

Offshore Regulation

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A DELICATE BALANCING ACT: REGULATING THE OFFSHORE

Canadians expect their governments to regulate offshore oil and gas developments. The critical question is how to balance the many issues and interests involved. Above all, we must find an equilibrium between environmental concerns and the need for secure energy for present and future generations.

The many other competing issues include:

- corporate desires for the profits from development,
- the need to protect fisheries resources,
- the value of economic spin-offs from oil & gas to coastal communities,
- the impacts on other energy industries,
- the value of royalties to governments, and
- communities' desire for change versus communities' desire *not* to change.

Different jurisdictions have approached these challenges in different ways.

A common way of thinking about government policies is to group them into how 'hard' or 'soft' they are.

Hard tools, often known as 'command and control' are put into place by laws and enforced by sanctions – regulations, standards, codes. Their effectiveness depends on whether they are practically enforced. We can all think of laws that are on the books, but never used.

Those favouring hard tools assume that making something mandatory produces more certain results, and makes enforcement easy. Canada has a number of hard tools to control offshore development.

But strict regulations are not the only way government can choose to pro-

ceed. Softer tools may be more persuasive, and effective, particularly if they are part of a comprehensive, well-thought-out approach to an issue.

In the middle of the spectrum lie 'economic instruments', which also play a key role in regulating the offshore. They include taxes, subsidies, royalties, financial enforcement incentives (like non-compliance fees), contractual agreements and partnerships, and the like.

'Soft' policy tools include such things as public education, social marketing, reporting and feedback, and public participation and consultation (though this last can also be part of hard regulations). Many government agencies routinely use soft tools when working with offshore stakeholders.



CEF

Consultants Limited

5443 Rainnie Drive
Halifax, Nova Scotia
B3J 1P8

*in association with
Envirosphere Consultants Ltd.*

advisory committee:
Dan G. Brown, P.Eng.
energy policy analyst
John Stewart, M.Sc.
president,

McGregor GeoScience Ltd.
Ralph Torrie, B.Sc. (Hon.)
president,

Torrie Smith Associates
Anne Wilkie, M.A., M.Sc.,
LLB, MRTPI
principal,
MacLaren Plansearch

Offshore Nova Scotia: Who's in charge?

Government permission is required for any and all activities associated with offshore exploration and development in Nova Scotia; 'command and control' tools are used at every step of the way. This includes specific approval procedures for seismic programs, drilling activities, the development plan, the installation of production facilities, operation procedures and diving programs. Each phase has stringent environmental requirements.

