



Environmental Assessment – A Key Tool In Our Environmental Protection Mandate

Atlantic Accord Act Environmental Assessments

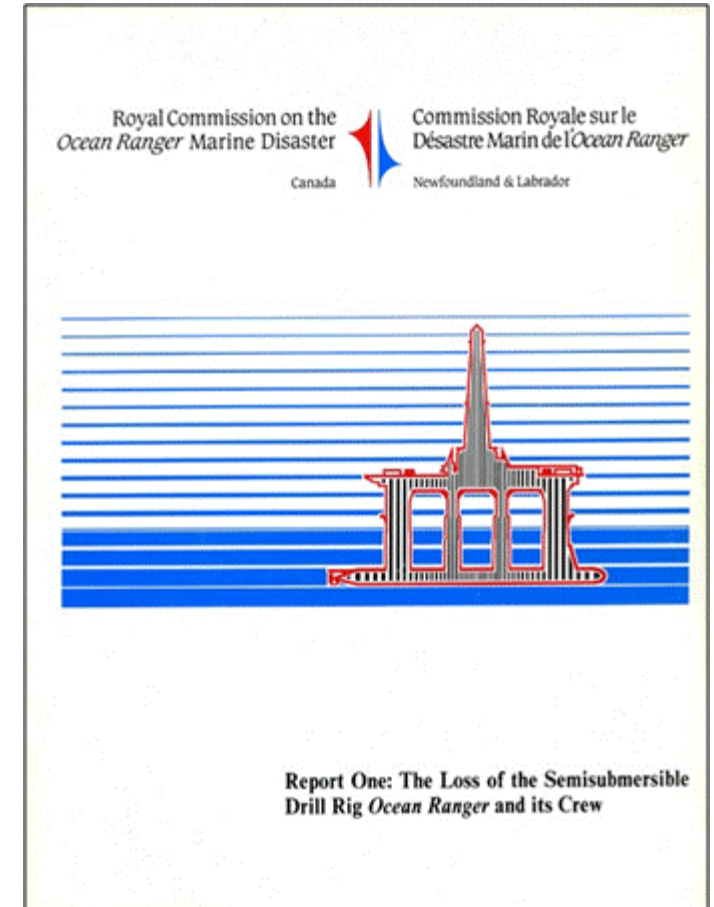
Submission to the Expert Panel on Environmental
Assessment Processes

Scott Tessier, Chair and Chief Executive Officer
October 26, 2016

Single Window Regulator Approach

Royal Commission on the Ocean Ranger Marine Disaster (Canada), & Hickman, T. A. (1984). *Report Two*, Recommendation 86:

*That Canada maintain the approach of a **single regulatory agency**, in concept and in practice, in exercising regulatory control over MODUs and the varied aspects of their drilling operations including the standby role of vessels and the rescue role of helicopters under contract to industry (p. 131, 139-140)*



Regime Under *Accord Acts*

- Atlantic Accord between Government of Canada and Government of Newfoundland and Labrador - February 11, 1985
- Joint management regime established by *Accord Acts* governing petroleum-related work or activity in the Canada-Newfoundland and Labrador Offshore Area:
 - *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*
 - *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*

Precedence over other Acts of Parliament

4. In case of any inconsistency or conflict between
 - (a) this Act or any regulations made thereunder, and
 - (b) any other Act of Parliament that applies to the offshore area or any regulations made under that Act, except the *Labrador Inuit Land Claims Agreement Act*, this Act and the regulations made thereunder take precedence.

