2/21/2020

Oceans North Response to the Draft Regional Assessment Report
Submitted online, February 21, 2020

Oceans North is pleased to submit the comments here in on the draft Regional Assessment report. We have engaged in this process because we feel that it is important for ocean industries to be held to a high standard of environmental protection. While we fully understand the impacts of oil and gas and increasing emissions on the health of the planet, its people, ecosystems and species – we also respect the need for a just transition from fossil fuel industries, ideally using proceeds from existing fossil fuel industries to fund that transition. It is for this reason that our submission focuses on best practices for oil and gas in offshore environments, within the greater context of marine protection. Our focus is not on the downstream emissions and climate impacts of production drilling, however we have provided several recommendations in our comments to the Technical Advisory Group on climate change with regards to this issue.

Oceans North has been engaged in all aspects of the regional assessment, from submitting initial public comments, attending in person and phone meetings with the Regional Assessment Committee, following up with questions with IAAC staff and engaging with government departments and governance entities and agencies. We have worked to ensure that this first Regional Assessment under the new Impact Assessment Act is a positive departure from the status quo and sets the stage for improved impact assessments and proactive environmental regulations for Canada's major projects and industries. Our collective staff experience and engagement in Arctic oil and gas issues, Atlantic Canadian environmental assessments as well as broader sustainability issues in marine industries including fisheries and shipping.

In earlier submissions to the Committee, we made the observation that this Regional Assessment resembles a class screening under CEAA 2012 rather than adhere to the IAAC definition of a Regional Assessment. We will reiterate that definition here, that a Regional Assessment under IAA should include, a baseline against which to assess the incremental impact of a discrete project; thresholds to support future project decisions; standard mitigation measures for future projects; potential impacts on rights and interests of Indigenous peoples; and, guidance for land- or marine-use planning and other initiatives for managing cumulative effects that may be undertaken by various jurisdictions. This Assessment adheres to some of these requirements but fails on the most important aspect which is to provide guidance for marine use planning and manage cumulative effects. We asked for clarity on how the Committee was addressing the new IAA within the Regional Assessment but did not receive a response. We maintain that this Regional Assessment, with its recommendations that conditions of exploratory drilling as agreed under CEAA 2012 be extended through blanket regulations for future exploratory drilling in the study area, sets an unfortunate precedent and misses a key opportunity to move offshore oil and gas in Canada to a better managed industry in the context of marine protection and marine spatial planning.

Our comments in this document are focused on the draft report and include overarching comments as well as specific comments on selected recommendations.

I. Overarching comments on the Draft Regional Assessment Report

We respectfully disagree with some points made in the Executive Summary and remain deeply concerned by others.

- While the Committee maintains that no scientific advice was given on areas to avoid, we know that scientific information on coral and sponge concentrations has been widely available in DFO CSAS reports from 2010 and 2016, and information developed through NAFO Scientific Council was also provided to the Committee. We are concerned that the Committee has focused on the mechanism of information transferal – from a federal or provincial department – with a focus on managers from those departments rather than scientific expertise. The information provided by NAFO should be considered scientific advice, given that the Committee did not specifically request a response from the NAFO Commission where Contracting Parties can agree on a response. Undermining the transmittal of scientific advice, when it does exist in the public realm, and only expecting managers to confer this information is not consistent with decision making based on the best available scientific information.
- The statement that "it was originally envisioned that the government experts would be directly involved in the planning, data analysis and writing of various components of the Regional Assessment" is a testament to the short time period required for the Assessment to be completed, and the failure of an all of government approach that would have better been able to assess capacity needs for this process. Going forward, it is imperative that the Regional Assessment process undertake interdepartmental discussions in advance of commencing, to ensure that the resources and expertise are available, that adequate funding is provided and that transparency in information transfer even within departments is foundational. The Committee calls for improved science policy linkages but at the same time has not requested that recent science advice be fast tracked so that it may inform the recommendations.
- The failure to adequately assess cumulative effects and to suggest that the land tenure process of the CNLOPB is a potential vehicle for this effectively punts this vital aspect of assessment down the road and to another agency as well. Cumulative effect assessment is difficult, but given the effort put into GIS modelling, and the science advice that already exists regarding impacts of oil and gas, seismic testing, fishing, shipping as examples, more effort should have gone into this aspect given that the goal of the assessment is to fast track drilling that will undoubtedly have cumulative effects.
- We are disappointed that the Regional Assessment did not conduct a spill response analysis, to better be able to advise on when spill response measures will not be effective or be able to be undertaken. Given that spills do occur during exploratory drilling, such an analysis is vital to advising on when drilling can take place. For example, because of weather and physical oceanographic processes including ice flows, some spill responses may not be able to be deployed. It is already understood that no more than 13% of a spill can be recovered, therefore limiting spills and assessing spill responses gaps should have been done within this assessment and not recommended to another risk assessment process.
- Climate impacts: While the assessment only references emissions related to exploratory drilling, the same treatment is not given to upstream economic benefits of production drilling. We recognize that addressing climate impacts would require an entirely different process that includes in its terms of reference more specificity on whether or not drilling should be allowed at all. That being said, more attention to how the downstream income from oil and gas, as it pertains to the overall GDP of Newfoundland and Labrador and existing and future land claims, should be provided. For example there is ample scope to provide recommendations on

