

**Challenges and Opportunities  
for Regulatory Effectiveness  
in the Offshore Accord Areas of  
Nova Scotia and Newfoundland  
and Labrador**

**A Report for the  
Regulatory Issues Steering Committee,  
Atlantic Energy Roundtable**

September 15, 2003



## **READERS CAUTION**

The approach used to obtain the information required for this project involved the review of available information and interviews with key people in government departments and agencies, boards and industry. It resulted in large amounts of information of different types: factual, anecdotal, experiential, perception-based and information shaped in a way to present a particular perspective. This range of information, by necessity, required a level of subjective analysis in order to develop results. In addition, there are at time of writing some initiatives underway to address key issues, and these will continue to evolve. Consequently, the content of this report represents the interpretation of the authors and must remain open to further discussion and refinement.

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Paul Barnes, CAPP, NL  
Brent Baxter, NS Dept. of Environment & Labour  
Steve Bigelow, CNSOPB  
Marsh Burgess, NS Dept. of Energy  
David Burley, CNOBP  
Bruce Cameron, NS Dept. of Energy  
Wayne Chipman, CNOBP  
Kim Coady, CNOBP  
Brian Condor, NL Dept. of Mines & Energy  
Mike Coolen, Canadian Superior  
Chris Daly, NS Dept. of Environment & Labour  
Jim Dickie, CNSOPB  
Charlie Dixon, HRDC, NS  
Paul Einarsson, Geophysical Services Incorporated  
Gail Faulkner, DFO-Fisheries, Ottawa  
Peter Furlong, Industry Canada  
Cathy Gee, DFO-Habitat, Ottawa  
Doug Gregory, Shell Canada Ltd.  
Tom Hawco, HRDC, NS  
Doug Hollett, Marathon Canada Ltd.  
Jacqueline Hotte, CTA  
Barry Jeffrey, EC, NS  
Friederike Kirstein, EC, NS  
John Korec, NEB  
Patrice LeBlanc, DFO-Habitat, Ottawa  
James LeBlanc, NS Dept. of Environment & Labour  
Charlie Lester, NL Dept. of Mines & Energy  
Glen Linder, DFAIT  
David Luff, CAPP, Calgary  
Derek McDonald, CEAA  
Greg MacDonald, ExxonMobil  
Scott MacDonald, ExxonMobil  
Bernie MacDonald, NS Dept. of Energy

Rob MacQueen, Encana  
Camille Mageau, DFO, Ottawa  
John McCarthy, NEB  
Jim McComiskey, NEB  
Ted McDorman, DFAIT  
Dan McDougall, DFO, Ottawa  
Mike McPhee, CNSOPB  
Alan Milne, TC  
Debbie Mountenay, CNSOPB  
Peter Nicholson, NS Dept. of Energy  
Lisa Noble, DFO, NL  
Ted O'Keefe, ExxonMobil  
Andy Parker, CNSOPB  
David Parkes, Diver Certification Board of Canada  
Howard Pike, CNOBP  
Stuart Pinks, CNSOPB  
Rob Porter, UARB  
Brian Power, EC, NL  
Renée Sauvé, DFO, Ottawa  
Tim Shanks, NRCAN  
Dan Shea, CCG  
Martin Sheppard, CNOBP  
Frank Smyth, CNOBP  
David Sproule, DFAIT  
Drew Taylor, Chevron Canada Resources  
David Taylor, Husky  
Paul Taylor, NS Dept. of Energy  
Pierre Tobin, NL Dept. of Mines & Energy  
Ian Travers, EC, NS  
Bruce Turner, EC, NL  
Paul Vautour, Chevron Canada Resources  
Debra Walsh, CAPP, NS  
Fred Way, CNOBP

# TABLE OF CONTENTS

PURPOSE .....	1
Content and Structure.....	1
Abbreviations .....	1
BACKGROUND.....	2
Scope and Approach .....	2
<b>PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES</b>	
DIFFERENCES IN REGULATORY PRACTICES OF THE OFFSHORE BOARDS .....	5
Description of Differences that are “Significant” .....	6
Description of Differences “Not Considered as Significant” .....	7
Other Areas of Differences.....	8
DUPLICATION AND OVERLAP.....	8
Authorizations Related to Development Plans, Pipelines and Other Facilities .....	10
Environmental Assessment .....	11
Operational Matters .....	13
Benefits Related Areas.....	14
OTHER “STAND ALONE” CHALLENGES .....	14
Benefits-Related Challenges Referred to Industrial Opportunities.....	16
OBSERVATIONS AND CONCLUSIONS.....	17
Expectations of the Policy and Regulatory Framework.....	17
Governments (Policy and Regulatory): .....	17
Regulatory Boards (Federal, Provincial, Joint):.....	18
Industry:.....	18
Extent of Challenges Identified .....	18
Challenges from Roadmap Reviews.....	18
Significant Issues and Opportunities.....	19
Concept of “One Window” .....	19
Some Differences in Practice are Inherent in the Regulatory Model.....	19
Strategic Direction .....	20
Regional Consistency In the Policy and Regulatory Regime for Offshore Oil and Gas.....	20

**PART 2 - ANALYSIS TEMPLATES**

List of Templates ..... 22

Template # 1: Common Purpose and Scope..... 23

Template # 2: Use of Regulatory Query Forms ..... 25

Template # 3: Performance-Based Regulation ..... 27

Template # 4: Ability to Respond to Small Projects ..... 30

Template # 5: Efficiencies in Environmental Assessments ..... 32

Template # 6: Multiple Regulatory Jurisdictions over Offshore Pipelines ..... 37

Template # 7: Overlapping Jurisdictions for Onshore Gas Plants ..... 40

Template # 8: Onshore Portion of Offshore Pipelines ..... 42

Template # 9: Concurrent Review Panels ..... 45

Template # 10: Role of the Certifying Authorities ..... 48

Template # 11: Rig Standards, Vessel Inspection and Certification..... 51

Template # 12: Formation Flow Testing ..... 54

Template # 13: Import Duty on Rigs ..... 57

Template # 14: Laws of General Application (*Oceans Act, SARA, CEAA*) ..... 59

Template # 15: Foreign Worker Approvals..... 63

Template # 16: Acquiring a Coasting Trade Licence..... 66

ADDENDUM: BENEFITS PLANS AND REPORTING ..... 69

    Interpretation of Requirements ..... 69

        Benefits Plans Guidelines ..... 69

        Benefits Plan Approval and Provincial Role..... 70

        Benefits Plans for Exploration ..... 70

        Development Stage Benefits Plans..... 71

    Benefits Reporting Requirements ..... 72

        Procurement and Contract Award ..... 72

        Monitoring and Reporting..... 72

    Research and Development ..... 73

## INTRODUCTION

### PURPOSE

This report presents the findings of work commissioned by the Regulatory Issues Steering Committee in support of its efforts to improve regulatory effectiveness and efficiency in the offshore oil and gas sector in Atlantic Canada, under the auspices of the Atlantic Energy Roundtable.

The report is one product from a two-part project. It documents the findings of some independent research into the challenges and opportunities facing departments, agencies, boards and industry when considering how the current policy and regulatory regime might be improved or streamlined.

The second component of the project provides an update for the *Guides to Oil and Gas Approvals in Atlantic Canada*, developed for the offshore areas of Nova Scotia and Newfoundland and Labrador (referred to here as the “Regulatory Roadmaps”). The updating of the Guides is not addressed in this report, although contacting the responsible parties for purposes of collecting the information necessary to update the Guides was carried out concurrently with the research for this report.

### Content and Structure

The report is organized in three parts:

**Introduction** provides a description of the purpose and scope of the report, and the content and organization of this report.

**Part 1** describes *Challenges and Opportunities* drawn from the interview process and secondary research. Challenges and opportunities are bundled according to the terms of reference provided by the Working Group into three main categories:

- 1) *differences or inconsistencies* in the regulatory practices of the Offshore Petroleum Boards;
- 2) areas of *duplication and overlap* between mandates or procedures; and
- 3) *other challenges* or opportunities that are significant but do not fit cleanly within the previous two categories.

**Part 2** contains a series of *analysis templates* that describe significant topics or issues by add-

ing context and an explanation of what aspects could be addressed and why, and what suggestions have been put forward in terms of approaches or solutions.

An **Addendum** regarding *Benefits Related Challenges* appears at the end of the report. Because the Industrial Opportunities Task Force is addressing challenges and opportunities associated with benefits, all findings from this project that pertain to the topic of benefits have been incorporated into a single addendum and referred to that Committee.

### Abbreviations

<b>Accords</b>	Federal-Provincial agreements in Nova Scotia and Newfoundland and Labrador
<b>Accord Acts</b>	Accord Implementation legislation
<b>CAPP</b>	Canadian Association of Petroleum Producers
<b>CCG</b>	Canadian Coast Guard
<b>CCRA</b>	Canada Customs and Revenue Agency
<b>CEAA</b>	<i>Canadian Environmental Assessment Act</i>
<b>CEAA</b>	Canadian Environmental Assessment Agency
<b>CIC</b>	Citizenship & Immigration Canada
<b>CNOPB</b>	Canada-Newfoundland Offshore Petroleum Board
<b>CNSOPB</b>	Canada-Nova Scotia Offshore Petroleum Board
<b>CTA</b>	Canadian Transportation Agency
<b>DFAIT</b>	Department of Foreign Affairs and International Trade
<b>DFO</b>	Fisheries and Oceans Canada
<b>DPA</b>	Drilling Program Authorization
<b>EA</b>	Environmental assessment under <i>CEAA</i>
<b>EC</b>	Environment Canada
<b>HRDC</b>	Human Resources Development Canada
<b>IC</b>	Industry Canada
<b>MODUs</b>	Mobile Offshore Drilling Units
<b>MOU</b>	Memorandum of Understanding
<b>NEB</b>	National Energy Board
<b>NL</b>	Newfoundland and Labrador
<b>nm</b>	Nautical Mile
<b>NRCan</b>	Natural Resources Canada (previously Energy, Mines and Resources Canada)
<b>NS</b>	Nova Scotia
<b>RA</b>	Responsible Authority under <i>CEAA</i>
<b>SARA</b>	<i>Species at Risk Act</i>
<b>TC</b>	Transport Canada
<b>UARB</b>	Nova Scotia Utility and Review Board

## INTRODUCTION

### BACKGROUND

In 2001, Erlandson and Associates and the Atlantic Canada Petroleum Institute (PRAC's predecessor) collaborated to produce the guides to regulatory approval processes for oil and natural gas exploration and production in the Nova Scotia and Newfoundland and Labrador offshore areas. This work, completed in June 2001, helped to demonstrate the complexity of the East Coast regulatory environment and the number of government departments and agencies that, together with the Offshore Petroleum Boards, can become involved in authorizations, approvals and permits. The work on the guides provided a backdrop for discussions among affected interests concerning the effectiveness and efficiency of the current processes and procedures. These discussions included concerns about duplication and overlap, inconsistencies in regulatory practices between jurisdictions, cycle times relative to other parts of the world, costs related to regulatory requirements and the role of government in business decisions.

In November 2002, the Atlantic Energy Roundtable was convened, comprising four federal and three provincial Ministers, together with support from senior representatives from the petroleum industry and government and regulatory bodies. The purpose was to identify challenges facing the offshore oil and gas industry, and to look for ways to "improve regulatory efficiency and encourage increased investment and local involvement."

The Roundtable established two Steering Committees, one responsible for "Regulatory Effectiveness" and the other for "Industrial Opportunities." The mandates of these committees included using an interest-based approach to provide a forum for exchanging information and reaching consensus-based decisions, while avoiding fettering statutory decision-making and placing participants in a 'conflict of interest' situation. The Steering Committees will report back with recommendations to a second Atlantic Energy Roundtable, currently scheduled for the fall of 2003.

In the case of the Regulatory Issues Steering Committee (the Committee), instructions were to "identify policies and/or regulatory practices, which enhance the competitiveness of the offshore oil and gas industry in Atlantic Canada, and to prepare for consideration by governments, recommendations for change." The Committee was to identify priority issues and ways to address these, and to assign tasks to others as required. The Committee formed a Working Group to manage a series of initiatives that would lead to a report back to Ministers with specific work plans, and that would enable progress on significant and meaningful improvements to the regional regulatory environment. The Working Group, on behalf of the Committee, initiated three complementary activities:

- a "Lessons Learned Workshop" to discuss issues relating to regulatory effectiveness in the offshore;
- a "Benchmarking Study" to compare the cycle times for regulatory approvals in four international jurisdictions with those experienced in the East Coast offshore; and
- an update of the Regulatory Roadmaps to make them current and to add value to the Lessons Learned component by a further refinement of challenges and opportunities affecting regulatory effectiveness (which is the subject of this report).

The collective results of these projects are intended to enable the identification of opportunities for improvement and the development of a work plan by the Steering Committee.

### Scope and Approach

Planning for this project began in late May 2003 and included the review of materials submitted by participants prior to the "Lessons Learned Workshop." The discussions and outcomes from the workshop were considered important background information for this project and hence, the consultants participated as observers during the workshop. Meetings were held with the Working Group on June 5 and July 2 to review the proposed project work in light of the discussions and results stemming from the workshop. Refinements were made to the



## INTRODUCTION

work plan by the Working Group, resulting in the following guidance.

- The updates of the current Roadmaps were to be directed in the short term at those areas that relate to the issuance of exploration rights and subsequent exploration program authorizations, and to development plan approvals. This encompasses environmental assessments (EAs), offshore pipeline approvals and any other approvals that affect the cycle time for such activities.
- The remaining aspects of the Roadmaps will be updated following a July 22 Working Group meeting, providing a current record of regulatory requirements offshore Nova Scotia and Newfoundland and Labrador prior to the 2003 Atlantic Energy Roundtable.
- Inconsistencies and differences in the way in which the Offshore Boards deal with particular matters, as well as any other inconsistencies identified through interviews with operators, regulators, government departments and others, were to be catalogued. This includes the rationale or explanation for the difference and inconsistency, its significance, who it affects and whether or not there appears to be an opportunity to remove it with some tangible result.
- Through the process of updating the Regulatory Roadmaps for exploration and development plan approval (including environmental assessment) areas of duplication and overlap were to be identified. This led also to the determination of where there may be opportunities for improvement. Any such results are incorporated into the templates in this report.

The existing Regulatory Roadmaps provide the basis for much of this project. A necessary step was to review each of these to become familiar again with the contents, potential areas for process improvement and initial contacts to provide input for updating the documents. In addition, secondary sources of information were scanned to identify and document changes to legislation, regulations, guidelines and memoranda of understanding. This information was used to develop questions and points for discussion during interviews with regulators and government officials.

Much of the information used to identify and assess opportunities for improving regulatory effectiveness, and in the development of two process models, is based on targeted interviews with regulators, government officials and industry representatives.

A list of interviewees was developed in Nova Scotia, Newfoundland and Labrador, Ottawa and Calgary. Interviews were structured to avoid placing constraints on the subject matter and to allow more in-depth questioning on areas of particular interest or significance. A general interview guide was prepared and sets of more specific questions developed for each interview germane to the individuals' responsibilities, known issues of concern and inputs to the "Lessons Learned Workshop." This provided assurance that key points were covered without artificially constraining the direction of the interviews.

It was anticipated that large amounts of information would be collected and that there would be a challenge in presenting the assessment of issues and areas of difference between Nova Scotia and Newfoundland and Labrador in a consistent manner. Templates were developed to enable a standardized method of cataloguing and assessment.

Approximately fifty interviews were conducted with individuals from the Offshore Boards, the National Energy Board (NEB), the oil and gas industry, federal and provincial departments and agencies in Ottawa, Newfoundland and Labrador and Nova Scotia. Interviews with regulators and government departments first identified what changes affecting the Regulatory Roadmaps had occurred since June 2001 and requested assistance in updating those portions of the Roadmaps in which those bodies were involved. All interviewees were questioned on the impact of these changes, as well as the expected effect of new legislation and regulations anticipated within the next six to twelve months.

A particular focus of the interviews was on areas where there is real or perceived duplication and overlap in regulatory processes. Industry inter-

## INTRODUCTION

viewees with experience in both provincial jurisdictions were asked about differences that they had encountered in regulatory practices between Nova Scotia and Newfoundland and Labrador. Input on these differences was also obtained from the Offshore Boards.

An important aspect of the interviews was to obtain expert perspectives on key regulatory challenges and their input on opportunities and barriers for improvement. Detailed notes on each interview were prepared to provide a record for subsequent analysis. Interviewees were assured that the interview results would be treated as confidential with no attribution unless there had been prior agreement.

