

Ms. Kim Phillips
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Renewable and Electrical Energy Division
Natural Resources Canada

SENT BY EMAIL

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March 25, 2024

Dear Ms. Phillips,

Re: Comments on the Proposed *Canada Offshore Renewable Energy Regulations*

This letter provides East Coast Environmental Law’s comments on the *Canada Offshore Renewable Energy Regulations* proposed under the *Canadian Energy Regulator Act* (“CERA”), as published in the *Canada Gazette, Part 1*, 158:8 on February 24, 2024.

East Coast Environmental Law is a regional charity that provides public-interest environmental law services throughout Atlantic Canada. We envision a future in which laws and legal systems protect ecological health and promote environmental and climate justice in Atlantic Canada, and, to that end, we advocate for progressive environmental law and policy, provide public legal education, and share our legal skills to support others who are working to prevent or redress environmental harms.

Over the past year and a half, we have been engaging actively in matters concerning Canada’s nascent offshore wind regimes, including by participating in the Regional Assessment of Offshore Wind in Newfoundland and Labrador and the Regional Assessment of Offshore Wind in Nova Scotia, engaging with federal law-makers on Bill C-49, the proposed *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*, and producing a series of associated reports and submissions.¹ Throughout all of these efforts, we have been advocating consistently for

¹ See: Mike Kofahl and Tina Northrup, [Comparative Jurisdictional Research Report on the Assessment and Regulation of Offshore Wind Development](#) (March 2023); Tina Northrup, [Joint Federal-Provincial Regulation of Marine Wind Energy Development in Offshore Nova Scotia: Understanding Anticipated Amendments to the Accord Acts Regime](#) (19 December 2023); Tina Northrup, [Provincial Regulation of Marine Wind Energy Development in “Nova Scotia Waters”: Understanding the “Regulatory Path” that the Government of Nova Scotia Might Establish under the Marine Renewable-energy Act and Other Provincial Statutes and Regulations](#) (19 December 2023); East Coast Environmental Law, [“Brief to the House of Commons Standing Committee on Natural Resources: Bill C-49”](#) (16 February 2024).

sustainability-based regulation in the offshore. Our perspective on what sustainability-based regulation requires in this context took shape through considerable research and analysis, and we continue to refine our understanding and perspective through further study, as well as through engagement with stakeholders in the fisheries and wind energy industries. Additionally, East Coast Environmental Law does considerable work in the areas of biodiversity and marine protection and conservation, and our experience and perspectives in those fields contribute significantly to our work on offshore renewable energy regulation.

We welcome the establishment of regulations designed to “operationalize” and give detail to the requirements currently set out in Part V of the *CERA*. We appreciate the urgent need for complete, comprehensive, and well-coordinated regulation in this sphere, and in all of our engagement in this field, we strive to work cooperatively and constructively to that end.

Our review of the proposed *Canada Offshore Renewable Energy Regulations* raised one especially significant concern upon which we wish to comment. In brief, that concern is that although the proposed regulations have been designed ostensibly to “operationalize” Part V of the *CERA* “by establishing comprehensive requirements respecting work and activities related to ORE projects and offshore power lines for the purposes of safety, security, and environmental protection” (as stated in the Executive Summary of the Regulatory Impact Analysis Statement), they fail to establish necessary requirements and meaningful guidance for the environmental and socio-economic assessments that project proponents will need to conduct when seeking authorization for offshore renewable energy projects and offshore power lines.

Subsection 298(3) of the *CERA* requires the Commission of the Canada Energy Regulator to take a number of important factors into account when determining whether to issue an authorization for an offshore renewable energy project or offshore power line. Those factors are:

- (a) the environmental effects, including any cumulative environmental effects;
- (b) the safety and security of persons and the protection of property and the environment;
- (c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;
- (d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
- (e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- (f) the extent to which the effects of the project or power line hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; and
- (g) any relevant assessment referred to in section 92, 93 or 95 of the *Impact Assessment Act*.

There is considerable complexity involved in assessing each of these factors. Taking them into account in a meaningful way requires substantial amounts of information-gathering from project proponents, consultation with Indigenous peoples whose constitutionally-protected Aboriginal and treaty rights may be impacted, and, ideally, input from other stakeholders and ocean users with relevant experience and knowledge. Not least for these reasons, we imagined that the proposed *Canada Offshore Renewable Energy Regulations* would provide information-gathering

and public participation requirements to establish minimum standards and crucial parameters for this work. The proposed regulations do not do that. Instead, what we see in sections 11, 12, and 19—which, respectively, stipulate requirements for additional contents in applications for Site Assessment, Construction, Operation and Maintenance, and Decommissioning and Abandonment activities—is that proponents are simply told to provide “an environmental and socio-economic assessment in respect of the work or activities that are the subject of the application that addresses the factors referred to in paragraphs 298(3)(a) to (f)” of the *CERA*.

Requiring proponents to provide environmental and socio-economic assessments that address the factors set out in paragraphs 298(3)(a) to (f) of the *CERA* will mean, in practice, that when the Commission seeks to fulfill its legal obligation under subsection 298(3), it will do so by relying on the assessments proponents provide. In other words, assessments provided by proponents will be the primary, if not the exclusive, means by which the Commission will receive pertinent information about complex matters such as cumulative effects, human health and socio-economic effects (assessed through an intersectional lens), Indigenous rights and interests, and climate change considerations.

We are aware that the Canada Energy Regulator’s current Filing Manual includes a substantial section on environmental and socio-economic assessments. We understand that the inherent complexity of assessment processes of this kind makes guidance materials like the Filing Manual useful for communicating details that would be onerous to describe comprehensively in legislation. However, we believe nevertheless that the fundamental requirements of the environmental and socio-economic assessment process should be set out in law, not left to guidance materials that, in effect, express discretionary practices and policies.

For these reasons, we urge Natural Resources Canada to reconsider its current proposed approach and move instead to establish fundamental information-gathering and other assessment requirements, including public participation requirements, within the text of the *Canada Offshore Renewable Energy Regulations*. Establishing essential assessment requirements and parameters in law, as opposed to leaving them to the realm of discretionary regulatory practice, will help to foster transparent, accountable, consistent, and participatory assessments of proposed offshore renewable energy projects and offshore power lines.

Thank you for considering our comments. Should you wish to discuss them, we would welcome the opportunity to speak further.

Sincerely,

A handwritten signature in black ink, appearing to read "Kostantina Northrup", with a long, sweeping underline.

Kostantina Northrup
Staff Lawyer