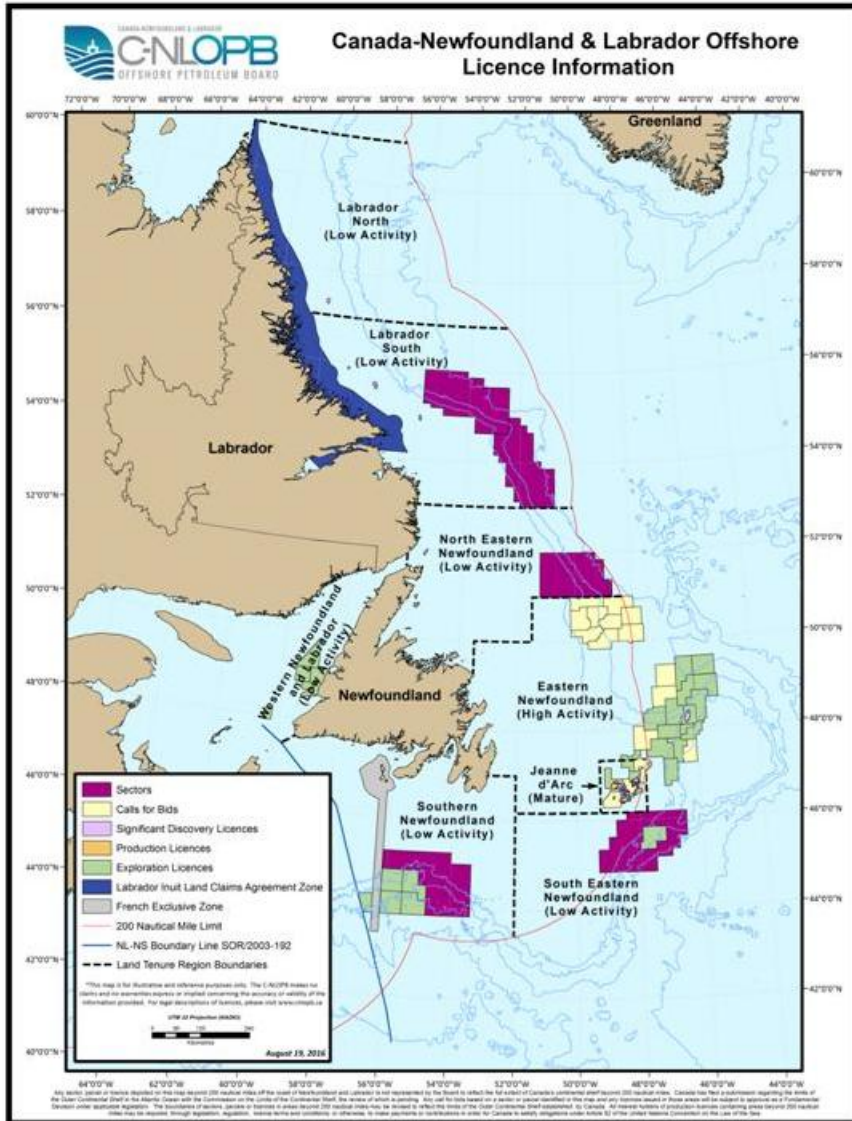
Regulator for Canada-Newfoundland and Labrador Offshore Area

- World-class, arm's length safety and environmental regulator
- Effective agent of independent joint management for governments
- One of three Canadian offshore regulators, along with CNSOPB and NEB
- Established in 1985 under the Atlantic Accord to provide regulatory oversight in four areas:
 - Safety
 - Environment
 - Resource Management (includes Exploration)
 - Industrial Benefits
- Safety and environmental protection are paramount in all Board decisions
- 7 Board Members: Chair and CEO (jointly appointed, along with designation of Vice-chair), 3 federal appointees and 3 provincial appointees (currently 1 provincial vacancy and 1 federal vacancy)
- Board accountable to Parliament and provincial House of Assembly through Ministers of Natural Resources (plus Minister of Service NL in respect of occupational health and safety)

Our Role

- Regulatory oversight of Operators' activities
- The *Atlantic Accord Acts* place ultimate responsibility for safety and environmental protection on the Operators
- Operators are required to mitigate risk to “as low as is reasonably practicable” (ALARP)
- Regulatory tools include legislation, regulations, guidance, and operational conditions imposed on specific activities
- Enforcement and compliance tools include notices of non-compliance, orders, revoking of authorizations, prosecution and administrative monetary penalties
- The *Atlantic Accord Acts* have enabled the Board to effectively regulate the industry for over 30 years

Canada-Newfoundland and Labrador Offshore Area



Jurisdiction extends to the outer edge of the continental shelf

29 Exploration Licences (ELs)

56 Significant Discovery Licences (SDLs)

11 Production Licences (PLs)

Increased activity beyond 200 miles

431 wells spudded since 1966, including 167 exploration wells

1.5 billion barrels of oil produced from 4 projects – Hibernia, Terra Nova, White Rose and North Amethyst

Expert Capabilities

86 employees

- 70% have a university degree or higher

Technical expertise includes:

- Safety
- Environmental Compliance
- Environmental Assessment
- Reservoir Engineering
- Certification Engineering
- Well Operations Engineering
- Industrial Benefits Engineering
- Reservoir Geology
- Exploration Geology
- Operations Geology
- Development Geology
- Exploration Geophysics
- Petrophysics
- Petroleum Technology
- Measurement Analytics



