

August 7th 2024



Written Brief to the Standing Senate Committee on Energy, the Environment and Natural Resources:

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

Nova Scotia Fisheries Alliance for Energy Engagement

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The Nova Scotia Fisheries Alliance for Energy Engagement (“NSFAEE”) is an alliance comprising twenty-two fishing and seafood processing and harvesting associations representing most of the \$2.6 billion seafood industry in Nova Scotia. The mandate of the NSFAEE is “[t]o unite the Nova Scotia fishing industry; ensuring the emerging renewable offshore energy sector is developed in a manner that respects fisheries, coastal communities, and the marine environment.”

The NSFAEE is supportive of collaboration and sustainable energy development in the marine environment, but we are concerned that Bill C-49 does not provide an adequate framework for achieving success in these respects. Bill C-49 can be improved to ensure that the interests and needs of all users and interests in the marine environment while properly enabling the renewable energy sector. These issues, in part, due to a lack of consultation in the development of Bill C-49.

It is important that Bill C-49 strike the right balance between different interests and users, as offshore development stands to create profound and complex changes to the ocean environment, including oceanographic characteristics, ecosystems and fisheries activities. To this end, the NSFAEE urgently requests that the committee undertake further in-depth studies of the impacts of offshore wind in the offshore area and amend Bill C-49 as recommended in this brief

Recommendation 1: The regulator must have responsibility for provincial waters being considered for development by Nova Scotia

Provincial waters are generally considered to be those that fall within the jaws of land. For Nova Scotia, these areas can be substantial and include Chedabucto Bay, near Guysborough County. Provincial waters do not form part of the ‘offshore area’ under the Act and therefore these waters will not fall within the jurisdiction of the regulator. Yet these provincial waters are being seriously considered for development of offshore renewable resources and could be developed on an expedited basis. But without an amendment adding those provincial waters under serious consideration to the Accord Acts through Bill C-49, it will mean that there will be two regulators for effectively the same areas.

Having two different regulators could create significant challenges for ensuring sustainability and orderly development of the marine environment. For example, what might be sustainable in the ‘offshore area’ could be unsustainable based on the activities of the provincial regulator across an arbitrary political line in the marine environment. Having a single regulator and set of regulatory requirements will foster development and trust by creating certainty and consistency in impact assessment criteria, decision-making criteria, mitigation and compensation standards.

The NSFAEE suggests that the offshore area be amended to include those provincial waters that are being considered for development by the province as follows:

Adding the following after clause 109(2) on page 84 at line 20:

(2.1) The definition *Offshore Area* in section 2 of the Act is replaced by the following:

Offshore area means

(a) in the case of petroleum, the lands and submarine areas within the limits described in Schedule I; and

(b) in the case of offshore renewable energy, the lands and submarine areas within the limits described in Schedule I.1.

Adding the following after clause 203 on page 157 at line 25:

204.1(1) Schedule I is amended in the title by adding "for Petroleum" at the end.

204.1(2) The following is added as Schedule I.1:

**Schedule I.1
(Section 2)**

Limits of the Offshore Area for Offshore Renewable Energy

...

Recommendation 2: Authorizations for renewable works and activities must consider cumulative effects

The NSFAEE is concerned over the permissive nature of the authorization scheme. To briefly recap, after a proponent is issued a SLL, they must also be issued an authorization from the regulator before commencing a renewable work or project. However, the regulator is not limited in the number of authorizations that can be issued for a SLL nor must they consider the cumulative impacts of the authorizations that are made for an area subject to a SLL. This could allow for a proponent to avoid key environmental requirements by characterizing their development as a series of small developments falling outside the definition of designated project. The NSFAEE urges the committee to amend Bill C-49 to require better consideration of these issues by the regulator, especially as such approvals are not subject to joint ministerial approval.

Adding the following after clause 170(2) on page 119 at line 10

(3) The Act is amended by adding the following after subsection 142.011(2):

Decision-making criteria to be considered by the regulator

(3) When considering an application under subsection (1), the regulator must consider the cumulative impacts of the proposed authorization and any relevant regional or strategic assessments undertaken in relation to the area impacted by the proposed authorization.

