



December 11, 2024

Luc Desroches
Consultation Lead, Consultation Operations Division
Impact Assessment Agency of Canada
luc.desroches@iaac-aeic.gc.ca

Mr. Desroches,

Re: The Regional Assessment of Offshore Wind in Nova Scotia

I write to you regarding the above-noted project pursuant to the *Terms of Reference for a Mi'kmaq- Nova Scotia – Canada Consultation Process (ToR)* as ratified on August 31, 2010. The Kwilmu'kw Maw-klusuaqn (KMK) has been working with the consultant AECOM Canada Ltd. since the Regional Assessment (RA) was initiated in April, 2022. AECOM has provided our organization with support such as attending the Advisory Group Meetings, providing support in the review of technical documents and producing the attached documents with our input. This “AECOM Report” outlines potential environmental impacts regarding offshore wind in both Nova Scotia and Newfoundland. We have also included the presentation AECOM provided at the meeting with the committee held on December 02, 2024 at the KMK Office in Millbrook. Please consider this letter, the attached report and AECOM presentation as our submission for the RA.

In addition to the attached documentation, KMK would also like to provide the following comments:

- While not specifically in the RA's Scope of Work, KMK would like to highlight the recent passing of Bill C-49 federally and Bill 471 within Nova Scotia. The passing of both Bills and the disappointing processes leading up to their passing undermine the work being completed by the RA Committees of Nova Scotia and Newfoundland & Labrador. We have two primary concerns with these pieces of legislation as they relate to the RAs specifically:
 - First, there seems to have been a profound lack of coordination between the development of the Bills and the work on the RAs, despite the fact that they cover many overlapping topics such as compensation for impacted fishing communities. It is perplexing that the Bills were not raised during, or factored into, the work on the RAs over the past two years. This lack of coordination has had procedural impacts, amounting to a lack of consultation with the Mi'kmaq on the Bills. It also has had substantive impacts, whereby topics which we expected to have input on through our involvement with the RAs have now been circumvented by the Bills and effectively removed from the purview of the RA Committees.

- Second, the new pieces of legislation do not accord weight to these RAs or account for their recommendations within the planning process. This omission undermines and undervalues all the time and resources that have been dedicated towards the RAs, and it suggests that a compartmentalized approach is being followed by the various federal and provincial government departments working on offshore wind. Despite the absence of any legislative requirement to this effect, we hope that the RA Committees will strongly recommend that there should only be calls for bids made, and submerged land licences issued, in areas that have been recommended for development within the RAs.
 - Similarly, we hope the RA Committees will convey in the strongest possible terms that the completion of the RAs should not be used as a trigger or justification for government to exempt offshore wind developments from project-specific Impacts Assessments. It would be deeply troubling if our involvement in and support of these RAs culminated in the removal of project-specific assessments, rather than the ultimate goal of better-informed, tiered decisions about offshore wind.
- The federal and provincial governments should have been doing much more consultation on the development of the offshore wind sector. **Our office expects more for the Mi’kmaq from the federal and provincial governments moving forward as the offshore wind sector develops.**
 - Given the importance of Mi’kmaq engagement in this process, we would recommend that a Plain Language Summary be prepared. This would benefit the general public, rightsholders, stakeholders, and Mi’kmaq individuals, organizations, and communities. Consideration should be given to producing this documentation in Mi’kmaq.
 - Offshore wind has the potential to impact the Mi’kmaq rights as recognized and affirmed under section 35 of the *Constitution Act, 1982*, including the right to hunt and fish for subsistence and a moderate livelihood throughout Mi’kma’ki (unceded territory of the Mi’kmaq people). Lobster, salmon, eels and trout are all culturally-significant species found in various bodies of water where offshore wind may become viable. Potential impacts to these species and other Aboriginal and treaty rights must be consulted upon as this sector develops. Beyond the legal requirements associated with Rights and Title, consideration for mitigation and monitoring of Mi’kmaq cultural practices, community well-being, and land and resource uses should be a requirement of any mitigation, monitoring, management, or decommissioning planning and developed with input and review by the Mi’kmaq of Nova Scotia.
 - It is essential to recognize that these rights are integral to Mi’kmaq culture, economy, and community well-being. Therefore, offshore wind development projects must ensure that potential impacts to these rights are fully assessed. This includes understanding and

respecting traditional fishing practices, marine resource harvesting, and the broader socio-economic activities that these rights support. This is of particular concern to us given that the legislative scheme not only neglects to include consultation with Indigenous peoples at necessary decision points, it also operates in such a way as to present hurdles to the Crown being able to fulfil its duty to consult.

