



CAPP Detailed Comments to the
National Advisory Panel on Marine
Protected Area Standards

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The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 80 per cent of Canada's natural gas and crude oil. CAPP's associate members provide a wide range of services that support the upstream crude oil and natural gas industry. Together CAPP's members and associate members are an important part of a national industry with revenues from crude oil and natural gas production of about \$110 billion a year. CAPP's mission, on behalf of the Canadian upstream crude oil and natural gas industry, is to advocate for and enable economic competitiveness and safe, environmentally and socially responsible performance.

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1 Introduction

The Canadian Association of Petroleum Producers (CAPP) and its members place the highest value on building and maintaining the trust of Canadians and the investment community. Timely and predictable regulatory processes can help foster that trust and build relationships between project proponents, Indigenous groups, local communities and Canadians broadly.

Canada's offshore oil and natural gas operators are committed to safe and responsible development. Safe and responsible offshore exploration activity has occurred for decades in Atlantic Canada, and in Canada's Arctic, with the oversight of a stringent offshore regulatory regime. Since 2002, 68 environmental assessments (EAs) have been completed in Atlantic Canada along with considerable research and effects monitoring, conducted nationally and internationally, resulting in accepted scientific thresholds, best practices and guidelines that have been applied and demonstrated to be effective.

Canada, as a signatory to the Convention on Biological Diversity, committed to protecting five per cent of Canada's marine and coastal areas by 2017, and 10 per cent by 2020. Canada's total ocean territory covers 5,750,000 km²¹. In the fall of 2017, Canada surpassed its 2017 target of five per cent with 445,900 km² of marine and coastal protected areas (7.75 per cent) and is close to meeting the 2020 target of 10 per cent. Achieving initial targets is a significant accomplishment and preparing for the next phase requires consultation and decision making processes that draw upon the best available science.

Voluntary actions have been taken by the offshore petroleum industry that have been integral to precautionary management, such as the development of codes of practice for working near the Sable Gully Marine Protected Area (MPA) and Sable Island National Park Reserve, offshore Nova Scotia. Industry has freely participated in collaborative research projects with government and academia to better assess the potential impact of its activities. Industry also provides extensive environmental effects monitoring (EEM) reports to the Offshore Petroleum Boards', which are publically available. The Offshore Petroleum Boards' administer robust and rigorous regulatory regimes to ensure the safety of workers and protection of the environment. The offshore regulatory regime, and the Offshore Petroleum Boards' policies and guidelines, take into account global best practices and provide the basis for enforcement and compliance for offshore petroleum activities.

Government and agencies have commissioned independent studies such as the 2004 work commissioned for the Canadian Environmental Assessment Agency (Agency) titled "Environmental effects of exploratory drilling offshore Canada: environmental effects monitoring (EEM) data and literature review: final report" (Hurley and Ellis, 2004). This work examines the environmental effects of offshore exploratory drilling on, among other things, fish and fish habitat, marine mammals and species-at-risk. The study focused on scientific literature and EEM from eight offshore EEM programs, and a Beaufort Sea EEM program to evaluate the

¹ <http://www.dfo-mpo.gc.ca/oceans/conservation/achievement-reussite-eng.html>

interactions between exploratory drilling and the environment. As such, the study's main finding was that the primary environmental concern during exploratory drilling is the effects of drilling waste and other discharges associated with the program. The findings further indicated quite conclusively that potential adverse environmental effects associated with such programs are low due to the small volumes discharged and the short-term nature of drilling activity, which is typically 90 to 120 days in duration.

Recently, Natural Resources Canada commissioned an update of the Hurley and Ellis (2004) study that confirms the scientific analysis previously completed respecting environmental impacts. In general, the findings of this updated study indicate the potential cumulative effects are anticipated to make a minor contribution, if any, to the overall environmental effects of offshore exploratory drilling given the extensive mitigation and monitoring measures in place. Potential effects on the environment of drilling are generally considered to be mitigated through engineering and environmental design criteria, industry standards, and environmental monitoring. As part of a project-specific environmental assessment (EA), companies wishing to conduct exploratory drilling in Canadian marine waters may be required to put in place additional or enhanced environmental mitigation measures to further reduce the risk of harm to marine life and/or to validate EA predictions. These are all factors that must be considered as part of multiple use ocean management plan.

