December 19 2024

SeaBlue Canada Submission on the Regional Assessment of Offshore Wind Development in Nova Scotia Committee's Draft Report: Protecting Marine Protected Areas

1. Introduction

The following is a submission by the SeaBlue Canada coalition to the Nova Scotia Regional Assessment Committee (the "Committee") regarding its draft report on the Regional Assessment of Offshore Wind Development in Nova Scotia (the "Draft Report").[1]

SeaBlue Canada is a coalition of eight of Canada's most respected environmental non-government organizations. The coalition works collaboratively to ensure that Canada's marine protected area ("MPA") commitments are ambitious, equitable, and ultimately provide meaningful protection to marine species and habitats. The coalition comprises the Canadian Parks and Wilderness Society, the David Suzuki Foundation, East Coast Environmental Law, the Ecology Action Centre, Nature Canada, Oceans North, West Coast Environmental Law, and WWF-Canada.

SeaBlue Canada supports the development of offshore renewable energy ("ORE") projects as part of the clean energy response to the climate crisis. However, ORE projects, including offshore wind ("OSW") developments, must be managed responsibly and sustainably to minimize impacts to the marine environment, and in a way that advances equity by providing benefits to local communities.

SeaBlue Canada supported *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* ("Bill C-49"),[2] which will enable the prevention or prohibition of offshore interests within offshore areas that have been identified for conservation and protection. Provisions of the amended federal *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, to be renamed the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation and Offshore Renewable Energy Management Act* (the "Federal Accord Act"), will be essential to protect marine biodiversity and will help to facilitate the clean energy transition through development of ORE while supporting the protection of marine biodiversity. Necessary amendments to the provincial legislative counterpart, the *Canada-Nova Scotia Offshore Petroleum Resources Accord*

[1] Nova Scotia Regional Assessment Committee, "Regional Assessment of Offshore Wind Development in Nova Scotia" (October 31, 2024) [Draft Report].
[2] 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*, 1st Sess, 44th Parl, 2023 [Bill C-49].

Implementation (Nova Scotia) Act, to be renamed the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation and Offshore Renewable Energy Management (Nova Scotia) Act* (the "Nova Scotia Accord Act"), has received Royal Assent in the Nova Scotia legislature and awaits proclamation.[3]

For the reasons elaborated below, **SeaBlue Canada does not support the development of OSW developments in legally protected and conserved areas in Nova Scotia's offshore area**. We support the Committee's application of the precautionary principle, the Committee's recommendation of a 25km coastal buffer zone, and the Committee's removal of key legally protected and conserved areas from areas it has identified for consideration for future OSW development. **SeaBlue Canada also strongly recommends that the Committee include a recommendation that the responsible federal and provincial ministers and the Governor in Council ("GiC") take action respectively to ensure protection of MPAs and OECMs, now and in the future.**

2. MPAs and OECMs Protect Marine Biodiversity

Canada has committed to protecting 25% of the ocean by 2025 and 30% by 2030 as part of its efforts to halt and reverse marine biodiversity loss under the *Kunming-Montreal Global Biodiversity Framework*.[4] The federal government protects areas of the ocean using protected area designations and other non-marine protected area legal mechanisms that provide spatial protections, known as "other effective area-based measures" ("OECMs"). MPAs are ocean areas that are set aside and protected for long-term conservation. OECMs are areas where conservation is not the primary objective, but where conservation outcomes are achieved.[5] The federal government has committed to prohibiting potentially harmful effects of industrial activities within all new federal MPAs[6], and avoiding or mitigating industrial activities that pose risks to biodiversity outcomes within OECMs.[7]

MPAs in Canada include *Oceans Act* MPAs, National Marine Conservation Areas ("NMCAs"), and National Wildlife Areas ("NWAs") with marine components or Marine National Wildlife Areas ("mNWAs"). Generally, MPAs prohibit or restrict activities that threaten species and ecosystems. MPAs are managed in part under the *Marine Protected Areas Protection Standard* (the "MPA Protection Standard"), which is based on a recommendation from the National Advisory Panel on Marine Protected Areas Standards. The MPA Protection Standard applies to all MPAs established after April 25 2019 and may be applied to MPAs that existed before that date. The standard prohibits oil and gas exploration, development and production; mineral exploration and exploitation; disposal at sea of waste and other matter; dumping of fill; deposit of deleterious drugs and pesticides; and bottom-trawling. It also restricts vessel discharges inside Canada's Territorial Sea (up to 12NM from shore).