- Given the ongoing governance and reconciliation processes with First Nations, long-term collaboration with Mi'kmaq communities is vital. This approach aligns with the principles of reconciliation and supports sustainable development. It also promotes compliance with Canada's commitments under the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the federal *UNDRIP Act*. Thorough and meaningful consultation, accommodation, and the integration of Mi'kmaq knowledge systems into the decision-making processes are essential for achieving these objectives.
- The implementation of moderate livelihood fisheries plans by Mi'kmaw communities has led to significant progress in exercising their treaty rights in a structured and sustainable manner. Over the past four years, the KMK-led Treaty Right Protected (TRP) fisheries have achieved considerable success, marked by collaborative efforts and positive relationships with key stakeholders, including with Fisheries and Oceans Canada (DFO) Conservation and Protection (C&P) directorate and local Lobster Fishing Areas (LFA) associations. It is KMK's expectation that any Rights Based Fisheries will be considered by the appropriate regulators as well as with individual proponents as projects are developed.
- Several Mi'kmaw First Nations, such as Potlotek, Eskasoni, We'koqma'q, Bear River, Acadia, Glooscap, Annapolis Valley, and Pictou Landing, have made strides in implementing moderate livelihood plans. These plans not only enhance the ability of Mi'kmaw communities to engage in sustainable fishing practices but also build trust and cooperation with DFO C&P. This collaboration has fostered co-enforcement and compliance processes that support both Mi'kmaw fishers and the broader goals of DFO-led fisheries management. The establishment of these co-enforcement initiatives has proven beneficial, helping to respect treaty rights while maintaining the integrity of fisheries conservation.
- The TRP team's efforts have also extended to building constructive relationships with commercial industry associations, lowering tensions on and off the water between KMK-supported First Nations and Commercial stakeholders. This ongoing relationship work has opened avenues for dialogue and mutual understanding, promoting a shared commitment to sustainable fisheries and economic development.
- Despite these successes, challenges remain, particularly in the current Canadian political climate, where the recognition of Mi'kmaw self-governance rights and authorities

continues to be an ongoing hurdle. Mi'kmaw communities are working towards broader acknowledgment and support from Canada and its departments for their inherent rights to manage and regulate their own fisheries. This commitment to self-governance and recognition of rights-based fisheries remains crucial for the full realization of Mi'kmaw inherent Aboriginal rights and Treaty rights as recognized and affirmed under the *Constitution Act, 1982*.

- The progress made through co-management efforts, compliance measures, and industry collaboration demonstrates the strength and resilience of the Mi'kmaw approach to fisheries management. Ongoing dialogue and cooperation with the Mi'kmaq, proponents and regulators will be essential in addressing the remaining challenges and advancing the recognition of Mi'kmaw self-governance in the fisheries sector.
- KMK is interested in more detail about exactly what type of fisheries are able to coexist from various installations of offshore wind farms and we feel there is a significant gap in addressing any benefits to fisheries from the artificial reef effect on long term wind farms. The rapid loss of fish biomass and diversity in our oceans is a contributing factor to climate change and all efforts must be made to ensure ocean diversity is not lost at the cost of industry. KMK wishes to know what gear types are compatible with offshore wind.
- The precautionary principal is an excellent approach considering the knowledge and data gaps presented in the RA. However, DFO and other marine users are moving towards an ecosystem-based fisheries management (EAFM) approach which combines policies such as the precautionary approach found in the 2009 Sustainable Fisheries framework. In 2024 the DFO found that an ecosystem-based approach would better address impacts of climate change. KMK encourages the RA to include EAFM as a key principle. EAFM aligns well to Mi'kmaw values which understand the environment in a more holistic way that does not segregate or prioritize.
- KMK has given considerable time and effort into providing feedback for DFO's Draft Marine Conservation Network. The federal Marine Protected Areas (MPA) standards came into effect in 2019 and while offshore wind is not directly mentioned in the standards, they are meant to safeguard MPAs against industrial activities taking place within MPAs to strengthen the protection level and standardize MPA function. KMK respectfully request the RA consider that no development will be considered in federal MPAs or other legislated areas of marine conservation. To that end, we ask that the PDA that overlaps with the Western Emerald Bank Marine Refuge be scaled down to scope out the Marine Refuge from the PDA. We see offshore wind as a contributor to a more sustainable future and therefore should not be competing for ocean space with

conservation areas but rather working alongside them to push Canada towards a more sustainable economy.