2 Offshore Context

The two Offshore Boards – the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) and the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) – regulate the offshore oil and natural gas industry off the coast of Nova Scotia and Newfoundland and Labrador respectively. Under the *Canada-Newfoundland Atlantic Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* the mandate of the Offshore Boards includes:

- Health and safety of all workers;
- Protection of the environment during various phases of a project (geophysical work, seismic surveys, exploration drilling, production and decommissioning);
- Management and conservation of petroleum resources;
- Employment and industrial benefits;
- Issuance of licences for exploration and development; and
- Resource evaluation, data collection, curation and distribution.²

Prior to the appropriate Offshore Board issuing an authorization for any activity the project proponent is required to have an EA conducted by the Canadian Environmental Assessment Agency as per the *Canadian Environmental Assessment Act, 2012*. The EA process is rigorous and often includes co-ordination with the Offshore Board, federal and provincial government departments such as Environment Climate Change Canada and the Department of Fisheries and Oceans along with Indigenous engagement and stakeholder consultation. Once the EA process

² www.cnsopb.ns.ca and www.cnlopb.ca

is complete, the Minister of Environment and Climate Change Canada (ECCC) is responsible for issuing a decision statement (DS) indicating whether the designated project may proceed.

While the EA process is ongoing, the project proponent prepares a number of technical documents for review by the Offshore Board including a safety plan and an environmental protection plan (EPP). These documents are not approved by the Offshore Board until the EA process is concluded and a DS is released by the Minister of ECCC.

The operator's EPP must be submitted in support of its application for an authorization and the Board must be satisfied the specific project details including the rig and equipment are fit for purpose, training and competencies of employees, response plans in the event of an incident (Tier 1, 2 or 3) and appropriate measures to mitigate the event.

Any authorization request to the applicable Offshore Board from an applicant is subject to an extensive review which covers, among other things, environmental monitoring, environmental protection plans and contingency plans. The applicable Offshore Board reviews proposals for all physical activities offshore – from seismic surveys to production projects – to identify their potential effects upon the natural environment or upon other users of that environment (such as the fishery). It also evaluates measures that are proposed to prevent or mitigate these effects. This activity includes reviewing operators' contingency plans for environmental emergencies – including the unlikely event of a spill - to ensure that adequate response measures, people and equipment are in place in the event of an incident. In addition, *Geophysical, Geological, Environmental and Geotechnical Program Guidelines* provide the detailed approach to assist in the authorization for projects related to seismic surveys.

If exploration is successful (commercial hydrocarbons are discovered), the operator is then required to commence a development plan, which on average can take from five to 10 years for approval. Before production authorizations are granted, the operator must implement and demonstrate to the satisfaction of the Offshore Board a rigorous EEM program. Producing operators are required to conduct EEM programs throughout each year. EEM is also required for all development projects, and at times for certain exploration activities depending on the commitments made in an EA. The EEM program, designs and monitors potential effects of offshore development or production activities on the environment directly adjacent to the project.

Operators are also expected to provide an update of planned activities to fisheries interests (Indigenous and non-Indigenous) that will include timing of exploration activities and locations of planned wells, regular updates of planned offshore operations and activities, and evaluate the continued applicability and validity of the EA predictions and mitigation measures.

For example, before any drilling activity takes place a remotely operated vehicle (ROV) survey is conducted to identify any deep water sponges, coral colonies and sea pens. If any are identified, a buffer zone from the corals must be maintained. This has been the Offshore Boards' standard for years. Management and mitigation controls eliminate or significantly

reduce potential effects of drilling activities on cold water corals and associated species, and must be considered as part of a multiple use ocean management plan. The National Advisory Panel on Marine Protected Area Standards should refer to existing management and mitigation measures currently in place such as the *Oceans Act*, *Fisheries Act* and *Species at Risk Act* as well as internationally accepted scientific thresholds for potential effects of drilling discharges on cold water corals can be used for exploration drilling planning, impact assessment and engineering options selection to ensure the risk of any effects are minimized or eliminated. International case studies demonstrate numerous best practice options to protect cold water corals, such as the use of high-resolution mapping sensors and platforms to secure suitable data to determine the spatial extent and condition of local cold water corals prior to operations.

Canada must not lose sight of the marine conservation tools already enacted which have the potential to contribute to MPA network goals, such as *Fisheries Act* closures and critical habitat protected under the *Species at Risk Act*.

3 CAPP's Responses to Key Questions

3.1 Question 1: What Practical Recommendations do you have for Creating Standards for Marine Protected Areas (MPAs)

CAPP strongly advocates for an approach that aligns the existing Canadian *National Framework for Establishing and Maintaining MPAs* with international ocean policies developed by other jurisdictions with oil and natural gas development, such as Norway and the UK, which also have stringent environmental protection standards similar to Canada and who implement a risk based approach that permits activity to occur in ecologically sensitive areas with mitigation measures in place.