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[3] *An Act Respecting Advancing Nova Scotia Opportunities*, SNS 2024 c 5.
[4] Government of Canada, Office of the Prime Minister, "Minister of Fisheries, Oceans and the Canadian Coast Guard Mandate Letter", by Right Honourable Justin Trudeau (Ottawa: Office of the Prime Minister, December 16, 2021). See also: signatory to Kunming-Montreal Agreement at COP15.
[5] SeaBlue Canada, "A Technical Review of Canada's Other Effective Area-Based Conservation Measures: Alignment with DFO Guidance, IUCN-WPCA Guidance and CBD SBSTTA Guidance" (January, 2019) at page 10.
[6] Fisheries and Oceans Canada, "Federal Marine Protected Area Protection Standard" (Ottawa: Fisheries and Oceans Canada, (2023).
[7] Fisheries and Oceans Canada, "Other Effective Area-Based Conservation Measures (OECM) Protection Standard", online (February 8, 2023).

In Canada, the primary type of OECM is a "marine refuge", which is a fisheries area closure established under the *Fisheries Act*.[8] Specifically, the *Fisheries Act* allows the Minister of Fisheries and Oceans (the "Minister") to prohibit fishing of one or more species or to prohibit any type of fishing gear in an area, using one of two mechanisms: 1) regulations for the purposes of conservation and protection of marine biodiversity[9] or 2) a fisheries management order (lasting up to 45 days with the possibility of renewal), if they are of the opinion that prompt measures are required to address a threat to "the proper management and control of fisheries and the conservation and protection of fish."[10] Marine refuges account for approximately 50% of the protected areas that Canada counts towards its conservation targets. OECMs are managed using the OECM Protection Standard, which is also based on a recommendation from the National Advisory Panel on Marine Protected Areas Standards. It is implemented through Fisheries and Ocean Canada's (DFO) *Guidance for Recognizing Marine Other Effective Area-Based Conservation Measures*.[11]

The MPA and OECM protection standards are a recognition that industrial activities are known to undermine the conservation of biodiversity and achievement of the conservation objectives and outcomes identified for individual sites. The standards reflect findings of the National Advisory Panel on Marine Protected Areas Standards, which recommended that the government adopt the International Union for the Conservation of Nature standards (i.e., prohibiting industrial activities in MPAs) and that the government be satisfied that the risks to intended biodiversity outcomes are avoided or mitigated in OECMs.[12] However, while they represent many international best practices, the MPA and OECM protection standards do not address nascent and emerging ORE industries, despite the fact that many jurisdictions around the world prohibit or strictly limit ORE installations in MPAs, including offshore wind developments, and in many countries – including Australia, France, Germany, the Netherlands, Spain, the United Kingdom – there are specific zones in which offshore wind may be installed, and which have been identified through marine spatial planning.[13]

Although ORE projects, including OSW developments, provide an alternative to fossil fuel-based energy sources and will be necessary as part of a clean energy transition, they must be approached carefully to avoid negative localized and cumulative impacts to marine ecosystems. For example, OSW installations (fixed foundation and floating turbines) can cause negative marine ecosystem impacts, including:

- increased ocean use, which could affect behaviours of fish, whales and other species;

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[8] SeaBlue Canada, "A Technical Review of Canada's Other Effective Area-Based Conservation Measures: Alignment with DFO Guidance, IUCN-WPCA Guidance and CBD SBSTTA Guidance" (January, 2019) at page 4.
[9] *Fisheries Act*, section 43.3(1).
[10] *Fisheries Act*, section 9.1(1).
[11] Fisheries and Oceans Canada, "Other Effective Area-Based Conservation Measures (OECM) Protection Standard", online (February 8, 2023).
[12] Mary Simon and Remi Bujold, et al ,"Final Report of the National Advisory Panel on Marine Protected Area Standards" (September 26, 2018).
[13] Josep Lloret et al, "Floating offshore wind farms in Mediterranean marine protected areas: a cautionary tale" (2023) 0 ICES Journal of Marine Science 1 at 2; see also Government of New Zealand, Ministry of Business, Innovation & Employment, "Annex 3: International models for offshore renewable energy regulation" in Enabling investment in offshore renewable energy discussion document (December 2022); Mike Kofahl & Tina Northrup, Comparative Jurisdictional Research Report on the Assessment and Regulation of Offshore Wind Development, (Ecology Action Centre, March 2023).

