

Minister of Energy
and Natural Resources



Ministre de l'Énergie et
des Ressources naturelles

Ottawa, Canada K1A 0E4

June 10, 2024

The Honourable Senator Paul Massicotte
Chair, Standing Senate Committee on Energy, the Environment and Natural Resources

Dear Senator Massicotte:

I am writing to you in regard to Bill C-49, *an Act to amend the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and to make consequential amendments to other Acts*, and recent concerns that have been raised by Nova Scotia Mi'kmaq, and conveyed to your committee, as well as the Senate's leadership, by the Honourable Senator Prosper.

Members of my staff and officials from Natural Resources Canada and the Department of Justice met with Senator Prosper and members of his staff on Wednesday, June 5th, to discuss the Bill and specifically clauses 12 in the Canada-Newfoundland and Labrador part of the Bill and 117 in the Canada-Nova Scotia part of the Bill, which codify existing policy in the legislation that the Crown may rely on the Offshore Energy Regulators for the purposes of consulting with the Indigenous peoples of Canada.

This amendment clarifies, in a manner that is consistent with case law and our current practice, that both the federal and provincial governments may rely on established assessment and regulatory processes to carry out the procedural aspects of consultation with Indigenous peoples and to accommodate any adverse impacts, if appropriate. This approach does not delegate the Crown's legal duty to consult and does not replace the existing tri-partite Terms of Reference for Mi'kmaq-Nova Scotia-Canada Consultation Process. The approach to consultation articulated in Bill C-49 is consistent with joint management, is guided by the principle of the honour of the Crown and furthers the objective of reconciliation with Indigenous peoples.

During the discussion, Senator Prosper also asked for information on how the Government engaged with Indigenous peoples, and specifically the Mi'kmaq of Nova Scotia, on the development of the legislation. Officials indicated that, together with the Government of Nova Scotia, they sent letters to each of the Nations within and outside of the Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO), to inform them about the proposed legislation and to provide an opportunity to engage. The first letters were sent in the fall of 2022, prior to the introduction of the legislation in Parliament. The second were issued in

Canada

May 2023, prior to the Bill's referral to the House of Commons Standing Committee on Natural Resources (the Committee). In that letter, Chiefs were informed about the status of the Bill, invited to continue to engage with the Government and encouraged to provide their perspectives during the Parliamentary review process which has been ongoing since the introduction of Bill C-49 on May 30th, 2023. I understand from officials that a number of communities did request further engagement on the Bill and the Miawpukek First Nation provided a written submission to the Committee during its study of the Bill.

Given the importance of this issue to Senator Prosper, officials committed to providing a written summary of the engagement process undertaken with Indigenous groups, including the names of the communities that were engaged. Officials have confirmed with my office that established engagement approaches were followed with Indigenous communities throughout Atlantic Canada, including in Nova Scotia, in the development and ongoing consideration of Bill C-49. I have appended the summary of the engagement process with Indigenous Peoples on C-49 to this letter for the consideration of Senator Prosper and all members of the Standing Senate Committee on Energy, the Environment and Natural Resources.

I would like to express my appreciation to Senator Prosper for bringing this issue to the fore. I fully agree with the importance of early and proactive engagement with Indigenous peoples on matters that may affect their rights and interests, and the need to ensure the Crown fulfills the duty to consult and accommodate. Officials at the federal and provincial level have acted in good faith to engage with Indigenous communities throughout Atlantic Canada in the development of the legislation, and in carrying out other important initiatives related to the establishment of the offshore renewable energy industry, such as the Regional Assessments for Offshore Wind in Nova Scotia and Newfoundland and Labrador. In addition, amendments proposed in Bill C-49 are an important step forward in clarifying and affirming the role of the Offshore Energy Regulators in carrying out the procedural aspects of consultation with Indigenous peoples.

I, along with my officials, welcome the opportunity to appear before your committee.

Respectfully,

A handwritten signature in black ink, appearing to read "Jonathan Wilkinson". The signature is fluid and cursive, with a long horizontal stroke at the end.

The Honourable Jonathan Wilkinson, P.C., M.P.
(he/him/il)

cc.

