



TRANSPARENCY OF ENVIRONMENTAL ASSESSMENTS IN NEWFOUNDLAND AND LABRADOR

TRANSPARENCY INTERNATIONAL CANADA

AUGUST 2023

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Transparency International Canada is grateful to the Trottier Family Foundation for supporting the research and writing of this report. The ideas, opinions, and comments within this publication are entirely the responsibility of its authors and do not necessarily represent or reflect the Trottier Family Foundation.

We are grateful to the interviewees who provided their time and knowledge for this report. We would also like to acknowledge technical advice and editorial feedback from Alan Freeman and Dr. Mark Stoddart.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of March 2023. Nevertheless, TI Canada cannot accept responsibility for the consequences of its use for other purposes or in other contexts than those intended. Policy recommendations reflect TI Canada's opinion. They should not be taken to represent the views of any external stakeholders unless otherwise stated.

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Executive Summary

This report discusses the challenges and opportunities associated with resource development in Newfoundland and Labrador (NL) and the importance of transparency and accountability in the province's environmental assessment (EA) process.

With its future growth largely tied to offshore oil and gas, mining, and electric power generation from hydro and wind, Newfoundland and Labrador's economic engines share one common trait: they have the potential to cause major impacts on the environment. Though these activities are all subject to environmental assessment (EA) regimes, lingering economic impacts from the pandemic and other factors have put pressure on the outcomes and efficiency of the EA process.

Newfoundland and Labrador's Minister of Industry, Energy, and Technology has acknowledged the skepticism surrounding resource development projects due to past failures but emphasizes the need for transparency to alleviate concerns and foster economic opportunities. The province has experienced transparency deficiencies in previous resource development projects, leading to negative impacts on communities, the environment, and the province's finances. But with current support for increased mining and oil and gas development, transparency and accountability risks may arise within the EA process in pursuit of economic recovery.

The EA process is regarded by many as a useful measure for ensuring that decision making on resource development projects is conducted in a transparent and sustainable manner. While the province benefits from enshrined federal and provincial processes, their transparency is at risk.

As Newfoundland and Labrador is planning rapid development of its natural resource sectors in the next decade, the ability of the province's decision makers to influence the outcomes of the provincial EA process is of pertinent concern to local and national sustainability.

Risks to Newfoundland and Labrador's EA process include:

- a lack of clear or publicly available criteria for decision making;
- restrictive and insufficient public commenting timelines;
- barriers to meaningful participation, including a lack of meaningful consultation with Indigenous communities;
- a lack of independent review;
- external influence in the process;
- the risk that communities' free, prior, and informed consent will be ignored;
- inadequate follow-up monitoring;
- ineffective stakeholder communication; and
- the limited consideration of gender-based impacts.

One of the most explicit examples of these risks is the lack of criteria determining significant environmental effects as well as the lack of criteria for the Lieutenant-Governor-in-council's public interest determination. As the determination of significant environmental effects and the public interest is a deciding factor in categorizing a project's assessment stream, and consequently the rigour of assessment for individual projects, the lack of explicit criteria for this determination creates transparency risks. Projects with potentially significant environmental effects may undergo a less rigorous process or no process at all if it is within decision makers' interest to do so.

The ease with which decision-makers can effectively influence the EA process reveals significant flaws in the design and implementation of the province's EA system. While the provincial EA process and the federal process in which it sometimes operates are usually well-defined, the presence of pre-existing commitments have often pushed decision-makers to reduce the purview of these processes or oversight surrounding them.

While these identified risks are prevalent, there also exist relative strengths within the province's process. These strengths include:

- having specific criteria to guide the Minister of Municipal Affairs and Environment when determining the public interest,
- having specific thresholds in legislation for triggering the assessment of

- project expansions,
- the availability of staff to assist project proponents with the EA process, and
- the ability for project proponents to opt into the province's most detailed level of EA (the Environmental Impact Statement process) at any time.

However, even with the presence of these strengths, Newfoundland and Labrador's EA process is dealing with significant transparency and accountability issues. To address these risks, it is recommended that the province adopt the following provisions:

- require published decision statements from the Minister of Municipal Affairs and Environment / the Lieutenant Governor-In-Council,
- extend public commenting timelines beyond 35 days,
- provide opportunities for participant and capacity funding,
- implement the United Nations Declaration on the Rights of Indigenous Peoples into the province's EA legislation, and
- incorporate requirements for gender-based analysis.

Though there is significant economic pressure on the province resulting from various factors, transparency and accountability cannot be left behind in the process of economic recovery. It is precisely that lack of transparency and accountability that has garnered the province with a troublesome history with resource development. The EA process is crucial to balancing economic prosperity with individual, community, and environmental rights and ensuring a sustainable future for the province.

By adopting the recommendations of this report, these provisions would all help in supporting Newfoundland and Labrador's demonstrated effort to learn from past mistakes and establish an EA process that ensures transparency and accountability for every partner involved.

1.0 Introduction

As Andrew Parsons, Newfoundland and Labrador’s (NL) Minister of Industry, Energy, and Technology has noted in relation to new resource development projects in the province, “There is an inherent cynicism that in some cases is absolutely well-founded, where we’ve got a history of well-documented resource development failures. We’ve been burned before” (Graney, 2023, para. 25-26). However, Parsons emphasizes that the “best way to counter cynicism is with sunshine – and so by shining a light on it, opening it up, letting people see it and realize that generally there’s nothing to fear in exploration of opportunity” (Graney, 2023, para. 25-26).

As Minister Parsons alludes to, Newfoundland and Labrador has had its fair share of resource development mega projects which have been developed with considerable transparency deficiencies. The effects of this lack of transparency have surfaced on multiple fronts as projects were pushed through with minimal regard for communities, the local environment, or the finances of the province. As resource development continues to play an important role in NL’s economy, risks to transparency surrounding the development of proposed and future resource mega projects are important to consider. Because the environmental assessment (EA) process has and continues to play an important role in developing projects with consideration to their social, environmental, and economic impacts, transparency of the province’s EA process will have direct implications for the degree to which future resource development is achieved in a responsible and transparent manner.

Recognizing this critical juncture in Newfoundland and Labrador’s future, Transparency International (TI) Canada has chosen to review the transparency and accountability risks in the province’s EA process to identify vulnerabilities and create recommendations for a more resilient process.

More than 70 years after Newfoundland and Labrador (NL) joined Confederation as Canada’s 10th province, its demographic and economic future remains challenging. Canada’s easternmost province has the country’s oldest population, a persistent problem with out-migration and high unemployment rates. Although provincial unemployment in September 2022 fell below 10 per cent, it still is almost double the national rate.

Despite the development of offshore oil production over the past 25 years, which has given the province's Gross Domestic Product (GDP) and treasury a major boost, NL remains the country's most indebted province. The provincial government's growing dependence on volatile oil and gas revenues and its decision to spend the funds as they come in has only exacerbated the situation.

When it joined Confederation in 1949, Newfoundland was a small British colony with a checkered financial past, heavily dependent on the North Atlantic cod fishery, supplemented by developing forestry and mining sectors. The collapse of the cod fishery in the early 1990s, due to a collection of factors including local and foreign overfishing and a lack of oversight by the Department of Oceans and Fisheries, resulted in an economic disaster. This led to a sharp population decline from which NL has never recovered. At the same time, its forestry sector has shrunk as well, with two of the province's three pulp and paper mills shutting permanently.

Yet despite the vagaries of an economy dependent on commodities, Newfoundland and Labrador's future remains closely tied to its natural resources. It may have a growing tourism sector and a promising cluster of high-technology and software prospects, but it remains far from North American economic centres. Consequently, developing a large manufacturing base or a significantly larger population base may be challenging.

The fishery and forestry sectors seem unlikely to regain their previous economic strength. As a result, Newfoundland and Labrador is leaning on other resources for its future growth: offshore oil and gas, mining and electric power generation from hydro and wind. All three sectors share one common trait. They have major impacts on the environment. And as in any modern democratic society, these activities are all subject to environmental assessment regimes.

The EA process is regarded by many as a useful measure for ensuring that decision making on resource development projects is conducted in a transparent and sustainable manner (Sinclair, Doelle, & Gibson, 2021). While the province benefits from enshrined federal and provincial processes, their transparency is at risk. These risks can be connected to social, historical, economic, and environmental factors which continue to constrain the province's present development opportunities and could create possible integrity risks.

Given its poor economic condition, Newfoundland and Labrador is subject to pressure from interests promoting strong economic development agendas which may be used to justify reduced environmental regulation and government oversight. Not only do Newfoundlanders earn lower-than national average annual incomes, but the provincial government also suffers from crippling debt, with the province recording Canada's largest provincial net debt per capita.

In its 2021 report, entitled *The Big Reset*, the Newfoundland and Labrador Premier's Economic Recovery Team (PERT) identified the province's declining and aging population along with persistent unemployment and low incomes as significant risks to long-term prosperity (Premier's Economic Recovery Team [PERT], 2021). Based on 2021 census data, Newfoundland and Labrador is Canada's second smallest province by population. The province's population peaked at 580,000 in the early 1990s but dropped sharply with the collapse of the Atlantic cod fishery and has never recovered. Combined with a declining birth rate, the province continues to grow older, creating a strain on resources and services that have to be financed by a dwindling workforce.

While the PERT report has arguably had less influence on the province than initially planned due to NL's recent economic recovery, it has still had an influence on public policy, such as cuts to public sector spending, the restructuring of crown corporations, and the amalgamation of school districts and health authorities. As NL's Minister of Finance, Siobhan Coady, has noted, the province also continues to plan for budget-balancing legislation (Roberts, 2023). Consequently, recommendations adopted from the PERT report in the past may continue to influence the province's approach to economic recovery and development in the future. Additionally, as NL's recent economic recovery has been due in large part to rising oil prices, this further highlights the reliance of the province on development of its natural resource sectors and may encourage adoption of PERT report recommendations that seek to aid this development.

Given the province's past economic state and access to bountiful natural resources, there have been calls for economic development initiatives to be fast-tracked with the help of limited environmental regulation and expedited timelines for project approvals. For instance, the Government of Newfoundland and Labrador's (GNL) *Mining the Future 2030* plan sets ambitious targets for the mining sector. The plan foresees the development of five new mines, the doubling of annual exploration

spending to \$100 million and an increase in annual mineral shipments to \$4 billion by 2030. The increase in the number of mines is particularly ambitious as mining projects often require multi-year long assessment processes to effectively assess and mitigate related impacts. Under the *Federal Impact Assessment Act*, assessments can take a maximum of about four and a half years. While under the province's legislated timelines EA's can only last for a maximum of just under a year (239 days), these timelines do not account for the time it takes for proponents to prepare an Environmental Impact Statement which can take a year or more to complete. To meet these ambitious goals, the provincial government aims to be ranked in the top three jurisdictions in Canada for expedited permitting times by modernizing the *Mineral Act* and *Mining Act* and assessing the efficiency and effectiveness of federal and provincial regulatory processes (Department of Industry, Energy and Technology [DIET], 2018b).

Similar pushes for increased project development and streamlined regulatory process have also been seen in the oil and gas and hydroelectric sectors. As exploratory wells are often a prerequisite for developing oil and gas projects, the GNL has made drilling expansion a priority and intends to drill over 100 new exploratory wells by 2030. The province aims to produce more than 650,000 barrels of oil equivalent per day from new and existing projects and shorten times between exploration to production by modernizing guidance and decision criteria for approving offshore exploration developments (DIET, 2018a). The Premier's Economic Recovery Team also advocates hydroelectric expansion, including development of the Gull Island Project as part of the Lower Churchill River Hydroelectric Generation Project (PERT, 2021). The Team's report calls for streamlining regulatory timelines and approaches to speed these and other resource developments in pursuit of economic development.

Despite trends of economic decline, the province has recently made an economic recovery in part due to increasing oil prices and Federal bailouts which are allowing the GNL a degree of economic flexibility it has not experienced in decades. As non-renewable resources continue to provide the province with revenues to service its debt and improve conditions for its constituents, it is likely that these projects will continue to be pushed to meet fiscal and economic objectives.

Other resource development opportunities such as wind and hydrogen projects are progressing within the province as well. Two wind-powered hydrogen/ammonia

production facilities for instance have been recently proposed in the Port au Port Peninsula by Word Energy GH2 Inc. and in the Port of Argentia by the Pattern Energy Group LP (Graney, 2023). Additionally, a recent deal was signed between Prime Minister Justin Trudeau and German Chancellor Olaf Scholz in Stephenville, Newfoundland to begin exporting hydrogen fuel to Europe from Eastern Canada beginning in 2025 (Graney, 2023).

The transparency and accountability of the province's EA process therefore has implications for how this development proceeds and the effectiveness of EA oversight.

As Newfoundland and Labrador is planning rapid development of its natural resource sectors in the next decade, the ability of the province's decision makers to influence the outcomes of the provincial EA process is of pertinent concern to local and national sustainability. This concern has been echoed by the province which is currently undertaking a review of its "Environmental Assessment Regulations" under the provincial *Environmental Protection Act* in part to improve the transparency and accountability of decision makers and the EA process (Department of Municipal Affairs and Environment [DMAE], 2019).

Throughout this review, the project team identified both strengths and risks to transparency and accountability in Newfoundland and Labrador's EA process. Strengths of the province's process include:

- having specific criteria to guide the Minister of Municipal Affairs and Environment when determining the public interest,
- having specific thresholds in legislation for triggering the assessment of project expansions, the availability of staff to assist project proponents with the EA process, and
- the ability for project proponents to opt into the province's most detailed level of EA (the Environmental Impact Statement process) at any time.

However, there are number of risks to transparency and accountability in NL's EA process including:

- a lack of clear decision-making criteria,

- insufficient public commenting timelines,
- a lack of meaningful consultation with Indigenous communities,
- and issues with effectively implementing gender-based analysis.

To address these risks, the project team recommends that the province adopt the following provisions:

- require published decision statements from the Minister of Municipal Affairs and Environment / the Lieutenant-Governor In Council (LGIC),
- extend public commenting timelines beyond 35 days,
- provide opportunities for participant and capacity funding,
- implement the *United Nations Declaration on the Rights of Indigenous Peoples* into the province's EA legislation, and
- incorporate requirements for gender-based analysis.

For a detailed discussion of transparency strengths, risks, and recommendations, please refer to sections **"3.0 Risk Assessment Results & Discussion"** and **"4.0 Conclusions & Recommendations"**

1.1 Project Objective, Scope, and Method

TI Canada's objective for this study is to analyse transparency and accountability risks within Newfoundland and Labrador's environmental assessment process. By doing so, we aim to raise standards and strengthen public trust in these processes and decisions both at the provincial and national level.

To note, this project is not evaluating specific environmental impact statements, nor did TI Canada uncover any sign of corruption in the evaluated EA processes. However, through desk research and interviews, it did find transparency and accountability vulnerabilities that could create risks and compromise the EA process, and ultimately impact the environment and society affected by development projects.

The EA process involves identifying, predicting, evaluating, and mitigating the effects of development proposals prior to regulatory bodies giving project approval. An EA thus requires a proponent to present the potential impacts of a project before

its implementation. If and when a project is approved, it will usually result in job creation and tax and royalty payments, as well as potentially adverse environmental and social impacts. A project can shape a community for generations. It is therefore important that the EA process provides meaningful opportunities for public input prior to approval or rejection of a proposal. In a transparent and accountable EA, the extent to which such input is considered in the decision process and outcome is clearly evident.

As a result, the EA process can enhance transparency and accountability in development projects and decision making. A transparent decision-making process allows stakeholders to hold authorities accountable, and transparent project planning allows stakeholders to hold companies accountable.

This research was conducted using a scaled down approach to the Mining Awards Corruption Risk Assessment (MACRA) Tool (Transparency International [TI], 2020), created specifically for Transparency International's "Accountable Mining Program." The methodological steps of the MACRA Tool highlights certain vulnerabilities related to transparency and accountability in the EA process of Newfoundland and Labrador and Canada. These vulnerabilities create certain risks, which are also highlighted in this report and are assessed in terms of likelihood and potential impact.

To collect data, the researchers used literature reviews and semi-structured in-depth interviews with experts, stakeholders, and right holders. Interviews were conducted virtually. Potential interviewees were approached following best practices for participant recruitment in research studies, such as the provision of an initial contact letter that outlined the research study's objectives and outputs, information related to confidentiality, incentives for participation and clarification that monetary compensation would not be provided in exchange for participation. Researchers conducted 14 interviews in total. The distribution of interviewed parties was 21% civil society and non-Indigenous Peoples, 22% Indigenous community members, 7% environmental lawyers, 36% academics, 7% industry representatives, and 7% non-governmental organization representatives. While efforts were made to consult with various provincial government departments early on and throughout the interview process, government contacts declined to participate in the current study.

1.2 Newfoundland & Labrador

Based on recent census data, Newfoundland and Labrador is Canada’s second smallest province by population (Statistics Canada [SC], 2022c). Newfoundland and Labrador’s population has declined by 1.8 per cent since the 2016 census. Newfoundland and Labrador is home to a rapidly aging population, with 24 per cent of citizens over the age of 65 compared to 19 per cent in the rest of Canada (SC, 2022ab). Individuals between 60 and 64 make up the largest age-bracket in Newfoundland and Labrador, accounting for 8 per cent of the population. As senior citizens are considered dependents, these demographics are a concern for the province’s long-term economic growth because of the resources that will be required to support this group and the resulting strain this will place on a dwindling workforce (PERT, 2021). Because residents continue to abandon rural areas to concentrate in the capital, St. John’s, 50 per cent of the province’s population now lives in Census Metropolitan Areas or Census Areas (SC, 2017a). These shrinking rural populations create a risk for the disappearance of communities as demand for services declines and the cost of providing these services to a scattered population grows.

