

**Comments from Ecology Action Centre on**

**Draft Terms of Reference for the Preparation of an Environmental Assessment Report**

**Mill Transformation and Effluent Treatment Facility Project Proposed by Northern Pulp Nova  
Scotia Corporation**

**Submitted to Nova Scotia Environment and Climate Change,  
January 31, 2022**

## **Overview**

The Ecology Action Centre (“EAC”) provides the following recommendations for improving the terms of reference (“TOR”) for the environmental assessment (“EA”) of the Mill Transformation and Effluent Treatment Facility Project which the proponent, Northern Pulp Nova Scotia Corporation (“Northern Pulp” or “the corporation”), has proposed. The draft TOR are more comprehensive and rigorous than those written for the EA of Northern Pulp’s proposed Replacement Effluent Treatment Facility Project in 2019 and require more accountability from the proponent. We agree with Nova Scotia Environment and Climate Change (“NSECC”) and the widely accepted principle in environmental assessment that the purpose of an EA is to assess the impact of a proposed project on a particular environment and not to presuppose or establish thresholds or targets prior to the assessment.

There are a number of gaps or ambiguities in the draft TOR that the EAC would like to see addressed in the final TOR. Our main concern is that there is a lack of clarity around the spatial and temporal boundaries of the proposed project. The pulp mill facilities at Abercrombie Point have not been in full operation since early 2020. The proposed Mill Transformation and Effluent Treatment Facility Project will result in the operation of an industrial facility that will have major impacts on the air, water and forests of Nova Scotia as well as on Nova Scotia’s climate targets. Since the formerly operating mill ceased operating, neighbouring communities—including Pictou Landing First Nation—have been able to enjoy cleaner and fresher air, and new environmental, community health, and socio-economic status quo have been established. The decision whether or not to approve new pulp mill operations at Abercrombie Point has major implications for the protected Indigenous rights of Pictou Landing First Nation and all Mi’kmaq in Nova Scotia; moreover, all Nova Scotians stand to be affected by the impacts that an operating mill will have on the province’s forested ecosystems and the communities they support. For example, our understanding is that an operating pulp mill at Abercrombie Point will require over one million tonnes of wood fibre per year. This demand for wood will have a major impact on the forests of Nova Scotia, on the species that inhabit those forests—including species at risk—and on the role our forests play in sequestering carbon. It is not clear that the draft TOR require assessment of these activities and impacts.

In the EAC’s view, the TOR for the proposed Mill Transformation and Effluent Treatment Facility Project must clearly require assessment of the full scope of impacts of a new operational mill at Abercrombie Point. The question is not whether a currently operating pulp mill will be allowed to continue its operations: the question is whether Nova Scotia will move from a new status quo of having no pulp mill operating at Abercrombie Point to having a new mill operating there.

As an additional point, we also note that although Northern Pulp is proposing new and “transformed” pulp mill operations at Abercrombie Point, much of the existing infrastructure on the site is very old, and not all of it is slated for changes or upgrades under the proposed Mill Transformation and Effluent Treatment Facility Project. Assessing the full scope of impacts of new pulp mill operations at Abercrombie Point must therefore also involve assessment of existing infrastructure’s capacity to function in the long term where no changes or upgrades are proposed.

As the Government of Nova Scotia reviews these comments and establishes the final TOR for the proposed project, we strongly encourage the Government to adhere to best practices in EA and to resist pressure from the proponent or related groups, whether in the form of paid advertising, a flood of similar

submissions or a lawsuit,<sup>1</sup> to weaken the terms of reference for the assessment. The health and prosperity of Pictou County, Pictou Landing First Nation, and Nova Scotia depend on it.

We have organized our comments so that they are linked to the relevant sections of the draft TOR. At the end of this document, we have also provided a table listing our recommendations by section.

## Comments on the Executive Summary

### Comment 1

The EAC disagrees with and is concerned by the following description of an EA, which appears on page 2 of the draft TOR document:

An Environmental Assessment is a planning tool that allows development to occur while protecting the environment.<sup>2</sup>

Nova Scotia's *Environment Act* defines "environmental assessment" as "a process by which the environmental effects of an undertaking are predicted and evaluated and a subsequent decision is made on the acceptability of the undertaking".<sup>3</sup> The purpose of an EA is not to allow proposed development to occur, as the above-quoted passage from the draft TOR suggests: its purpose is to inform a decision as to whether proposed development should be allowed to occur.

**Recommendation 1:** The TOR should reflect the legislated definition of "environmental assessment" and should not imply that the proposed undertaking will ultimately be allowed.

### Comment 2

The EAC agrees with and supports the following statement on page 2 of the draft TOR document.

The EA process does not propose or identify specific effluent and emission limits. It is up to the proponent, based on a full identification and evaluation of the potential impacts of the project, the capacity of the environment to handle these impacts, and any mitigations that would reduce them, to determine the overall impact of the project and recommend specific limits that a particular receiving environment can support.

Nova Scotia's *Environment Act* defines "environmental assessment" as "a process by which the environmental effects of an undertaking are predicted and evaluated and a subsequent decision is made on the acceptability of the undertaking".

The purpose of an EA is to assess if a particular project can be carried out in an acceptable manner in a particular location. Setting allowable limits before reviewing the science, considering local and Indigenous knowledge, engaging with experts and hearing from the public would undermine the value

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<sup>1</sup> Northern Pulp has filed a lawsuit seeking 450 million in damages against the Government of Nova Scotia and by extension the citizens of Nova Scotia. See Aaron Beswick, "Northern Pulp sues Nova Scotia for \$450 million" *Saltwire* (16 December 2021), online: <<https://www.saltwire.com/atlantic-canada/news/northern-pulp-sues-nova-scotia-for-450-million-100671646/>>.