conducting an assessment of the % of royalties that should be invested in renewable infrastructure, payment of debt on renewable energy projects, and in improving overall energy efficiency. A recommendation should be added in the final section on recommendations to other agencies that the provincial government undertake an analysis on how to use proceeds from oil and gas to reduce overall per capita GHGs.

II. Comments on specific recommendations

Our comments below are specific to the ensuing recommendations from the Regional Assessment report and are made chronologically with the recommendations. We have not commented on every recommendation and have focused largely on recommendations relevant to the Ministerial Regulation.

Recommendations Relevant to the Ministerial Regulation

It is clear that this assessment does not intend to raise the bar for exploratory drilling but that the intent is to fast track the project level assessments to reduce the for exploratory drilling approvals. We are not against administrative efficiency, however given the number of potential wells that are expected to be drilled in the study area (53-77 as stated in Module 15) between 2020 – 2028 we do expect that increased precaution would be taken to ensure that this ramp up is accompanied with an increase in environmental protection.

Recommendation 1: The various mitigation and follow-up measures that have been included as conditions of environmental assessment (EA) approval for recent exploratory drilling projects in the Study Area under the *Canadian Environmental Assessment Act,* 2012 (CEAA 2012) (as summarized earlier in Section 4.5) should be requirements for all future exploratory drilling projects in the Study Area (Section 4.6.1, p 113).

Comment: This overarching and primary recommendation ensures that no additional mitigation measures will be included in the regulations given that it is simply to roll over existing conditions of license. This is a lost opportunity to improve conditions of license, address marine spatial planning and marine protection as well as ensure that additional precaution is taken with regards to spill response, same season relief well requirement and respecting high value areas for fisheries and biodiversity protection.

Recommendation 2: Operators undertaking exploratory drilling activity in the Study Area should be required to assign trained (to Environment and Climate Change Canada – Canadian Wildlife Service (ECCC-CWS) standards, once finalized) and experienced seabird observers on drill rigs and supply vessels, whose primary responsibility is to make observations and collect seabird survey data during these activities (Section 4.6.1, p 113).

Comment: This recommendation on trained and experienced seabird observers should be extended to trained and experienced benthic ecologists who are able to identify to species level where possible, benthic species including corals and sponges, in relation to recommendation 8 below.

Recommendation 8) For any future exploratory drilling activities in the Study Area that are proposed to occur within a currently defined Marine Refuge (Fisheries and Oceans Canada, DFO) or a Northwest Atlantic Fisheries Organization (Northwest Atlantic Fisheries Organization, NAFO) Fisheries Closure

Area, any exemption from the federal IA process be contingent on the operator demonstrating that any risks to intended biodiversity / conservation outcomes of that area will be avoided or mitigated.

Specifically, it is recommended that the operator be required to outline, in its project notification to the Impact Assessment Agency of Canada (IAAC) (see Section 8.1.2 below), its plans (to be developed in consultation with DFO) to address any effects of these activities on the various environmental characteristics and sensitivities present within the special area(s). In the case of a Marine Refuge, it is recommended that the operator be required to provide evidence in that submission that the Minister of DFO is satisfied that that risks to intended biodiversity outcomes are avoided or mitigated as per existing DFO policy, and that this determination by DFO be made on clearly defined criteria which should be clearly referenced in the above (Section 4.6.2, p 115).

