



Government of Newfoundland and Labrador
Department of Environment and Conservation
Environmental Assessment Division

October 17, 2014

Mr. David Schulze
Dionne Schulze - Attorneys
507 Place d'Armes #1100
Montreal, Quebec H2Y 2W8

Dear Mr. Schulze,

Re: Reply to your August 22 and September 25, 2014 letters concerning the Environmental Assessment of the Labrador-Island Transmission Link Project: *Endangered Species Act* – Mitigation and Monitoring Plan for Endangered Species. Your file number: 7550-005

I would like to thank you for your correspondence and would like to assure you that appropriate monitoring and mitigation for listed species during construction and operation of the Labrador-Island Transmission Link Project (hereunto referred to as the 'Project') are priorities for this province. The province has discussed your concerns regarding ongoing LITL construction work in Labrador with Nalcor and I would like to offer the following.

This Project has undergone a complex review process and, upon release, was subject to a number of very specific terms and conditions designed to minimize disturbance and mitigate potential negative effects on valued ecosystem components during project construction and operation. One example would be the Project Wide Environmental Protection Plan (EPP) that was subject to Aboriginal consultation and can be viewed on our website at http://www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1407/index.html

Many of the mitigations contained within the EPP mirror what is written in the Species at Risk Impact Mitigation and Monitoring Plan (SAR IMMP) distributed for Aboriginal consultation on September 10, 2014. As noted in your letter, the SAR IMMP was initially sent out for Aboriginal consultation on October 17, 2013. During the intervening months, officials in this department have had many discussions with Nalcor to improve upon and advance this SAR IMMP. Mitigations to minimize impacts to caribou herds in Labrador, as well as other listed

species in the province that may be impacted by this Project, have been implemented by Nalcor for work undertaken in Labrador.

I would like now to provide more detailed responses to your questions posed in the September 25, 2014 letter.

Please note that the French translation of the caribou chapter was provided as a courtesy to our unilingual stakeholders to aid in their understanding and review of the SAR IMMP as it relates to listed caribou in Labrador. You had indicated in previous correspondence that listed caribou herds in Labrador were your chief concern.

As indicated by Mr. Michael Alexander in a recent letter to you, the federal departments of Fisheries and Oceans and Environment are ensuring that Nalcor develops and implements relevant mitigations and monitoring as set out in the Comprehensive Study Report. Please be assured that, as a Regulator, this department will ensure that any permit applications received from the Proponent be reviewed to determine whether they are suitable for approval.

The intent of the SAR IMMP is to provide for appropriate mitigation to ensure, to the degree possible, that activities will not prevent the recovery or survival of the designated species as well as to define monitoring projects designed to confirm Nalcor's predictions made in the EIS and to determine the effectiveness of measures taken to mitigate the adverse environmental effects of the Project. Please be assured that the province's wildlife officials have considered and applied, where appropriate, the example from British Columbia, as well as examples of monitoring and mitigation documents from other jurisdictions in Canada, to inform their expertise on the Project's impact mitigation and monitoring plan. For example, many of the possible management actions outlined in Table 2 of the *South Peace Northern Caribou Mitigation and Monitoring Plan Guidance* to mitigate impacts to caribou through avoidance (relocating activities outside of sensitive time periods, using previously disturbed areas, scheduling within time windows), minimization (access control measures, standardized practices and guidelines, decommissioning of access not needed for long term maintenance), and offsetting (deactivating or restoring roads, research, monitoring, inventory) are committed to in the SAR IMMP. As such, the draft SAR IMMP for the Project addresses the measures outlined in your letter (page 10). Each measure is outlined below with the applicable commitments and criteria outlined in the SAR IMMP:

A. Use “biodegradable lubricants and hydraulic fluids...when working near waterbodies”

Nalcor has indicated that biodegradable lubricants and fluids will be used except where they void warranties for a piece of equipment. Please be assured that in such cases, appropriate spill response equipment will be available and on site during all construction activity. Please note that Nalcor committed to having a spill response team trained and formed prior to any construction activities.

B. Keep “access and other disturbances on the landscape...within existing areas of disturbance”

The SAR IMMP outlines the following actions to keep access and other disturbances on the landscape within existing areas of disturbance in the planning of the Project and Nalcor’s commitment to decommission access roads and trails that are not necessary for operations and maintenance purposes:

- “The re-routing of the ROW to parallel the TLH and the south side access road has decreased range fragmentation and linear feature effects of the Project.”
- “Use existing roads, quarries and other disturbed areas, where possible.”
- “Use existing right-of-way corridors for construction of transmission lines where possible.”
- “Access roads and trails built during construction will be decommissioned that are not required for operations and maintenance activities.”

