

**Submission to the Standing Committee on Natural Resources
Regarding *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***

February 6, 2024

I. Introduction and Summary

1. SeaBlue Canada thanks the Committee for the opportunity to provide our submissions on *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).¹
2. SeaBlue Canada is a coalition of eight of Canada's most active and well-respected environmental non-governmental organizations. The coalition works collaboratively to ensure that Canada's marine protected area commitments are ambitious, equitable and ultimately provide meaningful protection to marine species and habitats. The coalition comprises: the Canadian Parks and Wilderness Society, East Coast Environmental Law, the Ecology Action Centre, the David Suzuki Foundation, Nature Canada, Oceans North, West Coast Environmental Law and WWF-Canada.
3. SeaBlue Canada supports the development of marine renewable energy as part of the clean energy response to the climate crisis. However, marine renewable energy projects 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. Further, to address the climate crisis, the introduction of marine renewable energy in Canada must be complemented by an equitable transition away from offshore oil and gas production.
4. SeaBlue Canada supports the amendments in the Bill that would protect the marine environment by enabling the prevention or prohibition of offshore oil and gas and renewable energy activities within areas that have

¹ *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.

been identified for conservation or protection. These amendments are essential to protect marine biodiversity. These amendments can help to facilitate the clean energy transition through the development of offshore renewable energy, while supporting the protection of marine biodiversity.

II. Political and Legal Context of the Proposed Amendments

5. Bill C-49 amends the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and the *Canada-Nova Scotia Atlantic Accord Implementation Act*, known together as the “Offshore Accord Acts”.²
6. Bill C-49, and the Offshore Accord Acts that it amends, form an important part of Canada’s ocean management framework, and will contribute to achieving Canada’s conservation goals on the Atlantic coast. Canada has committed to protecting 25% of the ocean by 2025, to working towards protecting 30% by 2030, and to working to halt and reverse biodiversity loss.³ The federal government protects areas of the ocean using marine protected area (MPA) designations, as well as other non-MPA legal tools that provide spatial protection, known as “other effective area-based measures” (OECMs). The federal government has committed to prohibiting oil and gas activities within all new federal MPAs,⁴ and avoiding or mitigating industrial activities that pose risks to biodiversity outcomes within OECMs.⁵
7. As described in greater detail below, oil and gas activities are incompatible with marine conservation, and offshore renewable energy projects also have the potential to impact marine ecosystems without careful management. However, there is no legal mechanism under the current Offshore Accord Acts to allow for the surrender or cancellation of oil and gas leases within areas set aside for environmental protection or conservation. This has resulted in at least one instance where the Canada-Newfoundland and Labrador Offshore Petroleum Board issued an oil and gas interest within a conservation area.⁶

² SC 1987, c 3; SC 1988, c 28.

³ 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).

⁴ Fisheries and Oceans Canada, [Federal Marine Protected Area Protection Standard](#) (Ottawa: Fisheries and Oceans Canada, 2023).

⁵ Fisheries and Oceans Canada, [Other Effective Area-Based Conservation Measures \(OECM\) Protection Standard](#), online (February 8, 2023).

⁶ The Board granted an exploratory license within the Northeast Newfoundland Slope Marine Refuge. As of May 2023, the interest holder, BP, began drilling within the area. Marc Montgomery, [“Legal challenge begun in relation to exploratory drilling in marine refuge”](#)

8. Bill C-49 would address this gap by enabling the federal government to pass regulations that prohibit offshore oil and gas or renewable energy projects within areas that have been identified for protection. It would also allow the government to negotiate for the surrender of interests within these areas. The passing of this legislation with these provisions will allow the Government of Canada and provincial governments to demonstrate their strong commitment to marine protection and assure stakeholders that the government has the legal tools required to ensure that protected areas are truly protected.

