: 902-237-7478

**From:** Mageste da Silva, Renata <[Renata.MagestedaSilva@novascotia.ca](mailto:Renata.MagestedaSilva@novascotia.ca)>  
**Sent:** 2022-12-02 4:36 PM  
**To:** Eyitayo-Oyesode, Oladiwura <**Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>

**Subject:** EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

**Importance:** High

Hello everyone,

On December 9, 2022, EverWind Fuels Company, will register the **EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1** for environmental assessment (EA), in accordance with Part IV of the *Environment Act*.

The purpose of the proposed undertaking is to develop and operate a Certified Green energy hydrogen and ammonia production facility on an industrial property situated along the Strait of Canso near Port Hawkesbury, Cape Breton. The green ammonia produced and sold is expected to be transported internationally for use in decarbonizing various industrial processes, including the production of ammonia-based fertilizer. The Project intends to begin construction in Spring 2023.

The EA registration documents can be downloaded from:

[Environmental Assessments-EverWind](#)

If you have trouble accessing the document, please let me know.

The GIS data regarding project location and environmental feature shapefile data can also be downloaded from the above-mentioned link. The GIS data must not be distributed outside of the government and should be used only for this review.

**Ensuring a clear, consistent and predictable review of EA projects is key to clarifying and streamlining the EA process. We have developed the **attached template** to support you, in your role as reviewer, to help achieve this goal. The template includes guiding questions to support reviewers with its completion, requests a summary of comments be provided, and requests sign off by Managers/Directors (for provincial departments) prior to submission of final comments to the EA Branch.**

Comments on this Project must be provided by **January 18, 2023**, via e-mail. If there are no comments, please reply indicating so.

On December 9, 2022, the Registration Documents will also be available on our website at <http://www.novascotia.ca/nse/ea/>. On or before **February 7, 2023**, the Minister of Environment and Climate Change will decide if the project can be granted conditional environmental assessment approval. **Your comments will be published on our EA website on the decision day.**

If you have any questions, please contact me at any time.

Kind regards,

**Renata Mageste da Silva** (She/Her)

---

Environmental Assessment Officer

**Department of Environment and Climate Change**

1903 Barrington Street, Suite 2085

PO Box 442

Halifax, NS B3J 2P8

Tel: (902) 456-6563

## Human Health Considerations in Environmental Assessment

Health Canada (HC) provides the following generic considerations for evaluating human health impacts in environmental/impact assessment (EA/IA). Please note that this is not an exhaustive list of human health concerns that may result from projects, and that issues will vary based on project specifics. Please also note that HC does not approve or issue licenses, permits, or authorizations in relation to the IA. HC's role in Impact Assessment is founded in statutory obligations under the Canadian Impact Assessment Act, and its knowledge and expertise can be called upon by reviewing bodies (e.g., Impact Assessment Agency of Canada, review panels, Indigenous groups and/or other jurisdictions). In the absence of such a request from one of the above noted groups, HC is unable to carry out a comprehensive review of the project. However, HC is able to accommodate specific requests for human health advice and guidance related to provincial environmental assessments within a reasonable timeframe.

HC currently possesses expertise in the following areas related to human health: air quality, recreational and drinking water quality, traditional foods (country foods), noise, and methodological expertise in conducting human health risk assessment. Based on Health Canada's "Guidance for Evaluating Human Health Impacts in Environmental Assessment", please consider the following information on these topics to assist in your review.

	Consideration	Reference Document
<p><b>Receptor Location(s)</b></p> <p>Please ensure the registration document clearly identifies the locations of all receptors that may be impacted by the proposed project, including any receptors located along the transportation route, if applicable.</p>	<ul style="list-style-type: none"> <li>It is important to clearly describe the location and distance from the proposed site(s) to all potential human receptors (permanent, seasonal or temporary), taking into consideration the different types of land uses (e.g. residential, recreational, industrial, etc.), and identifying all vulnerable populations (e.g. in schools, hospitals, retirement or assisted living communities). Note that the types of residents and visitors in a particular area will depend on land use, and may include members of the general public and/or members of specific population subgroups (Indigenous peoples, campers, hunters, etc.)</li> </ul>	<p>Section 7.1.3 of <i>Health Canada. 2019. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Human Health Risk Assessment. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario.</i></p> <p><a href="https://publications.gc.ca/site/eng/9.870475/publication.html">https://publications.gc.ca/site/eng/9.870475/publication.html</a></p>

	<ul style="list-style-type: none"> <li>• If there is the potential that project-related activities could affect human receptors, impacts to human health should be considered.</li> </ul>	
<b>Atmospheric Environment</b>		
<p>Project impacts to the atmospheric environment include changes to air quality and noise, and can occur in both the construction, operation and decommissioning phases of the project. Project impacts to air quality are commonly caused by emissions from equipment or vehicles as well as by dust. Noise impacts are commonly caused by equipment as well as by activities such as blasting.</p>	<ul style="list-style-type: none"> <li>• If there are receptors that could be affected by project-related activities, impacts to the atmospheric environment should be considered. Changes to the atmospheric environment that may impact human health include: <ul style="list-style-type: none"> <li>○ impacts to air quality (dust or fumes including PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>x</sub>, PAHs)</li> <li>○ increased noise from construction or operations</li> </ul> </li> </ul>	<p><i>Health Canada. 2016. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Noise. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario.</i>  <a href="http://publications.gc.ca/pub?id=9.832514&amp;sl=0">http://publications.gc.ca/pub?id=9.832514&amp;sl=0</a></p> <p><i>Health Canada. 2016. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Air. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario.</i>  <a href="http://publications.gc.ca/pub?id=9.802343&amp;sl=0">http://publications.gc.ca/pub?id=9.802343&amp;sl=0</a></p>
	<ul style="list-style-type: none"> <li>• If there are receptors who could be impacted by project-related noise, it may be necessary to inform receptors prior to loud activities, such as blasting.</li> </ul>	
	<ul style="list-style-type: none"> <li>• If there is the potential for impacts to human receptors from noise and/or air quality changes from the project, the proponent should consider establishing mitigation measures. If complaints are received additional mitigation measures may be required.</li> </ul>	
<b>Recreational and Drinking Water Quality</b>		
<p>The proponent should consider whether any nearby waterbodies are used for recreational (i.e. swimming, boating, or fishing) or drinking water purposes, as well as whether there are any drinking water wells in the area potentially impacted by the project. Nearby drinking and/or recreational water quality may be impacted by accidents or malfunctions, such as a fuel spill; by dust and</p>	<ul style="list-style-type: none"> <li>• If there is the potential for impacts to drinking and/or recreational water quality from the project site, the proponent should consider establishing mitigation measures. If complaints are received additional mitigation measures may be required.</li> </ul>	<p><i>Health Canada. 2017. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Water Quality. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario.</i>  <a href="http://publications.gc.ca/pub?id=9.832511&amp;sl=0">http://publications.gc.ca/pub?id=9.832511&amp;sl=0</a></p>
	<ul style="list-style-type: none"> <li>• The proponent should consider preparing a response plan in the event of an accident or malfunction with the potential to impact drinking and/or recreational water quality. Response plans should include a spill response kit, adequate spill response training, and a communication plan to notify all recreational and drinking water users in the impacted area as well as all relevant authorities.</li> </ul>	



<p>increased sediment runoff; and by other chemical discharges to the environment. Additionally, wells in the area potentially impacted by the project may be impacted by activities such as blasting.</p>	<ul style="list-style-type: none"> <li>• In some cases, for projects that are likely to have an impact on drinking and/or recreational water quality, the proponent should consider conducting water monitoring prior to the start of the project (to establish a baseline). Monitoring would continue throughout the construction, operation and decommissioning phases of the project (as applicable) to monitor for any changes in water quality or quantity.</li> </ul>	
<p><b>Country Foods</b></p>		
<p>If there are plants or animals present in the area potentially impacted by the project that are consumed by humans, there may be potential for impacts to country foods. The proponent should consider all country foods that are hunted, harvested or fished from the area potentially impacted by the project. Impacts to country foods may occur from the release of contaminants into soil or water (including from an accident or spill) or from deposition of air borne contaminants.</p>	<ul style="list-style-type: none"> <li>• If there is the potential for impacts to country foods from the proposed project, the proponent should consider establishing mitigation measures. If complaints are received additional mitigation measures may be required.</li> <li>• The proponent should consider preparing a response plan in the event of an accident or malfunction with the potential to impact country foods. Response plans should include a spill response kit, adequate spill response training, and a communication plan to notify all potential consumers of country foods in the impacted area as well as all relevant authorities.</li> </ul>	<p><i>Health Canada. 2017. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Country Foods. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario.</i>  <a href="http://publications.gc.ca/pub?id=9.855584&amp;sl=0">http://publications.gc.ca/pub?id=9.855584&amp;sl=0</a></p>

For more information on HC’s guidelines for evaluating human health impacts in environmental assessments, please see:

*Health Canada. 2017. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Noise. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario.* <http://publications.gc.ca/pub?id=9.832514&sl=0>

Appendix B of this guidance document provides a checklist that may be beneficial in verifying that the main components of a noise environmental assessment are completed.

*Health Canada. 2016. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Air. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario. <http://publications.gc.ca/pub?id=9.802343&sl=0>*

Appendix A of this guidance document provides a checklist that may be beneficial in verifying that the main components of an air quality environmental assessment are completed.

*Health Canada. 2017. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Water Quality. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario. <http://publications.gc.ca/pub?id=9.832511&sl=0>*

Appendix A of this guidance document provides a checklist that may be beneficial in verifying that the main components of a water quality environmental assessment are completed.

*Health Canada. 2017. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Country Foods. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario. <http://publications.gc.ca/pub?id=9.855584&sl=0>*

Appendix A of this guidance document provides a checklist that may be beneficial in verifying that the main components of a country foods environmental assessment are completed.

*Health Canada. 2019. Guidance for Evaluating Human Health Impacts in Environmental Assessment: Human Health Risk Assessment. Healthy Environments and Consumer Safety Branch, Health Canada, Ottawa, Ontario. <https://publications.gc.ca/site/eng/9.870475/publication.html>*

Appendix B of this guidance document provides a checklist that may be beneficial in verifying that the main components of a human health risk assessment are completed.

**From:** Tufts, Denis P <Denis.Tufts@novascotia.ca>  
**Sent:** December 12, 2022 1:28 PM  
**To:** Mageste da Silva, Renata <Renata.MagestedaSilva@novascotia.ca>  
**Cc:** Currie, Paul D <Paul.Currie@novascotia.ca>  
**Subject:** RE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

This project does not appear to be related to my program area. Therefore, I will not be providing comment.



55 Starrs Road, Unit 9  
Yarmouth, NS B5A 2T2

Denis Tufts, P. Eng.  
Water and Industrial Facilities  
Sustainability and Applied Science Division  
902-774-0396 Phone  
[Denis.Tufts@novascotia.ca](mailto:Denis.Tufts@novascotia.ca)

**From:** Mageste da Silva, Renata <[Renata.MagestedaSilva@novascotia.ca](mailto:Renata.MagestedaSilva@novascotia.ca)>  
**Sent:** Friday, December 2, 2022 4:36 PM  
**To:**  
**Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023  
**Importance:** High

Hello everyone,

On December 9, 2022, EverWind Fuels Company, will register the **EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1** for environmental assessment (EA), in accordance with Part IV of the *Environment Act*.

The purpose of the proposed undertaking is to develop and operate a Certified Green energy hydrogen and ammonia production facility on an industrial property situated along the Strait of Canso near Port Hawkesbury, Cape Breton. The green ammonia produced and sold is expected to be transported internationally for use in decarbonizing various industrial processes, including the production of ammonia-based fertilizer. The Project intends to begin construction in Spring 2023.

The EA registration documents can be downloaded from:

[Environmental Assessments-EverWind](#)

If you have trouble accessing the document, please let me know.

The GIS data regarding project location and environmental feature shapefile data can also be downloaded from the above-mentioned link. The GIS data must not be distributed outside of the government and should be used only for this review.

**Ensuring a clear, consistent and predictable review of EA projects is key to clarifying and streamlining the EA process. We have developed the **attached template** to support you, in your role as reviewer, to help achieve this goal. The template includes guiding questions to support reviewers with its completion, requests a summary of comments be provided, and requests sign off by Managers/Directors (for provincial departments) prior to submission of final comments to the EA Branch.**

Comments on this Project must be provided by **January 18, 2023**, via e-mail. If there are no comments, please reply indicating so.

On December 9, 2022, the Registration Documents will also be available on our website at <http://www.novascotia.ca/nse/ea/>. On or before **February 7, 2023**, the Minister of Environment and Climate Change will decide if the project can be granted conditional environmental assessment approval. **Your comments will be published on our EA website on the decision day.**

If you have any questions, please contact me at any time.

Kind regards,

**Renata Mageste da Silva** (She/Her)

---

Environmental Assessment Officer  
**Department of Environment and Climate Change**  
1903 Barrington Street, Suite 2085  
PO Box 442  
Halifax, NS B3J 2P8  
Tel: (902) 456-6563

## Agriculture

---

Date: January 9, 2023

To: Renata Mageste de Silva, Environmental Assessment Officer

From: Heather Hughes, Executive Director, Policy and Corporate Services,  
Nova Scotia Department of Agriculture

Subject: Everwind Point Tupper Green Hydrogen/Ammonia Project – Phase 1,  
Strait of Canso, Cape Breton, Nova Scotia

---

Thank you for the opportunity to review the documents for the above-noted project.

No agricultural impacts are anticipated given that:

- The Everwind Point Tupper Green Hydrogen/Ammonia Project is located on class 7 soil, Canada Land Inventory, which is unsuitable for agriculture.
- A ten-kilometer buffer was created around the industrial facility, in which there are approximately 34 hectares of active agriculture land and no commercial farms.
- The closest active agricultural land, 2.5 hectares, is 3 km from the industrial facility.

Date: January 10, 2023

To: Renate Mageste da Silva, Environmental Assessment Officer

From: Neil Morehouse, Manager, Protected Areas and Ecosystems

Subject: **EverWind Hydrogen & Ammonia Project, Point Tupper, Nova Scotia**

---

**Scope of review:**

This review focuses on the following mandate: Protected Areas

---

**Technical Comments:**

*This project does not have any protected areas in its vicinity.*

**Summary of Recommendations: (provide in non-technical language)**

*We have no comments on this project*

**IMPORTANT:**

- **Always provide a response back to the EA Branch, even if it is simply to confirm that there is “no comment.”**
- **The comments will be published on the EA website on decision day (privacy review is NOT conducted on comments from government).**



Suite 200  
1801 Hollis Street  
Halifax NS B3J 3N4

Bureau 200  
1801 rue Hollis  
Halifax, NE B3J 3N4

---

Date: January 10, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer, Nova Scotia  
Environment and Climate Change

From: Karen Lalonde, Project Manager, Impact Assessment Agency of Canada

Subject: EverWind Fuels Point Tupper Green Hydrogen/Ammonia Project

---

The federal environmental assessment process is set out in the [Impact Assessment Act](#) (IAA). The [Physical Activities Regulations](#) (the Regulations) under IAA set out a list of physical activities considered to be “designated projects.” For designated projects listed in the Regulations, the proponent must provide the Agency with an Initial Description of a Designated Project that includes information prescribed by applicable regulations ([Information and Management of Time Limits Regulations](#)).

The Agency reviewed the information submitted by EverWind Fuels Company to the Province of Nova Scotia on the proposed EverWind Fuels Point Tupper Green Hydrogen/Ammonia Project located in Port Hawkesbury, Nova Scotia. Based on the information provided, the proposed project does not appear to be described in the Regulations. Under such circumstances the proponent would not be required to submit an Initial Description of a Designated Project to the Agency. However, the proponent is advised to review the Regulations and contact the Agency if, in its view, the Regulations may apply to the proposed project, or if changes to the project are made that would potentially cause the Regulations to apply.

The proponent is advised that under section 9(1) of the IAA, the Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation. Should the Agency receive a request for a project to be designated, the Agency would contact the proponent with further information.

The proposed project may be subject to sections 82-91 of IAA. Section 82 requires that, for any project occurring on federal lands, the federal authority responsible for administering those lands or for exercising any power to enable the project to proceed must make a determination regarding the significance of environmental effects of the project. The Agency is not involved in this process; it is the responsibility of the federal authority to make and document this determination.

The proponent is encouraged to contact the Agency at (902) 426-0564 if it has additional information that may be relevant to the Agency or if it has any questions or concerns related to the above matters.

Thank you,

Karen Lalonde

Project Manager, Atlantic Regional Office  
Impact Assessment Agency of Canada / Government of Canada  
[Karen.Lalonde@iaac-aeic.gc.ca](mailto:Karen.Lalonde@iaac-aeic.gc.ca) / Tel: 902-399-8839

Gestionnaire de projets, région de l'Atlantique  
Agence d'évaluation d'impact du Canada / Gouvernement du Canada  
[Karen.Lalonde@iaac-aeic.gc.ca](mailto:Karen.Lalonde@iaac-aeic.gc.ca) / Tél. : 902-399-8839





**Department of Municipal Affairs and Housing**

Maritime Centre, Floor 8 North  
1505 Barrington Street  
PO Box 216  
Halifax, NS B3J 2M4

---

**Date:** January 11, 2023

**To:** NS Department of Environment and Climate Change

**From:** Department of Municipal Affairs and Housing

**Subject:** **EVERWIND POINT TUPPER GREEN HYDROGEN/AMMONIA PROJECT – PHASE 1**

---

As requested, the Department of Municipal Affairs and Housing (DMAH) has reviewed the Registration Documents provided by Everwind Fuels for the environmental assessment of the EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1. All components considered under DMAH's areas of mandate have been adequately addressed.

Thank you for the opportunity to review the Registration Documents for the above-noted project.

---

Date: January 11, 2023

To: NS Department of Environment and Climate Change

From: Department of Municipal Affairs and Housing

Subject: **EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1,  
Municipality of the County of Richmond**

---

**Scope of review:**

This review focuses on the following mandate: the Statements of Provincial Interest and engagement with municipalities

**Technical Comments:**

*(Is the proponent aware of any relevant municipal zoning? Has the proponent met with the Municipality to discuss the project? Describe any potential impact to the Statements of Provincial Interest.)*

The proponent considers current land use zoning in the proposal and has done significant consultation with municipalities and municipal entities on the project, as well as engaging associations, institutions and other potential stakeholders in the area.

*Statements of Provincial Interest:*

- **Drinking Water:** No anticipated impact. The Project's freshwater need combined with other users would still be below the water draw limit; however, stakeholder municipalities have voiced concern about the cumulative effect of future proposed industrial projects in the area.
- **Agricultural Land:** No anticipated impact as there is no agricultural land in the area.
- **Flood Risk:** No anticipated impact. The Project is not in an identified flood risk area, although the impact of sea level rise on the coastal infrastructure has had limited consideration.
- **Infrastructure:** No anticipated impact; however, stakeholder municipalities have voiced concern about the cumulative effect of future proposed industrial projects in the area.
- **Housing:** No anticipated impact; however, stakeholder municipalities have voiced concern about the cumulative effect of future proposed industrial projects on limited available housing supply in the area.

**Summary of Recommendations: (provide in non-technical language)**

*(Describe what outstanding information and/or conditions may be considered/required for the project.)*

There is no outstanding information and/or conditions. All components considered under DMAH's areas of mandate have been adequately addressed.

**From:** Bird, Michael W <Michael.Bird@novascotia.ca>  
**Sent:** January 17, 2023 11:10 AM  
**To:** Mageste da Silva, Renata <Renata.MagestedaSilva@novascotia.ca>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

Hi Renata,

The Subsurface Energy Development Branch of the Department of Natural Resources and Renewables will not be providing comments on the EA process related to the EverWind project as there are no concerns directly related to the mandate of our Branch.

Michael

**Michael Bird, P.Eng (he/him)**

Manager, Operations, Infrastructure and Regulation Division  
Subsurface Energy Development Branch  
Nova Scotia Department of Natural Resources and Renewables  
Joseph Howe Building | 12th Floor | 1690 Hollis Street  
PO Box 7 | Halifax | NS | B3J 1T0  
C: (902) 719-4316 | E: [Michael.Bird@novascotia.ca](mailto:Michael.Bird@novascotia.ca)

**From:** Mageste da Silva, Renata <[Renata.MagestedaSilva@novascotia.ca](mailto:Renata.MagestedaSilva@novascotia.ca)>  
**Sent:** January 11, 2023 9:56 AM  
**To:**  
**Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023  
**Importance:** High

Happy 2023, everyone!

Just a friendly reminder that comments on this EA process are due on **January 18, 2023.**

If you have no comments, please let me know in writing. And you have already provided your comments to the EA branch, please disregard this reminder.

**Thanks,  
Renata**

# Guidance for Reviewers – Environmental Assessments

## Environmental Assessment Branch, Environment and Climate Change

---

Date: January 18, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Office of L'nu Affairs Consultation Division; **Reviewed by Beata Dera, Director of Consultation**

Subject: EverWind Hydrogen and Ammonia Facility, Cape Breton County, Nova Scotia

---

### Scope of review:

The following review considers whether the information provided will assist the Province in assessing the potential of the proposed Project to adversely impact established and/or asserted Mi'kmaq Aboriginal and Treaty rights.

### Technical Comments:

### Summary of Recommendations: (provide in non-technical language)

#### 5.10.1 Inputs

An estimated 8.3ML/day of raw freshwater will be withdrawn from Landrie Lake.

#### 7.2 Freshwater Aquatic Environment – Transmission Interconnection Line

There are two protected watersheds within the proposed transmission interconnection line: Landrie Lake Watershed Water Protection Zone and Port Hawksbury Protected Water Area.

#### 13.5 Freshwater Aquatic Environment

No direct impacts to watersheds and protected watersheds are anticipated. Watercourses within the project boundary may be indirectly impacted by sedimentation, vegetation clearing, and/or accidental spills. The proponent is required to submit a report to the NS Minister of Environment & Climate Change detailing any potential effects on protected watersheds and associated mitigations. Adverse impacts to freshwater quality may potentially adversely impact Aboriginal and/or Treaty Rights. Based on this information, OLA recommends that engagement with the Mi'kmaq through a Mi'kmaq Communications Plan be required for the proposed project if approved, including information gleaned for the protected watershed report submitted to the NS Minister of Environment & Climate Change.

#### 6.0 Physical Environment

A 14 km Transmission Interconnection Line is proposed on undisturbed Crown land. The transmission line will include the construction of access roads, substations, and other associated infrastructure. Land clearing on Crown land may potentially adversely impact Aboriginal and/or Treaty Rights. Based on this information, OLA recommends that the proponent engages in discussions with the Mi'kmaq of Nova Scotia to address mitigation measures for potential impacts on possible traditional and current use activities on Crown land.

#### 7.2.4 Fish & Fish Habitat

## Guidance for Reviewers – Environmental Assessments

### Environmental Assessment Branch, Environment and Climate Change

---

The Atlantic Canada Conservation Data Centre (ACCD) Data Report identified two Atlantic salmon bearing watercourses outside of the secondary watersheds containing the proposed Transmission Interconnection Line. Although no direct impacts to Atlantic salmon are anticipated, potential indirect impacts to Atlantic salmon and their habitat due to disturbance and/or sedimentation may potentially adversely impact Aboriginal and/or Treaty rights. It is recommended that the proponent engages in discussions with the Mi'kmaq of Nova Scotia to address mitigation measures for potential impacts on possible traditional and current use activities associated with salmon harvesting within the project area.

#### 7.4.1 Terrestrial Habitat

The River Inhabitants Nature Reserve is located 5 km from the proposed Transmission Interconnection Line and provides habitat for Atlantic salmon. There are no proposed works located adjacent to the Nature Reserve. Although no direct impacts to Atlantic salmon are anticipated, potential adverse impacts to Atlantic salmon and their habitat from project development may potentially adversely impact Aboriginal and/or Treaty rights. It is recommended that the proponent engages in discussions with the Mi'kmaq of Nova Scotia to address mitigation measures for potential impacts on possible traditional and current use activities within the project area.

#### 11.0 Engagement

The EARD states that the proponent has met and exceeded rightsholder engagement requirements outlined in the Office of L'nu Affairs *Proponents' Guide: The Role of Proponents in Crown Consultation with the Mi'kmaq of Nova Scotia*. The proponent is unable to state with certainty that they have exceeded the expectations of the Province in their engagement efforts. Crown Consultation is ongoing and OLA recommends the proponent continue engagement efforts with the Mi'kmaq to facilitate information sharing.

Mike Sack is listed as the Chief of Sipekne'katik First Nation. The proponent should be advised that Michelle Glasgow is the current Chief of Sipekne'katik First Nation.

#### 13.8 Archaeological Resource Impact Assessment

Ground disturbance is specific to the placement of the power poles. Once these areas are determined they will be investigated prior to the construction phase. If archaeological resources are identified, the design will be modified to ensure avoidance and regulators will be engaged. Given that impacts to archaeology are of interest to the Mi'kmaq, OLA recommends that engagement with the Mi'kmaq on archaeology, through a Mi'kmaq Communications Plan, be required if the EA is approved.



Environment and Climate Change

Date: 17 January 2023  
To: Renata Mageste da Silva, Environmental Assessment Officer  
From: Resource Management Unit, SAS Division  
Subject: Everwind Point Tupper Green Hydrogen/Ammonia Project – Phase 1, NS

**Scope of review:**

This review focuses on the following mandate: dangerous goods and waste dangerous goods management as well as contingency planning and emergency response.

**Technical Comments:**

Section 5.2.2 (Raw Freshwater Treatment) notes ultrafiltration, reverse osmosis, and electro-deionization treatment technologies being utilized to treat surface water from Landrie Lake prior to its use in hydrogen production. The requirement for anti-scalant and anti-foulant products is noted, however, these products are still to be determined or selected on the basis of the equipment technology provider. Wastewater generated from these processes will be received at the wastewater treatment plant. The reviewer is unable to determine if the anti-scalant and anti-foulant products will impact wastewater sludge quality and whether it would require management as a hazardous waste.

Section 5.9.1 (Wastewater Treatment Plant) notes that solids from the treatment plant will be thickened and shipped off site to an approved site for disposal. The quantity of sludge solids that will be generated by the facility is not noted, and the reviewer is unable to determine there is capacity to manage the sludges off site.

One of the main products produced by the proposed facility is oxygen. Pure oxygen can have detrimental effects on human health, can adversely affect equipment by promoting accelerated corrosion and can support increased risk of combustion or explosion if near combustible materials. Overall, there is no discussion on how or where oxygen is to be handled or vented (s.5.3.5 simply mentions that “oxygen will be vented to the atmosphere”; Table 5.11 noted that 999 tonnes per day will be vented) and what steps are being taken to avoid or reduce hazards for this. This is a significant gap and should be addressed.

There is no discussion of connecting potential sources of hydrogen gas to proposed flare stacks to safely contain and combust this material before it is discharged to the atmosphere. Since hydrogen is a highly volatile, flammable, and explosive gas, it is

## Guidance for Reviewers – Environmental Assessments

### Environmental Assessment Branch, Environment and Climate Change

---

established industry practice that all reasonable measures must be taken to minimize emissions and contain and combust any releases due to process upsets, power interruptions or other foreseeable operating issues in order to prevent impacts on human health and the environment. This should be addressed.

Recent scientific studies have also highlighted the role that even trace emissions of hydrogen may have on exacerbating climate change by stabilizing the presence of methane in the atmosphere. Management of fugitive emissions is not addressed by the proponent in this submission.

There is very limited discussion of backup power although the proposed facility runs on electricity for production of its main products and requires electrical power for pumps, compressors, monitoring and controlling equipment and all other sources of care and control. Since this is a critical control feature, it needs to be addressed in detail.

There is a brief mention that hydrogen may be used as a fuel for the flares but that is not explained further or how they would obtain the hydrogen if there is no storage onsite and the only hydrogen is in the buffer tank feeding into the ammonia production process.

In s.17 Accidents, Malfunctions and Unplanned Events, the proponent addresses potential issues affecting releases of dangerous goods or waste dangerous goods from the proposed facility and how these can be prevented or mitigated.

In s.17.1 **Ammonia Release**, the proponent notes that “Ensure engineering controls (e.g., automatic shut-off valves, sensors) are implemented into the design and are able to identify an ammonia leak within 15 minutes, allowing for prompt response and isolation controls to engage.”

#### Comments

- The proposed sensitivity of gas monitors and response time seems low. Ammonia is widely used in industry and sensors are readily available with sensitivities of 5 ppm or less and instantaneous response times. The monitoring proposed by the proponent does not seem to be reasonable or protective.
- The potential impacts of ammonia event discussed in the registration document were strictly on air quality but accidents could also impact the environment, particularly aquatic organisms. These impacts need to be examined and addressed in order to develop effective mitigation strategies.
- Why wasn't the potential of water in the air (precipitation occurring during a release event) at the site of release resulting in a contaminated liquid considered by the modelling? This should be addressed.
- It is unclear how the case of a 25mm gap in a gasket was chosen as the worst-case release and why the proponent carries this 10% figure throughout different scenarios. Why wasn't a large or more strategic incident like a complete release

## Guidance for Reviewers – Environmental Assessments

### Environmental Assessment Branch, Environment and Climate Change

---

from a broken line or tank considered? These larger or faster releases would likely have significant implications for the location of plant equipment and development of effective mitigation measures.

#### 17.2 Hydrogen release

- There is no discussion of potential cascading effects from fire and explosion from a significant hydrogen release incident impacting on nearby production, handling or storage equipment and facilities. This should be addressed to confirm if the proposed facilities can be safely installed in their proposed location and if additional mitigation measures need to be developed.
- Most of the responses that the proponent discusses are based on an overpressure blast wave of 20 kPa that, according to Table 10.4 in Appendix G, is sufficient to destroy steel frame buildings but the same table notes that 1 kPa will result in 50% ear damage to staff inside buildings and only 0.2 will result in 100% ear damage to people outside. Similarly, pressure of 5kPa will damage brick buildings. It would be more reasonable if the proponent modelled responses on these more sensitive criteria rather than staff sheltering inside hardened structures since that does not appear to be likely unless there is sufficient warning of an impending explosion and all staff or nearby personnel have an opportunity to retreat to a safe structure.
- There is no mention of monitoring devices or vapor dispersion equipment or strategies. This is a significant issue and should be addressed.
- There is no mention of immediately halting production during an event and how this can be quickly and safely done.
- There is no mention of using a flare stack to divert in-system hydrogen away from fire/ explosion area so it is unclear if this is even being considered.
- The proponent states throughout that incidents are unlikely but does not quantify that so proper protective design and operation should rather depend on some degree of conservative design to protect from even unlikely events.

#### 17.3 Untreated effluent release

- It is not clear how this will be monitored or responded to other than being sent to onsite stormwater system. Is there any additional treatment/ recirculation considered or is the plan to use dilution as treatment? This should be addressed.
- If the main new pollutants of concern may be ammonia or water treatment and pH adjustment chemicals (all water soluble), how will these be controlled by an oil/ water separator? This is a significant gap that if unaddressed could lead to adverse effects on the environment.

#### 17.6 Hazardous materials spills

- There is no discussion of separate containment and sewerage for incompatible materials. This should be addressed.



# Guidance for Reviewers – Environmental Assessments

## Environmental Assessment Branch, Environment and Climate Change

---

### Summary of Recommendations: (provide in non-technical language)

There is a general lack of information and technical gaps in the proponent's draft plans to address production, accidents and malfunctions.

For ease and consideration, we have provided recommendations for how the information gaps could be addressed:

1. To ensure appropriate handling and disposal, provide additional detail regarding wastewater sludge generated at the wastewater treatment plant, including quantity and quality and considering the potential impact of anti-scalants and anti-foulants on sludge quality.
2. Provide details on how and where oxygen is to be stored and handled, including venting, to avoid risks associated with accelerated corrosion of equipment, risk of combustion or explosion if near combustible materials, impact on human health. It is noted that planned venting of 999 tonnes per day of oxygen needs some mitigation to avoid ground level issues.
3. Provide details regarding how hydrogen gas emissions and releases will be minimized and contained, including but not limited to, flaring.
4. Provide a detailed plan of how power to facility infrastructure will be maintained during regular operations and in the case of power outage (unplanned event). The plan should account for unplanned power outages of at least 72 hours.
5. Provide clarity around how flares will be maintained, including the fuel source and fuel storage.
6. Provide a risk matrix that considers probability and severity of accidents, malfunctions and unplanned events to assist in developing preventions, responses and mitigations.
7. Allowing for 15 minutes to detect ammonia leaks does not appear to meet industry standards. Please review and provide an alternative that can be shown to achieve best available technology, economically achievable (BATEA).
8. Address the interaction of ammonia releases with water, considering, but not limited to, release of ammonia during precipitation events and prevention/mitigation of ammonia releases in aquatic environment.
9. Provide updated modeling and mitigation for a worst-case scenario, which must consider failed lines and/or tanks, and must also consider cascading effects. Consider whether redesign or replacement of any facility components are required, particularly regarding storage and handling of materials. Provide details around stop-work planning during an event.

## Guidance for Reviewers – Environmental Assessments

Environmental Assessment Branch, Environment and Climate Change

---

10. Expand responses to consider blast waves of smaller magnitude (e.g. 0.2 kPa, 1 kPa, and 5kPa). In the responses, the proponent must consider more probable scenarios where staff are not able to shelter in the control room.
11. Responses must also consider diversion of in-system hydrogen away from fire/explosion, such as by using a flare-stack.
12. Provide details on how accidents, malfunctions and unplanned events will be prevented, including, but not limited to, monitoring devices, vapour dispersion equipment, and flaring.
13. Provide details on how effluent can be safely discharged to the stormwater system under both operational and worst-case scenarios. Consider such impacts to aquatic environment as, but not limited to, temperature, pH, presence of contaminants like ammonia, water treatment chemicals, and metals.
14. Provide detail on how compatibility of materials will be considered during operations to limit the risk of incidents or accidents. Also provide detail on how incompatibility of materials will be considered during a release (e.g. containment, clean-up and disposal).