Interview results were synthesized with information obtained from secondary sources, and a qualitative analysis of issues and areas of difference or inconsistency between Nova Scotia and Newfoundland and Labrador was undertaken.

Based on the results of the interviews, a list of “needs” was developed for each of the three principle groups, namely, regulatory boards, industry and government. In essence, these reflect what these groups require as results or outputs from regulatory processes and are important in shaping any new directions or process changes. Interview results, together with an assessment of issues, barriers and constraints, statutory decision-making authorities, and expected changes to legislation and regulation, were used as the basis for determining possible approaches to addressing issues.

The approach used to obtain the information required for this project was extremely labour-intensive and resulted in large amounts of information of different types: factual, anecdotal, experiential, perception-based, and information shaped in a way to present a particular perspective. This range of information, by necessity, required a level of subjective analysis in order to develop results. Consequently, the content of this report represents the interpretation of the authors and must be open to further discussion and refinement.

The research associated with this project was intended to identify additional topics of importance and to add a depth of understanding and explanation that was not part of the inputs to the “Lessons Learned Workshop.” The analysis of the information collected through interviews and secondary research has been consolidated into set of substantive challenges and opportunities in the report, and described in template form.

The project work:

- verifies the accuracy of information and assumptions behind the issues;
- sorts the issues into a manageable set;
- provides written context and descriptions of challenges and opportunities;
- eliminates some issues where the information collected does not support them; and
- consolidates some suggested approaches to addressing issues.

### DIFFERENCES IN REGULATORY PRACTICES OF THE OFFSHORE BOARDS

The Offshore Petroleum Boards in Nova Scotia and Newfoundland and Labrador operate under similar legislation and for the most part, the same regulations. Nonetheless, there are differences in the way in which the Boards carry out their responsibilities, and the Working Group asked for documentation. Some differences arise from varying interpretations of what the legislation and regulations require, and others emerge through the way in which the Boards manage their relationships with other departments and agencies. Differences are to be expected, given that the Boards:

- have different histories and levels of experience;
- are staffed by personnel with different backgrounds and professional perspectives;
- regulate in different operating environments, one being predominantly oil and the other predominantly natural gas; and
- face somewhat different political, social and cultural environments.

In addition, the *Accords* themselves vary to a degree in both format and specific language, which can introduce variations in interpretations with respect to how obligations under the *Accords* are fulfilled.

While the word “inconsistencies” has generally been used to describe differences in approach, it suggests something illogical or incorrect and therefore we prefer to use the term “differences” for most of the examples cited. In some cases, differences are insignificant with respect to the effectiveness of offshore oil and gas regulation in Atlantic Canada. In other instances, the implications are significant to operators in terms of costs and time, most notably when moving people or equipment between jurisdictions. Some of these differences, when analyzed, may also suggest that one Board’s approach may be preferred to the other’s, and suggest an opportunity for gaining some efficiency through consistency within the regulatory system.

Based on the information available, thirteen specific differences in practices between the two Boards were identified and discussed by interviewees. An additional related distinction was noted between the National Energy Board and Nova Scotia Utility and Review Board (UARB) with respect to gas plant regulation. All are listed below and briefly described together with their implications, including the identification of those that appear to be most significant. This latter group is assessed in more detail in accompanying templates, including possible options that might be considered to improve consistency in approach.

The list below shows the range of differences in the regulatory practices of the Offshore Boards that were considered by interviewees to be of importance. Those elements that are of greatest significance are also described in more detail in analysis templates contained in Part 2.

#### Significant Differences

- Inspection of Mobile Offshore Drilling Units (MODUs) and Applicable MODU Standards (Template 11)
- Formation Flow Testing (Template 12)
- Foreign Worker Applications (Template 15)
- Procurement and Contract Award (Addendum)
- Benefits Plan Guidelines (Addendum)

#### Differences that are Not Significant

- Exploration Licencing Schedules
- Extension of First Term of Licence
- Rates of Rentals payable
- Tight Hole Policy
- Benefits Review Mechanisms
- Research and Development Guidelines
- Allowable Expenditures
- Casing Pressure Testing

### Description of Differences that are “Significant”

**Inspection of MODUs and Applicable MODU Standards:** In Nova Scotia, inspections of MODUs are carried out by the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) based on International Maritime Organization (IMO) standards. Transport Canada (TC) may provide advice upon request. In Newfoundland and Labrador, the Canada-Newfoundland Offshore Petroleum Board (CNOBP) relies upon Transport Canada for MODU inspections which are carried out using the Canadian MODU standard. This has important implications for rigs moving between jurisdictions because of the time and cost for re-inspection and possible modifications to meet different standards. This difference is significant and is discussed further in Template 11.

**Formation Flow Testing:** The two Boards have issued joint guidelines on data acquisition and reporting. The guidelines reference regulatory requirements for sampling or testing from formations. The guidelines require that operators conduct a formation flow test over any formation where there is an indication of potential pay of five metres within a ten metre gross interval. The Chief Conservation Officer has the power to grant deviations from this requirement. The Nova Scotia Board has shown some leniency in this regard because of specific deep water circumstances involving natural gas, whereas the CNOBP has not to date been faced with such circumstances. While there is no apparent consensus on the state of the technology available for testing, the guidelines and the ability to grant deviations is the same in both jurisdictions. The concerns about the need for flow testing are, nonetheless significant because of the cost implications for exploration drilling, and are discussed further in Template 12.

**Foreign Worker Applications:** The CNOBP does not vet foreign worker applications, a matter that is viewed by that Board as being the responsibility of Human Resources Development Canada (HRDC) and Citizenship & Immigration Canada (CIC). The CNSOPB and HRDC run parallel processes with each “signing off” on the

request for approval of foreign workers. The potential exists for conflicting conclusions arising from duplicate processes. This duplication is a matter of some concern to operators. It is not particularly significant in terms of time or cost, but is assessed further because of the potential for some efficiencies to be achieved. Refer to Template 15 for further detail.

**Procurement and Contract Awards:** The Nova Scotia Board reviews bidders’ lists for all contracts exceeding \$100,000 for exploration and \$250,000 for development contracts, and requires notification of a contract award twenty-four hours in advance of the successful bidder being notified. The CNOBP focuses on the review of those procurement and contracting decisions that have significant national or provincial implications (referred to as designated contracts). Their monitoring and reporting requirements are established in consultation with a proponent after submission of the Benefits Plan. These differences are significant and have important implications for operator’s level of reporting and for the nature of Board involvement in procurement and contracting decisions. Board and operator workloads are also affected and bear scrutiny in relation to the utility and use of resulting information. This distinction in Board practice is benefits-related and has been referred to the Industrial Opportunities Task Force for further consideration (refer also to the Addendum in this report).<sup>1</sup>

**Benefits Plan Guidelines:** Nova Scotia issued Benefits and Employment Plan Guidelines in early 1994 that apply to both exploration and development. In contrast, CNOBP’s Benefits Guidelines that apply to development activity are embedded within their Development Application Guidelines. The CNOBP has issued separate benefits guidelines that apply to exploration ac-

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<sup>1</sup> Benefits-related findings from this study have been summarized in an Addendum and referred to the Industrial Opportunities Task Force for further assessment. While aspects of Benefits planning, approval and monitoring are prerequisites for regulatory approvals by the Boards, it is assumed that these implications will be addressed by the Industrial Opportunities Task Force.

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

tivity. Both Boards are understood to be looking at their guidelines with a view to updating them. The guidelines are important in that they reflect the Boards' expectations of Benefits Plans and respective philosophies for administering benefits. Operators have expressed concerns about a range of benefits issues and an assessment of the differences in approach could be significant in addressing some of these concerns. (refer to the Addendum)

### Description of Differences "Not Considered as Significant"<sup>2</sup>

**Exploration Licencing Schedules:** Nova Scotia has traditionally issued two Calls for Bids each year versus only one Call in Newfoundland and Labrador, and this is reflected in the timing of nominations. The Nova Scotia Board views the issuance of the licence as a fundamental decision, whereas the CNOBP does not. These differences were not raised during the "Lessons Learned Workshop" and are not considered significant.

**Extension of the First Term of an Exploration Licence:** In Nova Scotia, the first Period of an Exploration Licence can be extended from five years to six years if the operator posts a drilling deposit of \$250,000. Until the current Call for Bids, the CNOBP has not provided for such an extension. The terms and conditions in the current Call allow for a one year extension with a \$1,000,000 drilling deposit. This may change in future calls. This has limited implications, and is not considered significant. However, more focus may be placed on this matter in the future if extended environment assessment approval times for exploration wells result from *Canadian Environmental Assessment Act (CEAA)* Comprehensive Study requirements, and drilling is pushed into Period Two of the licence.

**Rates of Rentals Payable:** In Nova Scotia, period two of an Exploration Licence involves rent-

als payable at the rate of \$2.50 per hectare per year. In Newfoundland and Labrador, rentals are also charged, but at an escalating rate ranging from \$2.50 to \$7.50 per hectare per year. This matter was not raised by interviewees and hence the difference is not considered significant.

**Tight Hole Policy:** The CNOBP has put a "tight hole" policy in place to enable operators to protect the confidentiality of the status of drilling operations where there may be commercial sensitivity. The Nova Scotia Board does not have a tight hole policy. This is not significant, but a move to regional consistency would be advantageous from an industry perspective.

**Benefits Review Mechanisms:** The CNSOPB has established a Benefits Review Committee with which they consult on Benefits Plans and procurement activities. The CNOBP does not have such a committee, largely because of its different method of consulting with governments about industrial benefits. The CNOBP consults directly and collectively with some players, but does so without a standing committee structure. This difference is not significant.

**Research and Development Guidelines:** The CNOBP has developed draft guidelines for research and development expenditures to indicate expected expenditures for Research and Development associated with Benefits Plans for development activities. The Nova Scotia Board has the choice of adopting these, modifying them, developing their own or doing nothing. Depending on their action, this could give rise to a further distinction between Board practices relative to benefits.

**Allowable Expenditures:** The allowable expenditures for exploration programs differ somewhat between Nova Scotia and Newfoundland and Labrador, particularly with respect to allowable overheads for seismic and related activities. Newfoundland and Labrador allows 10 percent of actual costs, whereas Nova Scotia requires overheads to be included in costs submitted for Board approval. Newfoundland and Labrador also makes provisions for expenditures related to research and development and education and training. These differences were not raised during

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<sup>2</sup> Note that Analysis Templates are included later in the report for those issues and concerns generally considered by interviewees and the authors to be of significance to regulatory efficiency and effectiveness. Topics not considered significant are not analyzed further.

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

interviews and are therefore not considered significant.

**Casing Pressure Testing:** A check of both the Nova Scotia and Newfoundland and Labrador drilling regulations indicates exactly the same testing requirements and hence, no notable difference exists.

### Other Areas of Differences

In addition to those described above, there were several other areas noted where there are differences in the practices other than between the two Offshore Boards.

- The gas plant associated with the Sable Offshore Energy Project is subject to regulation by both the National Energy Board and the Nova Scotia Utility and Review Board. Each Board's gas plant regulations are different, with the NEB's being performance-based and the UARB's being more prescriptive. These differences are significant for operators if different standards are applied or they give rise to different decisions or direction from regulators. This is assessed more fully in Template 7.
- A number of operators noted inconsistencies over time in the requirements imposed on them by a single regulatory Board. Examples of this related to environmental assessment documentation for exploration wells for which Drilling Program Authorizations (DPAs) were being sought. At different points in time the same operator experienced different requirements, as did different operators within the same area. Differences in Benefits Plan requirements for exploration programs were also noted.
- The submissions to the "Lessons Learned Workshop" contained a number of other references to differences or inconsistencies that could be characterized as general in nature, and that were not elaborated further by interviews with industry or Board personnel. These are noted below; it is assumed that because they did not arise in interviews, their significance is minor:
  - Drilling Program Authorization processes;
  - levels of justification for RQFs;

- inconsistencies in audit approaches;
- inconsistencies in decisions given to different operators on essentially the same RQFs;
- in Nova Scotia, differences in the approaches taken to multi-agency approval of projects involving offshore pipelines; and
- general concern about the differences in the interpretation and application of regulations by the Boards.

Although interviewees did not provide further comments on the specific aspects of RQFs noted here, a number did discuss the RQF process more generally, particularly in the context of standards and performance-based regulations. RQFs are discussed in the next section and Template 2.

It should also be noted that, while interviewees did not contrast the differences in the regulatory review process for the Sable Offshore Energy Project with that for the Deep Panuke Project, the broader issue of overlapping regulatory responsibilities was raised a number of times. This is discussed further in the next section and assessed in Templates 6 through 9.

### DUPLICATION AND OVERLAP

When the *Atlantic Accord* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord* were negotiated in the mid-1980s, there was a perception that the two independent Boards being created to manage the resources on behalf of the Federal and Provincial governments would provide a single regulatory window and have jurisdiction over all offshore activities relative to oil and gas. In practice, however, other legislation exists (laws of general application), primarily federal, that gives various federal departments and agencies the legal authority and responsibility over certain matters that intersect with the Boards' responsibilities.<sup>3</sup> Similarly, provincial legislation is in place that gives provincial departments and agencies jurisdiction over certain

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<sup>3</sup> The *Accords* recognize that the Federal Government retains sole responsibility for decision-making with respect to federal laws of general application, including *inter alia*, the development of new laws and amendments.

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

activities. This has created a number of areas where responsibilities overlap and gives rise to situations where regulatory processes and activities may duplicate one another.

The implications of multiple regulatory authorities include more effort to work with and satisfy multiple procedures, higher costs to prepare filings, longer timeframes to obtain approvals and uncertainty as a result of multiple decisions. New or amended legislation and regulations, such as the *Canadian Environmental Assessment Act (CEAA)*, the *Species at Risk Act (SARA)* and regulations under the *Oceans Act*, have generated further concerns relating to their implementation and integration with existing requirements. Concerns about overlap and duplication have been expressed by the oil and gas industry, the Offshore Boards and Provincial Governments for some time, and are a key area of focus for the Atlantic Energy Roundtable.

There are a variety of interpretations as to what duplication and overlap actually mean. In carrying out this study, the approach has been inclusive and incorporates the following situations:

- two or more organizations with similar mandates in whole or in part and hence, multiple decisions;
- two or more organizations carrying out essentially the same work or processes concurrently;
- revisiting decisions that have already been made or re-doing work that has already been adequately done; or
- multiple permitting for the same facility or activity.

Duplication and overlap are not unique to Atlantic Canada, but the situation here is more complex as a result of the federal-provincial relationships with respect to jurisdiction in the offshore area. In some instances, overlaps may be unavoidable because of the nature of certain public interest issues and the need to ensure that they are fully respected. Some suggest that duplication may also have to be accepted for political or jurisdictional reasons. Nonetheless, the value of eliminating duplication and overlap to the ex-

tent possible is clearly recognized, and where not possible, managed in a way to minimize impact.

The interviews conducted for this project identified a large number of areas where duplication and overlap occur. Further examples were extracted from the submissions to the “Lessons Learned Workshop” and the discussions that took place during the workshop. This section briefly describes and comments on the areas identified in order to focus attention on those that are considered to be the most significant with respect to their impact on offshore oil and gas activities. Those considered to be most significant are assessed in more detail in the *analysis templates*.

The following list illustrates how identified areas of duplication or overlap are grouped in this report into categories for purposes of presentation.

### Authorizations Related to Development Plans, Pipelines and Other Project Facilities

- Offshore Pipelines
- Gas Plants
- Concurrent Reviews Panels
- Duplicate Filings

### Environmental Assessment

- Environmental Assessment
- Re-Opening of Environmental Issues
- Coordinated Comprehensive Study Review by Responsible Authorities
- *Oceans Act* and *Regulations*
- Onshore Portion of Offshore Pipelines

### Operational Matters

- Certifying Authorities
- Vessel Inspection and Certification
- Structure of Drilling Program Authorizations
- Use of Regulation Query Forms

### Benefits Related Topics

- Benefits Plans
- Foreign Worker Program
- Equipment Sharing

### Authorizations Related to Development Plans, Pipelines and Other Facilities

The first broad category of duplication and overlap involves authorizations related to Development Plans and approvals for pipelines and other project facilities. Duplication and overlap related to these approvals has, to date, primarily affected Nova Scotia due to joint jurisdiction over offshore pipelines and onshore gas processing plants. Each area is identified and described briefly below.