<sup>2</sup> This description also appears verbatim in the Introductions section of the draft TOR, on page 8 of the draft TOR document.

<sup>3</sup> *Environment Act*, SNS 1994-95, c 1 (as amended) at subsection (3)s.

and purpose of an EA. The appropriate time to set limits is at the conclusion of this process and/or when approvals are issued. To do so at the beginning would be to put the cart before the horse. It is important to remember and uphold the principles and goals listed in the purpose section of Nova Scotia's *Environment Act*, including the precautionary principle and the principle of pollution prevention.

The EAC also wishes to note that the passage quoted above from page 2 of the draft TOR concludes by stating:

If, through the EA review, proposed emission limits are identified to address the potential impacts of a project without causing significant environmental or adverse effects, the project can receive an EA approval. Specific limits (i.e., pertaining to effluent and emissions) are established through subsequent authorizations (i.e., industrial approval) once this planning phase and the environmental review is complete.

The EAC is concerned by the suggestion that specific limits may only be established through subsequent authorizations. EA approvals are typically issued under terms and conditions that set parameters for the construction, operation and decommissioning of proposed undertakings that have been assessed and approved.

Although the EAC agrees with and supports the view that Nova Scotia's EA process requires the proponent to demonstrate that their proposed project can be carried out safely by identifying prospective impacts and assessing the receiving environment's capacity to handle those impacts, we are concerned by the suggestion that specific limits may not be included as conditions of an EA approval if an approval is granted.

**Recommendation 2:** The TOR should recognize that specific limits may be included as conditions of an environmental assessment approval if an approval is granted.

**Comment 3: Subsection 1.3 (Proposed Project) and Section 3.0 (Project Description)**

The descriptions of the proposed project that appear in subsection 1.3 and section 3.0 of the draft TOR suggest that the EA may focus on the impacts of specific changes to the pre-existing infrastructure at Abercrombie Point (see pages 9-10 and 13).

In the EAC's view, the EA of the proposed Mill Transformation and Effluent Treatment Facility Project cannot focus solely on the impacts of specific changes to the pre-existing infrastructure at Abercrombie Point. It is inappropriate and contrary to the purpose of Nova Scotia's EA regime to frame this Class II EA as an assessment of proposed modifications to an existing mill.

It is noteworthy that the Replacement Effluent Treatment Facility Project that the proponent proposed when the mill was operational was deemed to require a Class I EA, whereas the project currently proposed was deemed to require a Class II EA. Public statements by former Minister of Environment and Climate Change Keith Irving indicate that the decision to require a Class II EA recognized the reality that the proposed "transformation" "would make the mill a substantially different facility than the one that

had operated there previously”.<sup>4</sup> Notably, this recognition of the substantial differences envisioned by the proposed “transformation” is being echoed strategically as a public relations point by the Friends of a New Northern Pulp—a prominent new industry campaign promoting the “new pulp mill” that Northern Pulp has proposed.<sup>5</sup>

The EAC agrees with former Minister of Environment and Climate Change Keith Irving and the Friends of a New Northern Pulp that the Mill Transformation and Effluent Treatment Facility Project proposed by Northern Pulp is, in effect, a “new” mill. Not least for this reason, our view is that the EA of the proposed Mill Transformation and Effluent Treatment Facility Project must assess the entire scope of impacts that are relevant to the construction, operation and decommissioning of the proposed new mill facilities, including all potential impacts on the air, water, and forests of Nova Scotia, as well as all potential impacts on the Aboriginal and treaty rights of the Mi’kmaq of Nova Scotia and other Indigenous groups that may be affected.

As additional support for this position, we note that this EA is unlike any EA conducted for the formerly operating pulp mill at Abercrombie Point. Before its original construction in the late 1960s, the formerly operating mill received no EA as we use that term today, as no such process was in place at the time. Since then, EA of proposed changes to mill facilities (i.e., the abandoned assessment of the proposed Replacement Effluent Treatment Facility Project) assessed proposed changes to a mill that was currently in operation. This meant that the status quo contextualizing that assessment was that of an operating mill, with its then-current activities fully authorized under approvals such as Nova Scotia’s Industrial Approval 2011-076657-A01.

The status quo that existed when the proposed Replacement Effluent Treatment Facility Project triggered an EA does not exist today. The existing mill facilities at Abercrombie Point are no longer operational (excepting the minimal operations required to maintain the facilities’ hibernation state). There is currently no Industrial Approval in place that authorizes the existing mill facilities to be operated for pulp production, and it has been roughly two years since the facilities were used for that purpose.

The effects of the *Boat Harbour Act* and the closure of the Boat Harbour Effluent Treatment Facility mean that the formerly operating mill at Abercrombie Point can never again produce pulp as it once did. If the proponent does not succeed in having new mill facilities approved, the formerly operating mill will remain defunct indefinitely. This means that the current EA process will in effect determine whether a pulp mill operates at Abercrombie Point. The question is not whether a currently operating pulp mill will be allowed to continue its operations: the question is whether Nova Scotia will move from a new status quo of having no pulp mill operating at Abercrombie Point to having a new mill operating there.

This reality has special implications for the assessment of the proposed project’s impacts on the forests of Nova Scotia, including climate impacts (i.e., loss of carbon sequestration) and impacts on biodiversity and species at risk. For this reason, which we address in more depth in our comments below, we recommend that the TOR require assessment of the impacts that the proposed mill’s operations would have on the forests of Nova Scotia.