---

Date: 17 January, 2023

To: Renata Mageste de Silva, Environmental Assessment Officer

From: Environmental Services, Nova Scotia Public Works

Subject: **EverWind Point Tupper Green Hydrogen and Ammonia Project, Richmond County, Nova Scotia**

---

**Scope of review:**

This review focuses on the following mandate: Traffic Engineering and Road Safety Impacts for the EverWind Point Tupper Green Hydrogen and Ammonia Project

**Technical Comments:**

- 1. The requirement for a Working Within Highway Right-of-Way Permit has been identified by the proponent. Any impact to provincially owned roads will require this permit. Table 3.1 (page 12) references widening and resurfacing existing access roads and developing additional road networks for the Industrial Facility as well as the Transmission Interconnection Line. This work could potentially have an impact on the provincial road network.*
- 2. With regards to the modifications required for the Transmission Interconnection Line, there appear to be work areas that pass over Port Malcolm Road, as well as Highway 104 and Trunk 4 (as shown in drawings 1 and 9). If any road closures are required, the proponent must seek Departmental approval, depending on the class of the road.*
- 3. All work areas on provincially owned roads, related to points 1 and 2 above, will require compliance with the appropriate sections of the Nova Scotia Temporary Workplace Traffic Control Manual in terms of work areas and traffic control. All traffic control plans required for the work will be the responsibility of the proponent and must be approved by the local Traffic Authority.*
- 4. The requirement for a Special Moves Permit has been identified by the proponent. The proponent should contact the Nova Scotia Department of Public Works contact for Special Moves. Spring Weight Restrictions may also need to be considered, depending on the transportation route. The proponent must discuss this with the Nova Scotia Department of Public Works and assess as required.*
- 5. Section 8.6 "Transportation (page 144) provides a good description of the local road network. The proponent makes a reference to "perimeter roads" in Section 4.3.1. It is assumed that these are the roads that are in the vicinity of the*

*proposed location (Port Malcolm Road, Bear Island Road and Industrial Park Road).*

- 6. Traffic Mitigation Measures on page 226 for both the construction and operations phases appear to be adequate to handle and transportation and traffic related issues (obtaining necessary permits, transport outside peak hours, etc).*
- 7. Appendix C – Regulatory Review – With regards to working within the Highway Right of Way Permit, it should be noted that, as per the Public Highways Act (Sections 22 and 42), no activity is permitted within 60 m of the ROW line for a Controlled Access Highway, and 100 m from the road centerline for other highways. Additional permits are identified (beyond Working Within Highway Right of Way and Special Moves Permits) and may have transportation and traffic impacts such as: Transportation of Dangerous Goods, Transportation of Explosives, and blasting. If provincially owned roads must be closed as a result of these activities, additional permits are required to comply with Motor Vehicle regulations. Additionally, there is a reference to “NSTIR for Transportation of Dangerous Goods; this should be updated to “NSDPW.”*

**Summary of Recommendations: (provide in non-technical language)**

- 1. Contact the Local Area Manager for any Working within Highway Right-of-Way Permits that may be required. This would also be the first contact for any issues to do with road closures, traffic related concerns or spring weight restrictions.*
- 2. Any traffic control plans (as required) must be prepared by the proponent, follow the appropriate guidelines of the Nova Scotia Temporary Workplace Traffic Control Manual, and be approved by the Local Traffic Authority.*
- 3. When a Special Moves Permit is required, please contact the Departmental Contact for Special Moves, Manuel Abreu (Manuel.Abreu@novascotia.ca), for any required information.*

Date: January 17, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Environmental Engineer – Groundwater Program, Sustainability and Applied Science Division;  
Reviewed by Elizabeth Kennedy, Director, Sustainability and Applied Science Division

Subject: **Everwind Point Tupper Green Hydrogen/Ammonia Project, Richmond Co., Nova Scotia**

---

**Scope of review:**

This review focuses on the following mandate: groundwater, including water quality and quantity.

The review is conducted of materials provided by the proponent during the EA registration process, limited to sections related to general project information and groundwater.

**Technical Comments:**

The proposed project is to develop and operate a green energy hydrogen and ammonia production facility to transport industrial/commercial products internationally. It is proposed to be located within the existing industrial area near Port Hawkesbury on the Strait of Canso. The project consists of the production facility, power transmission line, and a pipeline to the existing wharf area.

Based on a review of the Well Logs Database, the proponent identified 155 water wells within a 2km radius of the project area. The majority of the wells are closer to the transmission line vs the production facility. Blasting is not anticipated for construction of the transmission line, reducing the potential for water quantity impacts on nearby wells.

It is important to note that the Well Logs Database records and mapping based on these records may not be a complete representation of all water wells within the specified area. There may also be accuracy/errors within the original data set. Field truthing and field surveys would need to be completed to verify the information.

Nine wells were identified within 2km of the production facility; however, field validation of the water wells did not occur. Where blasting is a potential during the construction of the facility, only two wells were identified within 800m, and they are owned by the proponent. If blasting is required a pre-blast survey should include any nearby water wells.

No groundwater pumping is proposed as a part of the activity. Instead, a surface water supply will be used to provide water to the site. If water is planned on being extracted in excess of 23,000 L/day from the water wells a separate Water Withdrawal Approval would be required.

During the operation of the facility, potential impacts to groundwater quality were only identified as a result of accidents, malfunctions, and unplanned events. Spill response and contingency planning are outlined in the EARD. The proponent proposes to update the existing Point Tupper Terminal groundwater monitoring network to monitor for potential impacts to groundwater quality and quantity as a result of the activity.

A phase I ESA was completed for the site, contaminants of potential concern were identified as BTEX, metals, inorganics, organochlorine pesticides, PAHs, PCB, PHC and VOCs. Historical groundwater monitoring has not demonstrated any exceedances in the parameters listed above.

<b>Gap Assessment</b>			
<b>Identify Gap</b>	<b>Can it be addressed in another permit/approval or with a T&amp;C?</b>	<b>Define/provide detail</b>	<b>Risk of gap and this approach?</b>
Updated groundwater monitoring program	Yes	Updates to groundwater monitoring program were identified as required by proponent, details were not provided in the EARD.	Existing monitoring wells are not sufficient to monitor for possible contamination as a result of proposed site activities.
Groundwater Monitoring criteria	Yes	Clear site-specific groundwater regulatory criteria and points of compliance need to be developed in consultation with Department for review and approval.	The proposed project is located in a highly industrial area, background or existing concentrations of contaminants of concern will need to be understood by the proponent.  Groundwater criteria, monitoring to confirm compliance, and actionable steps the proponent will take in response to trends and exceedances are needed to manage potential impacts on groundwater.
Baseline groundwater quality	Yes	Baseline water quality was not provided in the EA submission.  Baseline should be established prior to startup of the facility.	Need baseline water quality to determine the current situation onsite for future reference.

**Summary of Recommendations:**

At a minimum, a site groundwater monitoring plan should be developed or updated to initially identify and record baseline conditions and then for longer term compliance monitoring of groundwater quality and quantity. Monitoring wells should be sited, and water quality monitored, to capture potential impacts from site activities.

In addition, site-specific groundwater criteria and points of compliance need to be developed in consultation with the Department. A statistical analysis and evaluation of groundwater background/baseline water quality parameters will assist in developing site-specific groundwater quality criteria. Contingencies should be built into the groundwater monitoring plan or an environmental site plan for if groundwater quality exceed site-specific criteria.

Two wells are located onsite, if they are planned to be used to obtain water in excess of 23,000 l/day a Water Withdrawal Approval will be required. Additional groundwater studies would be required to support the additional application, as outlined in the *Guide to Groundwater Withdrawal Approvals*.



**Environment and Climate Change**

Date: January 18, 2023  
To: Renata Mageste da Silva, Environmental Assessment Officer  
From: Air Quality Protection Advisor, Air Quality Unit  
Subject: EverWind Hydrogen and Ammonia, **Inverness County, Nova Scotia**

**Scope of review:**

This review focuses on the following mandate: Air Quality

**Technical Comments:**

This project involves the electrolysis of water to form hydrogen gas that is then converted to ammonia through the Haber-Bosch process. Ammonia is stored on-site until it can be transferred by pipeline to a cargo ship for export.

The primary impacts to air quality from this proposed development are releases from the process and the storage tank, upset event flaring, and accidental releases from the pipeline during transfer.

The assessment notes that there are continuous emissions of gases from the process and the storage tanks. It also notes that upset event flaring may occur once per year for 15 minutes from the process and for one hour from the storage tank.

A screening assessment, using SCREEN3, was prepared by Ramboll based on engineering assumptions from Hatch. The assessment was centred on the predicted occurrence of the upset events, and that the upset events occur at the same time.

The screening assessment determined that this scenario would not result in an exceedance of the current ambient air quality criteria in Schedule A of the *Air Quality Regulations* or surrogate standards where no Nova Scotia AAQC are reported for a particular pollutant. Baseline concentrations were not included in this assessment.

No assessment was made of the impact of continuous emissions from the process and the storage tank, and the potential impact should a leak occur while loading ammonia onto the ship.

The Proponent minimizes the effect of liquid ammonia releases on air quality, but ammonia liquid will quickly vaporize at ambient temperature and produce air effects. A liquid release would also contain significantly more product than a vapour release so the size and nature of the impact would likely be greater.



## Guidance for Reviewers – Environmental Assessments

Environmental Assessment Branch, Environment and Climate Change

---

### **Summary of Recommendations: (provide in non-technical language)**

The air assessment should be updated to include the impact of flaring, continuous emissions from site activities, effect of liquid ammonia vaporizing and the local baseline concentrations for comparison with applicable ambient air quality standards.

Note that the *Environmental Goals and Climate Change Reduction Act* requires that the ambient air quality standards are updated by 2025. The facility may be required to demonstrate compliance with the new standards within four years of the standards becoming effective.

For ease and consideration, we have provided recommendations for how the information gaps could be addressed:

1. Provide air modelling which includes the impact of flaring, continuous emissions from site activities, effect of liquid ammonia vaporizing and the local baseline concentrations for comparison with applicable ambient air quality standards, with appropriate mitigation applied as necessary.
2. Provide a detailed management plan that sets out appropriate steps for handling emergencies such as a leak during loading.



**Environment and Climate Change**

Date: January 18, 2023  
To: Renata Mageste da Silva, Environmental Assessment Officer  
From: Air Quality Protection Advisor, Air Quality Unit  
Subject: EverWind Hydrogen and Ammonia, **Inverness County, Nova Scotia**

**Scope of review:**

This review focuses on the following mandate: Noise

**Technical Comments:**

This project involves the electrolysis of water to form hydrogen gas that is then converted to ammonia through the Haber-Bosch process. Ammonia is stored on-site until it can be transferred by pipeline to a cargo ship for export.

The primary impacts to noise levels from this proposed development are process compressors, the movement of materials and shipping. The facility is due to operate continuously.

The proposed facility would be located in an elevated position to the north-east of the Strait of Canso. Several receptors are located on the opposite shore. There does not appear to be any natural noise barriers between the site and the receptors, and the site is laid out so that some of the noisier operations are not shielded by other site operations.

The assessment used the standard screening method for noise where the noise level decreases by 6dB per doubling of the distance. This is a physical attribute of noise attenuation that does not account for topography, meteorology or any other factors that could influence changing noise levels. No baseline noise levels were included in the assessment.

Through this method, the assessment concluded that the noise level would be below current noise criteria at the receptor locations.

## **Guidance for Reviewers – Environmental Assessments**

Environmental Assessment Branch, Environment and Climate Change

---

### **Summary of Recommendations: (provide in non-technical language)**

The assessment for impacts from noise (construction and operation) should be assessed using a computational model (e.g., CadnaA) and should include baseline noise levels at the receptor locations. The resulting combined noise level should then be compared with the maximum permissible noise levels.

Note that the Guidelines for Environmental Noise Measurement and Assessment are currently under review and the update will become effective early in 2023.

For ease and consideration, we have provided recommendations for how the information gaps could be addressed:

1. Provide an impact assessment for noise (construction and operation) using a computational model (e.g., CadnaA) which includes baseline noise levels at the receptor locations and compares results to the maximum permissible noise levels.

Date: January 18, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Wetland & Water Resources Specialist, Water Resources Management Unit

CC: Director, Water Branch and Manager, Water Resources Management Unit

Subject: EverWind Fuels Point Tupper Green Hydrogen/ Ammonia Project, Cape Breton, Nova Scotia

---

**Scope of review:**

The following review of the Point Tupper Green Hydrogen/ Ammonia Project (Cape Breton, NS) Environmental Assessment Registration (EverWind Fuels) is specific to the mandate of the NSE Wetlands Program. The review considers whether the environmental concerns associated with wetlands and the proposed mitigation measures to be applied have been adequately addressed within the Environmental Assessment.

**Reviewed Documents:**

Point Tupper Green Hydrogen/ Ammonia Project- Phase 1 Environmental Assessment Registration Document, EverWind Fuels Company, December 2022.

**General Comments:**

No wetlands have been proposed for alteration.

Industrial Facility Footprint

The EARD states that no wetlands were located within the Industrial Facility footprint; however, several human influenced drainage features were identified. The EARD only mentions three previous borrow pits in the Industrial Facility footprint and does not explain why the drainage areas are not considered wetlands.

The EARD does not mention how the wetlands (WLI, WLF, WLG, etc..) south of the Industrial Facility may be affected. Pre and Post flows were not assessed. If pre and post are not matched, then there is potential for indirect wetland alteration.

Transmission Interconnection Line

40 wetlands were identified within the Transmission Interconnection Line (70 m wide corridor) consisting of 11 bogs, 1 fen, 1 floodplain, 5 shrub swamps and 22 treed swamps. Of the 40 wetlands identified, 10 are considered Wetlands of Special Significance (WSS). The EARD states, the construction of the Transmission Interconnection Line will not directly impact or require the alteration of any wetlands as the selected route and pole spacing (160 m) allows wetlands to be spanned in their entirety. The EARD also mentioned that vegetation clearing would not occur within WSS. It is not clear if vegetation clearing will occur within the non WSS wetlands. No pole placement was provided in this EARD, and therefore, it is hard to determine the footprint of the project and what wetlands have the potential to be impacted. The EARD states CAUS (or selected contractor for the construction of the Transmission Interconnection Line) will have

demonstrated experience and internal protocols for working near protected wetland areas, these protocols will be implemented during all construction activities completed in the vicinity of these locations. These protocols should be reviewed by ECC to determine no indirect alteration occurs to the wetlands during construction.

Wetland surveys included wetland delineation of all wetlands within the Project Boundary along with functional assessments (FA) for select representative wetlands. It is not clear which wetlands had FAs completed. As a requirement for determining WSS, WESP AC functional assessments are required as the WESP-AC interpretation tool identifies WSS based on function.

Gap Assessment			
Identify Gap	Can it be addressed in another permit/approval or with a T&C?	Define/provide detail	Risk of gap and this approach?
Drainage features in the Industrial Facility Footprint not identified as wetlands.	Yes, T&C.	Explain why the drainage features are not considered wetlands. If all three components of a wetland (hydrology, hydric soils and vegetation) are present, and it does not meet an exemption in the <i>NS Wetland Conservation Policy</i> , then they are considered wetlands.	Not all wetlands identified and potential for wetland loss.
Potential indirect wetland alteration adjacent to the industrial facility.	Yes, Industrial Approval	Potential for indirect alterations to wetlands south of the industrial facility. No details were provided on site surface water management.	Risk of indirect alteration to wetlands south of the industrial facility.
Wetland functional assessments were not completed for all the wetlands in the project footprint.	Yes, T&C	Provide information on which wetlands had WESP-AC Functional Assessments (FA) completed. WESP-AC FAs should be completed for all wetlands that have the potential to be directly or indirectly impacted within Project Area or hydrologically connected to project footprint. Additional wetlands have the potential to be Wetlands of Special Significance with the WESP-AC interpretation tool, therefore any wetlands with the potential for alteration should have a WESP-AC FA completed.	Not all potential WSS have been identified and there is the potential for indirect wetland alterations.
Transmission Line pole placement not identified.	Yes, T&C and/or industrial approval	Pole placement was not provided and buffers around wetlands were not described. Confirm that pole placement is not in wetlands.	Potential for wetland alteration/loss.

**Summary of Recommendations:**

There is uncertainty around the human influenced drainage features within the Industrial Facility. The proponent should provide details on soils, vegetation, and hydrology of all these features to either prove or disprove that three components of a wetland (hydrology, hydric soils and

vegetation) are present. If wetland is present, a ECC Wetland Alteration Approval would be required.

Functional Assessments were not completed for all wetlands within the project boundary. The proponent should provide wetland functional assessment results for all wetlands with the potential to be directly/ indirectly altered.

Prior to construction, the proponent should provide to ECC a construction plan with the pole placement around the wetlands and if possible, maintain a 30 metre buffer. A wetland management plan including wetland mitigations should be provided to ensure wetland avoidance and protection. Only hand clearing should occur in wetlands otherwise it is considered wetland alteration and an approval is required. The *Wetland Conservation Policy* only allows alteration to WSS for necessary public function projects.

As part of the application for the Industrial Approval, the Approval Holder (s) should submit a site surface water management plan to the department for review and acceptance. The plan should assess the potential indirect impacts to downstream water resources, including watercourses and wetlands and present potential mitigations.

Should the Project be approved, the proposed activities will be subject to the ECC Wetland Alteration Approvals process prior to any wetland impacts. The proponent should utilize Nova Scotia's Wetland Alteration Application's Guided Template for the permit applications.



**Environment and Climate Change**

Date: January 20, 2023

To: Bridget Tutty, Environmental Assessment Officer

From: Climate Change Division Staff; **Satya Ramen, Manager, Research and Knowledge Mobilization**

Subject: EverWind Fuels – Point Tupper Green Hydrogen/Ammonia Project, Phase 1, Richmond County, Nova Scotia

**Scope of review:**

This review focuses on the following mandate: Climate Change - Adaptation and Mitigation

**Technical Comments:**

**Adaptation**

- The EA registration document includes a description of the local climate (Port Hawkesbury Climate Station) based on climate data from 2011-2021 (Section 6.1). The 'Guide to Considering Climate Change in Project Development in Nova Scotia' recommends 30 years of climate data to adequately assess climate variability.
- Projected climate changes under a high emissions scenario are compared to baseline (1981-2020) with respect to temperature, precipitation, wind and sea level rise in the project area using data from the NRCan and the Canadian Centre for Climate Services for the Port Hawkesbury area (Section 6.3). More frequent extreme weather events are also highlighted as a potential environmental effect that the project will have to consider.
- The EA registration document identifies some potential adverse and positive effects with respect to climate change impacts on the project (Section 15.1) and identifies some potential opportunities for mitigation (Section 15.2). The document also describes how the project layout will help mitigate some climate impacts (Section 1.4.2). These effects are not assessed within a risk management framework, as recommended in the 'Guide to Considering Climate Change in Project Development in Nova Scotia'.
- The EA registration document does not provide detailed design criteria to incorporate climate change projections into infrastructure design (e.g. stormwater system and effluent treatment ponds) but indicates that infrastructure will be designed considering conservative (e.g. high emissions) projections of climate (e.g. temperature and precipitation) (Section 6.3.1).

## Guidance for Reviewers – Environmental Assessments

Environmental Assessment Branch, Environment and Climate Change

---

- The probability and severity of impacts of sea level rise and storm surge on the existing marine terminal infrastructure, and what types of adaptation actions may help mitigate these potential impacts are not identified as per the 'Guide to Considering Climate Change in Project Development in Nova Scotia'. Section 15.2 of the registration document indicates that “where practical, existing infrastructure will incorporate design strategies to moderate the effects of sea level rise.”
- The registration document does not indicate the probability and severity of water quality and quantity impacts associated with the Landrie Lake freshwater supply as a result of the changing climate (e.g. has the Landrie Lake Water Utility incorporated climate change projections into seasonal and long-term water availability estimates?).

### Mitigation

- The proponent identifies various project stages and elements in the registration document, some of which have potential to emit greenhouse gases directly (construction, operation of flares, refrigeration) and others indirectly like electricity supply.
- The greenhouse gas contribution from the indirect use of electricity has been estimated and a mitigative commitment to ensure the source of electricity is low or non-greenhouse gas emitting has been made.
- The greenhouse gas contribution and measures for mitigation related to the construction have been provided and estimated to be of negligible impact.
- Concerning the operation of the plant, the greenhouse gas impact of cooling units has been provided however potential annual quantities of greenhouse gas emissions expected from the other processes identified in the operation of the plant have not been provided.

### Summary of Recommendations: (provide in non-technical language)

#### Adaptation

- The proponent should use 30 years of climate data to adequately assess climate variability and characterize the local climate as per the province's Guide.
- During detailed design of project infrastructure components (e.g. stormwater system and wastewater ponds) the proponent should use current design guidance from Environment and Climate Change Canada and the latest available climate change projection data (e.g. CMIP6 will be released this year).



## Guidance for Reviewers – Environmental Assessments

Environmental Assessment Branch, Environment and Climate Change

---

- The proponent should provide more detail on the Landrie Lake water system and whether the system can accommodate the estimated freshwater requirements over the longer term based on climate projections and during seasonal periods of drought conditions so that opportunities for mitigation may be identified.
- The proponent should assess the probability and severity of sea level rise/storm surge impacts to the existing marine terminal infrastructure over the term of the project so that opportunities for mitigation may be identified.
- The proponent should consider adopting a risk management framework as recommended in the 'Guide to Considering Climate Change in Project Development in Nova Scotia' to determine which impacts present the highest risks to the project and to assist in the determination of priorities for implementing adaptation measures where required.

### **Mitigation**

- The proponent should estimate the potential direct greenhouse gas emissions expected from the operation of the project. Most significant of this potential emission will be that from flaring the off gases using fuels on site annually related to the production and storage of ammonia. Emissions during construction are expected to be negligible and do not need to be estimated in similar manner

# Guidance for Reviewers – Environmental Assessments

## Environmental Assessment Branch, Environment and Climate Change

---



Barrington Place  
1903 Barrington Street  
Suite 2085  
Halifax, Nova Scotia  
Canada B3J 2P8

---

**Date:** January 18, 2023

**To:** Renata Mageste da Silva, Environmental Assessment Officer

**From:** Senior Water Resources Engineer, Water Resources Management Unit (reviewed by Director)

**Subject:** Everwind Fuels EA Submission

---

### Scope of review:

This review focuses on the following area: Hydrology & surface water quantity

### Documents reviewed:

The documents outlined below formed the basis for this EA review, and is referred to as the 'the EARD' through the rest of this memorandum:

- Everwind Point Tupper Green Hydrogen/Ammonia Project – Phase 1 – Environmental Assessment Registration Document, accessed from <https://novascotia.ca/nse/ea/everwind-point-tupper-green-hydrogen-ammonia-project/>

### Review Comments:

#### Water use

- Appendix P outlines a Memorandum of Understanding between the Landrie Lake Water Utility (LLWU) and the Everwind Fuels Company that sets out proposed terms to support negotiating a water supply agreement, where Schedule "A" outlines anticipated agreement particulars of a daily delivery volume of 2.5 million US gallons per day (9.5 ML/d).
  - To note, Table 5.2 of the document outlines a Nominal Flow Rate of 367.8 m<sup>3</sup>/hr (8.8 ML/day) and not the 345 m<sup>3</sup>/hr (8.3 ML/day) outlined in text.
- Table 5.11: Outputs (pg 60)
  - An output of water vapour is reported at 227 m<sup>3</sup>/hr, which is described as being "Freshwater, estimated evaporative losses from cooling tower during peak cooling days (summer)." This value is >3x larger than the value reported in Table 5.2 related to 'Cooling Water', which has a design flow rate of 68.5 m<sup>3</sup>/hr. The EARD also states that "More frequent and intense droughts would decrease water availability and quality." (pg 237)
    - Based on what is presented, it cannot be determined how the evaporative losses output is considered in the overall water demands for the activity, and particularly if estimates of demand used in the Utility's assessment of water supply availability during drier summer months are accurate and without impacts to the environment and other users.
    - The reported losses from the system are approximately 50% of the total design flow rate (i.e., 227 m<sup>3</sup>/hr in table 5.11 vs 452.5 m<sup>3</sup>/hr in Table 5.2) - assessment

# Guidance for Reviewers – Environmental Assessments

## Environmental Assessment Branch, Environment and Climate Change

---

and evaluation of recovery options for these losses is warranted and aligns with requirements for Water Conservation Plans outlined in the NSECC Guide to Surface Water Withdrawals.

- Table 13.20 outlines raw water demand for various other Landrie Lake Water Utility water users
  - Estimates of raw water demand from other users appear to be based on actual water uses in 2020, and not the water amounts the Utility has agreements to supply, which would affect estimates of actual water availability.
- The water needs for this project would place Everwind amongst the top 10 users of surface water in Nova Scotia.

### Surface water resources

- “No additional monitoring or follow-up is recommended for waterbodies, watercourses, fish/fish habitat, or wetlands as Project activities will not occur within or directly impact these features.” (pg 205)
  - From a review of available topography, there is the potential for indirect impacts to downstream water resources as a result of the proposed site surface water management. Where the stormwater pond is fulfilling multiple uses (e.g., receives site runoff, treated discharge, blowdown from cooling water systems) and is reported to discharge to the existing effluent treatment system, it appears that the site area can be considered as a reduction of contributing area to downstream water resources, including WC-IV,V,VI,VII.
  - No pre and post development watershed delineations are provided in the submission to support understanding the significance of potential drainage area changes and other associated statements in EARD, such as “previous developments have resulted in a severely altered and unnatural hydrological regime”

### Site Water Management

- The stormwater pond is intended to capture site runoff as well as treated discharge from WWTP and blowdown from cooling water systems
- The stormwater pond is reported to discharge to the existing effluent treatment system, but also may be used for fire water, and may also be discharged to the surrounding environment
- Collected stormwater quantities is listed as TBD in Table 5.11
- Information to support sufficiently understanding and assessing management of site surface water is unavailable.

Summary of Gaps/Risks			
Identify Gap/Risk	Can it be addressed in another permit/approval or with a T&C?	Define/provide detail for how it could be addressed	Risk of gap and this approach?
Assessment of potential impacts to WC-V and WC-VII as a result of reduction of upstream contributing area not completed	Yes, T&Cs	<ul style="list-style-type: none"> <li>• EA condition for this to be assessed as part of the site surface water management plan to be submitted with the Industrial Approval</li> </ul>	<ul style="list-style-type: none"> <li>• There is a risk that mitigation of impacts to downstream watercourses cannot be completed effectively and/or feasibly,</li> </ul>

# Guidance for Reviewers – Environmental Assessments

## Environmental Assessment Branch, Environment and Climate Change

		application	affecting project outcomes
Design objectives and planned operation of stormwater pond not provided in sufficient detail to support assessment of potential impacts	Yes, T&C	<ul style="list-style-type: none"> <li>EA condition for this to be assessed as part of the site surface water management plan to be submitted with the Industrial Approval application</li> </ul>	<ul style="list-style-type: none"> <li>Where the stormwater pond is intended to fulfill many purposes and minimal details are currently available to support evaluation, there is a potential risk that once final details are received and reviewed by NSECC, additional mitigations or changes to facility design/operations to meet requirements may come forward</li> </ul>
Landrie Lake Water Utility (LLWU) is committed to supplying water for the Project, however no assessment of the sustainability of the withdrawal has been provided in this submission. The current LLWU approval is based on outdated standards and will be renewed in 2025 based on our updated approval template and current Guide to Surface Water Withdrawal Approvals.	Yes, T&C	<ul style="list-style-type: none"> <li>EA condition to submit confirmation from the LLWU that the sustainability of the withdrawal has been confirmed based on the considerations outlined in the Guide to surface water withdrawal Approvals, including evaluation of the seasonality of water supply, other allocations, DFO requirements and climate change considerations.</li> </ul>	<ul style="list-style-type: none"> <li>Risk that updated sustainable yield calculations identifies impacts that require mitigation and/or a need for changes to utility operations that may impact availability of water to the project during certain scenarios (e.g., drought conditions).</li> </ul>

### Summary of Recommendations:

- As part of the application for the Industrial Approval, it is recommended that the company submit a site surface water management plan to the Department for review and acceptance. This plan would include details related to the design of any on-site surface water collection ditches and pond(s) completed by a qualified professional engineer or geoscientist licensed to practice in Nova Scotia, and include a plan to monitor compliance during the different operational phases of the Project. The plan would include details to support the mitigation of scour, flooding, sediment loading, and thermal charging related to discharges from the system, where appropriate. The plan would consider the potential impacts of climate change in the design criteria for site surface

## Guidance for Reviewers – Environmental Assessments

### Environmental Assessment Branch, Environment and Climate Change

---

water management features. This plan would also assess the potential indirect impacts to downstream water resources, including WC-IV,V,VI,VII and associated wetlands, and present potential mitigations, including areas requiring watercourse/wetland alteration applications, where appropriate. It is recommended that terms and conditions of approval include requirements to implement the approved surface water management plan once deemed acceptable by the Department and provide an evaluation of its effectiveness supported by site monitoring results as part of applications for renewal of the Industrial Approval.

2. As part of the application for the Industrial Approval, it is recommended that the company submit a Water Conservation Plan (in line with what is outlined in the NSECC Guide for Surface Water Withdrawals) that includes an assessment of the water uses outlined in Table 5.2 and the water related losses stated in 5.11, with justification for how these processes have been assessed from a water conservation perspective.
3. As part of the application for the Industrial Approval, it is recommended that the company submit a letter from the LLWU that confirms the sustainability of the withdrawal in consideration of the requirements outlined in the Guide to Surface Water Withdrawals, including hydrological assessment, the potential impacts of climate change on water availability within the reservoir, and identification of other potential impacts resulting from this additional water use.
4. It is recommended that a detailed sediment and erosion control plan for the industrial site activities (including roadworks) be developed by a qualified professional and is required to be submitted as part of any industrial approval application for NSECC review and approval prior to construction activities, including clearing, grubbing, and stripping, take place. In addition to this plan and prior to commencement of the project, it is recommended that the applicant provides details for review and acceptance by NSECC surrounding the approach to mitigate potential impacts to local drainage patterns resulting from the roadworks proposed by the project.
5. It is recommended that a detailed sediment and erosion control plan focused on the proposed transmission line be developed by a qualified professional and submitted for NSE review and approval prior to construction activities, including clearing, grubbing, and stripping, take place.

## Fisheries and Aquaculture

---

Date: January 18, 2023

To: Renata Mageste da Silva, Nova Scotia Environment and Climate Change

From: Executive Director, Policy and Corporate Services  
Nova Scotia Department of Fisheries and Aquaculture

Subject: EverWind Point Tupper Green Hydrogen/Ammonia Project – Environmental Assessment

---

Thank you for the opportunity to review the EverWind Point Tupper Green Hydrogen/Ammonia Project documents.

The Department of Fisheries and Aquaculture has the following comments:

- The Department does not anticipate risks to the commercial harvesting and marine activities within the Department's mandate.
- There are no recreational fishery concerns pertaining to this project.
- There are 11 shellfish leases, 2 finfish leases and 6 proposed shellfish leases within 25km of the proposed development.

Date: January 18, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Surface Water Quality Specialist, Water Resource Management Unit; **Sign-off by Manager/Director**

Subject: EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1, Richmond County, Nova Scotia

---

**Scope of review:**

EverWind Fuels Company provided a submission to Nova Scotia Environment and Climate Change (NSECC) dated December 2, 2022, titled *EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1 Environmental Assessment Registration Document*.

This review focuses on the department's surface water quality mandate.

**Technical Comments:**

Surface Water

- The proponent has chosen to use freshwater to meet its process demands, and selected Landrie Lake as the source of this freshwater supply, through the Landrie Lake Water Utility.
- The raw freshwater pipeline and Transmission Interconnection Line travel near to the Landrie Lake shoreline and/or cross several of its tributaries. Water quality within the Lake may potentially be indirectly impacted by sediment transport, erosion, and sedimentation generated by vegetation clearing and soil disturbance activities during construction.
- The facility will cover 23.6 ha, of which 18.7 ha will be occupied by laydown areas and other infrastructure. The proponent will build an unspecified number of new roads to facilitate access to facility components. The proposal indicates plans to create two separate drainage management systems: 1) external (upstream/clean) and 2) internal (onsite & potentially contaminated). In addition, it proposes to develop an erosion and sedimentation control plan.
- Ammonia produced by the facility will be stored in liquid form. Although the proponent has identified the possibility of a liquid ammonia leak, it has implied that if this occurs, the liquid will immediately vaporize and thus will not impose any direct risks to surface water quality, but rather to air quality instead.

## Wastewater

- The proposal identified five distinct wastewater sources for the proposed facility:
  - demineralized potable water system wastewater
  - ammonia plant blowdown
  - service water drains
  - cooling tower blowdown
  - sanitary wastewater
- The overall wastewater system presented includes four components:
  - Wastewater treatment facility (WWTP)
  - Sanitary wastewater treatment facility (SWWTP)
  - On-site stormwater pond (SWP)
  - Effluent treatment system (ETS)
- The proposal did not identify specific wastewater treatment functions for the SWP and ETS. It is therefore uncertain if these system components can perform the wastewater treatment functions the proponent expects of them, and if the treated wastewater effluent discharged from these system components will meet compliance limits.
- The proposal did not present the physical location of the components of the wastewater system or how wastewater will flow between these components.
- Facility operators may redirect wastewater from the SWP to the ETS for final treatment before their ultimate discharge to the natural environment.
- Despite indicating specific wastewater sources and generalized inputs, the proposal did not identify specific substances that would constitute these waste streams.
- The proponent did not present expected concentrations of COPCs in raw (untreated) wastewater. This information normally supports wastewater treatment requirements.
- The registration document did not clearly identify or characterize the location(s) of treated wastewater effluent discharge from the SWP or the ETS. The EARD indicated that “Treated effluent to be discharged from the ETS is directed to a natural drainage where it will eventually dissipate into the Strait of Canso.” The proposal gave no further information about this “natural drainage” feature.
- The proposal did not identify a compliance monitoring approach or proposed compliance assessment points.



Gap Assessment			
Identify Gap	Can it be addressed in another permit/ approval or with a T/C?	Define / provide detail	Risk of gap and this approach
Proponent will build drainage systems but has not identified plans to submit a surface water management plan.	Yes, T/C	Require the development of a surface water management plan for the review and acceptance of the department.	Inadequately designed or maintained drainage management systems that do not account for erosion or sedimentation may impact the hydrology and water quality of receiving watercourses.
Hazard assessment of liquid ammonia spills or leaks does not identify any risk to surface water, assuming all liquid volatilizes completely.	Yes, T/C &/or IA	Explain why there is no expected risks to watercourses from ammonia spills. Expand mitigation plan to include responses to liquid ammonia spills.	Ammonia, particularly un-ionized ammonia, can be toxic to aquatic life in freshwater environment.
Wastewater treatment functions of stormwater pond (SWP) and effluent treatment system (ETS) not identified.	Yes, IA	The wastewater system directs all wastewaters to the SWP, but facility operators may pump these from the SWP to the ETS for further treatment. Identify what substances the SWP and ETS will treat and identify their capacity to perform this treatment.	Wastewater streams directed to wastewater system components incapable of performing adequate treatment will result in contaminated effluent discharged to receiving watercourses and potentially harming local aquatic life.
Wastewater effluents from the facility are not adequately characterized.	Yes, IA	Need full wastewater characterization to ensure wastewater treatment system effluent within acceptable limits for receiving waters. Must identify substances in wastewater sources, estimated concentrations in untreated effluent, treatment processes in each treatment system component, and estimated treated effluent concentrations for each substance. Must identify appropriate surface water criteria to protect aquatic life in receiving environment(s) and indicate treatment capacity to achieve these criteria.	Potential contaminants of concern in wastewater effluents are not identified. If discharged to receiving waters untreated or at elevated levels may harm aquatic life in receiving environments.

Receiving environments not adequately characterized.	Yes, IA	Clarify the discharge point(s) for the on-site stormwater pond (SWP) discharge – does it all go to the effluent treatment system (ETS), or is it mostly discharged to nearby watercourses?  Clarify if the “natural drainage” receiving treated ETS effluent is freshwater or marine.	Wastewater effluent discharge cannot be assessed if the discharge location(s) are unknown.  Risk to receiving environment may be understated or overstated if the receiving environment type (freshwater vs marine) is unknown or mischaracterized.
Compliance monitoring approach not identified.	Yes, IA	Identify proposed monitoring locations, frequency, parameters, and concentrations of these parameters for substances of concern in treated wastewater effluents.	Missing or incomplete compliance monitoring may permit elevated concentrations of contaminants reaching receiving watercourses. Such discharges could cause acute or chronic toxicity to aquatic life.