**Offshore Pipelines:** Offshore pipelines are among the facilities under the jurisdiction of the Offshore Boards by virtue of the *Accord* legislation. The *National Energy Board Act* gives the NEB jurisdiction over inter-provincial or international oil and natural gas pipelines (i.e., inter-jurisdictional pipelines). The *Nova Scotia Pipeline Act* grants the regulatory authority for Nova Scotia intra-provincial pipelines to the Nova Scotia UARB.

Because the NEB considers the offshore to be federal lands, they have exercised their authority over subsea, inter-jurisdictional pipelines under the *NEB Act*. Similarly, because the Province considers the offshore to be part of the Province, they believe that the *Nova Scotia Pipeline Act* applies. The result is three Regulatory Boards exercising jurisdiction and issuing decisions related to the approval of offshore pipelines. This overlapping jurisdiction extends beyond pipeline certificates to include issues of pipeline tolls, pipeline construction and operations, and abandonment. To date, this overlap has been managed through administrative arrangements. However, EnCana's Deep Panuke Project did not respond to Provincial jurisdiction and, if followed to fruition, had the potential to send the question of jurisdiction for a legal opinion. This issue is significant; it creates confusion and uncertainty for operators and results in the issuance of multiple and potentially conflicting regulatory decisions. It is discussed further in Template 6.

**Gas Plants:** Gas plants that are integral to the operation of a federally regulated pipeline fall under the *National Energy Board Act*, although

to date in Canada, most gas plants have been associated with intra-provincial pipelines and hence, provincially regulated. The conflicting claims to jurisdiction in the offshore area have created a situation where the Sable Offshore Energy Project's gas plant is regulated by both the NEB and Nova Scotia UARB. Each has issued approvals respecting the construction and operation of the facility. The potential exists for the gas plant operator to be given conflicting direction from the two regulators. Complicating the situation further is the difference in gas plant regulations administered by the two boards (see previous section on differences and inconsistencies and refer to Template 7). The potential implications of this duplication are the added time and cost to satisfy both regulators and the possible uncertainty related to conflicting direction being given. Another complication relates to health and safety matters with both Federal and Provincial legislation applying and no memorandum of understanding (MOU) in place between the NEB and the UARB on this matter. This is significant and assessed further in Template 7.

**Concurrent Review Panels:** For EnCana's Deep Panuke Project, the NEB and CNSOPB agreed to establish a one-person NEB panel for the offshore pipeline and a single CNSOPB Commissioner for the offshore production and processing facilities. The two separate panels would hold their hearings in parallel in the same locations and at the same time. Because the offshore pipeline is part of the Development Plan Application and the CNSOPB approves Development Plans, the Board is also providing a duplicate approval of the offshore pipeline. Clearly, there are overlapping responsibilities and duplicate processes that have implications for the structure, timing, reporting and decision-making for offshore development projects that include pipelines. This is a significant issue, at least for those companies operating offshore Nova Scotia, and it assessed further in Template 9.

**Duplicate Filings:** Development Plan Applications require the submission of a number of related documents, including an environment impact statement (EIS), environmental protection plan (EPP) and socio-economic impact statement (SEIS). The scope of Comprehensive Study Reports is such that



## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

they include much, if not all of the information in the EIS and SEIS. Operators have expressed concern about the time, cost and effort involved in filing what amounts to duplicate information to satisfy two different but related processes. This issue is significant to those operators who may be contemplating a development and adds operating costs for reviewers, and is dealt with further in Template 5.

### Environmental Assessment

Among the most significant group of issues raised by interviewees is the manner in which environmental assessments are conducted and coordinated, the scope of these assessments, timelines, the ability to build on previous environmental assessments in an area and the potential impact of amendments to the *Canadian Environmental Assessment Act*. These involve a number of situations where there are overlapping responsibilities among regulators and departments, and in some instances, duplication of effort. Challenges and opportunities with respect to environmental assessment are discussed further in Template 5.

**Environmental Assessment for Exploration Drilling:** Recent changes to the *Canadian Environmental Assessment Act* address outstanding issues related to consistency of application of the Act in Canada's offshore areas, and improvements to coordination among Regulatory Authorities. Consequently, both Offshore Boards have been designated as Responsible Authorities under *CEAA*.

Previously, Drilling Program Authorizations required the submission of an environmental impact statement to be screened by the Boards prior to an authorization being granted. With the recent addition of the *Accord Acts* to the *Law List Regulations* under *CEAA*, the first exploration well drilled in an area requires a Comprehensive Study<sup>4</sup>. This brings the application of the *CEAA*

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<sup>4</sup> Section 5 of the *Comprehensive Study List Regulations* is amended to require a Comprehensive Study on "A proposed offshore exploratory drilling project that is located outside of a study area delineated in (a) an environmental assessment of a project for the exploratory drilling for, or the production of, oil or gas

to the Offshore Areas in line with other offshore locations in Canada. The associated implications of this to the industry, however, include an additional six to twelve months for an environmental assessment, increased business risk, greater uncertainty and higher costs.

A number of observers are of the view that the environmental impacts of exploration drilling activity are considered minimal and are largely known, based on anecdotal evidence, the environmental effects monitoring of wells drilled to date in the East Coast offshore, and the experience gained from similar activities in other jurisdictions. It has also been suggested that the information required for both Screenings and Comprehensive Study Reports could duplicate previous work completed by other operators and that, whatever the form of environmental assessment, it should build on and not duplicate past work. Finally, there have been questions with respect to duplication of environmental assessment processes that result from the designation of the Boards as Responsible Authorities under the *CEAA*, given that the *Accord Acts* also contain requirements for environmental assessments and socio-economic impact assessments by the Boards. Environmental assessment challenges and opportunities are assessed in Template 5.

**Re-Opening of Environmental Issues:** For Development Plans and offshore pipeline approvals, recent environmental assessments have been carried out under *CEAA*. Once a project has been released by the Federal Minister of Environment, the potential exists for environmental issues to be again raised during the consideration of facilities applications. Operators consider this to be an overlap and an opportunity for "double jeopardy." They take the view that, once a project has gone through the *CEAA* process, all environmental assessment requirements should be satisfied. This creates an added degree of uncertainty

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in an offshore location that was conducted by a review panel or as a comprehensive study under the *CEAA*; or (b) an environmental assessment of a proposal for the exploratory drilling for, or production of, oil or gas in an offshore location that was conducted by a Panel under the *Environmental Assessment Review Process Guidelines Order*."

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

for project proponents and broadens the scope of review of facilities applications. This is considered significant by at least some companies, and needs to be addressed more fully in the context of environmental assessment processes and their relationship to facilities approvals. Refer also to Template 5.

**Coordinated Comprehensive Study Review by Responsible Authorities:** Each Responsible Authority (RA) for a work or undertaking subject to a Comprehensive Study, as well as expert Federal departments, conduct their reviews largely in isolation of one another. As a result, the same questions may arise several times in the same or a slightly different manner. In addition, concerns exist about questions that go beyond the scope of what is relevant to the impacts of the activity being proposed, and may be to some extent, the result of scientific curiosity. Examples were cited of numerous duplicate questions being raised requiring considerable time and effort on the part of an applicant. Operators would like to see questions vetted by a lead Responsible Authority in order to consolidate them and eliminate duplication. Were a lead Responsible Authority to consolidate such information, however, there would likely be a commensurate time requirement, depending on the complexity of the task. It was also suggested that if Responsible Authorities were to work as a team, much of the duplication would be eliminated and time and effort reduced for all parties. Companies consider this type of duplication to have a significant impact on them.

Recent changes to *CEAA* require the appointment of a Federal Environmental Assessment Coordinator, a requirement which is aimed at addressing the need for improved coordination among Responsible Authorities, and the need for improved integration of work plans and reviews. Template 5 discusses this further.

**Oceans Act and Regulations:** Section 40 of the *Oceans Act* gives the Minister of Fisheries and Oceans (DFO) the authority for decision-making for activities in the oceans that are not the subject of other laws. Regulations under the Act could make DFO responsible for authorizing designated activity within particular areas. Therefore,

activities could not only require authorization from the Offshore Boards, but also potentially from the Minister of Fisheries and Oceans. This type of duplicate authority raises concerns about conducting a lengthy approval process for Board authorization, only to have it not approved by the Minister of Fisheries and Oceans. If not otherwise coordinated, there are significant implications for the offshore oil and gas industry and other ocean users in relation to increased regulatory risk, added time for approvals and the potential for additional conditions that affect costs. Template 14 discusses the need for federal coordination of laws of general application.

**Onshore Portion of Offshore Pipelines:** As noted earlier, offshore pipelines are subject to multiple approvals and, from an environmental assessment perspective, will be dealt with under the *Canadian Environmental Assessment Act*. The onshore portion, if over five kilometres in length, is subject to assessment under the *Nova Scotia Environment Act*, giving rise to the possibility of two agencies assessing at least a portion of the pipeline. Unlike the *CEAA* process, provincial environmental assessments have well-defined timelines creating the potential for assessment decisions to be made at different points in time.

The Province has the ability to enter into a project-specific memorandum of understanding to harmonize environmental assessment requirements with the Canadian Environmental Assessment Agency (CEAA). Where timelines vary from those set out in Provincial legislation, Cabinet approval is required. Through a bilateral agreement with the CEAA, it is possible to eliminate the need to go back to Provincial Cabinet for approval of each project-specific variance on the timelines. Therefore, for the onshore portion of offshore pipelines, duplicate environmental assessment requirements can be managed through MOUs and repeated Cabinet approvals for each can be eliminated through a bilateral agreement with the CEAA. This is described in Template 8.

### Operational Matters

The next grouping of areas where duplication and overlap occurs, involves what can be broadly referred to as operational matters. These are briefly identified and discussed below.

**Certifying Authorities:** A general prerequisite for work authorizations relating to any prescribed equipment or installation is a Certificate of Fitness issued by a Certifying Authority (CA) recognized in *Certificate of Fitness Regulations*. The Boards may impose requirements or conditions on the Certificate of Fitness beyond those required by the CA, or for which the CA is not fully qualified. Situations may also arise where the Boards require operators to retain consultants to examine certain aspects of the facility or equipment beyond the work carried out by the CA. Operators have expressed the view that the CAs should have the technical expertise required to issue a Certificate without the necessity of additional work or conditions being prescribed by the Boards. This has time and cost implications for operators. A related matter is the need to have equipment that has been certified in the offshore area of one province re-certified in order to work in the adjoining jurisdiction. This again, has significant cost and timing implications for operators. The role of Certifying Authorities is examined further in Template 10.

**Vessel Inspection and Certification:** As discussed in the previous section, vessel inspection and certification for all vessels, including MODUs, is handled in Newfoundland and Labrador by Transport Canada. Inspection responsibilities in Nova Scotia are split between Transport Canada and the CNSOPB, and are governed by a detailed memorandum of understanding. With the exception of foreign-flagged MODUs, storage tankers and accommodation vessels, a Canadian Safety Inspection Certificate is required from Transport Canada under the *Canada Shipping Act*. For some facilities, Certificates of Fitness are also required by the CNSOPB. In the case of some tankers that can act in both a storage and shuttle capacity, both Transport Canada and CNSOPB inspections and certificates may be required. There is a potential for duplication in such situations. Vessel inspection and certifica-

tion is discussed in association with rig standards in Template 11.

**Structure of Drilling Program Authorizations:** Certificates of Fitness are required for the authorization of drilling programs and hence, reference a specific drilling unit in the application. The potential exists for an operator to undertake a multi-well program covered by a single authorization that may involve different drilling units for some of the wells. Under current requirements, each time a new drilling unit is used, there would have to be a new drilling program authorization, unless all rigs were specified and Certificates of Fitness obtained at the time of the initial application. Some operators view this as a duplication that could be eliminated if the Certificate of Fitness for the rigs was considered outside of the DPA authorization, and required at the time of getting Approval to Drill a Well. This issue is discussed in association with rig standards in Template 11.

**Use of Regulatory Query Forms:** The prescriptive nature and age of many of the regulations under the *Accord Acts* has resulted in operators seeking from the Boards approval for deviations from requirements and standards referenced in the regulations through Regulatory Query Forms (RQFs). The number of requested deviations can amount to as many as several hundred for a development project, and perhaps in the order of 40 to 60 for exploration programs. This reflects the fact that technology or industry practice has advanced beyond what is prescribed in some regulations, or that some equipment or materials are based on equivalent international standards not referenced in the regulations. Over time the same RQFs have been dealt with by the two Boards on a number of occasions but have generally been reassessed each time. While the need for RQFs can be largely eliminated through performance-based regulations, such a shift will take a considerable amount of time to fully implement. In the interim, it has been suggested that to reduce duplication in the RQF process, a catalogue of all RQFs that go to the Boards be developed that can be referenced by operators. Refer to Template 2 for a more detailed assessment. Template 3 deals with the related topic of performance-based regulations.

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

### Benefits Related Areas

The final grouping concerns Benefits Plans and related processes involving the Offshore Boards and a number of federal and provincial departments and agencies. Benefits issues have been a long-standing concern for operators, both for exploration and development activities. Issues range from the content of Benefits Plans to procurement review practices and reporting. Areas of duplication and overlap that relate to benefits are outlined below and have been referred for assessment to the Industrial Opportunities Task Force. (Refer to the Addendum)

**Benefits Plans:** Benefits Plans are a prerequisite before the Boards can authorize any work or activity. The responsibility for approving Benefits Plans rests with the Offshore Boards, albeit with the requirement to consult with the Provinces. In the case of Nova Scotia, a Benefits Advisory Committee has been formed and is involved in the review of Benefits Plans as well as procurement activities by operators. The role of the Provinces is advisory, although they may enter into direct discussion with operators in advance of the submission of Benefits Plans and possibly with respect to procurement of major items or those of strategic importance. The Provinces monitor and attempt to maximize local content; the Boards ensure that local companies have full and fair opportunity to compete for contracts.

A number of operators feel that there is considerable duplication in the management of benefits, in that their Benefits Plans are reviewed by the Boards, the Provinces and the Federal Government. In addition, there is a concern that reporting and monitoring activities go beyond the intent of the Accord legislation to satisfy a requirement for involvement by the Provinces. On the other hand, the general public sees the responsibility for benefits resting with the Provinces, and have expectations for higher levels of local content. In effect, the Provinces have a perceived responsibility but no regulatory authority, which explains what might be considered as a somewhat duplicate role to that of the Boards. In general, benefits administration has been an ongoing concern for operators.

**Foreign Worker Program:** The CNSOPB provides advice to HRDC on the technical requirements related to positions for which an application has been made under the Foreign Worker Program, and also undertakes a parallel approval process. "Sign off" on foreign worker applications are made by both organizations (final federal approval is granted by Citizenship and Immigration Canada), with the potential existing for one organization approving a request while the other does not. There is also an administrative cost and associated workload for the Board and for operators. There is a desire to see this duplication eliminated.

**Equipment Sharing:** Operators can achieve economies by sharing drilling units and other equipment such as seismic vessels. Examples have been cited where operators have gone through a competitive procurement process to acquire the use of a rig or vessel, and attempts by other operators to piggy-back on the availability of this equipment in order to minimize mobilization and demobilization costs have been frustrated. Questions have been raised by regulators about the need for a further procurement process, or whether contracts allow for the assignment of a portion of a lease. Sharing equipment or piggy-backing on the availability of equipment is a policy issue that can have a significant impact on reducing costs and, therefore, the way in which the Boards deal with these matters is significant. This topic is related to both benefits requirements and high drilling costs.

### OTHER "STAND ALONE" CHALLENGES

This section describes a set of challenges that were identified during the interview process, but which are stand alone concerns in that they do not fit cleanly within the previous categories of "differences" or "duplication and overlap." There are nonetheless linkages between the following topics and some of the elements described in previous sections.

The following lists the specific challenges that are described in summary form below and elaborated in the analysis templates in Part 2.

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

- Common Understanding of Purpose and Scope
- Consistency with Adjacent Areas
- Performance-Based Regulation
- Ability to Respond to Small Projects
- Federal Coordination of Canada's Oceans Strategy
- Federal Coordination of Species at Risk Legislation
- Timing of Foreign Vessel Authorizations
- Import Duties on Rigs

**Common Understanding of Purpose and Scope:** Efforts to identify challenges and opportunities to improve regulatory effectiveness and efficiency are predicated on the assumption that the parties to the discussion share a common understanding of the principles and constraints that guide the initiative, including such elements as a shared sense of the importance of the work, the value of an efficient and effective regulatory system, commitment to joint effort, the need to protect public interests, accountabilities for conducting work and the nature of topics “on the table.” It is clear from the interviews that there are differences of opinion with respect to the definition and scope of the regulatory effectiveness initiative. This context is important to expectations of success and to the ability to complete work assignments, and should be a concern at the Steering Committee level. Template 1 assesses this further.