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<sup>4</sup> Nova Scotia Environment and Climate Change, “Northern Pulp Effluent Treatment Plant Project to Undergo Class II Environmental Assessment” (15 July 2021), online: <<https://novascotia.ca/news/release/?id=20210715009>>.

<sup>5</sup> See Friends of a New Northern Pulp, “About Us” (undated), online: <<https://friendsofnewnp.ca>>.

**Recommendation 3:** The TOR should require assessment of the impacts that the proposed mill's operations would have on the forests of Nova Scotia. These impacts should include climate impacts (i.e., loss of carbon sequestration) and impacts on biodiversity and species at risk.

If new pulp mill operations at Abercrombie Point are approved, the resulting demand for wood will have major implications for Nova Scotia's forests and the wildlife that use them. The increased level of cutting will also have major implications for carbon sequestration and thus for Nova Scotia's climate targets.

The proponent repeatedly discusses the perceived benefits to the forestry industry of Nova Scotia of new mill operations at Abercrombie Point. The following passage is from page 2 of the Environmental Assessment Registration Document for the proposed Mill Transformation and Effluent Treatment Facility Project ("EARD"):

NPNS will invest more than \$350 million in the Mill Transformation Project, which is expected to provide 600 construction jobs for a period of two years. Significant longer-term benefits to Nova Scotia will include (Gardner Pinfold 2019):

- 330 direct and 2,679 indirect jobs, and \$128 million in annual worker income gained throughout the economy, or \$1.28 billion over ten years;
- 1,379 companies supporting mill operations, with 943 suppliers in Nova Scotia, and
- \$279 million annual operating spending, with most spent in Nova Scotia; that is, \$2.79 billion in the next ten years.

The Proponent in the EARD goes so far as to suggest that new mill operations at Abercrombie Point will support the implementation of Professor William Lahey's recommendations in *An Independent Review of Forest Practices in Nova Scotia* ("the Lahey Report").<sup>6</sup> This is a completely unfounded assertion, but it is a clear indication that the proponent considers that the scope or project boundaries extend well beyond the construction footprint of the proposed upgrades to the effluent treatment system and the other changes that have been proposed.

For a pulp mill at Abercrombie Point to operate as it has been envisioned, wood will be sourced from across Nova Scotia. Northern Pulp has an annual wood supply allocation of roughly 200,000 tonnes from Crown land in Central and Southern Nova Scotia.<sup>7</sup> In the past, the annual wood consumption of the formerly operating mill was approximately 1.3 million tonnes, making it by far the largest consumer of wood fibre in Nova Scotia.<sup>8</sup> In the past, the formerly operating mill received some wood fibre from other provinces, but it sourced the vast majority of its supply from Nova Scotia's forests. Without a wood supply of this size or similar, there would be no mill and no jobs.

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<sup>6</sup> Northern Pulp Nova Scotia, "Mill Transformation Project: Class 11 Environmental Assessment Registration Project" (November 2021) at page x, online: <[https://www.novascotia.ca/nse/ea/mill-transformation-and-effluent-treatment-facility/NPNS\\_MillTransformation\\_EARD\\_MainDocument\\_21-11-30.pdf](https://www.novascotia.ca/nse/ea/mill-transformation-and-effluent-treatment-facility/NPNS_MillTransformation_EARD_MainDocument_21-11-30.pdf)>.

<sup>7</sup> See page 18 of this document: file:///C:/Users/action/Downloads/2020-20160-DLF\_PublicPackage.pdf

<sup>8</sup> See Kristina Urquhart, "What's next for Northern Pulp? Transformation plan outlines significant upgrades", *Pulp & Paper Canada* (14 July 2021), online: <<https://www.pulpandpapercanada.com/whats-next-for-northern-pulp-transformation-plan-outlines-significant-upgrades/>>.

Northern Pulp also owns 420,000 acres of forested land in Nova Scotia.<sup>9</sup>

Numerous government reviews have documented the impacts of forestry and forestry practices on forest ecosystems and the wildlife and flora of Nova Scotia, most notably, Phase 2 of the Natural Resources Strategy and the Lahey Report.<sup>10</sup> Both found that our forests are in poor condition and very young.

The Government of Nova Scotia has designated over 60 species at risk in Nova Scotia. In status reports, recovery plans and/or information provided on the website of the Department of Natural Resources and Renewables, forest removal and forestry practices are listed as reasons for the decline in a significant proportion of these species.<sup>11</sup> Examples of species impacted by habitat loss and forestry practices include the mainland moose, American pine marten, olive-sided flycatcher, rusty blackbird, ram's-head lady slipper, boreal felt lichen and many more plants and animals. Of course, impacts on the forests of Nova Scotia will not only affect designated species at risk, but will have broad implications for wildlife species and provincial biodiversity. Failing to assess the impact that new pulp mill operations would have on biodiversity within the province would ignore one of the fundamental principles of Nova Scotia's *Environment Act* (and thus the provincial EA regime): namely, "the principle of ecological value, ensuring the maintenance and restoration of essential ecological processes and the preservation and prevention of loss of biological diversity" (emphasis added).<sup>12</sup>

Forest harvesting and cutting practices also have impacts on the watercourses of Nova Scotia both directly and indirectly. These changes can negatively impact aquatic species including recreationally important species like trout and salmon.

Forests also play an important role in fixing or sequestering carbon. The Lahey Report recognized this role and recommended that the Department of Natural Resources and Renewables develop a framework for Nova Scotian landowners to access carbon trading opportunities.<sup>13</sup> Approving new mill operations at Abercrombie Point and the associated harvesting of Nova Scotia's forests will have major implications for Nova Scotia's carbon budget.