Comment:

a) This recommendation should be amended to refer to any known concentrations of corals and sponges, referred to as Significant Benthic Areas (SiBAs) within Canadian waters and Vulnerable Marine Ecosystems (VMEs) in the NAFO Regulatory Area. The fisheries closures themselves are not appropriate measures of habitat impact given that these are negotiated boundaries and do not reflect the extent of the key habitat areas. To be consistent with existing conditions of license which require identification of coral and sponge aggregations, this recommendation should be amended. It has already been determined by scientists in CSAS 25/2019 that the most effective mitigation measure is avoidance. Note that we fully support that areas closed to bottom fishing be closed to oil and gas drilling but the focus should be on the habitat and not the management measure given that these areas are protected under national and international fisheries regulation.

b) As noted above, we object to the statement "*As outlined in the report, no government agency with offshore environmental responsibility provided advice that supported designating such exclusion areas or offered recommendations for additional mitigative measures within such areas*". This appears to be a willful disregard of publicly available scientific advice and of recently agreed science advice. To ameliorate this problem, **we recommend that a technical briefing on the CSAS process held in St. John's in January on the impacts of exploratory drilling on corals and sponges should be requested as a matter of urgency by IAAC from DFO so that the results of that process may be incorporated into the ensuing regulations from this regional assessment.** This would ensure that up to date, timely scientific advice would apply to the 53-77 wells that undoubtedly will be covered by the imminent regulatory process and given that there is not current process or timeline for updating the Regional Assessment, there is no certainty that Recommendation x of this document will ever be achieved.

c) Urgent consultation with proponents and the regulator should be held to assess how difficult it would be to ensure that the expected exploratory drills of between 5.9-8.6 wells per year between 2020 and 2028 avoid known areas of coral and sponge habitat. It is stated in the RA (Table 5.3) that area where most drilling is expected is along a band on the slope of the Grand Bank. We expect that this is the primary reason for the Regional Assessment Committee to ignore science advice. Real information is needed to understand if this requirement would actually be a barrier to exploration by proponents.

d) Recommendation 8 should be further amended to specify that the CNLOPB be required to provide proponents information on coral and sponge concentrations, including habitat modeling results from within Canada's EEEZ and in the NAFO Regulatory Area, so that high biodiversity areas are well understood in advance of any baseline survey and the leasing process. Revisions

to the land tenure process should exempt coral and sponge concentrations from the leasing process. We note the current conditions of licence state (from CNOOC Conditions of License, December 18 2020):

> *3.6 The Proponent shall develop and conduct, in consultation with Fisheries and Oceans Canada and the Board, a seabed investigation survey to confirm the presence or absence of any aggregations of habitat-forming corals or sponges or any other environmentally sensitive features prior to drilling a well. The Proponent shall retain the services of an individual that is qualified to operate the equipment used to conduct the survey(s). Survey transect length and pattern around well sites shall be based on applicable drill cutting dispersion model results. Transects around anchor sites should extend at least 50 metres from each structure.*
>
> *3.7 If the survey(s) conducted in accordance with condition 3.6 confirm(s) the presence of aggregations of habitat-forming corals or sponges, or if other environmentally sensitive features are identified by a qualified individual, the Proponent shall change the location of the anchor(s) or well on the seafloor or redirect drill cuttings discharges to avoid affecting the aggregations of habitat-forming corals or sponges or other environmentally sensitive features, unless not technically feasible, as determined in consultation with the Board. If not technically feasible, the Proponent shall consult with the Board and Fisheries and Oceans Canada prior to commencing drilling to determine an appropriate course of action, subject to the approval of the Board, including any additional mitigation measures.*

These conditions of license should be amended to include information on where known concentrations already exist, with a direction to avoid these areas.

e) Conditions of license be improved to ensure that data that is gathered through baseline surveys is presented to DFO science for confirmation of identification of species and personnel engaged by the proponent to review transect data are properly trained in identification of benthic megafauna including and sponges.