All rights to Canadian offshore oil and gas are held by the Crown. Com-

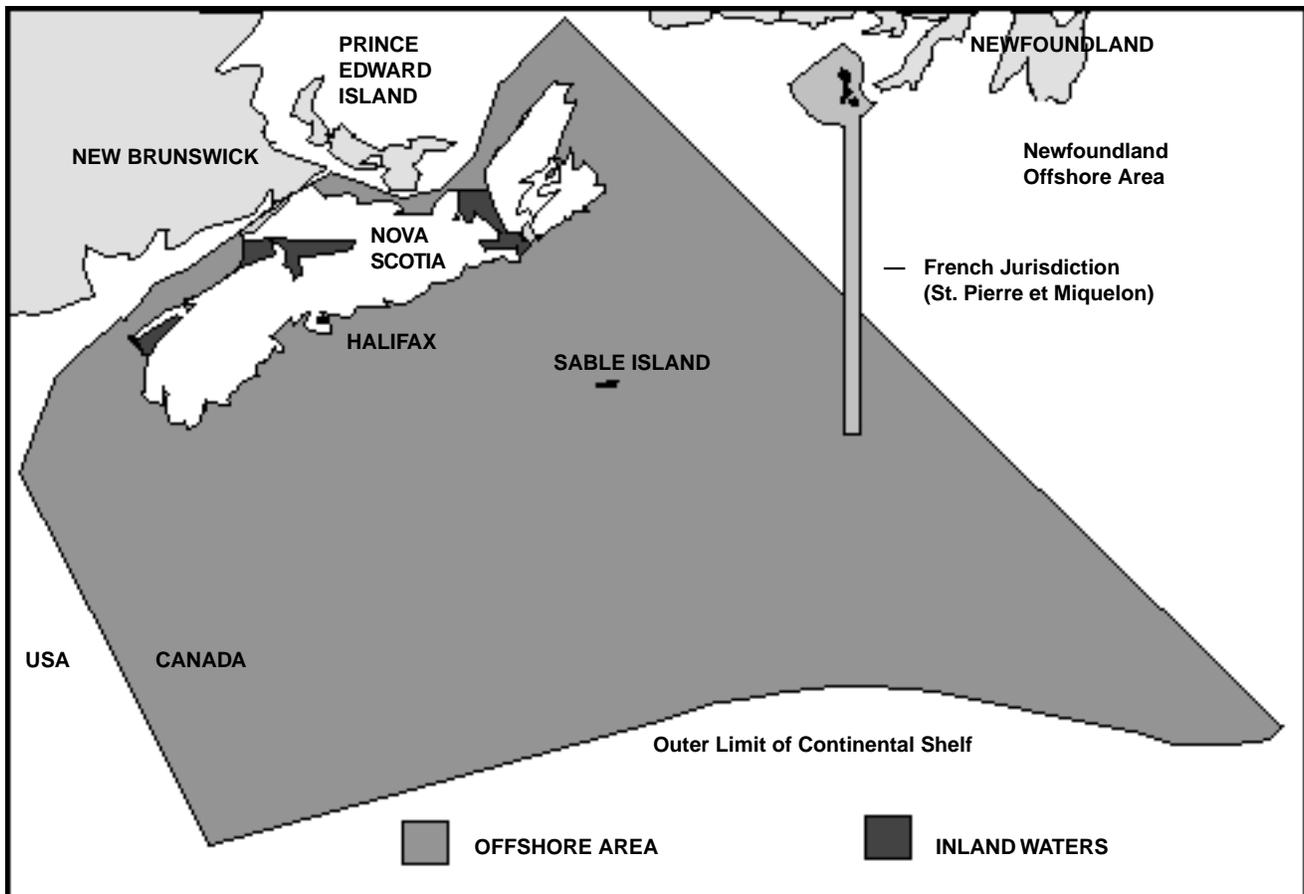
panies interested in exploiting the resources go through a competitive bidding process to initially establish interests, and subsequent rights to explore and develop are awarded through a series of licences.

The key pieces of Canadian legislation affecting oil and gas developments on Nova Scotia's offshore are:

- Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1998
- Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.N.S. 1987
- Canada Environmental Assessment Act
- Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations
- Guidelines on Plans and Authorisations Required for Development Projects

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CANADA-NOVA SCOTIA OFFSHORE PETROLEUM BOARD AREA OF JURISDICTION



- Guidelines on the Issuance of Exploration Licences

In Nova Scotia, the lead agency is the Canada - Nova Scotia Offshore Petroleum Board (CNSOPB or the Board). The CNSOPB was established under the *Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, passed in 1988, which implemented the Canada - Nova Scotia Offshore Petroleum Resources Accord of 1986 between the Government of Canada, and the Government of Nova Scotia. The Board has the authority and the responsibility to make all the decisions necessary to permit the exploration for, and the development and production of, offshore oil and gas.

Other agencies, because of their legislative responsibilities, have had varying influences on this regulatory process, but this is changing rapidly. CNSOPB is establishing a “single

window” for those seeking regulatory approvals, and is developing ‘memoranda of understanding’ with several agencies, spelling out how the regulatory process will work in their areas of expertise and responsibility.