Assessing the proposed Mill Transformation and Effluent Treatment Facility Project without assessing the impact that the proposed mill's operations would have on the forests of Nova Scotia would be like assessing a gold mine without assessing the impact of extracting the gold, or the impact of an offshore oil well without looking at drilling, or a hydroelectric dam without assessing the impact of the reservoir. Moreover, subsection 9.5 of the draft TOR currently requires the proponent to "[i]dentify and describe

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<sup>9</sup> See Nova Scotia Natural Resources and Renewables, "Neenah Land Purchase" (undated), online: <<https://novascotia.ca/natr/land/neenah-2010/>>.

<sup>10</sup> See Nova Scotia Natural Resources and Renewables, "Natural Resources Strategy – Supporting Documents" (undated), online: <<https://novascotia.ca/natr/strategy/downloads.asp>>; see also Government of Nova Scotia, "Ecological Forestry" (undated), online: <<https://novascotia.ca/ecological-forestry/>>.

<sup>11</sup> See Government of Nova Scotia, "Species at Risk – Recovery Update" (undated), online: <<https://novascotia.ca/natr/wildlife/species-at-risk/>>.

<sup>12</sup> *Environment Act*, SNS 1994-95, c 1 (as amended) at clause 2(b)(i).

<sup>13</sup> See for example William Lahey, *An Independent Review of Forest Practices in Nova Scotia (Executive Summary – Conclusions and Recommendations)* (August 2018) at page 43, Recommendation 116, online: <[https://novascotia.ca/natr/forestry/forest\\_review/Lahey\\_FP\\_Review\\_Report\\_ExecSummary.pdf](https://novascotia.ca/natr/forestry/forest_review/Lahey_FP_Review_Report_ExecSummary.pdf)>.

forestry activities in the study area”, and the EA can therefore be expected to address the proposed project’s intersections with the commercial forestry industry. It would be an unbalanced approach and contrary to the purpose of Nova Scotia’s EA regime to include intersections with the commercial forestry industry as part of this EA without also assessing the ecological impacts on the forests of Nova Scotia.

### **Additional Comments on Section 3.0**

#### **Comment 4: Subsection 3.1 (The Proponent)**

The mill that operated formerly at Abercrombie Point began operating in 1967 and was purchased by Paper Excellence, the current owners, in 2008. While the proponent has included the word “transformation” in the proposed project’s name and Friends of a New Northern Pulp on its website is calling the proposed project a “new mill”,<sup>14</sup> and although the EAC agrees that the proposed project is, in effect, a new mill, we nevertheless want to emphasize that the proponent operated the former mill for more than ten years, and the EA should explicitly recognize and consider the performance record of the formerly operating mill and Northern Pulp’s track record in operating it. Past failures to comply with environmental standards and conditions of approval are relevant to this EA, not least because they speak to the proponent’s ability to mitigate adverse effects. Panel members should review and consider the company’s past compliance with Nova Scotia’s regulations and laws. Past performance is one indicator of future performance.

In this regard, the EA should also consider the environmental, social and governance (“ESG”) performance of Paper Excellence and the track record of similar facilities it owns elsewhere in the world.

**Recommendation 4:** The TOR should explicitly recognize and consider the performance record of the formerly operating mill and Northern Pulp’s track record in operating it.

In December 2021, Paper Excellence filed a statement of claim in Nova Scotia Supreme Court against the Nova Scotia Government, and by extension the citizens of Nova Scotia, for 450 million dollars for damages and costs the company alleges arise from the closure of the formerly operating mill. While we understand this dispute is outside the TOR for the EA, in no way should the Government of Nova Scotia be influenced or intimidated by this lawsuit as it finalizes the TOR and carries out the EA.

#### **Comment 5: Subsection 3.3 (Project Design and Components)**

The “Effluent Treatment Facility (ETF)” section of subsection 3.3 currently requires “[c]omparison of the effluent characterization results from the above assessment with appropriate regulations and/or guidelines, including, but not limited to, the draft Pulp and Paper Effluent Regulations (PPER) daily and monthly average limits”.

During the EA of Northern Pulp’s proposed Replacement Effluent Treatment Facility, the proponent used units of measure that were different from those used in the Pulp and Paper Effluent Regulations, which made it impossible for a lay person to compare the characterization of the proponent’s proposed effluent with the federal regulatory standard. Additionally, while the Pulp and Paper Effluent Regulations used

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<sup>14</sup> See Friends of a New Northern Pulp, “About Us” and “Why Support a Mill” (undated), online: <<https://friendsofnewnp.ca/>>.



weekly and monthly averages for nitrogen and phosphorus, the proponent used daily and monthly predicted averages. We note that the draft TOR currently refer only to daily and monthly average limits.

To ensure that members of the public following or participating in the EA process are able to understand the effluent characterizations provided by Northern Pulp and compare them to the standards set in the Pulp and Paper Effluent Regulations, the TOR should require the proponent to ensure that all effluent characterizations are directly comparable to those set out in the draft Pulp and Paper Effluent Regulations, having regard to units of measure as well as temporality (i.e., the use of daily, weekly, and/or monthly average limits).

**Recommendation 5:** The TOR should require the proponent to ensure that all effluent characterizations are directly comparable to those set out in the draft Pulp and Paper Effluent Regulations, having regard to units of measure as well as temporality.