Other professionals:

- Lawyers, Public Relations, Human Resources, Information Technology, Information Management, Industrial Benefits and Accounting

Offshore Activities



Hibernia



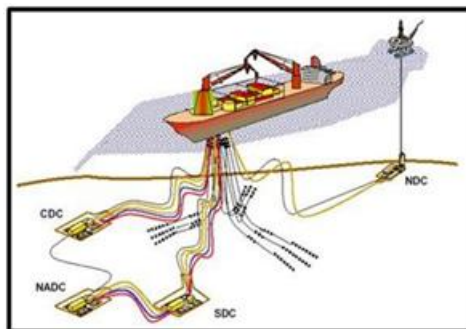
Terra Nova



White Rose / North Amethyst



Hebron
Production in 2017



Sub-sea Expansion



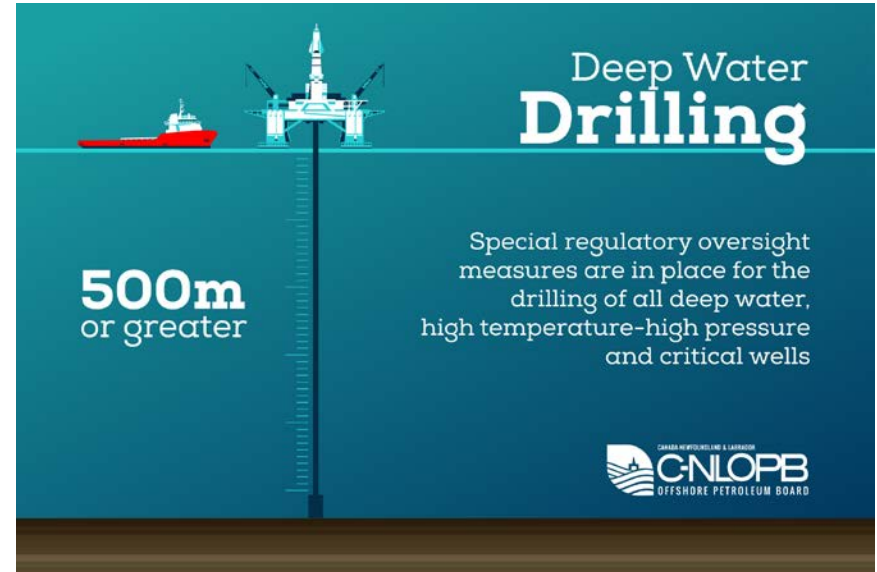
Seismic



Exploration Drilling

Offshore Safety and Environmental Protection are Paramount

- Operators must have an approved Safety Plan, Environmental Protection Plan, Contingency Plan, Oil Spill Response Plan, Ice Management Plan, and more
- Oversight activities include
 - audits and inspections;
 - reviews of Operators' daily reports and incident reports
 - Follow up on all complaints
 - Review Operators' Workplace Committee meeting minutes
 - Quarterly meetings with Operators
- The C-NLOPB has Special Oversight Measures for higher risk drilling programs such as high pressure and high temperature (HPHT) wells, ultra deepwater wells, and harsh environment drilling where there is increased potential for a well control incident to occur
- We hold bi-annual Safety Forums combined with meetings with Workplace Committees



Support for Federal Government's Interim EA Principles

“The following principles are intended to provide greater certainty as to how the Government of Canada will be guided in the application of its discretionary decision-making authorities for projects being assessed during the review of environmental assessment processes:

- 1. No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards;*
- 2. Decisions will be based on science, traditional knowledge of Indigenous peoples and other relevant evidence;*
- 3. The views of the public and affected communities will be sought and considered;*
- 4. Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated; and*
- 5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.*

During the interim period, timely decisions on individual projects will depend upon the provision of sufficient information and evidence in accordance with these principles. Where required, steps will be taken to gather additional evidence.”