f) We would like to highlight that there is no existing DFO policy on Marine Refuges and recommend that the wording of the paragraph following the recommendation be duly amended. The only reference to the difference between Marine Refuges and Marine Protected Areas in terms of expectations of activities that are prohibited is found in the National MPA Standards report. This report is not a policy document and to our knowledge, there are no policies in place that further elaborate on these recommendations. If drilling is permitted in an area of high coral and sponge concentration, the Minister should instead use the newly restored habitat provisions of the Fisheries Act and then make the decision as to whether or not a HADD can be authorized.

g) Below we have included maps and calculations of the overlap of SiBA and VME habitats as well as fisheries closures so that there is a quantitative assessment of how much area of existing exploration leases should be off limits to exploratory drilling. In Figure 1, approximately 13.2% of SiBA habitat overlaps with exploratory leases and on the high seas, 23.8% of VMEs are within existing exploratory leases. In Figure 2, the overlap of Marine Refuges with SiBAs is 7.1% and the overlap of NAFO VME closures is 7.8%. In both cases, restricting oil and gas from these areas leaves > 75% of the area open to exploratory drilling. We note that some leases have no overlap and some have a large percentage of overlap, suggesting that more work will need to be done to avoid drilling in these areas for some proponents than for others.

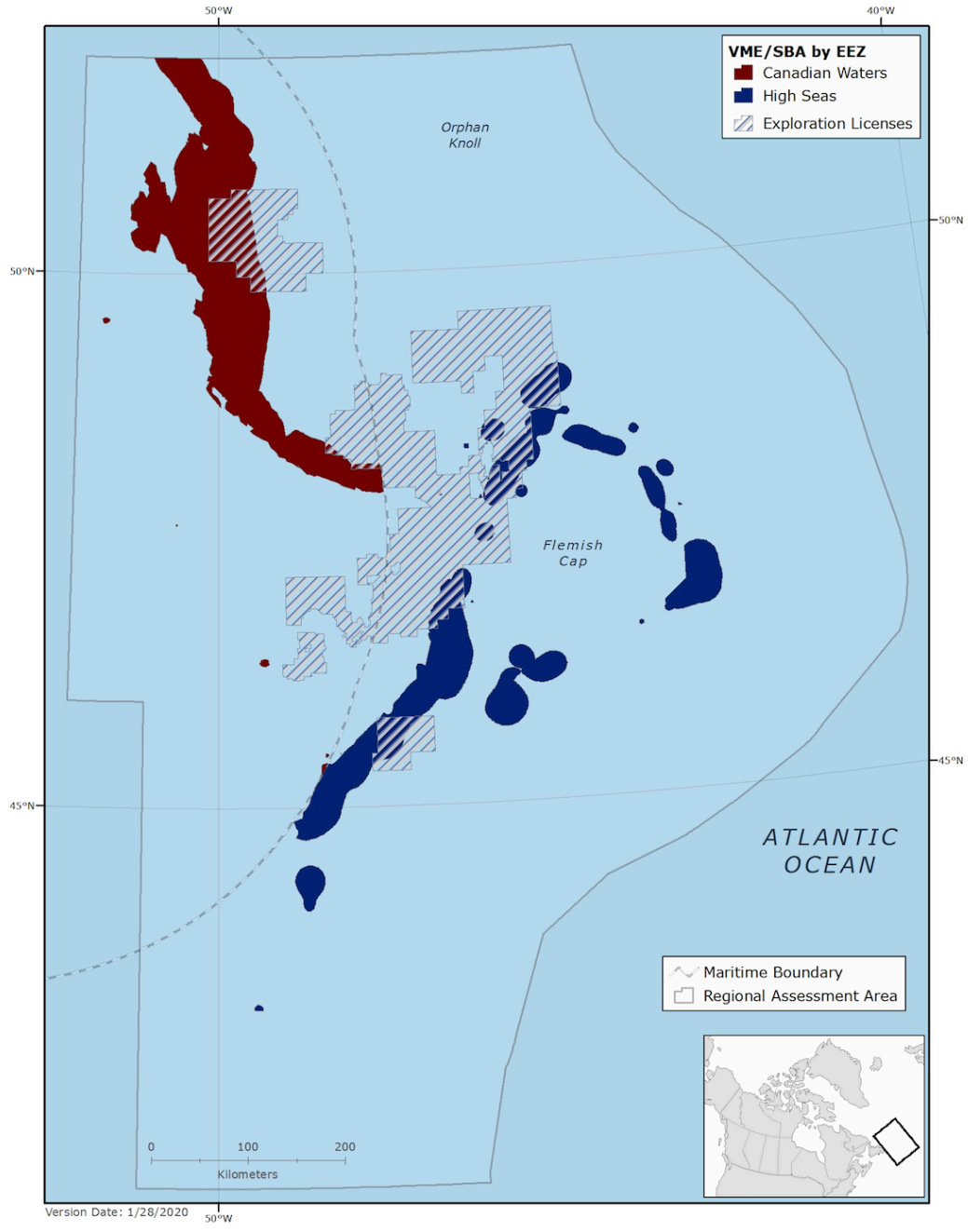

Figure 1. Overlap of SiBAs (red) and VMEs (blue) in the Canadian EEZ and in the NAFO Regulatory Area with current exploratory leases.