C. Refrain from creating new roads and access trails

New roads and access trails have been minimized in the planning of the Project. The SAR IMMP emphasizes continued adherence to this as well as the approach to decommission access roads and trails that are not necessary for operations and maintenance purposes. The SAR IMMP specifically outlines the following commitments:

- “The re-routing of the ROW to parallel the TLH and the south side access road has decreased range fragmentation and linear feature effects of the Project.”
- “Use existing roads, quarries and other disturbed areas, where possible.”

- "Use existing right-of-way corridors for construction of transmission lines where possible."
- "Access roads and trails built during construction will be decommissioned that are not required for operations and maintenance activities."

D. Limit traffic along the transmission line ROW, including the use of gates and other control measures

The SAR IMMP outlines the following commitments regarding access control measures:

- "Active work areas and access roads will be off limits to unescorted non-Project personnel, including during the hunting season." The south side road is gated and access is enforced by security personnel.
- "Access control measures (e.g., signage, gates) to address OHV use of access roads and trails required for Project operations and maintenance will be examined and discussed with NLDEC-WD, and applied as applicable and will be described in the EPP." Upon completion of construction, Nalcor will determine and discuss with NLDEC-WD the access roads/trails that are required for maintenance. Once this information is known the applicable criteria for access control measures will be discussed and employed.
- Also, Nalcor have posted no hunting signage and no admittance signage (including translated versions into Innu-aimun) at several workfronts for the Project.

E. Impose "haul distances for construction material"

As indicated in the SAR IMMP, haul distances will be limited to the extent practical. When this is not the case, longer haul distances may reflect the avoidance of sensitive habitat or be due to technical or terrain challenges.

F. Delay blasting "until wildlife have been allowed to leave the area of their own accord"

The SAR IMMP outlines the following criteria for delaying blasting:

- "If caribou are within 3km of the site, blasting will be delayed until caribou have left the area."

- “Environmental personnel and OSEMs will conduct a pre-blast survey for [avifauna] species at risk. A visual survey of the immediate area of a blast site within one hour prior to a blast and operations will be curtailed if wildlife is observed within 500m.”

G. Use non-residual herbicides and mechanical methods for vegetation removal

Nalcor currently uses a non-residual herbicide, e.g., Escort, for their vegetation control programs. Any herbicide application will be subject to *the Pesticides Control Regulations 2012* and the *Environmental Protection Act SNL 2002*. Permit requirements will also ensure that application methods and minimum buffers to sensitive habitats to minimize negative effects will be required. Nalcor has also committed to mechanical methods for vegetation removal for vegetation control programs.

H. Limit the removal of vegetation along rivers

In the SAR IMMP, Nalcor has committed to maintaining vegetation buffer zones at environmentally sensitive areas; including riparian zones (see Section 12.2.5.1 of the LITL EIS).

- “For known Rusty Blackbird nests, a minimum 75m buffer of natural vegetation will be maintained to increase likelihood of successful fledging”
- “For known Harlequin Duck nesting areas, a 100m buffer of natural vegetation will be maintained along the river’s edge during their breeding, nesting and staging times (May through September). A 30m buffer will be maintained outside of the sensitive nesting season. Clearing and construction within these buffers during this time will not occur unless otherwise authorized.”
- “Mitigation measures in place for riparian zones, as described in Section 12.2.5 of the LITL EIS (Vegetation) (Nalcor 2012a) are likely to limit effects on nesting sites for Harlequin Duck by maintaining undisturbed buffers around streams and watercourses.”
- “Mitigation measures in place for riparian zones, as described in Section 12.2.5 of the LITL EIS (Vegetation) (Nalcor 2012a), will minimize effects on breeding sites for Rusty Blackbird by maintaining undisturbed buffers around streams and watercourses.”

I. Apply “access control measures...in certain areas associated with facilities and/or ongoing activities to prevent disturbance of individual caribou”

The SAR IMMP outlines the following commitments regarding access control measures:

- “Access control measures (e.g., signage, gates) to address OHV use of access roads and trails required for Project operations and maintenance will be examined and discussed with NLDEC-WD, and applied as applicable and will be described in the EPP.” Upon completion of construction, Nalcor will determine and discuss with NLDEC-WD the access roads/trails that are required for maintenance. Once this information is known the applicable criteria for access control measures will be discussed and employed.
- Also, Nalcor have posted no hunting signage and no admittance signage (including translated versions into Innu-aimun) at several workfronts for the Project.