### Summary of Recommendations:

1. Submit a detailed surface water management plan, developed by a qualified Professional, as part of an industrial approval application for NSECC review and acceptance prior to construction and operation activities.
2. Expand hazard management response plan to address liquid ammonia spills.
3. Identify all substances the wastewater treatment system is intended to treat, the level of treatment that is required, and the capacity of the system to perform this treatment before the effluent is discharged to the receiving environment(s).
4. Identify appropriate surface water criteria to protect aquatic life in receiving environment(s).
5. Identify all wastewater treatment system discharge locations and confirm if these are freshwater or marine environments.
6. Submit a detailed compliance monitoring program including proposed monitoring locations, substances, frequency, and sampling/testing approach.

Date: January 18, 2023  
To: Renata Mageste da Silva, Environmental Assessment Officer  
From: ICE Port Hawkesbury & Sydney Offices  
Subject: EverWind Fuels -Point Tupper Green Hydrogen/Ammonia Project, Nova Scotia

---

**Scope of review:**

This review focuses on the following mandate: Surface water, groundwater, air quality, watercourse alteration.

**Technical Comments:**

- 1.4.3 Water Withdrawal (page 7)
  - The Proponent has engaged the LLWU and has an operating agreement to purchase the raw water from Landrie Lake.
- 3.2 (page 13)
  - Minimal details are provided in the submission with regards to decommissioning. A facility as complex as this should include a preliminary plan.
- 4.3.1.1 Industrial Facility (page 24)
  - Clearing activities are not anticipated to occur within 30 m of wetland or watercourse areas, should this be required, a Wetland and/or Watercourse Alteration Application (as applicable) will be submitted, and Approval will be obtained from NSECC prior to proceeding.
- 4.3.1.2 Transmission Interconnection Line Corridor (page 27)
  - Clearing activities are not anticipated to occur within 30 m of wetland or watercourse areas, should this be required, a Wetland and/or Watercourse Alteration Application (as applicable) will be submitted, and Approval will be obtained from NSECC prior to proceeding.
- 5.2.1 Raw Freshwater Intake (page 33)
  - The Project is expected to require an approximate daily average of 8.3 mega litres per day (ML/day) [equivalent to 345 cubic metres per hour (m<sup>3</sup>/hr)] of raw freshwater, which includes water consumption demands for hydrogen production via electrolysis, cooling water system make-up, fire suppression systems, and potable water.

- 5.2.1 Raw Freshwater Intake (page 34)
  - A memorandum of understanding (MOU) has been executed between the Proponent and the LLWU for the withdrawal of 9.5 ML/day [2.5 million US gallons per day (MG/day)] from Landrie Lake.
  
- 6.2 Acoustic Environment (page 71; Table 13.5, page 169)
  - The EA submission references the Town of Port Hawkesbury Noise Control by-law and the province's noise guideline which they acknowledge is under review and any revisions will be included as part of EMP.
  
- 7.1.3 Watercourses (page 86)
  - Field studies for watercourses were completed within the Industrial Facility (and all considered alternative layouts) between August and October 2022. Surveys included complete delineations along with an assessment of the watercourse's physical and habitat characteristics.
  
- 7.1.5 Wetlands (page 89)
  - Field studies for wetlands were completed within the Industrial Facility (and all considered alternative layouts) between August and October 2022. Surveys included complete delineations along with an assessment of each wetland's vegetation, soils, and hydrologic indicators.
  
- Environmental Management Plan (Appendix D)
  - A table of contents for the EMP exists but it does not appear any details have been provided.
  
- Surface Water Quantity
  - Breakdown for green hydrogen production water demand is not well explained in the document and it would appear that the requirement is much higher to produce per kg of H<sub>2</sub>. The other challenges are raw water feed treatment and water disposal.
  
  - It is important to determine the feasibility of the amount of water to produce green hydrogen each year including total amount of water withdrawn from LLWU and consumed for electrolysis. The water required by electrolyzers can be sourced from fresh water, seawater, and wastewater. The relationship between water withdrawal, consumption and energy systems and the balance between them must be understood and managed sustainably.
  
- Surface Water Quality
  - The Landrie Lake raw water contains elevated levels of iron, manganese and TOC which requires treatment to meet high purity electrolyser requirements which could lead a significant amount of water to produce a kilogram of hydrogen.

- In relation to water quality, Everwind Fuels will need to take an integrated approach and carefully think through the elevated levels of iron, manganese and TOC which is present in the Landrie Lake and identify the water implications while producing green hydrogen.
- Hydrogen Leaks and Potential Risks (Air Quality)
  - The current literature and scientific studies on green hydrogen does not provide any details in relation to the status of hydrogen leakage today due to data limitations. In the current scenario, there is a lack of technology for monitoring hydrogen leaks and therefore more research is required to calculate its net impact on global warming. This Environmental Assessment Registration Document doesn't capture hydrogen leakage and its consequences.
- Impacts of Green Ammonia
  - Although the green ammonia has a potential to decarbonize ammonia production and as a carbon-free product, it can still affect air quality and human health due to a fine particles and aerosol processes.
  - State-of-the art modeling approaches along with appropriate abatement practices in-place are needed to address the potential impacts of green ammonia production.

## **Summary of Recommendations: (provide in non-technical language)**

### Air Quality

- To address potential leakage, monitoring programs for green hydrogen should be implemented for all processes which include production, delivery, and end use. Furthermore, Everwind Fuels needs to have a plan for leakage mitigation measures and best practices. It is recommended to conduct Air Quality Dispersion Modeling to determine if the emissions from a source can meet a specific ambient air standard.

### Decommissioning Plan (Ref: 3.1, Page 13 & Table 4.2, Page 21)

- A preliminary decommissioning/reclamation plan should be provided with the IA application.

### Authorizations (Ref: 3.2, Page 13)

- A Conditions should be included ensuring that all authorizations to perform work on lands not owned by the proponent be included as part of the IA application, if not sooner.

### Raw Fresh Water Treatment (Ref: 5.2.2, Page 35)

- Potable water supplies must be registered and must comply with the responsibilities of a registered drinking water supply owner.

### Ammonia and Hydrogen Storage (Ref: 5.4 Page 46; Consequence Summary Report – Fireball Impact & Vapour Cloud Explosion)

- Set back distances should be established, with rationale, and included as part of the IA application, as a minimum.

### Wastewater Treatment (Ref: 5.9 Page 55)

- A wastewater treatment plan should be provided with the IA application, if not sooner.

### Sludge Management Plan (Ref: Table , Page 61)

A sludge management plan should be included as part of the IA application.

### Acoustic Environment (Ref: 6.2, Page 71)

- An EA Approval should reference need to be in compliance with the latest revision of the *Guidelines for Noise Measurement and Assessment*

Community Liaison Committee (CLC) (Ref: 11.5, Page 152)

- A requirement to create and maintain an active CLC should be a requirement of the EA Approval.

Complaint Management Procedure

A Complaint Management Procedure should be included as part of the IA application, if not sooner.

Environmental Management Plan (Ref: Appendix D)

An Environmental Management Plan (EMP) should be included 60 days prior to any work commencing on the site.



-



Date: January 18, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Environmental Health; **Sign-off by Manager, Colin Poirier**

Subject: EverWind Point Tupper Green Ammonia and Hydrogen Project – Phase I, **Richmond County, Nova Scotia**

---

**Scope of review:**

This review focuses on the mandate to protect public health from physical, chemical and biological hazards present in the environment. More specifically this review concentrates on 2 VC that were assessed for environmental impacts as part of the EA: Atmospheric Environment and Acoustic Environment.

**Atmospheric Environment**

The proponent has undertaken modelling to estimate the potential impacts of the project on air quality. Impacts to air quality were assessed to be low and with the implementation of mitigation measures air quality impacts were deemed not significant.

The proponent states that an Air Quality Monitoring Program will be created to establish baseline conditions at the Industrial Facility and to verify predicted project impacts.

The proponent also notes that air quality screening was based on early engineering and that screening level analysis should be re-visited if any changes are made to the Project's design related to Project emissions and source configuration.

**Section 17** of the EA describes work that was undertaken to assess the potential impacts from the accidental release of ammonia during the operations phase of the project. In one scenario modelled it was predicted that an accidental ammonia release could create an ammonia cloud that could impact air quality and human health at a distance of 3,371m from the source of the spill. Approximately 70 residential dwelling are located within 3,371m of the industrial facility.

ERPGs estimate the concentration at which most people will begin to experience health effects if they are exposed to a hazardous airborne chemical for 1 hour. It should be noted that sensitive members of the public – such as old, sick or very young people- - aren't covered by these guidelines as they may experience adverse effects at concentrations below the ERPG value.

**Recommendations:**

1. The development of an Air Quality Monitoring Program for the Project is both supported and encouraged. Active monitoring should be undertaken to verify

predicted impacts, and where necessary, identify if further monitoring or mitigation of air impacts are needed.

2. The proponent should establish a process such that any changes made to the Project's design related to Project emissions and source configuration triggers a review of atmospheric impacts associated with the Project.
3. In the event of an accidental release of ammonia during operations, it may become necessary to undertake an evacuation of a number of residences to protect people against the toxic effects ammonia. As such, it is recommended that in developing emergency management plans the proponent identify scenarios where evacuations may be necessary to protect public health, and provide relevant information to those potentially impacted to enable individuals to take necessary measures to protect health.

### **Acoustic Environment**

The impact assessment undertaken for noise demonstrates that during the construction of the Transmission Line there are hundreds of residential receptors, including 7 sensitive receptors such as schools, daycares and nursing homes, who may potentially be exposed to noise levels that exceed acceptable limits. The proponent suggests these instances will be infrequent and occur over short periods of time. However, it is not clear what the frequency or duration of these events might be. Also, it seems that a number of activities that will be undertaken during construction of the transmission line are inherently noisy, and that mitigation is unlikely to attenuate noise levels to acceptable limits.

#### Recommendations:

1. The proponent has committed in the EA to undertake baseline noise monitoring at all sensitive receptor sites prior to construction. This action is both supported and encouraged.
2. It is anticipated and encouraged that the proponent be subject to undertaking sound monitoring at the direction of NSECC.
3. It is recommended that the proponent develop a complaints process to enable residential and sensitive receptors to communicate negative impacts of construction related noise. Complaints should be investigated by the proponent with a focus on resolving negative impacts.







## EverWind Hydrogen & Ammonia Project

### Environment and Climate Change Canada Comments - January 18, 2023

#### Water Quality

##### Effluents and Discharges

- The proponent should be aware that the *Fisheries Act* is applicable to all deposits and discharges during all phases of the project. Section 36(3) of the *Fisheries Act* is administered by Environment and Climate Change Canada (ECCC) and prohibits the deposit of substances which may directly or indirectly render waters frequented by fish deleterious. This may include changes in temperature or salinity. For further information, it may be useful to consult the “Frequently Asked Questions” section regarding Section 36(3) of the *Fisheries Act* available at: <https://www.canada.ca/en/environment-climate-change/services/managing-pollution/fisheries-act-registry/frequently-asked-questions.html>.
- In section 13.5.4.2, it is stated that if all applicable water criteria are met, water will be discharged to the surrounding environment. Further detail on how this discharge would be controlled and managed should be provided.

It is further stated that if criteria are not met, the effluent will be redirected to the existing Point Tupper Terminal effluent treatment system. Section 3.3.3 describes the effluent treatment system for the pre-existing Port Tupper facility and states that “Once the effluent reaches the settling ponds, the clarified liquid is decanted and directed to a natural drainage where it will eventually dissipate into the Strait of Canso”. This effluent stream should be more fully characterized and potential impacts to the marine environment (Strait of Canso) should be discussed.

Any other pre-existing infrastructure at the site that will be incorporated into the project should also be identified and any modifications/updates needed to meet current environmental criteria/standards should be discussed.

- The Registration Document states that “the external stormwater and cooling tower water will be discharged into the environment” (Section 13). There does not appear to be any discussion characterizing these discharges or describing how they will be controlled, managed and monitored if necessary.
- The freshwater aquatic environment is identified as a Valued Component (VC) (p.155) but it does not appear the marine environment has been included as a VC. Given the potential effluent release discussed above and other potential releases through loading of vessels (e.g. Section 5.3.2 discusses the loading arms used to convey liquid ammonia to vessels at port), ECCC recommends that potential environmental effects to the marine environment be evaluated.

##### Monitoring and Data

- Baseline studies are important to informing the assessment of potential environmental effects and follow-up or effects monitoring programs. The background studies completed for the aquatic environment do not appear to adequately characterize existing conditions to allow for an accurate assessment of risk and effects. ECCC notes the following examples:
  - Section 13.5.8 discusses recommended monitoring and follow-up of the Port Hawkesbury Protected Water Area and the Landrie Lake Watershed Water Protection Zone. It is not clear that any other waterbodies that should be included (e.g. marine environment, 11 waterbodies surveyed in 2022). The Report does not describe the baseline data that are to be used to form the basis for the recommended monitoring and follow-up surveys.
  - Section 13.5.8 states that “No additional monitoring or follow-up is recommended for waterbodies, watercourses, fish/fish habitat, or wetlands as Project activities will not occur within or directly impact these features”. It should be confirmed whether there are any potential indirect impacts.
  - Table 13.20 shows anticipated water demand associated with the Project. The Project raw water demand (9.5 Million L/day) is projected to more than double the existing demand on water resources from all other users combined. The proponent should confirm whether any water balance modelling has been completed to demonstrate this can be accommodated through all seasons and expected water reservoir conditions.

## **Wildlife and Wildlife Habitat**

### Wildlife Surveys and Data

It is stated on p.21 of the Registration document that: “*The Project has adopted a buffer of up to 200m near any Species at Risk and/or Protected Areas identified (species dependent).*” However, species-specific surveys for wildlife, vascular plants and lichen identified through the desktop survey do not appear to have been completed. It is indicated that: “*Qualified biologists were briefed in SOCI and associated habitat types prior to the completion of freshwater field surveys to aid in the identification of significant habitats, flora, fauna, bats and avifauna.*” Wildlife observations were incidental to the general terrestrial survey.

ECCC-CWS recommends targeted field surveys to evaluate the effects of the Project *in habitats potentially harbouring species at risk and species of conservation concern* that could be difficult to detect incidentally on the landscape, such as migratory bird species at risk (e.g. Common Nighthawk), bat species at risk and residences (i.e. maternity roosts), and lichen.

### Potential Wildlife/Project Interactions

- Section 13.6.6 Mitigative & Protective Measures, states: “*Conduct clearing activities outside the sensitive timing window for avian species (April 15 – August 31). If clearing is required during this time, CWS will be consulted to ensure compliance with the MBCA.*” ECCC-CWS recommends restricting high disturbance activities such as vegetation clearing activities to outside of the regional nesting period for migratory birds to avoid impacts and ensure compliance with the *Migratory Birds Convention Act* and its associated regulations.

- Ground-nesting species of migratory birds such as Common Nighthawk, Eastern Whip-poor-will, Killdeer, Snipe and American Woodcock, may be found in the study area and may be attracted to previously cleared areas and industrial zones (see [https://www.mba-aom.ca/pdfs/atlas\\_en\\_210-239.pdf#page=5](https://www.mba-aom.ca/pdfs/atlas_en_210-239.pdf#page=5)). ECCC-CWS recommends identifying mitigation measures for protecting ground nesters in previously cleared areas should project construction activities be scheduled during the breeding season. Note: Killdeer are early breeder and may start nesting as early as March.
- The proponent should consider where the proposed interconnections transmission lines right-of-way intersect areas used as flight paths by birds (e.g. migration, travel routes from nesting to foraging areas, watercourses and streams used by waterfowl) and demonstrate how the proposed configuration is optimal for avoiding avian collisions and electrocution. Existing infrastructure, such as the existing NS Power transmission lines, wind energy project(s), as well as, any new infrastructure which could impact migratory birds should also be considered as part of the cumulative effects assessment. If available, wildlife monitoring data from existing and adjacent infrastructure/projects (e.g. wind farm) should be considered.
- It is stated: *“Where possible, wetlands or watercourses will be spanned rather than constructing within them. If wetlands or watercourses are not able to be spanned (i.e., the water feature is >160 m across), the wetland and/or watercourse area will be avoided wherever possible.”* Many species of migratory birds and species at risk are dependent on wetland habitats for part of the life cycle and a new transmission line(s), including spanned lines, may cause negative effects on these species. ECCC-CWS recommends avoiding wetland habitats used by bird species at risk. Where effects to wetland habitat used by species at risk are deemed unavoidable, ECCC-CWS recommends including a discussion of why avoidance is not possible, and the identification of mitigation measures to minimize effects (e.g. monitoring, conservation allowances).
- The potential for light attraction, collisions and stranding by migratory birds and bats should be discussed as part of the assessment, and, considered as part of the Project’s Lighting Plan.
- The general field assessment is likely inadequate for detecting bats species at risk and/or bat maternity roosts. The assessment should consider bat migration routes and an inventory of important/high value habitat and geographic features, including landforms that might influence movement/congregation, mature trees with cavities for roosting, buildings that might be housing Little Brown *Myotis* maternity colonies, old mines/caves that may be used as hibernacula, etc. in vicinity of the proposed project. The assessment should include mitigation measures to protect bat residences should they be suspected or confirmed during field surveys. Buildings can be surveyed for signs of bats (e.g. guano) followed by emergence surveys during the breeding season to confirm presence.
- While there is no Wood Turtle identified critical habitat, there is suitable habitat found onsite. The proponent has identified buffers and mitigations measures (including a timing restriction); however, additional mitigation measures (e.g. expanded buffers) are recommended should suitable habitat be identified.



- The ACCDC noted two observations of Eastern Waterfan listed as Threatened (SARA Schedule 1) near the Project. One of the sightings is approximately 500m from the connection line. Eastern Waterfan is an aquatic lichen SAR found in small clear streams and is very sensitive to siltation/sedimentation (e.g. road construction, watercourse or wetland alterations). The proposed recovery strategy for the Eastern Waterfan identifies critical habitat as the occupied stream including a 50m riparian (streamside) buffer for 1km radius around the occurrence, and any streams running into the occupied stream. The Recovery Strategy and Action Plan for the Eastern Waterfan (*Peltigera hydrothyria*) in Canada [Final] (2021) is available at: <https://species-registry.canada.ca/index-en.html#/consultations/3646>.
- Provincial biologists at the Nova Scotia Department of Natural Resources and Renewables should be consulted for technical expertise and avoidance windows for species at risk under their jurisdiction (e.g. bats, reptiles, amphibians, land-mammals, insects, plants, lichen, and birds not protected by the MBCA, such as raptors) (contact: Donna Hurlburt at [Donna.Hurlburt@novascotia.ca](mailto:Donna.Hurlburt@novascotia.ca)).

### General (Standard) Recommendations

#### Migratory Birds

The *Migratory Birds Convention Act* (MBCA) protects migratory birds, their eggs, nests, and young. Migratory birds protected by the MBCA generally include all seabirds (except cormorants and pelicans), all waterfowl, all shorebirds, and most landbirds (birds with principally terrestrial life cycles). The list of species protected by the MBCA is at <https://www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection/convention-act.html>. Bird species not listed may be protected under other legislation.

Under Section 5.1 of the MBCA describes prohibitions related to depositing substances harmful to migratory birds:

- “5.1 (1) *No person or vessel shall deposit a substance that is harmful to migratory birds, or permit such a substance to be deposited, in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such an area.*
- (2) *No person or vessel shall deposit a substance or permit a substance to be deposited in any place if the substance, in combination with one or more substances, results in a substance – in waters or an area frequented by migratory birds or in a place from which it may enter such waters or such an area - that is harmful to migratory birds.”*

Under Section 5(1) of the *Migratory Birds Regulations* (MBRs), it is forbidden to capture, kill, take, injure or harass a migratory bird; or damage, destroy or take a nest or egg of a migratory bird, excluding under the exceptions listed in 5(2) of the MBRs, or under the authority of a permit. It is important to note that under the MBRs, no permits can be issued for the harm of migratory birds caused by development projects or other economic activities.

It is the responsibility of the proponent to ensure that activities comply with the MBCA and associated regulations.

**Note:** As of July 30, 2022, the modernized Migratory Bird Regulations came into effect which outlines a list of species on Schedule 1 whose nests remain protected year-round, given their

propensity to reuse nests. The [Frequently Asked Questions: Migratory Birds Regulations, 2022 - Canada.ca](#) and [Fact sheet: Nest Protection under the Migratory Birds Regulations, 2022 - Canada.ca](#) are available for further information.

## Vegetation Clearing

Clearing vegetation may cause disturbance to migratory birds, and may inadvertently cause the destruction of their nests and eggs. Many species use trees and shrubs, as well as brush, deadfalls and other low-lying vegetation for nesting, feeding, shelter and cover. This would apply to songbirds throughout the region, as well as waterfowl in wetland areas. Disturbance of this nature would be most critical during the breeding period. Please see “Nesting Periods” (Website: <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods/nesting-periods.html>) for more specific information concerning the breeding times of migratory birds by nesting zones.

ECCC provides the following recommendations:

- The proponent avoid certain activities, such as clearing, during the regional nesting period for migratory birds.
- Active nests can be discovered during project activities outside of the regional nesting period. To reduce the risk of impacting nests or birds caring for pre-fledged chicks at those times, ECCC-CWS recommends implementation of measures such as the establishment of vegetated buffer zones around nests, and minimization of activities, in the immediate area until nesting is complete and chicks have naturally migrated from the area. It is incumbent on the proponent to identify the best approach, based on the circumstances, to complying with the MBCA.
- The proponent should be aware that while most migratory bird species construct nests in trees (sometimes in tree cavities) and shrubs, mitigations should be appropriate for migratory birds with different strategies. For example, several species nest at ground level (e.g. Common Nighthawk, Killdeer, sandpipers), in hay fields, pastures or in burrows. Some bird species may nest on cliffs or in stockpiles of overburden material from mines or the banks of quarries. Some migratory birds (including certain waterfowl species) may nest near head ponds created by beaver dams. Some migratory birds (e.g. Barn Swallow, Cliff Swallow, Eastern Phoebe) may build their nests on structures such as bridges, ledges, or gutters.
- The proponent should develop and implement a management plan that includes appropriate preventative measures to minimize the risk of impacts on migratory birds (Please see ‘Avoiding harm to migratory birds: guidelines to reduce risk to migratory birds’ at <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>). For beneficial management practices regarding how to avoid the incidental take of migratory birds nests and eggs, please refer to the Avoidance Guidelines (Website: <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/guidelines.html>). The management plan should include processes to follow should an active nest be found at any time of the year.

## Nest Searches

ECCC-CWS generally does not recommend nest searches or “sweeps”, except when the nests searched are known to be easy to locate without disturbance (e.g. previously cleared area, simple habitats, low vegetation). Ground nesting migratory birds may also be attracted to previously cleared areas during the breeding season.

Species such as Common nighthawk and Killdeer may choose to nest in open areas (e.g. gravel or sand) or cleared areas (e.g. forest harvest blocks, recent cleared land, and recent burns). Common Nighthawk is very cryptic in coloration and finding a bird on the nest or a nest site can be challenging. Using active nest searching techniques must be carefully evaluated because the risk of disturbing active nests is high. Nest surveys may be carried out successfully by experienced observers using scientific methodology in the event that activities would take place in simple habitats (e.g. in human-made settings) with only a few likely nesting areas or a small community of migratory birds. Examples of simple habitats include:

- An urban park consisting mostly of lawns with a few isolated trees;
- A vacant lot with few possible nest sites;
- A previously cleared area where there is a lag between clearing and construction activities and where ground nesters may have been attracted to nest in cleared areas or in stockpiles of soil; or,
- A structure such as a bridge, a beacon, a tower or a building (often chosen as a nesting spot by robins, swallows, phoebes, Common Nighthawk, gulls and others).

Nest searches can also be considered when looking for:

- Conspicuous nest structures (such as nests of Great Blue Herons, Bank Swallows, Chimney Swifts);
- Cavity nesters in snags (such as woodpeckers, goldeneyes, nuthatches); or,
- Colonial-breeding species that can be located from a distance (such as a colony of terns or gulls).

In these instances, should any nests or chicks be discovered, protection with an appropriate-sized buffer is expected. ECCC-CWS generally recommends buffers for landbird species at risk as follows during the breeding season:

- Low disturbance activities – 50 m
- Medium disturbance activities – 150 m
- High disturbance activities – 300 m

Note: Nests should not be marked using flagging tape or other similar material as this increases the risk of nest predation. ECCC-CWS can be contacted for further advice if a nest is found.

ECCC-CWS recommends the following for planning targeted nightjar surveys (if required):

- Timing surveys should be completed to 1 hr before sunset to 2hrs after sunset;
- Survey start date should be scheduled after June 10 (at the earliest) and completed within 7 days on either side of a full moon;
- The Canadian Nightjar Survey Protocol (2022) is a useful reference (attached).

## Transmission Lines

Transmission lines and transmission towers have the potential to harm, injure, or kill migratory birds. Birds electrocution can occur when they contact charged transmission or distribution lines. Additionally, birds are at risk of injury if they collide into lines in areas known to have high bird use (e.g. Strait of Canso). ECCC-CWS recommends the following in planning transmission line routes:

- Avoid building transmission or distribution lines over, adjacent, or near areas where high numbers of birds are known to congregate or move, including:
  - important breeding, staging, moulting areas;
  - breeding colonies;

- between breeding and foraging areas.
- Design 'avian-safe' configurations to reduce the risk of electrocution:
  - provide sufficient separation between energized phase conductors and between phases and grounded hardware;
  - insulate exposed surfaces in high-risk areas;
  - install perch-management (e.g. perch guards) devices on poles;
  - remove or minimize vegetation around poles and lines (please refer to Vegetation Clearing guidance).
- Install measures on lines that reduce to risk of collisions:
  - provide minimal vertical separation between lines;
  - use self-supporting structures to reduce the number of guy wires;
  - use line-marking devices to increase the visibility of the lines;
  - Bird flight diverters in areas of known risk.

The proponent should refer to Avian Power Line Interaction Committee ([www.aplic.org](http://www.aplic.org)) for an understanding of avian risks and further guidance.

### Noise Disturbance

Anthropogenic noise produced by construction and human activity can have multiple impacts on birds, including causing stress responses, avoidance of important habitats, changes in foraging behaviour and reproductive success, and interference with songs, calls, and communication. Activities that introduce loud or random noise into habitats with previously low levels of anthropogenic noise are particularly disruptive. ECCC-CWS recommends the following best management practices:

- The proponent should develop mitigations for programs that introduce very loud and random noise disturbance (e.g. blasting programs) during the migratory bird breeding season for their region.
- The proponent should, where possible, prioritize construction works in areas away from natural vegetation while working during the migratory bird breeding season. Conducting loud high disturbance construction works adjacent to natural vegetation should be completed outside the migratory bird breeding season.
- The proponent should keep all construction equipment and vehicles in good working order and loud machinery should be muffled if possible.

### Banks and Stockpiles

Certain species of migratory birds (e.g. Bank Swallow) may nest in banks or large piles of soil left unattended/unvegetated during the breeding season. To discourage this, the proponent should consider measures to cover or to deter birds from these large piles of unattended soil during the breeding season. If migratory birds take up occupancy of these piles, any industrial activities (including hydroseeding) will cause disturbance to these migratory birds and inadvertently cause the destruction of nests and eggs. Alternate measures will then need to be taken to reduce potential erosion, and to ensure that nests are protected until chicks have fledged and left the area.

For a species such as Bank Swallow, the period when the nests would be considered active would include not only the time when birds are incubating eggs or taking care of flightless chicks, but also a period of time after chicks have learned to fly, because Bank Swallows return to their colony

to roost. A Bank Swallow residence (i.e. burrow) is protected under the MBCA and SARA; a Bank Swallow Residence Description (GoC 2019) is available at: <https://species-registry.canada.ca/index-en.html#/documents/3521>.

### Light Attraction

Bright lights (and flares) can cause problems for night migrating landbirds (birds with principally terrestrial life cycles, e.g. warblers, sparrows, doves, nighthawks, etc.) undertaking their over-sea migrations and storm-petrels, especially during inclement weather such as periods of fog, drizzle, and haze.

Attraction to lights may result in a collision with lit structures, disorient birds causing them to circulate light source depleting their energy reserves so that they either die of exhaustion or drop to the ground where they are at risk of stranding and depredation.

At coastal and inland sites in NS, there is potential for migratory birds to be found stranded (grounded on land or a structure) and unable to fly away (e.g. Leach's Storm Petrel (*Oceanodroma leucorhoa*) (COSEWIC-Threatened)) particularly during the Leach's Storm-petrel fledging period and the fall migration period. High onshore winds can blow birds inland from the coast or ocean (sometimes high numbers of birds) and brightly lit inland sites, such as industrial areas, can disorient birds leading to stranding. Once stranded, some species such as storm-petrels cannot fly back to the ocean without assistance and are vulnerable to predators and other hazards. If found quickly, storm-petrels can safely be released back to the ocean.

The proponent should consider the following mitigation measures when designing the Project's Lighting Plan:

- Use the minimum amount of aviation safety, warning and obstruction lighting needed on tall structures. Warning lights should flash and completely turn off between flashes;
- Use the fewest number of site-illuminating lights possible in the project area. Only use strobe lights at night, at the lowest intensity and the smallest number of flashes per minute allowable by Transport Canada;
- Reduce lighting levels during inclement weather events that may force migratory birds to land, or fly at lower altitudes, to prevent birds from landing in areas that would cause collisions;
- Avoid or restrict the time of operation of exterior decorative lights such as spotlights and floodlights whose function is to highlight features of buildings or to illuminate an entire building. These lights, especially during periods of inclement weather, can draw birds from far away. Turn off these lights during the migratory season when the risk to birds is highest and during periods when birds are dispersing from their nests or colonies;
- Shield safety lighting so that the illumination shines down. Only install safety lighting where it is needed, without compromising safety;
- Shield street and parking lot lighting so that little escapes into the sky, and it falls where it is required. Consider using LED lighting fixtures as they are generally less prone to light trespass;
- Limit construction activities to the day and avoid illuminating habitat adjacent to the worksite(s);
- Avoid flaring at night and during conditions of fog during the day;
- Avoid flaring when large concentrations of migratory birds are vulnerable (e.g. spring and fall migration, inclement weather);
- If flaring must occur during the night or foggy conditions, use short bursts to reduce the chance of attracting migratory birds;
- Develop a Bird Monitoring and Management Plan that describes what measures will take place to avoid incidental take. The Plan should include:

- Actions will be used to prevent incidental take of migratory birds;
- A mortality monitoring plan that includes corrections for searcher efficiency, carcass persistence, and searchable area;
- consideration of flare shields to reduce light emissions and potentially reduce migratory bird mortality;
- Procedure to collect migratory birds that come into contact with infrastructure or flares;
- Leach's Storm-petrel carcasses should be sent to CWS for further study.

ECCC-CWS expects to be contacted within 24 hours for the following: bird mortality incidents of 10 or more birds in a single event, or an individual species at risk, via ECCC-CWS Main Office at **(506) 364-5044** or via email to [SCFATLEvaluationImpact-CWSATLImpactAssessment@ec.gc.ca](mailto:SCFATLEvaluationImpact-CWSATLImpactAssessment@ec.gc.ca).

### Stranded Birds Systematic Survey

ECCC-CWS recommends daily systematic searches of stranded migratory birds with a documentation of effort (including days when searches were completed but no birds were found) following "*ECCC-CWS Guidance for Developing Systematic Stranded Bird Survey Protocols for Vessels and Platforms*" (March 2021) (attached) which can be adapted to coastal inland sites in Atlantic Canada. Guidance, procedures, datasheets and educational resources are available for reference in the development of a monitoring plan and protocols. Infographics can be shared to support staff awareness about stranded birds.

- Guidance for Developing Systematic Stranded Bird Survey Protocols for Vessels and Platforms (March, 2021)
- Procedures for handling and documenting stranded birds encountered on infrastructure in offshore Atlantic Canada (ECCC, 2016)
- Dark skies for night flights – Reducing storm-petrel strandings in Eastern Canada (ECCC, 2022) (infographic)
- Stranded Bird Procedures (ECCC, 2021) (infographic)
- Stranded Bird Encounter Datasheet (ECCC, March 2021)

ECCC-CWS can be available to provide further guidance to the proponent to assist in their development of monitoring protocol (s) (if required).

**Important note:** A migratory bird capture/ handling permit will be required to implement this protocol. Permit applications can be obtained from via email at: [Permi.Atl@ec.gc.ca](mailto:Permi.Atl@ec.gc.ca). Any data collected from stranded bird surveys during the training exercise should be documented using the stranded bird datasheets and hard or scanned copies of datasheets sent to CWS at: [ec.scfatldonneesei-cwsatliadata.ec@ec.gc.ca](mailto:ec.scfatldonneesei-cwsatliadata.ec@ec.gc.ca)

### Fuel Leaks

The proponent must ensure that all precautions are taken by the contractors to prevent fuel leaks from equipment, and that a contingency plan in case of oil spills is prepared. Furthermore, the proponent should ensure that contractors are aware that under the MBR, "*no person shall deposit or permit to be deposited oil, oil wastes or any substance harmful to migratory birds in any waters or any area frequented by migratory birds*". Biodegradable alternatives to petroleum-based chainsaw bar oil and hydraulic for heavy machinery are commonly available from major

manufacturers. Such biodegradable fluids should be considered for use in place of petroleum products whenever possible, as a standard for best practices. Fueling and servicing of equipment should not take place within 30 metres of environmentally sensitive areas, including shorelines and wetlands.

### Wildlife Emergency Response Plan

A Wildlife Emergency Response Plan should be incorporated into emergency response contingency plans for scenarios that may impact avifauna directly (injury or mortality e.g. polluting incident) or indirectly (impacts to habitat e.g. re-suspension of contaminated sediment during dredging activities), collisions causing mortality or stranding due to light attraction, etc.

ECCC has prepared *Guidelines for Effective Wildlife Response Plans* (ECCC 2021) for consideration in emergency response and contingency planning related to accidents and malfunctions (attached). Plans should include:

- Measures to deter migratory birds from coming into contact with the oil or polluting substance;
- Measures undertaken if individuals of migratory birds and/or sensitive habitat become contaminated; and,
- The type, extent of monitoring, and reporting in relation to various spill events.

The proponent is responsible for ensuring that all precautions are taken by the contractors to prevent fuel leaks from equipment, and that a contingency plan is prepared in the case of spills. Furthermore, the proponent should ensure that contractors are aware of section 5.1 MBCA prohibitions.

Events involving a polluting substance should be reported to the 24-hour environmental emergencies reporting system: **1-800-565-1633**.

### The *Species at Risk Act*

The *Species at Risk Act* (SARA) “General prohibitions” apply to this project. In applying the general prohibitions, the proponent, staff and contractors, should be aware that no person shall:

- kill, harm, harass, capture or take an individual;
- possess, collect, buy, sell or trade an individual, or any part or derivative;
- damage or destroy the *residence* of one or more individuals.