- Canadian Coast Guard: ship safety, pollution and response to spills;
- Canadian Transportation Safety Board: the investigation of accidents;
- Fisheries and Oceans and Environment Canada: protection of fish, marine mammal and other sea creatures’ habitat;
- Natural Resources Canada and Nova Scotia Department of Natural Resources: industrial benefits; and
- Nova Scotia Department of Labour: occupational safety and health.



HOW THE CNSOPB WORKS

Should the Georges Bank moratorium be lifted, the current ‘rights’ holders, including Chevron, Texaco and Amoco, could apply for an exploration licence. CNSOPB will take the lead in determining whether or not exploration will take place on George’s Bank, and, if it does, to what extent.

Before any regulatory approval, however, the CNSOPB requires information from the proponent, who must file the following:

- Benefits Plan,
- Safety Plan
- Environmental Impact Statement,
- Environmental Protection Plan,
- evidence of financial security,
- an outline of the proposed activity,

- a Certificate of Fitness, if applicable, and
- a declaration from the operator.

STAKEHOLDER CONSULTATION

Consultation is an important and central part of the Board’s operating philosophy. For example, the Board consults with all provincial and federal agencies or departments that may have an interest in proposed activity, and with the public on all significant initiatives.

To help with consultation, the Board has established three permanent committees: the CNSOPB Environmental Co-ordinating Committee, the Fisheries Advisory Committee and the Benefits Review Committee.

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THE MISSION AND RESPONSIBILITIES OF THE CNSOPB

Mission: To regulate petroleum activities offshore Nova Scotia in an efficient, fair & competent manner.

The Board’s principal responsibilities include:

- Enhancement of safe working conditions for offshore petroleum activities.
- Protection of the environment during offshore petroleum activities.
- Management of offshore petroleum resources to ensure that operators provide for maximum economic recovery & avoid waste.
- Review of industrial benefits matters relating to proposed petroleum activities offshore Nova Scotia so as to ensure that Canadians, with first consideration given to Nova Scotians, have a full & fair opportunity to participate on a competitive basis in the supply of goods & services to be used in any proposed offshore petroleum activities.
- Issuance, in a controlled & fair manner, of licences required to carry out petroleum exploration & development activities offshore Nova Scotia.
- Collection, maintenance & distribution of offshore petroleum information to the petroleum industry, governments & the public in general.

How the CNSOPB Works from page 3

COMPLIANCE POWERS

The Board seeks voluntary compliance from companies operating on the offshore. However, it does have the legal power to withhold or withdraw its licences and authorizations, and it can start legal action to make sure companies comply with its requirements.

So far there have been no prosecutions, as such. However, the Cohasset Project was suspended while its operator did what was necessary to comply with the Board's requirements for handling oil-based muds. The Board has power, and the Board is prepared to use it.

INDUSTRIAL BENEFITS PLAN

The Benefits Plan is required by Part 1 of the *Accord Act*, and has become a significant and important part of how offshore development is handled. The Plan is mandatory and must ensure:

- the employment of Canadians, particularly Nova Scotians;
- that Canadian and Nova Scotian firms and individuals have a full and fair opportunity to participate in a project;
- that a project office is established in Nova Scotia;
- that Canadians and Nova Scotians are given first consideration for

training and employment;

- that first consideration is given to goods and services from Nova Scotia;
- that training and research is done in Nova Scotia; and
- that disadvantaged individuals are given access to employment and training.

The need for a Benefits Plan is not a one shot deal; it is an ongoing requirement throughout the project's life. It has a significant impact on the way a project is carried out and how much Nova Scotians benefit from it.

ENVIRONMENTAL IMPACT ASSESSMENT

Under the *Accord Act* the Board must ensure that any

proposed undertaking can be undertaken in an environmentally safe manner before allowing it.

The *Canada Environmental Assessment Act (CEAA)* will inevitably be triggered by proposed offshore activities. Therefore, CEAA

If the moratorium is lifted, CNSOPB will take the lead in determining whether or not exploration will take place on George's Bank.