J. Avoid Harlequin Duck nesting sites

The SAR IMMP outlines the following criteria for avoiding Harlequin Duck nesting sites:

- “For known Harlequin Duck nesting areas, a 100m buffer of natural vegetation will be maintained along the river’s edge during their breeding, nesting and staging times (May through September). A 30m buffer will be maintained outside of the sensitive nesting season. Clearing and construction within these buffers during this time will not occur unless otherwise authorized.”
- “Mitigation measures in place for riparian zones, as described in Section 12.2.5. of the LITL EIS (Vegetation) (Nalcor 2012a) are likely to limit effects on nesting sites for Harlequin Duck by maintaining undisturbed buffers around streams and watercourses. Details are outlined in the HVdc Transmission and HVdc Specialties Environmental Protection Plan. Additionally, the final ROW alignment within the transmission corridor has been sited to avoid known breeding sites and limit vegetation clearing at the edge of rivers, to the extent practical.”

K. Avoid clearing during bird nesting and breeding season

The SAR IMMP outlines the following criteria for avoiding clearing during bird nesting and breeding season and mitigations if clearing is necessary to occur during the breeding and nesting season:

- "Schedule activities related to transmission line construction around sensitive periods or areas, to the extent practical"
- "Where possible, the bulk of clearing shall take place during the non-breeding season."
- If clearing must occur during the nesting and breeding season, "Helicopter surveys for active raptors nests will be completed during late May through early June of the area of interest. Line transects will be flown along 3 transect lines covering 100% of the area to be cleared. Trained surveyors will complete ground searches for avifauna nests during 15 May to 31 July (Labrador), and 1 May to 31 July (Island) <7 days prior to the clearing activity. The census techniques will vary according to habitat but will be based on 100% coverage of the area of interest. To assure 100% coverage of the area of interest, three surveyors will each survey line transects of 10 m wide. The line transects will be completed in the area of interest by 1 km intervals to insure a thorough search. In total, 8 teams of 3 surveyors will be required for 3 nesting seasons, while 2 teams of 3 surveyors will be required for the final season. Active and potentially active nests will be identified using the criteria identified above according to species with information collected based on Maritime Bird Breeding Atlas Nest Record Card (Bird Studies Canada, 2006) and locations and mitigation measures communicated to the Construction Manager who will communicate to the On-site Environmental Monitors. The area of interest will only be cut after the survey team has cleared the area after completing their search. No cutting will be permitted until the survey team has returned to a buffered area to confirm fledging within the appropriate timeframe for the species in question found at the active nest. Note that an experienced avifauna biologist will be available for assistance and consultation following the initial surveys and throughout the identified period for the project. The ground survey team will be instructed in the identification of nests that may be readily visible or well concealed. The survey team will be aware of behavioral cues that suggest the presence of an active nest, even if it cannot be seen. These cues include singing males, pairs observed together (including courtship and copulation), adult birds repeatedly carrying nest materials or foods to a specific location, aggressive defense of a location (against other birds or people), or the presence of recently fledged birds (often with some tufts of down feathers remaining, or begging

persistently for food). For raptors such as hawks and owls, active nests will be identified as per the Avifauna Management Plan and appropriate buffers applied.

- Clearing and associated mitigations apply to ground/shrub/scrub clearing as well as forest removal in areas where ground-nesting birds may be present.”
- “No clearing shall take place within 800 m of an active raptor nest between the months of May 1 to August 15 (Island) and May 15 to August 15 (Labrador). If a nest is encountered during clearing activities, all work shall stop until the site is cleared by the On-Site Environmental Monitor, in consultation with the appropriate regulatory agencies.”
- “Where required (i.e., as per the Avifauna Management Plan or associated EEM Plans), prior to commencement of work, an on-site wildlife biologist shall be onsite to survey for areas of concern (critical breeding habitat, rare plants, nest sites, etc.) and to provide input on work methods, lay out approved travel routes and work areas and associated buffer zones”

L. Avoid disturbing wetlands

The SAR IMMP indicates that disturbances to wetland habitats are likely to be limited as construction activities will generally avoid these areas.