General prohibitions only apply automatically:

- on all federal lands in a province,
- to aquatic species anywhere they occur,
- to migratory birds protected under the *Migratory Birds Convention Act* (MBCA) 1994 anywhere they occur.

Section 33 of SARA prohibits damaging or destroying the residence of a listed threatened, endangered, or extirpated species. For migratory birds species at risk, this prohibition immediately applies on all lands or waters (federal, provincial, territorial and private) in which the species occurs.

For federal project assessments, SARA requires that:

- “79 (1) Every person who is required by or under an Act of Parliament to ensure that an assessment of the environmental effects of a project is conducted, and every authority who makes a determination under paragraph 82(a) or (b) of the [Impact Assessment Act](#) in relation to a project, must, without delay, notify the competent minister or ministers in writing of the project if it is likely to affect a listed wildlife species or its critical habitat.
- (2) The person must identify the adverse effects of the project on the listed wildlife species and its critical habitat and, if the project is carried out, must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.”

While there is no federal environmental assessment for this project, ECCC-CWS advocates a similar approach to provincial and territorial assessments related to the management and protection of species at risk. For species that are not listed under SARA, but are listed under provincial legislation only or that have been assessed and designated by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), it is best practice to consider these species in an environmental assessment as though they were listed under SARA.

#### Avian Species at Risk:

The following avian species at risk (as listed on Schedule 1 of SARA and the *NS Endangered Species Act* (NSESA)), may occur in the study area: Barn Swallow (SARA Threatened, NSESA Endangered), Canada Warbler (SARA Threatened, NSESA Endangered), Common Nighthawk (SARA & NSESA Threatened), Olive-sided Flycatcher (SARA & NSESA Threatened), Evening Grosbeak (SARA Special Concern, NSESA Vulnerable), and Rusty Blackbird (SARA Special Concern, NSESA Endangered).

The *Recovery Strategy for Canada Warbler (Cardellina canadensis) in Canada* (2016) is available at:

[https://wildlife-species.canada.ca/species-risk-registry/virtual\\_sara/files/plans/rs\\_canada%20warbler\\_e\\_final.pdf](https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/rs_canada%20warbler_e_final.pdf)

The *Recovery Strategy for the Common Nighthawk (Chordeiles minor) in Canada* (2016) is available at:

[https://wildlife-species.canada.ca/species-risk-registry/virtual\\_sara/files/plans/rs\\_common%20nighthawk\\_e\\_final.pdf](https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/rs_common%20nighthawk_e_final.pdf)

The *Recovery Strategy for the Olive-sided Flycatcher (Contopus cooperi) in Canada* (2016) is available at:

[https://wildlife-species.canada.ca/species-risk-registry/virtual\\_sara/files/plans/rs\\_olive-sided%20flycatcher\\_e\\_final.pdf](https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/rs_olive-sided%20flycatcher_e_final.pdf)

#### Non-Avian Species at Risk:

The following non-avian species at risk (as listed on Schedule 1 of the SARA, and the *NS Endangered Species Act* (NSESA)) may occur within the study area: Little Brown Myotis (SARA & NSESA Endangered), Eastern Waterflea (SARA & NSESA Threatened), Blue Felt Lichen (SARA Special Concern & NSESA Vulnerable).

#### Bats

The *Recovery Strategy for the Little Brown Myotis (Myotis lucifugus), the Northern Myotis (Myotis septentrionalis), and the Tri-colored Bat (Perimyotis subflavus) in Canada* (2018) is available at: <https://species-registry.canada.ca/index-en.html#/consultations/2475>. Table 8 of the Recovery



Strategy provides examples of “*Activities Likely to Result in the Destruction of Critical Habitat*” which includes activities that cause excessive disturbance (e.g., light, noise, vibrations), such as quarrying, excavating, blasting and forest clearing activities during the overwintering period. Hibernating bats in Atlantic Canada typically enter hibernacula in the fall and remain until the following spring. Outside of the listed critical habitat (i.e. hibernacula), other habitat features such as bat maternity roosts are important to the maintenance and recovery of the species.

The Government of Canada published factsheets providing information on the Emergency Listing Order, the disease threatening bats, the requirements of SARA, and ways to protect and preserve bat populations. The factsheet “*WIND ENERGY and the Emergency Listing Order for the Little Brown Myotis (Myotis lucifugus), the Northern Myotis (Myotis septentrionalis) and the Tri-colored Bat (Perimyotis subflavus)*” (2014), including best management practices, is available on the SARA Registry at: [Factsheet on the Emergency Listing Order for the Little Brown Myotis, the Northern Myotis and the Tri-colored Bat.](#)

### Wood Turtle

The *Recovery Strategy for Wood Turtle (Glyptemys insculpta) in Canada* (2020) is available at: <https://species-registry.canada.ca/index-en.html#/consultations/2864>. The Recovery Strategy lists accidental mortality (roads, sand and gravel pits) as threats that could impact individual wood turtle, which are vulnerable given their slow travel speed and how far they range from aquatic habitats in summer.

\*\*ECCC-CWS requests that any species at risk sightings be reported to the Atlantic Canada Conservation Data Centre, directions on how to contribute data can be found at: <http://accdc.com/en/contribute.html>.\*\*

### Wetlands

While the *Federal Policy on Wetland Conservation* does not apply to this project, ECCC advocates for the conservation of wetlands in areas where wetland losses have already reached critical levels (e.g. NB, NS, PEI, southern Ontario, Prairies) and regionally important wetlands. ECCC-CWS recommends that project effects on wetlands be avoided. Where they cannot be avoided they should be minimized, and for residual impacts there should be compensation to mitigate the effects. ECCC recommends the development of a Wetland Compensation Plan that fully describes the mitigation hierarchy, including:

- Identification of wetlands potentially affected by the project,
- A detailed description of potential effects, and the reasons why avoidance and minimization of impacts were determined to be not possible, and
- Identification and justification of proposed offset ratios.

As a mitigation measure to compensate for the lost habitat function for wetland associated landbird species at risk and species of conservation concern, in instances where such habitat cannot be avoided, ECCC-CWS recommends the use of conservation allowances as a third step in the mitigation hierarchy of avoidance, mitigation and compensation.

### Working near Waterbodies or Riparian Environments

ECCC-CWS has the following recommended beneficial management practices for working on/near waterbodies or riparian environments:

- Project staff should not approach concentrations of migratory birds (e.g. seabirds, shorebirds, waterfowl, etc.)
- Project staff should use the main navigation channels or access roads to get to and from the site; and should have well-muffled vessels and machinery.
- Project staff should undertake any measures that may minimize or eliminate discharge of oily waste into the marine or riparian environment.
- Food scraps and other garbage left near waterbodies or riparian environments can artificially enhance the populations of avian and mammalian predators of eggs and chicks. The proponent should ensure that no litter (including food waste) is left in coastal areas by their staff and/or contractors.
- If there is any noticeable change in migratory bird numbers or distribution at the location during operations, ECCC-CWS should be notified.

### Revegetation

A variety of species of plants native to the general project area should be used in revegetation efforts. Should seed mixes for herbaceous native species for the area not be available, it should be ensured that plants used in revegetation efforts are not known to be invasive.

Pollinator Partnership Canada's Planting Guide provides regional guidance and is available at: [Ecoregional Planting Guides | P2C \(pollinatorpartnership.ca\)](https://www.pollinatorpartnership.ca/p2c). ECCC-CWS recommends that the Proponent consider native species beneficial to Monarch during revegetation efforts.

### Invasive Species

Measures to diminish the risk of introducing invasive species should be developed and implemented during all project phases. These measures could include:

- Cleaning and inspecting construction equipment prior to transport from elsewhere to ensure that no vegetative matter is attached to the machinery (e.g., use of pressure water hose to clean vehicles prior to transport).
- Regularly inspecting equipment prior to, during and immediately following construction in areas found to support Purple Loosestrife to ensure that vegetative matter is not transported from one construction area to another.

### Accidents and Malfunctions and Environmental Emergencies

#### Environmental Emergency Regulations

The Environmental Emergency Regulations contain a list of substances under the CEPA, and other hazardous substances which, if they enter the environment as a result of an environmental emergency, (i) have or may have an immediate or long-term harmful effect on the environment or its biological diversity, (ii) constitute or may constitute a danger to the environment on which human life depends, or (iii) constitute or may constitute a danger in Canada to human life or health.

From the information provided in the EA Registration Document the proponent should be aware that both ammonia and hydrogen are found on the List of Hazardous Substances for which the Regulations could apply.

The Regulations set out specific requirements for the preparation of environmental emergency plans and reporting of accidental releases. It is the responsibility of the Proponent to ensure that environmental emergency plans are consistent with the requirements of CEPA and the associated Regulations.

Further information on the requirements, including *Implementation Guidelines for the Environmental Emergency Regulations* can be found at: <https://www.canada.ca/en/environment-climate-change/services/environmental-emergencies-program/regulations.html>.

### Spills and Releases

The Registration Document has identified most potential hazards that could occur such as a toxic release of ammonia and a fire from hydrogen gas release. One issue that should be considered relates to the potential fire hazard associated with an ammonia release. According to several ammonia safety datasheets, ammonia has a flammable range of 16%- 25%. This would equate to approximately 16000ppm to 25000ppm of ammonia in the atmosphere which could potentially cause a fire or an explosion. Given that ammonia is a gas, it will readily attain these concentrations. Furthermore, liquid ammonia will vaporize easily upon release to reach these concentrations. ECCC recommends that an additional scenario that considers the potential fire hazard associated with an ammonia release.

Date: January 18, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Natural Resources and Renewables

Subject: EverWind Fuels, Point Tupper green hydrogen/ammonia project, Phase 1, Richmond County, Nova Scotia

---

**Scope of review:**

This review focuses on the following mandate: Land Services, Geoscience, Minerals, Parks and Wildlife.

**Technical Comments:**

**Land Services Branch:**

The proponent will require authority (such as a lease, licence, or easement) from the Department of Natural Resources and Renewables (NRR) for any activity on Crown land.

Activities below the Ordinary High-Water Mark, that fall outside of the boundary of the water lots owned by the proponent, may require authority from NRR.

The proponent may require further approvals or permits for new bridge construction or the repair of existing bridge structures.

**Geoscience Survey and Mineral Management Divisions:**

No comments to make on this review.

**Parks Branch:**

No protected beach or provincial park program concerns.

**Wildlife Division:**

Section 4.1.1 Setback and Separation Distances, page 20. Federal Critical Habitat and provincial Core Habitat data layers were not present; however, through a review of GIS data layers provided in support of the registration document, it appears that no federal or provincial critical/core habitat layers for species at risk overlapped with the project footprint, although occurrences were noted.

Section 4.1.1 Setback and Separation Distances, page 21. *“The Project has adopted a buffer of up to 200m near any Species at Risk and/or Protected Areas identified (species dependent)”*. Buffers are species or species- group dependent and could vary depending on biological need and timing. It is recommended that generalized buffers for SAR not be used.

Section 7 Biophysical Environment, page 82. “*Targeted and comprehensive flora and fauna surveys were not completed...*” The proponent has made mention to siting of the project in a previously disturbed and anthropogenic area (Industrial Facility), and the realignment of the Transmission Interconnection Line to avoid sensitive habitat features where possible. Information was provided through a desktop analysis; however, field surveys that collect baseline data should be undertaken.

Section 7.2.5 Wetlands, page 96. Wetlands of special significance (WSS) designation was applied to 96 wetlands within 5km of the project due to the presence of species at risk. Dedicated field studies for flora and fauna are required.

Section 7.3 Terrestrial Environment, page 99. “*Field studies consisted of incidental observations of terrestrial flora and fauna SOCI...*” Targeted field survey programs are recommended.

Section 7.3.1 Terrestrial Habitat, page 100. According to Table 7.9, 67% of the Industrial Facility is still in a vegetated state which could support flora and fauna using 2015 forest data. However, the proponent indicates that during freshwater field surveys, the area has undergone “*significant vegetation clearing and grading*”. A full determination of the current amount of vegetated area (quantitative and mapped) is needed to determine if surveys are required.

7.3.1 Terrestrial Habitat, page 100. “*The Significant Species and Habitats Database contained no significant habitat records within 5km of the Industrial Facility*”. There are two records: Landrie Lake located ~900m N of the Industrial Facility and another record located ~650m SE of the Industrial Facility.

7.3.1 Terrestrial Habitat, page 101. “*...qualified field biologists were notified of the potential boreal felt lichen habitat within the larger Study Area; during wetland delineations/assessments, this species was searched for (as wetlands are considered ideal habitat)...* Record of provincial approval of biologist’s credentials is required – biologists that conduct surveys for lichens in Nova Scotia must be provincially approved lichenologists.

7.3.3 Terrestrial Fauna - Herpetofauna, page 104. Dedicated surveys for herpetofauna should be undertaken.

7.3.4 Bats, page 106. Mitigations will be required to support the presence of bat species.

7.3.5 Avifauna, page 108. The number of SAR/SoCI present within 5km of the Industrial Facility as indicated in Table 7.11 (five of which are listed under the SARA, ESA, or both, with two species within 0.5km of the facility) would necessitate the need for targeted surveys or mitigations will be required for all species at risk identified in keeping with the precautionary principle.

7.4.2 Terrestrial Flora, page 112. The proponent states that targeted surveys were not required due, in part, to “*stationary nature of flora and Transmission Line’s ability to*

*span SOCI identified*". This statement is applicable under the following circumstances: 1) all SoCI on the Transmission Interconnection Line placement have been identified and mapped; 2) location of infrastructure is placed away from SoCI with appropriate buffers in place; 3) SoCI are not impacted by access of equipment necessary to build the Transmission Interconnection Line infrastructure; 4) no vegetation management is required along with Transmission Interconnection Line or appropriate buffers around SoCI can be maintained.

7.4.2 Terrestrial Flora, page 112. Potential Boreal Felt Lichen (*Erioderma pedicellatum*) habitat was mapped within 0.06km W of the Transmission Interconnection Line. If Boreal Felt Lichen were found at this location a buffer would have been applied according to the *At-Risk Lichens Special Management Practices*, which would overlap the Transmission Interconnection Line footprint. Records of Boreal Felt Lichen with 5km of the Transmission Interconnection Line, Blue Felt Lichen (*Degelia plumbea*) and Eastern Waterfan (*Peltigera hydrothyria*) within the Study Area (page 208), proximity of Boreal Felt Lichen predicted habitat (0.06km), and amount of wetlands identified through desktop analysis and field surveys would have triggered the need for dedicated lichen surveys.

Section 13.6 Terrestrial Environment, page 205. Field studies and baseline information are required to determine risk of activities on SAR/SoCI,

Section 13.6.4.1 Construction Phase -Terrestrial, Page 209. Although degradation of habitat is one outcome, clearing and/or grubbing may create artificial nesting habitat for certain species at risk such as Common Nighthawk and Wood Turtle, both of which were determined to be present within the Study Area through AC CDC data.

Section 13.6.4.1 Construction Phase - Avifauna, page 210. "*Removal of these habitat types is not anticipated to impact the range or habitat function of SAR...*" The proponent must demonstrate through their desktop analysis, field surveys, and risk assessment that the various Acts with respect to Wildlife and SAR are being upheld.

Section 13.6.6 Mitigative and Protective Measures - Flora SOCI, page 214. Further explanation is required for the growing season for flora SOCI (June 15<sup>th</sup>-August 31<sup>st</sup>). Season may be too restrictive.

Section 13.6.6 Mitigative and Protective Measures - Flora SOCI, page 215. "*Prior to grubbing and grading, construction crews will be notified of locations of rare plant and lichen species in/within close proximity to the Project Boundary to ensure avoidance*". To ensure avoidance and maintain integrity of habitat, buffers should be placed around occurrences, and developed in consultation with NRR.

Section 13.6.6 Mitigative and Protective Measures - Fauna SOCI, page 215. Given the at-risk Threatened status of the species, further consultation with NRR on appropriate mitigation measures for Wood Turtle is required.

Section 13.6.6 Mitigative and Protective Measures - Avifauna, page 216. Consultation with NRR is also required prior to any vegetation clearing during the breeding bird window.

Section 13.6.7 Residual Effects Assessment, Table 13.25, page 216. Further details are required on the invasive species management approaches.

Section 13.6.8 Recommended monitoring and follow-up, page 216. The proponent has focused heavily on avoidance of habitat as the key measure upon which terrestrial flora and fauna protection is measured. Even if this were true (and it is the recommendation of the reviewer that this approach is inadequate), there are mitigation measures identified in Section 13.6 that are not tied to this approach, and monitoring and follow-up would be necessary to ensure effectiveness.

Section 14.0 Effects of the Project on the Environment, Table 13.32, page 235. Adherence to regulatory standards and guidance is not solely restricted to the MBCA; the SARA, Wildlife Act, and ESA are all applicable.

Appendix C, Regulatory Review, page 11. It should be clarified that the issuance of permits under the ESA are only available under the specific circumstances listed under section 14(1): human health and safety, or scientific research relating to recovery. For all other circumstances, avoidance is the requirement.

Old Growth Forest Policy. The Study Area overlaps with the Old-Growth predictor layer. As such, there is the possibility or potential for old-growth forest within the project footprint. The proponent shall be responsible for confirming on the ground that old-growth does not occur before any approval for the clearing of vegetation on crown land can be given by the Department.

### **Summary of Recommendations: (provide in non-technical language)**

#### **Wildlife Division:**

- The proponent must obtain all necessary permits related to wildlife and species at risk.
- The proponent must provide digital way points and/or shapefiles for all Species at Risk and Species of Conservation Concern to NRR (those species listed and/or assessed as at risk under the Species at Risk Act, Endangered Species Act, COSEWIC, as well as all S1, S2 and S3 species). Data should adhere to the format prescribed in the NRR Template for Species Submissions for EAs.
- The Approval Holder shall clear vegetation outside of the breeding season for most bird species (April 15 to August 31), unless otherwise authorized in writing by NRR. Under certain circumstances vegetation clearing during the breeding season may be approved.
- Surveys for old-growth forest are required prior to receiving approval for vegetation clearing on Crown land.

- A Wildlife Management Plan (WMP) must be developed in consultation with NRR, including mitigation measures to avoid and/or protect SAR/SoCC and associated habitats, with a focus on the following species identified through desktop analysis;
  - Barn Swallow (*Hirundo rustica*);
  - Common Nighthawk (*Chordeiles minor*);
  - Olive-sided Flycatcher (*Contopus cooperi*);
  - Canada Warbler (*Cardellina canadensis*);
  - Evening Grosbeak (*Coccothraustes vespertinus*);
  - Rusty Blackbird (*Euphagus carolinus*);
  - Wood Turtle (*Glyptemys insculpta*)
  - Bats
- A concentration of Southern Twayblade (*Neottia bifolia*) appears to be associated with wetlands WL35 and WL37 and likely connected to the larger wetland complex outside of the Transmission Interconnection Line footprint. Southern Twayblade is also present at other locations along the Transmission Interconnection Line. Mitigations and monitoring for Southern Twayblade and its habitat on the Transmission Interconnection Line are required.
- Consultation with NRR is required before revegetation of any cleared areas.
- The proponent must develop and provide a mitigation plan to prevent the spread of invasives both on and off site, which requires review and approval by NRR.
- For the Transmission Interconnection Line, the following surveys are required:
  - Breeding bird surveys;
  - Raptor nest search;
  - Lichen surveys, by a qualified lichenologist approved by the province;
  - Flora surveys;
  - Wood Turtle surveys, for all watercourses intersecting the project footprint that may contain suitable habitat.

**IMPORTANT:**

- **Always provide a response back to the EA Branch, even if it is simply to confirm that there is “no comment.”**
- **The comments will be published on the EA website on decision day (privacy review is NOT conducted on comments from government).**



**From:** Dolan, Jeff <Jeff.Dolan@novascotia.ca>  
**Sent:** January 19, 2023 10:58 AM  
**To:** Mageste da Silva, Renata <Renata.MagestedaSilva@novascotia.ca>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

Hi Renata,

Technical Safety/Fuel Safety has no comments to add.

Thanks,

Jeff Dolan

Jeff Dolan  
(902)266-9585 | [jeff.dolan@novascotia.ca](mailto:jeff.dolan@novascotia.ca)

**From:** Mageste da Silva, Renata <[Renata.MagestedaSilva@novascotia.ca](mailto:Renata.MagestedaSilva@novascotia.ca)>  
**Sent:** January 19, 2023 10:03 AM  
**To:**  
**Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023  
**Importance:** High

Good morning,

Comments on this EA process were due yesterday, January 18, 2023.

If your Department, Unit or Agency intends to submit comments, please forward them to the EA branch **ASAP** and I will do the best I can to accommodate them. If you're not providing comments, please let me know in writing.

Thanks,  
Renata

**From:** Mageste da Silva, Renata  
**Sent:** January 11, 2023 9:56 AM  
**To:** **Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023  
**Importance:** High

Happy 2023, everyone!

Just a friendly reminder that comments on this EA process are due on **January 18, 2023.**

If you have no comments, please let me know in writing. And you have already provided your comments to the EA branch, please disregard this reminder.

**Thanks,  
Renata**

**From:** Miller, David J <David.J.Miller@novascotia.ca>  
**Sent:** January 19, 2023 11:18 AM  
**To:** Mageste da Silva, Renata <Renata.MagestedaSilva@novascotia.ca>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

I do not plan to provide comments from NRR Clean Energy.

David

**From:** Mageste da Silva, Renata <[Renata.MagestedaSilva@novascotia.ca](mailto:Renata.MagestedaSilva@novascotia.ca)>  
**Sent:** January 19, 2023 10:03 AM  
**To:**  
**Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023  
**Importance:** High

Good morning,

Comments on this EA process were due yesterday, January 18, 2023.

If your Department, Unit or Agency intends to submit comments, please forward them to the EA branch **ASAP** and I will do the best I can to accommodate them. If you're not providing comments, please let me know in writing.

Thanks,  
Renata

**From:** Mageste da Silva, Renata  
**Sent:** January 11, 2023 9:56 AM  
**To:** Eytayo-Oyesode, Oladiwura **Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** RE: UPDATE: EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023  
**Importance:** High

Happy 2023, everyone!

Just a friendly reminder that comments on this EA process are due on **January 18, 2023.**

If you have no comments, please let me know in writing. And you have already provided your comments to the EA branch, please disregard this reminder.

**Thanks,**  
**Renata**

**From:** Mageste da Silva, Renata

**Sent:** December 2, 2022 4:36 PM

**To:**

**Cc:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>

**Subject:** EverWind Hydrogen & Ammonia Project – Environmental Assessment – Comments due January 18\_ 2023

**Importance:** High

Hello everyone,

On December 9, 2022, EverWind Fuels Company, will register the **EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1** for environmental assessment (EA), in accordance with Part IV of the *Environment Act*.

The purpose of the proposed undertaking is to develop and operate a Certified Green energy hydrogen and ammonia production facility on an industrial property situated along the Strait of Canso near Port Hawkesbury, Cape Breton. The green ammonia produced and sold is expected to be transported internationally for use in decarbonizing various industrial processes, including the production of ammonia-based fertilizer. The Project intends to begin construction in Spring 2023.

The EA registration documents can be downloaded from:

[Environmental Assessments-EverWind](#)

If you have trouble accessing the document, please let me know.

The GIS data regarding project location and environmental feature shapefile data can also be downloaded from the above-mentioned link. The GIS data must not be distributed outside of the government and should be used only for this review.

**Ensuring a clear, consistent and predictable review of EA projects is key to clarifying and streamlining the EA process. We have developed the **attached template** to support you, in your role as reviewer, to help achieve this goal. The template includes guiding questions to support reviewers with its completion, requests a summary of comments be provided, and requests sign off by Managers/Directors (for provincial departments) prior to submission of final comments to the EA Branch.**

Comments on this Project must be provided by **January 18, 2023**, via e-mail. If there are no comments, please reply indicating so.

On December 9, 2022, the Registration Documents will also be available on our website at <http://www.novascotia.ca/nse/ea/>. On or before **February 7, 2023**, the Minister of Environment and Climate Change will decide if the project can be granted conditional environmental assessment approval. **Your comments will be published on our EA website on the decision day.**

If you have any questions, please contact me at any time.

Kind regards,

**Renata Mageste da Silva** (She/Her)

---

Environmental Assessment Officer  
**Department of Environment and Climate Change**  
1903 Barrington Street, Suite 2085  
PO Box 442  
Halifax, NS B3J 2P8  
Tel: (902) 456-6563



Environment and Climate Change

---

Barrington Place  
1903 Barrington Street  
Suite 2085  
Halifax, Nova Scotia  
Canada B3J 2P8

Date: January 19, 2023  
To: Renata Mageste da Silva, Environmental Assessment Officer  
From: Melissa Ginn, Regional Environmental Advisor, Transport Canada  
Subject: EverWind Hydrogen project, **Strait of Canso, Nova Scotia**

---

**Scope of review:**

This review focuses on the following mandate: Navigation

**Technical Comments:**

Transport Canada Environmental Programs, Atlantic Region has reviewed the registration document for EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1. As is mentioned in the document, the proposed project is not located on federal lands, therefore a review pursuant to s.82 of the *Impact Assessment Act* (IAA) is not required.

If there are any works in, on or above water, such as the proposed freshwater intake pipeline, an application under the *Canadian Navigable Waters Act* (CNWA) may need to be submitted. Please refer to the following link for further details: [Login - Canada.ca](#).

**Summary of Recommendations: (provide in non-technical language)**

If there are any works in, on or above water, such as the proposed freshwater intake pipeline, an application under the *Canadian Navigable Waters Act* (CNWA) may need to be submitted. Please refer to the following link for further details: [Login - Canada.ca](#).

Date: January 19, 2023

To: Renata Mageste da Silva, Environmental Assessment Officer

From: Matthew Baker, Regulatory Reviews Biologist, Ecosystems Management  
**Sign-off:** Colleen Smith, Section Head, Marine Developments

Subject: EverWind Point Tupper Green Hydrogen/ Ammonia Project, Canso County, Nova Scotia

---

**Scope of review:**

This review focuses on the following mandates:

- the fish and fish habitat protection prohibitions of the *Fisheries Act*;
- the permitting prohibitions of the *Species at Risk Act* for listed aquatic species at risk; and
- the introduction of aquatic invasive species, which is prohibited under the section 10 of the *Aquatic Invasive Species Regulations*.

**Technical Comments:**

- The EA Registration Document provides adequate information to identify the potential environmental effects that may result in:

- the death of fish;
- the harmful alteration, disruption or destruction of fish habitat;
- prohibited effects to listed aquatic species at risk; and/or
- the introduction of aquatic invasive species.

There is adequate information to identify mitigation measures that can be implemented to avoid causing prohibited effects to fish and fish habitat. The proponent should refer to DFO's Projects Near Water website for additional information about the Department's standards and codes of practice, and measures to protect fish and fish habitat. The website is available at the following link: <https://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>.

The proponent should implement these measures to avoid and mitigate impacts to fish and fish habitat. Project works, undertakings, or activities associated with the project may require a regulatory review by DFO if impacts to fish and fish habitat cannot be completely avoided or mitigated through implementation of the standard measures.

- The proponent should provide DFO with additional information about the potential for the project to result in changes in flow in Watercourses IV, V, VI, and VII. Changes to the local catchment area, re-direction of overland flow, and/or wetland alterations may impact ecological flow requirements for fish and fish habitat in the watercourses, and may result in the harmful alteration, disruption or destruction of fish habitat or death of fish. See DFO's Pathways of Effects for more information (<https://www.dfo-mpo.gc.ca/pnw-ppe/pathways-sequences/frequency-frequence-eng.html>)



- The proponent should ensure proper erosion and sediment control by avoiding introducing sediment into aquatic habitats. An Erosion and Sediment Control Plan should be developed and implemented, and standard mitigation measures should be implemented.
- Any wastewater, stormwater, or effluent that may eventually be discharged from the site into aquatic environments must meet all applicable guidelines. The proponent should refer to the Canadian Council of Ministers of the Environment guidelines for water quality and protection of aquatic life.
- DFO understands that no modifications to the footprint of the existing marine terminal are required. As a result of the project, an increase in vessel presence and movement at and near the project's marine terminal is expected. The following advice should be implemented to avoid and mitigate potential impacts to marine mammals and aquatic species at risk from vessel movements and transits:
  - Vessel movements and transits should adhere to Section A2 Marine Mammal Guidelines and Marine Protected Areas in the Canadian Coast Guard's 2021 Annual Notice to Mariners available here: <https://www.notmar.gc.ca/annual-annuel-en.php>.
  - Maintain a watch for marine mammals, sea turtles, and aquatic species at risk during vessel movements and transits.
  - Report any collisions with marine mammals, or sightings of entangled, injured or dead marine mammals as soon as possible to the Marine Animal Response Society at 1-866-567-6277 or mars@marineanimals.ca, and to DFO's Fish and Fish Habitat Protection Program at 902-426-3909 or ReferralsMaritimes@dfo-mpo.gc.ca
  - Collect as much information as possible on any entangled, injured or dead marine mammals or aquatic species at risk observed during the exercise (e.g., date/time, GPS location, photos, species, number of individuals, condition, etc.).
  - Report live free-swimming whale sightings to DFO at 1-844-800-8568 or XMARWhaleSightings@dfo-mpo.gc.ca

### **Summary of Recommendations:**

DFO understands that the proponent will be purchasing freshwater from the Landrie Lake Water Utility, which has an existing water withdrawal approval, and that the water withdrawal approval will need to be renewed in the coming years, and that there may be plans to upgrade the water system and/or expand the watershed. Upon an application for renewal, DFO will review the proposed withdrawal of water from Landrie Lake and provide advice on avoiding and mitigating impacts to fish and fish habitat in Landrie Lake and/or contiguous watercourses. Information on the potential effects to the littoral zone in Landrie Lake and ecological flow requirements at the outflow of Landrie Lake may be required.

Should any of the proposed watercourse crossings associated with the installation of the transmission interconnection line and raw freshwater pipeline require a watercourse alteration approval or are unable to avoid causing a harmful alteration, disruption or destruction of fish habitat, DFO will review the work, undertaking and activity through the existing referral process.

Given the nature of the proposed project, the extent of fish and fish habitat within the proposed project site, and the description of the potential environmental effects, the proponent may be able to implement measures to avoid and mitigate prohibited effects to fish and fish habitat.

---

Date: 2023-01-25

To:

From: John Cormier, Coordinator Special Places

Subject: Everwind Hydrogen & Ammonia Project, Richmond **County, Nova Scotia**

---

**Scope of review:**

This review focuses on the following mandate: Archaeology

*(Examples: hydrology and surface water quantity; surface water quality; air quality; species at risk recovery; wildlife species and habitat conservation; contaminated sites, etc.)*

**Technical Comments:**

**I have reviewed the EA document and the associated archaeological resource impact assessments. I am satisfied that the EA Document aligns with the recommendations made in the ARIA.**

**There have been past archaeological resource impact assessments that have encompassed sections of the Transmission Line Development:**

**A2008NS010 Point Tupper Wind Farm**

**-The southern portion of the Transmission Line situated south of the Port Malcolm Road fall into a previously assessed area.**

**A2007NS071 Tupper Windfarm**

**- The maps for this report are not completely clear, but it appears that portions of the Transmission Line that are running to the southwest and northwest sides of Landrie Lake fall into previously assessed areas.**

**A2000NS042 Statia Terminals Pt. Richmond Underground Storage Project**

**- The southern portion of the Transmission Line south of Port Malcolm Road falls within a previously assessed area.**

**A2005NS070 Port Hawkesbury NSP Transmission Line**

**- Portions of the Transmission Line may fall into the Study Area Buffer of A2005NS070 around the southwestern and northwestern sides of Landrie Lake. However, portions of the Transmission Line that have not been encompassed by previously conducted ARIA's are situated in areas that may hold microtopography and hydrology that may be indicative of areas of elevated archaeological potential and should be subjected to archaeological assessment.**

**Summary of Recommendations: (provide in non-technical language)**

**The Transmission Line seems to have areas in its southern portion fall into previously assessed areas. However, the portions to the north are unassessed**

---

Date: Jan 25, 2023  
To: Environmental Assessment Officer  
From: Dr. C. Cottreau-Robins, Senior Curator Archaeology, CCTH  
Subject: Everwind Hydrogen and Ammonia Project, **Richmond County, Nova Scotia**

---

**Scope of review:**

This review focuses on the following mandate: archaeological resources

*(Examples: hydrology and surface water quantity; surface water quality; air quality; species at risk recovery; wildlife species and habitat conservation; contaminated sites, etc.)*

**Technical Comments:**

*(When completing this section, please consider the [Guiding Questions for Technical Comments](#) (attached), to inform your comments).*

**I have reviewed the EA document and find that it aligns with and supports the conclusions of the draft archaeological resource impact assessment completed by Boreas Heritage and supported by CCTH.**

**The document also indicates that there may be the need for further permitted archaeology related to the Transmission Interconnection Line and if so that will take place.**

**The archaeology report is not appended to the EA document and that aligns with the mandate of CCTH.**

**There is a list of Drawings in the table of Contents. Drawing 34 notes archaeology. Where can this be found in the document? There should be no illustration of archaeology site locations in the EA document.**

**Summary of Recommendations: (provide in non-technical language)**

*(When completing this section, please consider the [Guiding Questions for Summary of Recommendation](#) (attached), to inform your comments).*

**I recommend CCTH accept the archaeology components of the EA document.**

**IMPORTANT:**

- Always provide a response back to the EA Branch, even if it is simply to confirm that there is “no comment.”
- The comments will be published on the EA website on decision day (privacy review is NOT conducted on comments from government).

Date: January 25, 2023  
To: Environmental Assessment Officer  
From: Dr. Tim Fedak, Curator of Geology, Nova Scotia Museum.  
Subject: EverWind Point Tupper Green Hydrogen/Ammonia Project, Richmond County, Nova Scotia

---

**Scope of review:**

This review focuses on the following mandate: Special Places Act - Fossils

**Technical Comments:**

The proposal document describes correctly the general bedrock geology as Cumberland Group and Mabou Group Carboniferous strata. By referencing a more detailed geological map (Open File Map 2017-009) the project area includes strata from the Colindale Member, Margaree Member and Emery book Member of the Cumberland Group, as well as the Hastings and Pomquet Formations of the Mabou Group. [https://novascotia.ca/natr/meb/data/mg/ofm/pdf/ofm\\_2017-009\\_d433\\_dp.pdf](https://novascotia.ca/natr/meb/data/mg/ofm/pdf/ofm_2017-009_d433_dp.pdf)

There is potential for these Carboniferous units to contain significant fossils, including plants, invertebrates and possible vertebrate remains. If blasting and disruption of the bedrock is planned, a survey for potential significant fossil samples may be desirable if possible.

**Summary of Recommendations: (provide in non-technical language)**

If excavation of bedrock is proposed, recommend conducting a palaeontology survey to determine if any significant fossil material may be present and removed prior to destruction.

**IMPORTANT:**

- **Always provide a response back to the EA Branch, even if it is simply to confirm that there is “no comment.”**
- **The comments will be published on the EA website on decision day (privacy review is NOT conducted on comments from government).**





Kwilmu'kw Maw-klusuaqn Negotiation Office  
**Mi'kmaq Rights Initiative**

75 Treaty Trail  
Truro, NS B6L 1W3

**Tel** (902) 843 3880 **Fax** (902) 843 3882

**Toll Free** 1 888 803 3880

**Email** [info@mikmaqrighths.com](mailto:info@mikmaqrighths.com)

**www.mikmaqrighths.com**

Our Rights. Our Future.