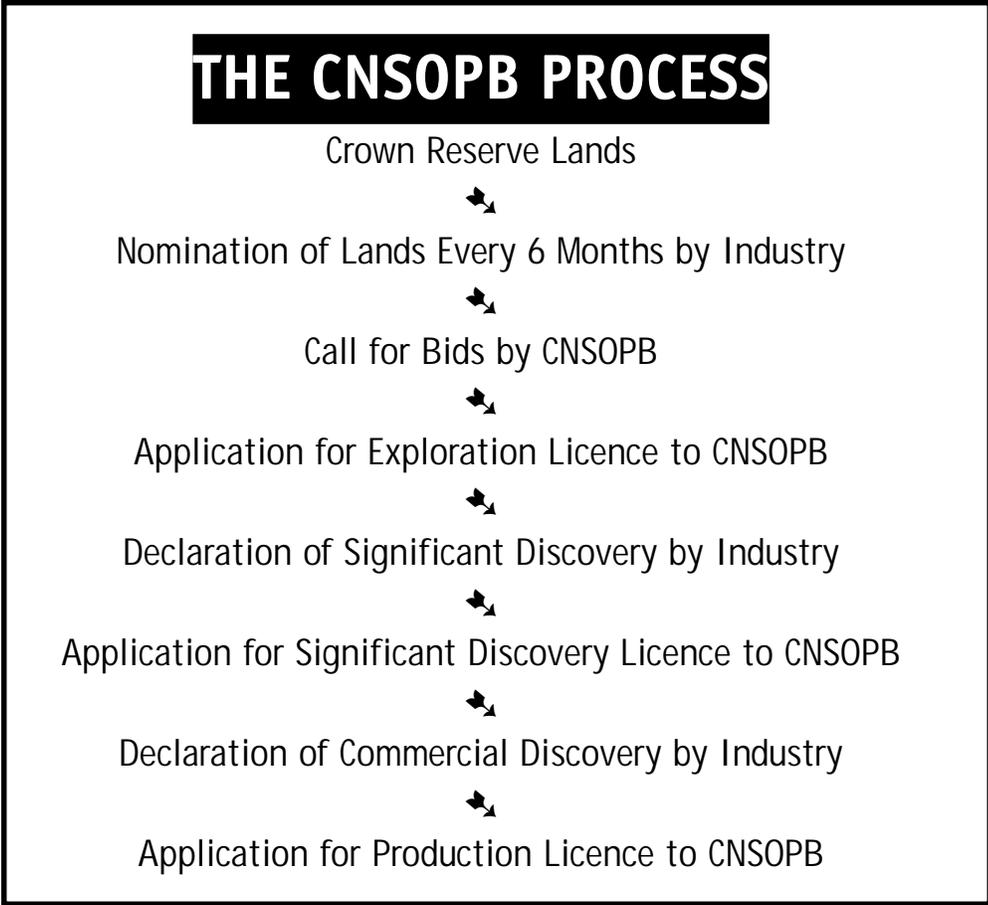
requirements must be met, even though the CNSOPB is not a "responsible authority" under CEAA. The project proponent is responsible for meeting CEAA's requirements.

EXPLORATION & DEVELOPMENT

From initial exploration to the flow of natural gas or oil involves issuing three types of licence: an *exploration licence*, a *significant discovery licence* and a *production licence*.

The *exploration licence* covers work in areas where no already known significant discoveries exist, or what is known as wildcat acreage. The maximum term allotted to an exploration licence is 9 years.

This licence gives its holder the right to explore an area, the right to drill



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and test for oil and gas there, and the exclusive right to obtain a production licence in the area.

A significant discovery licence is an intermediate interest which maintains an

explorer's rights between first discovery and eventual production.

The right to actually produce the oil and/or gas is conferred by a *production licence* which may be issued for any part of the

offshore with a *commercial discovery*. This is an area with reserves that justify the investment of capital and effort to bring the discovery to production.

Only a company incorporated in Canada can hold a production licence, which lasts for 25 years. It may be extended if commercial production is continuing, or likely to start again.