The Canadian Framework is built on partnership and a willingness for all stakeholders to work together and allows for regional flexibility which is needed in order to meet the range of conservation and protection targets for MPAs. This Canadian Framework was applied and worked well for the Laurentian Channel MPA process.

The Norwegian government also has comprehensive, ecosystem-based management plans which lay a framework for commercial activity in the area so that the overall impact does not exceed a critical level for the environment through multi-sectorial management plans. These management plans “contribute to a coordinated use of the sea while also ensuring that the environment is looked after. Each sector (fisheries, oil and gas, shipping) uses its own legislation to achieve this. Guidance has also been developed that outlines the specified requirements for operating in sensitive areas, including protection of cold water corals, with direction on mapping and visual techniques in order to identify whether there are corals present in the planned drilling area, and mitigating measures to avoid negative impact on corals. A precautionary, risk-based approach is applied whereby the source of impact, potential effects

and influence areas, are considered when planning for mitigating actions, monitoring regimes are considered, and mitigations are applied and weighted.”³

CAPP recommends: That the National Advisory Panel consider existing international standards and best practice that provide a balanced approach to resource development. International resources include DNV GL Guidelines for “Monitoring of Drilling Activities in Areas with Presence of Deep Water Corals.”

In addition, **CAPP recommends** the following points be considered by the National Advisory Panel.

- The Environmental Studies Research Fund (ESRF), initiated in 1983, receives its legislative mandate through the *Canada Petroleum Resources Act (CPRA)* as well as the *Canada-Newfoundland Atlantic Accord Implementation Act and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. ESRF is a research program that sponsors environmental and social studies and is designed to assist in the decision-making process related to oil and natural gas exploration and development on Canada's frontier lands.⁴ To date, more than 200 studies have been funded including those related to environmental effects monitoring for exploration drilling. This research is specific to Canada, publically available, and the results must be taken into consideration to assist as part of the decision-making process as per the mandate of this fund.
- Reference to Department of Fisheries and Oceans science research and advice to support decision making for policy development related to marine ecosystem conservation. “Advice is provided on a range of issues, such as the effects on marine species and ecosystems from:
 - seismic surveys;
 - drilling operations;
 - production systems; and
 - decommissioning of oil drilling platforms.”⁵

The Canadian offshore industry use a coordinated national program of research that focuses on ecosystem impacts of offshore oil and natural gas activities. The concept of developing provisions that permit flexibility in allowing or restricting recreational, harvesting, and economic activities, separately or jointly, depending on the potential risks of these activities to the ecological features being protected is not unique to Canada and such activities must be integrated as part of the National Advisory Panel recommendations.

³ <https://www.regjeringen.no/en/topics/climate-and-environment/biodiversity/innsiktsartikler-naturmangfold/hav-og-kyst/id2076396/>

⁴ <http://www.esrfunds.org>

⁵ www.dfo-mpo.gc.ca

3.1.1 Question 1a) on what do you base these suggestions? Best available science, indigenous knowledge, ecosystem approach or something else?

Standards should be developed by federal and provincial governments in conjunction with life-cycle regulators based on the best available, peer reviewed science alongside Indigenous ecological knowledge, MPA guidance and stakeholder consultation.

CAPP supports an approach that balances the protection of ecologically sensitive areas and sustainable development of Canada's ocean resources.

CAPP recommends the National Advisory Panel consider the following points when developing recommendation on MPA guidance to the federal government:

- The Regional Impact Assessment (RIA) process coupled with the project-based EAs conducted by the Canadian Environmental Assessment Agency, permitting processes, compliance monitoring such as environmental effects monitoring, and adherence to Offshore Board requirements such as the *Offshore Waste Treatment Guidelines* are designed to protect the environment during exploratory drilling and are tools that governments should use to determine and develop specific mitigation measures for areas with sensitive benthic habitats. The offshore processes and procedures currently in place should be given special consideration in recognition of the *Accord Act* provisions.
- Existing mitigations for seismic activities (e.g., ramp-up, pre-survey visual observation periods by qualified marine mammal observers, and shut-downs) have successfully prevented any demonstrable impacts beyond a temporary change in behaviour for individual animals, or any meaningful adverse consequences (including auditory injury or mortality) to marine mammal species or sea turtles.
- Routine drilling activities should be permitted if the proponent can demonstrate that environmental effects are low in magnitude, geographic extent, frequency and duration, and are reversible based on environmental effects monitoring results to date from offshore east coast Canada and other well-regulated offshore jurisdictions internationally.