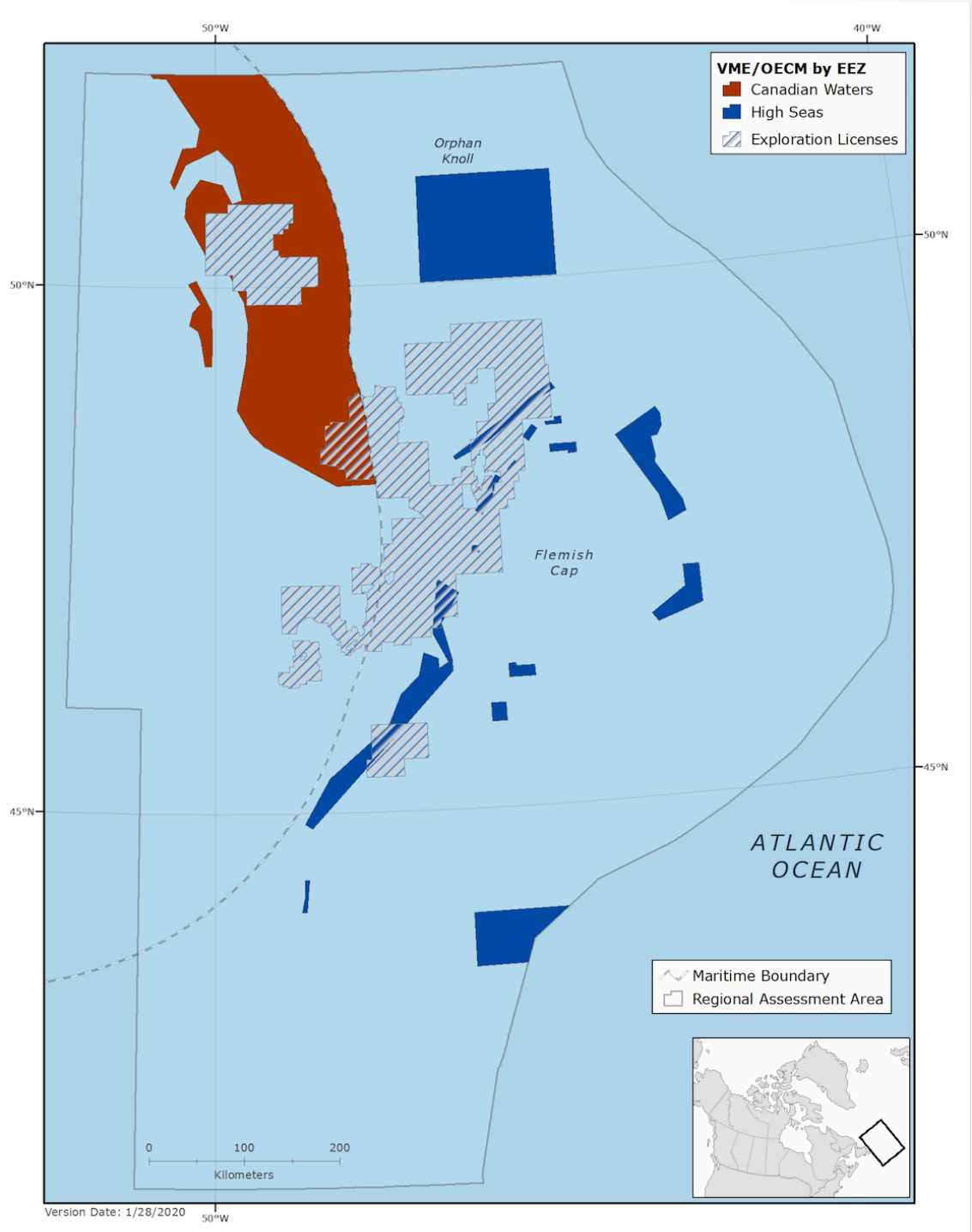

Figure 2. Overlap of Marine Refuges (red) and VME closures (blue) in the Canadian EEZ and in the NAFO Regulatory Area with current exploratory leases.

h) Finally, new information is available that shows the impacts of climate change on deep sea corals. This should be taken into account in any cumulative effects assessment (see Morato et al 2020[1]), as should the findings of the IPCC Special Report on Oceans and the Cryosphere.

Procedural Recommendations

We support and appreciate the focus on transparency, however Recommendation 9 is already expected and undertaken in the regulatory gazetting process.

Recommendation 9: The Committee recommends that the IAAC consult with Indigenous and stakeholder groups and the public in the development of the above referenced Ministerial Regulation.

Comment: Specific reference to the Canada Gazette process in addition to any other regulatory consultation should be made. A barrier to consultation and input is often that rightsholders and stakeholders do not know where to look to provide input.

Updating and Implementing the Regional Assessment and the Ministerial Regulation

We support the recommendations in this section, however we remain concerned about the lack of specificity regarding who will host the living document and the process for selection of Oversight Committee members (by application? Appointment?) more clarity and specificity is needed here. We are pleased that there is a recommendation that the Regional Assessment be reviewed annually, and strongly support that regulations be accordingly updated however we are well aware of the realities of changing regulations and the preference for regulatory certainty. As such, we revert to our recommendations above regarding designating areas to avoid so that proponents have certainty and can also use that certainty to show efforts by the oil and gas industry to avoid areas of high biodiversity. We appreciate the recommendation for accountability by all government departments to update on progress towards recommendations and suggest that this progress be made publicly available.

Recommendations Directed to Other Parties

Recommendation 24) It is recommended that representatives of the oil and gas industry, applicable regulatory and resource management agencies (including the C-NLOPB and DFO) and the fishing industry work together, through the One Ocean initiative, to develop and implement a protocol for gathering, documenting and sharing this information and knowledge to better understand key fishing activities, areas and times on a regional scale (Section 3.5.2, p 91).