The United Kingdom and the North Sea: A Regulatory Sea Change

Britain's priority in developing the North Seas was to facilitate a program of exploration and development in the shortest time possible, to reduce the country's almost total dependence on imported oil and gas.

The Petroleum (Production) Act of 1934 vested ownership of oil and gas within Great Britain and its territorial sea in the Crown, and gave the Government rights to grant licences to explore and exploit these resources. Following the passage of the *Continental*

Shelf Act in 1964, the UK government proceeded very quickly to offer licences to companies to explore and produce petroleum products under a discretionary allocation system.

The important factors were the technical and financial competence of the applicants, the exploratory programs proposed and the likely contribution that such activity would make to the UK economy. There was little, if any, consideration given to offshore environmental factors, and no regulatory requirement to

conduct impact assessments.

The UK regulatory regime has been enforced primarily through the licensing system. Regulations made under the Acts prescribe how and by whom applications for licences can be made and specify the model clauses to be incorporated in licences. The focus has been very much on economic instruments to control the pace of development.

However, a dramatic change took place in 1998, when the Oil and Gas Di-

rectorate of the Department of Trade and Industry issued the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations.

These new regulations put into place in Britain the European Union requirement for the carrying out of an environmental impact assessment for certain types of offshore oil and gas projects, by virtue of the 1985 EU Council Directive on the Assessment of the Effects of Certain Public and Private Projects

Aberdeen, Scotland, centre of the United Kingdom offshore oil and gas industry



on the Environment (85/337/EEC).

The regulations implement the Directive for wells, field developments and pipelines in the United Kingdom Territorial Sea and on the United Kingdom Continental Shelf (UKCS). Revised regulations will be implemented by 14 March 1999, to put into place the more stringent requirements of 1997 amendments to the EU Directive.

The Regulations require the Secretary of State for Trade and Industry to take into consideration environmental information before making decisions on whether or not to authorise various offshore projects. The Regulations require that any Licensees who wish to undertake a project must first prepare an Environmental Impact Assessment Statement, unless the Secretary of State has given a direction that such a Statement need not be prepared.

Any development that is expected to produce more than 500 tonnes of oil per day (some 3,750 bbls/d) or 500,000 cubic metres per day of gas (some 17.5 million scf/d) cannot be exempted; it is anticipated that the majority of the future developments on the UKCS will fall into this category.

As well as developing these regulations, Britain is generally paying far more attention to environmental concerns than it has before.

For example, since 1 January 1994, the level of oil permitted to be discharged with cuttings when drilling using oil based muds was limited to less than 1% for exploration and appraisal wells. All other wells had to achieve this target last year.

The discharge of oil contaminated drill cuttings effectively ceased 1 January 1997. The discharge of "mineral oil like" synthetic mud contaminated cuttings on the UKCS will be reduced to effectively zero by December 31, 2000.



THE AMERICAN OFFSHORE REGULATORY FRAMEWORK

The United States has sovereign rights over the exploration and development of oil and gas found in the seabed and subsoil of the continental shelf, which is defined to extend to 200 nautical miles from its coast or, where the continental margin extends beyond that limit, to the outer edge of the geological continental margin. Currently, about 27 per cent of the natural gas and 18 per cent of the oil produced in the United States is from the federally managed Outer Continental Shelf (OCS). Legally, the OCS comprises that part of the continental margin adjacent to the United States that remained subject to federal jurisdiction and control after enactment of the Submerged Lands Act of 1953, which established state jurisdiction over offshore lands within 3 miles of shore (or 3 marine leagues for Texas and the Gulf coast of Florida); the Outer Continental Shelf Lands Act, 1953 and its subsequent amendments set the stage for federal control through the Secretary of the Interior. The Secretary designated the Minerals Management Service (MMS) as the regulatory agency for managing mineral resources on the OCS.