Additionally, it is important to note that although regulatory standards such as those set out in the draft Pulp and Paper Effluent Regulations provide helpful context, they do not necessarily enable adequate assessment of all substances that could have harmful environmental, human health, or socio-economic effects. For example, although the Pulp and Paper Effluent Regulations have been evolving slowly to capture more substances, they do not currently regulate several harmful substances that may be found in effluent, including AOX compounds, chloroform, cadmium, dioxins and furans, PAH, and phenols. The proponent and review panel must be fully cognizant of the proponent's responsibility to identify all relevant components of the proposed project's emissions and discharges and ensure that the effects of those components are assessed.

#### **Comment 6: Subsection 3.5 (Operation)**

In keeping with our comment above on subsection 1.3 and section 3.0 of the draft TOR (Proposed Project and Project Description), the EAC recommends that subsection 3.5 be amended to make it clear that the operation of the proposed mill itself, as a functioning whole, requires assessment. The current language of the draft TOR suggests that the only "project components" requiring assessment are the individual elements that have been proposed as specific changes to the pre-existing mill facilities.

**Recommendation 6:** The TOR should make it clear that the operation of the proposed mill itself, as a functioning whole, requires assessment.

#### **Comment 7: Section 4.0 (Regulatory Environment)**

The TOR should explicitly recognize the proponent's obligation to seek input and expertise from federal departments, including Fisheries and Oceans Canada ("DFO"), Environment and Climate Change Canada ("ECCC") and Health Canada ("HC"). DFO's expertise in marine modelling and ECCC's expertise in atmospheric modelling would complement the expertise and resources available to NSSECC in reviewing the modeling done by the proponent.

**Recommendation 7:** The TOR should explicitly recognize the proponent's obligation to seek input and expertise from federal departments.

## **Comment on Section 6.0: Description of Alternatives to the Project and Section 7.0: Other Methods for Carrying out the Project**

### **Comment 8**

The proponent has rejected the installation of a closed loop system and the production of totally chlorine free (“TCF”) paper. The use of these technologies would reduce the proposed new mill’s environmental impact. A closed loop system would greatly reduce the effluent discharged into Northumberland Strait and the use of a TCF process would reduce the discharge of chlorine compounds.

**Recommendation 8:** The TOR should name TCF and a closed loop system as technologies that could be used in a new mill and require the proponent to consider them fully.

### **Comment 9: Section 8.0 (Assessment Methodology)**

Section 8.0 of the draft TOR (Assessment Methodology) currently requires the proponent to identify, where appropriate, “environmental protection objectives (including those contained in applicable legislation or guidelines) associated with each VEC”. The EAC recommends that the TOR make the proponent’s obligations in this regard clearer as they relate to Nova Scotia’s current GHG emissions reduction objectives. At minimum, the TOR should refer to the GHG emissions reduction targets set out in Nova Scotia’s *Environmental Goals and Climate Change Reduction Act*.

**Recommendation 9:** The TOR should clarify the proponent’s obligation to identify relevant environmental protection objectives associated with climate change mitigation and, at minimum, should refer to the GHG emissions reduction targets set out in Nova Scotia’s *Environmental Goals and Climate Change Reduction Act*.

## **Comments on Section 9.0 : Existing Environment**

### **Comment 10**

Section 9.0 of the draft TOR (Existing Environment) currently requires the proponent to “[p]rovide a baseline description of the environment in the vicinity of the project and all other areas that could be impacted by the project” (emphasis added). Despite this requirement, the current subsections within section 9.0 that identify the environmental components that the proponent must describe do not expressly include the forests of Nova Scotia as environmental components that must be assessed.

Subsection 9.4.1 (Terrestrial Environment) may be interpreted as requiring some discussion of the forests of Nova Scotia—in particular, their function as habitat for species at risk and/or their conservation status under federal or provincial legislation.

In keeping with our comments above on subsection 1.3 and section 3.0 of the draft TOR (Proposed Project and Project Description), the EAC recommends that section 9.0 be amended to include the forests of Nova Scotia as relevant areas that could be impacted by the project and therefore require assessment. Among other reasons for including impacts to forests explicitly, this inclusion will help to ensure that impacts to other relevant environmental components named in the draft TOR (e.g., “wetlands”, “climate”, “sensitive fauna” and “fauna species at risk”, “flora species”, conservation areas and “forestry resources”) will be fully and meaningfully assessed.

**Recommendation 10:** Section 9.0 of the TOR should be amended to include the forests of Nova Scotia as relevant areas that could be impacted by the project and therefore require assessment.

**Comment 11: Subsection 9.2.4 (Wetlands)**

Currently, subsection 9.2.4 of the draft TOR, which addresses the identification of wetlands and wetland functions, fails to recognize a crucial wetland function and require its assessment: namely, the role that wetlands play in carbon sequestration.

The *Nova Scotia Wetland Conservation Policy* recognizes that “[s]toring and sequestering carbon from the atmosphere, potentially moderating climate effects” is one of the many “ecosystem services and functions performed by wetlands”.<sup>15</sup> As we note below in our comments on subsection 9.3.1, Nova Scotia’s *Guide to Considering Climate Change in Project Development in Nova Scotia* and corresponding *Guide to Considering Climate Change in Environmental Assessments in Nova Scotia* both encourage proponents to assess adverse impacts on carbon sequestering ecosystems resulting in the loss of “carbon sinks”. A meaningful assessment of impacts to wetlands requires consideration of this crucial wetland function.

**Recommendation 11:** The TOR should identify the carbon sequestration function of wetlands as a wetland function that should be assessed.

**Comment 12: Subsection 9.3.1 (Climate)**

Subsection 9.3.1 of the draft TOR (Climate) currently requires the proponent to “include a summary of greenhouse gas emission projections for the project, including plans to mitigate those emissions in both the design and operation”.