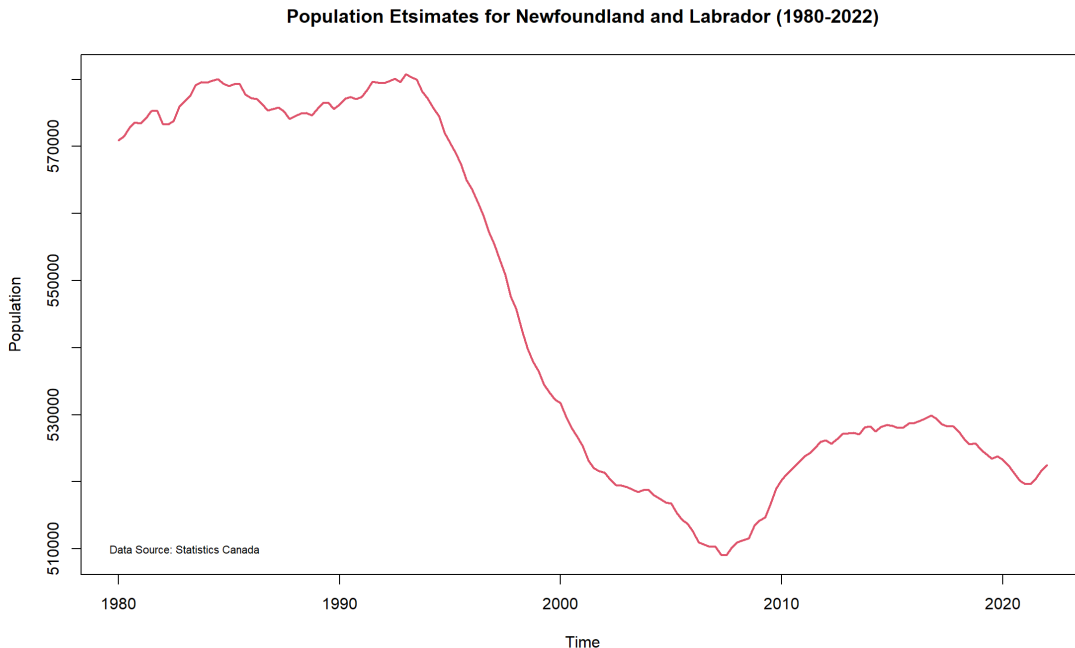


Figure 1. Population estimates for Newfoundland and Labrador. There is an observable net decline in the province’s estimated population between 1980 and 2022 (SC, 2023d)

From an economic standpoint, Newfoundland and Labrador is poorer than the rest of Canada. In 2016, the median pre-tax income in the province was \$31,754 compared to the national median of \$34,204. The proportion of the population defined as low income is larger in the province than in Canada as a whole, at 15.4 per cent compared to 14.2 per cent (SC, 2017b). Unemployment has declined in 2022 but remains close to double the national level. Additionally, the province's labour force participation rate is just 56.4 per cent, compared with the national average of 64.7 per cent (September 2022), indicating a higher proportion of discouraged workers.

1.2.1 Indigenous Rights in Newfoundland and Labrador

The nature of Indigenous Peoples' relationship with natural resource development in Newfoundland and Labrador, and in Canada more broadly, has dramatically altered over time and should not be assumed to be monolithic. There are different levels of support and resistance to mining projects across and within Indigenous communities in the province, which can make navigating issues around EA processes challenging.

The importance of land to Indigenous communities economically, culturally, and spiritually means that Indigenous communities can be particularly vulnerable to the negative legacies of natural resource developments (Booth & Skelton, 2011). Resource development generates significant challenges for Indigenous communities, which historically have been disproportionately affected by the ecological and social burdens of development and have had insufficient resources to address the damages. However, resource development can also bring significant potential for employment and economic development (Anderson, Dana & Dana, 2006). Mining is the largest private sector employer of Indigenous Peoples in Canada proportionally, representing 7% of the mining sector compared to 4% in the whole Canadian workforce (Mining Association of Canada [MAC], 2022). Increasingly, Indigenous governments enter into private agreements with resource companies to ensure that the economic benefits of resource development, and in some cases royalties, accrue locally (MAC, 2020).

There has been some recognition of Indigenous rights as legal obligations under the Constitution, clarified in recent rulings by the Supreme Court of Canada (Chadwick, 2013). International initiatives have further supported Indigenous rights, such as the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and promotion

of the concept of Free, Prior and Informed Consent (FPIC) prior to approval of proposed activities on Indigenous lands. Resource companies, provincial, territorial, and federal governments, and others involved in natural resource undertakings have legal, moral and practical obligations to engage with Indigenous peoples in the development process.

The right to self-determination includes the right to limit or prohibit industrial development on treaty land (Yellowhead Institute [YI], 2019). Indigenous communities are interested in controlling the form, impacts and benefits from economic development on their land, as well as in overall self-determination (Alfred, 1999). However, Indigenous communities have argued that the Canadian government and the private sector have often treated land claims dismissively and have exploited resources despite Indigenous opposition (Coyle, 2014). Thus, often the impacts of resource development may be reflected in the unfair distribution of negative legacies to Indigenous peoples and benefits to the Canadian private sector and government (Gibson, 2014).

1.2.2 Natural Resources

MINING

Newfoundland and Labrador ranks fifth in Canada for its value of mineral production with 11 active mines producing 14 commodities including iron ore, nickel, cobalt, copper, and gold (DIET, 2018; SC, 2023b). Mining and quarrying employs 4,300 people (SC, 2023a), contributes 6.4 per cent of provincial GDP (2016), yields \$90 million in taxes (2017), and produces \$4 billion in gross mineral exports (2020) (DIET, 2018).

Newfoundland and Labrador has an established history of natural resource development, with its first mine dating back to the 19th century, and now 11 active mines. Five new mines are already in development and the province exceeded its \$100 million annual exploration expenditure goal in 2021 (DIET, 2020; 2021a; 2022).

OIL AND GAS

Since development of Hibernia began in 1979, four oil fields have been developed off the coast of Newfoundland and Labrador which directly employ 5,251 people. Offshore oil and gas represents another key sector of the provincial economy, contributing 25 per cent of Newfoundland and Labrador's GDP and 41 per cent of all provincial exports over the last 20 years. Of the province's 1.5 million square kilometers of offshore territory, less than 7 per cent has been licensed for exploration. In this exploration area there are reserves of 3.9 billion barrels of oil, of which 1.7 million barrels have been developed, and 12.6 trillion cubic feet of undeveloped natural gas reserves. There is also the potential for larger discoveries in areas such as the West Orphan Basin and Fleming Pass, which are estimated to contain 37.5 billion barrels of oil and 133.6 trillion cubic feet of natural gas.

While climate change has increased uncertainty surrounding the future of oil and gas, bid prices on oil and gas have increased in recent years due to technologies allowing for more efficient assessment and development of reserves. Consequently, the GNL's vision for 2030 looks to exploit these higher prices by developing these substantial oil and gas reserves.

These objectives overlap with the Impact Assessment Agency of Canada (IAAC)'s recent "Regional Assessment of Offshore Oil and Gas Exploratory Drilling" which focused specifically on improving the efficiency of exploratory drilling assessments East of Newfoundland and Labrador by identifying common risks and mitigation measures. While likely to improve EA efficiency, the Regional Assessment has evoked concern of creating "one-size-fits-all" approaches that may hamper environmental protection (Regional Assessment Committee [RAC], 2020).

Despite these efforts, it is unclear whether the province will meet its ambitious production targets. In 2021, the province produced 94 million barrels of oil, only one third of its 2030 goal. However, this figure represents a decrease in production from 2020, when 104 million barrels were produced (Department of Finance [DF], 2022). Five exploratory drilling projects have been filed with the IAAC, three of which

have already received approval, comprising a total of 68 potential new wells (Canada Energy Regulator [CER], 2022; DF, 2022). Additionally, six new discoveries were recently made off the coast of Newfoundland and Labrador containing an estimate of 452 million barrels of economically recoverable oil (CER, 2022). Despite these discoveries, oil and gas production in the province still declined to about 84 million barrels in 2022 (Newfoundland and Labrador Statistics Agency [NLSA], 2023; DF, 2022). In response to falling oil production and with pressures from both levels of government to streamline the permitting process, there are risks that transparency may be at risk as the province attempts to meet its 2030 goals for the oil and gas sector.

HYDROELECTRIC

Outside of the extractive industries, Newfoundland and Labrador also has significant involvement with hydroelectric development. Currently, Newfoundland and Labrador boasts seven hydroelectric plants that generate 96% of the province's electricity. As a result of the agreement between the province and Quebec, however, a significant portion of that power is exported and sold to Hydro-Quebec. Consequently, the oil-fired Holyrood Thermal Generating Station provides 15-25% of the island of Newfoundland's power needs, annually (CER, 2022).

In 2020, the utilities sector employed 1,900 people and comprised 2.2 per cent of the province's GDP. While small compared to the economic impact of mining and oil & gas, utilities still play a significant role in the province's economy and in fact greater than the combined value of agriculture, forestry, and fishing during the same period (SC, 2023c). During 2019, Newfoundland and Labrador generated 40.8 terawatt-hours of electricity, equal to 7 per cent of Canada's total, making the province the fifth largest producer. Because of the Churchill Falls contract with Hydro-Quebec, interprovincial and international electricity outflows in 2019 totaled 31.1 terawatt-hours, equal to 75 per cent of the province's electricity generation (CER, 2022).

As a net exporter of electricity, Newfoundland aims to expand its energy industry to benefit from rising global demand for renewable energy (DIET, 2021). The most

recent expansion is the Muskrat Falls Hydroelectric Generating Station, which has begun operations but is not expected to reach full power until 2023.

1.2.3 COVID-19

Newfoundland and Labrador experienced significant adverse effects COVID-19 and its societal and economic impacts due to the importance of resource employment, where work could not be continued remotely.

The COVID-19 pandemic also affected the mining sector, as commodity prices fell (Azevedo et al., 2020). In the province, several major mines including Voisey's Bay, Marathon Gold, and Tata Steel were forced to temporarily close to develop safety protocols and in some cases restructure. In an attempt to relieve some of these impacts, the provincial government deferred rental and fee payments, waived annual assessment expenditure requirements for mineral exploration and provided \$1.7 million in financial assistance to support and encourage mineral exploration (DIET, 2020).

As crude oil prices fell into the negative range for the first time ever during April 2020 (Organization for Economic Co-operation and Development [OECD], 2020), crude production decreased worldwide, with Canadian output dropping 5 per cent below 2019 levels (CER, 2021). The West White Rose and Terra Nova expansion projects were halted with an estimated loss of 5,000 jobs (Roberts, 2021). To address these issues the provincial government launched an Offshore Oil and Gas Industry Recovery Assistance Fund which included \$320 million to support employment and development opportunities in the sector (DIET, 2021). With the Russian invasion of Ukraine in February 2022, commodity prices have soared, but price volatility can be expected in the future.

In jurisdictions like Ontario the pandemic was used to justify the scaling-back of environmental assessment processes (Mirnasl et al., 2022). Similar sentiments were expressed in Newfoundland and Labrador with the Premier's Economic Recovery Team 2021 report, which advocates for streamlined regulatory processes to facilitate major projects (PERT, 2021). With provincial support for increased mining and oil and gas development, transparency and accountability issues may arise within the environmental assessment process in pursuit of economic recovery. While TI

Canada's 2020 report did not analyze the impacts of the COVID-19 pandemic on EA process transparency and accountability, it did note the potential for both limiting and improving public engagement and consultation (Transparency International Canada [TIC], 2020). These themes were expanded on in a TI Canada report assessing the transparency risks and opportunities of virtual engagement strategies during the pandemic for environmental assessment processes. The spin-off report, for instance, found that virtual engagement can increase EA process transparency through improved Indigenous youth engagement, lower cost, higher efficiency, and broader accessibility. However, virtual engagement may decrease transparency of EA processes due to a lack of guidance or protocols regarding virtual consultation. Virtual engagement approaches may also decrease process transparency for specific groups more so than others such as communities who have limited technical infrastructure, such as internet access, or Indigenous elders who may be less able to use these technologies. Virtual engagement strategies therefore may be inconsistent with the decision-making processes of Indigenous communities, thereby reinforcing colonial approaches within EA processes (TIC, 2021).

1.3 EA Processes

Environmental assessment is a planning and decision-support tool that predicts and evaluates a proposed project's positive and negative impacts on the environment, economy, and society. Its goal is to prevent unwanted consequences stemming from an endeavour, such as environmental degradation. Provisions and requirements vary by jurisdiction, but EAs typically involve explaining the characteristics of the proposed project, reviewing the current state of the environment, and predicting its state in the future with and without the project, as well as presenting possible measures to reduce or eliminate negative impacts. If a given project is approved for implementation, the EA process also includes monitoring impacts (Therivel et al., 2013).

In Canada, an important aspect of EAs is Indigenous consultation to assess the impact of proposed actions on Indigenous groups and ensure the project is respecting their rights (IAAC, 2019). In Canada, an EA is often the first point where all the future challenges and limitations of a proposed project should be evaluated cumulatively, and the public should have a formal opportunity to engage. In principle, it is at this stage of the permitting process where all actors have the

most significant opportunity to influence the decision whether a project will be approved or rejected, or the conditions under which it will be approved. As a result, a transparent and accountable EA process is essential for meaningful engagement and understanding of the impacts and trade-offs involved in a proposed development project.

While the focus of this study was to review the challenges to transparency and accountability in Newfoundland and Labrador's EA process, it is important to recognize that many of the province's most high-profile assessments have been conducted under various iterations of the federal environmental assessment legislation. While a similar review of the federal process itself is outside the scope of this present study, the federal process received analysis strictly with respect to examples provided in case studies and interviews. As a result, this review of the federal process did not focus on its systemic issues with transparency and accountability but rather instances of these phenomena with respect to their presence in Newfoundland and Labrador.

1.3.1 Provincial Environmental Assessment Process

As natural resources fall under provincial oversight within the *Constitution Act* (1867) the provinces, including Newfoundland and Labrador, have developed their own EA legislation to manage natural resource development responsibly. While not its own Act, Newfoundland and Labrador's EA process was outlined in the "Environmental Assessment Regulations" in 2003 under Section III of the *Environmental Protection Act* (2002). Newfoundland and Labrador's Environmental Assessment process is comprised of 5 stages: (1) Registration and review; (2) Minister's decision; (3) preparation of guidelines for an Environmental Preview Report (EPR) or Environmental Impact Statement (EIS); (4) Proponent preparing the EPR or EIS; and (5) Review of the EPR or EIS and final decision.

STAGE 1: REGISTRATION AND REVIEW

The first stage, registration, and review is similar to a screening phase seen in most EA processes. Under the "Environmental Assessment Regulations," certain undertakings may automatically trigger a provincial EA process such as waste management, petroleum and coal productions, oil and gas extraction, mining, forestry, aquaculture, and public facilities. However, the Minister of Municipal

Affairs and Environment (the Minister) also has the authority to designate any proposed project if they think that project may cause significant environmental effects. While the Minister may consider many factors to determine the presence of significant environmental effects, they are not required to use any explicit criteria when making that determination. During registration, the proponent submits a project description to the Environmental Assessment Division of the Department of Municipal and Environmental Affairs detailing the proposed undertaking as well as its environmental impacts and the respective mitigation measures that can be put in place to manage them. After the proponent submits this information, the Minister announces the project's registration within 7 days (East Coast Environmental Law [ECEL], 2020). Once this announcement is made, a 21-day department and agency internal commenting period commences in addition to a simultaneous 35-day commenting period for the public to provide input on the project description (DMAE, 2019). Once this window has closed, the EA Division of the Department of Environment and Climate Change reviews the registration documents in addition to the comments received from various stakeholders. After reviewing these documents, the EA Division provides their recommendation to the Minister on how the project should proceed. If the undertaking is determined to be contrary to law or policy, however, the Minister has 60 days to defer the undertaking to the Lieutenant-Governor in Council and the project will be terminated (ECEL, 2020).

STAGE 2: MINISTER'S DECISION

Within 45 days of receiving the registration, the Minister is required to advise the proponent as to their decision on how the project will proceed. Under the *Environmental Protection Act*, there are three possible avenues the Minister can exercise: (1) The Minister may approve the project with or without conditions if there are no environmental or public concerns; (2) the Minister may require the proponent to submit an Environmental Preview Report (EPR); or (3) the Minister may require the proponent to submit an Environmental Impact Statement.

STAGE 3: PREPARATION OF GUIDELINES FOR AN ENVIRONMENTAL PREVIEW REPORT (EPR) OR ENVIRONMENTAL IMPACT STATEMENT (EIS)

An EPR is often required by the Minister when more information is required to assess the significance of the potential environmental impacts referenced in the proponent's project description. If the Minister determines that an EPR is required,

the Minister must appoint an Environmental Assessment Committee (EAC) which is responsible for recommending the EPR guidelines, reviewing and evaluating the EPR documents submitted by the proponent, reviewing public comments on those documents, and providing advice to the Minister (Department of Environment and Climate Change [DECC], 2021). Within 60 days of determining that an EPR is required, the Minister must provide the proponent with the guidelines for the EPR (ECEL, 2020). These guidelines are developed by the EAC and are based on the comments received during the review of registration documents as well as meetings with the proponent and other stakeholders. During the development of the guidelines, the EAC must consult with the proponent. The purpose of the guidelines is to allow the proponent to answer pertinent questions related to the project that the EAC can use to determine the significance of potential environmental effects (DECC, 2021).

STAGE 4: PROPONENT PREPARING THE EPR OR EIS

Once the EAC provides the Minister with the guidelines, the Minister then delivers them to the proponent and then they are made available to the public. As the proponent begins working on their EPR, a public information plan may be required to inform affected communities of the project. Once the proponent has completed and submitted their EPR, the Minister must inform the public which begins a 35-day commenting window on the EPR documents. The EAC then provides the Minister with their recommendation on the project based on their review of the documents, the compliance of these documents with the guidelines, and the comments from the public.