- introduction of electro-magnetic fields that impact navigation, predator detection, communication, and the ability for fish and shellfish to find mates;
- changes to existing habitats by altering local or regional hydrodynamics;
- creation of the “reef effect”, where marine life clusters around the hard surfaces of wind developments, drawing populations away from natural habitats and altering ecological dynamics;
- damage to the seafloor because of infrastructure and cables;
- impacts to organism life cycle stages, including larval dispersal and spawning;
- changes to species composition, abundance, distribution, and survival rates;
- increased vessel traffic, with associated increases in vessel strikes and increased pollution; and
- release of contaminants that can be consumed or absorbed by marine life.[14]

The Committee has identified potential factors, which may have impacts on valued environmental components. These impact-producing factors include atmospheric emissions, artificial lighting, vessel activity, noise and vibrations, exclusion zones, seabed disturbance, electrification of subsea power cables, presence of infrastructure, movement of turbine blades, waste handling and management, and accidents and malfunctions.[15]

The Committee has acknowledged that, while the development of OSW projects within the RA Study Area may enable the government to achieve GHG emissions reductions, their development also generates physical, ecological, and socio-economic consequences for the region and the province. Moreover, the Committee drew on the precautionary principle, Etuaptmumk (Two-Eyed Seeing), and adaptative management as principles to help it attain:

> "balance in its deliberations and recommendations between adopting an overly restrictive approach to the many unknowns and accepting a certain level of risk to facilitate an industry which has demonstrated elsewhere its capacity to sustainably generate electricity and contribute to the greater environmental challenge associated with climate change".[16]

One of the first steps that the Committee took was to identify parts of the offshore area where OSW development is most feasible. The Committee identified six Potential Future Development Areas ("PFDAs") in its interim report, and then further assessed and refined those areas, eventually proposing eight Potential Development Areas ("PDAs"). The Committee has acknowledged that site selection is an iterative process that often starts by identifying where development is precluded (like in MPAs), followed by consideration of other physical, ecological, and socio-economic constraints.[17] In the process of identifying PFDAs/PDAs, the Committee removed primary constraints such as: marine critical habitat for the North Atlantic right whale and northern bottlenose whale under the *Species at Risk Act; Oceans Act* MPAs including the Gully, Laurentian Channel, and St. Anns Bank; Sable

[14] NOAA Fisheries, *Offshore Wind Energy: Protecting Marine Life,* online; see also Tethys Knowledge Base, Wind Energy Content for a list of studies on the topic.
[15] Draft Report, p. 20.
[16] Draft Report, p. 31.
[17] Draft Report, p. 202

Island National Park Reserve; and Marine Bird Sanctuaries, including Big Glace Bay, Port Joli, Sable River, Port Herbert, Haley Lake and Sable Island.[18] The Committee also considered secondary constraints, including Significant Benthic Areas, Ecologically and Biologically Significant Areas, coral and sponge areas, sea pen areas, important habitat for sensitive species, and marine conservation network sites - among other features - as part of its process to identify PDAs.[19]

Ultimately, after considering the primary and secondary constraints, engagement input, and ongoing research work in the offshore area, the Committee proposed five "Tier 1" areas, which are recommended for immediate consideration as prospective Wind Energy Areas, and three "Tier 2" areas, which require additional investigation and engagement before being elevated to Tier 1 areas or being designated as Wind Energy Areas.[20] As noted above, the Committee has also recommended a 25km buffer zone around the coast of Nova Scotia and a 25km buffer zone around Sable Island, which means that all Key Biodiversity Areas have been removed from PDAs.[21]

SeaBlue Canada agrees with the general approach that the Committee has taken and supports the recommendation to establish 25km buffer zones around the coast and Sable Island. However, as we discuss below, **in order for Canada to achieve its conservation goals and to effectively protect marine biodiversity using tools like MPAs and OECMs, it is crucial that offshore wind be prohibited in all existing and future legally protected and conserved areas.**

3. Protect Existing MPAs from Offshore Wind Developments

SeaBlue Canada supports the approach that the Committee has taken with respect to removing *Oceans Act* MPAs – specifically, the Gully, Laurentian Channel, and St. Anns Bank MPAs – as primary constraints as part of its exercise to identify PDAs. This reflects a growing recognition of the ecological importance of these areas, including the critical role they play in preserving biodiversity and offering essential habitats to various marine species, including those at risk, and also reflects a purposive and contextual interpretation of the law, whereby offshore wind projects are already legally prohibited in MPAs because they disturb, damage, destroy, or remove living organisms or habitat.[22] In other words, although OSW development is not explicitly prohibited within these MPAs, the potential impacts posed by such projects are captured by the general prohibition in the respective MPA regulations.