M. Avoid work during sensitive seasons for bird species of conservation concern

The SAR IMMP outlines the following criteria for avoiding work during bird nesting and breeding season and mitigations if clearing is necessary to occur during the breeding and nesting season:

- “Schedule activities related to transmission line construction around sensitive periods or areas, to the extent practical”
- If clearing must occur during the nesting and breeding season, see mitigations outlined above (**Avoid clearing during bird nesting and breeding season**)

With regards to the presence of caribou, it is important to preface the following comments on establishing criteria for caribou mitigation by emphasizing that Scenario 3 of the SAR IMMP represents the highest level of risk and where the highest level of mitigation, spatial and temporal avoidance will be applied. It is also important to understand the nested approach of these

mitigation and monitoring scenarios where Scenario 1 sets the criteria for caribou within 20km of Project activities and Scenario 2 for caribou within 5km of Project activities:

- A. For the cautionary period in late winter, criteria for activities to be restricted, delayed or minimized if they are to occur “within 1 km of the known 90% kernels and caribou are known to be present”**

The criterion that is established is as follows:

1. Use existing disturbed areas rather than creating new ones.
 - The transmission line was re-routed to parallel the TLH, and existing disturbance, to reduce removal of habitat within caribou ranges, thus minimizing the likelihood that Scenario 3 will occur.
2. Scheduling of Activities
 - The proponent is encouraged to schedule activities outside of the cautionary period in late winter to avoid the situation described in Scenario 3.
3. Avoidance.
 - In order to avoid impacts, activities can be deferred to other areas outside seasonal ranges, or rescheduled to another time when caribou have left the area, and the precautionary time periods to not apply.

- B. For the critical calving/immediately post-calving period in the spring for activities to be restricted, delayed or minimized if they are to occur “within 1km of the known 90% kernels for the calving/immediately post-calving period and caribou are known to be present”**

The criterion that is established is as follows:

1. Use existing disturbed areas rather than creating new ones.
 - The transmission line was re-routed to parallel the TLH, and existing disturbance, to reduce removal of habitat within caribou ranges, thus minimizing the likelihood that Scenario 3 will occur.
2. Scheduling of Activities
 - The proponent is encouraged to schedule activities outside of the critical period in calving and immediately-post-calving to avoid the situation described in Scenario 3.
3. Avoidance.

- In order to avoid impacts, activities can be deferred to other areas outside seasonal ranges, or rescheduled to another time when caribou have left the area, and the precautionary time periods to not apply.

C. For blasting planned for when caribou are within 3km of the site, the conditions under which Nalcor would be allowed to seek permission to go ahead

The SAR IMMP outlines the following criteria for delaying blasting:

- "If caribou are within 3km of the site, blasting will be delayed until caribou have left the area."
- For blasting to occur if a caribou is within 3km of the site, Nalcor would be required to model the blast activity and provide the analysis to NLDEC-WD to determine if the blast decibel level would not have an impact on caribou

D. For all other project activities when caribou are observed within 500m, the criteria for restricting, delaying or minimizing activities

The SAR IMMP outlines the following criteria for other project activities:

- "As these activities would not be audible beyond a short distance, if caribou are observed within 500m of such an activity, the OSEM will determine if the activity will be delayed or curtailed.
- The criteria would depend on the activity but the activities listed under Scenario 5 of the SAR IMMP are not likely going to have an impact on a caribou within 500m.

Regarding your comments on the Labrador Woodland Caribou Recovery Team (LWCRT) and the caribou recovery strategy, each comment is addressed separately:

"It is important to remember two facts about the Labrador Woodland Caribou Recovery Team (LWCRT). First, its work was carried out without representation from the Innus whose reserves are in Quebec, in spite of their title and ancestral rights in Labrador, agreed to by the government of Canada for negotiation purposes decades ago."

The Labrador Woodland Caribou Recovery Team is a provincial recovery team that is formally recognized under the *Endangered Species Act*. The team was established by the Wildlife Division and has always had a policy of including any interested parties in the activities and meetings of the team. The team has been established to provide a forum for those interested

in furthering the recovery of the species to discuss issues, present solutions, develop a recovery plan and provide guidance to the Minister responsible for the *Endangered Species Act*. The Wildlife Division has taken an active role in including the Innu of Quebec in discussions pertaining to the status and management of caribou of the Ungava peninsula and several invitations to sit and discuss recovery have been presented to the Quebec Innu from the Wildlife Division. Specifically, in May 2007 in conjunction with a recovery team meeting one full day was dedicated to Aboriginal perspectives on caribou conservation for the Threatened herds, and the meeting was attended by a large group of Innu from Quebec. Additionally, in January 2011 officials travelled to Sept Isles and presented to all Quebec North Shore Innu chiefs on the status and management of both George River and Boreal Sedentary caribou. If the Ekuanitshit wish to participate on the recovery team the Wildlife Division could certainly provide information on future meetings and would be open to discussing participation in team activities.

“Second, with regard to a recovery strategy for the three herds of woodland caribou in Labrador, including the Red Wine Mountains Herd, the LWCRT’s work has produced no tangible results in the last ten years.”