However, through a combination of executive and legislative action, many coastal areas are now closed to new leasing. In 1990, a drilling ban was imposed by President George Bush on much of the offshore. The Department of Interior's 1997 five-year plan for the Outer Continental Shelf effectively prevented new leasing in federal waters off most of the U.S. coast through 2002. Then, on June 12, 1998, President William Clinton announced a ten-year extension of the current moratorium on oil leasing and drilling off most American ocean coastlines.

The Clinton ban, issued under the Outer Continental Shelf Lands Act, covers virtually all of the coasts of the North Atlantic, California, Washington, Oregon, southwest Florida, New England, the Mid-Atlantic and the North Aleutian Basin of Alaska. President Clinton also placed several existing marine sanctuaries permanently off-limits to oil exploration, including the Channel Islands and Monterey Bay sanctuaries in California, the Florida Keys, Gray's Reef in Georgia and the Olympic Coast sanctuary off Washington state.

The President's Directive prevents consideration of any of these areas for either exploratory or production leasing for any resource development in the waters of the Outer Continental Shelf. It does not cancel or interfere with existing leases, like those off the Texas and Louisiana coasts, where extensive drilling has been going on for years, and off much of the Alaskan shore.

The American side of Georges Bank is thus under moratorium until June 30, 2012.



For Further Information

United Kingdom

Oil and Gas Directorate Department of Trade and Industry
 mailto:graeme.cobb@ogld.dti.gov.uk
<http://www.dti.gov.uk/og/>

UK Department of the Environment, Transport, and Regional Planning
<http://www.detr.gov.uk/>

United Kingdom Offshore Operators Association Limited
 mailto:info@ukooa.co.uk
<http://www.ukooa.co.uk/>

The Energy Report
<http://www.databydesign.co.uk/energy/index.htm>

United States

United States Department of Energy Home Page
<http://www.doe.gov/>

US Environmental Protection Agency
<http://www.epa.gov/>

OCEANS: AN AGENDA FOR ACTION
<http://www.epa.gov/OWOW/oceans/yoto/initiati.html>

NOAA Information
<http://www.ncdc.noaa.gov/noaa.html>

Canada

Canada-Nova Scotia Offshore Petroleum Board
 6th Floor, 1791 Barrington St.
 Halifax, NS B3J 3K9
 Phone: (902)422-5588
 Fax: (902)422-1799
 mailto:postmaster@cnsopb.ns.ca
 WWW: <http://www.cnsopb.ns.ca/>

Canadian Coast Guard – Maritimes
<http://www.mar.dfo-mpo.gc.ca/cg>

Canadian Environmental Assessment Agency
<http://www.ceaa.gc.ca>

Environment Canada, Atlantic Region
<http://www.ns.ec.gc.ca/>

Department of Fisheries and Oceans Maritimes Region
<http://www.mar.dfo-mpo.gc.ca/>

Nova Scotia Department of Natural Resources
<http://www.gov.ns.ca/natr/>

Offshore Regulation

CEF Consultants Ltd.
 5443 Rainnie Drive
 Halifax, Nova Scotia B3J 1P8

GLOSSARY

environmental assessment: a legislated process which reviews how a project will affect its environment

environmental protection plan: a written set of procedures prepared by a project's proponent that details the steps that will be taken through all phases of a project's development, operation, and decommissioning to protect its environment

guideline: a text from a government department that sets out policy and/or procedures to ensure that action are in accord with laws and regulations.

legislation: the laws prepared and enacted by government

license: government certificate or document which gives permission to do something, from driving a car to drilling an oil well

permit: a written license or document issued by an authority, which allows the permit holder to do some act which, although not forbidden by law, cannot be done without this permission

proponent: the individual, company, or government which wants to carry out a project which requires approval from an arm of government, or an agency like the CNSOPB or the NEB

regulation: a rule or order prescribed through legislation for management or government

safety plan: a written set of procedures prepared by a proponent that detail the steps that will be taken through all phases of a project's development, operation and decommissioning, to ensure the safety and well-being of all involved personnel and the public.