To strengthen the protections for existing MPAs in the RA Study Area, as contemplated by the Committee, and to protect OECMs, we point to the provisions of the amended Federal Accord Act and to the provisions of the amended Nova Scotia Accord Act, which have

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[18] Draft Report, p. 205. See also Figure 4.10.
[19] Draft Report, p. 208.
[20] Draft Report, p. 20-21.
[21] Draft Report, p. 116.
[22] See the Committee's statement to such effect on page 127 of the Draft Report. Both the *Laurentian Channel Marine Protected Area Regulations*, SOR/2019-105 and the *St Anns Bank Marine Protected Area Regulations*, SOR/2017-106 prohibit, at section 4 respectively, any activity that disturbs, damages, destroys or removes any living marine organism or any part of its habitat, or is likely to do so. Section 4 of the *Gully Marine Protected Area Regulations*, SOR/2004-112 also prohibit such activities, as well as explicitly prohibit disturbance, damage, destruction, or removal of the seabed, and explicitly prohibit depositing, discharging, or dumping of substances likely to disturb, damage, destroy, or remove living marine organisms, habitat, or seabed.

received Royal Ascent in their respective legislative bodies, but which are not yet proclaimed:

- Section 135 of the amended Federal Accord Act and section 60(1) of the amended Nova Scotia Accord Act will allow the responsible Federal Minister and Provincial Minister to issue a joint direction to the Offshore Energy Regulator (currently, the Offshore Petroleum Board) to prohibit the issuance of submerged land licences.
- Section 137 of the amended Federal Accord Act and section 62A of the amended Nova Scotia Accord Act will allow the Governor in Council (GiC), for the purpose of protection of the environment, to make regulations prohibiting offshore renewable energy projects (including OSW developments) in any part of the offshore area that is, or in the opinion of the Governor in Council, may be identified under an Act of Parliament or the provincial legislature as an area for environmental or wildlife conservation or protection.

Once in force, these provisions of the respective amended Accord Acts will enable greater and clearer protection of existing *and* future MPAs.

Therefore, **SeaBlue Canada advocates that the Committee recommend in its Final Report that, once the respective Accord Acts are brought into force:**

1) **the responsible federal and provincial Ministers issue a joint direction to the Offshore Energy Regulator for Nova Scotia to prohibit issuance of submerged land licences in MPAs and OECMS,** and
2) **that the GiC create a regulation under the amended Accord Act to prohibit OSW developments in existing and future MPAs and OECMs.**

4. Protect Existing OECMs from Offshore Wind Developments

Key marine refuges in the RA Study Area include the Western/Emerald Bank Conservation Area, Northeast Channel Coral Conservation Area, Eastern Canyons Conservation Area, Emerald Basin and Sambro Banks Sponge Conservation Areas, Jordan Basin Conservation Area, Lophelia Coral Conservation Area, and the Corsair and Georges Canyons Conservation Area.[23] All of these areas prohibit commercial bottom-contact fishing gear from being used. They are managed in accordance with the *Policy for Managing the Impacts of Fishing on Sensitive Benthic Areas,* which is guided by the ecosystem and precautionary approaches, and prioritizes conservation of fisheries resources *and* fish habitat in consideration that the fishery is a common property resource to be managed for the benefit of all Canadians.[24]

The Committee has not recommended that offshore wind developments be excluded from OECMs (i.e., marine refuges created under the *Fisheries Act).* Instead, the Committee has identified two PDAs that overlap with the largest marine refuge in the RA Study Area: the Western/Emerald Banks Conservation Area. Specifically, the Committee has proposed the Sable Island PDA and the Western/Emerald Bank PDA as Tier 1 sites, to be immediately considered for offshore wind development.

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[23] Fisheries and Oceans Canada, "Marine Refuges Across Canada", online and Draft Report at pages 130-131.
[24] Fisheries and Oceans Canada, "*Policy for Managing the Impacts of Fishing on Sensitive Benthic Areas*", online. For example, see paragraph 2.2.

SeaBlue Canada does not support these areas being considered for offshore wind development for the following reasons:

1. offshore wind development in the marine refuge is not compatible with conservation objectives for the marine refuge (i.e., to protect the benthic area);

2. the Committee should apply a precautionary approach in the face of a new industry that prioritizes protection of high conservation and high biodiversity areas of the marine environment, and in the face of a lack of understanding of the cumulative effects on the marine refuge;

3. the Committee identified and considered multiple, independent analyses of the offshore area to identify areas of low conflict, and most of those analyses did not identify Western/Emerald Bank as being low conflict; and

4. the area of the proposed PDA has substantially increased in size since it was identified in the Committee's interim report as a PFDA, and therefore, the proposal has received little attention from participants of the regional assessment.