The LWCRT is an advisory body. They discuss research, provide advice, support enhanced communication among regional stakeholders, draft recovery plans, and may advise on critical and recovery habitat and advise the Minister on the implementation of recovery programs. They are not the management authority for boreal woodland caribou. The advice that LWCRT provided in the July 2004 Recovery Strategy has been taken by the department and other interested parties with several programs completed or currently underway including stewardship initiatives, surveys of every population, survival estimates of every population, the development of an ecological land classification for Labrador geared toward assessing habitat preferences for caribou, and mapping of high value areas both seasonally and range wide. Much of this work will be available in the updated recovery document and in a science companion piece that is currently being drafted.

“The strategy developed by the LWCRT was published by your department in July 2004 and, as the strategy itself stated, was to be followed in two years by an action plan and reviewed every five years. On the ground, the strategy was supposed to lead to the identification of the critical habitat and recovery habitat for the three herds.

A decade later, there is still no action plan, the essential habitat has not been identified and the strategy has never been reviewed. In its response to the March 15, 2012, Joint Review Panel on the Gull Island and Muskrat Falls Hydroelectric Complexes, the government of Newfoundland promised that an updated strategy would be published in the same year—which should have made it possible to adopt an action plan and identify the critical habitat—but that promise was not kept, although work has started.”

Since 2004, the recovery team has spent an extensive amount of time reviewing ongoing research, initiating and discussing stewardship activities and discussing land use activities. At the time that the 2004 document was drafted, the province was following the recovery document development processes that were being conducted nationally. Since that time, the federal recovery planning process and the provincial processes have diverged to be more in line with the requirements of each respective piece of legislation. The recovery team in conjunction with the Wildlife Division has been working on developing a Recovery Plan to meet the requirements of the *Endangered Species Act*. The federal recovery planning process requires the development of Recovery Strategies and Action Plans under the *Species at Risk Act*.

The provincial *Endangered Species Act* states a recovery plan shall (a) identify measures for the recovery of a designated species; (b) identify critical habitat, where appropriate; (c) identify recovery habitat, where appropriate; and (d) contain a schedule for implementation of the plan. The extensive habitat use analysis conducted to inform the critical habitat piece of the recovery plan is still being finalized. Once completed this ongoing work will be summarized and incorporated into the draft plan for presentation to the recovery team.

Next Steps

Please note that the province is satisfied with mitigations and monitoring outlined in the SAR IMMP. We note your concern about the use of terms such as, ‘to the extent practical’ and, ‘if necessary’ when outlining specific mitigations. We did share some of your concern with the use of these terms during the EIS review period. The Canadian Environmental Assessment Agency requested clarification during the EA review concerning the use of these words (CEAA-16) and I would refer you to the response provided by the Proponent relative to this Information Request. Please be assured that the use of these terms does not minimize any permit requirements or approvals that will be issued by this province. For example, when the proponent indicates that ‘haul distances for construction activities will be limited to the extent practical’,

the province is confident that routes chosen will be made in the interest of avoiding sensitive habitat or due to the location of appropriate borrow pits and quarries. Similarly, new access will only be created in consultation with the appropriate regulatory agency and will always be subject to appropriate permits.

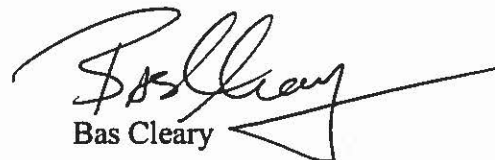
I would also like to indicate that all EEMs, EPPs as well as the SAR IMMP are considered 'living documents'. This means that should environmental conditions change, or for example should better herbicides become available, then these Plans will be updated to reflect better available mitigations,

We appreciate you and your client's interest in participating in forest ecosystem management for District 19 in Labrador. The current Forest Ecosystem Strategy Plan for FMD 19 is valid for five years and will be up for renewal in 2017. However, any permits associated with harvesting in this District, relative to this Project, are subject to Aboriginal consultation. I note that on February 13, 2014 a commercial clearing/operating permit relative to District 19 was sent out by Nalcor for a 30 day Aboriginal consultation period.

I urge you and your client to submit any comments you may have on this SAR IMMP to Ms. Kirsten Miller, Senior Wildlife Biologist in the provincial Wildlife Division. Please bear in mind that this SAR IMMP must satisfy the Province of Newfoundland and Labrador's requirements for appropriate avoidance, mitigation and monitoring measures to protect species at risk to the greatest extent possible.

Thank you for bringing your concerns to our attention and please don't hesitate to contact me should you have any additional concerns.

Sincerely,



Bas Cleary

Environmental Assessment Division

Cc. Michael J. Alexander, Regional Director General, Fisheries and Oceans Canada
Maurice Landry, Regional Director, Programs – Atlantic, Transport Canada