**Consistency with Adjacent Areas:** Interest is developing with respect to opening the areas offshore of PEI, New Brunswick and Québec to oil and gas exploration. The policy and regulatory regime and administrative models are not yet defined for those areas, although they are currently considered by Canada as Frontier Lands, subject to regulation by the National Energy Board. Consistency among adjacent jurisdictions in the offshore is generally desirable and the possibility of several new “offshore areas,” each with respective regulatory regimes, brings this issue into focus. One perspective heard a number of times during interviews is that the management of technical and environmental regulations by a single regional regulator could make sense, if the

positions of the Province's with respect to resource rights and benefits were not impacted. The topic of regional consistency is elaborated further in the Observations and Conclusions section of this report.

**Performance-Based Regulation:** Prescriptive-style regulations have difficulty keeping pace with current practice or with the evolving nature of information and technology requirements. Alternative mechanisms have been developed in the form of Guidelines and Regulatory Query Forms (RQFs) that allow for added detail and for exemptions from specific regulatory requirements. Current trends indicate a move toward performance-based outcomes in many jurisdictions, including those dealing with offshore oil and gas developments. Template 3 addresses this challenge.

**Ability to Respond to Small Projects:** To date, development projects on the East Coast have, with the exception of the Cohasset-Panuke Project, been large multi-billion dollar projects. Regulatory approval processes have been designed to deal with large projects with the potential for significant impacts. In the future, small incremental projects of a completely different scale, and often with marginal economics, will be proposed that will be tied to existing facilities. These projects will have trouble accommodating extensive benefits requirements, lengthy environmental assessment processes, protracted public reviews and long regulatory approval times. The ability of current regulatory processes to respond to the needs of smaller marginal projects needs to be examined to ensure that opportunities are not lost. Template 4 discusses this further.

**Federal Coordination of Canada's Oceans Strategy:** Canada's *Oceans Act* is a law of general application that establishes an integrated management and planning function for Canada's ocean area, within the responsibility of the federal Department of Fisheries and Oceans. A “Strategy” and a “Policy and Implementation Framework” have recently been released that describe the intent of the Act and the direction that DFO, on behalf of Canada, is contemplating for purposes of implementing the legislation. The primary vehicle for implementing the Strategy is

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

“Integrated Management;” a pilot project is underway for the eastern Scotian Shelf (the Eastern Scotian Shelf Integrated Management Project). The affect of the implementation of the Strategy is uncertain (flexibility to issue authorizations, security of investments, process for Marine Protected Area designation). A key concern with respect to this and other laws of general application is the need for federal agency coordination and integration with other applicable legislation and decision-making processes. Template 14 assesses the need for federal coordination in respect of the *Oceans Act* and other such federal legislation.

**Federal Coordination of Species at Risk Legislation:** A federal *Species at Risk Act (SARA)* has recently been introduced that formalizes the process to identify, rehabilitate and protect endangered and threatened species and their habitats in Canada. This legislation will apply in the offshore areas and its affect on oil and gas operations is not yet fully understood. Critical habitats may be designated and restricted and a permitting function could also be applied that could affect operators and operations. Process and mechanisms for implementing *SARA* are still being worked out and suggest an opportunity to ensure that there is integration with other processes and commitments. Template 14 assesses the need for federal coordination in respect of *SARA* and other such federal legislation.

**Timing of Foreign Vessel Authorizations:** Foreign-flagged vessels operating in Canadian waters require the approval of the Canadian Transportation Agency (CTA) and a Coasting Trade Licence from the Canada Customs and Revenue Agency (CCRA). The granting of a Coasting Trade Licence depends on whether or not suitable Canadian vessels are available and includes a process for Canadian vessel owners to oppose the issuance of a licence. If opposed, the adjudication process can take a significant amount of time and affect the economics of a project. Licences are generally granted for a fixed period of time. If drilling programs or offshore activities take longer than expected and extend beyond the term of the Coasting Trade Licence, the extension of the licence requires re-starting the process. While this protects the public interest in supporting Canadian-flagged vessels, it is also

considered by some as a duplicate approval, the implications of which can be significant in terms of time, cost and uncertainty about continuing operations. New guidelines are in the process of being finalized by the CTA that are intended to address a number of outstanding concerns with the Coasting Trade Licence acquisition process. Template 16 assess this topic further.

**High Well Costs:** Costs of drilling wells in offshore Atlantic Canada are very high. There are a number of contributing factors that are beyond the natural environment or the inherent difficulties encountered in a particular drilling location, such as: well testing; wireline logging; cutting full hole cores; requirements for backup equipment; removal of subsea wellheads; equipment sharing and use of burner booms. Chief among these cost factors are the costs of formation flow testing and the imposition of a temporary import duty for foreign and non-duty paid vessels.

Formation flow testing is referred to earlier in this report and assessed further in Template 12 as a significant contributor to drilling costs of first exploration wells.

Canada Customs and Revenue Agency places a Temporary Import Duty on most drilling rigs entering the country as a means of encouraging use of Canadian made units. However, there have not been rigs fabricated in Canada for many years. Because of the low demand for new rigs and existence of low-cost fabrication facilities offshore, it is unlikely that new rigs will be built in Canada in the foreseeable future. Import duty is a significant addition to the cost of drilling a well in an area that already experiences some of the highest operating costs in the world. Template 13 adds detail to this topic.

### **Benefits-Related Challenges Referred to Industrial Opportunities**

In addition to the above, there are several benefits-related challenges that have emerged. While benefits planning and monitoring does have an influence on the authorization of plans and activities within regulatory processes, the benefits aspects are being addressed by the Industrial Opportunities Task Force, rather than by the Regu-

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

latory Issues Steering Committee. Consequently, the following benefits-related information and conclusions from this project have been consolidated in an *Addendum*, and referred to the Industrial Opportunities group.

**Approach to Benefits:** Benefits Plans for development projects come under significant scrutiny for their ability to foster local and Canadian involvement. Governments and operators are sometimes at odds with respect to the perceived level of involvement and influence that each should bring to the Plan. Some of the distinctions in benefits administration between the offshore areas relate to the differences in the evolution of respective provincial policies, which may be linked to the maturity of the developments off Newfoundland and Labrador versus those off Nova Scotia. Benefits policy for the two provincial jurisdictions is seen by many as converging. The degree of experience that now exists with respect to benefits planning, approvals and results could be used to ensure that interpretation of benefits requirements and responsibilities are consistent among jurisdictions.

**Benefits Plans for Exploration:** Benefits Plans are required for approval of exploration programs. The activities involved in the exploration phase are understood. The capability and capacity of Canadian and local workers and suppliers to contribute to exploration activities is known. Significant monitoring and reporting workloads are associated with these plans. Given that the nature and outcome of benefits from exploration programs has become very predictable, the rationale for the continued need for, and value of, this type of benefits plan reporting is being questioned.

**Research and Development Expenditures:** The Accord legislation requires that research and development expenditures be made within a province, as a component of benefits planning. This requirement does not, however, address the question of limited regional research capability or capacity. While the public policy objective of building research and development capacity in individual provinces is appropriate, a general view is that some flexibility would better enable collaborative activities to be undertaken that are consistent with further devel-

oping local capability. The current restriction on research funding seems to some observers to be inconsistent with the notion of building regional capacity or establishing synergies among researchers and institutions.

### OBSERVATIONS AND CONCLUSIONS

This section offers some general observations and conclusions based on the information collected and its analyses.

#### Expectations of the Policy and Regulatory Framework

The needs expressed by government departments and agencies, regulatory boards and industry operators influence their viewpoints on what constitutes an effective regulatory system. The following lists the needs of each group as identified through the interview process and, while the lists may not be complete, they are representative of the elements of greatest importance to each group.

#### Governments (Policy and Regulatory):

- unfettered statutory authorities
- public transparency and the ability to stand up to public scrutiny
- generation of wealth and economic returns (economic rent)
- wise use and conservation of public resources
- fairness and equitable treatment of those with an interest in offshore petroleum activity
- thorough and fair regulatory procedures
- legally sound processes and decisions
- private sector investment
- regional economic development
- environmental protection and sustainability
- responsible public expenditures within budgetary constraints and appropriations
- protection of jurisdiction and accountabilitys
- balancing multiple interests

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

### Regulatory Boards (Federal, Provincial, Joint):

- clear and consistent legislative base (acts and regulations)
- clear and consistent policy direction
- operational independence
- independent decision-making authority subject to reasonable oversight
- functional capacity – human and budgetary resources
- reasonable operating time lines
- clearly defined responsibilities and distinct authorities
- free of conflicts of interest, including a clear separation of regulatory responsibilities from those considered promotional in nature
- perceived as fair, competent and unbiased

### Industry:

- cost-effective and efficient regulatory processes
- certainty as to the structure of the processes and outcomes
- access to lands to explore for, and develop resources
- competitive and acceptable exploration drilling, development and operating costs
- protection of their commercial and proprietary interests
- regulatory time lines that are competitive with other areas
- to be perceived as environmentally and socially responsible
- equitable regulatory treatment relative to other industrial sectors
- reasonable expectation of future return on investment
- understandable and functional relationships with regulators (desire for a single window)
- consistent and repeatable approval processes
- unfettered access to markets
- control over their business practices, decisions and relationships within the constraints imposed by legislation

### Extent of Challenges Identified

There was an assumption made at the outset of the research that government and Board personnel would be in a position to add value to the package of inputs to the “Lessons Learned Workshop.” Results in fact did show that interviewees added depth and understanding to the challenges and opportunities already “on the table.” There were, however, few new elements identified by policy makers or regulators.

There may be more than one reason for this finding. Parties may feel that the “right” issues have been identified through the lesson learned process. The process to date may also have been driven primarily by industry concerns, with departments, agencies and Boards being in position of reacting. It should be noted that parties have been responsive to issues presented and have taken some proactive steps to examine specific areas of concern.

### Challenges from Roadmap Reviews

Another assumption of the project was that a “technical review” of the Regulatory Roadmaps would reveal new challenges and opportunities that could be added to the Lessons Learned inputs. Although the updating of the Roadmaps is still underway, there have been only a few added issues from the technical roadmap work.

There are several reasons for this:

- many of the right issues have been identified by the managers and users of the system — they know where the challenges and opportunities lie;
- the Regulatory Roadmaps describe the process rather than the mechanics of daily operations, and in this sense they do not address a level of detail that examines the operational effectiveness of the management systems or standards of practice that are in place; and
- the Roadmaps were developed with the explicit understanding that “issues” of effectiveness and efficiency would be avoided and would not be reflected in the documents.



## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

Challenges and opportunities that have emerged from a review of the Roadmaps have been incorporated into the template descriptions of issues that are part of this report.

### Significant Issues and Opportunities

In broad terms, there is significant convergence among industry operators and regulators with respect to the issues of importance that affect regulatory efficiency and effectiveness. There is also a general recognition that the regulatory Boards and governments are prepared to give fair and serious consideration to addressing those issues.

When considering the categories of challenges that have been referred to, the list of “inconsistencies or differences” in Board practices, while an irritant for companies operating in both offshore areas, is a relatively short list. The category of “duplication or overlap” in mandates, responsibilities and practices, however, is of greater concern to all parties.

The somewhat lengthy list related to duplication and overlap was somewhat surprising. This may be attributed in part to the variation in experiences between jurisdictions, the familiarity of the industry with Board practices in both jurisdictions and, specifically, the consequence of project proposals in Nova Scotia that require pipeline infrastructure.

Five issues areas have emerged through this study as being of greatest significance in the sense that aligning policies or practices would see substantive improvements in terms of costs, time or ease of administration and operations. These are:

1. undertaking measures that reduce well drilling costs following from an evaluation of a number of technical and policy elements;
2. harmonizing the standards and certification procedures for rigs and supply vessels;
3. coordinating environmental assessment processes, and integrating environmental assessment and regulatory authorization procedures;

4. managing the duplication of mandates for offshore pipelines and connected facilities; and
5. aligning benefits planning, monitoring and reporting practices and administration.

### Concept of “One Window”

A recurrent theme is that the “one window” regulatory mechanism created with the Offshore Boards is being somehow eroded by new legislation and regulations being overlain at a federal level (environmental assessments, special area designations, planning processes, permitting procedures that bring new conditions). This notion of a one-window approach for the Accord areas, however, has no foundation in the Accords. The *Accords* recognize that the Federal Government retains sole responsibility for decision-making with respect to federal laws of general application, including *inter alia* the development of new laws and amendments.

Nevertheless, this “trend” of increasing regulatory requirements has added uncertainty to the system and leads to a conclusion by many that the regulatory regime is becoming more complex and expensive, rather than more streamlined, with reference to the original intent of the federal-provincial *Accords*.

Associated with the foregoing is the need for a distinction between social decision-making about protection, conservation and disposition of public resources and values, and the need to efficiently regulate the activities associated with exploiting those same resources. An example of this distinction is demonstrated by the perception that federal programs to plan for uses and values in the Canada’s ocean areas under the *Canada Oceans Act* is adding to the regulatory burden. Rather, this legislation is aimed at making social choices about which public resources are protected or exploited and where.

### Some Differences in Practice are Inherent in the Regulatory Model

Many of the “issues” raised through the Lessons Learned exercise and in interviews stem from the fact that the industry works in adjacent offshore

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

areas of Canada where there are parallel, but independent, regulatory authorities. That is, a number of the challenges and opportunities identified for the Steering Committee can be related, in large measure, to the fact that there are two regulatory regimes in place, each with distinctive cultures and practices. While efforts continue to improve “consistency,” it must also be acknowledged that the distinctions in regulatory practices are, to an extent, inherent in the regulatory model that has been adopted for the offshore areas. To this extent, differences and inconsistencies will always be part of the system, as will the need for continued efforts for alignment.

### Strategic Direction

There is an emphasis on enabling exploration efforts to advance and on creating a business climate that is competitive in terms of its ability to attract investors. Regulatory effectiveness and efficiency (costs, cycle time, working relationships, flexibility, responsiveness, administrative certainty) is a key contributor. The focus on exploration may seem obvious, but given the number of bodies involved in planning or regulating the oil and gas sector, the importance of having a common, strategic understanding (as opposed to a project-specific focus) should not be underestimated.

Given the importance and profile of dealing with some of the identified challenges, it would seem important that there be a senior level issue champion to add senior accountability and support to the work. One possible approach would be for each Steering Committee member to sponsor one or more of the sanctioned initiatives on behalf of the Committee.

### Regional Consistency In the Policy and Regulatory Regime for Offshore Oil and Gas

During the interview process, people were asked to reflect on their experience with oil and gas sector management in the Accord Areas, with a view to where opportunities for improving the system might exist. Based on what is now known, and given the opportunity, a number of people offered a broad perspective on the system

that emerged as an unexpected theme: that the notion of a single regulatory body for adjacent offshore areas has merit. This idea was qualified by making a separation between regulatory matters (such as environment, health, safety, reporting, and compliance) and social matters (such as, benefits to Provinces and Canada, land use, revenues to governments) for which the governments should maintain “control.” It is also important to note that while the above perspective was offered by people at the federal and provincial levels and in the industry, there are strong distinctions between the Provinces on this topic, as well as significant concern about provincial sovereignty. Newfoundland and Labrador has strongly expressed concerns.

Although this topic remains contentious, there appears to be sufficient interest and experience to warrant a further discussion. A number of reasons were proffered in support of this observation, including that:

- there is a high public expense for supporting management systems that are mirror images of each other in Nova Scotia and Newfoundland and Labrador;
- continuing efforts will be needed to maintain joint working relationships, guidelines and mechanisms, aimed also at establishing consistency and predictability;
- continuing concerns about variations in practice that have been sources of added costs and frustration are likely to continue because they are an inherent part of the current system;
- continuing pressures to align interpretations of the legislation and regulations can be expected from the industry; and that subsequent Board decisions will increasingly require clarity about interpretations;
- there appears to be little clear evidence that the current model has resulted in any greater provincial control or sovereignty over the offshore areas; and
- the primary interests of the provinces in terms of values and benefits may be achieved through retaining control of the rights issuance, benefits and financial aspects,

## PART 1 - REGULATORY EFFECTIVENESS CHALLENGES AND OPPORTUNITIES

given that jurisdictional claims are not challenged.