The area that encompasses Western Bank and Emerald Bank has been closed to mobile gear targeting groundfish since 1987 and closed to all groundfish fishing since 1993.[25] In 2017, DFO announced the establishment of the Western/Emerald Banks conservation areas under the *Fisheries Act* as a means of supporting productivity of multiple kinds of groundfish, and particularly, the area as a long-standing nursery ground for haddock. The conservation objectives for the marine refuge include supporting productivity objectives for groundfish species of Aboriginal, commercial and/or recreational importance (particularly haddock) and managing the disturbance of benthic habitat that supports juvenile and adult haddock and other groundfish species.[26] As such, commercial and recreational bottom-contact fisheries gear and gear known to interact with groundfish are prohibited in most of the fisheries closure areas.[27]

The Western/Emerald Bank marine refuge is currently being counted towards Canada's 25% and 30% marine conservation targets (accounting for approximately 0.18% of Canada's marine conservation targets).[28] The Western/Emerald Bank marine refuge was created with only the impacts of fishing activities in mind; other industrial activities were not "foreseeable" as being incompatible with its conservation objectives.[29] The history of the marine refuge and its long-term conservation is now at odds with the emerging offshore wind energy industry. Despite being an OECM, the Western/Emerald Bank's conservation objectives and measures effectively target biodiversity conservation. Now, its status as an OECM and its contribution to Canada's marine conservation targets is in jeopardy.

SeaBlue Canada has previously highlighted that activities outside of DFO's jurisdiction could potentially negatively impact the ecosystem[30]; now, the Committee's identification of the area for offshore wind development brings that possibility one step nearer.

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[25] Fisheries and Oceans Canada, "Review of Criteria for Selecting Ecologically Significant Areas of the Scotian Shelf and Slope: A Discussion Paper" *Oceans and Coastal Management Report* (April 2004) at page 48.
[26] https://www.dfo-mpo.gc.ca/oceans/oecm-amcepz/refuges/westernemerald-emeraudewestern-eng.html#
[27] Department of Fisheries and Oceans, "New Marine Refuges in Canada's Atlantic Ocean", *Canada Technical Report of Fisheries and Aquatic Sciences* 2948 (September 2017).
[28] https://www.dfo-mpo.gc.ca/oceans/oecm-amcepz/refuges/westernemerald-emeraudewestern-eng.html#
[29] https://www.dfo-mpo.gc.ca/oceans/oecm-amcepz/refuges/westernemerald-emeraudewestern-eng.html#
[30] Travis Aten and Susanna Fuller, "A Technical Review of Canada's Other Effective Area- Based CONSERVATION Measures: Alignment with DFO Guidance, IUCNWCPA Guidance and CBD SBSTTA Guidance" (SeaBlue Canada: January 2019) at page 7.

Under the DFO's OECM Standard, there are multiple criteria that an area must meet to be considered an OECM. Criterion E in the OECM Standard requires an OECM to be governed and managed in ways that provide Biodiversity Conservation Benefits (BCBs) and address risks. As part of this criterion, the OECM's governance and management system must be adaptive and effectively avoid or mitigate risks from existing and foreseeable activities to the BCBs.[31] As identified above, the key BCB provided by the Western/Emerald Bank marine refuge is the prevention of disturbances to benthic habitat. As such, the placement of wind turbines and associated infrastructure (for example, transmission cables or anchoring structures for floating *or* fixed wind turbines) is not compatible with the BCBs provided by the marine refuge. While the Committee has identified two types of offshore wind developments – floating and fixed – the nomenclature is misleading: both kinds of offshore wind infrastructure require disturbance of benthic habitat.

We note that the Committee has accepted that "development within a Marine Refuge would require a determination that the conservation objectives that gave rise to the designations would not be substantially compromised by the co-location of a wind farm."[32] SeaBlue Canada cannot support the notion that offshore wind development can co-exist with protected areas unless it is proven that the conservation objectives remain uncompromised.