STAGE 5: REVIEW OF THE EPR OR EIS AND FINAL DECISION

Once the EAC submits their recommendation to the Minister, the Minister then has 10 days to reach a final decision and inform the proponent. From an EPR, there are two potential decisions the Minister can make: (1) Approve the project with or without conditions; and (2) refer the project to an EIS process if the minister believes there are significant impacts or significant public concern that requires further analysis and mitigation.

While proceeding to an EIS is a possibility of an EPR, it can also be initially prescribed by the Minister after the point of registration based on the Minister's perception of significant adverse environmental impacts or public concern. An EIS can also

be entered into voluntarily at any time by the proponent. While similar to the EPR process, an EIS is designed to assess more significant undertakings and carries with it additional timelines, reporting structures, and requirements. Under an EIS process, the Minister is still required to appoint an EAC which is responsible for creating the EIS guidelines, reviewing documents and comments, and submitting a recommendation to the Minister. Unlike the EPR process, the EIS guidelines developed by the EAC are subject to a 40-day review period prior to approval by the Minister, and then are issued to the proponent within 120 days of the initial EIS decision. Similar to the EPR guidelines, the EIS guidelines are meant to inform the proponent when creating their EIS by providing information to the EAC that will help them assess the project's impacts.

Once the EIS Guidelines have been approved, the proponent begins preparing their EIS. While a public participation plan may be required for an EPR, it is always required for an EIS for the proponent to collect pertinent information on the concerns of local communities related to the project. Within this plan, the proponent is required to meet with the public in the geographic area of the project or in an adjacent area and supply copies of all reports and original studies undertaken for the EIS. The intention of this requirement is for the proponent to inform local communities of the undertaking and respond to questions or concerns they may have. The proponent is also required to provide 7-days' notice in advance of the meeting and keep a record of concerns brought forth by the community. Once the proponent has completed and submitted their EIS, the Minister has 70 days to verify that the EIS complies with the Guidelines. The Minister has the power to send the EIS back to the proponent multiple times for amendments. However, if the Minister deems that the EIS satisfies the guidelines, a 50-day public commenting window begins on the EIS with comments used by the EAC for review.

If the Minister determines that there is significant public concern or uncertainty surrounding the project's impacts, the Minister may request that a component study or public hearing take place. A component study is an in-depth original study on a project activity or valued ecosystem component which provides information to the EAC in line with information requirements set out in the guidelines. The Minister may request several component studies during an EIS to investigate areas of concern and uncertainty more fully. Once the Minister receives a component study, the public then has 35 days to comment on the study. To launch a public hearing, the Minister must appeal to Cabinet to order the public hearings and appoint a board

to oversee them. The board is required to be comprised of 2-5 people and have at least 1/3 comprised of representatives for the geographical area. Once the board is appointed, a notice is posted and applications to appear before the board open. During public hearings, the board records comments from the public alongside the answers provided by the proponent. If the proponent is unable to answer a question during a hearing, the proponent is required to submit a written response within 30 days of the hearing's closing. The board then composes a report of proceedings and recommendations from the hearing and uses this information to produce its own recommendations on the project. This report is then used to inform the Minister's final recommendation to release or deny the project.

As Cabinet, not the Minister, is responsible for project approvals under an EIS process, the Minister must provide their recommendation to Cabinet on whether the project should be released with conditions or denied. However, the decision to release or deny the project is ultimately that of the Lieutenant-Governor in Council. If the Minister is of the opinion that the project indicates an unacceptable environmental threat, the Minister may recommend at any time that the environmental assessment stop, and the Lieutenant-Governor in Council deny the project. The Lieutenant-Governor in Council may also halt the assessment and deny the project at any time if they detect an unacceptable environmental impact of the project as well.

In 2019, the Department of Municipal Affairs and Environment launched a review of Part 10 of the *Environmental Protection Act* which contains the province's "Environmental Assessment Regulations." As the province's current EA legislation is almost 20 years old, the review is focused on investigating needed updates to reflect changes in economic, environmental, and legal realities of the province. Some of the review's objectives include examining broad operational issues with the province's EA process, as well as on improving efficiency and effectiveness, process flexibility, harmonization with other EA processes, and openness and transparency (DMAE, 2019). As the provincial review is currently underway, we intend that the findings of this report, specifically to transparency and accountability, may aid in the goals of this process.

1.3.2 Federal Impact Assessment Process

It is important to note that, as a Canadian province, Newfoundland and Labrador is also subject to the *Federal Impact Assessment Act* (IAA). While natural resource development remains under provincial jurisdiction (*Constitution Act, 1867*), projects designated under the IAA may be required to undergo a federal assessment in addition to or in place of a provincial assessment if their design specifications reach trigger levels set out in the Act's *Physical Activities Regulations* or the potential impacts of the project fall under an area of Federal jurisdiction such as impacts to migratory birds or designated species at risk. The formal EA process in Canada has its origins in the *Environmental Assessment and Review Process* (EARP) which was adopted in 1973 in response to increasing public awareness of environmental issues and the resulting pressures to adopt more stringent standards for assessing the environmental impacts of large undertakings. While the EARP was successful in providing guidelines to instruct a potential EA process, it was not based in statutes and was largely a form of self-assessment without any formal requirements. As a result, several lawsuits occurred surrounding projects under the EARP, with the most famous of these being the *Rafferty Alameda* and *Oldman River* cases. In the results of these litigations, the Supreme Court of Canada determined that the EARP was beyond a set of guidelines and were legally binding, providing the impetus for the Federal government to set out a formal EA legislation (Jeffery, 1991).

Originally the *Canadian Environmental Assessment Act* (CEAA), the Act was first created in 1992 to formalize the guidelines outlined in the EARP and make provisions for their enforcement through legislative backing. Before becoming the IAA, the CEAA underwent an iteration in 2012 which narrowed the Act's application and introduced legislated timelines to expedite the EA process. While CEAA 2012 improved the efficiency of the Federal process, it garnered criticism for reducing public consultation opportunities and the scope of environmental effects required to be assessed (Gibson, 2012). In response to these criticisms, the federal government conducted an expert panel review of CEAA that recommended a more holistic EA process more representative of the intentions behind the original Act while addressing developments in EA practice as well as the evolving social and political context that surrounds assessments today (Expert Panel for the Review of Environmental Assessment Processes [EPREAP], 2017). As a result, the *2019 Impact Assessment Act* re-introduced more comprehensive community

engagement protocols while also adding new requirements for incorporating Indigenous traditional knowledge as well as precedents for enacting strategic and regional assessments beyond the typical project-scale (IAAC, 2019). The current Federal Impact Assessment process is outlined in the IAA and has 5 major stages: (1) Planning; (2) Impact statement; (3) Impact Assessment; (4) Decision-making; and (5) Post decision.

STAGE 1: PLANNING

In the planning stage, project proponents are required to submit a project description to the Impact Assessment Agency (the Agency) outlining the objectives, benefits, and potential impacts of the proposed project. After the Agency receives the project description, they have 180 days to determine if the project is subject to an impact assessment (IA). Under the IAA, an IA is required if the activity described in the project description falls under the project types or conditions listed in the *Physical Activities Regulations* or affects a component of the environment which falls under federal purview. If the Agency determines that an IA is required, the Agency posts a Notice of Commencement and begins consultation with important stakeholders of the project including lifecycle regulators, federal departments, provincial, territorial, and Indigenous governments, and Indigenous and public groups affected by the project. Through the consultation process, the Agency composes a Summary of Issues document which details the concerns from these stakeholders on the Initial Project Description. This Summary is then delivered to the proponent who prepares a Revised Project Description which the Agency reviews.

STAGE 2: IMPACT STATEMENT

In the second stage, the proponent is advised on and completes their Impact Statement (IS). After reviewing the Revised Project Description, the Agency creates draft versions of a Public Participation Plan and Tailored Impact Statement Guidelines and posts these to the registry site. The public is then allowed to comment on these draft documents which helps inform their final versions. The Agency then posts the finalized Public Participation Plan and Tailored Impact Statement Guidelines and delivers these documents to the proponent. The Tailored Impact Statement Guidelines specifically outline the requirements for the proponent in terms of what information must be provided, including studies that must be conducted, considerations and perspectives that must be included, and other

necessary detail information. After receiving these documents, the proponent has three years to complete their IS and submit it to the Agency.

STAGE 3: IMPACT ASSESSMENT

In the third stage, the Agency reviews the IS, and a formal IA begins. In reviewing the IS, the Agency ensures it is compliant with the Tailored Impact Statement Guidelines. If the Agency determines that the IS is deficient, the Agency may return it to the proponent for additional information. Once the IS is complete, the Agency then has 300 days to compose an Impact Assessment Report (IAR), detailing the likely significant impacts of the project and any public comments received on the IS. Before finalizing the IAR, the Agency must also post it to the registry for public comments. These comments then must be incorporated into the final version of the IAR which acts as the Agency's recommendation to the Minister in terms of project approval. However, the Minister may defer decision making responsibility on project approval to the Governor in Council (GIC).

STAGE 4: DECISION-MAKING

In the fourth stage, the Federal Minister or the GIC makes a final determination on the project based on the Agency's IAR alongside criteria relating to the project, including the project's contribution to sustainability, the significance of the project's adverse effects, the available mitigation efforts, the impacts of the project on Indigenous peoples, and the extent to which a project may advance or hinder Canada's environmental obligations and climate change commitments. As a result of these criteria, the Minister or GIC will deny the project, approve it, or approve it with conditions if they believe it is in the best interest of the public.

STAGE 5: POST-DECISION

In the fifth stage, the Minister must post a Decision Statement on the Impact Assessment Agency's project registry within 30 days of the final decision. For the GIC, this deadline is within 90 days of the initial decision. Within the Decision Statement, the Minister or GIC must stipulate the necessary mitigation measures and follow-up/monitoring programs if the project was approved, as well as a rationale justifying the final decision and conditions, if applicable. Following the Decision Statement, the Agency (or a responsible lifecycle regulator) becomes responsible for ensuring the compliance of the proponent to the approval conditions stipulated in the Decision

Statement and continues to post notices and reports detailing non-compliance on the registry.

ALTERNATIVE REVIEW OPTIONS

While the Federal IA process is mostly carried out by the Impact Assessment Agency, there are also avenues for the process to be undertaken by a Joint Review Panel, consisting of representatives from various jurisdictions, or by substitution, referring to using the process of one jurisdiction in place of the federal process outlined above. Both alternatives are relevant to Newfoundland and Labrador's context as Joint Review Panels have occurred in the province on major projects before such as Voisey's Bay. There are also assessment processes outside of the provincial EA such as those defined in the *Labrador Inuit Land Claims Agreement* and the *Labrador Innu Land Claims Agreement-in-Principle*.

These alternative pathways for the Federal IA create important distinctions between them and the conventional IA process in terms of reporting structures and timelines. While Joint Review Panels follow a usual procedure, substitution IAs can take many forms depending on the jurisdictions involved and can extend down to the community-level. Because of this, it is outside of the scope of this report to detail the potential processes involved in substitution IAs within the context of Newfoundland and Labrador.

Once the project reaches the Impact Statement stage, a Federal IA can undergo an assessment by Joint Review Panel if the Minister determines it is in the public's interest. The Minister may determine that a Joint Review Panel is in the public interest if the project and/or its impacts fall under the purview of the Federal government alongside that of any provincial, territorial, and/or Indigenous government(s). To avoid duplication and promote information sharing, these jurisdictions may sign a Joint Review Panel Agreement, detailing the mandate, terms of reference, authority, composition, procedures, and timelines for the Joint Review Panel. Once the Notice of Commencement is released, the Minister has 45 days to decide whether to refer the assessment to a Joint Review Panel before the project automatically undergoes assessment by the Agency. After receiving the IS,

the Minister then has 45 days to appoint the Review Panel members. In reviewing the IS, the Agency remains responsible for ensuring its compliance with the Tailored Impact Statement Guidelines, however, the Joint Review Panel still reviews the IS for sufficiency and may ask the proponent for additional information. After the proponent has amended the IS, the Joint Review Panel holds public hearings to ascertain the breadth of adverse effects and concerns surrounding the project. The Panel then has 600 days to compose and deliver a report containing their findings to the Agency.

This report is then used by the Agency to determine their recommendation to the Minister and in-turn, inform the Minister's recommendation to the GIC. Following these recommendations, the process for an assessment by Joint Review Panel mirrors that of an assessment by the Agency with a formal Decision Statement and follow-up and monitoring for compliance occurring afterward.

1.4 Industries of Focus and EA Regulations

As part of this study, a select number of industries will be focused on to provide a manageable and representative picture of Newfoundland and Labrador's EA process. These industries will include the oil and gas, mining, and hydroelectric sectors based on their historical and ongoing importance to the provincial economy as well as the resulting availability of case studies with which to determine EA transparency and accountability risks in practice. Proposed projects within these industries also fall under several regulations in both provincial and federal EA law, making focus on these sectors useful for examining potential risk factors in current legislation as well as for comparing discrepancies between the theory and application of these regulations.

1.4.1 Provincial Regulations

At the provincial level, oil and gas, mining, and hydroelectric projects are all subject to the provincial EA process, subject to differing conditions. Under the *Environmental Assessment Regulations*, all crude oil, natural gas, and petroleum production facility projects automatically trigger a provincial assessment.

Oil and *Gas* denote specific legal terms which are defined under the province's *Petroleum and Natural Gas Act*. "Oil" refers to crude petroleum produced at a wellhead in liquid form in addition to any other hydrocarbons (except coal and gas) that can be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, and oil shale, or from seabed or subsoil deposits in the offshore area. Alternatively, "Gas" primarily denotes natural gas and includes substances other than oil that are produced in association with natural gas.

The construction of pipelines for transmitting oil and gas products also triggers a provincial assessment should any portion of a proposed pipeline be located ≥ 500 meters from an existing right of way. Projects which use oil and gas products, such as the refining or manufacturing of crude oil into petroleum products also automatically triggers a provincial assessment. However, an undertaking engaged in the wholesale of these, and other petroleum products may only be registered if storage capacity equals or exceeds 2 million litres.

While most mining projects trigger an assessment under the provincial legislation, mining projects have comparatively more screening criteria in comparison to oil and gas. Certain minerals automatically trigger an EA such as the mining of bituminous coal, anthracite and lignite using underground, auger, strip, culm, bank, or surface mining methods. Undertakings involved in the breaking, washing, grading, or beneficiating of coal also triggers the assessment process.

Similar to oil and gas, a "mineral" carries a legal meaning under the *Provincial Mineral Act* and includes any naturally occurring inorganic substance contained in mine tailings with the exemption of water, quarry materials as defined by the *Quarry Materials Act*, stratified oil deposits, or petroleum. Conversely, a "quarry material" refers to any substance used in its natural form for construction or agricultural purposes and includes clay, sand, gravel, rock, soil, peat and slag.

Under the provincial EA process, any undertaking involved in the mining of a mineral triggers an assessment. However, the mining of quarry materials is only subject to an assessment if the proposed mine covers an area greater than or equal to 10 hectares. This trigger area decreases to 2 or more hectares if the undertaking is engaged in the extraction and collection of peat. Similar to petroleum products, projects involved in the refinement and manufacturing of coal products also automatically triggers an EA. Additionally, the manufacture of some quarry material products alongside specific primary metal manufacturing processes also trigger an assessment. These include the manufacture of quicklime, hydrated lime, or calcified dolomite, as well as the smelting and refining of ferrous and nonferrous metals, extraction and refining of aluminum, alloying of nonferrous metals, and the forging of ferrous and nonferrous metal products.

Hydroelectric developments themselves are subject to noticeably fewer regulations compared to oil and gas and mining projects but also are subject to prescriptions on other project activities. Under the EA Regulations, the construction of a hydroelectric dam is subject to an EA if its generating capacity equals or exceeds 1 megawatt. If the dam's capacity is less than 1 megawatt, an EA may still be required if the area flooded by the dam equals to or is greater than 50 hectares. Additionally, an EA is automatically triggered if the dam involves any inter-basin or intra-basin water transfers. As dams sometime use dikes and levees to control flooding, hydroelectric plants may also require an EA if these or other flood control structures are employed. Transmission lines carrying the generated electricity from the dam can also launch an assessment process if any portion of these lines is located or realigned more than 500 metres from an existing right of way.

In addition to the assessment triggers surrounding each sector, there are several potential triggers which may apply to these projects in certain cases. For instance, clearing land, which is a common practice, may automatically trigger an EA if the cleared area exceeds 50 hectares. The construction and realignment of roads and railways may also trigger an EA if they will be located more than 500 meters from an existing right of way. As the majority of resource development projects tend to be in rural areas, these provisions have important implications when projects require the construction of access roads or the use of railways to transport finished products. However, haul roads located less than 500m from the project are exempt from assessment. Other common project activities such as draining land areas of over 50 hectares, reclaiming land or filling in an underwater area of over 5 hectares,

the construction of a service depot or equipment storage yard, or an excavation removing over 1000 m³ of material, all warrant assessment. However, these triggers will ultimately rely on the design specifications of each project. Notably, outside of facilities for painting, varnishing and lacquering boats, there is no requirement that an expansion of any undertaking is subject to an EA. While there is a process for a proponent to seek an amendment on their approval to allow expansions, amendment approvals are at the discretion of the minister and are not subject to the same public and government oversight seen in EAs.

1.4.2 Federal Regulations

Similar to the provincial legislation, the Federal IA also provides specific triggers for a federal assessment process surrounding both specific undertakings and their design specifications. Unlike the *Newfoundland and Labrador's Environmental Protection Act*, however, the IAA also specifies assessment requirements surrounding project expansions.