January 17<sup>th</sup>, 2023

Renata Mageste da Silva  
Environmental Assessment Officer  
Environmental Assessment Branch  
Nova Scotia Environment and Climate Change  
Email: [renata.magestedasilva@novascotia.ca](mailto:renata.magestedasilva@novascotia.ca)

**RE: Consultation with the Mi'kmaq of Nova Scotia on EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1.**

Ms. Silva,

I write in response to your letter dated December 7<sup>th</sup>, 2022, requesting consultation under the *Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process (ToR)* as ratified on August 31, 2010, on the above noted project. We wish to proceed with consultation.

As Climate change continues to disproportionately affect marginalized and First Nation communities across Canada, more needs to be done globally to lower Co2 emissions. The Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) are encouraged to see EverWind Fuels partner with various Mi'kmaw communities including Memebertou, Paqtnekek and Potlotek First Nations. We recognize more needs to be done in the transition away from fossil fuels and are encouraged that the Mi'kmaq are at the forefront in emerging technologies such as Green Hydrogen and Ammonia production.

This project may impact various communities rights as protected under section 35 of the Constitution Act, 1982. Section 35 allows the Mi'kmaq of Nova Scotia to hunt and fish throughout Mi'kma'ki (Unceded land of the Mi'kmaq people). This project may impede that ability in the surrounding area (including but not limited to the ability to hunt, fish, and gather in the project area). Atlantic Salmon and American Eel, but not limited to, are species that are important to the Mi'kmaq and are all found in the project area.

The Environmental Assessment Registration Document (EARD) EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1 for EverWind Fuels Company Section 7.3.1 Terrestrial Habitat states that:

*“Terrestrial habitat within 5 KM of the industrial facility was assessed through desktop analysis of the following resources:*

- *Provincial Landscape Viewer (NSLF, 2015)*
- *Ecological Land Classification of Nova Scotia (Neily et al., 2017)*

- *Significant Species and Habitats Database (NSNRR, 2018)*
- *Parks and Protected Areas Interactive Map (NSECC, 2022c)*
- *Old Forest Policy Lands Layer – per Provincial Landscape Viewer (NSLF, 2015)*
- *Potential Boreal Felt Lichen Habitat Layer (NSNRR, 2010)”*

While there is indication in the EARD of the above report that some field work has been conducted, it is unclear to what extent. It should be noted that areas reviewed solely using desktop review are not reliable and can not be considered sufficient for review of significant species. Further, the Old Forest Policy has since been updated to better suit all provincial forest crown vegetation and Forest Ecosites thus the use of the Old Forest Policy Lands Layer – per Provincial Landscape Viewer (NSLF, 2015) can not be considered an adequate review for any project. It is unclear to what extent Mi’kmaq Rights will be impacted on this land base due to the lack of inventoried species within this assessment.

**Table 7.0: ACCDC Flora SOCI Identified within 5 km of the Industrial Facility and Section 7.3.3 Terrestrial Fauna** speaks to flora and fauna species of provincially/ federally recognized sensitive species. Whereby Species at Risk are of concern, it can not be acceptable to conduct activities that will negatively impact Species at Risk habitat directly or indirectly.

Our office is seeking clarity on the approved draw down from Landrie Lake and how this body of water will be impacted by the initial phase of this project as well as subsequent phases. The total approved drawdown from Landrie Lake is an estimated 36.6 ML/day. While the estimated draw down would be 25.3ML/day, our office remains concerned of the demand placed on this lake and its ability to meet the demand for future phases.

The EARD identified several wetlands and watercourses located in the project area may be altered, disrupted, or destroyed due to the construction and development of the proposed transmission lines. The restoration and/or creation of wetland areas is supported and encouraged, however, it is our understanding that wetlands are complicated systems that cannot be easily replicated from a biological perspective. It is our expectation that Consultation will continue on future permits and approvals for this project such as a Fisheries Act Authorization or alternative permitting from Department of Fisheries and Oceans that will allow the proponent to alter or disturb these bodies of water.

It is our expectation that a Mi’kmaq Ecological Knowledge Study (MEKS) be completed in accordance with the Mi’kmaq Ecological Knowledge Protocol. Should this project be approved, it is strongly advised the completion of a MEKS by the proponent be incorporated into the terms and conditions of the approval. An updated MEKS is needed to better understand the potential impacts this project may have on Rights and Title. In particular, the transmission lines footprint is large and has potential to impact various community member’s harvesting ability.

The KMKNO Archaeological Research Department (ARD) has reviewed the EverWind EARD, particularly Section 9.0 (Pages 128-130), Section 13.8 (Pages 227-232) and the Archaeological Assessment area identified in Drawing #34. An Archaeological Resource Impact Assessment (ARIA) has been conducted by Boreas Heritage Consulting and is currently still under review by

the Special Places Program of CCTH. Any recommendations that have been offered in the ARIA have yet to be reviewed.

The ARIA evaluated the archaeological potential within the Project Boundary and aimed to identify and delineate any areas exhibiting a high potential for encountering archaeological resources. This information was then used to inform the design/layout of the Project to avoid these sensitive features. The ARIA included a “historical background study and reconnaissance” of the Project Boundary and did not involve sub-surface testing.

Three areas have been identified as exhibiting high potential for encountering archaeological resources. These areas, as well as one previously recorded site, are located outside of the Project Boundary, but within the Study Area. Two areas identified as high potential are associated with watercourses located within the archaeological study area, are recognized areas used by Mi’kmaq, and the potential for encountering buried archaeological remains is high (EverWind EARD 2022: 130). The third area has been identified as high potential and belonging to a historic occupation (which could also be Mi’kmaw). EverWind has acknowledged that this project has been designed to avoid any high potential areas. Waterways, regardless of size, continue to be important features in Mi’kmaw cultural landscapes. Whether for navigation, by boat or foot, drinking water, or harvesting areas, these features are significant in Mi’kmaw cultural landscapes. These features work in conjunction with cultural landscapes. All other areas within the study area were recommended to be cleared for any future archaeological assessment. In the absence of subsurface testing, KMKNO’s ARD cannot support this recommendation.

To date, it appears that archaeological assessment of impacted lands is limited to the footprint of the industrial facilities planned for construction, not the landscape that will be impacted by the transmission interconnection line. Under Section 13.8.2.1 Spatial Boundary, ground disturbance associated with the transmission interconnection line, “is expected to be minimal and specific to the placement of power poles” (EverWind EARD 2022:228). It has been acknowledged that once a detailed design has identified “areas of disturbance”, EverWind will investigate these locations under a separate archaeological permit from Nova Scotia Communities, Culture, Tourism & Heritage (NSCCTH) prior to the construction of the Transmission Interconnection Line. EverWind has acknowledged that if archaeological resources are identified, “the design will be modified to ensure avoidance is achieved” (EverWind EARD 2022:228). “No ground disturbance associated with the Transmission Interconnection Line will occur until a separate ARIA is completed and accepted by NSCCTH” (EverWind EARD 2022:228). It is strongly recommended all proposed disturbances and impact areas within the EverWind Project study area be subjected to subsurface testing before construction activities commence. Disturbance is defined, for archaeological purposes, as the dislocation of soils and/or sediments, such as that by heavily treaded or tracked vehicles, as well as purposeful excavation by heavy equipment.

The Assembly of Nova Scotia Mi’kmaw Chiefs (ANSMC) expects a high level of archaeological diligence with evidence-based decisions grounded in an understanding of the subsurface environmental data. There were no subsurface investigations conducted within the proposed impact study area where Industrial Facilities will be developed. The Maw-lukutijik Saqmaq (Assembly of Nova Scotia Mi’kmaw Chiefs) expects subsurface data, adequate to eliminate

concern for presence, protection, and management of Mi'kmaw archaeological and cultural heritage as part of assessment of potential in advance of any development.

Finally, we do not support clearances without subsurface testing. Mi'kmaq archaeological sites have developed since time immemorial and may not be identified from the surface character of the current landscape, one cannot conclusively eliminate potential for Mi'kmaw archaeological heritage, without subsurface testing. It is KMKNO's expectation that a final ARIA will be sent to our office for review and comment upon completion.

KMKNO is requesting updated shapefiles be sent to our office for the proposed project boundaries. Shapefiles for the project area will allow for more thorough review and better assessment on how this project may impact Mi'kmaw Rights and Title.

KMKNO does not represent the communities of Membertou, Millbrook or Sipekne'katik First Nations.

Please contact [redacted], Senior Mi'kmaw Energy and Mines Advisor at KMKNO for any further questions.

Yours in Recognition of Mi'kmaw Rights and Title,

[redacted]  
Director of Consultation  
Kwilmu'kw Maw-Klusuaqn Negotiation Office

c.c.:

Kwilmu'kw Maw-Klusuaqn Negotiation Office  
Consultation Advisor, Nova Scotia Office of L'nu Affairs  
Director, Nova Scotia Public Works  
Manager, Natural Resources and Renewables  
Senior Biologist, Department of Fisheries and Oceans



Nova Scotia Department of Environment & Climate Change  
1903 Barrington St  
Halifax, Nova Scotia  
B3J 2P8

January 17, 2023

**RE: EverWind Point Tupper Green Hydrogen/Ammonia Project**

Dear Renata Mageste da Silva,

This letter is to acknowledge receipt by the Sipekne'katik Governance Initiative (SGI) of the above-mentioned letter dated December 7, 2023 regarding the EverWind Point Tupper Green Hydrogen/Ammonia Project. The aforementioned project may impact Mi'kmaq rights, including Mi'kmaq title.

In 2013, Sipekne'katik exited the Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference and chose to develop its own consultation process, the *Sipekne'katik Governance Initiative Protocol, 2020* ("SGI Protocol"). The SGI Protocol follows a similar six-phased approach to the Government of Nova Scotia's 2013 Consultation Policy and Guidelines. Its purpose is to ensure that Sipekne'katik can obtain the requested information on the nature and exercise of rights through a meaningful consultation process that involves rightsholders. Sipekne'katik cannot provide specific details on impacts to Mi'kmaq rights without this type of robust community engagement, and certainly not within a month's time.

Article 18 of UNDRIP affirms Indigenous peoples' right to participate in decision-making matters which would affect their rights in accordance with their *own procedures*. To address any correspondence relating to consultation, all projects must go through the SGI Protocol process. We are returning the information to your office pending completion of the enclosed application form and payment of the requisite administrative fee.

The administrative fee covers the first four phases of the process, including Application Intake (Phase 1), the Preliminary Assessment of the Consultation Scope (Phase 2), the Internal Governance Review (Phase 3), and Negotiations, where required (Phase 4). The substantive community consultation process (Phase 5) is triggered when a project is identified as having significant adverse impacts to Mi'kmaq rights, including to the ecological integrity of Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. The cost of community consultation is not included in the initial administrative fee; rather, capacity funding will be negotiated during Phase 4 according to the level of consultation owed.



Please note that the length of the SGI Protocol process may not accord with proponent's proposed project timeline as well as legislated timelines imposed by the federal and provincial governments. Nonetheless, we require that all projects undergo the SGI Protocol process to ensure full and meaningful consultation.

Notices and information provided to Sipekne'katik reviewed pursuant to the SGI Protocol are reviewed on a without prejudice basis. Neither the consultation process nor any agreements concluded with Government or Industry Proponent(s) as a result of the participation of Sipekne'katik in the consultation process can be used to define or in any way limit Aboriginal and Treaty rights. Further, the participation of Sipekne'katik in consultation is without prejudice to any position, past, present, or future that may be taken in negotiations, litigation or in any other process, as per section 4.3 of the SGI Protocol.

We are enclosing the SGI Protocol and an information brochure outlining the six-phase approach to consultation, as well as a letter addressed to Minister of Aboriginal Affairs, Justin Huston, on this subject matter. The Sipekne'katik Governance initiative staff will be happy to arrange a time to meet to answer any questions and to discuss a path forward with your department or project leads. We look forward to collaborating with you in a manner consistent with the Nation-to-Nation treaty relationship.

Please ensure that you copy [consultationclerk@sipeknekatik.ca](mailto:consultationclerk@sipeknekatik.ca) in all communications with the Sipekne'katik Governance Initiative.

Sincerely,

***Sipekne'katik Governance Initiative***  
[consultation@sipeknekatik.ca](mailto:consultation@sipeknekatik.ca)  
(902) 835-2869

Encl.

CC:

[@sipeknekatik.ca](mailto:@sipeknekatik.ca)  
[@sipeknekatik.ca](mailto:@sipeknekatik.ca)  
[@sipeknekatik.ca](mailto:@sipeknekatik.ca)  
[@sipeknekatik.ca](mailto:@sipeknekatik.ca)  
[@sipeknekatik.ca](mailto:@sipeknekatik.ca)

COPY



June 28, 2022

Chief Executive Officer  
Office of L'nu Affairs  
Province of Nova Scotia  
PO Box 1617, Halifax, Nova Scotia  
B3J 2Y3

**RE: Sipekne'katik Consultation Process**

Sipekne'katik passed the *Sipekne'katik Governance Initiative Protocol* (“the SGI Protocol”) into law in July 2020. The SGI Protocol sets out a community-based consultation process that will be relied upon whenever the Crown contemplates conduct that could adversely impact the Mi'kmaq rights of Sipekne'katik. Whereas the Province encourages Sipekne'katik to test the expectations within the SGI Protocol against the guidance on consultation provided by the Supreme Court of Canada, Sipekne'katik encourages the Province to test the common law duty to consult against the requirements of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which is to be implemented in Canadian law without delay by governments and courts alike.<sup>1</sup>

The Province of Nova Scotia states that it has “full authority to create and define the consultation process” and “discretion over how the consultation process is conducted,” so long as the process is reasonable.<sup>2</sup> In keeping with the Honour of the Crown and reconciliation, a reasonable and meaningful approach to consultation is one that respects the self-determination and self-governance of Indigenous peoples and treats them as equal treaty partners.<sup>3</sup> Article 18 of UNDRIP

<sup>1</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [UNDRIP Act] (section 2.3 explicitly states that “nothing in this act is to be construed as delaying the application of the Declaration in Canadian law” and s.4.a. affirms UNDRIP as an international human rights instrument with application in Canadian law); see also, See, *Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families* [2022] (QCCA) at paras 433, 506-513 [*Reference Re Bill C-92* (QCCA)] (The Quebec Court of Appeal (QCCA) confirmed that UNDRIP should inform the interpretation of section 35 of the *Constitution Act*, 1982 much like how international law informs the interpretation of the Charter).

<sup>2</sup> Nova Scotia, Letter from the Office of L'nu Affairs, RE: Draft Sipekne'katik Governance Initiative Protocol, April 22, 2021 at pp 2, 3 [OLA Letter, April 21, 2022].

<sup>3</sup> See, *Reference Re Bill C-92* (QCCA), *supra* note 1 at para 560; UNDRIP, Arts 3 & 4; Department of Justice Canada, “Principles respecting the Government of Canada's relationship with Indigenous peoples” (last modified 1 September 2021), s 3, online: *Department of Justice Canada* <[www.justice.gc.ca/eng/cs/sj-c/principles-principes.html](http://www.justice.gc.ca/eng/cs/sj-c/principles-principes.html)> (Canada affirms in its 10 Principles that, “section 35 contains a full box of rights, and holds the promise that Indigenous nations will become partners in Confederation on the basis of a fair and just reconciliation



affirms Indigenous peoples' right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves, in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.<sup>4</sup> To reiterate, Sipekne'katik does not fall under the 2006 "Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process" ("TOR") between the Province and the Assembly of Nova Scotia Mi'kmaq Chiefs ("the Assembly") and neither Kmilnu'kmaw Maw'klusuaqn (KMKNO) nor the Assembly possess authority to conduct consultations on Sipekne'katik's behalf.<sup>5</sup> We are attaching the Band Council Resolution confirming Sipekne'katik's exit from the TOR. The Province is legally obligated to consult with Sipekne'katik under Mi'kmaq law, section 35 of the *Constitution Act*, 1982, and Articles 19 and 32(2) of UNDRIP.

It has come to our attention that the Province's approach to consultation is to engage primarily with the reserve located in closest proximity to the proposed project. Such an approach fails to consider the impacts of forced centralization on the Sipekne'katik Mi'kmaq and is inconsistent with the territorial approach to Aboriginal rights recently affirmed by the Supreme Court of Canada in *Desautel*, 2021 SCC 17.<sup>6</sup> We would like to remind the Province that Mi'kma'ki is subject to the Aboriginal title of the Mi'kmaq Nation and that confining the exercise of our inherent rights to areas adjacent to the reserve does not accord with Mi'kmaq law, Canadian law, or UNDRIP. All projects proposed in the unceded and ancestral traditional territory of the Mi'kmaq could impact the ability of the Sipekne'katik Mi'kmaq to exercise their inherent rights.

We expect that all consultation and related matters with Sipekne'katik will be consistent with the SGI Protocol. The Crown has a duty of good faith when engaging in consultation with Indigenous peoples, which leans heavily against frustrating community processes.<sup>7</sup> As held by the Supreme Court, the duty to consult is owed to the Aboriginal peoples that hold collective rights, not

---

between Indigenous Peoples and the Crown "); see also, *Mitchell v M.N.R.*, 2001 SCC 33 at para 146 (Justice Binnie's concurring decision holds that Indigenous jurisdiction is plenary and can include all governmental authority over a Nation's internal affairs, including the right to occupy and use their traditional territories).

<sup>4</sup> UNDRIP, Art 18; See also, UNDRIP, Art 5 ("Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State"); IAAC, "Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples" (2022) at pp 5, 30 (The federal government's Guidance under the *Impact Assessment Act* acknowledges the importance of respecting an Indigenous' communities consultation protocol and of recognizing Indigenous laws, practices, and jurisdiction in assessment processes).

<sup>5</sup> On March 5, 2013, Sipekne'katik passed a Band Council Resolution declaring that neither Kmilnu'kmaw Maw'klusuaqn nor the Assembly has authority to engage in consultations on behalf of Sipekne'katik and that Sipekne'katik would assume its own consultation process with the Crown. As per section 4(2) of the TOR, "If a First Nation (Band) receives a notice under Article 9 a. and declines to delegate authority or be represented in respect of that matter by the Committee pursuant to these Terms of Reference, Government shall not conduct consultations respecting that First Nation (Band) through the Consultation Table provided for herein."

<sup>6</sup> See also, *R v Powley*, 2003 SCC 43; *R v Sappier; R v Gray*, 2006 SCC 54.

<sup>7</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 42.





necessarily the Indian Band itself.<sup>8</sup> Importantly, the SGI Protocol is how Sipekne'katik's duly elected Chief & Council may fulfill its fiduciary duties to its members to ensure the collective procedural and substantive rights of the Sipekne'katik Mi'kmaq are protected. Where an Indigenous group has established a process for consultation, the Crown must engage in this process in good faith.<sup>9</sup>

In the past, the Province has often engaged in consultations with the Mi'kmaq Nation in a manner inconsistent with its legal obligations. These failures to uphold the Crown's fiduciary duties were addressed in *Sipekne'katik v Alton Gas Storage LP*, 2020 NSSC 11, where the court was clear that the level of consultation owed is to be determined through a preliminary assessment of the strength of the rights impacted.<sup>10</sup> The Province is legally obligated to share its' strength of claim assessment with Sipekne'katik; meaningful consultation is not possible where the Crown withholds this assessment.<sup>11</sup> Most importantly, where consultation does not address the rights at issue, including impacts to Aboriginal title, the Crown will not have fulfilled its' legal duty owed to the affected Indigenous group.<sup>12</sup>

Sipekne'katik has developed its self-governed SGI Protocol based on such legally established consultation principles as well as Mi'kmaq legal principles, including *Kisu'lt melkiko'tin*, *Weji-sqalia'timk*, *Netukulimk*, *Tlilnuo'lti'k*, *Ko'kmanaq*.<sup>13</sup> The SGI Protocol provides for early consultation engagement, a time for the Crown's strength of claim assessment to be shared with Sipekne'katik, and a process for rightsholders to review the proposed Crown conduct to consider how such actions may affect Mi'kmaq rights. The level of consultation owed in each circumstance will vary, from mere notice to a more substantive process requiring community consent and accommodation.<sup>14</sup>

The Province's contention that there is "no obligation for the parties to enter into negotiations or to agree" is an unreasonable position.<sup>15</sup> In keeping with the Honour of the Crown, the minimum

<sup>8</sup> See, *Moulton Contracting Ltd v British Columbia*, 2013 SCC 26 at para 30 ("The duty to consult exists to protect the collective rights of Aboriginal peoples. For this reason, it is owed to the Aboriginal group that holds the s.35 rights, which are collective in nature").

<sup>9</sup> See, *Adams Lake Indian Band v British Columbia (Lieutenant Governor in Council)*, 2011 BCSC 266.

<sup>10</sup> *Sipekne'katik v Alton Gas Storage LP*, 2020 NSSC 11 at para 75 [*Alton Gas*].

<sup>11</sup> See, *Fort Chipewyan Métis Nation of Alberta, Local 215 v Alberta (Minister of Aboriginal Relations)*, 2016 ABQB 713 at para 148.

<sup>12</sup> *Alton Gas* at para 144.

<sup>13</sup> SGI Protocol at s 1 ("Mi'kmaq Worldview"); see also, UNDRIP, Art 34 ("Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards").

<sup>14</sup> SGI Protocol, s 6.2.2 (It is through the "initial assessment and reponse" section that Sipekne'katik will determine whether Crown conduct will or will not create an appreciable adverse impact on Aboriginal and treaty rights or interests). See also, *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at para 92.

<sup>15</sup> OLA Letter, April 21, 2022 at p 5.



standard for any consultation process should be cooperation with the aim of achieving consensus, in accordance with the principles of Mi'kmaq justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.<sup>16</sup> This standard is reflected in Section 6.1.1 of the SGI Protocol (“Intention to Reach Agreement”) which provides that,

All parties – the Government, Industry Proponent(s), and Sipekne'katik – shall engage with each other with the genuine intention to substantially address the interests and concerns of all parties and reach mutually beneficial agreement.

The requirement for free, prior and informed consent (FPIC) as contained in Article 32(2) of UNDRIP should be applied on objective grounds, based on a consideration of all the rights at stake and the importance of their protection.<sup>17</sup> FPIC is fundamentally a relational process that provides Sipekne'katik the opportunity to meaningfully participate in the decision-making process in a self-determined manner.

We understand the Province views their duty to consult as one where the Mi'kmaq's constitutionally-protected section 35 rights must be balanced with other societal interests, as per the 2004 *Haida* decision. However, any infringement of Mi'kmaq rights must meet the justification test under the *Sparrow* framework.<sup>18</sup> Respecting the fundamental human rights of Indigenous peoples and upholding the Crown's constitutional obligations is in the public interest.<sup>19</sup>

Sipekne'katik also wishes to note that the distinction between established and asserted rights<sup>20</sup> is rooted in the doctrines of discovery and *terra nullius*, which Canada declared to be “racist, scientifically false, legally invalid, morally condemnable and socially unjust” in the UNDRIP Act.<sup>21</sup> Indigenous rights are inherent; they derive from Indigenous peoples' political, economic and social structures, and from their cultures, spiritual traditions, histories and philosophies.<sup>22</sup>

<sup>16</sup> See, UNDRIP Act, *supra* note 1 at Schedule subsection 2(1) at s 46(3).

<sup>17</sup> See also, 10 Principles, *supra* note 3, s 6 (The federal government acknowledges that “meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources”).

<sup>18</sup> Article 46(2) of UNDRIP further provides that, “The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.”

<sup>19</sup> *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 40.

<sup>20</sup> *Dee, Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 43 –45 (Currently, the Canadian common law imposes more limited procedural obligations where rights are asserted but “unproven” in a Canadian court).

<sup>21</sup> UNDRIP Act, *supra* note 1 at Preamble 9; See also, *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc.*, 2022 BCSC 15 at para 194 (“if the doctrines of discovery and terra nullius are indeed ‘legally invalid’ or simply inapplicable in Canadian law, what then is the legal justification validating the assertion of Crown sovereignty over indigenous people and lands?”).

<sup>22</sup> UNDRIP, *supra* note 1 at Preamble 6.



Inherent rights exist independently of the Crown's recognition and can neither be granted nor taken away by colonial governments. The Province's unilateral assertion of absolute authority over Indigenous peoples and their lands, territories, resources is untenable in the era of UNDRIP and contrary to the promises of the Peace and Friendship Treaties, which did not involve First Nations ceding, surrendering, or trading away lands and resources they had traditionally occupied and used.<sup>23</sup> We would like to remind the Province that treaties should be given a fair, large and liberal construction in favour of the Indians, as held by the Supreme Court.<sup>24</sup>

Based on existing jurisprudence and past litigation, the Province is fully aware that Sipekne'katik is the holder of Aboriginal and Treaty Rights, and has a credible, strong claim of Aboriginal title to our traditional territories, including the lands, water and resources upon which Sipekne'katik's current members and our ancestors have relied on since time immemorial. The Province is also aware of the unlawful taking of Sipekne'katik lands, including the Sambro, Ingram River, Ship Harbour Indian Reserves in 1919 which resulted in a successful specific claim. The Province and its agencies must respect Sipekne'katik's right to our traditional territories and shall not execute any sale, disposition, transfer or change of deed on the traditional territories of the Sipekne'katik Mi'kmaq without our consent.

The duty to consult owed to Sipekne'katik will often be at the high-end of the consultation spectrum, taking into account the size and scope of the proposed project and the severity of its impacts. Sipekne'katik wishes to note that screening and responding to the Crown's numerous requests for consultation requires significant capacity, yet the Band's resources are extremely limited. As such, the SGI Protocol provides for a small initial funding amount to ensure that meaningful consultation can be achieved at the outset. We also require the Province to submit applications outlining the proposed Crown conduct to ensure efficiency, timeliness, and enhanced coordination.

Crown-Indigenous relations can no longer be based in sections 91 and 92 of the *Constitution Act*, 1867, which position Indigenous peoples as passive subjects of the law: if the objective of reconciliation under section 35 is to be taken seriously, Indigenous peoples must be able to self-govern "as distinct social and political actors within Canada, a status which was already held out but which was put on hold by colonialist policies of assimilation."<sup>25</sup>

---

<sup>23</sup> OLA Letter, April 21, 2022 at p 4 (The Province asserts that, "Until [Aboriginal title] lands are established, the Crown has authority to use and manage such lands and that the benefits of Aboriginal Title do not flow until such title is established." In contrast, Article 26 of UNDRIP provides that, "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and Article 37 further provides that Indigenous peoples have the right to the recognition, observance and enforcement of treaties concluded with States and to have States honour and respect such treaties.

<sup>24</sup> *Simon v the Queen*, [1985] 2 SCR 387 at para 27.

<sup>25</sup> *Reference Re Bill C-92*, *supra* note 1 at 562.



We are attaching the SGI Protocol and the Phase 1 Application Form for proposed projects and demand that you share these documents with all relevant provincial departments. The Province must consult with Sipekne'katik according to the SGI Protocol, as it is the means by which Nova Scotia can uphold Mi'kmaq law, Canadian law and the Honour of the Crown. Should the Province fail to consult us under the SGI Protocol, we may be required to take legal action to protect our rights.

Yours ~~in~~ Recognition of Aboriginal Title and inherent Mi'kmaq Rights,



**NOW THEREFORE, BE IT RESOLVED THAT:**


1. The Sipekne'katik Council, as the elected representative of Sipekne'katik, hereby wish to re-confirm and provide notice to Canada, Nova Scotia and the Assembly of Nova Scotia Mi'kmaw Chiefs, that they terminate their subscription to the Terms of Reference and will continue to take responsibility for all consultations on its' own behalf; and
2. That this BCR is a fulfillment of the notice requirements contained under section 7 and section 22 of the Terms of Reference, confirming that Sipekne'katik is not a party to the Terms of Reference.

**MOTION made by Councilor** Lena Knockwood

**SECONDED by Councilor** Rufus Copage


**PASSED UNANIMOUSLY by the Sipekne'katik Chief and Council**


  
Chief Michael Sack

  
Councilor

  
Councilor

  
Councilor

  
Councilor

  
Councilor

\_\_\_\_\_  
Councilor

  
Councilor

\_\_\_\_\_  
Councilor



## SIPEKNE'KATIK BAND COUNCIL RESOLUTION

#

**WHEREAS** Sipekne'katik Council held a duly convened Council meeting at Sipekne'katik, Nova Scotia on June 15, 2022.

**AND WHEREAS** in 2010, the Mi'kmaq of Nova Scotia, as represented by the Thirteen Mi'kmaw Saqmaq of Nova Scotia, Nova Scotia and Canada entered into a Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process ("Terms of Reference");

**AND WHEREAS** section 7 of the Terms of Reference provides that a Chief and Council may conduct consultation itself, where it provides notice to the Assembly, who will then notify Canada and the Province of Nova Scotia;

**AND WHEREAS** on March 5<sup>th</sup>, 2013 the Sipekne'katik Council (formerly the Shubenacadie Band Council) passed a Band Council Resolution ("BCR") withdrawing from the Mi'kmaq Rights Initiative (Kwilmu'kw Maw-Klusuaqn) and the Made-In-Nova Scotia process, and confirming that it would be resuming all responsibilities for consultation and treaty rights of Sipekne'katik; consistent with section 7 of the Terms of Reference;

**AND WHEREAS** Sipekne'katik provided a copy of the BCR to Canada, Kwilmu'kw Maw-Klusuaqn and the Province of Nova Scotia confirming its' intention to undertake its own consultation process;

**AND WHEREAS** Sipekne'katik is concerned that the Province of Nova Scotia may be continuing to reference and apply the Terms of Reference to consultation it intends to undertake with Sipekne'katik, even though they are not a party to the Terms of Reference;

**AND WHEREAS** Sipekne'katik wishes to re-confirm and provide clarity to Canada and Nova Scotia that it is not a party, nor are bound to the Terms of Reference, as contained in the 2013 BCR passed by the Sipekne'katik Council; consistent with section 7 and section 22 of the Terms of Reference;



# Sipekne'katik Governance Initiative Protocol



## OVERVIEW

The Sipekne'katik Governance Initiative (SGI) Protocol, "Navigating a New Path Forward," outlines how community members want to be consulted regarding matters impacting their inherent rights and title. The Protocol was enacted into law in the summer of 2020 and represents an exercise of Sipekne'katik's right to self-governance and self-determination. Historically, environmental assessment processes have failed to adequately address the concerns of rightsholders, including in the case of Alton Gas.

The SGI Protocol upholds the fiduciary duties owed by the Crown to rights-holders, on the one hand, and by the Sipekne'katik Chief & Council to its members, on the other.

The following six-phase regulatory process has been adopted with the aim of implementing Sipekne'katik's right to Free, Prior & Informed Consent.



The Alton Gas site on the Shubenacadie River.  
Credit: Shawn Maloney

## Phase 1: Application

Application forms for each project must be completed and submitted with the requisite processing fee. The application form introduces each project, its nature, size and scope, the project timeline, the relevant legal jurisdiction(s), and the applicable legislation.

## Phase 2: Scope of Consultation

Applicants are expected to complete a "Scope of Consultation" form in which they will outline the potential risks and impacts to: (a) the environment, (b) social, cultural, economic and health rights, (c) Aboriginal & Treaty Rights, and (d) Mi'kmaq title and self-governance.

## Phase 3: Governance Review

The SGI Team will prepare an internal Project Report that will proceed to a three-part Governance Review by:

- i) The in-house legal team;
- ii) A Community Committee; and
- iii) Chief & Council.

This comprehensive review will help determine whether and what level of consultation is owed. The outcome of this initial assessment must be communicated to the Crown within 90 days of the application submission.

## Phase 4: Consultation Workplan & Negotiations

A Consultation Workplan with internal and external elements will be developed in cooperation with the applicant. The parties will negotiate the amount of capacity funding required to implement the Workplan.

## Phase 5: Community Consultation

In Phase 5, the parties will implement the Consultation Workplan. Consultation activities can include:

- i) Specialized studies on Mi'kmaq ecological knowledge and use, baseline scientific data, archaeology, etc.;
- ii) Archival and historical research;
- iii) Community engagement sessions;
- iv) Referendum, where required.

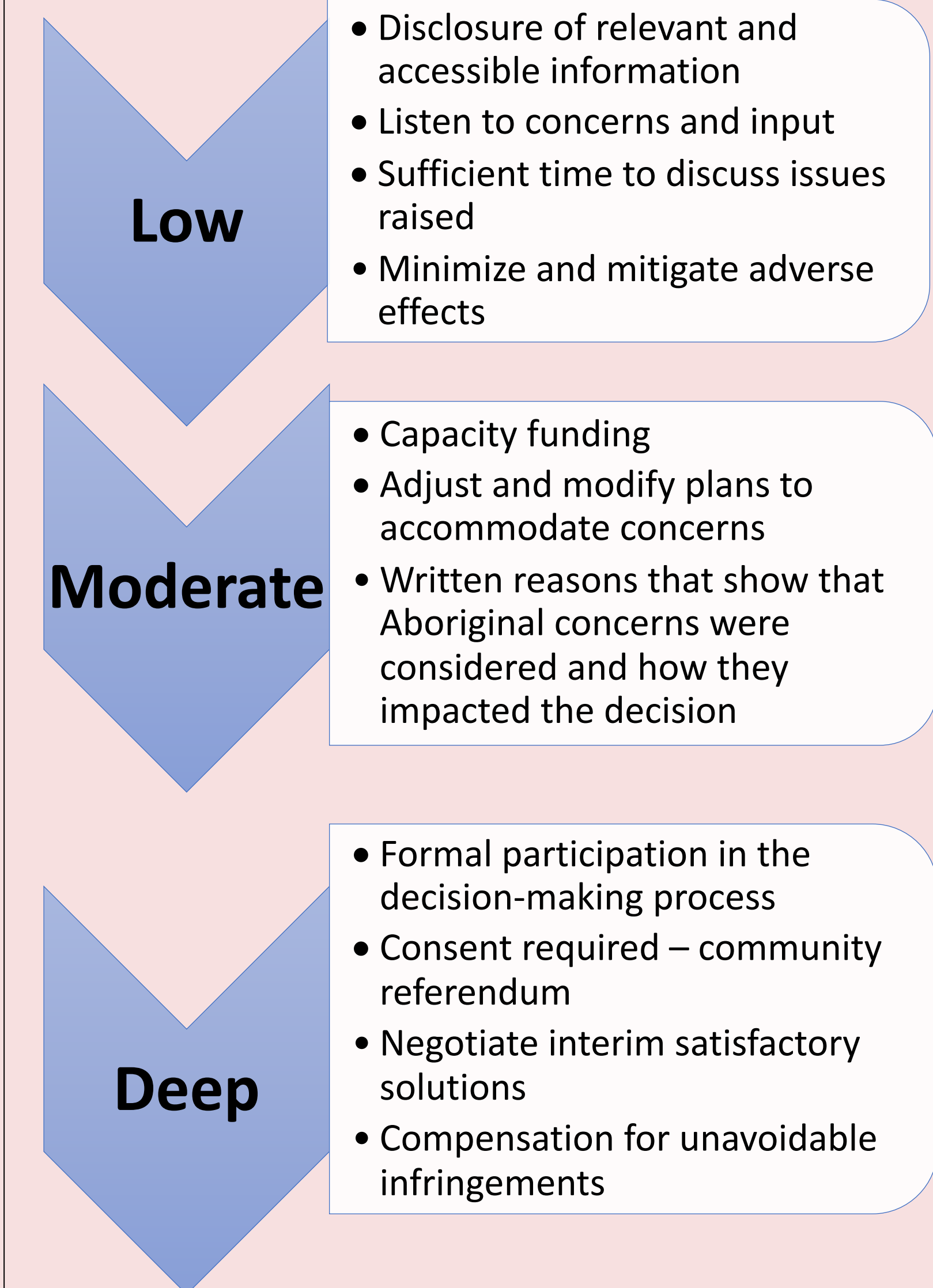
Once consultation is complete, the parties shall work towards an Agreement in Principle.