Clause 170.1 is amended on page 120 at line 15 by replacing subsection 142.012(1) with the following:

Definition of *designated project*

142.012(1) For the purposes of this section and sections 142.013 to 142.017, **designated project** means a *designated project*, as defined in section 2 of the *Impact Assessment Act*, that is a work or activity referred to in section 140 or 140.2 of this Act and is deemed to

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include any work or activity that, if authorized, would allow for 10 turbines or more to be developed in the area included in the submerged land licence.

Recommendation 3: Principles to be considered during the issuance of SLL must include the environmental characteristics of the marine environment

The clause proposed to be added as section 98.7 to the Act sets out several principles which must be given importance or consideration by the regulator and responsible ministers. The Standing Committee on Natural Resources first amended this provision to include the fisheries activities and also the environmental qualities on which those fisheries rely upon. Natural Resources Canada argued against this amendment saying that such a criterion would be impossible to fulfil when making decisions. Based on this position from Natural Resources Canada, the committee made a further amendment to this provision removing the reference to the environmental characteristics of the offshore area on which the fisheries rely.

We disagree with this assertion and urge the committee to return to the original amendment, included below. We feel that including the environmental characteristics on which the fisheries rely creates a more meaningful principle, as the current wording only requires the regulator to contemplate how fishing activities (such as access and navigation) will be impacted. The fisheries have significant concerns regarding the environmental impacts of offshore renewable development, including changes in oceanography and ecosystems. These changes could in turn impact where and how fisheries occur, but this provision as amended would not require any consideration of these impacts when issuing a SLL as they are not considered fishing activities.

What is more, a baseline requirement for decision makers to consider such characteristics of the ocean environment is a low threshold to meet and we are surprised that the department is indicating that these factors might not form part of the regulator's decision-making process when we feel environmental assessment is a key role for the regulator in their decision-making. Indeed, environmental impacts goes to the very heart of the regional assessment process that is being undertaken and, as noted below, we feel that such regional and cumulative understandings of the environment should be prioritized expressly in the regulator's decision-making process.

Finally, having such a requirement does not create a high legal threshold for the regulator to meet as their decision-making ultimately only needs to be considered reasonable and recent caselaw sets a low bar for what constitutes a reasonable when completing or considering a study (at least for regional assessments under the *Impact Assessment Act*). To this end, we urge the committee to make the following amendments:

Clause 147 of the Bill at page 108 at line 5 be amended by replacing clause (c) with the following:

(c) during the submerged land licence issuance process, importance shall be given to considering the effects of the proposed work or activity on fishing activities and to understanding and maintaining the environmental characteristics of the offshore area that support that industry

Recommendation 4: Call for bid process must respect outcomes of existing assessment processes

Protecting the environment is essential for the long-term sustainability of fisheries and regional studies on the impacts of development should be prioritized within Bill C-49.

However, Bill C-49 has no specific requirements for the regulator or ministers to consider any applicable regional or strategic assessments when making decisions on call for bids or SLLs (“SLL”). Once a call for bids or SLL is issued, the pressure for development is overwhelming. At minimum, Canadians should expect to see such required consideration of regional or strategic assessment in the parent legislation that enables the call for bids and granting of SLL.

While a full impact assessment is not required before a call for bids or SLL is issued, Bill C-49 should ensure that any current regional or strategic assessment that considers those environments, cumulative risks and suitable development areas is considered. To this end, we suggest that the issuance of a call for bids be required to abide by the outcomes of regional and/or strategic assessments supported both by this legislation and the IA Act.

For instance, the Regional Assessment (RA) for Nova Scotia included the identification of potential areas for development which act as candidate focus areas for future baseline environmental data collection and determination of local impacts to stakeholders. The fishing industry has been actively supporting this process, including the self-identification of areas for development. Yet, there remains no assurances that the decision-making bodies supporting the selection of future areas via call for bid and SLL processes (i.e. the regional regulatory Boards) will respect and embrace those outcomes, making participation in that process by stakeholders moot. To ensure that these processes remain relevant, we recommend that clause 147 in Bill C-49 be amended as follows:

Page 103 at line 5:

Regional assessment required for calls for bids

92.1(1) The Regulator shall not make a call for bids outside of areas identified for potential development under a regional assessment under subsection 142.018(1) or under subsection 93(1) of the *Impact Assessment Act* that

- (a) has been completed no later than five years' preceding the call;
- (b) has studied the regional and cumulative impacts of development in the type and quantity of development that will be proposed under the call; and
- (c) includes all information and study required by regulation.