For the oil and gas industry, an IA is required from the beginning of the project development phase with exploratory drilling and testing of offshore wells triggering an assessment process. Additionally, the construction and decommissioning of any offshore floating or fixed platform, vessel or artificial island used for producing oil and gas is also subject to an assessment under the Act. An IA is also required for the operation and decommissioning of oil refineries with input capacities of $\geq 10,000$ m³/day, facilities for liquefaction, storage, or regasification of liquified natural gas with processing capacities of ≥ 3000 tonnes/day or storage capacities of $\geq 136,000$ m³, and petroleum or natural gas liquids storage facilities with capacities of $\geq 500,000$ m³ and $\geq 100,000$ m³, respectively. For expansions of these undertakings, the general rule is that an assessment is required if an expansion would result in a 50% increase to input capacity, production capacity, or storage capacity, and the respective capacity would meet or exceed the respective threshold which would normally trigger an IA. The construction and decommissioning of an offshore oil and gas pipeline automatically initiates an IA process.

Requirements for an IA process of the construction and decommissioning of mining and milling projects are subject to similar conditions as oil and gas undertakings but vary by mineral and the production capacity at which it can be mined or processed.

The trigger ranges for each mineral are as follows: for coal, diamonds, metal mines other than placer mines, uranium, or rare earth metals, or metal mills other than uranium mills, the benchmark is ≥ 5000 tonnes/day; for rare earth elements and uranium mills and mines, this benchmark is ≥ 2500 tonnes/day; and for stone, sand, or gravel quarries, this benchmark is ≥ 3.5 million tonnes/day. Expansions on these undertakings are also subject to an assessment if an expansion would result in a $\geq 50\%$ increase in the mined area and the projected ore production capacity would increase to or beyond the previously stated benchmarks.

As in the provincial assessment legislation, hydroelectric projects are subject to regulations on renewable energy projects, water projects, and transmission lines. For a hydroelectric generating facility on its own, an IA is required if the production capacity of that facility meets or exceeds 200 Megawatts, or if an expansion would cause a $\geq 50\%$ increase in production capacity and a total production capacity of 200 Megawatts or more. Hydroelectric facilities may also be subject to an IA if the use or expansion of a dam on a natural water body results in the creation of a reservoir with a surface area exceeding the mean annual surface area of the natural water body by 1500 hectares or more, and in the case of an expansion, by $\geq 50\%$. The use of dams and other water diversion structures to divert water from one natural waterbody to another may also trigger an assessment if their diversion capacity is ≥ 10 million m^3 of water per year or an expansion to these structures would increase total diversion capacity by $\geq 50\%$ to a total of ≥ 10 million m^3 /year. If transmission lines are proposed alongside the hydroelectric plant, the project may also be considered for an assessment if the lines are either international with a voltage of ≥ 345 kV that requires a total of ≥ 75 km of new right of way or are interprovincial.

In addition to these sector-specific requirements, there are also several regulations that are unique within the IAA and may apply on a project-to-project basis. For electrical generating stations, transmission lines, mines, mills, oil and gas facilities, and oil and gas pipelines located in national parks, wildlife areas, migratory bird sanctuaries, protected marine areas, or national marine conservation areas, these projects are automatically subject to an impact assessment. This requirement also applies to other project activities within these areas including railway lines, canals, marine terminals, water diversion structures, runways, or waste management facilities. Further, the construction of any physical work within a national marine conservation area or any land administered by Parks Canada may be subject to an assessment if that construction is contrary to an existing management plan for

that area. Outside of these specified areas, these project activities may also trigger an IA. Railway lines that require a total of 50km or more of right of way, as well as canals, locks, and the construction and expansion of marine terminals for handling ships larger than 25,000 dead-weight tonnage and railway yards larger than 50 hectares or more, all warrant an impact assessment under the Act. The provisions for runways and marine terminals are especially important in context of mining and oil and gas projects as many mining communities rely on a fly-in-fly-out model and specialized barges are often employed in offshore oil and gas operations. As mentioned in section **“1.3.2 Federal Impact Assessment Process”** projects may be required to undergo a federal assessment if they are likely to have effects within federal jurisdiction. While the Governor-in-Council may determine additional effects within this jurisdiction, the following effects are always considered: changes to fish and fish habitat, aquatic species, or migratory birds; changes to the environment occurring on federal lands, in a province other than the one in which the undertaking takes place, or outside of Canada; impacts to Indigenous peoples in Canada resulting from changes to the environment (including on physical and cultural heritage, land use for traditional purposes, or any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance); and changes in the health, social, or economic conditions of Indigenous peoples in Canada.

Photograph by Iswanto Arif

2.0 Case Studies

Within Newfoundland and Labrador, there have been a number of EAs that act as examples for greater transparency and accountability in EA processes, as well as those which act to highlight areas for improvement. In this section, we analyze three of the province's most significant EA cases to identify vulnerability risks of Newfoundland and Labrador's EA process in practice: Muskrat Falls (Lower Churchill) Project; the Voisey's Bay Nickel Mine (Voisey's Bay); and the Impact Assessment Agency's *Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador* (the Regional Assessment or RA).

2.1 Muskrat Falls

Officially proposed in 2006, though long considered by the province, the Muskrat Falls project, completed in 2020, is a dam and 824 Mw generating station located on the Churchill River near the Town of Happy Valley-Goose Bay. Alongside the dam and generating facility, several transmission lines directing the energy to markets in Newfoundland and Labrador were proposed and approved in addition to the "Maritime Link" transmission line between the project and Nova Scotia. The Muskrat Falls project was led by Nalcor Energy, a provincial crown-corporation under the government of Newfoundland and Labrador which is responsible for managing the province's energy resources. Under the joint assessment beginning in 2009, Nalcor acted as the project's proponent during the EA process and held responsibility for providing decision makers with information on project details on scheduling, budget, and environmental impacts. However, the Muskrat Falls EA quickly devolved as, the public inquiry report notes, Nalcor remained uncooperative in providing information, actively withheld information, and influenced the process in advantage of the project. Muskrat Falls was eventually approved against the advice of the Joint Review Panel and exceeded its \$6.2 billion budget by an estimated \$6.5 billion, leading to a provincial inquiry report titled "Muskrat Falls: A Misguided Project". Of the causes of these budget overruns and environmental impacts, the Inquiry centred the presence of a pre-existing commitment to the Project which significantly deteriorated the transparency of the EA process as well as the accountability of both Nalcor and the GNL to its findings.

2.1.1 Budget and Schedule Issues

Despite that most hydroelectric developments go over budget and schedule, the management and lack of oversight of the Muskrat Falls project led to substantial overruns. Where the average Canadian hydroelectric development goes overbudget by 41%, Muskrat Falls rocketed past that, exceeding its budget by roughly 105%, which is even higher than the global average of 96% (Flyvbjerg & Budzier, 2018). Muskrat Falls' budget overrun may be due to its issues with scheduling. This sentiment is echoed by the authors of the Inquiry report who noted that the approval of unrealistic project timelines, which had a probability success rate of only 5-10%, likely contributed to cost overruns that were not included in the project's initial cost estimate (Commission of Inquiry Respecting the Muskrat Falls Project [CIRMFP], 2020). These budget and schedule overruns were likely increased by the conduct of Nalcor and the Newfoundland and Labrador Government during the EA process. The Inquiry found that a general lack of oversight from the GNL on the project, consisting of failure to establish a communication protocol with Nalcor, exempting the project from review by the Public Utility Board, reliance on Nalcor's board of directors to provide oversight (despite knowing they lacked the expertise to do so), staffing officials on the project and Oversight Committee who were unqualified to evaluate costs, risks, and schedule, which all created opportunities for Nalcor to withhold information regarding early warning signs of the project's poor economic feasibility, schedule, and environmental impacts (CIRMFP, 2020).

2.1.2 Environmental Impacts

One of the most contentious environmental issues surrounding the Muskrat Falls project was its potential effects on downstream and predominantly Inuit communities. Concern arose surrounding the reservoir and its potential for generating methylmercury contamination in the downstream Lake Melville and in the traditional foods communities in the area relied on, such as fish and seal (Joint Review Panel [JRP], 2011). Despite Lake Melville being a traditional Inuit area for hunting and fishing as well as being designated as an ecologically and biologically significant area by the Canadian Science Advisory Secretariat, the proponent determined methylmercury fluxes as a result of the Muskrat Falls project would have a negligible impact on the lake, and so the geographic scope of the assessment did

not include Lake Melville (Calder et al., 2016). Nalcor explained that this exclusion was due to their model of reservoir flooding which showed that Goose Bay, which lies between the Churchill River and Lake Melville, would cause a sizable enough dilution to reduce potential mercury impacts to within the range of the Lake's natural variability (Nalcor, 2011). While Environment Canada and Natural Resources had agreed that Nalcor had modelled mercury increases appropriately, Natural Resources Canada questioned the inevitability of methylmercury contamination claimed by the proponent while Fisheries and Oceans Canada questioned the accuracy of Nalcor's predictions of the duration and magnitude of methylmercury in the Lower Churchill River (JRP, 2011). Similarly, while the Joint Review Panel agreed with the proponent that there was no evidence of impacts of methylmercury to fish, based on the model's predictions, the Panel questioned the proponent's lack of cumulative effects assessment of methylmercury contamination on the Lower Churchill system with respect to the effects of the upstream Churchill Falls project and highlighted the need to consider the cumulative impacts of additional methylmercury contamination in an already stressed area on human health and renewable resources (JRP, 2011). Natural Resources Canada also challenged Nalcor's conclusion that consumption advisories on specific fish species was the only viable form of mitigation to methylmercury contamination. Despite this omission, Indigenous and non-Indigenous communities organized various forms of resistance against the project including well-documented protests, hunger strikes, and research (Stoddart, Bernharðsdóttir & Atlin, 2021). In collaboration with Harvard University, the Nunatsiavut government found that as a result of flooding the reservoir area, methylmercury flow-weighted mean concentrations in the Churchill River would likely increase 10-fold to 180 pg MeHg per litre and lead to a substantial biomagnification in local food webs, contradicting the findings of the proponent. This biomagnification was also expected to increase Inuit exposure to methylmercury from the top 20 Inuit traditional foods by 19%, double the majority of Inuit communities' exposure to methylmercury in general, and triple exposures in the downstream community of Rigolet (Calder, et al., 2016).

As traditional foods carry health and cultural benefits, Calder et al. noted that reducing consumption of these foods through consumption advisories represented a less viable mitigation strategy than clearing the planned reservoir area of organic matter, including soils, which could contribute to methylation, effectively reducing the flux of methylmercury from the project (2016). Despite representing one of the few independent and peer-reviewed investigations of the project whose

recommendations the Independent Expert Advisory Council and the Joint Review Panel would echo to the proponent, Nalcor contested the recommendations, which went unincorporated with the proponent arguing that the project's effects should only be based on a regulatory definition, not an academic one (Barnard-Chumik, Gappe & Giang, 2022). However, both the World Health Organization and United States Environmental Protection Agency agree that when considering chronic levels of methylmercury exposure, even small levels can cause health effects (United States Environmental Protection Agency [US EPA], 2002; Calder et al., 2016; World Health Organization [WHO], 2017). This regulatory decision also operated from a largely western scientific basis without considering Indigenous traditional knowledge or the cultural context of hunting and fishing in Lake Melville which with the threat of mercury contamination has made local communities concerned of continuing these practices (Canadian Broadcasting Corporation [CBC], 2016; Barnard-Chumik, Gappe & Giang, 2022). Subsistence fishing has also been linked to chronic mercury exposures (Calder et al., 2016; WHO, 2017), making added methylmercury exposures that, while meeting a regulatory definition, are potentially more dangerous than those that meet a definition which factors the local exposure context. While an operational methylmercury monitoring program was put in place by Nalcor, on recommendation of the Joint Review Panel, and which reports to the NL Department of Environment, Climate Change, and Municipal Affairs, local communities continue to express concern over the risk of chronic contamination and frustration at their lack of inclusion (Penney & Johnson-Castle, 2021). These ongoing concerns highlight communities' lack of trust with Nalcor and the GNL due to the transparency and accountability issues surrounding the dam and their role in limiting the transmission of knowledge and information.

2.1.3 Knowledge and Information Issues

Underlying Muskrat Falls' lack of consideration to budget, schedule, and environmental impacts was a lack of effective knowledge sharing, an ineffective oversight committee, and the presence of knowledge hierarchies within the EA process.

The Inquiry found that lack of government oversight into Nalcor and the project created conditions for the proponent to withhold information and thus influence the EA process unfairly. For instance, the GNL's failure to oversee Nalcor's consultation

efforts with Indigenous communities was found to have prevented meaningful and transparent consultation processes with the NunatuKavut Community Council and the Innu of Ekunaitshit, as well as creating an “environment of distrust” which contributed to schedule and budget overruns (CIRFMP, 2020). These overruns were also exacerbated by the lack of comprehensive government or independent review of the project at its various Decision Gates (DG) which was cited as a cause of the project’s significant overruns and risks as well as Nalcor’s penchant for misinformation on these issues. Due to this lack of oversight and no formal communications protocol between Nalcor and the GNL, the proponent’s project management team was able to frequently conceal information from decision makers which weakened the project’s feasibility case. For example, Nalcor falsely claimed in writing to the provincial Finance Minister that the project’s DG3 cost, which included an estimate of all project components, would be the same as the initial estimate of \$6.2 billion despite information from its own Management Outlook reports that it would exceed these estimates. When cost overruns were noticed by the GNL, Nalcor falsely represented these as intentional expenditures to improve the project’s energy reliability. In reality, these additional costs were primarily to assess and manage the geotechnical work that was required for the project site and transmission lines, and which was not covered in the project’s DG3 estimate despite its necessity (CIRMFP, 2020).

Nalcor also used this lack of comprehensive GNL oversight to misrepresent information in order to make Muskrat Falls’ case more appealing. For instance, the proponent selected “inadequate” to “grossly inadequate” contingency fund estimates to lower the perceived cost of the project (CIRMFP, 2020). However, within the first 4 months of the project’s approval, these contingency funds were completely exhausted to secure necessary contracts. Of the contracts it did secure, their insufficiency also led to cost and schedule overruns once the project was sanctioned. For instance, Nalcor intentionally made its contract with Valard Construction complicated to reduce its cost, but this led to complex management structures which eventually increased the project’s schedule and costs. Nalcor was also shown to have inadequately considered alternatives to the Muskrat Falls project by screening out negotiations with Quebec on potentially importing electricity, excluded consideration of using natural/liquified gas from the offshore Grand Banks area, provided no assessment on wind generation or small-scale hydro developments, and did not spend necessary funds to optimize the Isolated Island Option which involved a scenario with no project and mixed energy sources. While an oversight committee

was established for the project, this committee was made up mostly of civil servants who the inquiry determined lacked the expertise necessary to sufficiently oversee it. As a result, the GNL continues to fail in its responsibilities to monitor the project and meet the environmental commitments surrounding it (CIRMFP, 2020).

Because of this lack of government oversight into the project, Nalcor was able to influence the assessment process and thereby its outcomes. While several independent bodies were brought in during the assessment to determine the project's feasibility and environmental impacts, Nalcor failed to cooperate with these bodies and limited their oversight where possible. As a responsible authority for energy projects, Newfoundland and Labrador's Public Utilities Board (PUB) was tasked with determining whether the Isolated Island Option or the project option was the least-cost option. Despite a simple objective, Nalcor attempted to limit the PUB's assessment by providing slow responses to information requests and refusing to disclose some information on the grounds that it was commercially sensitive despite the PUB's quasi-judicial status. This eventually inhibited the PUB to the point where it could not definitively determine which option was of least cost and motivated them to highlight key transparency and information quality issues from Nalcor (CIRMFP, 2020; Stoddart, Bernharðsdóttir & Atlin, 2021). When Manitoba Hydro International (MHI), a subsidiary of Manitoba Hydro, offered to provide an independent and comprehensive analysis of the project, Nalcor restricted MHI's scope which the organization agreed to. The result was a heavily biased report which Nalcor helped influence and write in favour of the project, but which was treated as independent by reviewers, compromising the EA's credibility.

While an Independent Engineer's report was in favour of the project and largely uninfluenced by Nalcor, the GNL's reliance on this work and failure to understand its limited scope contributed to poor decision making within the EA. The GNL also failed to review the draft reports which contained information on the project's costs, contingencies, and schedule which the Inquiry determined were significant enough for the GNL to likely have reconsidered the project (CIRMFP, 2020). Despite these obstacles, the Joint Review Panel's review recommended that the Muskrat Falls project not proceed without better justification and demonstrated benefits due to its potential environmental and economic impacts (JRP, 2011). However, this recommendation was ignored by the province which proceeded to sanction the project in 2012, arguing that the project was too far advanced to reverse course (CBC, 2011; Stoddart, Bernharðsdóttir & Atlin, 2021). This lack of due diligence

and oversight of the GNL combined with Nalcor's interference therefore acted symbiotically to produce a poor EA (CIRMFP, 2020).

In addition to issues with oversight and information sharing, the presence of distinct knowledge hierarchies within the assessment prevented meaningful consultation between the proponent and Indigenous groups. While a certain degree of horizontality was introduced into the EA's knowledge creation, particularly after mounting pressures on decision makers due to protests within the project site, the knowledge provided by Indigenous groups was not relied on within the project's final decision (Barnard-Chumik, Cappe & Giang, 2022). This separation between the power to participate in the process and the power to contribute to it was quickly recognized by some groups who refused to meet with Nalcor and the GNL which sought to reach a compromise on what these communities considered an existential threat (CBC, 2016). The difference in how issues like methylmercury contamination were perceived also reveal knowledge hierarchies in the assessment, with the environmental justice focus of Indigenous communities and academics given less credence than the regulatory-based definitions of human and environmental health favoured by the proponent and the GNL. These regulatory definitions of knowledge, which were used to justify the project's sanction, were also strengthened by the attempts of Nalcor and the GNL to depoliticize the Muskrat Falls EA process. The incorporation of the Independent Expert Advisory Committee to assess the methylmercury contamination issue emphasized the role of expert consensus from a predominantly western scientific approach which largely ignores difference in risks and stakes experienced by different groups. This framing of the issue thereby ignored the power differentials between the two knowledge communities and centred western conceptions of health within the EA process, allowing Nalcor and the GNL to influence the EA's decision more easily (Barnard-Chumik, Cappe & Giang, 2022). The decisions by Nalcor and the GNL to dismiss the procedural and substantive concerns of local Indigenous communities, despite seeking to consult with them, thus highlights a lack of accountability to these groups.