## Phase 6: Outcome

The Final Agreement shall be subject to the approval mechanism stipulated in the Consultation Workplan (e.g., Band Council Resolution, Community Referendum and/or other). Where there is consent, an Impact Benefit Agreement may be negotiated. Where there is no community consent, further consultation may be required. The parties may agree to resume negotiations.

## Spectrum of Consultation

The level of consultation owed falls along a spectrum ranging from low to deep, depending on the seriousness of the potential impacts on rights.



# Sipekne'katik Governance Initiative: Six Phases to Consultation

## SGI Protocol Application Form:

Please ensure all sections are filled out and application fee is included. Incomplete applications will be returned. **Completion of this form is done on a without prejudice basis and is not considered consultation as per section 4(3) of the SGI Protocol.**

### *PART I*

Application Date: \_\_\_\_\_

Project name: \_\_\_\_\_

Consultation Lead & Contact: \_\_\_\_\_

Government Department: \_\_\_\_\_

Federal  Provincial  Proponent  Other

Applicable legislation, regulations, policies, guidelines and/or governing bodies (please also identify the relevant jurisdiction).

\_\_\_\_\_

List: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### *PART II*

About the Project: \_\_\_\_\_

\_\_\_\_\_

Purpose of the Project \_\_\_\_\_

Alternatives to the Project \_\_\_\_\_

Location: \_\_\_\_\_

Size: \_\_\_\_\_

Scope: \_\_\_\_\_

Duration: \_\_\_\_\_

Timeline for project approval & construction commencement date: \_\_\_\_\_



**Part III**

**Application fees** (contact the SGI Secretariat to discuss fees)  \$5,000  \$10,000  \$15,000

Method of Payment:  Cheque  Direct Deposit  Funding Agreement

Payable to Sipekne'katik - Re: SGI Application Fee (Department & Project Name - e.g. DFO - Tusket Dam)

Upon completion of the application and fee, the application will proceed to electronic records department and an electronic file # will be assigned to each project before proceeding to the Strength of claim/impact to rights and review stage.

Upon completion of the application form (Phase 1), the Sipekne'katik Governance Initiative Secretariat will process the file internally and subsequently supply the "Strength of Claim Assessment" form for your perusal (Phase 2). Phase 2 will determine:

- Preliminary issues regarding the potential impacts to established and asserted Aboriginal and Treaty Rights, including Aboriginal title of the Mi'kmaq.

Phase 3, the Governance Review, will determine:

- The level and cost of community consultation, considering the severity of the impacts on rights and capacity needs such as scientific studies, Mi'kmaq Ecological Knowledge Studies, archival and historical research, engagement with Lnu governments (including the Mi'kmaq Grand Council, the Elders Council, etc.), referendums, among other needs.

## For more Information

Sipekne'katik Governance Initiative Secretariat

Phone: 902 835-2869

Fax: 902 758-2017

Email: [consultation@sipeknekatik.ca](mailto:consultation@sipeknekatik.ca)

522 Church Street,  
Indian Brook 14,  
N.S., B0N 2H0



## For office use only

Date received: \_\_\_\_\_

Project: \_\_\_\_\_

Assessment number: \_\_\_\_\_

Project File # assigned: \_\_\_\_\_

Assessment start date: \_\_\_\_\_

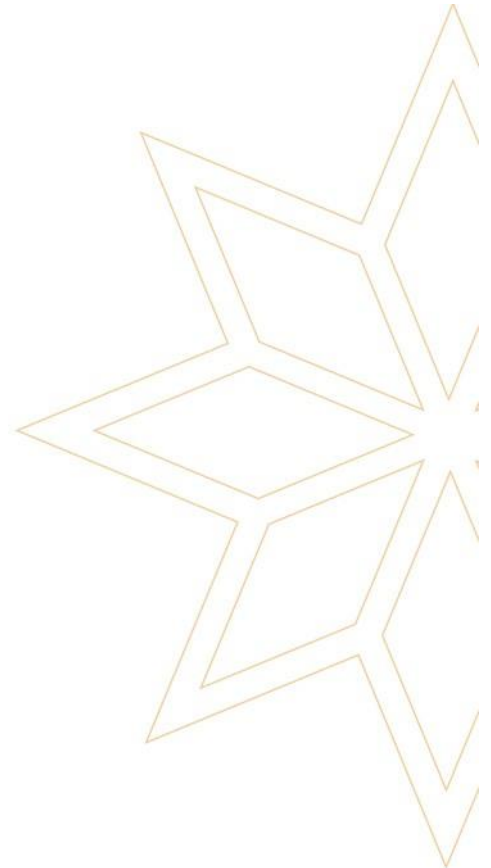
Funding File # Assigned \_\_\_\_\_

Assessment Phase: \_\_\_\_\_



## **SIPEKNE’KATIK GOVERNANCE INTIATIVE PROTOCOL: Navigating A New Path Forward**

Committing to a meaningful and inclusive consultation process, conducted in good faith and with the proper rights holders. Enacted pursuant to the authority of the inherent right of Sipekne’katik, as represented by the duly elected Chief and Council.



## TABLE OF CONTENTS

<b>1. PROLOGUE.....</b>	<b>6</b>
1.1 <i>The Mi'kmaq Nation.....</i>	6
1.2 <i>The Health a Wealth of Mi'kma'ki.....</i>	6
1.3 <i>The Duty to Consult.....</i>	7
<b>2. PURPOSES.....</b>	<b>9</b>
2.1 <i>Empowering Relations Between Sipekne'katik, Government and Industry.....</i>	9
2.2 <i>Empowering Relations Internally Among Sipekne'katik and with Neighbours.....</i>	9
2.3 <i>Setting Consultation Expectations.....</i>	9
2.4 <i>Establishing Internal Consultation Process.....</i>	9
2.5 <i>Establishment of Process, Not Outcome.....</i>	9
<b>3. DEFINITIONS AND TERMINOLOGY.....</b>	<b>10</b>
<b>4. INTERPRETATION AND LIMITATIONS.....</b>	<b>12</b>
4.1 <i>Spirit and Intent.....</i>	12
4.2 <i>Conflict.....</i>	12
4.3 <i>Without Prejudice.....</i>	12
<b>5. STATEMENT OF PRINCIPLES AND EXPECTATIONS.....</b>	<b>13</b>
5.1 <i>Assertion of Title to Mi'kma'ki.....</i>	13
5.1.1 <i>Continuous Use and Occupation.....</i>	13
5.1.2 <i>Use and Occupation.....</i>	13
5.1.3 <i>Title: A Right to the Land Itself.....</i>	13
5.2 <i>The 18<sup>th</sup> Century Chain of Covenants is the Foundation of Sipekne'katik-Crown Relations.....</i>	13
5.2.1 <i>Perpetuity of the Treaty Relationship.....</i>	13
5.2.2 <i>Contemporary Force and Effect.....</i>	13
5.2.3 <i>Reciprocity of Treaty Rights and Obligations.....</i>	13
5.2.4 <i>No Cession and No Delegation of Governing Authority.....</i>	13
5.3 <i>Multi-tiered Governance Structure.....</i>	14
5.4 <i>Expectation: Meaningful Processes.....</i>	14
5.4.1 <i>Mutually Beneficial Outcomes.....</i>	14
5.4.2 <i>Commitment to Compliance With Indigenous, Domestic and International Law.....</i>	15
<b>6. EXTERNAL CONSULTATION PROCESS.....</b>	<b>16</b>
6.1 <i>GUIDING PRECEPTS.....</i>	16



6.1.1 Intention to Reach Agreement ..... 16

6.1.6 Processing Fees ..... 17

6.1.13 Protection of Aboriginal Rights ..... 19

6.2 *PROCESS MECHANICS* ..... 20

6.2.1 Notice..... 20

6.2.1.1 Notice Trigger .....20

6.2.1.2 Notice Content.....20

6.2.1.3 Notice to be Updated .....21

6.2.1.4 Form of Notice .....21

6.2.1.5 Processing Fee.....21

6.2.1.6 Logistics of Notice .....22

6.2.2 Initial Assessment and Response ..... 22

6.2.2.1 Initial Assessment.....22

6.2.2.2 Letter of Acknowledgment.....22

6.2.2.3 Outcome of Initial Assessment .....22

6.2.2.4 Response – Outcome of Initial Assessment.....23

6.2.3 External Consultation Plan ..... 23

6.2.3.1 Initial Meeting .....23

6.2.3.2 Developing a Consultation Plan .....23

6.2.3.3 Full and Meaningful Participation in Regulatory Processes .....24

6.2.4 Processing Fees..... 24

6.2.4.1 Fees in the External Consultation Plan .....24

6.2.4.2 Purpose of Fees.....24

6.2.5 Impact Analysis..... 25

6.2.5.1 Sipekne’katik Governance Initiative Responsibility .....25

6.2.5.2 Consideration of Impact Analysis .....25

6.2.6 Negotiation and Agreement in Principle ..... 25

6.2.6.1 Agreement in Principle.....25

6.2.6.2 Resources .....25

6.2.6.3 Collaboration .....25

6.2.6.4 Timelines .....26

6.2.6.5 Approvals .....26

6.2.6.6 Evaluation.....26

6.2.7 Final Agreement on Impacts and Benefits ..... 26

6.2.7.1 Final Agreement .....26

6.2.7.2 Sipekne’katik Interests.....27

6.2.7.3 Sipekne’katik Community Approval Process .....27



6.2.7.4	No Agreement.....	27
6.2.7.5	Cancellation.....	28
6.2.7.6	Non-Derogation.....	28
6.2.8	Government Oversight.....	28
6.2.8.1	Legal Duty.....	28
6.2.8.2	Government Approvals.....	28
6.2.8.3	Government – Sipekne’katik Engagement.....	28
6.2.9	Dispute Resolution.....	28
6.2.9.1	Reservation of Rights.....	29
6.2.10	Implementation and Monitoring.....	29
6.2.10.1	Monitoring Mechanisms.....	29
6.2.10.2	Ongoing Communication.....	29
6.2.10.3	Environmental Capacity.....	29
<b>7.</b>	<b>INTERNAL CONSULTATION PROCESS.....</b>	<b>30</b>
7.1	<i>GUIDING PRECEPTS.....</i>	<i>30</i>
7.2	<i>PROCESS MECHANICS.....</i>	<i>31</i>
7.2.1.1	Monthly Meetings.....	31
7.2.1.2	Inclusive Participation – Sipekne’katik District.....	31
7.2.1.3	Sipekne’katik Band Council Attendance.....	32
7.2.2.1	Accessible Information Repository.....	32
7.2.2.2	Industry Availability.....	32
7.2.2.3	Hired Experts.....	32
7.2.3.1	Drafting.....	32
7.2.3.2	Consultation Plan Components.....	33
7.2.3.3	Approval of an Internal Consultation Plan.....	33
7.2.4	Impact Analysis.....	33
7.2.4.1	Responsibility of Individuals.....	33
7.2.4.2	Community Input.....	33
7.2.4.3	Endorsement of Agreement.....	34
7.2.4.4	Approval Mechanism.....	34
7.2.4.5	Referenda.....	34
7.2.4.6	Majority Vote at a Special Meeting.....	35
7.2.4.7	Role of Band Council.....	35
7.2.4.8	Role of Sipekne’katik Governance Initiative.....	35
<b>8.</b>	<b>REVIEW.....</b>	<b>36</b>
<b>9.</b>	<b>SCHEDULES AND POLICIES.....</b>	<b>36</b>



## 1. PROLOGUE

### 1.1 Mi'kmaw Worldview

Language guides us to the Indigenous consciousness and understandings of the world and the tribal knowledge of how the world works; it is where the epistemological foundations of tribal societies are held<sup>1</sup>. Language reveals the unique connection of the Mi'kmaw people to the landscape in *Mi'kma'ki*, their traditional homeland for at least the last 11,000 years<sup>2</sup>. There are several Mi'kmaw words that are central to telling this story.

*Kisu'lt melkiko'tin* is the Mi'kmaw word for the place of creation, an “ecological order or vantage point from which [the Mi'kmaq] construct their worldview, language, knowledge and order”<sup>3</sup>.

*Weji-sqalia'timk* translates to “where we sprouted or emerged from” and

---

<sup>1</sup> Battiste, M. 1998. Enabling the autumn seed: Toward a decolonized approach to Aboriginal knowledge, language and education. *Canadian Journal of Native Education* 22(1): 16-27.  
—. 2000. Introduction: Unfolding the lessons of colonization. In *Reclaiming Indigenous voice and vision*, ed. M. Battiste. Vancouver, BC: UBC Press, xvi-xxx; Kovach, M. 2009. *Indigenous methodologies: Characteristics, conversations and contexts*. Toronto, ON: University of Toronto Press; Lewis, D., Castleden, H., Apostle, R., Francis, S. & Francis-Strickland, K. (In print). Linking land displacement and environmental dispossession to Mi'kmaw health and wellbeing: Culturally relevant place-based interpretative frameworks matter. *The Canadian Geographer*; Tuhiwai Smith, L. 2012. *Decolonizing methodologies: Research and Indigenous Peoples* (2<sup>nd</sup> ed.). London, UK; Zed Books.

<sup>2</sup> Sable, T., B. Francis, R. Lewis, and W. Jones. 2012. *The language of this land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press.

<sup>3</sup> Battiste, M., and J. Youngblood Henderson. 2000. *Protecting Indigenous knowledge and heritage: A global challenge*. Saskatoon, SK: Purich Publishing, Ltd; Lewis, D., Castleden, H., Apostle, R., Francis, S. & Francis-Strickland, K. (In print). Linking land displacement and environmental dispossession to Mi'kmaw health and wellbeing: Culturally relevant place-based interpretative frameworks matter. *The Canadian Geographer*; Youngblood Henderson, J. 2000. Ayukpachi: Empowering aboriginal thought. In *Reclaiming Indigenous voice and vision*, ed. M. Battiste. Vancouver, BC: UBC Press, 248-278.

expresses the Mi'kmaw cultural understanding of the origin of people as rooted in the land<sup>4</sup>, which is integral to the cultural and spiritual psyche of the Mi'kmaq, to their language, to their social order, and to their way of being<sup>5</sup>. Cajete terms the relationship to the natural world as “ensoulment”, a metaphysical attachment at the deepest level of psychological involvement with the land<sup>6</sup>.

*Tlilnuo 'lti'k* reflects Mi'kmaw ontology and translates in several ways - to “how we maintain our consciousness”<sup>7</sup>, or “the process of maintaining the Mi'kmaw worldview”<sup>8</sup>. This is reflected in the relational and associative aspects of the Mi'kmaw language, which extend beyond the individual to the environment<sup>9</sup>.

*Netukulimk* reflects a value system that dictates the interaction between the Mi'kmaq and nature. As a set of rules and obligations, it embraces the cultural norms for being on the land and for the sustainable use of resources, and it embodies relational accountability which sanctions particular types of behavior, taking what you need, giving back, and offering thanks<sup>10</sup>.

*Ko'kmanaq* means ‘our relations’ and conveys a value system of how Mi'kmaq

---

<sup>4</sup> Sable, T., B. Francis, R. Lewis, and W. Jones. 2012. *The language of this land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press.

<sup>5</sup> Sable, T., B. Francis, R. Lewis, and W. Jones. 2012. *The language of this land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press; Youngblood Henderson, J. 2000. Ayukpachi: Empowering aboriginal thought. In *Reclaiming Indigenous voice and vision*, ed. M. Battiste. Vancouver, BC: UBC Press, 248-278.

<sup>6</sup> Cajete, G. 2000. *Native science: Natural laws of interdependence*. Sante Fe, NM: Clear Light Publishers, p. 186.

<sup>7</sup> Battiste, M., and J. Youngblood Henderson. 2000. *Protecting Indigenous knowledge and heritage: A global challenge*. Saskatoon, SK: Purich Publishing, Ltd, p. 35.

<sup>8</sup> Battiste, M. 2000. Introduction: Unfolding the lessons of colonization. In *Reclaiming Indigenous voice and vision*, ed. M. Battiste. Vancouver, BC: UBC Press, xvi-xxx, p. 263.

<sup>9</sup> Sable, T., B. Francis, R. Lewis, and W. Jones. 2012. *The language of this land, Mi'kma'ki*. Sydney, NS: Cape Breton University Press.

<sup>10</sup> Prosper, K., L. J. McMillan, A. Davis, and M. Moffit. 2011. Returning to netukulimk: Mi'kmaq cultural and spiritual connections with resource stewardship and self-governance. *The International Indigenous Policy Journal* 2(4): 1-17.

extend a relationship to both animate and inanimate objects, creating a relationship of respect and kinship and a reciprocity that includes obligations<sup>11</sup>. Relationality, the way of being in sacred relationships, includes the inanimate and the spiritual<sup>12</sup>, while reciprocity ensures that all life is respected “as we are in reciprocal relations with all life<sup>13</sup>”. Nothing can exist outside of that relationship<sup>14</sup>.

## 1.2 Sipekne’katikowaq Health and Well-being

Any disassembly of Indigenous consciousness and understandings of the world and knowledge of how the world works has implications for the health and wellbeing of Indigenous people<sup>15</sup>.

The *Sipekne’katikowaq* identity flows from their place in *Sipekne’katik*. Any disruption of *Sipekne’katik* including that of the Sipekne’katik River System will impact the health and well-being of the *Sipekne’katikowaq*. Any disruption of the river disrupts how the *Sipekne’katikowaq*, orient to the world. Disrupting the river means that the *Sipekne’katikowaq* will have less opportunity to engage in the value system embraced by *Netukulimk* and to gain the knowledge and values of living within their traditional ecosystem.

The Sipekne’katik Governance Initiative: Navigating A New Path Forward is an expression of empowerment of the *Sipekne’katikowaq* Aboriginal and treaty right to be healthy and is enacted pursuant to the authority of the inherent right of Sipekne’katik, as represented for this purpose by the duly elected Sipekne’katik Chief and Council.

---

<sup>11</sup> Sable et al. 2012.

<sup>12</sup> Wilson, S. 2008. *Research is ceremony: Indigenous research methods*. Halifax, NS: Fernwood Publishing.

<sup>13</sup> Hart, M. A. 2010. Indigenous worldviews, knowledge, and research: The development of an Indigenous research paradigm. *Journal of Indigenous Voices in Social Work* 1(1): 1-16.

<sup>14</sup> Sable et al. 2012.

<sup>15</sup> Lewis et al. 2020.



Societal practices that supported material sustenance and economic prosperity were hunting, fishing, trapping, gathering, artisanship, and the trade of the products of these activities. Activities were seasonal and the needs of the Mi'kmaq varied. These activities are still practiced and are integral to the Mi'kmaq, a distinctive original society.

The Covenant Chain of Treaties, including the Treaty of 1752, neither ceded nor sold any land in Mi'kma'ki. The absence of cession is explicitly recognized and affirmed by Western legal principles and further protected under the *Constitution Act* of 1982, section 35.

The implementation of the Centralization Policy resulted in dispersing, separating and amalgamating governance structures of the Mi'kmaq Nation to various reserve lands and into various Band entities. The purpose of the policy, coupled with the intentions of the *Indian Act*, was to settle the Mi'kmaq into a state of poverty so that control would be more easily.

The impacts of economically oppressive policies imposed on the Mi'kmaq Nation continue. The hold of disempowering policies is lessening and the Sipekne'katik Mi'kmaq are regaining strength through various channels of empowerment.

The Sipekne'katik Governance Initiative Protocol: Navigating A New Path Forward is an expression of empowerment and is enacted pursuant to the authority of the inherent right of Sipekne'katik, as represented for this purpose by the duly elected Sipekne'katik Chief and Council.

### **1.3 The Duty to Consult**

This Protocol is developed as a result of the legal obligations and arising from the Crown's duty to consult and, if necessary, accommodate, Indigenous People when their Aboriginal and treaty rights including title may be impacted by Proposed Activities.

The Crown's duty to consult and, if necessary, accommodate varies with the circumstances of the proposed activity that triggers the duty. The duty exists on a spectrum described in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 43-45:

*... I turn to the kind of duties that may arise in different situations. In this respect, the concept of a spectrum may be helpful, not to suggest watertight legal*



*compartments but rather to indicate what the honour of the Crown may require in particular circumstances. At one end of the spectrum lie cases where the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor. In such cases, the only duty on the Crown may be to give notice, disclose information, and discuss any issues raised in response to the notice. “[C]onsultation’ in its least technical definition is talking together for mutual understanding”:* T. Isaac and A. Knox, “The Crown’s Duty to Consult Aboriginal People” (2003), 41 *Alta. L. Rev.* 49, at p. 61.

*At the other end of the spectrum lie cases where a strong prima facie case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high. In such cases deep consultation, aimed at finding a satisfactory interim solution, may be required. While precise requirements will vary with the circumstances, the consultation required at this stage may entail the opportunity to make submissions for consideration, formal participation in the decision-making process, and provision of written reasons to show that Aboriginal concerns were considered and to reveal the impact they had on the decision. This list is neither exhaustive, nor mandatory for every case. The government may wish to adopt dispute resolution procedures like mediation or administrative regimes with impartial decision-makers in complex or difficult cases.*

*Between these two extremes of the spectrum just described, will lie other situations. Every case must be approached individually. Each must also be approached flexibly, since the level of consultation required may change as the process goes on and new information comes to light. The controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake. Pending settlement, the Crown is bound by its honour to balance societal and Aboriginal interests in making decisions that may affect Aboriginal claims. The Crown may be required to make decisions in the face of disagreement as to the adequacy of its response to Aboriginal concerns. Balance and compromise will then be necessary.*

The Sipekne'katik Mi'kmaq have established treaty rights and continue to assert Aboriginal rights and title. As such, the duty to consult and accommodate is on the high end of the spectrum.

The duty to consult and, if necessary, accommodate is grounded in the honour of the Crown, is part of reconciliation, must be meaningful and is reciprocal. For consultation to achieve these objectives, it must be conducted with the proper rights holders. All parties must make a good faith effort to understand each other's concerns and move forward to address them in a meaningful process. All parties are required by law to be committed to that meaningful process and exhibit good faith throughout the process which must, at all times, be meaningful.

## **2. PURPOSES**

### **2.1 Empowering Relations Between Sipekne'katik, Government and Industry**

The purpose of the Sipekne'katik Governance Initiative Protocol is to empower and promote fair, transparent relations conducted in good faith between Sipekne'katik, Government and Industry.

### **2.2 Empowering Relations Internally Among Sipekne'katik and with Neighbours**

Further, the purpose of the Sipekne'katik Governance Initiative Protocol is to empower transparent relations, conducted in good faith, among the Mi'kmaq internally and in relation to their neighbours with whom interests are shared.

### **2.3 Setting Consultation Expectations**

Further, the purpose of the Sipekne'katik Governance Initiative Protocol is to set out how Sipekne'katik expects to be consulted by Government and Industry/ Proponents in regard to Proposed Activities taking place.

### **2.4 Establishing Internal Consultation Process**

Further, the purpose of the Sipekne'katik Governance Initiative Protocol is to meet the legal obligations the Band owes to its members as defined in Indigenous, Domestic, and International laws.

### **2.5 Establishment of Process, Not Outcome**

The Sipekne'katik Governance Initiative Protocol establishes the process for consultation. It does **not presuppose or imply any**

outcome or commit Sipekne'katik to any position, result, or agreement.

### 3. DEFINITIONS AND TERMINOLOGY

**Aboriginal Rights:** specific and may vary between Aboriginal peoples, generally they include rights to the land, resources, the right to self-determination and to self-govern, and the right to practice customs including language and religion.

**Aboriginal Title:** an inherent Aboriginal right to land or territory.

**Adverse impact:** Refers to a negative effect or impact on Aboriginal rights, title, and treaty rights.

**Centralization Policy:** officially imposed in 1942 by the federal government as an attempt to reduce administration costs by creating two central reserves in Nova Scotia (Eskasoni and Shubenacadie)<sup>16</sup>.

**Colonialism:** A policy or practice of a county extending control over other people, imposing religion, economics, and other cultural practices on Indigenous peoples<sup>17</sup>.

**Covenant Chain of Treaties:** The series of treaties signed between various representatives of the Mi'kmaq of Mi'kma'ki and of the Crown in the 1700s, establishing relations of equality and mutual benefit. This chain includes the Treaty of 1752, the continued validity of which was affirmed by the Supreme Court of Canada in *Simon v The Queen*, 1985 2 SCR 387.

**Consultation:** is commitment to a process, a meaningful discussion about something that is being decided, sharing information.

**Confidentiality:** keeping something private.

**Capacity:** the ability to do something.

**Crown or Government:** The government of Nova Scotia and the government of Canada including departments, agencies, Crown corporations, boards, commissions, Ministers, and government employees have the duty to consult. The actions of one level of government does not discharge the duty of the other level.

**Cumulative impact:** changes in the environment as a result from a combination of past,

---

<sup>16</sup> <https://www.cbu.ca/indigenous-affairs/mikmaq-resource-centre/mikmaq-resource-guide/contemporary-mikmaq-kiskukewaq-mikmaq/#:~:text=The%20Centralization%20Policy%20was%20created.and%20the%20other%20in%20Shubenacadie.>

<sup>17</sup>

[https://www.google.com/search?q=colonialism&rlz=1C1SQJL\\_enCA841CA859&oq=colonialism&aqs=chrome..69i57j0l7.562ljl1j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=colonialism&rlz=1C1SQJL_enCA841CA859&oq=colonialism&aqs=chrome..69i57j0l7.562ljl1j7&sourceid=chrome&ie=UTF-8)

present, and future activities.

***Direct impact:*** impact to rights as a result of a project/activity.

***Duty to consult:*** the government has a legal duty to consult and accommodate on operational and strategic-level decisions to ensure fair consideration is given.

***Engagement:*** a meeting or other event used for purpose to share information.

***Honour of the Crown:*** is a term to describe the conduct expected of the Crown. Section 35 of the Consultation Act, 1982 requires government to determine, recognize, and respect Aboriginal and treaty rights. The Crown is required to act honourably in its consultations and when indicated to accommodate Aboriginal interests.

***Indirect impact:*** impact to rights as a result of a project/activity which is not a direct result of the project, can be produced outside of the defined project/activity area.

***Industry or Industry Proponent:*** any private or public corporate or partnership-based entity that seeks to exploit or is contemplating the exploitation of resources, natural or otherwise, within Mi'kma'ki.

***Lead:*** the individual appointed by the Sipekne'katik Governance Initiative to coordinate a consultation process on behalf of Sipekne'katik.

***Meaningful:*** having a serious, important, or useful quality of purpose. Sincere, honest, and forthcoming. Refers to quality of consultation and means listening to concerns. Discussing those concerns, and being prepared to accommodate those concerns.

***Mi'kma'ki:*** all lands and waterways commonly known as the Maritimes, including parts of Newfoundland and Quebec, and parts of the State of Maine in the United States of America.

***Nova Scotia Supreme Court (NSSC):*** the superior court in the province of Nova Scotia.

***Pre-confederation treaties:*** peace and neutrality treaties signed between 1701 to 1760.

***Peace and Friendship treaties:*** signed between 1725-1779.

***Proposed Activities:*** any and all activities contemplated or undertaken by an Industry Proponent, Government or related entity concerning the exploitation of resources in Mi'kma'ki, including those which are preparatory or exploratory. An activity contemplated or undertaken by Industry, Proponents, Government, or other entity concerning the exploitation of resources.

***Reconciliation:*** restoring friendly relations.

***Residential School System:*** the residential school in Shubenacadie was imposed from 1930 until 1966 with purpose of religious conversion by the church and assimilation by the federal



government. Children who attended lost their language, culture, and identity. Teachings were based on European concepts contrary to Mi'kmaq teaching styles. Many who attended the school refer to themselves as survivors<sup>18</sup>.

**Rightsholder:** a person/organization with a legal right to something.

**Royal Proclamation:** issued by King George III on October 7, 1763 which established the basis for governing the North American territories surrendered by France to Britain and set the structure for treaty negotiation and other matters.

**Self-Determination:** making own decisions for governance.

**Self-Governance:** exercising all functions of regulations without intervention from an outside entity.

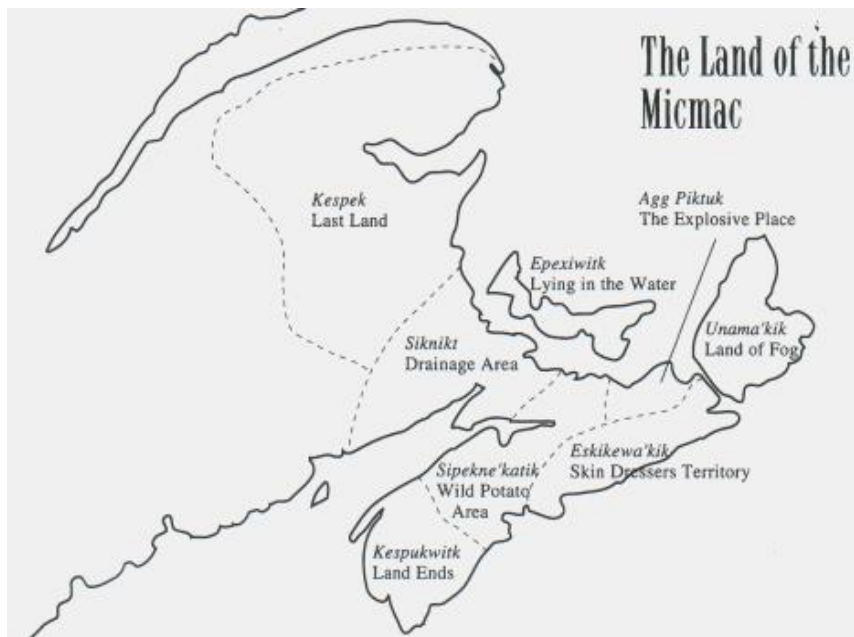
**Section 35 of the Constitution Act, 1982:** “The existing aboriginal and treaty rights of Aboriginal peoples of Canada are hereby recognized and affirmed”<sup>19</sup>. The Constitution protects rights however the extent of rights has not been fully defined which is why cases are brought to the courts when impacts to rights are not considered during Crown decisions.

**Sipekne'katik:** legal name of Band. Formerly known as “Shubenacadie Band”.

**Stakeholder:** a person/organization with an interest/concern.

**Supreme Court of Canada (SCC):** is the highest court in Canada and the final court of appeals in the Canadian justice system.

**Traditional Districts:** <http://www.danielpaul.com/Map-Mi'kmaqTerritory.html>



<sup>18</sup> <https://www.cbu.ca/indigenous-affairs/mikmaq-resource-centre/mikmaq-resource-guide/contemporary-mikmaq-kiskukewaq-mikmaq/#:~:text=The%20Centralization%20Policy%20was%20created,and%20the%20other%20in%20Shubenacadie.>

<sup>19</sup> Constitution Act, 1982.

***Truth and Reconciliation Commission (TRC):*** The TRC was the largest class action in Canadian history and resulted in the Residential School Settlement Agreement with a mandate to inform all Canadians what happened in residential schools. The TRC issued 94 Calls to Action to repair the legacy of harm caused by the Residential School System.

***Treaty:*** a formal agreement signed and ratified.

***Treaty of Utrecht:*** signed in 1713 and recognized Queen Anne of England as the legitimate sovereign of England and officially ended French claims to the British throne. This caused previously French claimed territories to be claimed by England.

***Treaty Rights:*** are rights conferred through the signature of a treaty.

***Two-Eyed Seeing:*** Elder Albert Marshall's<sup>20</sup> principle of looking at both Indigenous and Western perspectives equally.

***Without Prejudice:*** without any effect whatsoever on any existing or future right or claim. If so labeled, the provision of information, promulgation of positions and any and all statements cannot be used against either party in the context of any existing or future claim regarding rights and/or title.

***Western perspective:*** ideas associated with the United States, Canada, and Western, Northern and Southern Europe. Western science seeks to understand the natural world by studying individual parts<sup>21</sup>.

***Indigenous perspective:*** ideas associated with Indigenous people. Indigenous knowledge seeks to understand the natural world in a holistic way, observing connections.

---

<sup>20</sup> Eskasoni First Nation, Nova Scotia.

<sup>21</sup> <https://combiningtwowaysofknowing.wordpress.com/comparingindigenousknowledge/>

## **4. INTERPRETATION AND LIMITATIONS**

### **4.1 Spirit and Intent**

All aspects of the Sipekne'katik Governance Initiative Protocol must be interpreted consistently with the spirit and intent of the Statement of Principles and Expectations.

### **4.2 Conflict**

In case of conflict between the Statement of Principles and Expectations and other parts of the Sipekne'katik Governance Initiative Protocol, the conflict shall be viewed in light of the Statement of Principles and the appropriate interpretation shall be the one that gives greatest effect to the Statement of Principles.

### **4.3 Without Prejudice**

The Sipekne'katik Governance Initiative Protocol does not prejudice Sipekne'katik's rights. Nothing in the Sipekne'katik Governance Initiative Protocol shall neither be construed to justify any infringement of Sipekne'katik's rights, nor to prevent or to limit the exercise of such rights. Further, the Sipekne'katik Governance Initiative Protocol shall not be construed as conferring consent or as providing approval of any past, existing, new, or ongoing activities within Mi'kma'ki.

Notices and information provided to Sipekne'katik reviewed pursuant to the Sipekne'katik Governance Initiative Protocol are reviewed on a without prejudice basis. Neither the consultation process nor any agreements concluded with Government or Industry Proponent(s) as a result of the participation of Sipekne'katik in the consultation process can be used to define or in any way limit Aboriginal and treaty rights. Further, the participation of Sipekne'katik in consultation is without prejudice to any position, past, present, or future that may be taken in negotiations, litigation or in any other process.



## **5. STATEMENT OF PRINCIPLES AND EXPECTATIONS**

### **5.1 Assertion of Title to Mi'kma'ki**

#### **5.1.1 Continuous Use and Occupation**

The Mi'kmaq Nation have used and occupied Mi'kma'ki, including the Sipekne'katik district territory, since time immemorial.

#### **5.1.2 Use and Occupation**

The Mi'kmaq Nation have used and occupied Mi'kma'ki before contact with Europeans in the 17<sup>th</sup> century, and continued to use and occupy these lands after contact, at some points exclusively.

#### **5.1.3 Title: A Right to the Land Itself**

Aboriginal title is a right to the land itself. Use and development of Aboriginal title lands must not be inconsistent with the preservation of such lands for the use and development of future generations.