The Honourable Senator Marc Gold, P.C.
Government Representative in the Senate

The Honourable Donald Neil Plett
Leader of the Official Opposition in the Senate

The Honourable Raymonde Saint-Germain
Facilitator, Independent Senators Group

The Honourable Scott Tannas
Leader, Canadian Senators Group

The Honourable Pierre Dalphond
Leader, Progressive Senate Group

All members of the Standing Senate Committee on Energy, the Environment and Natural Resources

The Honourable Senator Paul J. Prosper

The Honourable Senator Iris G. Petten

SUMMARY OF ENGAGEMENT PROCESS WITH INDIGENOUS PEOPLES ON C-49

- Government reached out to 59 Indigenous groups (see Appendix A for a complete list) across Nova Scotia, Newfoundland and Labrador, Prince Edward Island, New Brunswick, and in the Gaspésie and North Shore regions of Québec to provide an opportunity to engage on the government's intent to amend the Accord Acts. Letters were sent to Chief and Council, or other officials where appropriate, in fall/winter 2022 prior to the introduction of Bill C-49, and again in Spring 2023.
- In Nova Scotia, Natural Resources Canada, together with the Nova Scotia Department of Natural Resources and Renewables, sent letters to all Nova Scotia Mi'kmaq community Chiefs and the Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) on September 7, 2022 and again on May 26, 2023, concerning the proposed amendments to the Accord Acts, in order to share information, discuss in greater detail should they be interested, and hear their perspectives on the proposed legislation.
- Provincial governments may have undertaken additional engagement outside of the process outlined here.

Summary of responses from Indigenous groups

Nova Scotia:

- NRCan and Nova Scotia heard back from Sipekne'katik First Nation and met with their representatives on February 8, 2023, to provide more information on, discuss, and hear their perspectives on the proposed amendments to the Accord Acts.
 - Sipekne'katik First Nation expressed interest in learning how they could participate in and benefit from offshore wind development and noted their interest and involvement in onshore wind energy development to date.
 - Sipekne'katik First Nation expressed concern that Indigenous rights in the offshore would not be recognized or respected, raised that UNDRIP may be implicated, and feared that economics would outweigh other considerations. They also sought clarification on who would regulate offshore wind projects and how projects would be evaluated.
 - They indicated an intention to make a submission during the parliamentary review process in relation to jurisdiction, sovereignty, and claims.
- No other Nova Scotia Mi'kmaq communities requested a meeting with NRCan officials.

Atlantic Canada:

NRCan held meetings with the New Brunswick Aboriginal Peoples Council, Maritimes Aboriginal Peoples Council, and Mi'gmawe'l Tplu'taqnn, and received preliminary feedback by email from Pabineau First Nation, Première Nation des Innus Essipit and Miawpukek First Nation:

- The meeting with Mi'gma'we'l Tplu'taqnn (MTI) took place on March 22, 2023, where MTI sought clarification on who would regulate offshore wind projects in the Canada-Nova Scotia Offshore Area, and asked if there were any UNDRIP related implications given the first UNDA Action Plan being released shortly after the introduction of Bill C-49.
 - NRCan offered to hold another meeting and to discuss in greater detail, should either group be interested.
- The meeting with the New Brunswick Aboriginal Peoples Council and the Maritimes Aboriginal Peoples Council occurred on July 7, 2023, where both groups asked about the Canada-France Transboundary Agreement and whether there were any boundary implications stemming from potential offshore wind development. Both groups also discussed other government science and spatial planning-based activities in the region and their relevance to planning for offshore wind development.
 - NRCan offered to hold another meeting and to discuss in greater detail, should either group be interested.

Written Correspondence:

- Written correspondence was received from Pabineau First Nation on February 2, 2023, Miawpukek First Nation (January 18, 2023), and la Première Nation des Innus Essipit (January 11, 2023) all mentioned their respective interests in learning more about Bill C-49 and offshore wind development generally.
- In the cases of Pabineau First Nation and Miawpukek First Nation, they expressed support for renewable energy development but also some concerns around offshore wind development, with Miawpukek further specifying concerns around social and environmental impacts, the need for Indigenous peoples to be involved, and fully participate, in all aspects of offshore wind projects, including licencing and regulatory processes.
- NRCan responded to each group and offered to meet to discuss in greater detail and share more information.