- Any time there is a watercourse, named or unnamed, regardless of size or velocity, and whether there is terracing or not, there is a heightened probability of encountering Mi'kmaw archaeological heritage. The Assembly of Nova Scotia Mi'kmaq Chiefs, KMK and the Mi'kmaw Nation in Nova Scotia expect a high level of archaeological investigative diligence and consultation when potentially disruptive activities are contemplated.
- Our office recommends that future offshore wind developers with projects happening in Mi'kma'ki contact KMK's Benefits Department as early as possible to start the early engagement process. This may lead to the establishment of a Memorandum of Understanding with the Assembly of Nova Scotia Mi'kmaq Chiefs, with the development of an Impact Benefits Agreement to follow. The Benefits Department could also assist in connecting developers to the Indigenous employment officers closest to the project for Mi'kmaw looking for employment in offshore wind projects. As the offshore wind sector develops, there is a huge opportunity for the Mi'kmaq of Nova Scotia to be active players as rights holders as well as for potential equity ownership on these projects. As this industry develops, proponents and regulators must look at the nearby Mi'kmaw Communities and ensure Mi'kmaw owned businesses are being contracted and/or subcontracted for opportunities where available. This industry has major potential to participate in economic reconciliation and ensure The Mi'kmaq are well represented and informed from the beginning as this industry develops.
- The Secretariat stated at the mentioned December 02, 2024 meeting that KMK comments on the draft would be dispositioned in a table after the fact. These comments, with responses, should be published with the document so that the concerns and process of dealing with the feedback received are transparent.
- Given the emphasis the Secretariat has put on Indigenous involvement and the level of effort that was spent on public and Indigenous engagement, it is surprising that the last stage of this process is being rushed such that the committee only has a matter of weeks consider, integrate and update the Draft report based on the feedback received. This is not sufficient time for a fulsome consideration of the issues. We acknowledge that not all of the concerns or questions raised at this time can be resolved, however it would be a benefit for future assessments if these were identified and characterised.
- Priority must be given to Mi'kmaq led initiatives that allow The Mi'kmaq of Nova Scotia to demonstrate self governance in Mi'kma'ki. These initiatives include (but are not limited to) Marine Protected Areas, Indigenous Protected and Conserved Areas and other areas

The Mi'kmaq are trying to preserve for the next seven generations. This includes in our waters where turbines will be deployed as well as on our lands where substations and transmission lines will be commissioned. It is crucial The Mi'kmaq are wholesomely included as Rights Holders and are allowed to demonstrate this ability to self govern as the offshore wind industry is developed in our unceded territory.

- A more detailed and specific Labour Market Analysis would benefit the industry, the public, and the Mi'kmaq of Nova Scotia. This work should include an element that focuses on the availability, readiness, and needs of Mi'kmaw people to be full participants in all aspects of OSW economic opportunity (e.g., from labour to trades to professional positions).
- The committee includes a number of recommendations, but these are not presented in an actionable format. The following additions would make the recommendations more likely to be enacted:
 - Include suggested ownership of the recommendation (e.g., which group would be responsible for enacting the recommendation).
 - Include measurable parameters for tracking progress (e.g., a reporting timeline on progress; a specific summary of data).
 - Provide a template for a recommendations-report-card so that updates can be regularly and plainly communicated.
 - Prepare a separate stand-alone recommendations report so that it can be more easily accessed, shared and disseminated.

We recognize that more needs to be done in the transition away from fossil fuels, and we would be encouraged to see the Mi'kmaq at the forefront in various renewable energy projects. With the provincial and federal governments making NetZero targets to transition Mi'kma'ki away from fossil fuels and with Nova Scotia's primary source of electricity being coal generation, we recognize that other sources of energy are needed to meet these targets. However, meeting these targets must not come at the expense of the Mi'kmaq or our constitutionally-protected rights.

Information on the next steps of the process is currently lacking. Participants in the process should be provided with a roadmap that outlines next steps, including the timeline associated with Ministerial consideration and a commitment to publishing the final Strategic Assessment to CEAR, along with follow-up to participants of the process.

KMK does not represent Membertou, Millbrook or Sipekne'katik First Nations. We do encourage consultation and engagement with these communities as they may have an interest in this Regional Assessment.

KMK and AECOM are willing to meet virtually to discuss the contents of the attached documentation. Please coordinate with Kris Buurman for a meeting date and time. Please contact

Patrick Butler, Senior Energy & Mines Advisor, at Kwilmu'kw Maw-klusuaqn with any other questions.

Yours in Recognition of Mi'kmaw Rights and Title,

<Original signed by>

Twila Gaudet, B.A., LL. B.
Director of Consultation
Kwilmu'kw Maw-Klusuaqn

C.C.:

Offshore Wind NS

Patrick Butler, Kwilmu'kw Maw-klusuaqn

Kristina Buurman, Kwilmu'kw Maw'klusuaqn

Carys Burgess, Impact Assessment Agency of Canada

Lorraine Whitman, Committee Member for the Regional Assessment of Offshore Wind Development in Nova Scotia

James Wooder, Committee Member for the Regional Assessment of Offshore Wind Development in Nova Scotia

Anne Wilkie, Committee Member for the Regional Assessment of Offshore Wind Development in Nova Scotia

Steve Parsons, Committee Member for the Regional Assessment of Offshore Wind Development in Nova Scotia

Graham Daborn, Committee Member for the Regional Assessment of Offshore Wind Development in Nova Scotia

Attachments:

- 1) AECOM Report for the Regional Assessment of Offshore Wind Development in Nova Scotia & Newfoundland
- 2) AECOM Nova Scotia Offshore Wind – Review of the Regional Assessment Recommendations Presentation dated December 2, 2024