2.1.4 An Existing Commitment to the Project

While the GNL's oversight and Nalcor's misconduct during the Muskrat Falls EA may seem accidental, underlying the Muskrat Falls EA was an active cultural and political will which motivated these parties to manipulate the EA process in favour

of the project. Since the election of the ninth premier of Newfoundland and Labrador, Danny Williams, in 2003, Newfoundland and Labrador's goal to become a prosperous and largely self-sufficient province has crystallized with a particular focus on developing natural resource revenues and fortifying energy security. The now retired premier was the first to champion the Muskrat Falls Project near the end of his career in 2010, hopeful of the project's ability to provide reliable electricity to the province and spurn the Quebec government which through an energy contract had profited from Newfoundland and Labrador's previous Upper Churchill generating station more so than the province itself. As Danny Williams enjoyed a high degree of popularity, the Muskrat Falls project received a similar level of support during the midst of the EA process for its supposed transformative potential that could break the province away from its impoverished history (House, 2021). This approval for the project can be summed up in a quote from an interviewee of one paper in reference to the Muskrat Falls EA:

“the underlying thing was that people wanted to build the dam and they didn't care what the other evidence was.” (Barnard-Chumik, Cappe & Giang, 2022, p. 11)

This **project inertia**¹ was also recognized by the inquiry who stated that the GNL had predetermined the Muskrat Falls project would be built and as a result, failed to practice its due diligence and oversight of Nalcor (CIRMFP, 2020). In this context, the limiting of the EA's scope and dismissal of concerns from communities and independent reviewers without justification was accomplished to promote the project's sanction and was not motivated out of a genuine assessment of the project's risk, financial or environmental. This allowed the project proponent to operate under what some have called a “blank-cheque approach” where the project was indiscriminately funded with few requirements for any fiscal or public accountability. As a result, the project has had a profound effect on the Newfoundland and Labrador economy with the province's debt to GDP ratio increasing by 79% and doubling electricity rates to 22.9 cents/kWh (Stoddart, Bernharðsdóttir & Atlin, 2021).

1 ...when a project builds a large amount of political will and historical momentum, and therefore moves forward to completion largely unencumbered. This momentum does not change despite scientific evidence that, if presented earlier, could have impeded its approval” (Barnard-Chumik, Cappe & Giang, 2022, p. 11)

2.2 Voisey's Bay

The Voisey's Bay project is a current nickel mine located in Labrador's Voisey's Bay, 35km southwest of Nain. The project also includes port facilities at Anaktalak Bay in Labrador for shipping ore to its processing facility in Long Harbour on the Avalon Peninsula in Newfoundland. Discovered in 1993 by Diamond Resources, the project's nickel deposit was estimated at 141 million tonnes and quickly attracted attention from mining companies. The rights to the deposit, however, were eventually sold in 1996 to Inco Ltd. for \$4.3 billion CAD, founding the Voisey's Bay Nickel Company (VBNC) as a subsidiary of Inco. The Brazilian mining company Vale would eventually purchase Inco-VBNC and their rights to the deposit in 2006, allowing for Inco-VBNC to operate as a subsidiary of Vale.

At the same time as the Voisey's Bay project was being developed, the federal and provincial governments were engaged in Land Claims negotiations with the Labrador Inuit Association (LIA) (now the Nunatsiavut Government) and the Innu Nation. As the VBNC's proposed project lay within the territories of these two groups at the time of the negotiations, the resulting EA placed an emphasis on not only assessing and mitigating the project's potential adverse impacts on Indigenous communities and the environment, but on the potential for the project to contribute to a legacy of sustainable development in the region.

This shift in EA scope toward a test of sustainability had rarely been conducted in prior projects which has encouraged some to refer to the Voisey's Bay EA as a national and global precedent for sustainability assessment (Hanrahan, 1999; Gibson, 2002;2005). Despite this reputation, some have also criticized the Voisey's Bay EA around issues of women's participation within critical aspects of the process as well as for a lack of follow-up and meaningful implementation of the assessment's outcomes (Archibald & Crnkovich, 1999; Cox & Mills, 2014; Dalseg et al., 2018).

In this section we will examine the unique features of the Voisey's Bay EA which have contributed to its exemplary status while also drawing attention to its shortcomings.

2.2.1 The Sustainability Test

Unique to the Voisey's Bay EA was its requirement to assess,

“the extent to which the Undertaking may make a positive overall contribution towards the attainment of ecological and community sustainability, both at the local and regional levels” (Voisey's Bay Environmental Assessment Panel [VBEAP], 1999, p. 7).

While sustainable development had always been an underlying goal of the environmental assessment process in Canada, sustainability assessments have seldom been completed. As a result, the Voisey's Bay EA was the first to introduce an explicit “sustainability test”, setting a precedent and example for the consideration of broad socio-ecological sustainability criteria in conventional assessment practice (Gibson, 2005). Gibson notes that this move toward considering the potential positive effects and sustainability implications of proposed projects represents an essential paradigm shift surrounding the role of assessments. No longer seen as a merely reactive exercise for preventing and mitigating the negative effects of development, the Voisey's Bay EA helped view assessments as a tool of integrated planning and decision-making which emphasizes community empowerment, recognizes uncertainty of the process, and underlines the need for adaptability in the management of projects and plans (2002). The willingness of the proponent and the GNL to accept a higher level of assessment rigour associated with a sustainability test thus highlights an increased level of accountability in the Voisey's Bay EA process by considering additional types of project impacts which were not mandatory to consider under legislative requirements at the time.

Due to its strong theoretical underpinning in sustainability, the Voisey's Bay EA was able to deliver important outcomes on the final project that allowed for the generation of long-term benefits. One of these outcomes was the agreement to extend the project's lifespan by altering components of the project's design. While the project originally intended to use a mill with a maximum ore capacity of 20,000 tonnes/day, this created a point of contention for project stakeholders who realized that this would equate to only a 7–12-year project lifespan. Through a sustainability lens, this amount of time was viewed as inadequate for generating significant

positive effects and risked the creation of a boom-bust cycle. Because of the panel's introduction of the sustainability test, this allowed an entry point for the proponent and decision makers to negotiate a compromise where the project would employ a mill with a maximum daily capacity of 6,000 tonnes, extending the project's lifespan to >30 years so that multiple generations would have the opportunity to experience its benefits (VBEAP, 1999). The location of the mill became a subsequent issue primarily raised by the government of Newfoundland and Labrador who advocated that the mill be located in Newfoundland specifically. Similar to the discussion on project lifespan, the GNL argued that if located outside the province, the project's contribution to sustainability would be limited by the loss of potential jobs, economic diversification, and long-term economic developments that the mill would have provided the province. As a result of this framing, the proponent agreed to locate the mill in Long Harbour to further demonstrate their commitment to local and regional sustainability (Gibson, 2005).

In addition to the economic and community-based aspects of sustainability, the sustainability test also motivated the proponent to consider changes to its project design that would promote ecological sustainability. An example of this commitment was seen in response to the Labrador Inuit Association's (LIA) concern over the impacts the shipping of ore from Anaktalak Bay would have on sea ice, seal habitat, and marine ecosystems. In response to these concerns, the proponent agreed to alter its planned shipping schedules by prohibiting ship travel for two 6-week periods: one at the start of winter when sea ice began to form and another at the start of spring after which sea ice would not reform in the goal of ensuring appropriate ringed seal habitat and the prevention of oil spills from the ship during ecologically sensitive times (VBEAP, 1999; Higgins, 2018). The VBNC also agreed to follow-up activities and a monitoring program recommended by the Joint Panel which would assess the implementation and effectiveness of mitigation measures related to other valued ecosystem components such as habitat needs for harlequin ducks and caribou (VBEAP, 1999; Noble & Storey, 2005). However, the effectiveness of the monitoring program was debatable as some argued the program's scope proposed in the proponent's EIS was too narrow to meet its stated objectives. The discrepancy between the VBNC's view of the program as a management tool compared to its partners', such as the Department of Fisheries and Oceans, who expected a more scientific end for the monitoring work was also cited for reducing the effectiveness of follow-up activities for the Voisey's Bay EA (Noble & Storey, 2005).

As a result, while the sustainability test created useful provisions for both community and ecological wellbeing in most circumstances, the centering of the complex term “sustainable development” may have contributed to some discrepancies between partners in the assessment who had differing conceptions of what fell under the Panel’s broad definition. However, the incorporation of this term had largely positive effects both within the Voisey’s Bay EA and in the assessment field broadly by creating a precedent for considering higher standards of community and ecological wellbeing in the Canadian resource development context.

2.2.2 Indigenous Rights

In addition to its work on integrating sustainability considerations into impact assessment, the Voisey’s Bay EA has also been commended for its engagement and empowerment of local Indigenous communities within the assessment processes. However, the Voisey’s Bay EA’s contribution to Indigenous rights was fairly nuanced with both positive and negative process practices and outcomes for the local Indigenous communities.

Due to the project’s development at the time of land claims negotiations, Indigenous rights occupied a central theme for the assessment at a time where ample attention was being paid to the collective futures of local communities. This sentiment was further solidified in January 1997 when the LIA and the Innu Nation alongside the federal and provincial governments and the proponent signed a memorandum of understanding (MOU) which secured these Indigenous communities’ positions as partners in the assessment (VBEAP, 1999). This was particularly momentous for the LIA and Innu Nation as Indigenous communities prior to this point had experienced limited engagement and decision-making power in the assessment process (Gibson, 2005). However, the authority of these communities would only become apparent to the proponent in the Spring of that year when the VBNC applied to construct an airstrip and road at the project site as part of its exploration phase. While the Minister approved the application, the LIA and Innu Nation contested the approval in the Supreme Court of Newfoundland and Labrador who sided on behalf of the VBNC. This decision motivated the LIA and Innu Nation to hold protests, blocking the project site from construction work and demanding the airstrip and road be subject to the EA process. This example of coordinated activism by Indigenous communities eventually convinced the VBNC of their need to gain support of the LIA and Innu Nation for the project to be successful (McCreary, Mills & St-Amand, 2016).

While the MOU had been signed earlier that year, it became apparent that the VBNC would need to take further steps to treat these communities as partners. It was from this standpoint that the VBNC engaged in separate Impact-Benefit Agreement (IBA) negotiations with the LIA and Innu Nation to address community-specific concerns of the project. Consequently, the IBAs created leverage for the LIA and Innu Nation to advocate for and secure community benefits, of which employment opportunities related to the project were a central concern. One of the core outcomes of these IBA negotiations was the implementation of the “Adjacency Principle” whereby Indigenous people in Labrador were given priority in hiring, training initiatives, and contract bids for providing goods and services to the project over its lifespan. This ensured that the benefits of the development would mainly flow to these communities rather than to individual outside workers who would eventually leave the region after the project’s close (McCreary, Mills & St-Amand, 2016). In the years since its implementation, the adjacency principle has shown to be effective at Voisey’s Bay with 51% of positions and 80% of contracts filled by Indigenous workers and businesses (Vale, 2023). While the long-term effects of the project on Indigenous communities are uncertain, particularly in response to the eventual closure of the project, these figures provide a positive valuation surrounding the immediate economic outcome of the assessment for Indigenous communities.

While IBAs in this case and others were able to secure some community benefits specifically around employment (McCreary, Mills & St-Amand, 2016), IBA’s have been critiqued for reducing transparency and oversight of the EA process (Higgins, 2011; Cox and Mills, 2014; MacLean, 2020). This was a sentiment shared by some of the Voisey’s Bay participants who noted that since the IBAs were being simultaneously completed alongside the EA, the proponent was advantaged in both processes. For example, because the IBAs were still being developed, the proponent was able to make one-sided commitments during the EA process which advanced their interests in the IBA negotiations. In the main EA process, the proponent was also able to exercise the confidentiality clauses of the IBAs to be selective in what information was included in Panel submissions in order to give vague responses to the process participants and public, preventing the transparent sharing of information (Cox & Mills, 2014). While the Panel recommended that the IBAs and Land Claims both be ratified before the project proceeded, this recommendation was not supported in full by the provincial and federal governments and so a compromise was reached for having the IBAs completed before project construction (VBEAC, 1999; Gibson 2005). However, as unregulated agreements between the proponent and the individual

Indigenous communities, the IBAs resulted in limited oversight into the effects of the project on Indigenous rights.

Although Indigenous communities received important benefits through the IBAs, the IBAs did not eliminate all negative impacts of the project. For example, Indigenous employees have described experiences of discrimination at the project site from both other employees and management consisting of the lack of culturally appropriate training for Indigenous workers, the de-prioritization of Indigenous workers for training opportunities, the tokenization and isolation felt by these workers, and the perceptions of Indigenous workers as less capable and having received unfair advantages due to the IBAs (Cox & Mills, 2014). While the Joint Panel recommended implementing cross-cultural and anti-racism training programs (VBEAP, 1999), these programs may not have been sufficient to address fundamental challenges. In their interviews with mine workers, Cox and Mills identified underlying racism in the mining industry which contributed to the discriminatory attitudes and behaviours toward Indigenous employees (2014). These impacts were felt especially by Indigenous women who struggled with additional sexist and misogynistic barriers, and which is further detailed in the following sub-section **“2.2.3 Women’s Rights”** While the long-term effects of the project on socio-cultural factors of these communities is uncertain, it is also important to note that particularly Indigenous women were skeptical that employment would mitigate social conditions and may instead entrench and create new problems surrounding violence, substance abuse, and impacts to cultural practices (Archibald & Crnkovich, 1999; Dalseg et al., 2018).

While certain developments such as the inclusion of the LIA and Innu Nation as partners in the MOU, the Panel’s support for completing land claims prior to the project, and the proponent’s embrace of the adjacency principle in IBA negotiations, the practical outcomes for Indigenous communities were mixed. While these communities eventually secured a stake in the project, this was hard-won after protest and navigating overlapping and at times adversarial processes. In addition, while this stake ultimately secured community employment benefits it also exposed the community to socio-cultural impacts through the underlying prejudices of the mining sector. This may indicate a certain lack of accountability on behalf of Inco towards Indigenous communities by failing to address these underlying sources of social impact and ignoring these concerns which were raised mostly by Indigenous women as seen in the following section.

2.2.3 Women's Rights

As Juliana Forner (2020) recounts: “mining projects impact women and men differently.” (p. 13). Women affected by the mining industry, both as workers and residents around mines, face several unique risks because of their gender such as: employment barriers, family violence, harassment, and pay inequality (Cox & Mills, 2014). Indigenous women face additional risks due to their relationship with the land. As resource extraction erodes the environment that Indigenous women occupy, their social and cultural relationships are further jeopardized (Bond and Quinlan, 2018).

In response to these challenges, governments and extractive project oversight panels require project proponents to produce impact statements [which identify the gendered impacts of their proposed developments]. Whereas environmental assessments once focused primarily on the consequences of resource extraction on the environment, they have since shifted in scope to evaluate economic, cultural, gender, health, and social impacts (Stinson et al., 2016). The inclusion of gender within the production of these requirements was largely necessitated because of the significance that gender plays in contributing to unequal workplace and living standards for women in resource industries (Clow et al., 2016).

Moreover, the importance of gender within the crafting of environmental assessments and impact statements remains a salient point to this day because as **remedies** to the unequal conditions that women face, neither has been particularly effective. For instance, women often continue to be excluded from consultative processes that are part of EA/ EIS requirements (Dalseg et al., 2018). Yet, when women are consulted, their contributions are limited by inadequate funding (Dalseg et al., 2018), rushed hearings, and data collection methods which disregard gendered power relations (Walker, Reed, and Thiessen, 2019). The examination of Voisey's Bay brings these challenges to the foreground, contextualizing why gender remains a relevant variable of study within environmental assessment research.

While women's participation was also a central theme to the Voisey's Bay assessment, the practical implementation of this commitment was largely negative and provided few positive outcomes for women in local communities.

Prior to the signing of the MOU, the LIA and the Innu Nation had been engaged in

scoping potential issues the project might have on their communities (Cox & Mills, 2014). At the onset of the Joint Panel's scoping sessions on the draft Environmental Impact Statement (EIS) guidelines in 1997, these communities' initial work had allowed women's groups to voice concerns over the gendered impacts of the project. Within presentations given by five groups representing local Indigenous women, issues such as increased family and sexual violence, prohibitive costs of childcare, pay inequality, a lack of involvement in non-traditional employment, and the socio-cultural impacts of the mine were raised to the panel's attention (Archibald & Crnkovich, 1999; Cox & Mills, 2014). This caused the panel to include a requirement within the EIS guidelines stipulating that the proponent was required to conduct a gender-based analysis (GBA) and describe the gendered effects its activities would generate in the final EIS.

While this decision was viewed by the majority of participants and decision makers as a positive step for accountability through women's engagement, this sentiment was not shared by most of the women participants. These women indicated feeling that the process had been rushed and that women were generally unwelcome and not included in public meetings. Women also noted that many of the women's organizations did not receive ample funding to participate and of those that did, funding was not received promptly (Dalseg et al., 2018). Unfortunately, this lack of engagement and undermining of accountability in practice translated into poor outcomes for particularly Indigenous women who reported discrimination at the project site as a dual minority such as being treated as token hires and being passed over for training opportunities and promotions.

While provisions had been made during the EA that prioritized women's employment in the project, these provisions contained no measurable targets and so were found to be poorly translated into the project's collective agreements to the point at which a significant number of union and hiring staff were not aware of any such requirements (Cox & Mills, 2014). While a revision of the women's employment plan with measurable goals became a condition of the project's final approval (Lieutenant-Governor in Council [LGIC], 1999) the future-facing nature of this requirement did not require these goals to be immediately incorporated into the collective agreements. When knowledge of women's prioritization in the project was present in the work force, women also received little support from fellow employees with zero of the surveyed non-Indigenous workers and less than half of surveyed Indigenous workers believing that women should receive such prioritization. As a result, women working

in the mine and mill became targets for harassment and isolation. While the project did have a higher than national average of female employees (17.5% compared to 14.4%), it was found that the majority of these women employees occupied service and administrative positions and not the non-traditional roles they had advocated for during the EA process (Cox & Mills, 2014).