Participation in Parliamentary Process:

- During the meetings referenced above, NRCan officials sought preliminary feedback from groups, and following introduction of Bill C-49, encouraged groups who had specific comments or concerns about Bill C-49, to participate in the federal parliamentary process, which would include Committee reviews by the House and Senate.
- On February 15th, 2024, Chief Terry Paul, the Executive Director of the Membertou Development Corporation attended as a witness before the Parliamentary Committee on Natural Resources at the Committee's invitation.
- On February 20th, 2024, the Miawpukek First Nation submitted a written brief to the Parliamentary Committee on Natural Resources.

Summary of Engagement taking place through the Regional Assessments for Offshore Wind in Nova Scotia and Newfoundland and Labrador with Indigenous groups

- While the Regional Assessments (RA) for Offshore Wind in Nova Scotia and Newfoundland and Labrador are being led independent from government, they are an important mechanism for all interested parties, including Indigenous communities and organizations, to provide their perspectives about the future development of offshore wind.
- Governments will use the findings of the RAs to help inform potential suitable areas for offshore wind ahead of launching any land tenure processes, to understand potential impacts on the activities of other ocean users and Indigenous groups, and to identify appropriate mitigation measures to be implemented as projects are designed and reviewed by the Offshore Regulators and the Impact Assessment Agency of Canada.
- Prior to the launch of the RAs, engagement took place with Indigenous groups across Atlantic Canada on the Terms of Reference and Agreements governing the RAs.
- Following the launch of the RAs, the Nova Scotia RA Committee met first with the Assembly of First Nations to provide an overview of the Regional Assessments and community meetings were then held in-person with interested Chiefs and Councils and included an offer of a future community engagement session to gather input and answer questions from community members.
- The RAs have also convened Indigenous Knowledge (IK) Advisory Groups for each RA to support the Committees, which include representatives from various groups in Nova Scotia and Newfoundland and Labrador.
- Engagement with Indigenous communities and organizations, and the IK Advisory Groups, is expected to continue into summer 2024 as the RA Committees look to publish draft final reports in September 2024.

Appendix A - Indigenous Communities and Organizations Contacted

Nova Scotia

1. Sipekne'katik First Nation
2. Millbrook First Nation
3. Membertou First Nation
4. We'koqma'q First Nation
5. Wagmatcook First Nation
6. Potlotek First Nation
7. Pictou Landing First Nation
8. Paqtnkek Mi'kmaw Nation
9. Bear River First Nation
10. Glooscap First Nation
11. Eskasoni First Nation
12. Annapolis Valley First Nation
13. Acadia First Nation
14. Kwilmu'kw Maw-klusuaqn Negotiation Office (commonly referred to as KMKNO, they are the consultation body for 10 out of 13 Mi'kmaq communities in NS, copied on all correspondence)

Prince Edward Island

1. Lennox Island First Nation
2. Abegweit First Nation
3. L'nuey
4. Native Council of PEI

Newfoundland and Labrador

1. Benoit First Nation
2. Innu Nation
3. Miawpukek First Nation
4. Mi'kmaq Alsumk Mowimsikik Koqoey Association
5. No'kmaq
6. Northern Peninsula Mekap'sk Mi'kmaq Band
7. Nunatsiavut Government
8. NunatuKavut Community Council
9. Qualipu First Nation
10. Three Rivers Mi'kmaq Band

New Brunswick

1. Eel Ground (Natoaganeg) First Nation
2. Anqotum Resource Management Council
3. Eel River Bar (Ugpi'ganjig) First Nation
4. Elsipogtog First Nation
5. Mi'gmawe'l Tplu'taqnn

6. Gespe-gewaq-Mi'kmaq Resource Council
7. Indian Island First Nation
8. Kingsclear First Nation
9. Madawaska Maliseet First Nation
10. Metepenagiag First Nation
11. NB Aboriginal Peoples Council
12. North Shore Mi'kmaq District Council
13. Oromocto First Nation
14. Peskotomuhkati First Nation
15. St. Mary's First Nation
16. Tobique (Neqotkuk)First Nation
17. Woodstock First Nation
18. Wolastoqey Nation in NB

Quebec

1. Ekuanitshit First Nation
2. Essipit First Nation
3. Nutashkuan First Nation
4. Association de gestion halieutique Mi'gmaq/Malecite
5. Mamit Innuat
6. Mamuitun
7. Pakuashipi
8. Pessamit
9. Uashat-Mak-Mani-Utenam
10. Unamen Shipu
11. Listuguj First Nation
12. Gespeg First Nation
13. Gesgapegiag First Nation