It is relevant that the OECM Standard requires that OECM decision-making use best-available knowledge and apply the precautionary approach.[33] This means that decisions rely on best-available knowledge coming from many sources, including science, Indigenous knowledge, and knowledge provided by stakeholders and others. Where there is an absence of scientific certainty, the precautionary approach must be applied. The Government of Canada's *Framework for the Application of Precaution in Science-based Decision Making* offers a useful insight into the application of the precautionary approach.[34] For example, the Framework envisions that "[s]imilar situations should not be treated substantially differently and decision makers should consider using processes used in comparable situations to ensure consistency".[35] SeaBlue Canada contends that it would be inappropriate and inconsistent on the one hand to prohibit bottom trawling in an area where the primary conservation objective is prevention of benthic habitat, and on the other, allow offshore wind development that will disturb the benthic habitat of that same area. That is especially so for offshore wind because so little is known about the short- and long-term impacts of this nascent industry on Canadian waters and its unique marine ecosystems. For example: What are the impacts of installing dozens or hundreds of anchors and/or fixed platforms on the sea floor? What are the impacts of installing seafloor transmission lines for each wind turbine? What are the impacts of maintenance of turbines and transmission lines? What are the impacts from increased vessel traffic? What about impacts from end-of-life, decommissioning activities?

With respect to cumulative effects, SeaBlue Canada understands the economic, cultural and social importance of fisheries. However, there are many, equally important dimensions to cumulative effects that must be comprehensively evaluated and considered. The benefits of conserving vital nursery grounds for fisheries and protecting unique and vulnerable benthic ecosystems from the potential threats posed by offshore wind

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[31] OECM Standards at section 6.1.5.
[32] Draft Report, p. 237.
[33] OECM Standard at section 5.1 (Guiding Principles).
[34] Government of Canada's *Framework for the Application of Precaution in Science-based Decision Making*.
[35] Government of Canada's *Framework for the Application of Precaution in Science-based Decision Making* at page 11.

development deserves substantial weight. Reducing the negative impacts on fisheries by placing offshore wind developments into an area where fisheries is prohibited must be weighed against the benefits *and* the inherent risks to those same fisheries. SeaBlue Canada has serious concerns that this aspect of the cumulative effects assessment has not been properly considered, and that the Committee has not identified or provided a clear framework through which all the cumulative effects will be assessed. As others have submitted, assessing cumulative effects is one of the primary reasons to undertake a regional assessment, and we refer the Committee to its mandate as set out by its Terms of Reference: it must consider both "potential positive and adverse effects" of offshore wind developments. We recognize the Committee has worked to address cumulative effects in the limited time provided to undertake this assessment, but **the state of understanding of cumulative effects is not sufficient to forego a precautionary approach**.

As part of its work, the Committee also considered – in detail – government and industry work used to identify suitable locations for OSW development in Atlantic Canada[36]: the DFO's Marine Spatial Planning Atlas, Aegir Insights' "Value Mapping Nova Scotia's Offshore Wind Resources" (2023), CanmetENERGY's "Preliminary Considerations Analysis of Offshore Wind Energy in Atlantic Canada" (2023), DFO's "Marxan with Zones Analysis for Potential Locations of Low-Conflict with Offshore Wind Development" (2024), a submission from the Nova Scotia Fisheries Alliance for Energy Engagement (2024), a non-attributed, government summary of industry responses to a survey about prospective offshore wind areas of interest, and, a geological survey from the Geological Survey of Canada (2024). Most of these works, excluding the DFO Atlas and the geological survey, identified suitable areas for OSW development based on a number of factors and scenarios. Table A provides a summary of the inputs and conclusions.

Table A: Summary of Key Constraints Mapping Work Considered by the Committee

Study	Author	Summary	Results (Suitable Areas)
Value Mapping Nova Scotia's Offshore Wind Resources (2023)	Aegir Insights	Objective was to identify relative cost of electricity for various potential development locations and scenarios using a Levelized Cost of Energy. Physical conditions (wind speed, water depth, distance to port, and distance to grid connection) were analyzed against series of physical, biological, social and	Areas with less interaction and conflict with OSW: • Sydney Bight, • Canso Bank, • Middle Bank, • Eastern Shore and • Sable Island Bank.