While the Voisey's Bay EA had some positive elements for women's engagement, including the inclusion of two women on the Joint Panel (of which one was co-chair) and GBA requirement, the lack of effective outcomes for women were thought to be the result of the proponent's poor attempt at the GBA as well as the exclusion of women participants from more meaningful processes external to, but with bearing on the EA such as the IBA and Land Claims negotiations. The proponent avoided addressing and mitigating the gendered impacts of the project by citing existing research on family violence and crime in the region out of context. This was done to establish a higher-than-average rate of family violence and crime surrounding the project area to argue that the project's gendered impacts would not be significant. An example of this was the proponent's use of a study on unreported domestic abuse which was written in response to the murder of an Inuk woman who did not report her abuse and was eventually killed by her partner. As this study was intended to advocate for women's rights and community action, the proponent's use of the study to decrease their responsibility for the project's gendered impacts is a misrepresentation of the original data (Archibald & Crnkovich, 1999). Outside of this, the GBA as a whole was considered to be of low quality with the EIS merely splitting data by gender with minimal analysis or attention paid to how the project would uniquely affect Indigenous women (Archibald & Crnkovich, 1999; Noble & Bronson, 2005).

Despite recognition that women's engagement, the IBAs, and the Land Claims agreements were all central components to the Voisey's Bay EA, women were not included within either the IBA or Land Claims negotiations. To some of the women participants, this represented a barrier to engagement in the main EA process. Since the VBNC delegated the majority of socio-economic concerns to the IBA negotiations, this decision effectively reduced the oversight and involvement of the federal and provincial regulators as well as surrounding women's issues in the main EA process and allowed the proponent to be ambiguous surrounding these commitments. While women's continued participation in the process eventually prompted the Joint Panel to recommend the LIA to consider women's issues and work with women's groups in

its IBA negotiations, these negotiations did not result in any specialized programs or accommodations for women (Cox & Mills, 2014).

Although women's outcomes from the EA process were largely negative, the requirement made by the Joint Panel to include funding for women's groups and a gender-based analysis as part of the assessment's framework were advanced aspects of the Voisey's Bay EA compared to its contemporaries (Noble & Bronson, 2005; Noble & Storey, 2005; McCreary, Mills & St-Amand, 2016; Dalseg et al., 2018). However, the ability for women to participate meaningfully and the strength of the GBA may have been impeded by larger process factors such as the assessment's pre-defined scope and terms of reference in the MOU (VBEAP, 1999), the overlap between IBA and land claims negotiations with the main EA process, and the underlying sexism in the resource extraction industries (Cox & Mills, 2014). These factors therefore reflect a gendered transparency and accountability risk in the environmental assessment process, and which may not be unique to Voisey's Bay. However, as the participation of women in the Voisey's Bay process was able to somewhat influence the assessment's scope and outcomes, the Voisey's Bay EA represents an example for improved women's participation in EA processes. However, developments in GBA+ alongside a shift to view women's issues as essential and not variable in the assessment context will be required for more positive examples to be created (Dalseg et al., 2018).

2.3 Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland

The *Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland* (RA or "the regional assessment") was a regional assessment conducted under the *Federal Impact Assessment Act*, 2019. Its purpose was to assess the potential regional effects of proposed offshore oil and gas exploratory drilling projects off the eastern shore of Newfoundland in a 735,000 square kilometer area (**Figure 2**). In April 2019, the Minister of Environment and Climate Change along with the Federal Ministers of Natural Resources Canada, Intergovernmental Affairs, and Indigenous Affairs signed an agreement to conduct the regional assessment which established the assessment's terms of reference and appointed a 5-member Regional Assessment Committee (RAC) responsible for carrying out the assessment work (Impact Assessment Agency of Canada [IAAC], 2020b).

As the first regional assessment in Canada conducted under the new Impact Assessment legislation, the Newfoundland offshore RA plays a precedent setting role for the future of regional assessments both provincially and nationally. Consequently, the gains and losses to transparency and accountability which have occurred as a result of the RA will likely have implications for the state and effectiveness of IAs in the near future, with a decrease in transparency and accountability in the oil and gas sector overall.

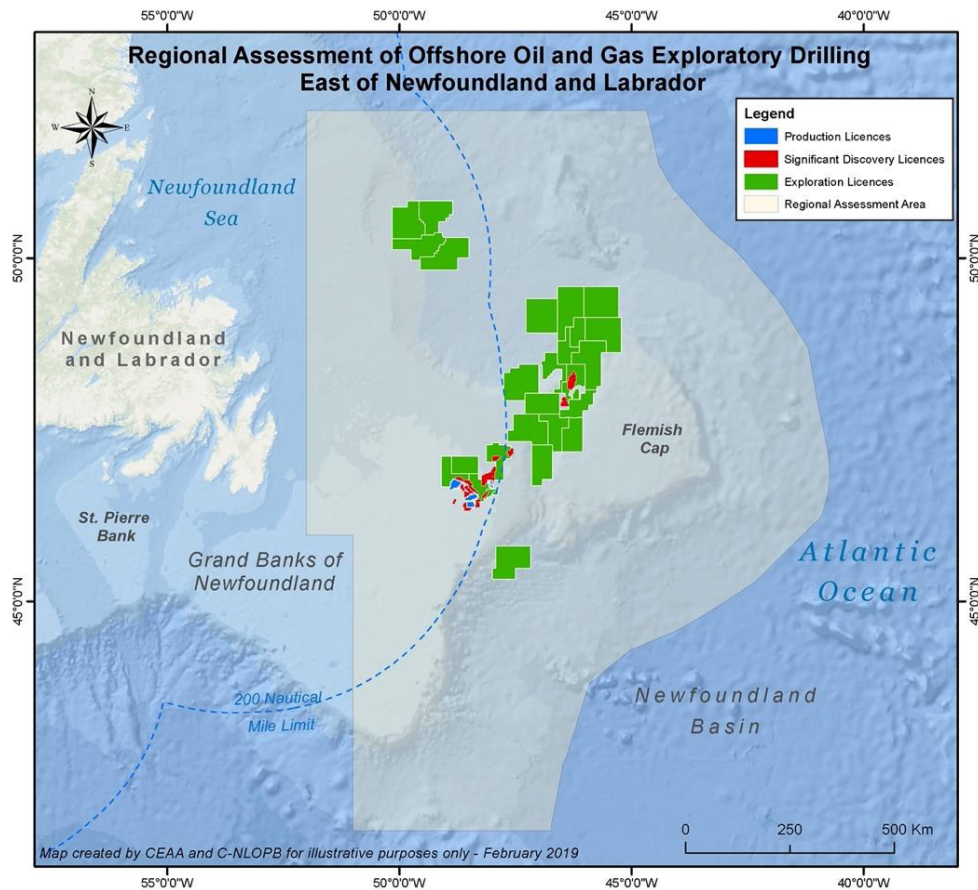


Figure 2. Map of Regional Assessment Study Area including current discovery, exploratory, and production licenses (Canadian Environmental Assessment Agency, Canada-Newfoundland & Labrador Off-shore Petroleum Board [CEAA, C-NLOPB, 2019])

2.3.1 Background

As the federal government’s first foray into the realm of regional assessments, any analysis of the RA of offshore exploratory drilling must also consider the contributions of regional assessments to the state of transparency and accountability

in assessments at large. With such a broad scope, it is also important to consider multiple views of transparency and accountability; primarily those of proponents and participants. As a relatively new concept, it is also useful to define the term “regional assessment.” Based on the definition given by the Expert Panel which reviewed the *Canadian Environmental Assessment Act*, regional assessment is an impact assessment process which

“...is used to assess baseline conditions and the cumulative impacts of all projects and activities within a defined region”
(EPREAP, 2017, p.76).

Regional assessments can be conducted both reactively to the presence of multiple projects or stressors or proactively in the case of expected or potential stressors. Regional assessments are usually compared to regional studies; however, their defining element is the consideration of alternative development scenarios with which practitioners can identify ideal futures for a region and develop sustainability frameworks that can inform the development trajectory in that region. A tiered approach to regional assessments refers to the use of these sustainability frameworks or plans to directly influence how and if developments proceed and under what conditions. In the case of the RA of offshore oil and gas, the regional assessment focused specifically on exploratory drilling projects for oil and gas development and created a Ministerial Regulation responsible for exempting these projects from a full EA.

It is important to understand the context of oil and gas development management in Newfoundland and Labrador as part of understanding the RA. The Atlantic Accord signed in February 1986 was the first official agreement between the provincial and federal governments which implemented management and revenue sharing schemes for Newfoundland and Labrador’s offshore. As Newfoundland and Labrador at the time of the agreement was one of the poorest and most unemployed provinces in Canada, a central tenant of the Accord became that the province would be the main beneficiary of its offshore oil and gas revenues. However, as a result of increased provincial revenues from oil and gas projects, equalization payments from the federal government to the GNL decreased on a dollar-for-dollar basis. As a result, this cut in equalization payments created a savings for the federal government which, when combined with existing federal taxes on oil and gas projects, led to Canada receiving an estimated 79% of all oil and gas

revenues from Newfoundland and Labrador's offshore. Consequently, the Atlantic Accord constrained Newfoundland and Labrador's economy with total oil and gas revenues received up to 2011 making up just 50% of what would have been received in one year's equalization payments (Crosbie, 2003). While a renewed Atlantic Accord signed in 2019 created an additional revenue stream of \$2.5 billion from the federal government over 38 years, concern has been raised over the current provincial government's intention to use the majority of these funds to balance provincial debts and that the sum is fixed in the Agreement leading to the province receiving a potentially poorer deal when encountering inflation in the near future (CBC, 2019). The mismanagement of Newfoundland's offshore resources has also been accompanied in recent years by the COVID-19 pandemic and growing national and global concerns over climate change which have resulted in unemployment, contraction, and divestment from the sector. Despite these factors, the oil and gas industry still comprises a major segment of the province's economy and employment making it a continuing priority to develop (DIET, 2018a).

2.3.2 Differing Perspectives on Regional Assessments

While the RA sought to address the environmental assessment process from both a proponent's and participant's perspective, the impetus of the assessment was likely based in a proponent's understanding of transparency. This can be inferred from the stated purpose of the RA which was to "to facilitate a more effective and efficient assessment process for exploratory drilling projects in the defined offshore Study Area..." (RAC, 2020, p. viii). For project proponents, clearly understandable timelines, process requirements and outcomes, as well as a lack of onerous regulation are considered elements of a transparent process (Macintosh, 2010; Savan & Gore, 2015). These elements also improve the certainty in individual projects and corresponding security in investments which can promote an advantageous environment for economic development. In the context of the Newfoundland RA, regulation plays an important role in a proponent's view of transparency.

Prior to the RA, exploratory drilling projects could not be exempted from an EA. However, in the views of some proponents and practitioners, the continued assessments of exploratory drilling projects created minimal benefit as the impacts and mitigation measures associated with these projects were well understood and managed through industry standards (RAC, 2020). It was in this context that a Fraser

Institute survey on Canadian energy competitiveness found that 88% of managers and executives in the upstream petroleum industry considered the cost of regulatory compliance in Newfoundland and Labrador to be a deterrent to investment in oil and gas projects (Yunis & Aliakbari, 2021). Due to the role of RAs in reducing the time, costs, and the number of studies required from proponents, RAs have generally been considered to improve EA process efficiency while retaining the ability to address key project-related issues (EPREAP, 2017). These economic and policy factors likely prompted the regional assessment to secure greater investment in the oil and gas sector while still addressing the environmental and social concerns of exploratory drilling projects through assessment.

From a participant's perspective, however, the RA of offshore oil and gas received mixed responses from the public and other stakeholder groups. Of primary concern to these stakeholders was the inherent exclusion of public oversight and participation into a significant number of once publicly accessible projects and the future implications of this decision (Anselmi, 2022). While some opportunities to participate will still exist, such as the requirement for the proponent to demonstrate their meaningful consultation with Indigenous people (IAAC, 2020b), the lack of accountability in these consultations arguably reduces their meaningful nature. However, regional assessments also have the potential to improve outcomes for the public and Indigenous groups by being able to create a framework in which factors such as cumulative effects and sustainable development can be better addressed than at the project-scale.

RAs can also create consistency of Indigenous communities required by proponents to consult (EPREAP, 2017). Additional transparency and accountability measures have also been put in place for the Newfoundland RA, such as annual reports on the status of implementing recommendations from the final report and the Ministerial Response, as well as a 5-year review of the regional assessment to consider new or emerging cumulative effects and ensure the effectiveness of streamlining and environmental protection (IAAC, 2020b). It is also important to note that while the Regional Assessment removes the requirement for an EA of exploratory drilling projects it does not remove such projects from review requirements of the Canada-Newfoundland & Labrador Offshore Petroleum Board (C-NLOPB) or from other review processes concerning relevant areas of federal review under the *Fisheries Act*, *Oceans Act*, or the *Species At Risk Act*.

While the regional assessment thus fulfills a primarily proponent-based view of transparency and accountability, it strives in its design to retain elements of public oversight and engagement within the assessment process. As a result, the regional assessment attempts to strike a balance between these two perspectives while ultimately justifying the loss of public engagement and oversight in some areas for the entailing gains of process efficiency. However, the removal of public oversight ultimately constitutes a net loss to transparency by removing opportunities for oversight from subsequent projects. While diminished oversight has obvious implications from a public/stakeholder perspective, it may also impact proponents themselves by creating potential vulnerabilities for process abuse by regulators and bribery. Additionally, the degree of transparency and accountability in these subsequent projects is ultimately reliant on the transparency, accountability, quality, and implementation of the initiating regional assessment itself, which will be touched on in the following sections.

2.3.3 Assessment Quality

While differing views of transparency may be a subjective basis to judge the regional assessment, the quality of work which comprised it may provide an understanding as to the likelihood of the RA meeting its objectives of promoting both a more efficient and effective assessment process, especially in the absence of concrete cases.

Although differing views of transparency may be difficult to reconcile, the recommendations of the RA's final report and the requirements of the IAA legislation made positive contributions toward retaining a level of oversight and accountability over the regional assessment's outcomes. One of these beneficial recommendations was the creation of a Regional Assessment Oversight Committee (OC) which would be responsible for ensuring the RA will meet its stated objectives, providing input to RA procedures and policies, and monitoring and advancing the understanding of mitigation practices to keep the RA's provisions up to date. Additionally, the RAC recommended that the OC be required to include Indigenous members as a means for building relationships and improving the state of offshore management.

Another useful recommendation by the Committee was the creation, maintenance, and annual review of a publicly accessible online GIS tool which can be used to integrate information on the region's environmental quality, and support the

assessment of cumulative effects (RAC, 2020). The GIS tool is relatively easy to use and can create custom maps for identifying potential valued ecosystem components within the RA study area and is useful for facilitating understanding of potential risks in the context of proposed exploratory drilling projects (**Figure 3**). While these recommendations themselves are helpful from a transparency and accountability perspective, they were also made effective by existing transparency and accountability provisions under the recent Impact Assessment legislation.

Under the IAA 2019, the Minister is required to give rationales for their decisions surrounding designated projects including on their acceptance or rejection of recommendations. In the context of the Regional Assessment, this led to the then Minister of Environment, Jonathan Wilkinson, issuing a Ministerial Response which outlined his response to each of the 41 recommendations of the Committee. In most cases the Minister accepted the recommendations as the Committee had stated and with minor elaborations and additions to those remaining. As one of the Committee's recommendations included annual reporting on the status of these recommendations, the Minister was also required to publicly disclose progress made on implementing them. With the first report released in 2022, this implementation appears to be progressing with 55% of the Committee's recommendations having been completed as of present (IAAC, 2022).

It is possible then that the success of the Committee's recommendations lay within structural transparency and accountability provisions provided by the new Impact Assessment legislation, and which helped to advance the mandate of the regional assessment.

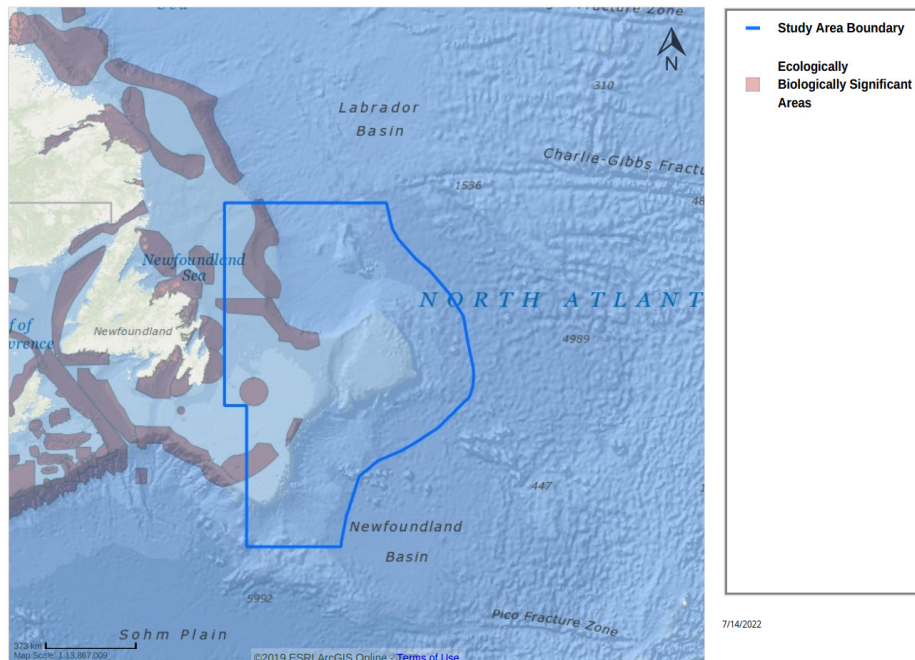


Figure 3 . Example of a custom map of designated Ecologically Biologically Significant Areas using the Newfoundland Offshore Regional Assessment online GIS tool (NL Offshore Study, 2021).