Recommendation 5: Spatial protections under the Accord Act must be updated

The Accord Acts feature special spatial protection for Georges Bank and Sable Island. These areas require special spatial protection under the Accord Acts because the Accord Acts have paramountcy over other legislation, such as the *Oceans Act* and the *Canada Parks Act*.

These protections are currently limited to petroleum development given the regulator's historic jurisdiction for that type of energy. Bill C-49's role is to enable the regulator to also regulate renewable energy, but, in doing so, Bill C-49 is not updating the special spatial protections to which the regulator is already subject to. This means that unless the Senate takes action, the regulator will now be enabled to authorize licensing and development on Georges Bank and Sable Island.

Given the obvious importance of these areas, their historic protection under the Accord Acts, the lack of specific study on the impacts of energy development in these areas, and the lack of need for development in these areas (the regional assessment has already identified areas that exceed provincial energy goals by ten times), there is no reason to allow this error to stand. Rather, these spatial protections should be corrected in the following manner:

Clause 166 of the Bill at page 118 at line 1 is replaced with the following:

166 The Act is amended by replacing sections 140.1 to 141 with the following:

Prohibition

140.1 No person shall carry on any work or activity related to an offshore renewable energy project unless

- (a) that person is the holder of an authorization issued, before the commencement of operations, under subsection 142.011(1) for the work or activity; and
- (b) if it is required, that person is authorized or entitled to carry on business in the place where that person proposes to carry on the work or activity.

Prohibition — Sable Island National Park Reserve of Canada

140.2(1) No person shall do the following in Sable Island National Park Reserve of Canada or within one nautical mile seaward of its low-water mark:

- (a) carry on any work or activity related to the drilling for petroleum, including exploratory drilling for petroleum;
- (b) carry on any work or activity related to a renewable energy project.

Prohibition --- submerged land licences

140.2(2) The regulator shall not make a call for bids for a submerged land licence or issue a submerged land licence in Sable Island National Park Reserve of Canada or within one nautical mile seaward of its low-water mark.

Prohibition --- Georges Bank

141(1) On or before December 31, 2032, no person shall do the following in that portion of the offshore area described in Schedule IV:

- (a) carry on any work or activity related to the drilling for petroleum, including exploratory drilling for petroleum;
- (b) carry on any work or activity related to a renewable energy project.

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 --- submerged land licences

(3) The regulator shall not make a call for bids for a submerged land licence or issue a submerged land licence in that portion of the offshore area described in Schedule IV on or before December 31, 2032 or for the duration of the period specified in a written notice issued under (2).

Recommendation 6: A royalty-funded fund should be established to support future compensation needs for those impacts resulting from cumulative or unforeseen impacts of offshore energy development

The Act directly considers damages to fishing gear through the development of offshore resources (i.e. gear tear-ups or vessel interactions) but defers to other Federal legislation (the Fisheries Act) for any damages related to operational releases of hydrocarbons that may render a fishery resource either non-viable or unable to be accessed for safety reasons. The current Bill before the Senate has maintained this same language, meaning that there now exists a gap as it pertains to recovery of damages related to the act of harvesting wind energy or tidal energy and its impact on oceanic resources.

For example, in research undertaken on the impacts of wind farm development in the United States of America, Chen *et al.* 2024 presented modelling demonstrating that the presence of offshore wind farms stands to substantively impact scallop larval distribution to areas unavailable to the fishery, creating a future fishery-productivity impact. Given the similarity in bank habitat and distribution pressures between the Eastern United States and the Scotian Shelf, similar impacts can be expected should a large-scale development occur here.

In a similar fashion, impacts related to substation development are also not considered. Any offshore production of electrical energy will require some substation (and potentially a network of them) alongside cabling for shore-based customer collection. Long-term impacts of both the operation of high-voltage cabling and its associated EMF fields and thermal releases associated with cooling offshore substations remains in its infancy, however long-term studies have demonstrated biologically relevant changes in behaviour of both elasmobranch and American lobster (Hutchison *et al.* 2018).