Another rationale for the consideration of this question of regional consistency is that preliminary discussions about offshore oil and gas regimes are expected between the federal government and the provinces of New Brunswick, Prince Edward Island and Québec. The future policy and regulatory models for oil and gas for those areas are as yet undefined. These discussions will have a bearing on the existing model in the Accord Areas because of the tendency to measure new opportunities against the collective experience with that model. Such discussions are bound to encounter the same range of issues as are being raised with respect to the management regimes currently in place in Newfoundland and Labrador and Nova Scotia.

The affect of the policy and regulatory environment on the attractiveness and competitiveness of the region was a primary topic of conversation at the Atlantic Energy Roundtable meeting in November 2002. Although oil and gas activities were not focussed in non-Accord parts of the region at that time, those other areas do constitute part of the regional picture, and their contribution will need to be considered as interest in oil and gas resources expands. It is not clear, however, as to whether the Atlantic Energy Roundtable is a forum for this topic.

Further considerations with respect to future models in Atlantic Canada include:

- the stated objective of the existing *Accords* to promote consistency, insofar as is appropriate, with the management regimes for other offshore areas in Canada;
- the establishment of a federal initiative to streamline regulatory regimes in Canada, referred to as “smart regulation”; and
- the likelihood of the Atlantic Energy Roundtable becoming an identified example of the smart regulation initiative at work, and the greater profile that could result.

A timely question for Canada and the Provinces may be: Is an alternative regional regulatory

mechanism possible that protects the interests of citizens of the Provinces and Canada, increases efficiency of regulatory processes in a substantive way, and improves the region’s competitiveness for offshore oil and gas development?

## PART 2 - ANALYSIS TEMPLATES

### PART 2 - ANALYSIS TEMPLATES

Part 2 of the report contains a set of “analysis templates” that have been used to describe specific topics in greater detail. To the extent possible, each template is built with the same format and presents:

- a short statement that describes the topic of the template;
- an explanation of context needed to understand the topic or issue;
- a description of what needs to be addressed and why;
- an overview of the alternative means of addressing or resolving the concern or issue;
- a sense of priority and the ease with which an issue might be addressed;
- any related work that is known to be in progress;
- linkages to other topics or issues.

#### List of Templates

##### *Regional Considerations*

Template #1 Common Purpose and Scope

##### *Responsiveness of Current Regulations*

Template #2 Use of Regulatory Query Forms

Template #3 Performance-Based Regulation

Template #4 Ability to Respond to Small Projects

##### *Environmental Assessment*

Template #5 Efficiencies in Environmental Assessments

##### *Pipeline Approvals and Regulation*

Template #6 Multiple Regulatory Jurisdictions Over Offshore Pipelines

Template #7 Overlapping Jurisdictions for Onshore Gas Plants

Template #8 Onshore Portion of Offshore Pipelines

Template #9 Concurrent Review Panels

##### *Standards and Certification*

Template #10 Role of Certifying Authorities

Template #11 Rig Standards, Vessel Inspection and Certification

##### *Drilling Costs*

Template #12 Formation Flow Testing

Template #13 Import Duty on Rigs

##### *Federal Coordination*

Template #14 Laws of General Application (*Oceans Act, SARA, CEAA*)

Template #15 Foreign Worker Approvals

Template #16 Acquiring a Coasting Trade Licence

### Template # 1: Common Purpose and Scope

#### Description

Interview results point to different perspectives on the importance of the regulatory effectiveness initiative, the scope of issues it might reasonably address and the range of appropriate participants. This variation in definition affects the commitment and resources that participants are willing or able to bring to the process.

#### Context

The work of the Atlantic Energy Roundtable to improve regulatory effectiveness and efficiency is predicated on the assumption that the participants in the discussion share some common perspectives about purpose and that work proceeds with the same set of guiding objectives in mind (e.g., defining what regulatory effectiveness is and is not, value of collaborative effort, understanding and protecting public interests, scope of work to be undertaken, accountabilities for conducting work, resourcing). The variation in scope of responsibilities of participating federal and provincial bodies is reflected in the variation in scope of interests and topics that are advanced during discussions.

Different perspectives are apparent with respect to both the definition and inherent value of improving the effectiveness and efficiency of regulatory processes. While there is the view that regulatory effectiveness serves the public interest and creates advantages for business development, there is also the view that overlaps in procedures or jurisdictions serve as important checks and balances for protecting public resources and values. There is also a perception by some that industry may want changes to the regulatory regime that could result in an erosion of the public processes and protections that were negotiated under the *Accord Acts* or other legislation. That is, there is a concern that greater effectiveness and efficiency in decision making could translate into a relaxation of standards.

Regulatory effectiveness and efficiency has been variously described by participants in the process as:

- ◆ an integrated and comprehensive legal and policy base;
- ◆ best efforts to coordinate regulatory authorization and environmental assessment procedures and reduce associated timelines;
- ◆ reduction of inconsistencies, overlap and duplication of procedures among regulators and review agencies;
- ◆ improved integration between regulatory decision-making processes and the business cycle,
- ◆ reducing the life cycle costs of oil and gas development to ensure continued investment and increased benefits; and
- ◆ relaxing environmental standards and social safeguards.

An explicit definition of purpose and set of shared principles may be part of the natural evolution of the initiative that creates a sense of formality and commitment going forward. Efforts to improve regulatory effectiveness and efficiency in Northern Canada have encountered the same requirements for clarity in terms of intent, scope and commitment to engage.

Specific work has not been undertaken to prepare guiding principles. While efforts have been made to engage new agency participants at the working level, these have only been partly successful.

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** Common objectives or principles for improving regulatory effectiveness have not been clearly articulated in a manner that ensures that all parties have a common understanding of the importance and the commitments necessary to make Roundtable efforts successful. A sense of common purpose governs how parties react to the initiative as a whole and to particular problems tabled for discussion. Continued absence of a clear understanding of the scope and importance of the initiative can have some unintended results, including delays in prescribed work, frustration among participants, strain on working relationships and criticisms about leadership.

A set of expectations has been created about the utility of the initiative. At some future point, an inability to seriously address those expectations (some of which may be competing) could have implications at a senior level.

The possibility also exists for the Atlantic Energy Roundtable to be raised as an example of recent efforts of the federal government to pursue “smart regulation,” as outlined in the recent Speech from the Throne. This connection could increase public scrutiny in, and add profile to, the Roundtable, requiring a clearer linkage between the aims of “smart regulation” and the work of the Roundtable. A clear definition of purpose, principles and scope, consistent with the intended outcomes of “smart regulation,” would be a predictable requirement.

**What options exist** 1. The Steering Committee could prepare a set of guiding principles that define the initiative, its scope, public interest safeguards, etc., making any necessary links to the federal “smart regulation” initiative. These principles could then be adopted by Ministers at the Atlantic Energy Roundtable.

The more formal definition of the initiative could form the foundation on which to invite the participation of “other” agencies with a strong influence on oil and gas sector activities (e.g., those agencies responsible for laws of general application that have a direct affect on regulatory efficiency and effectiveness). Resourcing commitments must be consistent with principles.

2. The Roundtable and its committees could continue to operate on the basis of an approved work plan that relies for success on the commitment of Roundtable participants and the “good will” of those bodies not participating, but whose involvement is necessary for success.

**What’s the priority** The need for an understanding of common purpose is a high priority in the sense that it forms the basis upon which levels of commitment are determined and future work undertaken. The opportunity exists for the Steering Committee to address this need at the Roundtable at its 2003 Roundtable meeting. Any formal link with the federal “smart regulation” initiative will enhance the need for clarity, particularly as it may relate to the engagement of new federal agency partners.

**What work is in progress** Discussion has occurred at the Working Committee concerning the need for a working protocol(s) among participants. The Privy Council Office is proceeding with the federal “smart regulation” initiative and is considering the Atlantic Energy Roundtable as a formal example.

**Linkages** Linked to Smart Regulation.

## Template # 2: Use of Regulatory Query Forms

<b>Description</b>	Companies involved in offshore exploration, development, and production activities use the Regulatory Query Process to: seek clarification of regulatory requirements; request exemptions from regulations; or request approval to use alternate equipment, methods, measures or standards provided an equivalent level of safety and environmental protection is provided. There is a concern that the growing need to use this process points to outdated regulations that reference codes or standards that are often not the most current and appropriate. Concerns have been expressed about different responses to the same Regulatory Query Form (RQF) request submitted by different operators, and the lack of a mechanism to share the results of past RQFs.
<b>Context</b>	Regulations under the Newfoundland and Labrador and Nova Scotia <i>Accord</i> legislation have been developed over a number of years resulting in references to codes and standards that are not the most up-to-date. The general approach taken in these regulations has been prescriptive, which by nature leaves little room for deviation from regulatory requirements. However Section 151 (1) of the <i>Canada-Newfoundland Atlantic Accord Implementation Act</i> and Section 155 of the <i>Canada-Nova Scotia Offshore Accord Implementation Act</i> give the Chief Safety Officer and the Chief Conservation Officer the authority to authorize deviations from specified codes and standards provided that they are satisfied that an equivalent level of safety, environmental protection and resource conservation can be achieved. The Boards have established a RQF process to enable operators to request deviations. The documentation required must set out what is being proposed and the rationale. Should the deviation fall within the approved scope of work for a Certifying Authority (that is, for RQFs associated with installations), then a statement of concurrence must be provided stating that the alternative will meet the Fitness for Purpose for requirements under the <i>Certificate of Fitness Regulations</i> . The objective is to ensure that equipment, methods and facilities are safe, while at the same time providing some degree of flexibility to allow for the application of best practices and recognition of equivalent international standards.
<b>What needs to be addressed</b>	<p>Companies report that over time the number of RQFs has grown to the point where it can be in the hundreds for a development project and dozens for an exploration well. The intent of the RQF process is to provide some flexibility, however it can be both time consuming and costly. As noted previously, the growth of RQFs is a function of prescriptive regulations that reference out dated codes and standards. Any move towards performance-based regulations will take some time to accomplish. In the interim, the RQF process will be required to ensure the application of best practices.</p> <p>By streamlining the current practice of repetitive RQF applications, the number of RQFs and the time required to process them can be reduced. It should be possible to accomplish this without negative implications to public policy objectives related to safety, environmental protection or resource conservation. Such streamlining would not only have a positive impact for operators, but would reduce the amount of resources required by the offshore Boards to process RQFs and improve the consistency in the handling of RQFs, both within and between the two Boards.</p> <p>While a more streamlined processing of RQFs may not be the ultimate answer for keeping regulations current, it does provide an interim solution without the need for amendments to legislation or regulations. The level of effort is likely moderate in the near term but will have a longer term beneficial impact on both regulators and operators.</p>

## PART 2 - ANALYSIS TEMPLATES

<b>What options exist</b>	<p>The options for addressing this issue are relatively straight forward and to a large extent interrelated.</p> <ol style="list-style-type: none"><li>1. Develop a catalogue of approved equivalent codes and standards that can be used by operators and that would be accepted by the Boards without further review.</li><li>2. Undertake a review of RQFs submitted and approved to date, so that these can be referenced by operators in the future. Ideally this would result in a common data base developed jointly by the industry and the Boards, that could be updated on a regular basis.</li><li>3. Establish common requirements for documentation, Certifying Authority review and concurrence, and for processing of RQFs.</li><li>4. In the longer term reduce the need for RQFs by progressively moving towards performance-based regulations (refer to Template 3).</li></ol> <p>With perhaps more than 2000 RQFs submitted to date, the task of developing a data base will be fairly time consuming. There may also be issues related to the confidentiality contained in some of the RQFs. The cataloguing of approved equivalent codes and standards would likely be based on information in previously approved RQFs, possibly supplemented by secondary research by the Board's staff. Common requirements for documentation and processing should be possible to achieve. The CNSOPB has issued an information letter on the Regulatory Query Process that can provide a basis for common requirements.</p> <p>RQFs are generally confidential and can only be released with permission of the industry. As a result, CAPP has begun to establish a data base with information from its members that could be managed by CAPP so that the information is shared among CAPP members.</p>
<b>What's the priority</b>	<p>With the number of RQFs growing with each new development project, this issue is of relatively high priority. It can be addressed with moderate effort.</p>
<b>What work is in progress</b>	<p>Discussion of this issue took place at the "Lessons Learned" workshop and it was agreed that, by the end of June 2003, the Canadian Association of Petroleum Producers, both Boards and the Canadian Association of Oilwell Drilling Contractors would meet to develop an action plan. Assuming that such a meeting took place, work should be in progress on this issue.</p>
<b>Linkages</b>	<p>This issue is linked to the broader issue of performance-based regulation.</p>



### Template # 3: Performance-Based Regulation

#### Description

Prescriptive style regulations can become outdated in terms of current practice or the evolving nature of information and technology requirements. At the same time, the procedures to amend regulations is becoming more cumbersome. Alternative mechanisms to amending regulations have been developed in the form of guidelines and request for exemptions from regulations. Current trends indicate a move toward performance-based outcomes in many jurisdictions, including those dealing with offshore oil and gas developments.

#### Context

All regulatory systems have the goal of improved performance. Agencies explicitly consider issues of performance when they draft regulatory standards, enforce them, and evaluate their overall effectiveness. Over the past decade, the idea of having government regulatory agencies setting goals for performance has gained increased attention, both internationally and domestically.

A regulatory system that is “performance-based” is generally considered to be one in which performance is used as:

- ◆ the basis for the legal requirements found in regulatory standards;
- ◆ a means of shifting management responsibility to licencees;
- ◆ a criterion for allocating resources to measure compliance;
- ◆ a trigger for differentiating between performance and non-performance; and
- ◆ a basis for evaluating regulatory programs and agencies.

A performance-based regulation is a rule, regulation, or standard that specifies the desired outcome, but gives those being regulated the discretion in how that outcome is achieved. A simple example illustrates the point. A regulator may require that vegetation adjacent to a publicly used facility be controlled so that it does not become a fire hazard or obstruct visibility. The regulator specifies the outcome (not being a fire hazard or an obstruction to visibility), but not how far from the facility the vegetation must be removed nor the methods needed to control it. Performance-based regulations give discretion in the means by which standards are met. Such an approach allows those being regulated to innovate, take advantage of best practices and latest technology and search for the least costly means of achieving the desired outcome.

Performance-based regulations are often contrasted with prescriptive-based (or technology-based) regulations. Prescriptive regulations specify how firms are to meet regulatory requirements (that is, the particular technological or procedural methods that must be used). They address the inputs to or causes of the outputs that are of concern to the regulator. In contrast with performance-based regulations, prescriptive regulations provide little discretion to those being regulated. While performance-based and prescriptive regulations are often referred to as two separate ideas, in practice the two approaches are more akin to the ends of a spectrum of regulatory approaches that permits differing levels of discretion concerning how to get to a desired set of outcomes.

Performance may also be used by regulators to inform the allocation of inspection and enforcement resources. This is important with performance-based regulations because of the inherent requirement to shift efforts to measuring outcomes (rather than evaluating inputs). Firms that consistently perform well may not warrant the same scrutiny as firms that consistently perform badly. For a given level of resources, a regulator may be able to maximize social benefits by targeting available enforcement resources to poor performers.

## PART 2 - ANALYSIS TEMPLATES

### Context

Just as agencies use performance as a basis for distinguishing between firms when it comes to the probability that a given firm will be inspected, they can also sometimes use performance as a basis for distinguishing between firms in terms of the standards that apply to conduct. Often, firms are distinguished by characteristics such as size, age, or type of processes used, without regard to performance. When firms are distinguished based on some performance measure that demonstrates consistent low numbers (high achievement), however, that firm might be given greater flexibility or exemptions from otherwise applicable standards. For example, the U.S. Environmental Protection Agency's Project XL has piloted a performance-based approach wherein an opportunity has been provided for firms with certain facilities with strong performance records to propose alternative rules, including modifications in the permitting procedures that would ordinarily need to be followed.

Regulatory agencies also publicly report their activities as an indication of success. Increasingly, agencies are looking to evaluate themselves in terms of their performance in solving regulatory problems. Using performance as a measure of evaluation can facilitate an agency's ability to describe performance in terms of the outcomes of most vital social concern (such as lowered fatalities, reduced pollution, or increased efficiency).

### What needs to be addressed

One of the inherent problems facing governments in terms of managing regulatory regimes is how best to maintain responsiveness in the system to new technologies, advances in services and practices, variations in local circumstances and evolving problem-solving techniques (e.g.; new deep water drilling sites, staying current with safety standards, new efficient technologies, advantages of best practices). Heavy government agendas are making changes to regulations ever more difficult, a trend which is contrary to the underlying notion of regulations providing the flexibility to respond to change beyond making changes to the legislation itself.