In terms of public and Indigenous consultation, however, there was a divergence of opinions on whether the consultation undertaken was effective and meaningful. In the RAC’s perspective, this consultation was constructive, citing that the RAC had met with 41 Indigenous groups, conducted over 100 meetings and workshops, and “made efforts” to document, verify, and make public the results of these meetings (IAAC, 2020; RAC, 2020). The Committee also referenced that it had met early, often, and in times and locations accessible to Indigenous community members to support their participation in the RA process (RAC, 2020). However, this experience was not shared by all participants. In a 2020 letter to the Impact Assessment Agency, Chief Jean-Charles Piétacho of Les Innus de Ekuanitshit wrote that Committee members organized and notified participants of consultation meetings at the last minute and that the Committee’s initial report was rushed, lacked clarity, and was based in a vision which explicitly encouraged future oil and gas development, undermining the rights of Indigenous peoples in the region (Anselmi, 2022).

This divergence and lack of communication or ability to integrate concerns between

the Committee and participants unfortunately highlights a lack of meaningful public and Indigenous consultation despite the Committee's extensive provisions. As a result, this lack of meaningful consultation, especially with Indigenous communities, will likely have implications for the RA meeting its goal for a more effective process.

In addition to consultation challenges, the scientific integrity of the regional assessment has also been questioned. As a partner in providing scientific knowledge and reviewing the regional assessment, the Department of Fisheries and Oceans (DFO) highlighted significant errors within the Committee's Final Report. Of these errors, DFO noted that the report used baseline information which was incomplete and outdated, that the marine fish and fish habitat section required substantial revisions, that the section on marine mammals and sea turtles was inadequate in describing the species it covered, and that the section on plankton and invertebrates contained significant errors to the point that it should be re-written. The DFO report also criticized the Committee for considering the study area as a single ecological unit despite its size and presence of multiple ecosystems (Department of Fisheries and Oceans [DFO], 2020). A review of the Committee's report by Health Canada also revealed that the Committee had not addressed the potential health impacts of chemical mixtures used to disperse oil spills and noted that the lack of this information would significantly hamper the ability to respond to such crises (Anselmi, 2022). Despite the ability of these agencies to provide insights, the DFO report noted that the review period of only 30 days was insufficient to conduct a thorough evaluation of the Committee's report and noted that as a result of its errors, the regional assessment did not represent a reliable source of information from a scientific standpoint or for the purposes of decision-making (DFO, 2020).

These concerns for the regional assessment's quality were also shared by representatives and lawyers from Ecojustice, the Sierra Club Foundation, the World Wildlife Fund (WWF), and the Ecology Action Centre who also called attention to the Committee's lack of scrutiny into cumulative effects (Logan, 2022). While the Committee stated that they found no indication that cumulative effects would arise in their considered scenarios (RAC, 2020), the lack of scientific rigour evidenced in the Committee's report and the use of faulty baseline data casts doubt on the substance of this conclusion. Regardless, although the Committee indicated that the C-NLOPB's land tenure process and joint initiatives between scientists and proponents would help to better understand potential cumulative effects in the study area, this directive once again places the burden of cumulative effects consideration onto

individual projects. As consideration of cumulative effects in regional assessments has been noted as both more effective and efficient compared to this consideration at the project-level due to proponent's lack of understanding on the activities of their competitors and the mismatch between project-level and regional scales for assessing cumulative impacts (Dubé, 2003; EPREAP, 2017; Doelle & Sinclair, 2019), the RA failed to fulfill a major part of its mandate and squandered the potential for clarifying these questions that the regional assessment provided. Therefore, by relying on questionable scientific data, the RA risked actualizing its goals both for a more efficient assessment process and for secured environmental protection.

Ultimately, many of the shortcomings of the regional assessment might be explained by the resources devoted to it. The Committee members for instance explained in their final submission to the Minister that while the Technical Advisory Committee (TAC) was a beneficial prospect for providing scientific insight to the Committee, the TAC's members were rarely available to assist the Committee in its deliberations or provide any notable assistance. While originally the TAC had planned to take a much larger role in the assessment including being involved in the planning, data analysis, and writing of multiple sections for the final report, the TAC was unavailable or inaccessible to do so, citing competing priorities in their roles as federal public servants as responsible for the lack of assistance. The Committee also noted that the timeline provided to conduct the RA was insufficient, constraining their activities and ability to consult stakeholder groups, thereby reducing public trust in the regional assessment process (RAC, 2020). In the words of the Committee itself, this represents "an untenable situation" considering the intended cooperative nature of the regional assessment and "will need to be addressed as a priority" (RAC, 2020, p. ix). Therefore, while some flaws of the regional assessment may be due to the Committee's actions, there appear larger structural issues such as available funding and the presence of timelines which notably constrained the RA's quality.

While the Committee did request an extension of their timeline, this extension was only given from Fall 2019 until February 2020 to complete their Final Report and until May 2020 to complete the GIS tool (RAC, 2020). Because of the short breadth of these extensions and their limited focus, they likely were not sufficient to improve the quality of the RA substantially. However, this may have been an intentional decision on behalf of the federal and provincial governments. In a 2019 letter to the Federal Minister of the Environment, the Premier of Newfoundland and Labrador, and the Newfoundland and Labrador Minister of Natural Resources, the Federal Minister of

Natural Resources indicated that the Government of Newfoundland and Labrador had agreed to support the passing of the *Impact Assessment Act* on agreement from the Trudeau government that exploratory drilling projects would eventually be exempt. The Minister went on to state that as a result he would only approve the extension of the Committee's timeline on the condition that it did not interfere with industry plans to spend over \$7 billion in oil and gas exploration in the region or jeopardize a ministerial regulation that would exempt such projects (Anselmi, 2022). As the regional assessment eventually did result in a Ministerial Regulation allowing the exemption of oil and gas exploratory drilling projects, this casts doubt on the objectivity of the RA and points rather to sources of outside influence which believed in a pre-determined outcome for the assessment, further weakening its quality.

2.3.3 Implementation of Regional Assessments

As the federal government's first attempt at a regional assessment, it is important to compare the implementation of the Newfoundland RA relative to the expected role of regional assessments in the legislation, literature, and past experiences in Newfoundland's offshore.

Doelle and Sinclair (2019), have noted that while the new *Impact Assessment Act* introduces the concept of regional assessments, there exists little guidance on how these types of assessments should be conducted or used. For instance, there exist no formal triggers or criteria for when a regional assessment is warranted. Rather, the decision to initiate a regional assessment is under the discretion of the Minister of Environment and Climate Change Canada who is advised by a Minister's Advisory Council, a Technical Advisory Committee, and an Indigenous Advisory Committee on regional assessment priorities. This lack of guidance also extends to how regional assessment processes should be designed, carried out, incorporate, and assess cumulative effects, or how to link findings to broader strategic and policy issues. There also exists no legislated basis for connecting the final regional assessment outcomes to decision making or how the results of regional assessments should be used to inform future projects. While some direction in the legislation is given around public and Indigenous consultation (2019), the lack of specific requirements or criteria to facilitate this consultation may have allowed poor engagement practices to operate and lead to the lack of transparency experienced by some RA participants. As these constitute key questions and objectives of regional assessments, the lack

of guidance surrounding these areas represents an important gap. It is therefore reasonable to expect that without clear guidance on such important aspects of a relatively new assessment process the Newfoundland RA would be somewhat unprepared to synthesize the information provided to the Committee and meet all its desired outcomes.

Despite this lack of guidance, however, the final products of the RA also provided elements recommended for regional assessments and its components by the Expert Panel's Review of the *Environmental Assessment Act* and other academics such as the creation of a consistent list of Indigenous groups to consult, a cooperative approach to regional assessments, a role for independent review bodies in project decision making like the C-NLOPB, and the integration of multiple information sources to support follow-up and monitoring such as the GIS tool (Dubé, 2003; EPREAP, 2017). Therefore, while a lack of guidance for the RA led to a poor process, the regional assessment appeared to produce beneficial requirements to support subsequent EA processes that would follow it.

However, an important omission from the RA's outcomes was the lack of a resulting sustainability framework with which to inform project decision making. While the concept of regional assessments providing the basis for sustainability frameworks and plans to inform resource development is common in the literature (Dubé, 2003; Doelle & Sinclair, 2019) and was mentioned as a desirable aspect of regional assessments in the Expert Panel's Review of the *Canadian Environmental Assessment Act* (EPREAP, 2017), this objective was not shared by the Newfoundland RA. While the regional assessment's terms of reference did include a consideration as to the extent to which exploratory drilling projects themselves would promote sustainability, the goal of the assessment was to inform a Ministerial Regulation which would potentially allow exemptions of exploratory oil and gas drilling projects, not a broader framework which would seek to incorporate these activities in pursuit of a regional vision for sustainable development. As a result, the consideration of how exploratory wells would contribute to sustainability could be seen as rudimentary, especially in its consideration of climate change impacts.

While greenhouse gas emissions were a topic of the RA, the Committee's review intentionally scoped out the consideration of downstream greenhouse gas emissions that would result from subsequent oil and gas projects. Although technically the

committee's rationale to do so was sound, this exclusion drew criticism for not being transparent of the effects such projects would have on Canada meeting its GHG commitments through encouraging further oil and gas developments (Anselmi, 2022; Logan 2022). The lack of such explicit and forward-facing sustainability frameworks in the regional assessment process and its terms of reference may therefore point to external and implicit goals embedded in the RA, such as the goal of the province's Advance 2030 plan which seeks to implement 100 new exploratory offshore wells by 2030 (DIET, 2018a). While speculative, this highlights that the Newfoundland RA's lack of relevance for informing how and if projects are developed in the region may ultimately be a risk to transparency by intentionally narrowing the scope of regional assessments away from their intended use by decision makers, and at the very least, limiting its effectiveness for environmental management and protection. Potential exists for the RA to inform the sustainability assessments conducted by the C-NLOPB, as was recommended by the Committee, however, the extent to which the RA will inform the regional planning considerations of these sustainability assessments is not clear given the lack of plans or progress to do so as of present.

Because there is a lack of current assessment cases under the regional assessment itself, the implementation of the RA and the effects of this implementation have yet to be seen. However, experiences with similar types of assessments in Newfoundland's offshore indicate that, while ambitious, the regional assessment may provide minimal benefits in practice. As a responsible authority over oil and gas projects in Newfoundland and Labrador's offshore, the C-NLOPB remains the primary authority over issuing licenses and approvals for oil and gas exploratory drilling. With a similar impetus as behind that of the regional assessment, the C-NLOPB realized that the consistent assessment of exploratory drilling projects yielded very similar results in terms of potential impacts and mitigation measures. As a response, the Board conducted 4 strategic environmental assessments (SEAs) in the early 2000's which had the goal of characterizing the local environments, identifying standard impacts and mitigation practices in these regions, and identifying planning requirements for future oil and gas activities.

Similar to the regional assessment, the purpose of these SEAs was to limit requirements on proponents within the C-NLOPB's EA process and allow assessments to address more important project-specific issue if necessary and in a timely matter. However, several issues with the SEAs were identified in practice. An important issue was a limited understanding among C-NLOPB regulators of SEAs

and their benefits, particularly for their ability to narrow the scope for downstream projects and improve process efficiency. In reality, the SEAs had little mention in the C-NLOPB's EA guidelines and did not prevent the consideration of broad environmental issues within project-level EA's. Rather, these SEAs pivoted from their intended active role in project licensing decisions to merely a provisional one, supplying consistent baseline information for the various SEA regions. However, the differences in size and shape between the SEA study areas and the smaller project-level areas generated concern that this regional information was ultimately less relevant to project proponents, effectively providing little gains to process efficiency (Bonnell, 2020).

Due to the similarities in purpose and design of the C-NLOPB's SEAs and the regional assessment, the failure of the CNLOPB's SEAs does not bode well for the overall successful implementation of the regional assessment. However, it is important to note that additional provisions exist under the RA which were not present in the C-NLOPB's SEAs such as the Oversight Committee, Follow-Up Program, and the presence of specific mitigation requirements for exploratory projects in the Ministerial Regulation and which therefore may help to ensure its comparatively more successful application (IAAC, 2020b; RAC, 2020).

Photograph by Erik Mclean

3.0 Risk Assessment Results & Discussion

Researchers highlighted 5 major risks related to transparency and accountability in Newfoundland and Labrador’s EA processes. These vulnerabilities relate to the legislation and procedural guidelines in writing and in practice. Even though the study focuses on the EA process, some risks that affect EAs derive from the pre-development stages.

3.1 Strengths in Provincial and Federal EA processes

While assessing risks in the provincial and federal EA processes, the research also identified noteworthy strengths.

A shared strength noted between both processes was the use of specific criteria to define the term “public interest” within the responsible Minister’s area of purview. Because of the role public interest can play in informing directions and decisions in both the federal and provincial EA processes, the use of criteria for the Ministers’ public interest determination thus provides greater transparency into ministerial decision-making. In a review of public interest determinations in Canadian infrastructure legislation, Gooday, Winter & Westwood (2020) identified that definitions of *public interest* are generally lacking with only 46% of public interest tests across 33 statutes and 13 regulations using explicit criteria. While there are inherent issues with the top-down nature in which public interest is defined and assessed, providing specific criteria within legislation allows both processes to introduce opportunities for public scrutiny in the use of the public interest test. Because of the evolving nature of the public interest, the inclusion of guidance material such as in Newfoundland and Labrador’s process also ensures that there is a degree of understanding into how public interest decisions will be made when considering present and contextual factors. While the federal process does not have similar guidance for the Minister’s determination, it also prevents external interference in this determination by allowing only the Minister to apply the public interest test. This prevents other authorities from interfering in the Minister’s

decision and potentially changing the assessment process based on little or no criteria. This unfortunately is the case in the province where the Lieutenant-Governor in Council (LGIC) may overturn the Minister's decisions based on their "opinion" of the public interest (Goody, Winter & Westwood, 2020). While both processes have clearly not perfected public interest determination, the inclusion of specific criteria to inform these decisions creates a comparative transparency and accountability advantage over the majority of assessment processes when factoring the risks, a lack of criteria exposes them to.

Another shared strength of the federal and provincial process is the inclusion of assessment trigger ranges for project expansions. This is beneficial from a transparency perspective as introducing assessment requirements on project expansions provides windows for analysis and participation within the project amendment phase, as well as improves opportunities for follow-up and monitoring. By sharing the same requirements surrounding process, information sharing, and stakeholder engagement as project assessments, requiring assessments of project expansions creates additional transparency and accountability surrounding individual projects. As EAs must consider the risks of a development and the potential for mitigation measures to address them, the provision of EA requirements on the expansion of projects also creates an opportunity to follow-up with the proponent's project by assessing how mitigation measures have been applied, how effective they have been, and the presence of any residual effects. As this information is used in the assessment process to determine the impact of proposed expansions and the likelihood they will be effectively mitigated, this offers more public insight into how projects have been managed after the assessment process, particularly surrounding the implementation of and compliance with project conditions. Indirectly, these assessment requirements may also encourage more monitoring and detailed record keeping by proponents in the event that an expansion triggers an EA, and this information is sought, benefitting reviewers and the public who may be able to access these records. While in the provincial process EAs are only required on expansions if they cause the main undertaking to exceed a predetermined trigger range for registration, the Federal process also includes a requirement for EA if an expansion causes a project to increase at least 50% in size or output. This additional requirement at the federal level thus creates additional opportunities for transparency and accountability in comparison to the provincial process.

Outside of providing public interest criteria, the Newfoundland and Labrador process provides a few notable areas of strength. One of these areas is the presence of Industry Facilitators which act to advise and guide proponents through the environmental assessment process. This helps to increase the process' transparency by ensuring proponents understand how the process functions and what is required of them at each step. Additionally, the presence of sector-specific and separate industry facilitators for oil and gas, mining, and hydroelectric projects ensures that the information received by proponents is focused and relevant to their specific project. By informing project proponents, industry facilitators thus help establish a form of effective communication surrounding the assessment process between the proponent and a knowledgeable government employee who does not have control over the process, making the risk for external influence low. These industry facilitators also lower the risk of corruption by preventing responsible authorities from potentially exploiting proponents through onerous timelines and requirements that they may otherwise interpret as due process.

Another area of strength in the provincial process is the ability for proponents to undergo an EIS process at any time during the registration phase. As the registration phase may involve numerous occasions where proponents are required to provide additional information to inform the Minister's decision on how to proceed with the assessment, there is a risk that proponents may be deterred by registration timelines or the uncertainty in what information may be required. By providing an opportunity for the proponent to opt into an EIS process, this allows for both a more efficient and effective EA process by streamlining the registration phase while applying a higher standard of assessment. This may help reduce risks of proponent influence on the Minister such as bribery during the registration phase while also providing greater transparency into the potential effects of a project through the more rigorous process. Another strength of the process highlighted by one of the industry interviewees was the availability of staff from the provincial Department of Environment and Climate Change to guide proponents through the EA process. However, it is important to note that this departmental support is primarily the result of a lack of formal written guidance on areas such as permitting and consultation requirements which were consequently mentioned by the interviewee as areas of confusion for proponents. To the interviewee, this gap was made up by the informal guidance and support of government staff who were routinely consulted on such requirements. While access to knowledgeable staff is certainly a strength of the provincial EA process, it is unclear the extent to which this support is available

across different projects or if similar access extends to individuals or communities attempting to engage in them. Additionally, the context in which this practice has generated raises questions surrounding its efficiency in terms of the use of limited departmental and government resources. However, due to the interconnected nature of public and private life within the province, this approach may be more effective at providing information and transparency than formal guidance.