Extracted from a Government of Canada News Release - January 27, 2016

Ref: http://news.gc.ca/web/article-en.do?nid=1029999&_ga=1.32608058.560780517.1475677667

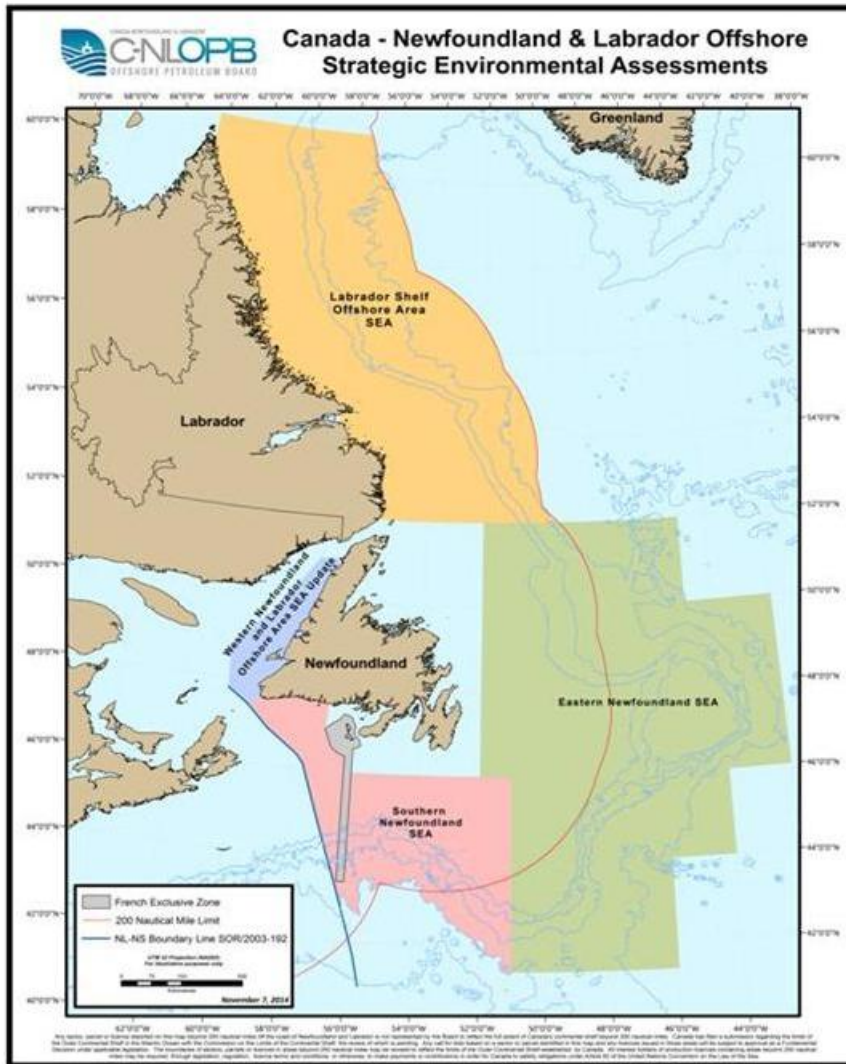
Environmental Assessment

Strategic Environmental Assessment (SEA)

- An SEA provides an overview of the biophysical and socio-economic environment, including potential environmental sensitivities and is principally conducted in support of the C-NLOPB rights issuance process
- SEA helps to focus / streamline subsequent EA
- Call for Bids issued in that region will not close for a minimum of 120 days after the completion of an SEA or SEA Update
- Currently working to update the Labrador SEA with an 18-member Working Group co-chaired by C-NLOPB and the Nunatsiavut Government

Project Specific Environmental Assessment (EA)

- No activity can take place without a project-specific environmental assessment
- Very transparent process. All documents and comments received are posted on our EA Registry



ENVIRONMENTAL ASSESSMENT (EA) PROCESS UNDER THE ATLANTIC ACCORD ACTS



ACCORD ACT EAs

STEP 1:

Project Description (PD) Review by the C-NLOPB (Up to 1 Week)

- Proponent submits PD
- PD is reviewed for completeness.
- PD is accepted or returned for more information
- A Draft Scoping Document (SD) is created.

STEP 2:

External Review of PD and Draft SD (Up to 2 Weeks)

- PD and Draft SD forwarded to government departments and agencies, One Ocean, and Fishing Interest Organizations.
- PD and draft SD posted on EA Registry for public review and comment

STEP 3:

Consolidation of Comments and Finalization of SD (Up to 1 Week)

- Draft SD revised in consideration of comments received.
- Final SD and comments within the scope of the EA transmitted to the Proponent.
- Comments and Final SD posted on the EA Registry.