Comment: This process does not include any Indigenous organizations or communities nor does it include any environmental or conservation organizations. This recommendation should be amended to broaden the scope of the One Ocean initiative to improve quality of information and stakeholder / rightsholder collaboration.

Recommendation 25) It is recommended that representatives of the oil and gas industry, applicable regulatory and resource management agencies (including the C-NLOPB, DFO and ECCC), Indigenous

[1] Morato *et al.* (2020) Climate-induced changes in the suitable habitat of cold-water corals and commercially important deep-sea fishes in the North Atlantic. Global Change Biology. https://doi.org/10.1111/gcb.14996

groups and the fishing industry work together to develop and implement a protocol for gathering, documenting and sharing.

Comment: Environmental and conservation organizations should be included in this recommendation.

Recommendation 29) It is recommended that the C-NLOPB specifically consider overall information availability, data gaps and associated environmental risks in future decisions around whether and when to issue licences in data deficient areas as part of its scheduled land tenure process (Section 4.6.2, p 115).

Comment: This recommendation should be amended so that CNLOPB provides information about known biodiversity hotspots and concentrations, particularly as relates to corals and sponges as well as all information on bottom fishing closures with regards to whether and when to issue licenses. Decision making should not be limited to data deficient areas, as there is a clear problem with making decisions in areas where there is sufficient data.

Recommendation 30) For each of the various types of identified special areas found within the Study Area (Marine Refuges, Fisheries Closure Areas, Ecologically and Biologically Significant Areas (EBSAs), Sensitive Benthic Areas (SiBAs), Vulnerable Marine Ecosystems (VMEs)), it is recommended that the relevant authorities accelerate scientific review and analysis of these areas to determine if their various components and characteristics warrant additional protection, mitigation or follow-up measures for any future exploratory activity that may take place within them (Section 4.6.2, p 116).

