



October 6, 2023

Catherine Ducey
on behalf of the Committee for the Regional Assessment of
Offshore Wind Development in Newfoundland and Labrador
Secretariat Member
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The Committee for the Regional Assessment of Offshore Wind
Development in Newfoundland and Labrador:

Thank you for your letter of September 28, 2023, requesting advice from
the Impact Assessment Agency of Canada (the Agency) in relation to the
application of the *Impact Assessment Act* (IAA) to offshore wind
development in the Regional Assessment (RA) Study Area.

The *Physical Activities Regulations* (the Project List) identify the types of
activities that are considered “designated projects” subject to the IAA. The
definition of designated project also includes any physical activity that is
incidental to those physical activities listed. It should be noted that, under
the IAA, it is the responsibility of proponents to determine whether their
proposed project includes physical activities that are described in the
Project List and, if so, to submit an Initial Project Description to
the Agency.

As described in your letter, wind power generating facilities, with 10 or
more wind turbines, are captured by the Project List when proposed in an
offshore area or in a boundary water.

The Project List defines the terms *boundary water* and *offshore area* as
follows:

- ***boundary water*** has the meaning assigned by the definition
boundary waters in subsection 2(1) of the *Canada Water Act*.
- ***offshore area*** has the same meaning as in section 2 of the
Canadian Energy Regulator Act.

.../2

Using the Project List definitions and descriptions above, we offer the following responses to your requests:

Response to Request 1

In all three of the project examples described in your letter, the wind power generating facilities described appear to meet the thresholds of the Project List and would likely be designated projects under the IAA.

In the first scenario relating to a new offshore oil and gas production platform, which includes installing a wind power generating facility that has 10 or more turbines, the wind power generating facility would be subject to the IAA and would likely be considered a component of the oil and gas production project.

The second scenario relates to replacement of the generating units on an existing oil and gas facility with wind turbines. Although the offshore oil and gas production platform is already in existence, the offshore wind power generating facility that has 10 or more turbines would be a new facility and would likely be considered a designated project subject to the IAA.

Similarly, in the third scenario, where a new wind power generating facility with 10 or more wind turbines is proposed to power multiple existing oil and gas platforms, it would likely be considered a new designated project subject to the IAA.

In each case, the Agency would request information from the proponent, and discuss with the proponent the specifics of the proposed project to understand if and how the Project List would apply.

The Agency would take the following criteria into account in determining the activities and components that would be considered part of the project, and to scope the impact assessment, should an assessment be required following the planning phase:

- nature of the proposed activities and whether they are subordinate or complementary to the designated project;
- whether the activity is within the care and control of the proponent;
- if the activity is to be undertaken by a third party, the nature of the relationship between the proponent and the third party, and whether the proponent has the ability to “direct or influence” the carrying out of the activity;
- whether the activity is solely for the benefit of the proponent or is available for other proponents as well; and
- the federal and/or provincial regulatory requirements for the activity.

Response to Request 2

The IAA in general applies to the entire area highlighted in the RA Study Area map; the legislation applies in most regions of Canada, except where explicitly excluded by legislation relating to northern territories.

Application of the IAA would be triggered in relation to a specific offshore wind project proposed in the RA study area where the project meets the description of a designated physical activity set out in the Project List: having 10 or more turbines and located in an offshore area.

The term *offshore area* for the purposes of sections 44 and 45 of the Project List is defined as having the same meaning as in section 2 of the *Canadian Energy Regulator Act* (CERA). Under CERA, the definition is as follows:

offshore area means:

- (a) the part of the internal waters of Canada or of the territorial sea of Canada that is not situated in
 - (i) a province other than the Northwest Territories, or
 - (ii) the onshore, as defined in section 2 of the *Northwest Territories Act*; and
- (b) the continental shelf of Canada and the waters superjacent to the seabed of that shelf.

The territorial sea of Canada and the internal waters of Canada are based on established baselines determined under provisions of the *Oceans Act*, including areas over which Canada has a historic or other title of sovereignty.

If further information is required, the Canada Energy Regulator (CER) is the responsible body with expertise on the provisions of the CERA. We are seeking out the appropriate contact at the CER and will provide it to the Secretariat.

Sincerely,

<Original signed by>

Terence Hubbard (he/him, il)