Although the draft TOR request that the proponent follow Nova Scotia’s *Guide to Considering Climate Change in Project Development in Nova Scotia* (and imply that the corresponding *Guide to Considering Climate Change in Environmental Assessments in Nova Scotia* should also be followed), subsection 9.3.1 neglects to mention a crucial climate change consideration that both of those guidance documents address: adverse impacts on carbon sequestering ecosystems resulting in the loss of “carbon sinks”.

As these guidance documents rightly recognize, assessing a proposed project’s potential impacts on carbon sequestering ecosystems is a crucial part of assessing prospective climate impacts. Notably, both documents use impacts to forests as an example of what can be missed if impacts on carbon sequestering ecosystems are not considered, stating: “carbon sinks such as forests may be lost if these are not considered in the design of a project”.<sup>16</sup>

The TOR should not focus exclusively on GHGs emissions in subsection 9.3.1, as the draft TOR currently do, but should expressly require the proponent to address adverse impacts on carbon sequestering

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<sup>15</sup> Nova Scotia Environment, *Nova Scotia Wetland Conservation Policy* (September 2011) at page 4, online <<https://novascotia.ca/nse/wetland/docs/Nova.Scotia.Wetland.Conservation.Policy.pdf>>.

<sup>16</sup> See Nova Scotia Environment, *Guide to Considering Climate Change in Environmental Assessments in Nova Scotia* (February 2011) at page 1, online: <<https://novascotia.ca/nse/ea/docs/EA.Climate.Change.Guide.pdf>>; see also Nova Scotia Environment, *Guide to Considering Climate Change in Project Development in Nova Scotia* (February 2011) at page 4, online: <<https://novascotia.ca/nse/ea/docs/Development.Climate.Change.Guide.pdf>>.

ecosystems resulting in the loss of “carbon sinks”. Among other things, the cumulative effects of the proposed project’s GHG emissions (the assessment of which is required under section 10.0) cannot be assessed meaningfully if the project’s impacts on carbon sequestration in the province are not considered as well.

**Recommendation 12:** The TOR should expressly require the proponent to address adverse impacts on carbon sequestering ecosystems resulting in the loss of “carbon sinks”.

Finally, subsection 9.3.1 of the draft TOR currently requires the proponent to “[d]etermine the overall impact of the greenhouse gas emissions from the project on the annual emissions profile of the province”. In keeping with Recommendations 11 and 12 above, the EAC recommends that this statement be revised.

**Recommendation 13:** The concluding statement in what is now subsection 9.3.1 of the draft TOR should be revised as follows:

Determine how the project’s greenhouse gas emissions and effects on carbon sinks will impact the annual emissions profile of the province, and assess the significance of those impacts, taking into account the greenhouse gas emissions reduction targets set out in Nova Scotia’s *Environmental Goals and Climate Change Reduction Act*.

**Comment 13: Subsection 9.3.2 (Air Quality)**

The EAC agrees that a meaningful air quality assessment requires review of current baseline data (assessing current conditions with no mill in operation) as well as historical baseline data (assessing conditions from when the formerly operating mill was operational). These data will be needed to determine how new mill operations at Abercrombie Point would impact air quality improvements that have been gained since pulp mill production at the site ceased roughly two years ago.

Although this aspect of the EA will be relevant to all residents living in the vicinity of the proposed project site, it will be especially relevant to Pictou Landing First Nation, the Aboriginal and treaty rights of its members, and the protected Indigenous rights of all Mi’kmaq in Nova Scotia. The former pulp mill operations at Abercrombie Point are arguably Nova Scotia’s most notorious example of environmental racism, and the adverse impacts the mill had on Pictou Landing First Nation are widely known. New mill operations at Abercrombie Point could reproduce adverse impacts to Pictou Landing First Nation community members’ constitutionally protected and internationally recognized rights, and it should go without saying that such impacts must be fully assessed and understood so that they can be avoided.

**Comment 14: Subsection 9.4 (Wildlife, Wildlife Habitat and Species-at-Risk)**

Subsection 9.4 of the draft TOR requires the proponent to “[i]dentify flora, fauna, and habitat types that will be intersected by all components of the project”. The EAC recommends that the language in this subsection be amended to specify that cumulative effects should be considered in addition to direct impacts. We recognize that section 10.0 of the draft TOR (Adverse Effects and Environmental Effects Assessment) requires descriptions of the cumulative effects of project activities; however, we believe it is important to signal the need for cumulative effects assessment as clearly as possible in the portions of the TOR that deal with the identification of valued environmental components and possible impacts on them.

**Recommendation 14:** The TOR should be amended to specify that cumulative effects should be considered in addition to direct impacts when identifying “flora, fauna, and habitat types that will be intersected by all components of the project”.

**Comment 15: Subsection 9.6 (Socio-Economic Conditions)**

Air quality can have a negative impact on human health, and it affects the ability of residents and visitors to enjoy and spend time outdoors. The TOR should explicitly require the proponent to assess the socio-economic effects of improved air quality following the closure of the formerly operating mill and evaluate how new mill operations would affect the new status quo. In particular, the proponent should assess how improved air quality has affected neighbouring communities—including impacts on property prices and businesses that rely on or benefit from improved air quality, such as restaurants and cafes, bed and breakfasts and hotels and the tourism sector in general—and should evaluate whether new mill operations would undo the socio-economic gains that have been made.

**Recommendation 15:** The TOR should explicitly require the proponent to assess the socio-economic effects of improved air quality following the closure of the formerly operating mill and evaluate how new mill operations would affect the new status quo.