Regulators are more frequently finding themselves in the position of requiring adherence to laws that may not reflect latest knowledge or experience, or that contain outdated prescriptions. Current daily workloads also tend to negate the ability for system self-examination and change. The use of Guidelines and Regulatory Query Forms (RQFs) by the Offshore Boards reflect, to some degree, the need for alternative mechanisms to respond to needed adjustments to standards or prescriptions that are contained in regulation.

Guidelines are used to adjust regulatory direction and add detail not in the regulations and, in some instances, to define conditions of approvals (i.e.; as surrogates for regulations). Concern exists about the use of guidelines as conditions of approval, which may in effect have the same force as regulations. Guidelines used in this way, however, have not been subjected to the same rigour of review of government vetting as regulations. Guidelines can be also be interpreted and applied in a number of ways and by particular individuals without the benefit of a formal consultation and peer review process.

The prescriptive nature and age of many of the regulations under the *Accord Acts* (some dating to 1988) has resulted in operators seeking from the Boards approval for deviations from requirements and standards referenced in the regulations through Regulatory Query Forms. The number of requested deviations can amount to as many as several hundred for a development project, and perhaps in the order of 40 to 60 for exploration programs. This reflects the fact that technology or industry practice has advanced beyond what is prescribed in some regulations, or that some equipment or materials are based on equivalent international standards not referenced in the regulations.

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** Other considerations for governments include:

- ◆ the risk associated with prescribing certain standards or practices (that is, the extent to which the government assumes liabilities associated with imposed requirements if those prior requirements are not consistent with best practices); and
- ◆ the affect of prescriptive detail on the amount of needed information, the management infrastructure necessary within government and industry, and the sophistication among operators.

**What options exist** Over time the same RQFs have been dealt with by the two Boards on a number of occasions but have generally been reassessed each time. While the proliferation of RQFs may be addressed through performance-based regulations, such a shift would take a considerable amount of time to fully implement. In the interim, it has been suggested that to reduce duplication in the RQF process, a catalogue of approved deviations from regulations be developed that can be referenced by operators and accepted by the Boards under specified conditions. A catalogue of approved RQF results would describe procedures that rely on previous decisions about acceptable equivalent or alternative practices, so that the RQF process is streamlined and the need for RQFs is reduced for any given project.

Require Operators to have management systems in place to monitor for specified outcomes, with specific reference to stewardship policy and practices.

Begin the work to research and explain the trends and experiences with respect to performance-based regulations in the natural resources sector in other jurisdictions in Canada and elsewhere. Use this information as a basis for analyzing components of the current regulatory regime that might lend themselves to the identification of desired outcomes that could be reflected in performance-based regulations and standards. Given that the federal government is interested in furthering the concept of “smart regulation,” such an initiative in the offshore oil and gas sector could seek sponsorship or partnership from that federal initiative.

**What’s the priority** The pursuit of a performance-based approach requires significant political and senior management support over an extended period of time. It requires status as a formal program initiative of governments with the expressed result being changes to regulations. Priority is dependent on government agendas.

**What work is in progress** Performance-based regulation is a topic being considered for the 2003 Atlantic Energy Roundtable meeting.

**Linkages** The trend toward performance based regulation is in a sense a global trend that many governments are considering. Performance-based regulations respond directly to criticisms of the system being overly reliant on Guideline (the use of “guidelines as regulations”) and Regulatory Query Forms to approve deviations from prescribed standards and practices.

### Template # 4: Ability to Respond to Small Projects

#### Description

To date development projects on the East Coast have, with the exception of the Cohasset-Panuke Project, been large multi-billion dollar projects. Regulatory approval processes have been designed to deal with large projects of this nature that have the potential for significant impacts. With growth in offshore infrastructure associated with major projects, operators will begin looking at opportunities to tie in smaller incremental projects. The issue is whether or not current regulatory processes are appropriate for smaller marginal projects of the type that may take place.

#### Context

Applications for offshore oil and gas developments are subject to the provisions of the respective *Accord* legislation. In addition, they are subject to the *Canadian Environmental Assessment Act*, and, if pipelines are involved, the *National Energy Board Act* and provincial pipeline legislation. To date, all projects undertaken have involved public review processes. Overall timeframes from development plan submission to final regulatory approval has been from less than a year for the first project, Cohasset-Panuke, to between eighteen months and two years for subsequent developments. The objectives of these comprehensive project reviews are to protect the environment, ensure that resources are being developed in the most appropriate manner, consider socio-economic impacts, ensure that the facilities are safe and that the projects are in the public interest. Because of the nature and extent of the impacts of large projects, project reviews of this nature are warranted.

Small incremental projects tied into existing facilities are of a completely different scale and often have marginal economics. These projects have trouble accommodating extensive benefits requirements, lengthy environmental assessment processes, protracted public reviews and long regulatory approval times. In more mature petroleum producing areas, such as the Gulf of Mexico, the approval time for incremental developments can be as short as six months and in the UK as little as four to five months, including environmental impact assessment.

As the East Coast matures, more opportunities will arise for incremental developments. These will generally be in relatively close proximity to existing facilities and hence many of the environmental impacts as well as other issues will have already been examined to some extent. Consideration needs to be given to how current regulatory practices might be adapted to reduce regulatory burden while at the same time ensuring environmental and public interests are protected.

#### What needs to be addressed

With growth in offshore oil and gas infrastructure, smaller add-on developments that take advantage of facilities that are already in place may be a reality in the not too distant future. A lengthy environmental assessment and development plan approval process could deter such developments, resulting in lost opportunities. While these projects clearly do not have the significance of a Hibernia, Terra Nova or Sable Offshore Energy Project, their loss would have a corresponding impact on royalty revenues, employment and industrial benefits, tax revenues and other positive impacts. For petroleum companies, it may affect their opportunity to more fully utilize existing facilities and improve returns.

Addressing this issue in the proper manner would not result in a lessening of project scrutiny. It would require the adaptation of existing processes to reduce regulatory cycle times through a more streamlined approval process appropriate to the scale of development. A proactive approach to examining this issue sends a positive message to the producing companies and demonstrates a positive, forward looking approach to regulatory issues on the part of regulators and government.

## PART 2 - ANALYSIS TEMPLATES

**What options exist** Offshore projects, whether large or small, are included with the *CEAA Comprehensive Study List Regulations*. To date the average length of time for the fifty plus comprehensive studies conducted in Canada has been approximately eighteen months. In theory this could be reduced to twelve months.

The Offshore Boards are not obligated to conduct public reviews but to date have done so for every development project. Even if a public review were not conducted, the timeline for project approval would be governed by the environmental assessment. Amendments to *CEAA* enable the federal Minister of Environment to make an up-front decision on whether a project will be subject to a Comprehensive Study or to a Panel Review. There may be some opportunity to reduce regulatory cycle time if the decision is made to always subject offshore development projects to a joint public review with issues confined to the scale of the project.

**What's the priority** To date, no marginal projects of the nature discussed have sought regulatory approval on the East Coast and it is uncertain when one might be proposed. Therefore the priority is not particularly high. Furthermore it is clear from the discussion of options that this issue is not easily addressed. Because of the potential for such projects in the future and the difficulty of dealing with the issue, it may be opportune to begin a more detailed examination of opportunities.

**What work is in progress** No specific work is in progress to address this topic. Some discussion has occurred at the working level about an examination of models and the potential for generic agreements aimed at regulating small projects.

**Linkages** The ability to accommodate small projects is linked to discussions on streamlining environmental assessment and authorization approval procedures.

## Template # 5: Efficiencies in Environmental Assessments

### Description

The Offshore Petroleum Boards have recently been identified as Federal Authorities under the *Canadian Environmental Assessment Act (CEAA)*. Amendments to *CEAA* regulations see prescribed Board authorizations becoming triggers for *CEAA* Screenings and, in particular, for possible Comprehensive Study of exploration drilling. The additional time and costs associated with the Comprehensive Study process and inter-agency coordination are seen as the most important issues facing the exploration business in the offshore areas.

### Context

The application of *CEAA* to the offshore Accord Areas brings those areas in line with the environmental assessment requirements on other federal offshore areas in Canada. Amendments to the *CEAA* regulations see prescribed authorizations issued by the Boards becoming triggers for *CEAA* assessments.

Recent changes to *CEAA* are also aimed at addressing several issues of concern to both agencies and the oil and gas industry:

- ◆ a decision on Comprehensive Study, Panel Review or Mediation will now be made at the outset of the process to eliminate the potential for progressive, sequential environmental assessments of a project, and to enable joint public reviews;
- ◆ a formal requirement for coordination among agencies will help streamline and coordinate the review process among Regulatory Authorities (RAs) and other reviewers under *CEAA*; and
- ◆ introduction of the idea of regional studies (s.16.2, *CEAA*) will provide the opportunity to stratify and focus subsequent assessment work by taking into account studies done outside the scope of *CEAA* with other jurisdictions, particularly in considering cumulative impacts.

The *Accord Acts* predate *CEAA* and give the Boards the responsibility to conduct environmental and socio-economic impact assessments. Consequently, the application of *CEAA* to Board activities is seen by many as an overlay of federal jurisdiction onto the Accord Areas — areas that under the *Accord Acts* were intended to see federal and provincial approvals for oil and gas activities managed through a joint Board. The *Accords* themselves, however, leave the responsibility for federal laws of general application with federal agencies exclusively. *CEAA* falls within this category. In addition, it should also be noted that while the industry supported the idea of the Boards becoming Federal Authorities under *CEAA*, there was an assumption that coordination requirements would be worked out and that Comprehensive Study and/or Panel Reviews under *CEAA* would apply exclusively to development projects.

Following a transition period, all environmental assessments conducted by the Boards will be carried out in accordance with federal environmental assessment legislation. Previously, the Boards required public reviews of environmental and socio-economic impact statements for purposes of authorizing works and activities (s.44(2) of the *Accord Acts*). The *Accord Acts* have not been amended to remove existing environmental assessment responsibilities from the Board or to replace those responsibilities with new *CEAA* responsibilities.

It is also important to note that the Canadian Environmental Assessment Agency has recognized the applicability of previous environmental assessments in substantive offshore locations in Nova Scotia and Newfoundland and Labrador. This “grandfathering” has made a material reduction to the impact that the industry will experience from the application of *CEAA* to exploration wells over the next 2 to 3 years.

## PART 2 - ANALYSIS TEMPLATES

### What needs to be addressed

A set of related concerns have emerged with respect to new environmental assessment requirements under *CEAA* and are addressed in more detail below:

- ◆ the requirement for a Comprehensive Study on the first exploration well to be drilled in an area will add significant time to the approval process for a Drilling Program Authorization;
- ◆ the potential may exist for double jeopardy for the applicant in that environmental assessment questions could be revisited as part of the review of applications for authorizations;
- ◆ a second type of double jeopardy is the potential for joint filings to meet EIS/SEIS requirements under the *Accord Acts* and the Comprehensive Study requirements under *CEAA*;
- ◆ deficiencies in inter-agency coordination of requirements and responses with respect to environmental and authorization assessments can complicate and prolong the assessment process;
- ◆ the scope of an environmental assessment can be broader than the potential impacts of a project, including the propensity for the public and reviewing agencies to request information and analyses that may not be directly related to the project.

1. A key implication of the *CEAA* amendments is that the first exploration well drilled in an “area” (as defined under *CEAA*) will require a Comprehensive Study, as is the case in other Canadian offshore areas. This adds a level of consistency of practice in environmental assessment across offshore areas, particularly as it applies to exploration drilling. There are, however, a number of unintended effects to timing and costs of industry activities, which are summarized below.

There are implications for the length of time that it will take to process a Drilling Program Authorization with the addition of Comprehensive Study requirements; estimates by the industry range from an additional 6 to 12 months. This added time will increase business risk and uncertainty and add to project costs, which could in turn push the start up of drilling beyond the first period of an exploration licence, requiring an extension to the licence period. It is also likely that the business decisions for a single well will extend beyond a single budget cycle for a company, reducing certainty about the availability of project funding.

A further unintended effect is that extended review periods may impact on the contracting of rigs, since most companies resist contracting a rig until terms and conditions of an approval are in place. A rig must be acquired that can meet any condition resulting from the *CEAA* approval. Contracts are only pursued after management direction is received and budgets allocated. Budgets, rig rates and partner alignments can also change over a period of months.

The addition of the *Accord Acts* to the Laws List under *CEAA* also introduces a concern for development projects with respect to duplicate filings to satisfy the environmental and socio-economic assessment requirements under the *Accord Acts* and under *CEAA*. The Comprehensive Study Report includes requirements for environmental and socio-economic assessment. Presumably, the environmental impact statement (EIS) and Socio-Economic Impact Statement (SEIS) requirements as defined in the *Accord Acts* can be extended in a manner that meets the requirements of *CEAA*.

## PART 2 - ANALYSIS TEMPLATES

### What needs to be addressed

2. For Development Plans and offshore pipeline approvals, recent environmental assessments have been carried out under *CEAA*. Once a project has been released by the federal Minister of Environment, the potential exists for environmental issues to again be raised during the consideration of facilities applications. Under these circumstances, the potential exists for overlap with previously answered questions, and an opportunity for “double jeopardy” for the applicant. This is in contrast to the expectation that, once a project has gone through the *CEAA* process, all pre-project environmental assessment requirements should be satisfied.

In a worst case, the previous system allowed for the potential of sequential environmental assessments; that is, for a Panel Review to follow a Comprehensive Study. New *CEAA* rules require that the Minister make a decision on the environmental assessment “track” at the time that a project proposal is received, thereby resolving the uncertainty over the assessment track and the potential for sequential assessments. This is coupled with a requirement for inter-agency coordination that appears to address the need for consensus among agencies on the scope, information needs and public review processes associated with environmental assessments (see 3 below). However, the details of the information needed to decide the “track” and the means of acquiring that information are not well-defined (other than as generally described in s.21(2) of *CEAA*). A public review is also anticipated at this scoping stage. These aspects of the new *CEAA* procedures can be expected to add time and cost to the front end of the assessment process.

Recent discussions about tiered assessments have also put forward the idea of regional (or strategic) environmental assessments forming the basis for more refined environmental assessment requirements at the project level. This would shift the onus for regional studies to government or the Boards and would respond to some of the concerns about improving front-end social decision making, prior to the disposition of ocean-based resources.

3. A continued requirement will be the need for coordination among regulatory and review agencies during environmental assessments. If agencies conduct internal reviews in relative isolation from one another, the same questions may be repeated from different sources. Similarly, scope of the assessment may be variously defined. The new coordination requirements within *CEAA* should help address these issues by requiring a decision on environmental assessment track early in the process and by requiring inter-agency coordination through an identified federal environmental assessment coordinator for each project. In this way, scope of the assessment, work plans, schedules and responses could be coordinated through a “one window” approach. Several examples now exist where inter-agency coordination agreements have been put in place for individual projects, adding to the experience of agencies and Boards in this regard. One concern noted with respect to coordination efforts to date, is that they have tended to harmonize requirements in a manner that preserves individual agency work plans and schedules, rather than integrating requirements.



## PART 2 - ANALYSIS TEMPLATES

### What needs to be addressed

4. A common concern with environmental assessments and public reviews is how best to contain the questions and information requests within the scope of the potential impacts of the proposed activity or project. In the absence of significant public discussion prior to the issuance of rights to explore and test (for example, through some form of broader planning process), there will be some propensity to have the question of “whether to allow activity in an area” to be addressed at the same time that the “how to conduct activity” is offered for public discussion. Also, in a time when public agency budgets are constrained, the advent of large projects offers an opportunity to catalogue information that may otherwise be difficult to obtain.

To an extent, the issue of reasonable scope of assessments is linked to the need for inter-agency coordination and clear terms of reference for public reviews. While recent examples exist of well-defined assessment activities, this can be a frustrating experience for the public who find their concerns outside of the terms of reference. This underlines the need for the right consultation at the time that terms of reference are developed.

### What options exist

1. Comprehensive Studies for Exploration Wells

Several possibilities exist for addressing the *CEAA* requirements for a Comprehensive Study of exploration drilling in a new area.