In 30 years of development in the Newfoundland and Labrador and Nova Scotia offshore areas, there has been no significant environmental effects. The decision-making process around marine conservation initiatives must give considerable weight on outcomes to date and timely, predictable, collaborative and evidence-based decision making.

3.2 Question 2. What Role Do Indigenous Approaches Play in Shaping Your Suggestions?

Our recommendations are rooted in meaningful engagement at the RIA process whereby concerns of directly affected Indigenous groups are tabled early during and prior to a call for bids process. This engagement also allows prospective developers to begin meaningful dialogue with Indigenous groups that may be directly affected by a proposed project.

Once licenses are awarded by the Offshore Board and project-specific EAs are underway, Indigenous concerns and interests pertaining to project development can be understood and considered such that mitigations can be developed early in the project planning phase.

Meaningful Indigenous consultation early on in the process provides an opportunity to discuss and consider traditional knowledge in conjunction with peer-reviewed science in the decision-making process. Meaningful Indigenous engagement at the project-specific EA requires timely decision making and must focus on those directly affected by the development.

CAPP recommends governments, agencies, proponents, Indigenous leaders and stakeholders must recognize the need to balance meaningful engagement while providing timely project approvals.

3.3 What kinds of guidelines will help Canada to honour its commitments to reconciliation and new relationships with Indigenous peoples?

In order for Canada to honour its commitments to reconciliation and new relationships with Indigenous peoples, the federal government should not be driven by guidance; the relationship must be one of mutual respect, open, and honest, transparent and continued dialogue.

CAPP recommends co-ordination within the federal government and with the provinces and territories regarding the framework for Indigenous consultation. Consultation on the draft *Public Statement - Canada's Approach to Consultation and Accommodation* and draft *Consultation and Accommodation Advice for Proponents* developed by Indigenous and Northern Affairs Canada should be revisited as tools to assist with building relationships and accommodation.

Without co-operation and co-ordination the development of guidance will become an afterthought that will lead to excess costs, lengthy timelines, and duplication of proponent, Indigenous, government and stakeholder efforts.

Canada's commitment to United Nations Declaration on the Rights of Aboriginal People is reflected in the recent amendments to *Bill C-69*. This potential change moves away from the concept of duty to consult as a legal obligation to a means of advancing reconciliation and other shared objectives. If government chooses to develop guidance, roles and responsibilities must be clearly defined early in the process and a key principal of any guidance should be the importance of meaningful engagement as a two-way approach whereby all relevant parties must be willing to engage in the process, share information, provide follow-up and adapt as required.

3.4 Question 3: What Do You See As The Strengths and Weaknesses of the IUCN Guidelines?

3.4.1 Background

At one time IUCN recognized that, at a minimum, an MPA must meet the following definition of a protected area: “A protected area is a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values (IUCN, 2008). IUCN currently recognizes that in some cases, the following types of marine-managed areas may not necessarily qualify as MPAs (Day, et al., 2012), though it is noted that many areas will have several objectives:

- Fishery management areas with no wider stated conservation aims.
- Community areas managed primarily for sustainable extraction of marine products.
- Marine and coastal management systems managed primarily for tourism.
- Wind farms and oil platforms that incidentally help to build up biodiversity around underwater structures by excluding fishing and other vessels.
- Marine and coastal areas set aside for other purposes but that have an indirect conservation benefit (e.g. military training areas, disaster mitigation zones, communications cable and pipeline protection areas, shipping lanes). Large areas (e.g. regions, provinces, countries) where certain species are protected by law across the entire region.⁶

3.4.2 Strengths of IUCN Guidelines

IUCN is internationally recognized, draws from thousands of researchers world-wide develops best practices, conservation tools, and international guidelines and standards and is the “only environmental organization with official United Nations Observer Status. IUCN ensures that nature conservation has a voice at the highest level of international governance. IUCN’s expertise and extensive network provide a solid foundation for a large and diverse portfolio of conservation projects around the world. Combining the latest science with the traditional knowledge of local communities, these projects work to reverse habitat loss, restore ecosystems and improve people’s well-being.”⁷

3.4.3 Weaknesses of IUCN Guidelines

The weakness with IUCN Guidelines is the level of emphasis placed on conservation which is disproportionate to the economic and social goals required for sustainable oceans management. Economic considerations are an important component of biodiversity at the highest level as a means of food sources and energy security. CAPP is concerned is there is no recognition in the IUCN Guidelines that MPA networks are, from the perspective of resource

⁶ www.iucn.org

⁷ www.iucn.org

users, intended to address both environmental and socio-economic needs. Also, whether it is fishing or resource development, the use of our resources is culturally significant to Canadians.