STEP 4:

Review of Draft EA Report (Up to 8 weeks)

- Proponent submits EA Report, including a report on consultations
- EA Report reviewed for completeness.
- Draft EA Report forwarded to government departments and agencies, One Ocean, and Fishing Interest Organizations for review.
- Draft EA Report posted on the EA Registry for public comment

STEP 5:

Consolidation of Comments on EA Report (Up to 1 Week)

- Comments within the scope of EA consolidated and forwarded to proponent for a response.
- All comments posted on the EA Registry.

STEP 6:

Review of Proponent Response to EA Report Comments (Addendum) (Up to 3 Weeks)

- Addendum sent to the relevant reviewers for consideration
- Outstanding comments forwarded to Proponent, if applicable.
- Addendum on EA Report revised, as appropriate, by Proponent

STEP 7:

Determining the Likelihood of Significant Adverse Environmental Effects (Up to 3 Weeks)

- Technical review of the EA Report and associated documents is complete if EA Report and Proponent's response addresses all outstanding issues.
- A determination is made on the likelihood of significant adverse environmental effects of the project
- Proponent receives determination with applicable conditions

Follow-up and Enforcement

- *Opportunity for public input*
- *Timeline for EA process completion is up to 19 Weeks*
- *Timelines do not include time required by the proponent to provide information*
- *Consultation with Indigenous People may be integrated into the process at the request of governments*

Our EA Experience

- Board decided in 2002 to undertake SEAs in areas which could be considered for licencing
- Offshore Boards were Responsible Authorities under CEAA prior to 2012
- Broad experience in EAs:
 - **Production:** Production Wells; Possible Reinjection Wells; Drill Centres
 - **Exploration Drilling:** Exploration; Delineation; and Possible Appraisal Wells
 - **Geophysical Programs:** 2D/3D/4D Seismic; Geohazard Surveys (Wellsite and Seabed); Vertical Seismic Profile Programs; Controlled Source Electromagnetic Surveys, and Airborne/ Marine Gravity Gradient and Magnetic Surveys
 - **Geotechnical Programs:** Seafloor and Seabed Sampling (Gravity Coring)
 - **Geological Programs:** Seep/Slick Samples; Seafloor and Shallow Seabed Coring; Geochemical Materials Core/Cuttings
- Transparent – all EA related documents are posted on the EA Registry
- Opportunities for public comments at several stages
- **57** completed EAs and **8** completed SEAs (including one Update) since 2003
- Substantial Environmental Effects Monitoring field surveys as EA follow-up around production sites since first year of Hibernia operations in 1998; results are publicly available
- **4** new EAs active (not including 3 CEAA 2012 offshore drilling EAs): 1 designated CEAA 2012 EA offshore western NL; one onshore-to-offshore drilling EA; 2 seismic survey EAs

SEA and EA in the Western NL Offshore Area

- The C-NLOPB has been particularly sensitive to the concerns of Canadians resident in the Atlantic Provinces and Quebec about offshore exploration in the Gulf of St. Lawrence
- Corridor Resources was issued an exploration licence in 2008, but started its EA in 2011
- Public response to the draft EA Scoping Document illustrated an increased level of concern among stakeholders in other provinces (*Post-Deepwater Horizon/Macondo blowout*)
- C-NLOPB asked by Government to update the Western NL SEA and continue with a screening report and extensive public consultation
- The SEA Update was completed with assistance from a 17-member working group:
 - 10 Town Hall Sessions in 5 provinces
 - Meetings with stakeholder groups in each of the 5 provinces
 - Meetings with Indigenous Groups
- Full SEA Update Report was translated and posted on the Board website in May 2014
- If Governments approve the issuance of a 4 year licence for Corridor Resource in exchange for the current licence, the public will be given another opportunity to review and comment on the project specific EA and the Board's Screening Report

CASE STUDY: West White Rose Extension EA

- C-NLOPB acted as Federal Environmental Assessment Coordinator (FEAC) for the screening level EA for the Husky Oil Operations Limited White Rose Extension Project (May 2012 to September 2013)
- The C-NLOPB worked with:
 - 3 other RAs (Transport Canada, Fisheries and Oceans Canada and Environment Canada);
 - 5 Federal Authorities (Industry Canada, Parks Canada, Natural Resources Canada, Health Canada and the Department of National Defence);
 - 3 Government of Newfoundland and Labrador departments; and
 - One Ocean and fishing interest groups
- Single harmonized EA conducted with the NL Department of Environment and Conservation [since renamed as NL ECC] to meet the requirements of the NL *Environmental Protection Act* and the *Canadian Environmental Assessment Act*
- The C-NLOPB public registry included EA documents in addition to those posted on the CEAA Registry
- Climate change considerations were included in the scope of the EA
- Sea ice conditions offshore Newfoundland was also included in the scope of the EA