Some mechanism must be incorporated into C-49 that, similar to the recovery of lost resources due to the incidental release of hydrocarbons, ensures that productivity or access lost as a result of cumulative and unforeseen impacts of offshore energy development be compensated to the fishers, families and communities that experience the impact.

We suggest that this best be achieved through the development of a royalty-funded compensation fund enshrined within Bill C-49 that would act as a back-stop should long-term, cumulative impacts be determined. We suggest that this could be easily achieved through the following instructions:

- 1. Establish a fund called the Renewable Energy Effects Fund (REEF).**

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2. The REEF should be administered by the regulator for the purposes of funding research to assess; or, compensate participants in the fisheries industry for the economic effects caused by the adverse or unknown effects of the construction and operation of offshore renewable energy projects. The amount in the fund should not be used for other purposes.
3. Despite clause 150 of the amendments (which adds a new section 99.1 (Revenues reserved)) the federal Crown must transfer a percentage of all revenues, interest and penalties into the REEF fund.
4. The regulator shall develop policies for studying and monitoring baseline conditions and ascertaining changes in baseline conditions, and assessing how changes in baseline conditions have impacted commercial fish species and those that rely on them through regional and strategic assessments.
5. The regulator shall use policies and assessments used in studying baseline conditions and changes to baseline conditions to develop guidelines for compensation for losses to commercial fish species that cannot be attributable to an individual development. The regulator shall consult the fisheries industry in developing and reviewing such guidelines and allow for the industry to provide input on such policies.

All of which is respectfully submitted,

Signed,

Kris Vascotto, Ph.D.

Manager, Nova Scotia Fisheries Alliance for Energy Engagement

On Behalf of:

Area 19 Snow Crab Association	Scotia Fundy Inshore Fishermen's Assoc.	Eastern Shore Fisherman's Protective Assoc.	Nova Scotia Seafood Alliance	Brazil Rock 33/34 Lobster	Southwest Nova Tuna Association	Richmond Co. Inshore Fishermen's Assoc.	Full Bay Scallop Association
ASPANS	Seafood Producers Association of Nova Scotia	Gulf Nova Scotia Tuna Fishermen's Assoc.	NS Swordfishermen's Association	Cape Breton Fish Harvesters Association	SHQ Swordfish Harpoon Quota Group	Maritime Fishermen's Union – Local 4, 6 & 9	
Atlantic Groundfish Council	Shelburne County Quota Group	Guys. Co. Inshore Fishermen's Assoc.	Tuna Charter Nova Scotia Association	Clearwater Seafoods Limited Partnership	Coldwater Lobster	Bay of Fundy Inshore Fishermen's Association	

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References:

Chen, C., L. Zhao, H. Lin, P. He, S. Li, Z. Wu, J. Qi, Q. Xu, K. Stokesbury, and L. Wang. 2024. Potential impacts of offshore wind energy development on physical processes and scallop larval dispersal over the US Northeast shelf. *Progress in Oceanography*. 224. AVAILABLE HERE: [Potential impacts of offshore wind energy development on physical processes and scallop larval dispersal over the US Northeast shelf - ScienceDirect](#)

Hutchison, Z. L., P. Sigray, H. He, A. B. Gill, J. King, and C. Gibson, 2018. Electromagnetic Field (EMF) Impacts on Elasmobranch (shark, rays, and skates) and American Lobster Movement and Migration from Direct Current Cables. Sterling (VA): U.S. Department of the Interior, Bureau of Ocean Energy Management. OCS Study BOEM 2018-003. AVAILABLE HERE: [Microsoft Word - BOEM URI M14PC00009 FINAL REPORT REVISED v3 Reformatted US Letter 8March2018_ZH.docx](#)

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Annex 1: Summary of Recommendations (legislative text provided earlier in submission):

Recommendation 1: The regulator must have responsibility for provincial waters being considered for development by Nova Scotia

Recommendation 2: Authorizations for renewable works and activities must consider cumulative effects

Recommendation 3: Principles to be considered during the issuance of SLL must include the environmental characteristics of the marine environment.

Recommendation 4: Call for bid process must respect outcomes of existing assessment processes

Recommendation 5: Spatial protections under the Accord Act must be updated

Recommendation 6: A royalty-funded fund should be established to support future compensation needs for those impacts resulting from cumulative or unforeseen impacts of offshore energy development