**Comment 16: Section 9.7 (Existing and Planned Land Uses)**

The TOR should explicitly reference past industrial uses located at Abercrombie Point in particular Canso Chemicals and any contaminated sites or soils associated with that company: in particular, sites and soils contaminated by mercury.<sup>17</sup>

**Recommendation 16:** The TOR should explicitly reference the industrial legacy of Canso Chemicals and, in particular, should require that the effects of mercury contamination at the proposed project site be assessed.

**Comments on Section 10.0: Adverse Effects and Environmental Effects Assessment**

**Comment 17: Subsection 10.2.4 (Wetlands)**

In keeping with our comments above on subsection 9.2.4, we note that subsection 10.2.4 fails to account for carbon sequestration as a crucial wetland function and require assessment of the possible loss of “carbon sinks”. We therefore reiterate Recommendation 11 (that the TOR should identify the carbon sequestration function of wetlands as a wetland function that should be assessed) and suggest that it be applied to amend subsection 10.2.4 as well as subsection 9.2.4.

**Comment 18: Subsection 10.3.1 (Climate)**

In keeping with our comments above on subsection 9.3.1, we note that subsection 10.3.1 provides minimal direction for a meaningful assessment of climate change considerations. We therefore reiterate Recommendation 12 (that the TOR should expressly require the proponent to address adverse impacts

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<sup>17</sup> For further information on mercury contamination at the proposed project site, see Joan Baxter, “The curious case of Northern Pulp’s neighbour Canso Chemicals, and why its owners keep it alive” (28 November 2019), online: <<https://www.joanbaxter.ca/2019/11/28/the-curious-case-of-northern-pulps-neighbour-canso-chemicals-and-why-its-owners-keep-it-alive/#more-1276>>.

on carbon sequestering ecosystems resulting in the loss of “carbon sinks”) and suggest that it be applied to amend subsection 10.3.1 as well as subsection 9.3.1.

Additionally, Recommendation 13 (that the TOR should clarify the proponent’s obligation to identify relevant environmental protection objectives associated with climate change mitigation and, at minimum, should refer to the GHG emissions reduction targets set out in Nova Scotia’s *Environmental Goals and Climate Change Reduction Act*) is also relevant to the requirements established in subsection 10.3.1.

**Comment 19: Subsection 10.3.2 (Air Quality)**

In keeping with our comments above on subsection 9.3.2, we reiterate that a meaningful air quality assessment requires review of current baseline data (assessing current conditions with no mill in operation) as well as historical baseline data (assessing conditions from when the formerly operating mill was operational). These data will be needed to determine how new mill operations at Abercrombie Point would impact air quality improvements that have been gained since pulp mill production at the site ceased roughly two years ago. In particular, this will be necessary to ensure that adverse impacts to Pictou Landing First Nation community members’ constitutionally protected and internationally recognized rights are fully assessed and understood so that they can be avoided.

**Comment 20: Subsection 10.4 (Wildlife, Wildlife Habitat and Species-at-Risk)**

In keeping with our comments above on subsection 9.4, the EAC believes it is important to emphasize the requirement to assess cumulative effects when identifying and assessing potential impacts on wildlife, wildlife habitat, and species at risk.

**Recommendation 17:** The TOR requirements for the assessment of adverse effects to wildlife, wildlife habitat and species at risk should reiterate the requirement to conduct cumulative effects assessment.

**Comment 21: Subsection 10.7 (Socio-Economic Conditions)**

Under Nova Scotia’s *Environment Act*, the “environmental effects” considered as part of an environmental assessment include effects on socio-economic conditions. Subsections 9.6 and 10.7 of the draft TOR identify some pertinent socio-economic conditions and establish requirements for their assessments, but the subsections do not provide clear guidance on how potential adverse effects on socio-economic conditions should be predicted or assessed.

As we have already noted, the EARD for the proposed Mill Transformation and Effluent Treatment Facility Project includes several claims about the beneficial socio-economic effects that the proposed project will cause. As is the case with most EAs, the proponent can be expected to make further claims along these lines and may provide economic analyses to substantiate them. Assessment of potential socio-economic benefits is a legitimate and important part of EA processes, but in order for such assessments to be accurate—and to be capable of informing wise and sustainable decision-making—they must consider potential socio-economic detriments as well.

An important socio-economic detriment that is often neglected in EAs, but that is increasingly relevant as Nova Scotians and the rest of the world confront the climate emergency, is the social cost of carbon.

Assessing the social cost of carbon involves assigning a dollar figure to each tonne of carbon that a proposed project is expected to produce. Although the Government of Canada has included social cost of carbon accounting in some regulatory decision-making, to our knowledge the practice has not yet been included in environmental or impact assessment processes at the federal level or in Nova Scotia. Although there are disputes about the various approaches that have been taken to arrive at dollar figures representing the social cost of carbon, at our current moment in time, it is critical to engage in some form of accounting for the costs of adding additional GHG emissions to the atmosphere, as well as the costs of removing carbon sequestering ecosystems, when the claimed socio-economic benefits of proposed projects are weighed against the environmental harms those projects may cause.

**Recommendation 18:** The TOR should require “social cost of carbon assessment” as an element of the assessment of socio-economic effects.

**Comment 22: Subsection 10.7 (Socio-Economic Conditions)**

In keeping with our comments above on subsection 9.6, we note again that air quality can have a negative impact on human health and that it affects the ability of residents and visitors to enjoy and spend time outdoors. We reiterate our recommendation that the TOR explicitly require the proponent to assess the socio-economic effects of improved air quality following the closure of the formerly operating mill and evaluate how new mill operations would affect the new status quo.