[36] Draft Report, p. 45-49.

		economic constraints, including identified protected areas.[37] Areas with less interaction and conflict with OSW were identified.	
Preliminary Considerations Analysis of Offshore Wind Energy in Atlantic Canada (2023)	CanmetENERGY	Study that considered publicly available spatial data about various ecological and socio-economic constraints/factors, including fisheries, "identified ecological areas" and "risk to marine birds", to identify areas suitable for OSW development. The study entailed development and consideration of six scenarios, which were assigned different weighting for individual constraints.	Areas noted to have more favourable scores for OSW development across multiple scenarios were: • portions of Sable Island Bank, • Middle Bank, • Banquereau Bank, • Northumberland Strait, • Browns Bank and • George's Bank.
Marxan with Zones Analysis for Potential Locations of Low-Conflict with Offshore Wind Development (2024)	DFO	Constraints analysis exercise (using Marxan with Zones) to identify prospective areas for OSW with less risk of conflict, considering a range of ecological and socio-economic components, including identified protected and ecologically sensitive areas, critical and important habitat for species at risk, seabird density, and	Potentially suitable for fixed-bottom OSW development included some nearshore areas, and areas around: • the Northumberland Strait, • Sable Island Bank, • Middle Bank, • Sydney Bight, • Canso Bank, and

[37] Draft Report at pages 45-46.

		fisheries. Exercise used 18 scenarios focused on different objectives.	• Roseway Bank The scenario for floating OSW development yielded similar results, but with some larger areas identified, including a section of Middle Bank.
Submission to Committee (2024)	NSFAEE	NSFAEE consulted with membership to identify areas within RA Study Area considered "low conflict" for OSW development.	Areas of low conflict: • Sydney Bight, • Laurentian Channel, • Western/Emerald Bank, • edge of Browns Bank, • some small portions of Middle and Banquereau Banks.
Unattributed Industry Survey (2024)	NRCan and NRR	Committee issued an "Information Request" to NRCan and NRR to solicit information from prospective OSW developers to gather information about locations of interest.	The highest level of interest was expressed in Middle Bank, by five developers, followed by Sable Island Bank, with four, and Sydney Bight, with three. Other areas identified by at least one developer were Western Bank, French Bank (floating foundations), Georges Bank, Digby Neck, Liverpool (floating foundations), Banquereau Bank, Misaine Bank (floating foundations) and the Northumberland Strait.[38]

It is noteworthy that Western/Emerald Bank is only identified as an area suitable for OSW in the NSFAEE submission. Moreover, it was proposed as an area of interest by only one singular developer.

[38] Draft Report, p. 49.

Finally, we note that the size of the proposed Western/Emerald Bank PDA has increased substantially from 6,570km^2 to 13,170 km^2, effectively doubling the amount of space in and around the marine refuge potentially open to offshore wind development based on the Committee's recommendations. This spatial increase took place following the release of the interim report, meaning that the huge increase in potential size of the PDA, and the implications of that proposal, have not been subject to adequate public engagement or scrutiny. **Therefore, we suggest that, at minimum, the two PDAs that overlap with the marine refuge must be listed as Tier 2 sites, with further study and refinement.**

5. Protect Future Legally Protected and Conserved Areas from Offshore Wind Developments

We respectfully submit that the Committee has not given adequate consideration to possible future interactions between OSW development and legally protected and conserved areas that are to be established or designated in the future. For example, Parks Canada is currently considering the Pemsɨk Mawa'tasikl Anko'tmu'kl ("Pemsɨk"), which includes a potential National Marine Conservation Area as a component of a larger Indigenous-led "conservation mosaic".[39] Despite Parks Canada's recommendation that Pemsɨk be excluded from areas where OSW development might occur, one of the Committee's newly proposed PDAs (LaHave Basin PDA) partially overlaps with the Pemsɨk study area.[40] This area is identified as an AOI (i.e., an area of interest) in Figure 4.11, "Existing and Proposed Conservation Sites with Ecological Areas", of the Committee's Draft Report.[41] **SeaBlue Canada does not support OSW development in NMCAs and strongly urges the Committee to remove the Pemsɨk study area from the LaHave Basin PDA.**

SeaBlue Canada urges the Committee to apply the precautionary principle to ensure that future legally protected and conserved areas – including those that are in the process of designation– are explicitly scoped out of areas considered for OSW. We note that the Committee has not provided any recommendations with respect to how the OSW regulatory regime can or should address future proposed protected areas, and it is critical that regulators, proponents, Indigenous nations, the public and other stakeholders have certainty with respect to which offshore areas will be closed to future bids for OSW development. To that end, **SeaBlue Canada recommends that the Committee be explicit that OSW development must not be allowed in future legally protected and conserved areas. This means that if a future site is identified for protection, new and existing interests in OSW will be prohibited or cancelled, respectively. We reiterate our recommendation that the responsible Ministers and the GiC take appropriate actions under the amended Accord Act once it has the force of law.**

[39] Draft Report, p. 123.
[40] Draft Report, p. 123.
[41] Draft Report, p. 124.