RA Designation for Offshore Boards

1. Avoiding Duplication

- Designated projects under CEAA 2012 must also undergo an *Accord Act* EA. The potential inefficiency of having 2 EAs completed for the same project would be eliminated

2. Maintaining and Enhancing a Robust Regulatory Regime

- Establishing the offshore boards as RAs further enhances a robust single-window regulatory regime

3. Respect for Joint Management

- Management of the offshore industries in NL and NS is done through joint management boards.
- Current federal EA regime is inconsistent with the spirit of joint management

4. High Level of Transparency

- The C-NLOPB's EA process is very transparent. All documents relating to an ongoing or completed EA are posted on the Board website

5. Consultation with Indigenous Peoples

- The constitutional Duty to Consult indigenous peoples rests with Governments. The C-NLOPB may assist governments in the discharge of this duty if requested

6. Value of Proximity and Local Knowledge

- Board members, staff, friends and family live, play and work on, in and near our offshore; no one is better placed to assess the impacts, risks and benefits of offshore petroleum activities there

Specific Questions

1. What should federal EA achieve and what do you view as your jurisdiction's role in the future of federal EA?

- EA is one of several tools that the C-NLOPB utilizes to achieve our mandate of Environmental Protection
- Federal EA should :
 - Be a **planning** tool to evaluate and enhance environmental protection at the early stages of a project
 - Provide for transparency and accountability in its processes
 - Provide opportunity for public and indigenous peoples' participation, especially for major projects
 - Respect already existing regulatory and enforcement/compliance mechanisms
- In addition, if the scope of federal EA expands to include “lesser” projects/activities (as it did prior to CEAA 2012), the process also should be appropriately scalable
- The CNLOPB's role in federal EA **either** should be as an accepted substitute EA jurisdiction **or** as a CEAA Responsible Authority for all offshore related activities in our jurisdiction that trigger federal assessment. This would be in keeping with the Board's environmental protection mandate and build upon our other systems

Specific Questions

2. What changes would you like to see in the current federal EA process?

- The legislation should identify the principal goals for an effective EA regime, and where another jurisdiction (e.g., the Atlantic Accord joint management framework) can meet those goals the federal regime should be required to defer to it, subject to demonstration that the goals are being met
- The regime should not duplicate existing enforcement /compliance frameworks – EA is supposed to be an early planning tool and is ill suited to the details of operational industrial oversight unless there are no other means for so doing
- CEAA mechanisms for potential efficiency in EA (e.g., class or model screenings in the pre-2012 regime, regional assessments in CEAA 2012) tended either to be unused or underused. Such mechanisms should be designed with practicability in mind and their use or non-use subject to audit

Specific Questions

3. **What are best practices and lessons learned in EA in your jurisdiction, and what are some of the unique aspects of your process that you want the panel to know about?**

Best Practices and Lessons Learned

- Have successfully completed harmonized EAs
- EA should be focused on impact assessment and mitigation of those potential impacts to protect the environment
- Existing environmental protection tools (such as guidelines) should be referenced in the EA, but their assessment not repeated
- Ensure commitments by operators made throughout the EA process are followed through
- Commitments are included as conditions of authorization by C-NLOPB

3. What are best practices and lessons learned in EA in your jurisdiction, and what are some of the unique aspects of your process that you want the panel to know about? (Cont.)

Unique Aspects

- World class regulatory regime
- Sector specific with an expert staff in the subject matter
- MOUs in place with DFO, ECCC and other government departments regarding environmental matters
- Member of International Regulators Forum and the International Offshore Petroleum Environmental Regulators, which provide fora to consult with other international regulators to ensure best practices are used, and lessons learned in other countries are shared and utilized
- The Board has many tools which have been developed for environmental protection, including guidelines that are based on international best practices, for such things as waste treatment, chemical selection, and the mitigation of seismic sound in the marine environment
- Requirements for a Certificate of Fitness for all offshore installation