- ◆ Develop regional environmental assessments (regional studies) under *CEAA* in a manner that satisfies the requirement for an environmental assessment on an “area,” as defined by *CEAA*. Use a Screening approach to identify and satisfy additional information needs.
- ◆ In conjunction with regional studies, undertake environmental assessments on classes of activity or equipment that address particular activities or equipment used within certain homogenous operating areas and conditions, consistent with *CEAA* specifications. The proposition is to eliminate or limit the need for further assessment unless circumstances vary, and to use a Screening approach to verify that class specifications apply.
- ◆ Undertake parallel processes so that the environmental assessment and regulatory authorization processes run concurrently. This requires formal coordination agreements if it is to be an effective “system” response. It also requires faith on the part of the operator that environmental assessments will lead to positive outcomes.

2. Inter-agency Coordination/Joint Assessments and Reviews

The potential exists for agencies normally involved in environmental assessments and those issuing authorizations for activities to create a permanent Memorandum of Understanding concerning the means and mechanisms that will be used for coordinating information needs and responses (a standing general agreement on joint review procedures). Recent large projects have set this precedent, but each has been addressed individually at the time of an application. There does not appear to any substantive constraint to adopting a standing agreement that dispenses with uncertainty about who will be engaged and how. Agreements could extend to the use of a single set of records, coordinating agency inputs and single joint public review processes.

## PART 2 - ANALYSIS TEMPLATES

### What options exist

In the case of joint reviews, a single Panel could deal concurrently with environmental assessment and development plan reviews. Concurrent reviews could significantly affect the cycle time for authorizations by putting Regulatory Authorities in a position to make authorization decisions at the close of the joint review period. The public benefits from this approach by being able to consider the project in a more comprehensive and consolidated manner, and confusion about the nature and purpose of the public review opportunities is eliminated. Template 9 discusses concurrent review panels in greater detail.

#### 3. Double Jeopardy

In addition to 2 above, the amendment to *CEAA* that requires an early decision by the Minister of Environment with respect to the environmental assessment track, specifically addresses the potential for a Comprehensive Study to be followed by a Panel Review. Enabling this decision in a timely manner, however, is a possible challenge. Two approaches could help to address the needs here:

- ◆ extend the notion of a standing general agreement on coordination (as described above) to the scoping of applications for a tracking decision; and
- ◆ proceed directly to a joint panel review for all large projects, thereby saving all front end time and effort associated with making the tracking decision.

The latest *CEAA* requirements for a federal environmental assessment coordinator should help to streamline the information and communication needs among agencies and applicants. In addition, coordination responsibilities could extend to vetting agency responses to assessment documents to ensure that these responses are free of duplicate questions and requests, and consistent with the scope of the project.

### What's the priority

The addition of the offshore Board authorizations to the Law List triggers and the consequent need for a possible Comprehensive Study of exploration drilling, is the most important issue affecting the exploration for oil and gas in the offshore Accord Areas, and has to date proven to be very difficult to address. Efforts to accommodate this requirement within manageable time and costs must be a high priority. This issue has the potential to directly affect exploration investment decisions.

A second priority is that of coordination among agencies at the environmental assessment stage and for purposes of coordinating environmental reviews and decisions with respect to regulatory authorizations.

### What work is in progress

The Oil and Gas Subcommittee of the federal Regulatory Advisory Committee is examining the *CEAA* amendments in relation to their affect on the oil and gas sector.

The "Lessons Learned Workshop" results makes reference to a four part response to environmental assessment related concerns: development of a MOU on process and roles, establishment of a regulatory review team, project specific scoping, and a tiered environmental assessment approach. These elements have been incorporated into the above.

### Linkages

Finding efficiencies in the environmental assessment process, including the amendments to *CEAA*, is linked to the need for integration of laws of general application and to development approvals, particularly with respect to the need for coordinated technical reviews and decision-making and coordinated public reviews (panels).

## Template # 6: Multiple Regulatory Jurisdictions over Offshore Pipelines

<b>Description</b>	<p>Offshore pipelines are subject to regulatory approval by federal, provincial and joint regulatory Boards. This situation arises from offshore pipelines being specifically included within the provisions of the <i>National Energy Board Act</i>, the <i>Accord Acts</i> and the <i>Nova Scotia Pipeline Act</i>. The issue is the requirement for duplicate approvals to construct, open, operate and abandon a pipeline in the Accord offshore areas with special conditions. Can the impact of overlapping legislation be mitigated without compromising Board and Ministerial decision-making responsibilities, or jurisdictional claims?</p>
<b>Context</b>	<p>Pipelines are generally regulated to achieve the public policy objectives of economic efficiency, safety and environmental protection taking account of need, environmental impacts, socio-economic effects and feasibility. The situation in the Nova Scotia offshore area is complicated by competing federal and provincial claims to jurisdiction. In the case of Newfoundland and Labrador the issue of ownership was settled in the courts in favour of the federal government. Both provinces have entered into agreements with Canada to establish joint management regimes administered by independent offshore Boards — the 1984 <i>Atlantic Accord</i> (Newfoundland and Labrador) and 1986 <i>Canada Nova Scotia Offshore Petroleum Resources Accord</i> — with the intent of setting aside the question of jurisdiction. Included in the responsibilities of the Nova Scotia Board is the authorization of pipelines in the offshore area (Section 134). The CNOPB is responsible for pipelines that are completely in the offshore, a subtle but important difference from Nova Scotia.</p> <p>The <i>National Energy Board Act</i> gives the NEB overall regulatory responsibility for pipelines that originate in the offshore area and cross jurisdictional boundaries, with either section 52 or 58 applying depending on whether or not the pipeline is greater than 40 km. in length. For the purpose of the <i>NEB Act</i> the offshore area is considered to be part of lands under federal jurisdiction. Nova Scotia's claim to jurisdiction has not been tested in the courts and hence the province takes the position that the <i>Nova Scotia Pipeline Act</i> is as applicable as the <i>NEB Act</i>.</p> <p>The intent of the Boards is to comply with their responsibilities as set out in legislation, and in the case of Nova Scotia to also avoid compromising its jurisdictional claim. The Boards and governments have demonstrated in the past a willingness to find administrative solutions with the goal of minimizing the impacts of multiple regulators, although the approach has differed between projects.</p>
<b>What needs to be addressed</b>	<p>From the perspective of both operators and regulators the regulatory processes for offshore pipelines are made more complicated by virtue of having to satisfy several regulators. This includes filings, public hearings, decision making, authorizations and toll setting. For regulators and governments, considerable effort is required to reach agreement on an acceptable process that meets their collective requirements (e.g. the Sable joint review agreement took almost two years; EnCana's Deep Panuke Project six months). The implications for operators include lack of up-front clarity and certainty regarding the scope, procedures, filing requirements and process for public reviews; the risk of conflicting decisions or direction; concerns over extended timelines; and potentially higher costs for satisfying multiple regulators.</p>

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** While the intended outcome for governments and the Boards was not to further complicate the regulatory system, this has been the unintended outcome. Each regulator has to ensure that its public interest responsibilities are satisfied in a manner that is fair, efficient and effective for all concerned. Addressing the overlap between regulators must be done in a way that respects public policy and government objectives, but also provides pipeline proponents with an approval process and ongoing operational regulatory system that is clear, efficient, unambiguous, timely and balanced. Addressing the issue will not affect the level of project scrutiny. It will help to reduce regulatory burden, risk and uncertainty and can be accomplished with moderate effort building on past models.

**What options exist** There are several possible options for dealing with this issue:

1. Conduct a joint review of pipeline applications through a panel composed of a Commissioner appointed by the Offshore Board, a member of the National Energy Board and a member of the Nova Scotia UARB. Each board would use the panel report as the basis for their respective decision making.
2. The Offshore Board and Nova Scotia UARB delegate the responsibility for a public review of a pipeline application to the NEB. Each would issue a decision based on and consistent with the NEB Decision Report.
3. Each regulator would conduct parallel coordinated public reviews and would each issue their own decision reports.

Implicit in each alternative is the recognition that each regulatory board may have jurisdiction over offshore pipelines while at the same time not prejudicing any party's claim to jurisdiction. Offshore pipelines with landfall in Nova Scotia could be proposed independent of any offshore development project, or could be an integral part of an offshore development. If part of an overall development, then each of the alternatives noted above would be integrated with the Offshore Board's review of the offshore production facilities and any inter-field gathering lines.

Each alternative can be implemented through an administrative arrangement by mutual agreement among the regulators without compromising their decision-making responsibilities. Two models already exist, one for the Sable Offshore Project and the second for EnCana's Deep Panuke Project. The most significant difficulty for each party is recognizing and accepting the possible jurisdiction of another regulator. Ministerial directives to the three boards to enter into an administrative agreement may be the most effective way of setting the jurisdictional question aside. The agreement reached would not be specific to an individual project but rather should be generic in nature and would involve the two levels of government and the Boards as signatories.

**What's the priority** As the prospect for future developments involving pipelines increases, this issue takes on a higher priority. Because of existing models involving administrative agreements this issue can be addressed quite easily. No new or amended legislation is required, only the willingness of the governments and regulators to reach an agreement. Resolving this issue sends a positive message to the oil and gas industry by demonstrating the willingness of regulators to work together to create greater certainty around regulatory processes, roles and responsibilities with respect to offshore pipelines.

## PART 2 - ANALYSIS TEMPLATES

### **What work is in progress**

The Regulatory Issues Working Group has initiated work to review the agreement for the Sable Offshore Energy Project Joint Panel Review. This a first step toward resolving this issue.

### **Linkages**

This issue is linked to environmental assessments and the regulation of onshore gas plants. In the case of the Sable Project, the Joint Review Panel not only dealt with pipelines and production facilities, but also with the overlapping jurisdiction related to the onshore gas plant. The Panel was also structured to carry out an environmental review under *CEAA* and other legislation (for example the *Nova Scotia Environment Act* for onshore facilities). Therefore the resolution to this issue may encompass these other issues in a single agreement.

## Template # 7: Overlapping Jurisdictions for Onshore Gas Plants

<b>Description</b>	<p>Onshore natural gas plants that are part of the facilities for an offshore pipeline are regulated by both the National Energy Board and the Nova Scotia Utility and Review Board. This is a consequence of conflicting claims to jurisdiction which in turn gives rise to the application of both the <i>National Energy Board Act</i> and the <i>Nova Scotia Pipeline Act</i>. The issue is twofold — the need for duplicate approvals to construct and operate a gas plant and differences in the gas plant regulations administered by the NEB and the UARB.</p>
<b>Context</b>	<p>The public policy objectives of gas plant regulation are similar to pipelines, namely the protection of the environment and property, and the safety of both the general public and employees during the construction, operation and abandonment of the plants. For onshore gas plants in Nova Scotia that are an integral part of an offshore pipeline, regulatory responsibility is affected by competing Federal and Provincial claims to jurisdiction over offshore pipelines. While gas plants are normally associated with intra-provincial pipelines and hence subject to Provincial regulation there are exceptions when the gas plant is part of a federally regulated pipeline. In that case, the <i>National Energy Board Act</i> and its processing plant regulations apply. These regulations reflect a goal oriented approach and place the onus on companies for ensuring the safety of people and the protection of property and the environment.</p> <p>Nova Scotia's <i>Gas Plant Facility Regulations</i> apply to gas plants designed, constructed, operated or abandoned in Nova Scotia. These regulations fall under the <i>Nova Scotia Pipeline Act</i> and delegate the responsibility for gas plant regulation to the Nova Scotia Utility and Review Board. Because Nova Scotia takes the position that the <i>Nova Scotia Pipeline Act</i> applies to pipelines in the Nova Scotia offshore area, the <i>Gas Plant Facility Regulations</i> apply to any related gas plant. These regulations include provisions for Nova Scotia benefits and make the facilities subject to any Provincial laws of general application including the <i>Environment Act</i> and the <i>Occupational Health and Safety Act</i>. They are also more prescriptive in approach than the National Energy Board's regulations.</p> <p>The intent of the NEB and the UARB is to carry out their legislative responsibilities in a manner that enables the achievement of the public policy objectives noted above. In addition, Nova Scotia wants to avoid compromising its jurisdictional claim to the offshore. The NEB and UARB were able to achieve an administrative solution for the Sable Offshore Energy Project gas plant that respected jurisdictional claims and enabled coordinated decision making on approvals.</p>
<b>What needs to be addressed</b>	<p>Having to satisfy two regulators affects operators in a number of ways. Filing requirements differ between the two Acts and their regulations, resulting in the potential for two separate filings for approval to construct and operate. The potential also exists for two hearings for the same facility and two decisions which may not be consistent. Decisions may result in conflicting conditions and put operators in the situation of not knowing whose conditions to satisfy. Two different sets of occupational safety and health legislation are referenced; the Nova Scotia <i>Occupational Health and Safety Act</i>, and the Canada <i>Occupational Safety and Health Regulations</i>. In general the implications are: more time and effort to satisfy regulatory requirements; and potential conflicting direction to applicants. This in turn can compromise the achievement of public policy objectives.</p>

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** Multiple regulation is a consequence of government's legitimate interest in protecting their claims to jurisdiction, but by doing so has added a level of complication to the regulation of gas plants. Regulators must act within the law and to the extent that particular legislation applies, they must carry out their responsibilities under that legislation. Addressing this issue must respect both public policy and government objectives. At the same time it should result in an outcome that leads to clear, efficient, unambiguous and timely regulation of gas processing facilities. Regulatory burden, risk and uncertainty can be removed with a moderate level of effort that builds on the Sable Offshore Energy Project model.

**What options exist** Because gas plants are a part of a pipeline, the options for addressing this issue are similar to those for multiple jurisdiction over pipelines. They are:

1. Conduct a Joint Review through a single panel composed of representatives from the NEB and the UARB. The single panel report would act as the basis for each Board's decision making.
2. Delegate the responsibility to the NEB, with the Province using the powers contained in Section 4 of the *Nova Scotia Pipeline Act*.
3. Conduct parallel coordinated public reviews with each regulator issuing its own decision report.

Each alternative requires a recognition that both the NEB and Nova Scotia UARB may have jurisdiction over onshore gas plants and that this issue is directly linked to the question of jurisdiction over offshore pipelines. The approach adopted must not prejudice any party's claim to jurisdiction. The alternatives can be accomplished through administrative arrangements set out in an agreement between the NEB, the UARB and the two levels of government. It should be noted that the *Nova Scotia Pipeline Act* is sufficiently flexible to allow the exemption of a pipeline from all or a portion of the Act or its regulations, and for having the *National Energy Board Act* and its regulations apply. In the case of the Sable gas plant, this was the approach that was used, although several sections of the *Nova Scotia Pipeline Act* were retained, most notably those related to benefits.

**What's the priority** The priority for dealing with this issue increases if there is the opportunity for a natural gas development in the near future involving an onshore gas plant taking. The issue can be addressed relatively easily through an administrative agreement with or without a provincial order-in-council depending on the option chosen. There is no need to enact legislation nor to put new regulations in place. As with pipelines, resolving this issue would send a positive message to the oil and gas industry by demonstrating the willingness of regulators and governments to find workable solutions to overlapping regulatory responsibilities and, by doing so, providing industry with greater certainty and reduced regulatory burden.

**What work is in progress** The Regulatory Issues Working Group is examining the agreement governing the Sable Offshore Energy Project joint panel review and presumably this includes the provincial order-in-council to deal with the gas plant.

**Linkages** This issue is linked to the multiple regulation of pipelines where gas plants are part of the pipeline. Similar to the Sable Offshore Energy Project the resolution of this issue may be accomplished through a single generic agreement that encompasses all regulatory overlaps for offshore developments involving pipelines and gas plants.

## Template # 8: Onshore Portion of Offshore Pipelines

### Description

The *Nova Scotia Environment Act* applies to any onshore natural gas pipeline exceeding 5km in length and operating at a pressure above 500 psig. The Act does not apply to any undertaking that is seaward of the high water mark. An offshore pipeline, including any onshore component, is also subject to the *Canadian Environmental Assessment Act* as a result of triggers that exist within the Law List Regulations. As a result the potential exists for an environmental assessment of the onshore portion of offshore pipelines to be conducted under both Federal and Provincial environmental legislation.

### Context

The *Canadian Environmental Assessment Act* applies to projects for which the Federal Government has decision making authority either as a proponent, land administrator, regulator or source of funding. Its objectives are to ensure that before a Federal responsible authority takes any action, the environmental effects of projects are carefully considered and that the resulting actions taken promote sustainable development as well as achieving a healthy environment and economy. Another objective of the Act is to provide that there is an opportunity for public participation in the environmental assessment process. The intent is to ensure that the environmental effects of projects are considered as early as possible in a project's planning stages.