**Comment on Characterizations of Commercial and Aboriginal Fisheries throughout the Draft TOR**

The EAC notes that the draft TOR are not wholly consistent in their references to commercial fisheries and Aboriginal fisheries: in some locations, the phrase “Aboriginal fisheries” is said to refer to Food, Social, and Ceremonial fisheries; in other locations, “Aboriginal fisheries” is said to include commercial Mi’kmaq fisheries as well. As the Government of Nova Scotia has a constitutional obligation to ensure that the Mi’kmaq of Nova Scotia are fully and meaningfully consulted on all matters affecting their protected Indigenous rights, the TOR should be drafted in a way that enables the proponent and the review panel to be fully aware of—and understand—the full spectrum of Aboriginal rights, treaty rights, and internationally-recognized Indigenous rights that are at stake. Using clear and consistent terminology is one way to prevent confusion.

Additionally, the EAC is aware that Pictou Landing First Nation operates a Netukulimk fishery in Pictou Harbour. Clearly, the proponent’s proposed use of Pictou Harbour as the receiving water for treated effluent has implications for the Netukulimk fishery. In our view, the TOR should explicitly recognize the existence of the Netukulimk fishery and require that potential impacts to the fishery be assessed.

**Recommendation 19:** To ensure that the proponent and the review panel are fully aware of—and understand—the full spectrum of Aboriginal rights, treaty rights, and internationally-recognized Indigenous rights that are at stake, the TOR should use clear and consistent terminology when describing Indigenous rights and interests that are at issue in this EA.

**Recommendation 20:** The TOR should explicitly recognize the existence of the Netukulimk fishery and require that potential impacts to the fishery be assessed.

**Table 1: Summary of Recommendations**

Draft TOR Section(s)	EAC Recommendation
Executive Summary	<p>Recommendation 1: The TOR should reflect the legislated definition of “environmental assessment” and should not imply that the proposed undertaking will ultimately be allowed.</p> <p>Recommendation 2: The TOR should recognize that specific limits may be included as conditions of an environmental assessment approval if an approval is granted.</p>
1.3 and 3.0	<p>Recommendation 3: The TOR should require assessment of the impacts that the proposed mill’s operations would have on the forests of Nova Scotia. These impacts should include climate impacts (i.e., loss of carbon sequestration) and impacts on biodiversity and species at risk.</p>
3.1	<p>Recommendation 4: The TOR should explicitly recognize and consider the performance record of the formerly operating mill and Northern Pulp’s track record in operating it.</p>
3.3	<p>Recommendation 5: The TOR should require the proponent to ensure that all effluent characterizations are directly comparable to those set out in the draft Pulp and Paper Effluent Regulations, having regard to units of measure as well as temporality.</p>
3.5	<p>Recommendation 6: The TOR should make it clear that the operation of the proposed mill itself, as a functioning whole, requires assessment.</p>
4.0	<p>Recommendation 7: The TOR should explicitly recognize the proponent’s obligation to seek input and expertise from federal departments.</p>
6.0	<p>Recommendation 8: The TOR should name TCF and a closed loop system as technologies that could be used in a new mill and require the proponent to consider them fully.</p>
8.0	<p>Recommendation 9: The TOR should clarify the proponent’s obligation to identify relevant environmental protection objectives associated with climate change mitigation and, at minimum, should refer to the GHG emissions reduction targets set out in Nova Scotia’s <i>Environmental Goals and Climate Change Reduction Act</i>.</p>
9.0	<p>Recommendation 10: Section 9.0 of the TOR should be amended to include the forests of Nova Scotia as relevant areas that could be impacted by the project and therefore require assessment.</p>
9.2.4	<p>Recommendation 11: The TOR should identify the carbon sequestration function of wetlands as a wetland function that should be assessed.</p>
9.3.1	<p>Recommendation 12: The TOR should expressly require the proponent to address adverse impacts on carbon sequestering ecosystems resulting in the loss of “carbon sinks”.</p> <p>Recommendation 13: The concluding statement in what is now subsection 9.3.1 of the draft TOR should be revised as follows:</p> <p>Determine how the project’s greenhouse gas emissions and effects on carbon sinks will impact the annual emissions profile of the province, and assess the significance of those impacts, taking into account the greenhouse gas emissions reduction targets set out in Nova Scotia’s <i>Environmental Goals and Climate Change Reduction Act</i>.</p>
9.4	<p>Recommendation 14: The TOR should be amended to specify that cumulative effects should be considered in addition to direct impacts when identifying “flora, fauna, and habitat types that will be intersected by all components of the project”.</p>
9.6	<p>Recommendation 15: The TOR should explicitly require the proponent to assess the socio-economic effects of improved air quality following the closure of the formerly operating mill and evaluate how new mill operations would affect the new status quo.</p>
9.7	<p>Recommendation 16: The TOR should explicitly reference the industrial legacy of Canso Chemicals and, in particular, should require that the effects of mercury contamination at the proposed project site be assessed.</p>
10.4	<p>Recommendation 17: The TOR requirements for the assessment of adverse effects to wildlife, wildlife habitat and species at risk should reiterate the requirement to conduct cumulative effects assessment.</p>



10.7	Recommendation 18: The TOR should require “social cost of carbon assessment” as an element of the assessment of socio-economic effects.
Characterization of Commercial and Aboriginal Fisheries throughout the Draft TOR	Recommendation 19: To ensure that the proponent and the review panel are fully aware of—and understand—the full spectrum of Aboriginal rights, treaty rights, and internationally-recognized Indigenous rights that are at stake, the TOR should use clear and consistent terminology when describing Indigenous rights and interests that are at issue in this EA.
	Recommendation 20: The TOR should explicitly recognize the existence of the Netukulimk fishery and require that potential impacts to the fishery be assessed.