III. Environmental Impacts of Offshore Oil and Gas and Offshore Renewable Energy

9. Restricting offshore oil and gas and fully assessing the risk associated with offshore renewable energy are essential to marine conservation efforts because of the risk of negative impacts that industrial activities pose to the marine environment.
10. Offshore oil and gas projects contribute to climate change through emissions from their exploration and extraction processes, as well as processing and refining.⁷ Offshore oil and gas projects have also been shown to cause several direct negative impacts to marine ecosystems, such as:
 - harm to organisms, and specifically marine mammals, from physical impacts during the exploration and production phase;
 - underwater noise pollution, in particular from seismic surveys but also construction and decommissioning, which may result in changes to animal behaviour, including avoiding areas which may be critical (e.g., feeding grounds) or damage to hearing;
 - collisions with marine mammals, large fish and turtles caused by vessels servicing offshore oil and gas infrastructure;
 - physical damage to the seabed from platform infrastructure, cables, etc., including smothering and suspended sediments, impacting seabed habitat;

Radio Canada International (November 14, 2020); Patrick Butler, "[BP defends drilling exploration well in marine refuge off Newfoundland](#)" *CBC News* (June 6, 2023).

⁷ E Wolvovsky & W Anderson, [OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon](#) (Sterling, VA: US Department of the Interior, Bureau of Ocean Energy Management, 2016); see also United Nations Environment Programme, Finance Initiative, [Harmful Marine Extractives: Understanding the risks & impacts of financing non-renewable extractive industries](#) (Geneva: UNEP, 2022) [UNEP, Harmful Marine Extractives]. Burning the product accounts for 70 to 90 percent of life cycle emissions from oil products and 60 to 85 per cent of those from natural gas.

- pollution from planned operational discharges⁸, which includes heavy metals, biocides and hydrocarbons, and which may cause adverse health impacts to organisms, as well as encourage the growth of some species, reduce species diversity and affect food chains;
 - introduction of non-native species from hull fouling and ballast water;
 - the risk of accidental discharges, *i.e.*, oil spills, from offshore infrastructure and vessels, which cause high wildlife mortality, including of endangered species; and smothering and toxicity of coastal ecosystems, which take months or years to recover. This includes a risk of large-scale spills with devastating environmental and economic consequences; and
 - pollution from ships and installations, including air emissions, plastics, sewage and greywater, which can change the chemical composition of the sea and negatively impact wildlife health.⁹
11. Though offshore renewable energy projects provide an alternative to fossil fuel-based energy sources and are a necessary part of a clean energy transition, they must be approached carefully to avoid negative impacts to marine ecosystems. For example, offshore wind installations (both fixed-foundation turbines and floating turbines) can cause the following negative marine ecosystem impacts:
- increased ocean noise, which could affect the behaviours of fish, whales, and other species;
 - 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;
 - attraction/creation of a “reef effect” where marine life cluster around the hard surfaces of wind developments, drawing populations away from natural habitats and altering ecological dynamics, as well as damage to the seafloor through infrastructure and cables;

⁸ UNEP, *Harmful Marine Extractives*, *supra* note 6 at p 27: “The most common sources of pollution from petroleum activities derive from normal [exploration and production] operations and include: drilling fluids, cuttings and well treatment chemicals; produced water containing dispersed and suspended hydrocarbons; process, cooling, wash and drainage water; ballast water from mobile offshore drilling units (MODUs) and ships and associated invasive species; sewerage, sanitary and domestic wastes; and, garbage.”

⁹ *Ibid.* See in particular Table 4 at p 30.

- impacts to organism life cycle stages, including larval dispersal and spawning;
 - changes to species composition, abundance, distribution, and survival rates;
 - increased vessel traffic, which could lead to more vessel strikes and increased pollution; and
 - release of contaminants that can be consumed or absorbed by marine life.¹⁰
12. Other forms of offshore renewable energy – including tidal, wave, geothermal, ocean current and osmotic energy (all of which are much earlier in their research and development process than offshore wind energy) – may cause many of the same impacts.¹¹
13. Accordingly, for Canada to achieve its conservation goals and to effectively protect marine biodiversity using tools like MPAs and OECMs, it is crucial that both offshore oil and gas and renewable energy be prohibited from legally protected areas. The amendments proposed in Bill C-49 will facilitate the development of offshore renewable energy without harming marine areas intended for conservation.

IV. International Approaches to Offshore Renewable Energy and Marine Protection

14. The international community is moving towards restricting industrial activities, including offshore renewable energy, within MPAs. Many jurisdictions around the world prohibit or strictly limit offshore renewable energy installations in MPAs. For example, in France offshore wind projects are prohibited in certain types of marine protected areas, and in many countries – including Germany, the United Kingdom, Spain, France, the Netherlands and Australia – there are specific zones in which offshore wind may be installed, and which have been identified through marine spatial planning.¹²

¹⁰ 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.

¹¹ Tethys Knowledge Base, *supra* note 10.