CAPP recommends that offshore oil and natural gas development should not fall within the category of mining in IUCN Guidelines. The categories defined by IUCN can have a direct effect on policy, including controls on particular management interventions within protected areas, which should be specific to the level of activity. Canada must develop its own language and provisions outside of the IUCN Marine Protected categories in consultation with key stakeholders.

Canada must not lose sight of the marine conservation tools already enacted, which have the potential to contribute to MPA network goals, such as *Fisheries Act* closures and critical habitat protected under the *Species at Risk Act*.

4 Question 4: Do the Guidelines Developed by the IUCN Work Well in the Canadian Context?

As currently written, the Guidelines published by IUCN do not provide the necessary guidance for the development of a multiple use ocean management plan. IUCN Guidelines are a resource that Canada can draw upon but should not be the only resource used when developing MPA guidance should government determine guidance is required.

Guidelines should be based on principles, planning and management approaches that allow a balanced approach to managing Canada's oceans and subsequent socio-economic benefits must be considered in the decision making process.

5 Question 5: Specific circumstances unique to Canada that pose challenges for the use of the IUCN Guidelines?

Operators are expected to provide an update of planned activities to fisheries interests (Indigenous and non-Indigenous) that includes timing of exploration activities, locations of planned wells, and regular updates of planned offshore operations while evaluating the continued applicability and validity of EA predictions and mitigation measures. Voluntary actions by the offshore petroleum industry that have been integral to precautionary management in and near MPAs and other environmentally sensitive areas, such as the Codes of Practice for working near the Sable Gully MPA and Sable Island National Park Reserve, could be potential consequences if IUCN guidance is applied.

The implementation of enhanced mitigation measures by offshore operators, as well as research initiatives, to better assess the impact of their activities and to enhance the current state of knowledge, has led to advancements in technology, mitigation measures and environmental effects monitoring. Solely applying IUCN guidance will place a disproportionate emphasis on conservation versus development and none on activities that can be assessed on a

risked basis and mitigated accordingly erode such opportunities as the offshore oil and gas industry as operations, environmental effects and mitigations are drastically different.

5.1 Cooperation with Provinces and Lifecycle Regulators

The offshore regulatory regime and the Offshore Boards' policies and guidelines are regularly updated and already take into account global best practices, and provide the basis for enforcement, compliance and the development of effective mitigations for offshore petroleum activities.

Canadian MPA guidance should recognize life-cycle regulators and leverage their unique expertise and specific interests. The Offshore Boards have relevant experience in administering offshore oil and natural gas whilst protecting the environment and have specialized technical expertise that should be availed of.

5.1.1 Other Factors to Consider

"In 2015 Canada adopted national biodiversity goals and targets for 2020 which complement the international goals and targets. Protected area reporting will form the basis for measuring progress toward Canada's 2020 Biodiversity Target 1: By 2020, at least 17 percent of terrestrial areas and inland water, and 10 percent of coastal and marine areas, are conserved through networks of protected areas and other effective area-based conservation measures."⁸

Canada continues to make significant advancements in protecting the marine environment. The approach taken for the potential development of MPA guidance should not be anchored to a singular approach and must allow for flexibility to accommodate advances in technology, research findings, climate policies and environmental changes.

6 Conclusion

CAPP again wishes to emphasize the importance of maintaining regulatory processes that are efficient and provide certainty and consistency for all parties involved. CAPP supports an approach that balances the protection of ecologically sensitive areas and the sustainable development of Canada's ocean resources.

The joint management principle of the Atlantic Accords and the regulatory authority of the Offshore Boards must be respected.

If the federal government plans to proceed with MPA guidance or standards development, the IUCN should be considered a reference that Canada can draw upon. However; IUCN should not directly influence Canadian policy as it falls short of providing guidance for the development of a multiple-use ocean management plan.

⁸ <https://ec.gc.ca/ap-pa/default.asp?lang=En&n=8EF4F871-1&offset=2>

Guidelines or standards, should they be required, must be based on principles, planning and management approaches that allow a balanced and flexible approach to managing Canada's oceans resources. Such principles should include socio-economic benefits that must be considered in decision making to ensure sustainable multiple use ocean management resource plan.