



Crown / Indigenous Context in the Nova Scotia Offshore

➤ Province of Nova Scotia Perspective

Presentation to the Regional Assessment Committee:
Nova Scotia Office of L'nu Affairs (OLA), July 12, 2024

Who we are: OLA Mandate

- Positive and productive relationships through tri-partite rights negotiations
- Coordinated approach to ensure NS meets its consultation obligations
- Effective coordination and strategic policy advice across NS government
- Collaborative and respectful Mi'kmaq and intergovernmental relations
- Partnerships to improve socio-economic prosperity of Indigenous communities
- Enhanced public awareness and appreciation of Mi'kmaw history & culture

RA Committee Mandate

Regarding Indigenous (Aboriginal and Treaty) rights, you have a delicate mandate:

- Asked to collect and consider rights information, but not violate A1.3:

Committee's Terms of Reference:

A1.2 The Committee is mandated to receive information from Indigenous peoples on the nature and scope of any Aboriginal or Treaty rights protected by section 35 of the Constitution Act, 1982 in the Study Area, as well as information on potential adverse impacts that future offshore wind development activities in the Study Area may (individually or cumulatively) have on these rights. Information provided to the Committee as part of this process may also inform Crown efforts to develop and implement meaningful consultation processes with Indigenous peoples in future project-specific impact assessments and other regulatory and decision-making processes.

The Committee will consider any such information received regarding Aboriginal or Treaty rights and will consider that information in its analysis and the development of its recommendations.

A1.3 The Committee is not mandated or empowered by this Agreement to make any determination as to the existence or validity of Aboriginal or Treaty rights, the probability of adverse impacts upon any such rights, or whether any duty to consult has arisen and been discharged in any particular context.

Advisory Group: Indigenous Knowledge

f) (...) This advisory group will also provide information, knowledge and perspectives on Indigenous peoples and their communities, activities and other interests, including Aboriginal or Treaty rights protected by section 35 of the Constitution Act, 1982. (...)

Observations and Comments

1. Seek out, and stay consistent with, existing facts and legal determinations regarding the existence, nature and extent, and location, of Indigenous rights at play in the offshore.
 - a) Some rights questions have been answered, and some guidance has already been provided, by the courts.
 - b) How will the Committee seek out and consider existing facts / determinations regarding Indigenous rights?
 - c) Be fact and context specific with any Committee statements or recommendations (rights at play / potential adverse impacts).

2. Be careful not to inadvertently influence ongoing formal discussions regarding the existence, nature and extent, and location of rights.
 - a) Clearly identify Indigenous contributions, and any direct or indirect rights assertions, as their own.
 - b) In your reports and recommendations, avoid broad statements that could be misinterpreted or misapplied.

Observations and Comments

3. You may wish to keep “economic reconciliation” ideas clearly separated from Indigenous rights claims or Crown obligations.
 - a) Remember, in NS, Indigenous rights entitlements / claims are the subject of ongoing negotiations.
 - b) “Economic reconciliation” should not borrow rationale from the Indigenous rights context.

4. Nova Scotia’s position is Indigenous “Royalty Agreements” (referenced in the Interim Report) is a rights negotiation issue, not an “economic reconciliation” issue, and is beyond the mandate of the RA Committee.
 - a) Making any such recommendations would be inconsistent with A1.3.
 - b) What is your plan regarding the commitment in the Interim Report to “become better informed” (p.21)?

Overall Perspective:

The Regional Assessment, in its reports and recommendations, should be careful not to unduly influence the existing Indigenous rights processes (formal rights negotiations and Crown consultation).

- Inform yourself in a complete and balanced way – this is not a “blank slate”.
- Clearly identify what are assertions / arguments (of all parties).
- Avoid direct or indirect Committee “determinations”.
- When in doubt, defer to the existing rights processes.