Comment: As recommended above, we advise that the Committee take into account publicly available science on concentrations of sponges and corals, information provided by DFO science and NAFO Scientific Council as well as request a Technical Briefing on the recent CSAS process and incorporate that information into this Regional Assessment.

Recommendation 33) It is recommended that once DFO's forthcoming additional guidance on mitigating effects to corals and sponges has been developed and released, these measures be incorporated into a future update of this Regional Assessment (Section 4.6.3, p 116).

Comment: As noted above, the agreed results of this CSAS process should be requested through a Technical Briefing as is practice for many time sensitive scientific processes in advance of critical management decisions. This recommendation should be acted upon now, given that there is little to no chance that regulations will be updated to incorporate this information.

Recommendation 34) Should the *Statement of Canadian Practice with respect to the Mitigation of Seismic Sound in the Marine Environment* be revised as a result of DFO's on-going review of it, it is recommended that any new mitigations/standards be included in future update of this Regional Assessment (Section 4.6.3, p 117).

Comment: DFO has recently posted scientific advice on updating the Statement of Canadian Practice. This information is available now and that Statement could be updated immediately based on new advice found here: http://www.dfo-mpo.gc.ca/csas-sccs/Publications/SAR-AS/2020/2020_005-eng.html

Recommendation 38) It is recommended that government assume responsibility for offshore-related cumulative effects assessment and management through a planning process directed by a dedicated agency. The DFO Marine Spatial Planning initiative might be considered as an appropriate vehicle through which to do this (Section 5.4, p 147).

Comment: As noted in the report "any attempt to manage the spatial and temporal distribution of future drilling activity in the Study Area requires a more **proactive and holistic approach through associated policy and planning decisions by the federal and provincial governments if potential adverse effects are to be avoided or minimized**. " (page 147). The Committee itself has not taken a proactive or holistic approach. The fact that the Committee cannot recommend any areas to avoid, despite adequate scientific information means that the marine spatial planning process outcome is already predetermined, with no spatial restrictions on oil and gas activity. It is unacceptable that the Committee continues to punt the hard decisions to other Departments and processes, particularly when this Regional Assessment is to inform Ministerial Regulations.

Gaps

We are disappointed that the Committee has not made a recommendation regarding the transboundary nature of this Regional Assessment and strongly recommend that some statement be made to this effect, given the precedent this Assessment will set in how Canada and other States embark on transboundary impact assessments. Canada has engaged in international negotiations for a new high seas treaty in areas beyond national jurisdiction. There are gaps in the legal structure to ensure that environmental protections of one sector are upheld by another. There are gaps in guidance on transboundary EIAs and adherence to commitments made in UNCLOS. We recommend that the Committee include a recommendation that Global Affairs Canada together with DFO and IAAC work to ensure that future updates to this Regional Assessment take into full account its transboundary nature and cumulative impacts on the high seas portion. We are fully aware of Canada's extended continental shelf and the sovereign rights therein, however Canada should show leadership and best practices that other States could follow. Currently this Assessment does not do that and is a lost opportunity to demonstrate how cross sectoral collaboration can lead to enhanced biodiversity protection. Canada is also a signatory to the Convention on Biological Diversity, and we suggest that this Regional Assessment be reviewed to better understand how the current process could be improved to ensure that decisions made about large projects uphold our commitments to protect habitat, biodiversity and mainstream biodiversity within the private sector and its related regulators.

Conclusion

We undertook this exercise in engaging in this Regional Assessment because we believe in democratic and public processes, and in public decision making underpinned by using the best available science. We support many of the changes to the *Impact Assessment Act* and we have supported Canadian government adherence to international commitments and wanting to resume its place in the list of States who can claim to be ocean leaders. As it stands, the draft Regional Assessment report falls short of meeting our expectations, however we have continue to engage because to not try would be abdicating our civic responsibility to ensure that biodiversity protection is taken seriously and that we have productive and healthy oceans into the future that continue to provide for coastal communities as well as rebuild depleted marine animal populations.

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