Specific Questions

- 4. Using the example of climate change, how and to what extent do broad policies or commitments fit into your organization’s EA process?**
- The C-NLOPB administers a “goal oriented” regulatory regime which allows for flexibility in how government policies and commitments can be achieved
 - Accord Act EAs currently include consideration of GHG emissions associated with proposed activities
 - In the event Canadian legislation of general application does not provide for subsequent monitoring / mitigation, the Accord regulatory framework can accommodate doing so for offshore petroleum proponents

Specific Questions

5. How does your EA process link into land-use planning within your jurisdiction?

- The C-NLOPB SEA process is conducted in support of our rights issuance process – our version of “land-use” planning
- The SEA process includes engagement with Fisheries and Oceans Canada concerning *Oceans Act* considerations and Parks Canada concerning Marine Conservation Area planning, amongst others
- The SEA process provides opportunity for public input and participation
- Rights issuance decisions are not undertaken until at least 120 days following conclusion of an SEA or SEA Update, so its results may be considered

6. If regional based assessments were to be conducted by the federal government, what would you want your role to be?

- The current C-NLOPB SEA process is a form of regional assessment, albeit focused principally on the offshore petroleum sector. It is not formally recognized within CEAA 2012
- The C-NLOPB could participate as an advisor to any larger-scale federal regional assessment process

Specific Questions

7. Where applicable, what are your experiences with co-management decision making approaches?

- The Accord regime is a federal-provincial co-management regime that has worked for almost three decades
- Its core elements include
 - An arms-length regulator, C-NLOPB, that is functionally independent of governments in most of its functions, but accountable to both governments
 - Identification of specific “fundamental decisions” that are subject to governments’ approval
 - A prescribed dispute resolution mechanism in the event of disagreement in governments’ approvals
 - MOUs with line government departments to promote coordination, and avoidance of overlap or duplication
- Challenges can occur “on the boundaries” of the Accord regime
 - Matters on which the Accord legislation is silent
 - Overlap / interaction with legislation of general application

Other Specific Questions

- 1. To what extent can the Government of Canada coordinate with other jurisdictions while maintaining process integrity in the conduct of federal EAs?**
 - Basic principles of accountability and transparency can readily accommodate coordination with other jurisdictions provided
 - The goals / principles of the federal EA process are clearly articulated;
 - A mechanism for demonstrating attainment of those goals exists for “coordinated” EAs; and
 - In areas where perfect overlap does not exist, a mechanism (e.g., MOU) exists for formalizing the relative roles of the federal practitioner and the other jurisdiction(s)

Other Specific Questions

2. To what extent is the current approach to substitution and equivalency effective?

- Neither has ever been accepted in the context of the Accord regime

Other Specific Questions

3. Do you think duplication between the federal EA process and the EA process of other jurisdictions exists? If yes, what are the ways in which duplication could most effectively be reduced while maintaining process integrity?

- Duplication does exist between current CEAA requirements and the Accord regime
- As an example, there are (so far) three separate proponents engaged in essentially the same EA process respecting exploration drilling in a deep-water Flemish Pass area east of the island of Newfoundland. Their request to conduct a single coordinated EA could not be accepted by the CEA Agency. The existence of an up-to-date C-NLOPB SEA for the area was not a factor
- C-NLOPB, so far, is participating in the CEAA 2012 process in good faith and deferring to it
- Designation as an Responsible Authority to agencies or departments that have the internal expertise on the industrial sector to conduct EA needs to be considered. The CEA Agency has expertise in EA process, but very limited subject matter expertise in various industrial sectors
- Alternatively, the Accord EA process could be accepted as an equivalent or substitute. The parameters for so doing (e.g., public disclosure of information, participant funding, etc) could be defined and published in advance, and subsequently publicly tracked

Summary

- The C-NLOPB's mandate includes Environmental Protection
- Environmental assessment is one of several tools that the Board use to achieve Environmental Protection
- The C-NLOPB has a rigorous environmental assessment process - built on (i) strategic environmental assessment and (ii) project specific environmental assessment
- The Board has a team of experts that understands the activities of the offshore oil and gas sector, potential environmental effects of the sector and appropriate mitigation
- Efficiencies gained with the C-NLOPB conducting the EA include:
 - Focus on actual potential effects and mitigation;
 - In-house expertise on the activity therefore reviews are more efficient, comprehensive and timely;
 - no need for a CEAA 2012 "screening" as the requirement for an EA is pre-determined; and
 - Broad powers for post-EA compliance and enforcement
- Federal EA should respect the principle of joint management under which the Accord Acts were established
- Federal EA should focus on environmental impact assessment which would enhance environmental protection

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