¹² 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).

15. There is currently no law or policy in Canada that addresses offshore renewable energy in MPAs. Bill C-49 would provide Canada and the provinces with the legal tools to sustainably and responsibly manage offshore renewable energy in the Offshore Accord Act areas, and set a precedent for a similar legislative framework in the rest of Canada's ocean estate.

V. Summary of Amendments on Protection of the Marine Environment

16. SeaBlue Canada supports the amendments proposed under clauses 26-28 and 135-137 of the Bill as they would allow Canada and the provinces to create strong MPAs free from damaging industrial activities. These clauses grant governments greater powers to protect areas that are or may be identified under federal or provincial laws for environmental or wildlife conservation or protection.

17. These clauses make substantively identical amendments to the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* (at clauses 26-28) and the *Canada-Nova Scotia Atlantic Accord Implementation Act* (at clauses 135-137). For the sake of brevity, only the clauses that amend the Newfoundland and Labrador Act are described below.

18. First, Bill C-49 introduces a new regulatory power that would allow the Governor-in-Council to make regulations prohibiting offshore oil and gas or offshore renewable energy activities within areas that have been, or may be, identified for environmental or wildlife conservation or protection. These areas may be identified for protection under either federal or provincial law.¹³ These regulations could prohibit the commencement or continuation of work, as well as the issuance of any interests.

19. Second, the Bill would introduce amendments allowing for the relevant (federal or provincial) Minister to negotiate for the surrender of oil and gas or renewable energy interests that are within areas that have been identified for conservation or protection. This framework would enable the federal Minister to negotiate for the surrender of interests, in exchange for compensation, within federally protected areas, and would grant the provincial Minister similar authority within provincially protected areas.¹⁴ In the event that the negotiations are unsuccessful, the federal and provincial Ministers may jointly cancel the interest.¹⁵

20. These amendments are substantively similar to provisions that were added to the *Canada Petroleum Resources Act* (CPRA) in 2018. The CPRA provides

¹³ Bill C-49, *supra* note 1, cl 28, s 56.1.

¹⁴ *Ibid*, cl 28, ss 56.2(1), 56.3, 56.4(1).

¹⁵ *Ibid*, cl 28, ss 56.2(4), 56.4(4).

the legal framework for offshore oil and gas activities in the rest of Canada (outside of Newfoundland and Labrador and Nova Scotia), and the 2018 amendments allow for the surrender or cancellation of oil and gas interests within *Oceans Act* MPAs. Bill C-49 improves on the CPRA amendments by allowing the government to rescind interests in all protected and conserved areas under both federal and provincial law.

21. Finally, Bill C-49 introduces two other amendments that may contribute to the protection of the marine environment: it clarifies that the Regulator's pre-existing power to prohibit the issuance of interests within specific areas applies only to oil and gas interests; and it grants the federal and provincial ministers a similar authority to prohibit the issuance of offshore renewable interests, referred to as "submerged land licenses", within specific areas.¹⁶ The Bill also allows the Regulator to prohibit the commencement or continuation of work that is already subject to an interest because of serious environmental (or social) problems, or dangerous or extreme weather conditions.¹⁷
22. The amendments described above would establish a legal framework that enables federal and provincial governments to protect MPAs and OECSs from damaging offshore energy activities. These amendments are critical for responsible stewardship of the marine environment and will allow Canada to meet its marine conservation commitments.

VI. Conclusion

23. SeaBlue Canada recommends that the Committee pass Bill C-49 in a timely manner to ensure that these marine conservation provisions may be implemented as soon as possible, and in time for Canada to achieve its conservation targets for 2025.
24. SeaBlue Canada thanks the Committee for the opportunity to present our views. We look forward to seeing the proposed offshore renewable energy provisions in Bill C-49 passed into law.

About SeaBlue: SeaBlue Canada is a joint project of eight of Canada's most active and well-respected NGOs: Canadian Parks and Wilderness Society, the David Suzuki Foundation, East Coast Environmental Law, Ecology Action Centre, Nature Canada, Oceans North, West Coast Environmental Law and WWF-Canada. We work together to hold the Government of Canada to account on ambitious, equitable and impactful marine protection.

¹⁶ *Ibid*, cl 26, s 54. "Interest" is defined at s. 47 of the N&L Act

¹⁷ *Ibid*, cl 27, s 56.