A strength unique to the Federal process is the presence of an early planning phase. This provision is particularly important from a transparency and accountability perspective because of its role for identifying and engaging stakeholders and issues in the early stages of project development. Early engagement provides a mechanism for communities to participate in the process in a more meaningful way since a wider scope for the assessment may be set that addresses the inherent uncertainty and risks surrounding new developments before significant decisions and work have been made and completed. By creating frameworks for public participation, Indigenous consultation, and government-to-government cooperation, the early planning phase also establishes the process of an assessment collaboratively and in a way that is beneficial to the involved communities. This allows for a better understanding of the process among all stakeholders and as a result, prevents opportunities to manipulate it. Due to the formal nature of these agreements, and the planning stage itself, this also allows for improved tracking of the process and the commitments made by different stakeholders. Through engaging stakeholders in the design and scope of assessment processes, the early planning phase thereby creates provisions for a more transparent and accountable assessment process at the Federal level.

3.2 Weaknesses in Federal and Provincial EA Processes

While both the Federal and provincial EA processes contain certain strengths, the analysis undertaken in this study revealed 10 key transparency and accountability risks inherent in the design and implementation of these processes. These risks ranged from “Very High” risk level, to significant and moderate. While other risks were also identified as part of this analysis, risks with a score of 5 or less were not included in this final analysis to prioritize the most pressing risks to Newfoundland and Labrador’s assessment process.

Risks encountered during the analysis were broad, covering contextual factors, process design and implementation, and the state of community consultation.

3.2.1 Contextual Risk Factors

As mentioned in Section **“1.0 Introduction”** Newfoundland and Labrador is at a challenging economic point in its history in which the province is looking to leverage its natural resource sectors as one potential solution. In addition to a declining and aging population which has put constraints on economic development in recent years, the province has also had a history of resource mismanagement which has resulted in poor economic planning and crippling debt, such as with the Atlantic Accord and Muskrat Falls respectively. This situation was soon compounded by the effects of COVID-19 which were felt especially strong in the province. Large unemployment and lack of economic activity were prevalent in Newfoundland and Labrador during the early pandemic due to reliance on the oil and gas sector which faced historic downturns at the time. As a result of these and other factors, the province finds itself on the road to insolvency and bankruptcy. This financial crisis has encouraged a strong economic development mindset within the province reflected prominently in several recent reports such as that of the Premier’s Economic Recovery Team released in 2021, as well as the array of sector-specific development plans for oil and gas, mining, and renewable energy which stress the importance of these undertakings for the province’s economic recovery. It is not surprising then that many of these reports also include recommendations for streamlined regulatory permitting and approval processes, including the environmental assessment process, to facilitate more rapid development. It is within this context that the current legislative review of the provincial assessment legislation is taking place, creating risks that reforms to this legislation will result in reduced transparency and oversight in the name of economic recovery. This of course is despite the history of projects like Muskrat Falls which, having used economic recovery as a rationale to limit transparency and oversight of the EA process, created immense financial burdens that the province struggles with to this day. There is therefore a risk that if such reforms are planned, they will have disastrous consequences both for transparency and wellbeing of the province.

3.2.2 Process Design

Outside of the external risk of process reform, Newfoundland and Labrador's EA process also contains risks to transparency and accountability inherent to its design and implementation.

One of these risks noted in the case studies and interviews was that all steps of the EA process or the criteria used in this process, will not be clear or publicly available to all stakeholders. One of the most explicit examples of this risk is the lack of criteria for determining significant environmental effects as well as the LGIC's lack of criteria for determining the 'public interest'. As the determination of significant environmental effects is a deciding factor in deciding the assessment stream, and therefore the rigour of assessment for individual projects, the lack of explicit criteria for this determination creates risks that projects with potentially significant effects may undergo a less rigorous process or no process at all if it is within the Minister's interest to do so. Additionally, the LGIC may overturn the Minister's decision on how to proceed with an assessment based on their *perception* of the public interest. However, this perception of the LGIC is not legislatively defined, creating a similar risk that assessments may be less thorough than necessary or may be exempted entirely from an EA, leading to the potential for significant impacts. Other provinces show similar struggles with legislation from Saskatchewan and Alberta providing no criteria for public interest and Ontario and BC's legislation not indicating what constitutes a significant adverse effect. There is a similar lack of clarity in the Regional Assessment process with the decision to undertake an RA and define its scope being at the discretion of the Minister. With no legislated guidance on how RAs should inform project decision-making, there is the potential for RAs to lead to exemptions for certain projects from the assessment process entirely, as seen in the RA of exploratory drilling. Given the limited number of completed RAs, this risk is unique to NL but may become more common as RAs are completed, such as that for the Ring of Fire in Ontario and offshore wind developments in Nova Scotia.

These risks are further amplified by the tendency for the provincial EA process to defer assessment decisions to the Minister without requiring them to issue a rationale or justification for such decisions. Without the requirement to give a justification, the Minister or the LGIC has the opportunity to conceal factors that informed these decisions, including factors which were not disclosed publicly

during the process and may operate as sources of external influence. The lack of decision-making rationale from the Minister also prevents external review of specific assessments as the criteria and methods used by the Minister to arrive at their determination are unavailable. Therefore, there is limited ability to analyze the decision-making process through testing the methodologies used to arrive at conclusions. EA legislation in BC and Ontario are examples where a decision statement is required from the Minister, indicating that NL is lagging behind legislative trends.

A lack of external review was also seen throughout NL's EA process. For example, Panels being under resourced by the government was a key challenge in Voisey's Bay and the Regional Assessment for ensuring a high level of rigour. There have also been instances of direct prevention of external review. In the Muskrat Falls EA, Nalcor repeatedly withheld information from the PUB's review and restricted the scope of Manitoba Hydro's review to provide a favourable outcome for the project. In the Regional Assessment, interference was also seen when the Minister of Natural Resources Canada (NRCan) agreed to approve the Panel's timeline extension request with the condition that their review would not jeopardize the creation of an exemption regulation or risk the plans of the oil and gas industry in the study area. These instances of interference highlight the presence of external motivations and pre-existing commitments as well as their ability to influence the level of external review and thereby assessment outcomes.

3.2.3 Process Practice & Implementation

Transparency and accountability risks in Newfoundland and Labrador's EA process are not reserved to the design of the process itself but also in how it has been practiced and implemented.

One important area of implementation is the inadequate monitoring of compliance with mining licence or permit obligations. While there are requirements for monitoring in both the federal and provincial EA processes, interviewees noted that these requirements were not as extensive as they should be. A lack of government involvement and power imbalances, particularly between proponents and Indigenous communities, within monitoring and follow-up work was seen as a concern for limiting the effectiveness of follow-up activities and ensuring compliance.

Limited resources within both the Voisey's Bay and the Muskrat Falls EAs were also seen to have limited the amount of follow-up and monitoring activities which could take place. These challenges are important to note as the lack of follow-up and monitoring may limit transparency of the EA process in the post-decision period and risks accountability to conditions made through the process.

Poor communication between stakeholders also showed impacts on the implementation and quality of the EA process. This was seen in the Muskrat Falls EA where a lack of communication protocol with the provincial government allowed the proponent to selectively withhold information from the EA process and contribute to the project's cost overruns. While IBAs have been used in part to facilitate communication between Indigenous communities and proponents regarding projects, it was noted that IBAs can reduce transparency through the relation of these agreements to privacy and non-disclosure law. Additionally, the legal and technical nature of these documents was also noted by interviewees as a potential barrier for some community members' understanding the role and implications of IBAs. Additionally, access to information was comparatively lower in the provincial EA process where there is no public access to comments or records of consultation compared to the federal process. This further reduces transparency and accountability. This stands in contrast to assessment authorities like the federal Impact Assessment Agency, BC, Ontario, and Manitoba which provide EA registries with access to project-related documents. Consequently, the lack of public access to these records limits the public's ability to critique the implementation of the EA process and its outcomes.

The lack of consideration of gender-based impacts is another issue concerning the implementation and practice of the EA processes. This was seen in the Voisey's Bay EA where despite the proponent being required to undertake a GBA as part of the EA, women experienced exclusion from the main EA process as well as the IBA and Land Claims negotiations. Women were also underfunded in comparison to other groups which may have contributed to women's concerns surrounding the project going largely unheeded by the proponent. This example shows that despite requirements in place to conduct GBAs, gender-based impacts may receive minimal attention or bearing on the process and outcomes of EAs. This discrepancy highlights an issue of accountability in the EA process which ultimately serves to devalue women and their input.

3.2.4 Community Consultation

Consultation remains an integral element of the EA process by providing opportunities for stakeholders and the public to become informed and provide input into EA decision-making. Consequently, the lack of effective consultation seen in NL's EA process creates risks to transparency and accountability.

Interviewees noted that consultation timelines in the provincial process were insufficient for meaningful engagement. The timeline for the public to review and submit comments on registration documents, environmental preview reports, or component studies of just 35 days was noted by some as insufficient to conduct proper analysis. When factoring the length of these documents and their use of highly technical information, these interviewees highlighted that the 35-day window presented a barrier to fully understanding and being able to contribute meaningful input on EA documents. However, it is important to note that NL's public commenting timelines are some of the longest available with most provinces and the federal government using a 30-day limit.

Similarly, a lack of capacity for some groups was also raised by interviewees as a contributing factor to poor experiences with the province's consultation efforts. Interviewees highlighted that capacity barriers impacting meaningful engagement can take multiple and intersecting forms, including financial, geographic, technological, socio-cultural, linguistic, and administrative. As a result, participation in the EA process is bounded by capacity. This condition is exacerbated by the lack of provisions in either federal or provincial EA legislation for providing participant funding. While additional funding primarily addresses financial barriers to engagement, it can also mitigate the effects of other barriers such as the cost of transportation to consultation opportunities or the expense of translators, consultants, and additional staff to process an EA's information and improve the ability to engage meaningfully. Although participant funding is often provided to Indigenous communities, one interviewee noted that this is a less desirable alternative. As communities may use a proponent's funding to conduct reviews and write reports to submit during an EA process, the connection of these end-products to proponent backing can create perceived conflicts of interest which limit the effectiveness of these submissions. Consequently, Indigenous communities may be left with few viable sources of funding to engage meaningfully in EAs.

Difficulties experienced by Indigenous people attempting to engage in the province's EA process, however, are emblematic of its historic lack of Indigenous consultation. The Upper Churchill project is one example of this absence which resulted in the inundation and destruction of gathering areas, burial grounds, and caribou migration routes used by the Innu Nation. The Muskrat Falls EA also showed a lack of meaningful Indigenous consultation as evidenced both in the findings from the project's Inquiry and the jailing of Indigenous protesters. This lack of meaningful Indigenous consultation is exacerbated by a similar lack of specific legal requirements for Indigenous consultation within NL's EA legislation. In this context, Indigenous consultation is left up to proponents and may result in varying effectiveness. As a consequence, NL's EA process carries significant risks for transparency and accountability in the experience of Indigenous communities.

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4.0 Conclusions & Recommendations

Newfoundland and Labrador's EA process is dealing with significant transparency and accountability issues. While the provincial EA process and the federal process in which it sometimes operates are usually well-defined and contain strengths, the presence of pre-existing commitments has often pushed decision-makers to reduce the purview of these processes or oversight surrounding them. While these actions in themselves have resulted in several notable impacts, the ease with which decision-makers can effectively influence the EA process reveals significant flaws in its design and implementation. As an objective of the province's current review of its EA process is to identify areas of weakness from a transparency perspective, we believe the findings of our analysis may be of use in this review through identifying and detailing important transparency issues. These issues include: a lack of clear or publicly available criteria for decision making; restrictive timelines; barriers to meaningful participation; a lack of independent review; external influence in the process; the risk that communities' free, prior, and informed consent will be ignored; inadequate follow-up monitoring; ineffective stakeholder communication; and the limited consideration of gender-based impacts. While these identified risks are prevalent, there also exist effective mitigation measures to address them. Consequently, we recommend that the Government of Newfoundland and Labrador adopt the following provisions in pursuit of improved transparency and accountability in its EA process.

4.1 Publish decision statements:

To address risks with unclear decision-making criteria, NL should require the Minister and the LGIC to issue decision statements at points in the EA process requiring their respective approval. This would help to ensure that the rationales behind decisions and the information and methodologies used to arrive at them will be clear and testable. This would also reduce risks for undue influence on these parties by requiring an explanation of all factors considered during decision-making. In addition to transparency and accountability gains, decision statements would also

help improve communication between stakeholders by introducing more consistent documentation practices.

By identifying the stakeholders consulted with, how trade-offs between VECs were considered, and how terms like significance and public interest were conceptualized, decision statements would contribute to the mutual learning of all stakeholders in the process. This would also provide confidence to project proponents and could act as a resource for informing their approach to subsequent EAs. As decision statements are already required under the *Impact Assessment Act* and some provinces, this would be feasible to implement. NL should also advocate for changes to the *Impact Assessment Act* that would establish a clearer process for regional assessments, including requiring the release of decision statements from the Minister outlining how decisions to initiate a regional assessment process were arrived at. While the inherent structure of regional assessments results in a net loss of transparency and accountability from future projects, this would help to improve the transparency and accountability related to the RA itself and improve its outcomes.

4.2 Extend commenting time limits:

To address transparency risks related to public consultation, NL should consider adopting longer commenting time limits. The current 35-day period was noted as being insufficient for many respondents to meaningfully engage with the volume of materials and their technical complexity. While the Federal IA process as well as many provincial processes, such as in Saskatchewan, British Columbia, Ontario, and Alberta, allow only a 30-day commenting period, the issues presented with a 35-day period should encourage the province to extend these timelines and continue its role as an example to other authorities. While longer timelines mean a longer process, they also promote greater opportunities for public input and to identify and address project issues. Consequently, the potential for conflict which can lead to delays in themselves may be mitigated or avoided. As a result, transparency and accountability of the EA process would increase alongside process efficiency. In addition to general timeline extensions, the process for requesting additional timeline extensions should be made more transparent to limit undue influence on reviewers. By creating more formalized and documented processes for requesting extensions, ideally through a third-party, this would ensure that extensions required to ensure the rigour of reviews are not used to compromise them.

4.3 Provide participant and capacity funding for engagement:

Transparency in the province's public consultation can also be improved through the provisioning of participant and capacity funding. While capacity is an issue for all participants in the EA process, it may be especially so for Indigenous communities. These capacity issues can be related to balancing other responsibilities and projects, as well as the costs of hiring consultants and travelling to engagement opportunities. As these barriers were cited by many of the other interviewees, some form of capacity or participant funding would greatly improve the transparency of NLs EA process by allowing for more effective engagement and the opportunity for a greater number of stakeholders to participate. While participant funding would be a considerable cost, funding may provide additional benefits such as helping to address a lack of monitoring and follow-up for projects.

This could be accomplished through funding of community monitoring programs which would increase public oversight of projects and have the potential to lower costs associated with follow-up. While funding is needed in-and-of-itself to address certain capacity issues, the additional associated costs should also be weighed in light of other alternatives. Extending review timelines for instance may help to alleviate administrative and project management barriers and ensure a greater degree of participation and process oversight.

4.4 Implement GBA+ in Newfoundland and Labrador's EA legislation:

While recommendations for process design are important to address potential transparency and accountability risks, attention to the implementation and practice of the EA process should pay close attention to the experiences of women and Indigenous communities. Implementing a requirement for GBA+ into NL's EA legislation would be the first step to ensuring all projects adequately consider the gendered impacts of projects.

By following a clear and equitable process for receiving, analyzing, and presenting

this information, this will help to increase transparency and accountability both for the general public, as well as for women and gender minorities to understand the unique ways projects may impact them. Precedence for such a requirement exists both at the Federal level and at the provincial level. Provincial examples like New Brunswick have shown a full and explicit incorporation of GBA into its assessment process while provinces such as Ontario and PEI require similar policies. Other jurisdictions such as Yukon, Quebec, and Alberta having partial requirements or working on expanding the use of GBA and similar policies. These trends thus present encouraging potential for NL to implement a GBA+ requirement feasibly into its EA legislation.

4.5 Implement UNDRIP and integrate Free Prior and Informed Consent in Newfoundland and Labrador EA legislation:

While the creation of individual requirements will not address the entirety of issues Indigenous communities have experienced with the provincial EA process, the implementation of UNDRIP and a requirement to obtain communities' Free Prior and Informed Consent (FPIC) into the province's EA legislation is recommended. As FPIC has been historically disregarded in the EA process, the importance of an explicit FPIC requirement will help to begin addressing issues of transparency and accountability faced particularly by Indigenous communities. This requirement would also help meet the province's lack of Indigenous-specific consultation requirements in its EA process and consequently create additional opportunities for participation.

Given that an integral element of FPIC is for communities to be "Informed", this would also create precedence for greater access to information within the EA process to ensure communities are fully informed of all potential impacts. UNDRIP is already being implemented within the Federal IA process as well as in BC's provincial EA process. Consequently, there is potential for NL to similarly adopt UNDRIP and FPIC requirements within its own EA process and legislation. NL should also advocate for the incorporation of specific requirements and criteria in the *Impact Assessment Act* to facilitate consultation within regional assessments to avoid further losses to transparency in the RA process itself.

The recommendations outlined here seek to address the highlighted risk factors to transparency and accountability in Newfoundland and Labrador's provincial EA process. With the ongoing review of the *Provincial Environmental Protection Act* and "Environmental Assessment Regulations," these recommendations may help to meet the review's goal of assessing and addressing transparency risks in the provincial EA process. Additionally, these recommendations are intended to inform shifting legislative contexts, such as the use of regional assessments, and future resource development projects, like Gull Island to develop a more transparent and accountable EA process. Having been informed by case studies, academic literature, current policies, and interviews with stakeholders, the intent of this study and its recommendations is to harken attention to examples of compromised transparency and accountability and the economic, socio-cultural, and environmental implications this has had for the province. By adopting the recommendations of this report, these would all help in supporting Newfoundland and Labrador's demonstrated effort to learn from past mistakes and establish an EA process that ensures transparency and accountability for every partner involved.

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