6. Enhancing Protections for Sable Island and Georges Bank

The *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (the "NS Accord Act") currently provides an explicit ban against petroleum within 1 NM of Sable Island:

140.1 No person shall carry on any work or activity related to the drilling for petroleum, including exploratory drilling for petroleum, in Sable Island National Park Reserve of Canada or within one nautical mile seaward of its low-water mark.

The Nova Scotia Accord Act also provides a ban against petroleum on Georges Bank, whose coordinates are contained in Schedule IV:

Jointly issued notice — prohibition

141 (1) The Federal Minister and the Provincial Minister may jointly issue a written notice prohibiting, for a period beginning on the day specified in the notice and ending on December 31, 2022, the exploration and drilling for and the production, conservation and processing of petroleum in that portion of the offshore area described in Schedule IV, and the transportation of petroleum produced in that portion of the offshore area.

Further period

(2) The Federal Minister and the Provincial Minister may jointly issue one or successive written notices, after a review of the environmental and socio-economic impact of exploration and drilling activities in that portion of the offshore area described in Schedule IV and any other relevant factor, each extending the prohibition established in subsection (1) in all or any part of that portion of the offshore area for a specified period of no more than 10 years.

Prohibition

(3) No person shall, for the duration of the period specified in a written notice issued under subsection (1) or (2), engage in the activities listed in subsection (1) in that portion of the offshore area described in Schedule IV or in any part of it that is specified in the notice.

The amended Accord Acts do not extend the existing protections in Sable Island and Georges Bank to ORE projects. In other words, ORE projects would be allowed in both offshore areas.

Sable Island is a National Park Reserve with outstanding Mi'kmaq rights claims. It contains one of the last wild herds of horses in the world and largest breeding colony of grey seals. One of the defining features of Sable Island's management plan is the need to work collaboratively with Mi'kmaq and the public to better understand the island and use evidence-based decision-making to protect the island. A precautionary approach warrants further protection against existing and emerging activities while that work is being undertaken.

Georges Bank is known to have a very productive ecosystem, serving as an important nursery ground for juvenile cod and haddock and acting as a migratory corridor for the North Atlantic Right Whale. It also supports multiple lucrative fisheries.[42] The part of Georges Bank that is in American jurisdiction is now protected as the Northeast Canyons

[42] For example see: Canadian Science Advisory Secretariat, "The Marine Ecosystem of Georges Bank" Research Document 2011/059 at pages 182-184.

and Seamounts Marine National Monument, which restricts petroleum, mining and fishing activities.

We reiterate that specific and binding language articulating that OSW development is prohibited in protected areas would help to ensure that areas such as Sable Island and Georges Bank remain protected from the cumulative negative effects that a disturbance of these vital ecosystems would provoke.

7. Conclusion and Recommendations

Environmental impacts can occur throughout the various phases of OSW development, from the initial construction and installation of turbines to the long-term operational presence of infrastructure and, eventually, the decommissioning of these projects. Each stage presents its own set of challenges and risks to marine ecosystems, with direct, indirect, and cumulative effects on species and habitats protected by MPAs and OECMs. By removing MPAs and other important legally protected and conserved areas from its proposed PDAs, the Committee is prioritizing the protection of the marine environment under the precautionary principle.

Future planning for new MPAs is crucial, especially as ongoing research continues to reveal previously unknown marine ecosystems. Identifying new areas that may require federal or provincial protection underscores the need for forward-thinking conservation strategies to ensure marine biodiversity can coexist with OSW development. To support this, it is vital that the Committee actively considers these future conservation needs in its decision-making process.

The newly amended Accord Acts, which are anticipated to be proclaimed in the near future, strengthen the OSW development regime as it relates to environmental protection by allowing the Governor-in-Council to make regulations prohibiting the commencement or continuation of offshore renewable energy activities within areas that have been, or can be, identified for protection under federal or provincial law.[43] These expanded powers allow the Governor-in-Council to take a precautionary and pre-emptive approach to protecting sensitive marine areas, even before formal designation. As such, this framework reinforces Canada's commitment to sustainable development and environmental protection.

SeaBlue Canada recommends that the Committee leverage and recommend the use of new environmental protection provisions in the amended Accord Acts to proactively safeguard existing and future MPAs from adverse impacts of OSW development, which will pave the way for a more sustainable and forward-thinking approach to OSW development.

[43] Bill C-49, *supra* note 30, cl 28.