### **5.2 The 18<sup>th</sup> Century Chain of Covenants is the Foundation of Mi'kmaq-Crown Relations**

#### **5.2.1 Perpetuity of the Treaty Relationship**

The series of Treaties signed in the 1700's are the foundational instruments grounding Sipekne'katik's relations with the Crown and its subjects and heirs, however variously composed over time, now and into the future.

#### **5.2.2 Contemporary Force and Effect**

Those Treaties are of as much force and effect today as they were at the time they were concluded<sup>22</sup>.

#### **5.2.3 Reciprocity of Treaty Rights and Obligations**

The Treaties create reciprocal rights and obligations for the Mi'kmaq Nation and its citizens, the Crown and its heirs and successors, however represented or composed, now and into the future.

#### **5.2.4 No Cession and No Delegation of Governing Authority**

The Treaties do not cede land<sup>23</sup> and they do not delegate any decision-making authority to other Peoples, the Crown or otherwise, with respect to activities that may take place in Mi'kma'ki. Rather, the Treaties themselves create the need for cooperative processes to establish and facilitate transparent governance for all parties.

---

<sup>22</sup> *Simon v The Queen*, 1985 2 SCR 387, at para 36, regarding the Treaty of 1752.

<sup>23</sup> [*Simon v The Queen*, 1985 2 SCR 387, at para 50]

### **5.3 Expectation: Meaningful Processes**

Sipekne'katik is committed to and expects to be engaged in truly meaningful and reconciliatory consultation processes.

#### **5.3.1 Mutually Beneficial Outcomes**

Meaningful consultation processes reciprocally conducted in good faith with the proper rights holders will result in mutually beneficial outcomes for all involved.

#### **5.3.2 Commitment to Compliance With Indigenous, Domestic and International Law**

Sipekne'katik is committed to carrying out meaningful consultation, without prejudice, as set out by various decisions of the Supreme Court of Canada, Indigenous, domestic, and international laws.

### **5.4 Collaboration and Cooperation**

- a. Sipekne'katik may collaborate and cooperate with any other Band, Tribal organization or/and partners with whom it shares interests by entering into a Memorandum of Understanding (MOU) under the Sipekne'katik Governance Initiative Protocol which clearly outlines Sipekne'katik's roll and expected outcomes.
- b. Participation in other tables and processes without a formal MOU cannot bind the Band or community as legal consultations.



## **6. EXTERNAL CONSULTATION PROCESS**

### **6.1 GUIDING PRECEPTS**

#### **6.1.1 Intention to Reach Agreement**

All parties – the Government, Industry Proponent(s), and Sipekne’katik – shall engage with each other with the genuine intention to substantially address the interests and concerns of all parties and reach mutually beneficial agreement.

#### **6.1.2 Separate and Distinct from other Processes**

Sipekne’katik represents itself pursuant to the requirements of the Sipekne’katik Governance Initiative Protocol.

#### **6.1.3 Holistic View of Proposed Activities and Impacts**

The duty to consult is not met by addressing only the site-specific impacts of any Proposed Activities. The parties must also seriously consider and substantially address the potential indirect, derivative, induced and cumulative impacts of any Proposed Activities, including injurious affection and environmental degradation generally.

#### **6.1.4 Continuity of Negotiators and Consistency**

- a) The parties shall each appoint one key individual (Lead) for all consultation activities at the outset of a consultation process, in order to facilitate communication and to build and develop relationships and understanding over time. If that key individual (Lead) must change at any time after the appointment has been made, notice in writing will be provided to all other parties in a timely manner and knowledge and history of party relations will be transmitted to the new key individual (Lead) to the greatest extent possible.
- b) The Sipekne’katik Governance Initiative is responsible for carrying out the consultation process on behalf of Sipekne’katik.
- c) The Sipekne’katik Governance Initiative will identify a Lead to coordinate a consultation process. Any attempt to consult with any other person outside of this process will not constitute lawful consultation with Sipekne’katik.

#### **6.1.5 Full and Ongoing Disclosure**

- a) Industry Proponent(s) and Government shall provide Sipekne’katik with all available information about the impact of Proposed Activities during consultations under the Sipekne’katik Governance Initiative Protocol. Disclosure shall include all Industry and Government assessments of impacts and copies of applications and studies in the possession of the Government or Industry Proponent(s).

- b) Sipekne'katik shall be provided with a minimum of two copies of all information relevant to Proposed Activities, one hard copy and one in electronic form. Information shall be provided directly to Sipekne'katik by hand delivery, registered mail, or courier to the address below:

Sipekne'katik Governance Initiative  
Consultation Coordinator  
522 Church Street  
Indian Brook, Nova Scotia  
B0N 1W0  
Email: [consultation@sipeknekatik.ca](mailto:consultation@sipeknekatik.ca)

- c) Disclosure shall be ongoing. Information shall be updated or provided as it becomes available.

#### **6.1.6 Processing Fees**

- a) Sipekne'katik requires adequate resources to assess the potential impacts of any Proposed Activities on its rights and interests and to identify mitigation and accommodation opportunities.
- b) As such, Sipekne'katik will charge processing fees to consider Proposed Activities. These fees are non-refundable and shall pay for the consideration of a notice only; they do not guarantee a certain outcome or assessment. The Sipekne'katik Governance Initiative will set fees and publish them in a fee schedule.
- c) The parties shall also negotiate adequate funding that enables Sipekne'katik to carry out its consultation obligations in relation to any Proposed Activities.

#### **6.1.7 Honesty and Transparency**

Communication between all parties shall be clear and honest. Each side will communicate its interests openly and honestly and update the other parties on any changes in a timely manner.

#### **6.1.8 Ongoing Discussion and Negotiation**

- a) The parties shall meet early and regularly.
- b) Any consultation process commencing after Proposed Activities have already occurred and/or immediately prior to when a decision is to be made will be deemed and presumed to not be meaningful.
- c) All parties will make their best efforts to attend all of the meetings concerning their interests.



- d) All parties shall have the opportunity to speak freely and without interruption at meetings. When expressing a concern, a constructive solution will be offered.
- e) Industry Proponent(s) and Government, if required, will be available to attend community meetings and present information as requested by Sipekne'katik.
- f) Community **meetings will members** the chance to speak freely and be heard.

#### **6.1.9 Good Faith, Reasonableness and Cooperation**

- a) The parties shall meet and negotiate in good faith and treat each other as partners. They shall not withhold, willfully, neglectfully or through a lack of diligence appropriate to the subject matter, relevant information from the other parties. They shall update each other on changes to the Proposed Activities or their positions as soon as such changes are known.
- b) When a party voices concerns about or objections to the Proposed Activities, they will also offer constructive solutions to the concerns. They will provide reasons for objections and concerns that are rooted in science and/or Mi'kmaq knowledge. Such objections and concerns may be made in writing and supported with information, including documentation, western science, oral history and/or Mi'kmaq law.
- c) The parties shall not object to the validity of oral history and Mi'kmaq knowledge and laws as legitimate and helpful sources of information as established in *Delgamuukw*<sup>24</sup> and strongly affirmed in successive Supreme Court judgments.

#### **6.1.10 Flexibility**

The parties will demonstrate flexibility, including with respect to project timelines, in order to ensure consultation is full, meaningful, and adequate in the circumstances.

#### **6.1.11 Confidentiality**

- a) The complete exchange of all relevant information, including that of a confidential or proprietary nature, is essential for full engagement between the parties. The parties shall respect the confidentiality of each other's proprietary or sensitive information.
- b) Each party will mark its written confidential material as such, and declare information shared orally confidential prior to disclosure.

---

<sup>24</sup> *Delgamuukw v British Columbia*, 1997 3 SCR 1010.

- c) All traditional, ecological and cultural information that Sipekne'katik provides to the Government and/or Industry Proponent(s) in relation to Proposed Activities shall be kept in strict confidence and any such information shall not be disclosed to any third party without the written consent of Sipekne'katik, unless disclosure of such information is required by law or unless that information is already in the public domain. The Sipekne'katik Governance Initiative Team will treat Government and Industry Proponent confidential information in the same manner, and will follow confidentiality protocols supplied by the disclosing party.

#### **6.1.12 Specificity of Consultation**

- a) Consultation under the Sipekne'katik Governance Initiative Protocol shall be specific to Sipekne'katik, specifically addressing its rights and interests.
- b) Consultation under the Sipekne'katik Governance Initiative Protocol is a separate and distinct process from any public consultations conducted by Government or Industry Proponent(s) and from any activities undertaken by other parties. Sipekne'katik's participation in public consultations neither discharges the Government's duty to consult nor displaces the applicability of the Sipekne'katik Governance Initiative.

#### **6.1.13 Protection of Aboriginal Rights**

If Proposed Activities have the potential to infringe any Aboriginal or treaty right, Sipekne'katik, supported by Indigenous, domestic, and international law, require that:

- a) Priority be given to Aboriginal and treaty rights versus those of non-Aboriginal stakeholders;
- b) Activities minimally impact rights;
- c) Mitigation measures are taken to avoid impacts and to ensure that any impact that does occur is "as little as possible" and to ensure that Aboriginal concerns are "demonstrably integrated" into any plan of action;
- d) Fair compensation is given for unavoidable infringements; and,
- e) Meaningful efforts are made to ensure sensitivity to and respect of Aboriginal and treaty rights.

## 6.2 PROCESS MECHANICS

### 6.2.1 Notice

#### 6.2.1.1 Notice Trigger

The Government or Industry Proponent(s) will provide notification of any Proposed Activities (“Notice”) that may:

- a) have an adverse environmental, health, social, or cultural impact;
- b) on Sipekne’katik or Mi’kma’ki waterways or lands;
- c) before or during the province of Nova Scotia’s “consultation screening” stage of its Consultation Policy; and,
- d) in advance of any application for a decision regarding such Proposed Activities is made and substantially before any decision regarding such Proposed Activities is made.

#### 6.2.1.2 Notice Content

The Notice of Proposed Activities shall include:

- a) Strength of claim assessment for Aboriginal and treaty rights including title;
- b) the nature and scope of Proposed Activities and related future contemplated conduct;
- c) the reasons for or purpose of the Proposed Activities;
- d) the applicable regulatory framework and an overview of the regulatory process;
- e) the timing of the Proposed Activities, including the timing for all approvals and decisions in the regulatory process;
- f) the location of the Proposed Activities;
- g) the duration of the Proposed Activities;
- h) the potential risks to Mi’kma’ki associated with the Proposed Activities, as understood at the time Notice is provided;
- i) proposed measures to ensure inclusion of Sipekne’katik’s traditional, ecological, and cultural knowledge;
- j) a plan for how Sipekne’katik will be consulted and included in the development of studies related to the Proposed Activities, including in the pre-application phase and in all aspects of the regulatory process;
- k) the identification of alternatives to the Proposed Activities;
- l) the identification of who will be involved in carrying out the Proposed Activities, including any agents or contractors;
- m) a list of documents available to be reviewed, including but not limited to:
  - i. applications, in the event an application has already been made before Notice is provided;
  - ii. studies;

- iii. reports, such as in respect of seismic or exploration phases of the Proposed Activities;
  - iv. any previous assessments, studies or reports in respect of any phase of the Proposed Activities, including the exploratory stage, or in the vicinity of the Proposed Activities that are known to or in the possession of the government or Industry Proponent(s); and,
  - v. information on applicable legislation, policies, guidelines, and regulations related to the Proposed Activities or which will guide decision making over the Proposed Activities by the Industry Proponent(s);
- n) the names, addresses, emails, and telephone numbers for the Government and Industry Proponent(s) contacts with whom the Sipekne'katik Lead will communicate and negotiate.

#### **6.2.1.3 Notice to be Updated**

If there is any change to the information provided in the Notice as outlined in the above section or if new and/or additional information becomes available during the regulatory review of the Proposed Activities, the Notice shall be amended to include the new or changed information. The amended Notice shall be delivered in accordance with the provisions of this section as soon as it is known, with all changes and/or additions flagged in a cover letter.

#### **6.2.1.4 Form of Notice**

- a) The Notice shall be drafted in accessible language, and all information will be organized in a logical manner that allows Sipekne'katik to easily locate specific information.
- b) The Notice shall include a detailed table of contents with clear and descriptive headings and references to page numbers. The Notice should index any documents it encloses and include the title, date of production and author of included documents.

#### **6.2.1.5 Processing Fee**

The Industry Proponent(s) or Government shall include with the Notice the processing fee for the review of the Notice in accordance with the Sipekne'katik Governance Initiative Protocol fee schedule in effect at the time the Notice is sent. Fees are subject to change from time to time.



#### **6.2.1.6 Logistics of Notice**

- a) Notices shall be sent electronically to: [consultation@sipeknekati.ca](mailto:consultation@sipeknekati.ca)
- b) A hard copy will be delivered to:

Sipekne'katik Governance Initiative  
Consultation Coordinator  
522 Church Street  
Indian Brook, Nova Scotia  
B0N 1W0

### **6.2.2 Initial Assessment and Response**

#### **6.2.2.1 Initial Assessment**

Upon the receipt of Notice satisfying the above section, the Sipekne'katik Governance Initiative Protocol will conduct an initial assessment of the impact to Sipekne'katik rights and interests and whether and what type of consultation is required. For clarity, this initial assessment is to be Sipekne'katik's equivalent to "Step 1: Consultation Screening" of the Province of Nova Scotia's April 2015 consultation policy. This will involve:

- a) Presenting the Proposed Activities at a Community Meeting as set out in the following section of this Protocol, the Internal Consultation Process, with industry participation if requested by Sipekne'katik;
- b) Seeking the views of elders and others with traditional knowledge, as required;
- c) Consideration of whether negotiation will be worthwhile for Sipekne'katik, both in terms of potential value in an agreement and the integrity and capacity of the Industry Proponent; and,
- d) Retaining other technical experts, as required.

#### **6.2.2.2 Letter of Acknowledgment**

Sipekne'katik shall acknowledge receipt of the Notice in writing within 30 business days, stating when it plans to inform the Government and/or Industry Proponent(s) of the outcome of its initial assessment and requesting additional information, if required.

#### **6.2.2.3 Outcome of Initial Assessment**

The outcome of the initial assessment will determine either that:

- a) The Proposed Activities do not have the potential to adversely affect its rights or interests or Sipekne'katik does not wish to be consulted at the present time. The parties must keep Sipekne'katik apprised of changes that



may change the initial assessment; or,

- b) The Proposed Activities do have the potential for adverse impacts and that Sipekne'katik wishes to be consulted. Sipekne'katik will draft a list and description of its preliminary concerns in respect of the Proposed Activities and identify the appropriate level of consultation.

#### **6.2.2.4 Response – Outcome of Initial Assessment**

As soon as practicable, and no longer than 90 business days from when Notice was received, Sipekne'katik shall provide the outcome of its Initial Assessment. This Response will:

- a) include a list and description of preliminary concerns and the level of consultation required;
- b) request a meeting to discuss next steps; and,
- c) identify the Lead for Government and Industry Proponent(s) engagement on the Proposed Activities.

### **6.2.3 External Consultation Plan**

#### **6.2.3.1 Initial Meeting**

If consultation is required, the parties will meet before any decisions are made on the Proposed Activities. The meeting will be guided by a jointly drafted formal agenda and address:

- a) the nature of the regulatory review process or other approval process contemplated for the Proposed Activities and timelines review of the Proposed Activities;
- b) information requirements, including the identification of information gaps, required to facilitate Sipekne'katik's ability to assess and ultimately determine the potential impacts of the Proposed Activities on its rights, title, and interests; and;
- c) a workplan and fee schedule for Sipekne'katik's review of the Proposed Activities to enable the Sipekne'katik Governance Initiative to engage fully and meaningfully, as required by law.

#### **6.2.3.2 Developing a Consultation Plan**

The parties will discuss and agree on a plan for consultation that meets the reciprocal obligations of good faith, the honour of the Crown, meaningfulness, and the promotion of reconciliation ("External Consultation Plan"). The External Consultation Plan will be presented to Chief and Council, as discussed in the next section, the Internal Consultation Process. The External Consultation Plan will include:

- a) a timeline of key dates and deadlines in the regulatory review process and when key studies and reports will be undertaken;
- b) a timeline of meetings and negotiations between the parties;
- c) a plan for presentations by Government and/or Industry Proponent(s) directly to the community;
- d) arrangements for the parties to cooperate on key studies and reports, or the commissioning of separate studies;
- e) the processing fees to be provided to the Sipekne'katik Governance Initiative to execute the plan;
- f) when Sipekne'katik will provide its Impact Analysis; and,
- g) when and at what stages community approval will be required.

#### **6.2.4 Processing Fees**

##### **6.2.4.1 Fees in the External Consultation Plan**

The reasonable cost of consultation shall be negotiated with the Crown by Sipekne'katik. The Government and Industry Proponent(s) shall pay processing fees to enable Sipekne'katik to implement the External Consultation Plan. The amount of resources required will depend on the complexity of the Proposed Activities and their impact, and the requirements of the External Consultation Plan.

##### **6.2.4.2 Purpose of Fees**

The fees provided to the Sipekne'katik in the External Consultation Plan will be used exclusively for consultation and managed by Sipekne'katik. Fees may be used for:

- a) technical/legal expertise and analysis;
- b) engagement costs with the parties or with Council and/or the community on the project;
- c) office space and capacity needs; and,
- d) administrative costs not to exceed 15% of the total fees.

## **6.2.5 Impact Analysis**

### **6.2.5.1 Sipekne'katik Governance Initiative Responsibility**

The Sipekne'katik Governance Initiative shall provide to the other parties an analysis in writing of the impact of Proposed Activities, as well as recommendations on how such concerns can be addressed, accommodated, or mitigated ("Impact Analysis"). This analysis will be undertaken as early as practicable in the process and provided at a time determined in the External Consultation Plan.

### **6.2.5.2 Consideration of Impact Analysis**

The Government and Industry Proponent(s) shall work with Sipekne'katik to reach agreement on how best to eliminate or minimize the potential impacts identified in the Impact Analysis. All applications and decision documents drafted by either the Government or Industry Proponent(s) shall directly address the Impact Analysis and discuss how impacts were addressed, mitigated, accommodated, or compensated.

## **6.2.6 Negotiation and Agreement in Principle**

### **6.2.6.1 Agreement in Principle**

Once the Impact Analysis is completed, the parties shall work towards an Agreement in Principle on how the impacts identified by Sipekne'katik will be addressed. The Agreement in Principle shall be approved by the parties through their respective approvals processes. The Agreement in Principle, if approved, will allow the Parties to proceed to negotiation and finalization of a legally binding Final Agreement.

### **6.2.6.2 Resources**

Sipekne'katik requires adequate resources to engage in negotiation. The External Consultation Plan and fee schedules will provide for these resources in most instances. However, when unanticipated costs are incurred or studies are undertaken, the parties must approach resourcing issues flexibly and with the aim of ensuring all parties are able to present their respective positions. Otherwise, consultation may become less meaningful and the integrity of the process may be compromised.

### **6.2.6.3 Collaboration**

The parties shall at all times approach this interest-based negotiation as a collaborative endeavour. Where it is possible and the parties agree, joint reports shall be commissioned. Negotiations shall be conducted focusing on solutions to parties' concerns. Obstructionist approaches shall be considered to run against the goal of collaboration and put good faith into question.



**6.2.6.4 Timelines**

- a) Timelines in the External Consultation Plan shall be respected and ensure sufficient time for the community to conduct its internal consultations where the approval mechanism in a process requires it.
  
- b) Parties shall not unreasonably refuse to extend timelines where circumstances justify it and are beyond the control of the party requiring an extension.

**6.2.6.5 Approvals**

- a) If internal community consultation is required under this Protocol, the Internal Consultation Plan shall determine the appropriate approval mechanism: either Band Council Resolution (BCR) or Community Referendum (CR).
  
- b) If Sipekne'katik departs from a "yes or no" vote on an Agreement in Principle, the wording of the question put to the community in a CR shall be subject to consultation with the Industry Proponent and the Government.

**6.2.6.6 Evaluation**

At the mutual agreement of the parties, and after negotiations have concluded and an Agreement in Principle has been reached, the parties shall each submit a report evaluating each other's conduct during negotiations and offering lessons learned and best practices going forward.

**6.2.7 Final Agreement**

**6.2.7.1 Final Agreement**

- a) The resolution of Sipekne'katik's concerns, as articulated in its Impact Analysis, will be documented in a formal, and duly executed, agreement on avoidance, accommodation, mitigation, benefits or compensation, or a combination thereof (the "Final Agreement").
  
- b) The Final Agreement may be substantially the same as the Agreement in Principle unless the Parties have agreed otherwise.
  
- c) The Agreement shall be endorsed and signed by the appropriate individuals who have the authority to bind their respective parties.



#### **6.2.7.2 Sipekne'katik Interests**

Sipekne'katik will be driven by the following interests in negotiating the Agreement in Principle and the Final Agreement:

- a) Ensuring that Sipekne'katik has and continues to have the meaningful ability to exercise its rights throughout Mi'kma'ki;
- b) Preserving Sipekne'katik cultural, spiritual, and economic relationship to its lands and waterways;
- c) Protecting the use and enjoyment of its lands, including its reserve lands, and waterways for present and future generations;
- d) Sharing in the wealth created by any industrial development on its lands, in terms of compensation and resource equity sharing or resource revenue sharing;
- e) Meaningfully participating in the management, including use and access, of its lands;
- f) Protecting its culture and way of life;
- g) Building and sustaining healthy communities;
- h) Developing the human and financial capacity of Sipekne'katik to participate in the economic and social benefits of development, maximizing the potential benefits of development while minimizing the adverse impacts of development;
- i) Developing the human and financial capacity to consult and address and manage impacts of Proposed Activities in Sipekne'katik lands and Mi'kma'ki as a whole; and,
- j) Protecting historical and culturally significant sites.

#### **6.2.7.3 Sipekne'katik Community Approval Process**

- a) If internal community consultation is required under this Protocol, the Internal Consultation Plan shall determine the appropriate approval mechanism for the Final Agreement.

#### **6.2.7.4 No Agreement**

Where no Final Agreement is approved, and consultation is meaningful, further consultation may be desired by the parties. The parties may agree to resume negotiations at any time by mutual consent in an attempt to produce a Final Agreement which would be subject to the appropriate approvals processes of the parties.



#### **6.2.7.5 Cancellation**

The Final Agreement shall contain a cancellation clause that either party can initiate at any time with cause, or without cause subject to mutually agreed upon notice periods. The cancellation clause shall contain, where practicable, provisions regarding the division of costs in the event of cancellation.

#### **6.2.7.6 Non-Derogation**

The Final Agreement shall include a non-derogation clause concerning Aboriginal rights and title.

### **6.2.8 Government Oversight**

#### **6.2.8.1 Legal Duty**

The Government has ultimate responsibility for ensuring that the duty to consult is properly discharged.

#### **6.2.8.2 Government – Sipekne’katik Engagement**

a) Prior to making a decision on any Proposed Activities, if requested by Sipekne’katik, the government will engage with Sipekne’katik to discuss, among other things:

- i. the adequacy of the consultation process;
- ii. the basis upon which decisions will be made;
- iii. how Sipekne’katik’s concerns as outlined in its Impact Analysis were addressed, and, if those concerns have not been addressed, the reason(s) why those concerns have not been addressed.

b) The Government shall provide Sipekne’katik with any and all accounts or records of the consultation process provided by its officials or the Industry Proponent(s), and allow Sipekne’katik to formally comment on such documents and provide its own perspective.

### **6.2.9 Dispute Resolution**

a) At any stage of the process, if the Parties are having difficulty reaching an agreement, the parties will discuss alternative methods of resolving disagreements, including Alternative Dispute Resolution (“ADR”). All parties must agree in order for ADR to occur.



- b) In the interests of time and cost, Sipekne'katik shall negotiate an ADR clause in the Final Agreement, where practicable, to address disputes that arise in its implementation.

**6.2.9.1 Reservation of Rights**

If Sipekne'katik's concerns are not resolved in any process set out under this Protocol or through ADR, Sipekne'katik retains its full right to participate in any regulatory proceedings related to the Proposed Activities and to raise its concerns in any court or other proceeding.

**6.2.10 Implementation and Monitoring**

**6.2.10.1 Monitoring Mechanisms**

The Final Agreement shall include fair and effective mechanisms to monitor the implementation of the terms and conditions contained in the Final Agreement on behalf of all parties and to assist the parties to ensure and report that all respective commitments are being fulfilled. At a minimum, reporting concerning financial benefits shall be undertaken by an independent accountant annually, as well as at milestones in the Proposed Activities.

**6.2.10.2 Ongoing Communication**

The Final Agreement shall include fair and effective mechanisms to ensure the parties continue to meaningfully engage in ongoing and meaningful communication processes about the Proposed Activities, including the opportunity to raise new concerns or propose changes to the Proposed Activities or amendments to the Final Agreement.

**6.2.10.3 Environmental Capacity**

The Final Agreement shall include provisions to ensure there is adequate environmental monitoring and rehabilitation capacity to fulfill agreed-upon environmental objectives during the implementation and monitoring stages.



## 7. INTERNAL CONSULTATION PROCESS

### 7.1 Adaptive Management Approach

**7.1.1** The Sipekne'katik internal consultation process is a complex system of Indigenous, Domestic, International, and environmental laws and, therefore, each project must be assessed based upon the existing conditions and impacts present with each project. Where legal duties and obligations are constantly evolving, some project may span multiple years, each project must be flexible and adaptive.

**7.1.2** According to section 6.2.2.1 an initial assessment of impact to rights will be undertaken for:

- i) Existing established Treaty rights of Sipekne'katik;
- ii) Aboriginal Rights; and
- iii) Asserted Aboriginal title.

**7.1.3** The results will direct the level of consultation needed. The initial assessment is subject review and amendments according to the best available knowledge. New information, developments in project, environment, law, or community input can trigger a deeper duty of community consultations needed to meet the legal and fiduciary duties of Sipekne'katik to its members.

**7.1.4** Each project will be assessed on a case by case basis.

### 7.2 Fiduciary Duties to Members

7.2.4 *Legal definition of "fiduciary": [The Dictionary of Canadian Law] "...[W]here by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power, that party thus empowered becomes a fiduciary ..." Guerin v R, [1984] 2 SCR 335*

7.2.5 *"There can be no question that a chief and the members of the band council are fiduciaries as far as all other members of the band are concerned" Williams Lake Indian Band v Abbey (1992) BC SC*

7.2.6 For each project, a project specific workplan will be developed and included with community engagement, including the necessary schedule of events, timelines and community capacity budget. Where deep consultations are required and impact to rights may cause irreparable harm or extinguishment of a right, a process for plebiscite or referendum maybe triggered subject to Band capacity and legal fiduciary duties.

- 7.2.7 The level of consultation and approval required will be assessed based upon the Band’s legal duties owed to its members and impact to asserted and established rights.

**7.3 Reasonable Cost of Consultations**

- 7.3.1 The duty to consult and accommodate, carries with it the obligation to ensure adequate and sustained funding for First Nations to carry out the ongoing work of identifying and articulating their interests and to participate in decision-making processes.

- 7.3.2 In instances where deep consultation is required capacity funding has become a key part of consultation as there is typically limited or no ability of aboriginal communities to pay for needed expertise to respond to consultation requests. The Courts in Clyde River v. Petroleum Geo-Services Inc. considered the lack of capacity funding in their determination that the duty to consult had not been met.

“While these procedural safeguards (Public hearings and capacity funding) are not always necessary, their absence in this case significantly impaired the quality of consultation. Although the appellants had the opportunity to question the proponents about the project during the [NEB](#) meetings in the spring of 2013, the proponents were unable to answer many questions, including basic questions about the effect of the proposed testing on marine mammals. The proponents did eventually respond to these questions; however, they did so in a 3,926 page document which they submitted to the [NEB](#). This document was posted on the [NEB](#) website and delivered to the hamlet offices in Pond Inlet, Clyde River, Qikiqtajuak and Iqaluit. Internet speed is slow in Nunavut, however, and bandwidth is expensive. The former mayor of Clyde River deposed that he was unable to download this document because it was too large. Furthermore, only a fraction of this enormous document was translated into Inuktitut. To put it mildly, furnishing answers to questions that went to the heart of the treaty rights at stake in the form of a practically inaccessible document dump months after the questions were initially asked in person is not true consultation. “

- 7.3.3 Funding for capacity for the Sipekne’katik to participate in consultations will be addressed thru negotiations with the Provincial and Federal crown on a case by case basis. Any proponent funding will be thru crown negotiations as part of the “reasonable cost of consultations” and will not be contingent upon an outcome or impact benefit agreement.

**7.4 GUIDING PRECEPTS**

**7.4.1 Respectfulness and Reasonableness**

- a) Community interactions and dialogue on consultation and Proposed Activities shall be sincerely respectful of the views and positions of others.



- b) Dialogue shall be open and transparent. All relevant information shall be shared amongst all. All shall have the opportunity to speak.
- c) Solution based- When someone voices concerns about or objections to the Proposed Activities or to consultation, they shall offer a constructive solution to the issue raised. They shall provide reasons for objections to the Proposed Activities that are rooted in science, Indigenous laws, and values. They shall listen to responses and opposing viewpoints and engage constructively.

#### **7.4.2 Inclusiveness**

- a) All community meetings and other community-wide participation mechanisms in the consultation processes under this Protocol shall be open to members who have an interest in the Proposed Activities or their impacts or who are subject to any *ad hoc* or more formal Memorandum of Understanding or joint process.

#### **7.4.3 Timeliness and Publication of Timelines**

- a) The Sipekne'katik Governance Initiative shall provide important dates and timelines on Proposed Activities in a timely manner in accordance with deadlines established in the Internal Consultation Plan established under this Section.
- b) The Sipekne'katik Governance Initiative shall publicize relevant deadlines and provide reminders as necessary to ensure interested individuals and community are aware of milestones and the progress of the process.

#### **7.4.4 Confidentiality**

- a) Elders and other holders of traditional, ecological, and cultural knowledge and information must be able to share relevant information in the internal consultation processes without concern that the confidential, proprietary and/or sacred nature of the information will be jeopardized. The Sipekne'katik Governance Initiative shall institute appropriate protections for Sipekne'katik's confidential information, including the identification of the confidential nature of information prior to disclosure triggering subsection 6.1.11 of this Protocol.
- b) All participants in consultations shall respect the confidentiality of Government and Industry Proponent(s) confidential information, in accordance with subsection 6.1.11 of this Protocol. The Sipekne'katik Governance Initiative shall institute appropriate protections for confidential information disclosed to Sipekne'katik and inform and remind participants in consultation of their obligations, as necessary.

### **7.5 PROCESS MECHANICS**

#### **7.5.1 Community Consultation and Engagement**

Community Engagement is based upon the initial strength of claim assessment of existing and established treaty rights, Aboriginal rights and title lands.

#### **7.5.2 Development of Internal Consultation Workplan**

The Internal Consultation Workplan will determine what approval mechanism will be required for any agreement or public consultation under the preceding section according to the level of established or asserted rights and impacts. The initial assessments are based upon strength of rights and assertions. According to the adaptive management approach to ongoing consultations, the Internal Consultation Workplan must reflect unforeseen developments in either legal, social, environmental or project developments and maybe subject to amendments with notice and approval of Chief and Council.

##### **7.2.2.1 Monthly Updates**

The Sipekne'katik Governance Initiative shall convene monthly community updates via online publication, community newsletters or notices and may from time to time host ("Community Meetings") to provide updates and information to community members and obtain input



from the community regarding ongoing consultation processes. Notice of a Community Meeting shall be made at least 10 days in advance of the date set for the meeting. At such meetings:

- a) All new Notices will be presented in accessible language and input on the initial assessment of Proposed Activities will be invited;
- b) Internal Consultation Plans will be presented if applicable;
- c) Updates on all consultation processes will be delivered, in plain language;
- d) Industry Proponents may, upon request of the Sipekne'katik Governance Initiative, present on Proposed Activities as required under the External Consultation Plan;
- e) Experts retained by the Sipekne'katik Governance Initiative may attend and participate as required; and,
- f) Individual attendees shall have the opportunity to present their views and ask questions. Sipekne'katik may enter Memoranda of Understanding with any other band, tribal organization, governance structure(s) it sees fit to include, who may have common interest and impacts, and/or broaden the base of the consultation process. Sipekne'katik shall do this on its own initiative, upon invitation or upon recommendation, where it is of the view that the interests at stake require collaboration with otherwise excluded structures or interested collectivities.



### **7.2.1.2 Sipekne'katik Band Council Attendance**

Chief and Council, as duly elected and confirmed, may attend any or all Community Meetings at their own discretion and when they do so, they shall be provided time on the agenda to offer their informed opinions regarding the Proposed Activities when requested by participants.

## **7.5.3 Full Disclosure to Community**

### **7.2.2.1 Accessible Information Repository**

All information received about all Proposed Activities shall be available by the Sipekne'katik Governance Initiative and shall be available for review based upon reasonable notice to allow Sipekne'katik Governance Initiative sufficient time and resources to prepare.

### **7.2.2.2 Industry Availability**

Industry Proponents and experts shall be accessible to the community per the External Consultation Plan. They shall attend Community Meetings, as required, and be available, as appropriate and as necessary.

### **7.2.2.3 Experts**

Technical and scientific experts hired by the Sipekne'katik Governance Initiative for assistance in reviewing Proposed Activities shall be available to provide written and verbal reports and, if necessary, answer questions from the community at Community Meetings and upon request, if appropriate.

## **7.5.4 Internal Consultation Plan**

### **7.2.3.1 Drafting**

The Sipekne'katik Governance Initiative will propose a plan for community consultation (“Internal Consultation Workplan”) for each set of Proposed Activities in which Sipekne'katik has indicated it should be consulted in its Initial Assessment per subsection 6.2.2.3 of this Protocol. The Lead for a consultation process will present a proposed plan, and invite comment, feedback and revisions to Chief and Council. Further community distribution to be determined upon approval of Chief and Council.

### **7.2.3.2 Consultation Plan Components**

The Internal Consultation Plan will detail how the community will be consulted at the various stages of a regulatory review, as well as lay out the applicable community approval mechanism required for an Agreement in Principle and a Final Agreement. It shall be organized around the deadlines and key dates in the External Consultation Plan, and shall set out:

- a) Whether and when the Industry Proponent shall present directly to the community;
- b) How input will be solicited, including Community Meetings, special sessions, and awareness-raising measures;
- c) Measures for the targeted engagement of elders and other traditional knowledge holders, women, and youth;
- d) How interested parties will feed into the Impact Analysis described in subsection 6.2.5;
- e) Whether an Agreement will be put to the approval mechanism of a Community Referendum (“CR”), Band Council Resolution (“BCR”) and/or another mechanism; and
- f) Measures to facilitate community planning regarding the benefits and losses resulting from a Final Agreement.
- g) Cost of “reasonable consultation” activities, budget and financial report.

## **7.5.5 Impact Analysis**

### **7.2.4.1 Responsibility of Individuals**

The Mi’kmaq, as those with deep knowledge of their lands and waterways, shall identify impacts on their lands and waterways by the Proposed Activities and communicate those impacts, in detail, to the Sipekne’katik Governance Initiative. The success of the process is the responsibility of both individual members and the collective to feed into this process so that all impacts may be studied and addressed in any Agreement in Principle and Final Agreement.

## **7.5.6 Endorsement of Agreement**

### **7.2.5.1 Approval Mechanism**



- a) The Internal Consultation Workplan will determine how any Agreement shall be endorsed by the community.
- b) If the Proposed Activities will impact reserve lands, approval of the Chief and Council in the form of a Band Council Resolution (“BCR”) shall be required. A conditional surrender of the subject lands or a disposition of the subject lands further to a double majority referendum vote, conducted pursuant to the provisions of the *Indian Act*, may be required.
- c) If the Proposed Activities impact lands in Mi’kma’ki that are not reserve lands, a form of community approval shall be required, such as a community referendum or majority vote during a meeting called for that purpose.
- d) If the Proposed Activities impact reserve and non-reserve lands, a combination of a) and b) above may be required.

#### **7.2.5.2 Referenda**

- a) Any referendum will be defined on a case by case approach as set out in the internal consultation workplan.
- b) A public information package that contains the key points of the arguments in favour of and against the referendum issue, prepared by the Sipekne’katik Governance Initiative and approved by a quorum of the duly elected Chief and Council at a Band Council meeting duly convened for that purpose, shall be made available to members in advance of a Referendum.
- c) The Internal Consultation Plan will determine who is eligible to vote in a referendum: Sipekne’katik members, Sipekne’katik community members by community custom and practice, and/or members of other communities subject to a Memorandum of Understanding under section 5.4 for the purposes of consultation on specific Proposed Activities. Where the Proposed Activities affect Sipekne’katik reserve lands exclusively and the *Indian Act* governs a conditional surrender vote process, voter eligibility shall be restricted to members.



### **7.2.5.3 Majority Vote at a Special Meeting**

Any meeting held for the purposes of taking a vote on an Agreement in Principle or a Final Agreement is valid only when notice guidelines are followed.

### **7.2.5.4 Role of Band Council**

- a) Chief and Council shall confirm the results of any community approval mechanism of a Final Agreement in the form of a BCR.
- b) Failure to pass a BCR within the prescribed time period shall not nullify the results of the community approval process.
- c) Under the terms of this Protocol, Chief and Council shall not modify or overturn the results of any internal community approval process, except when it has a valid legal reason to appeal the result.

### **7.2.5.5 Role of Sipekne'katik Governance Initiative**

In addition to the tasks enumerated in this Protocol, the Sipekne'katik Governance Initiative shall:

- a) make available all information on the Proposed Activities to interested members, subject to confidentiality requirements;
- b) coordinate all Community Meetings;
- c) respond to requests for information from community members, Industry Proponents and the Government;
- d) manage all consultation processes;
- e) hire and liaise with experts and negotiators; and,
- f) maintain all formal records of all consultation processes.

## **8. REVIEW**

The Sipekne'katik Governance Initiative Team, in collaboration with the Sipekne'katik Chief and Council, shall undertake a formal review of the Sipekne'katik Governance Initiative Protocol effectiveness, success and structure no later than 18-24 months from its coming into force. The review process will cause to be produced a report which shall contain recommendations for amendments to the Sipekne'katik Governance Initiative, if any.

A review process shall be undertaken every five years thereafter.

The Sipekne'katik Governance Initiative Protocol is envisioned as a living document. This document will be updated as case law develops and evolves.

## **9. SCHEDULES AND POLICIES**

The Sipekne'katik Governance Initiative Protocol is complemented, augmented, implemented, and operationalized by schedules, policies and procedures. Such schedules, policies and procedures are subject to periodic review and amendment on the authority of the Sipekne'katik Governance Initiative further to its approval processes.



**From:** CAO@richmondcounty.ca <CAO@richmondcounty.ca>  
**Sent:** December 9, 2022 11:18 AM  
**To:** Mageste da Silva, Renata <Renata.MagestedaSilva@novascotia.ca>  
**Subject:** Re: EverWind Point Tupper Green Hydrogen/Ammonia Project – EA review

**\*\* EXTERNAL EMAIL / COURRIEL EXTERNE \*\***

Exercise caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien

Thanks for the notification Renata,

Chief Administrative Officer  
Municipality of the County of Richmond  
2357 Hwy 206 PO Box 120  
Arichat, NS B0E 1A0  
T 902.226.3970 F 902.226.1510



**From:** "Mageste da Silva, Renata" <[Renata.MagestedaSilva@novascotia.ca](mailto:Renata.MagestedaSilva@novascotia.ca)>  
**To:** "Environment Assessment Web Account" <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Date:** 2022-12-09 09:24 AM  
**Subject:** EverWind Point Tupper Green Hydrogen/Ammonia Project – EA review

---

Good Morning,

On December 9, 2022, EverWind Fuels Company, will register the EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1 for environmental assessment (EA), in accordance with Part IV of the *Environment Act*.

The purpose of the proposed undertaking is to develop and operate a Certified Green energy hydrogen and ammonia production facility on an industrial property situated along the Strait of Canso near Port Hawkesbury, Cape Breton. The green ammonia produced and sold is expected to be transported internationally for use in decarbonizing various industrial processes, including the production of ammonia-based fertilizer. The Project intends to begin construction in Spring 2023.

On December 9, 2022, all project information will be available on Nova Scotia Environment and Climate Change website at [EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1 \(novascotia.ca\)](#)

Please note that all comments must be provided by **January 18, 2023**, to be considered in this environmental assessment. **Comments are requested to be provided via email if possible.** All submissions received, will be posted on the Department's website for public viewing.

On or before February 7, 2023, the Minister of Environment and Climate Change will decide if the project can be granted conditional Environmental Assessment Approval.

Regards,

**Renata Mageste da Silva** (She/Her)

---

Environmental Assessment Officer  
**Department of Environment and Climate Change**  
1903 Barrington Street, Suite 2085  
PO Box 442  
Halifax, NS B3J 2P8  
Tel: (902) 456-6563

**From:** @gmail.com>  
**Sent:** December 11, 2022 11:06 AM  
**To:** Environment Assessment Web Account <EA@novascotia.ca>  
**Subject:** Proposed Project Comments

**\*\* EXTERNAL EMAIL / COURRIEL EXTERNE \*\***

**Exercise caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien**

Project: everwind point tupper green hydrogen/ammonia project Comments: Simply as an interested bystander I am very supportive of the development of the hydrogen economy. Some years ago I came across Devid S. Scotts Smelling Land: the Hydrogen Defense Against Climate Catastrophe. Dr. Scott taught at the University Of Victoria and has been very influential in the internal development of the hydrogen economy. This book provides an in depth presentation of the advantages of a hydrogen economy along with realistic reviews of the obstacles and benefits of its development. It is very readable and presents a very strong case. Although it is now somewhat dated, it presents many obstacles that have been developed and resolved over recent years. With all the recent international advances toward this goal, as seen with projects like the recently announced Canada - Germany project to produce hydrogen and ammonia at Port aux Basques, Nfld., I think this book would be a valuable resource for anyone wanting to learn more about the topic. I also fully support Nova Scotias involvement in this project. Name:                                  Email: @gmail.com Address: 1  
Municipality: Wolfville, NS email\_message: Privacy-Statement: agree x: 63 y: 21

-----Original Message-----

From: Margaree Environmental Association <[margareeenviro@gmail.com](mailto:margareeenviro@gmail.com)>

Sent: January 15, 2023 10:41 AM

To: Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>

Subject: EverWind Point Tupper Green Hydrogen/Ammonia Project – Phase 1

**\*\* EXTERNAL EMAIL / COURRIEL EXTERNE \*\***

Exercice caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien

Hello:

I have reviewed the EA proposal for EVERWIND, and I find that the EA lacks in a very serious way discussing and analyzing what would could happen from an uncontrolled ammonia leak, as ammonia can be very toxic in an uncontrolled release;

- defining in detail the risk of an Ammonia leak into the air or water of the area.
- Defining in detail the risk to human health of an ammonia leak, would it travel by air and be a risk to the Town and residents of Port Hawkesbury.
- what are the conditions of it not dispersing in the air and being a risk to human health.
- where are examples of what has taken place in the past in other places worldwide in an emergency situation where ammonia has leaked.
- Would the Local fire department really be prepared to handle a disaster of this type. I don't agree with the EA.
- how would the company ensure on an ongoing basis that systems are upgraded to match best practices and new technology for safety.

I find it unacceptable that the EA in this regard is more of a promotional document, than one that takes a serious professional look at the worst case situation and what could take place. If this was done properly in the EA report, then once this was defined at it's worst, then the company could define how it can attempt to build into its project safeguards that are not just suitable, but exemplary to protect the public from what can be a very toxic and hazardous chemical.

Margaree Environmental Association  
Box 55, Mabou,  
Nova Scotia B0E 1X0

-----Original Message-----

From: [@ymail.com](#)>

Sent: January 17, 2023 8:28 PM

To: Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>

Subject: Proposed Project Comments

**\*\* EXTERNAL EMAIL / COURRIEL EXTERNE \*\*** Exercise caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien

Project: everwind-point-tupper-green-hydrogen-ammonia-project Comments: My central concern about this development is that the green energy provided by NSP will include electricity generated by burning our forests, which will further exacerbate both the climate and biodiversity crises in our province. All the jobs and wealth created wont hold a candle to the stable climate and society lost. Name:

Email: [@ymail.com](#) Address: Municipality: Grantville

email\_message: Privacy-Statement: agree x: 45 y: 31





January 18, 2023

The following submission in response to EverWind Point Tupper Green Hydrogen/Ammonia Project Environmental Assessment is on behalf of the Ecology Action Centre. Due to the short time frame in which the public and civil society groups (including EAC) can comment on projects evaluated through Nova Scotia's environmental assessment process (only 30 days), EAC staff were only able to review and provide comment on a limited number of aspects of the proposed project.

The Ecology Action Centre is an environmental charity based in Mi'kma'ki/Nova Scotia. We take leadership on critical environmental issues from biodiversity protection to climate change to environmental justice. Grounded in over five decades of deep environmental change work and fuelled by love and grief, EAC takes a 50-year perspective on what is needed to build towards a time of thriving and flourishing. We work to equip human and ecological communities for resilience and build a world where ecosystems and communities are restored not just sustained.

### Waterbodies, Watercourse and Wetlands

The proponent states that "the raw freshwater pipeline and Transmission Interconnection Line travel within close proximity to its shoreline and/or cross several tributaries of Landrie Lake" **The proponent should clarify what is meant by close proximity, and what impacts, direct and indirect, there will be to the shoreline habitat and ecosystems.**

We are pleased to see that the 11 watercourses within the Project Boundary will not be altered or directly impacted by the construction of the Industrial Facility or the Transmission Interconnection Line. Similarly, we are pleased to see that 40 wetlands located in Transmission Interconnection Line corridor will not be directly impacted or require any alteration. Several indirect impacts to both watercourse and wetlands are highlighted. **The proponent should provide more detail about these indirect impacts including:**

- What are the setbacks that will be observed by Transmission Interconnection Line and raw freshwater pipeline infrastructure and construction materials from the waterbodies, watercourses and wetlands?
- What type of, and how much, vegetation clearing will occur?
- What are the monitoring and mitigation activities described?

## Sources of power

This project claims it will meet the UN RED II RFNBO standards, one of which is that green hydrogen and ammonia must be produced through renewable energy sources. The proponent states this will be achieved through a commercial agreement with NS Power “such that the electricity supplied to the Project will be verified/ certified to be originating from renewable energy sources” which could include “wind, tide, run-of-the-river hydraulic, solar, or other acceptable renewable energy sources.” Currently, Nova Scotia includes burning of biomass in its Renewable Electricity Regulations. The EAC, and many others in Nova Scotia, and the European Union, recognize that burning of biomass for electricity is not a renewable or green form of energy. In Nova Scotia, in Canada, [internationally](#), and in [the EU](#) there have been strong cases made to governments for getting biomass for electricity out of renewable energy regulations and out of the energy mix altogether. EverWind Point Tupper Green Hydrogen/ Ammonia Project cannot claim it is green if it is using biomass as an energy source.

Also of note: the need for combustible, fossil fuels for burning of effluent gases in the flare stacks should also be accounted for in the emissions and green certification of this project.

## Process for producing ammonia

The proponent has selected the Haber-Bosch process for producing ammonia. Although the EARD describes alternative processes for ammonia production and discusses why the Haber-Bosch process was selected, **the proponent should discuss the risks of the Haber-Bosch process.**

## Wildlife

Field surveys were completed in August – October 2022 and did not include any incidental observations of “priority” bird species for the project. **The project should have considered all bird SOCI a priority, as was done for other taxonomic groups (ie., all lichen, plant, and mammals species).** Also, several of the “priority” bird species would not likely to have been observed during the field surveys in August - October. **To complete even adequate field surveys for birds survey dates and times should align with when the species are most likely to be observed (e.g., during spring migration or nesting season, during dawn chorus or at dusk for Common Nighthawk).**

**Plans to reduce impact to all SOCI, or even all birds, could be included in the to-be-developed Environmental Management Plan.** Currently, consideration of birds does not appear to be a section in the EMP Table of Contents (Appendix D).

East Coast Environmental Law  
6061 University Ave., PO Box 15000  
Halifax, NS B3H 4R2

Environmental Assessment Branch  
Department of Environment and Climate Change  
PO Box 442  
Halifax, NS B3J 2P8

SENT BY EMAIL  
ea@novascotia.ca

January 18, 2023

Dear Environmental Assessment Branch,

**Re: Comments on the Environmental Assessment Registration Document for the Proposed Point Tupper Green Hydrogen / Ammonia Project – Phase 1**

East Coast Environmental Law appreciates the opportunity to submit comments on the [Environmental Assessment Registration Document](#) for the proposed Point Tupper Green Hydrogen / Ammonia Project – Phase 1 (“the EARD”), which the proponent EverWind Fuels submitted to Nova Scotia Environment and Climate Change (“NSECC”) in December 2022.

East Coast Environmental Law is an environmental law charity that provides public-interest environmental law services throughout Atlantic Canada. We envision a future in which laws and legal systems protect ecological health and promote environmental and climate justice in Atlantic Canada. To that end, we advocate for progressive environmental laws and policies, provide public legal education on environmental law and environmental decision-making processes, and share our legal skills to support individuals, communities, and organizations that are working to prevent or redress environmental harms.

Due to limited staff capacity leading up to and following the holiday season, we are unable to comment extensively on the EARD. While we recognize that it may be advantageous from a business perspective to complete significant process milestones before the end of the calendar year, for many non-governmental environmental organizations, community groups, and individual members of the public who wish to participate in environmental assessments, EARD submissions in December reduce our collective capacity to participate. We encourage NSECC and project proponents to consider how this problem may be avoided in future environmental assessment processes.

Our comments in this submission focus mainly on our concerns regarding the sources of renewable electricity that will be needed for EverWind Fuels’ proposed electrolysis activities. Before turning to those concerns, we wish to make a few high-level comments on other parts of

the EARD that caught our attention. Our comments address the main body contents of the EARD, as we did not have capacity to review the corresponding appendices.

## **1.0 Assessment of Climate Change Considerations**

We were very glad to see that the EARD takes land use changes and loss of carbon sequestering ecosystems into account when assessing the climate change impacts of the proposed project (see for example page 179). We have been encouraging NSECC to formally require such considerations in EARDs, and we appreciate seeing proponents take the initiative.

We do, however, have some concerns about other aspects of the EARD's treatment of climate change considerations.

We note that on page 177, the EARD refers to the *Environmental Goals and Sustainable Prosperity Act* ("EGSPA") having been reviewed: there is no indication that the proponent understands that EGSPA is no longer in force and that its climate change mitigation goals have since been replaced by the targets set out in the *Environmental Goals and Climate Change Reduction Act*.

Further, the EARD assesses the project's projected greenhouse gas ("GHG") emissions within the context of Nova Scotia's recent historical emissions and finds that the proposed project would contribute additional GHGs amounting to less than .25% of Nova Scotia's 2020 emissions. Nova Scotia's 2020 emissions are used as the baseline by which the proponent determines that the proposed project's GHG emissions would not contribute significantly to the province's emissions on the whole. While we recognize that the proposed project's projected, direct GHG emissions appear minimal in comparison to those of other, higher-emitting projects, we nevertheless maintain that it is crucial for proponents to assess GHG emissions' significance by taking Nova Scotia's GHG emissions reduction targets into account rather than using recent historical emissions as the baseline by which to assess significance. In other words, it is our view that NSECC should be guiding proponents to assess the significance of projected GHG emissions by showing how those emissions fit within the remaining "carbon budget" that Nova Scotia has established through the GHG emissions reduction targets it has enshrined in law.

Finally, we note that on page 180, the proponent refers to the proposed project's atmospheric carbon contributions as being "localized", and we struggle to understand how GHG emissions can be characterized as "localized" contributions when assessing their climate change impacts.

## **2.0 Assessment of Accidents that Could Affect Human Health, Avifauna, Terrestrial Wildlife, and the Marine Environment**

On page 145 and at various other points throughout the EARD, the proponent states that no impacts to the marine environment are anticipated. Given the proposed use of pipelines to transport liquid ammonia to a jetty from which the ammonia will then be loaded for shipment, potential impacts to the marine environment as a result of accidents or infrastructure malfunction are possible and should be addressed.

We recognize that, beginning on page 244, the EARD discusses the potential impacts of accidental release of ammonia due to transfer pipeline or loading arm malfunction; however, the assessment presented within this section of the EARD lacks detail.

The assessment beginning on page 244 indicates that, under certain conditions, the release of an ammonia cloud could affect approximately 70 residential dwellings that are within roughly 3.5 kilometres of the proposed industrial site; however, the assessment does not describe or assess the significance of the corresponding human health effects that the residents of those dwellings might suffer.

Likewise, the EARD includes no assessment of the potential effects that an accidentally released ammonia cloud could have on avifauna or terrestrial wildlife, nor does it assess the potential effects that accidentally released liquid ammonia could have on marine species.

We recommend that the proponent be required to provide further information addressing potential effects such as these.

### **3.0 The Proponent’s Plans to Secure “Certified Green” Energy**

The EARD repeatedly notes the critical importance of securing “Certified Green” energy to power the proposed electrolysis that will produce hydrogen gas from water. We understand from the EARD that the procurement of “Certified Green” energy will be necessary for the proponent to comply with European Union (“EU”) standards when supplying ammonia to the EU.

Given the emphasis the proponent places on the critical importance of “Certified Green” energy—i.e., clean, renewable, and low-GHG-emitting electricity for electrolysis—we wish to underscore a significant concern regarding Nova Scotia’s renewable electricity regime.

Nova Scotia’s *Renewable Electricity Regulations* define “renewable electricity” as meaning: “heritage renewable electricity”; “renewable low-impact electricity generated after December 31, 2001”; and, “imported electricity that in the opinion of the Minister is generated from renewable sources”. The phrase “renewable low-impact electricity” is defined as meaning “electricity produced from any of the following”: “solar energy”, “wind energy”, “run-of-the-river hydroelectric energy”; “ocean-powered energy”; “tidal energy”; “wave energy”; “biomass that has been harvested in a sustainable manner”; “landfill gas”; and, “any resource that, in the opinion of the Minister and consistent with Canadian standards, is able to be replenished through natural processes or through sustainable management practices so that the resource is not depleted at current levels of consumption”.<sup>1</sup>

The proponent is clearly aware of these definitions, as they are mentioned at various points throughout the EARD. For example, the EARD states on page 9:

By definition, Certified Green energy requires electricity supplied by NS Power to be generated through renewable, low-impact sources via wind, wave, tide, run-of-the-river hydraulic, biomass, solar, and/or landfill gas sources. As mentioned, the Proponent will

---

<sup>1</sup> *Renewable Electricity Regulations*, NS Reg 155/2010, as amended, at subsections 2(1) and 3(1).

enter a commercial agreement with NS Power, such that the electricity supplied to the Project will be verified/certified as originating from renewable energy sources.

Throughout the EARD, the proponent relies on the allegedly lower impacts of the energy sources recognized as sources of “renewable low-impact electricity” in Nova Scotia. The EARD states on page 10:

Since NS Power will provide the electrical power through Certified Green energy supplied via the Project’s Transmission Interconnection Line and associated northern and southern substations, the ammonia production process is cleaner than traditional production methods, and lower GHG emissions will be achieved.

This proposed reliance on Nova Scotia’s “renewable low-impact electricity” is also integral to the proponent’s assertion that the proposed project will result in a GHG emission reduction of 1.5 million tonnes per year by 2030 (see for example page 220).

There is a problem, however, and it is that not all of the recognized sources of “renewable low-impact electricity” set out in Nova Scotia’s *Renewable Electricity Regulations* are actually low-GHG-emitting. In particular, the use of biomass to generate electricity is an acute concern—one that environmentalists in Nova Scotia have been raising for some time—as the immediate carbon intensity of burning woody biomass to generate electricity is actually very high. Biomass energy is considered to be renewable because the sources of vegetable biomass (trees, crops, etc.) can theoretically be harvested and re-cultivated in a continuous cycle; however, the renewable nature of the energy source does not make it “green” in the sense of being low-GHG-emitting. Biomass is often framed as being carbon-neutral because when new trees or crops are grown, they sequester carbon from the atmosphere. This forms the basis for policy assumptions that when wood is burned to generate electricity, the GHG emissions resulting from that combustion are easily neutralized by growing more trees. The reality, however, is much more complicated than that: new vegetation does not immediately sequester large amounts of carbon, and there is no guarantee that the carbon sequestered by new growth will ever be sufficient to neutralize the adverse environmental effects of biomass combustion. Many delicate ecosystem and land use factors come into play, requiring careful and holistic regulatory management. Nova Scotia does not yet have in place a regulatory regime that manages biomass energy feedstocks and biomass combustion appropriately.

We noted several places throughout the EARD that appear to suggest that EverWind Fuels is interested in relying on wind energy as a primary source of electricity, but several passages in the EARD speak more generally of the full gamut of “renewable low-impact electricity” sources that are available in Nova Scotia. Given recent decisions by the Government of Nova Scotia to require Nova Scotia Power Incorporated (“NSPI”) to use *more* biomass to generate electricity,<sup>2</sup> we are gravely concerned that EverWind Fuels’ proposed “green” hydrogen project will in fact be nothing of the kind, and that the considerable amounts of electricity needed for the proposed electrolysis operations will be enabled significantly by biomass combustion. This concern is

---

<sup>2</sup> Michael Gorman, “Province orders Nova Scotia Power to use biomass to generate electricity” *CBC News* (19 December 2022), online: <<https://www.cbc.ca/news/canada/nova-scotia/biomass-forestry-electricity-nova-scotia-power-tory-rushton-1.6691389>>.

made more acute by the reality that Nova Scotia has very few regulatory measures in place to make biomass combustion more sustainable—there are no legislated definitions explaining what the *Renewable Electricity Regulations* mean by biomass “harvested in a sustainable manner”, and although the *Renewable Electricity Regulations* set a cap on the use of primary forest biomass that can be used to attain a renewable electricity standard, there are no measures in place that provide for sustainable harvesting, use, and restoration of biomass energy feedstocks more broadly.

Ultimately, Nova Scotia’s renewable electricity regime is not yet sophisticated enough to guarantee that “renewable low-impact electricity” supplied by NSPI is actually low-impact, from a GHG emissions perspective.

We recognize that, given the current state of Nova Scotia’s renewable electricity regime, NSECC may not be in a position to impose terms and conditions requiring EverWind Fuels to seek an arrangement that would lead to necessary renewable electricity capacity being provided by wind, solar, or other truly low-GHG-emitting sources. We nevertheless request that NSECC consider if there are any steps it can take to enhance the genuine sustainability of the proposed project. Further, we appeal to EverWind Fuels directly to consider the points we have raised in this submission and explore contractual opportunities with NSPI that could address these concerns.

Sincerely,

Staff Lawyer

East Coast Environmental Law  
6061 University Ave., PO Box 15000  
Halifax, NS B3H 4R2

Environmental Assessment Branch  
Department of Environment and Climate Change  
PO Box 442  
Halifax, NS B3J 2P8

SENT BY EMAIL  
ea@novascotia.ca

January 18, 2023

Dear Environmental Assessment Branch,

**Re: Comments on the Environmental Assessment Registration Document for the Proposed Point Tupper Green Hydrogen / Ammonia Project – Phase 1**

East Coast Environmental Law appreciates the opportunity to submit comments on the [Environmental Assessment Registration Document](#) for the proposed Point Tupper Green Hydrogen / Ammonia Project – Phase 1 (“the EARD”), which the proponent EverWind Fuels submitted to Nova Scotia Environment and Climate Change (“NSECC”) in December 2022.

East Coast Environmental Law is an environmental law charity that provides public-interest environmental law services throughout Atlantic Canada. We envision a future in which laws and legal systems protect ecological health and promote environmental and climate justice in Atlantic Canada. To that end, we advocate for progressive environmental laws and policies, provide public legal education on environmental law and environmental decision-making processes, and share our legal skills to support individuals, communities, and organizations that are working to prevent or redress environmental harms.

Due to limited staff capacity leading up to and following the holiday season, we are unable to comment extensively on the EARD. While we recognize that it may be advantageous from a business perspective to complete significant process milestones before the end of the calendar year, for many non-governmental environmental organizations, community groups, and individual members of the public who wish to participate in environmental assessments, EARD submissions in December reduce our collective capacity to participate. We encourage NSECC and project proponents to consider how this problem may be avoided in future environmental assessment processes.

Our comments in this submission focus mainly on our concerns regarding the sources of renewable electricity that will be needed for EverWind Fuels’ proposed electrolysis activities. Before turning to those concerns, we wish to make a few high-level comments on other parts of



the EARD that caught our attention. Our comments address the main body contents of the EARD, as we did not have capacity to review the corresponding appendices.

## **1.0 Assessment of Climate Change Considerations**

We were very glad to see that the EARD takes land use changes and loss of carbon sequestering ecosystems into account when assessing the climate change impacts of the proposed project (see for example page 179). We have been encouraging NSECC to formally require such considerations in EARDs, and we appreciate seeing proponents take the initiative.

We do, however, have some concerns about other aspects of the EARD's treatment of climate change considerations.

We note that on page 177, the EARD refers to the *Environmental Goals and Sustainable Prosperity Act* ("EGSPA") having been reviewed: there is no indication that the proponent understands that EGSPA is no longer in force and that its climate change mitigation goals have since been replaced by the targets set out in the *Environmental Goals and Climate Change Reduction Act*.

Further, the EARD assesses the project's projected greenhouse gas ("GHG") emissions within the context of Nova Scotia's recent historical emissions and finds that the proposed project would contribute additional GHGs amounting to less than .25% of Nova Scotia's 2020 emissions. Nova Scotia's 2020 emissions are used as the baseline by which the proponent determines that the proposed project's GHG emissions would not contribute significantly to the province's emissions on the whole. While we recognize that the proposed project's projected, direct GHG emissions appear minimal in comparison to those of other, higher-emitting projects, we nevertheless maintain that it is crucial for proponents to assess GHG emissions' significance by taking Nova Scotia's GHG emissions reduction targets into account rather than using recent historical emissions as the baseline by which to assess significance. In other words, it is our view that NSECC should be guiding proponents to assess the significance of projected GHG emissions by showing how those emissions fit within the remaining "carbon budget" that Nova Scotia has established through the GHG emissions reduction targets it has enshrined in law.

Finally, we note that on page 180, the proponent refers to the proposed project's atmospheric carbon contributions as being "localized", and we struggle to understand how GHG emissions can be characterized as "localized" contributions when assessing their climate change impacts.

## **2.0 Assessment of Accidents that Could Affect Human Health, Avifauna, Terrestrial Wildlife, and the Marine Environment**

On page 145 and at various other points throughout the EARD, the proponent states that no impacts to the marine environment are anticipated. Given the proposed use of pipelines to transport liquid ammonia to a jetty from which the ammonia will then be loaded for shipment, potential impacts to the marine environment as a result of accidents or infrastructure malfunction are possible and should be addressed.

We recognize that, beginning on page 244, the EARD discusses the potential impacts of accidental release of ammonia due to transfer pipeline or loading arm malfunction; however, the assessment presented within this section of the EARD lacks detail.

The assessment beginning on page 244 indicates that, under certain conditions, the release of an ammonia cloud could affect approximately 70 residential dwellings that are within roughly 3.5 kilometres of the proposed industrial site; however, the assessment does not describe or assess the significance of the corresponding human health effects that the residents of those dwellings might suffer.

Likewise, the EARD includes no assessment of the potential effects that an accidentally released ammonia cloud could have on avifauna or terrestrial wildlife, nor does it assess the potential effects that accidentally released liquid ammonia could have on marine species.

We recommend that the proponent be required to provide further information addressing potential effects such as these.

### **3.0 The Proponent’s Plans to Secure “Certified Green” Energy**

The EARD repeatedly notes the critical importance of securing “Certified Green” energy to power the proposed electrolysis that will produce hydrogen gas from water. We understand from the EARD that the procurement of “Certified Green” energy will be necessary for the proponent to comply with European Union (“EU”) standards when supplying ammonia to the EU.

Given the emphasis the proponent places on the critical importance of “Certified Green” energy—i.e., clean, renewable, and low-GHG-emitting electricity for electrolysis—we wish to underscore a significant concern regarding Nova Scotia’s renewable electricity regime.

Nova Scotia’s *Renewable Electricity Regulations* define “renewable electricity” as meaning: “heritage renewable electricity”; “renewable low-impact electricity generated after December 31, 2001”; and, “imported electricity that in the opinion of the Minister is generated from renewable sources”. The phrase “renewable low-impact electricity” is defined as meaning “electricity produced from any of the following”: “solar energy”, “wind energy”, “run-of-the-river hydroelectric energy”; “ocean-powered energy”; “tidal energy”; “wave energy”; “biomass that has been harvested in a sustainable manner”; “landfill gas”; and, “any resource that, in the opinion of the Minister and consistent with Canadian standards, is able to be replenished through natural processes or through sustainable management practices so that the resource is not depleted at current levels of consumption”.<sup>1</sup>

The proponent is clearly aware of these definitions, as they are mentioned at various points throughout the EARD. For example, the EARD states on page 9:

By definition, Certified Green energy requires electricity supplied by NS Power to be generated through renewable, low-impact sources via wind, wave, tide, run-of-the-river hydraulic, biomass, solar, and/or landfill gas sources. As mentioned, the Proponent will

---

<sup>1</sup> *Renewable Electricity Regulations*, NS Reg 155/2010, as amended, at subsections 2(1) and 3(1).

enter a commercial agreement with NS Power, such that the electricity supplied to the Project will be verified/certified as originating from renewable energy sources.

Throughout the EARD, the proponent relies on the allegedly lower impacts of the energy sources recognized as sources of “renewable low-impact electricity” in Nova Scotia. The EARD states on page 10:

Since NS Power will provide the electrical power through Certified Green energy supplied via the Project’s Transmission Interconnection Line and associated northern and southern substations, the ammonia production process is cleaner than traditional production methods, and lower GHG emissions will be achieved.

This proposed reliance on Nova Scotia’s “renewable low-impact electricity” is also integral to the proponent’s assertion that the proposed project will result in a GHG emission reduction of 1.5 million tonnes per year by 2030 (see for example page 220).

There is a problem, however, and it is that not all of the recognized sources of “renewable low-impact electricity” set out in Nova Scotia’s *Renewable Electricity Regulations* are actually low-GHG-emitting. In particular, the use of biomass to generate electricity is an acute concern—one that environmentalists in Nova Scotia have been raising for some time—as the immediate carbon intensity of burning woody biomass to generate electricity is actually very high. Biomass energy is considered to be renewable because the sources of vegetable biomass (trees, crops, etc.) can theoretically be harvested and re-cultivated in a continuous cycle; however, the renewable nature of the energy source does not make it “green” in the sense of being low-GHG-emitting. Biomass is often framed as being carbon-neutral because when new trees or crops are grown, they sequester carbon from the atmosphere. This forms the basis for policy assumptions that when wood is burned to generate electricity, the GHG emissions resulting from that combustion are easily neutralized by growing more trees. The reality, however, is much more complicated than that: new vegetation does not immediately sequester large amounts of carbon, and there is no guarantee that the carbon sequestered by new growth will ever be sufficient to neutralize the adverse environmental effects of biomass combustion. Many delicate ecosystem and land use factors come into play, requiring careful and holistic regulatory management. Nova Scotia does not yet have in place a regulatory regime that manages biomass energy feedstocks and biomass combustion appropriately.

We noted several places throughout the EARD that appear to suggest that EverWind Fuels is interested in relying on wind energy as a primary source of electricity, but several passages in the EARD speak more generally of the full gamut of “renewable low-impact electricity” sources that are available in Nova Scotia. Given recent decisions by the Government of Nova Scotia to require Nova Scotia Power Incorporated (“NSPI”) to use *more* biomass to generate electricity,<sup>2</sup> we are gravely concerned that EverWind Fuels’ proposed “green” hydrogen project will in fact be nothing of the kind, and that the considerable amounts of electricity needed for the proposed electrolysis operations will be enabled significantly by biomass combustion. This concern is

---

<sup>2</sup> Michael Gorman, “Province orders Nova Scotia Power to use biomass to generate electricity” *CBC News* (19 December 2022), online: <<https://www.cbc.ca/news/canada/nova-scotia/biomass-forestry-electricity-nova-scotia-power-tory-rushton-1.6691389>>.

made more acute by the reality that Nova Scotia has very few regulatory measures in place to make biomass combustion more sustainable—there are no legislated definitions explaining what the *Renewable Electricity Regulations* mean by biomass “harvested in a sustainable manner”, and although the *Renewable Electricity Regulations* set a cap on the use of primary forest biomass that can be used to attain a renewable electricity standard, there are no measures in place that provide for sustainable harvesting, use, and restoration of biomass energy feedstocks more broadly.

Ultimately, Nova Scotia’s renewable electricity regime is not yet sophisticated enough to guarantee that “renewable low-impact electricity” supplied by NSPI is actually low-impact, from a GHG emissions perspective.

We recognize that, given the current state of Nova Scotia’s renewable electricity regime, NSECC may not be in a position to impose terms and conditions requiring EverWind Fuels to seek an arrangement that would lead to necessary renewable electricity capacity being provided by wind, solar, or other truly low-GHG-emitting sources. We nevertheless request that NSECC consider if there are any steps it can take to enhance the genuine sustainability of the proposed project. Further, we appeal to EverWind Fuels directly to consider the points we have raised in this submission and explore contractual opportunities with NSPI that could address these concerns.

Sincerely,

Staff Lawyer

**From:** [@telling.net](mailto:@telling.net)>  
**Sent:** January 18, 2023 5:34 PM  
**To:** Environment Assessment Web Account <[EA@novascotia.ca](mailto:EA@novascotia.ca)>  
**Subject:** Proposed Project Comments

**\*\* EXTERNAL EMAIL / COURRIEL EXTERNE \*\***

Exercise caution when opening attachments or clicking on links / Faites preuve de prudence si vous ouvrez une pièce jointe ou cliquez sur un lien

Project: - Choose - Comments: What are the risks relating to the production and storage of ammonia on Point Tupper? Is there going to be another public hearing?

Address:

Email:

Municipality: West

Arichat\_email\_message: Privacy-Statement: agree x: 59 y: 21