Similarly, the *Nova Scotia Environment Act* has among its goals environmental protection as an essential aspect of human health and socio-economic wellbeing, the principles of sustainable development and facilitating opportunities for public participation. Clearly federal and provincial legislation have essentially the same public policy objectives and intended outcomes. Both contain provisions to enable the harmonization of environmental assessment processes to avoid duplication. While assessment processes can be harmonized there is still a need to coordinate decision making since Ministers cannot delegate that responsibility to another party.

### What needs to be addressed

Although cited as an issue during interviews, this issue does not appear to be of great significance. In the case of the Sable Offshore Energy Project the onshore component of the offshore pipeline did not trigger the application of the *Nova Scotia Environment Act* since that portion of the pipeline was less than 5km in length. The *Nova Scotia Environment Act* did come into play for the liquids pipeline extending from the gas plant to Point Tupper. Because of the joint review process that was put in place for the Sable Project a single environmental assessment of the entire project, including the Maritimes and Northeast Pipeline, was used to form the basis for all environmental decisions.

For EnCana's Deep Panuke Project a Memorandum of Understanding on environmental assessment was developed between all potential responsible authorities and other regulators including the Canadian Environmental Assessment Agency and the Nova Scotia Department of Environment and Labour. The environmental assessment was to include consideration of any matters that fell under the *Nova Scotia Environment Act*. The MOU was structured to enable the coordination of comments on the Comprehensive Study Report, including those from the Province, through the CNSOPB. The final project design did not include an onshore pipeline component exceeding 5km in length and hence the *Nova Scotia Environment Act* was not triggered.



## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** In both projects to date, regulators have entered into project-specific agreements that have dealt with overlapping environmental assessment responsibilities including the onshore portion of offshore pipelines. Addressing this overlap through a generic rather than project specific agreement that would form part of a more general agreement on offshore pipeline regulation, would provide more clarity and certainty around regulatory requirements and remove the prospect of duplicate filings and public hearings.

Harmonization of environmental review processes does not affect the quality or comprehensiveness of such reviews, and in fact ensures that with proper scoping all relevant issues are considered. The public interest is better served in that regard, as are the private interests for reasons cited previously. Comparatively little effort is involved to deal with this issue and models already exist that can facilitate the development of a generic agreement.

It should be noted that the *Nova Scotia Environment Act* and its environmental assessment regulations establish clear timeframes for conducting environmental reviews. No similar timelines are contained with the *Canadian Environmental Assessment Act*. Where timelines vary from those set out in Provincial legislation, Cabinet approval is required. Through a bi-lateral generic agreement with the Canadian Environmental Assessment Agency, it is possible to eliminate the need to seek cabinet approval for each project-specific variance of the timelines.

**What options exist** There are a three possible options for addressing this issue.

1. Conduct separate but parallel environmental assessments under the *Canadian Environmental Assessment Act* and the *Nova Scotia Environment Act*. In the case of *CEAA* the assessment would cover the entire project, not just the onshore portion of the offshore pipeline. The *Nova Scotia Environment Act* assessment would be specific to the onshore component.
2. Section 47 of the *Nova Scotia Environment Act* enables the Minister to delegate administrative responsibilities to another government agency such as the *CEAA*. This option would involve entering into a generic agreement for oil and gas undertakings that are subject to Federal and Provincial environmental assessment. A variation on this option is to roll this agreement into a broader single agreement encompassing all regulators for offshore petroleum developments.
3. Develop project-specific agreements for joint assessments as the project circumstances require.

The first option does not fully address the issue and has the potential for assessments to proceed on different timelines and without any coordinated decision making on the part of Ministers. In the extreme the two environmental assessments may result in different outcomes.

Option 2, the delegation of administrative responsibilities by the Nova Scotia Minister, is envisaged in the legislation and is feasible. Included within the agreement would be notional, but non-binding, timelines for accomplishing the assessment. Decision making would still rest with both the Federal and Provincial Ministers. Because models already exist for this approach for individual projects, the basis for a generic agreement is in place. Rolling this into a broader agreement covering all aspects of project approval is somewhat more complicated simply because of the number of players and the increased scope of the agreement. Nonetheless, the Deep Panuke MOU and the Sable Joint Panel Agreement provide good starting points for such a multi-party agreement.

Option 3, project specific agreements, has been the norm to date. This option is relatively easy to implement based on existing models but requires re-negotiation time and effort for each project to which the *Nova Scotia Environment Act* applies.

## PART 2 - ANALYSIS TEMPLATES

- What's the priority** This issue is only a high priority if a development is expected in the foreseeable future that involves a portion of onshore pipeline exceeding 5 km in length. However, if it is determined that a broader generic agreement will be developed for offshore pipeline regulation, then the priority of this issue increases so that it can be addressed within that broader agreement. As already noted models exist for Deep Panuke and Sable that can form the basis for a generic agreement. No new or amended legislation is required, only the willingness to reach an agreement and to gain cabinet approval in the case of Nova Scotia.
- What work is in progress** Although it is understood that the Sable Offshore Project Joint Panel Review Agreement is being reviewed through the Regulatory Issues Working Group, this project did not require provincial environmental assessment of the onshore portion of the offshore pipeline. While the model is applicable, the review of that agreement should take account of this particular issue.
- Linkages** This is linked to the issue of multiple regulatory jurisdictions over offshore pipelines since the onshore portion is an integral part of the facility and should be dealt with as a single entity.

## PART 2 - ANALYSIS TEMPLATES

### Template # 9: Concurrent Review Panels

<b>Description</b>	<p>Development projects involving offshore pipelines are considered by both the National Energy Board and the CNSOPB or CNOBP, depending on the jurisdiction. The approach being used for EnCana's Deep Panuke Project was a Memorandum of Understanding to establish a coordinated public review process involving a single NEB Board member and a Commissioner appointed by the CNSOPB. This was done in a way to ensure that the independent responsibilities and requirements of each regulator were met. While the hearing would have the NEB Board member and Commissioner sitting together to carry out the public review, this was in no sense a joint panel and each maintained their assigned and separate independent regulatory roles. The issue is that with this approach the potential existed for any motion of matter being considered to result in separate and independent rulings that could be inconsistent with one another. The MOU did not contemplate coordinated decision making and because the pipeline was being considered by both the NEB and the CNSOPB as part of the development application, different decisions or conditions of approval could result on this portion of the project.</p>
<b>Context</b>	<p>In many respects this issue is similar to multiple regulatory jurisdiction over offshore pipelines. However it is broader in that it arises from the relationship between and coordination of the offshore production facilities and associated transportation infrastructure that make up the entire project. As previously discussed the <i>National Energy Board Act</i> gives the NEB overall regulatory responsibility for pipelines that originate in the offshore area and cross jurisdictional boundaries. For the purposes of the <i>NEB Act</i> the offshore area is considered to be part of lands under Federal jurisdiction. The <i>Accord Acts</i> establish joint management regimes administered by independent offshore boards whose responsibilities include offshore pipelines. In general the public policy objectives of both the <i>NEB Act</i> and the <i>Accord</i> legislation revolve around safety, environmental protection, economic efficiency, feasibility and socio-economic impacts.</p> <p>Historically the NEB and the CNSOPB have entered into project-specific agreements, sometimes involving other parties, to coordinate regulatory approval processes. The Sable Offshore Energy Project involved a Joint Panel Review that considered all facilities and included environmental assessment. The Deep Panuke MOU uses a different model and does not achieve the same degree of coordination in decision making.</p>
<b>What needs to be addressed</b>	<p>The EnCana Deep Panuke project involved two separate Memoranda of Understanding, one a multi-party agreement relating to environmental assessment and the second, an agreement between the NEB and the CNSOPB on pipeline and development applications. The single coordinated public review process created the opportunity for conflicting rulings on matters being raised during the public review process and for inconsistent decisions from regulators. While the intent was to establish a coordinated public process for all facilities and to respect the applicable legislation, it also resulted in some uncertainty and potential for inconsistency in the decisions made by the two regulators. This lack of certainty creates an additional risk for project proponents.</p>

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** Some have expressed the view that concurrent regulatory processes of this nature are a partial solution to the issue of overlapping jurisdiction. The Sable Offshore Energy Project used a more comprehensive Joint Panel approach that dealt with environmental, facilities, benefits and socio-economic issues within one overall process. It should be noted that the Deep Panuke MOU responded to applications made to both the CNSOPB and NEB, but since no pipeline application was filed with the Nova Scotia UARB they were not included within the MOU. The implications of this can be debated, but if taken to the extreme, could have resulted in the need for a legal ruling related to jurisdiction. The uncertainty created by a legal challenge does not seem to be in anyone's best interests.

**What options exist** Possible options for dealing with this issue including:

1. Rather than concurrent reviews, establish a Joint Review Process involving all regulators claiming jurisdiction and with coordinated decision making.
2. Appoint the CNSOPB Commissioner as a temporary NEB member or the NEB member as the CNSOPB's commissioner in order to remove the potential for conflicting rulings and achieve consistency in the reporting and recommendations to the respective regulators.
3. Establish within the MOU that created the coordinated public process a mechanism to ensure coordinated and consistent rulings and recommendations made by the NEB Board member and Commissioner to the respective regulators.
4. Conduct separate hearings for the pipeline and the offshore production facilities with the CNSOPB delegating its responsibilities for the public review for pipeline applications to the NEB.

The Joint Review Option has been used in the past for the Sable Project and has been shown to work although the negotiation of such an agreement involving multiple parties is more complex than a two party MOU. The option of dual appointments is feasible but may raise questions about the ability of the individual to deal with issues that would not normally be part of his or her mandate. It also removes the discretion that regulators have in who they appoint to a panel.

Broadening the MOU to establish a mechanism for coordinated rulings and recommendations may fetter the independence of the regulators and therefore may not be acceptable to them. The option of separate hearings would only complicate the issue further by creating confusion among interested parties as to what issues are on the table during any particular hearing. In addition it ignores the relationship between the pipeline and production facilities.

Each of the options can be implemented without any amendments to legislation or regulations through the use of administrative arrangements or agreements. The jurisdiction claimed by the UARB over offshore pipelines complicates the situation further with respect to some of the options, for example joint appointments and separate hearings.

**What's the priority** The priority for this issue depends on the timing of a development that includes an offshore pipeline. If the preferred option is to establish a generic agreement for the joint review of such projects, then the priority becomes somewhat higher due to the time to negotiate such an agreement. This issue can be addressed if governments and regulators have a willingness to reach agreement that sets aside (avoids) jurisdictional issues and lays out a jointly-supported regulatory approval process.

## PART 2 - ANALYSIS TEMPLATES

**What work is in progress**

Work has been initiated by the Regulatory Issues Working Group to review the agreement for the Sable Offshore Energy Project Joint Review Panel. This is a first step in resolving this issue.

**Linkages**

The issue is linked to each of the other three issues falling into the category of pipeline approvals and regulation in that the potential exists to deal with each through a multi-party joint review process using the Sable Offshore Energy Project model as a starting point. It is also linked to environmental assessment under the *Canadian Environmental Assessment Act* and possibly the *Nova Scotia Environment Act*, since the potential exists for a single joint review to encompass environmental assessment.

## Template # 10: Role of the Certifying Authorities

### Description

Certificates of Fitness issued by an approved Certifying Authority (CA) are required before any work authorization can be approved with respect to any prescribed equipment or installation, or any equipment or installation of a prescribed class. Operators have expressed concern that the Boards may impose requirements or conditions on the Certificate of Fitness beyond those required by the Certifying Authority. In addition, situations may arise where the Boards require operators to retain consultants to examine certain aspects of the facility or the equipment beyond the work carried out by the Certifying Authority. Operators have expressed the view that the certifying authorities have the technical expertise required to issue a certificate and that the Board's requirements for additional work or conditions overlap Certifying Authority responsibilities.

### Context

Section 139.2 of the *Canada-Newfoundland Atlantic Accord Implementation Act* and section 143.2 of the *Canada-Nova Scotia Accord Implementation Act* require that before any authorization can be granted with respect to prescribed equipment or installations, a Certificate of Fitness must be issued by an approved Certifying Authority. The legislation then goes on to expand upon the requirements and provides the authority for the making of regulations. Both Offshore Boards issued *Certificate of Fitness Regulations* in 1995 that mirror each other. Joint guidelines were issued by the two Boards in October 2001.

The certification process provides for an independent third party evaluation on regulatory compliance and fitness for purpose. The intent is to provide assurance that the installation, during the term of the certificate (normally five years) is fit for purpose and remains in compliance with the regulations without failure of the structure or equipment. The Boards rely on the certificate for the purpose of issuing authorizations, and therefore the process must be carried out in a way that provides a high level of confidence for the Boards.

The certification process is based on a scope of work prepared by the Certifying Authority in consultation with the applicant for the authorization. The scope of work is subject to approval by the Chief Safety Officer (CSO) in the respective Board. The CA's work must be carried out in accordance with the scope of work and the CA must be satisfied that the installation can be safely operated without polluting the environment before issuing a Certificate of Fitness. The expectation of the Boards is that the CA assessment includes confirmation that the installation reflects good practices for offshore installations in comparable harsh environments and that all risks have been assessed and that measures have been implemented to minimize these risks. The Certificate of Fitness may include limitations, conditions or qualifications, and may also involve approved RQFs as part of the certification of the installation.

The intended outcome of the certification process is an independent third party review of the installation's fitness for purpose and compliance with all regulatory requirements. CAs are required to have the technical expertise to carry out such comprehensive assessments so that they can then be relied upon by the Boards when issuing authorizations.

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** The value of the certification process is not in question nor is the technical competence of the certifying authorities to undertake a thorough review of all equipment and installations and their compliance with regulatory requirements. However operators cite examples of the Offshore Boards adding conditions to the Certificates of Fitness, or requiring additional work beyond that carried out by the Certifying Authority. There have been situations where the Boards have required operators to retain consultants to examine certain aspects of a facility or equipment, beyond the work carried out by the Certifying Authority. These Certifying Authorities were expected to have the technical expertise necessary to issue the Certificate. There is also a concern that when the Boards modify a Certifying Authority's approval, there is a corresponding transfer of responsibility and risk from the CA to the Offshore Boards.

The implications of this issue for operators are the potential for increased costs and time to satisfy those requirements imposed by the Boards over and above the conditions in the Certificate of Fitness. As already noted there is the potential for a transfer of responsibility from the CA to the Boards.

Interviews with Board personnel provide some greater clarity around this issue. There are instances where the Certifying Authority does not have the technical capability to examine certain aspects of an installation and in those situations the Boards have directed the applicant to retain specialized consultants. More generally, there are several reasons why the Boards may place conditional conditions on the work of the CA — there is an area of known weakness of the particular CA; an item may be beyond the scope of the CA's work; or the CA missed something that was subsequently picked up by the Board. The Boards feel that ideally they should be able to rely on the CA for the inspection and certification of equipment without having to get directly involved. The Boards believe their emphasis should be on occupational health and safety and the competency of personnel.

Clarifying the roles and responsibilities of the Certifying Authority and the practice of certification should strengthen the certification process and improve the confidence that Boards can have in the technical competence of the CAs.

**What options exist** The issue appears to revolve around such things as the definition of the scope of work and the CA's technical ability to carry it out, the confidence of the Boards in the CA's work, and formal assessment of the CA's performance over time. Options include the following:

1. Prior to the selection of a Certifying Authority, the applicant for an authorization would be required to provide to the respective board a draft scope of work for approval. The selection of the CA would be on a competitive basis with a requirement that they demonstrate their competence to fulfill the scope of work including how any voids in their internal capacity or capability would be filled. The CA selected, in consultation with the applicant, would still be responsible for finalizing the scope of work and obtaining approval from the Chief Safety Officer.

## PART 2 - ANALYSIS TEMPLATES

**What options exist** 2. The two Boards jointly undertake a periodic formal review of Certifying Authorities including consideration of their quality control procedures, staff capability and training, and the results of performance monitoring and audits. Reviews would be carried out at appropriate time interval, say five years, with the result being that CAs would either stay on the list, stay on the list with conditions (for example staff training requirements), or be removed from the list as a result of their performance.

These options are not mutually exclusive. The first requires more effort by both the applicant and the Offshore Boards at the front end to prepare and review a draft scope of work. However, this should simplify the completion of the final scope of work and approval by the Chief Safety Officer, with little or no impact on the overall time schedule. At the same time it should provide greater confidence that the CA selected will be able to satisfactorily complete the scope of work.

The second option requires formalized performance monitoring of the Certifying Authorities and the time to carry out a joint formal review. Complicating this option somewhat is the need to amend regulations to enable periodic adjustments to the approved list of CAs.

**What's the priority** This issue does not have the significance of a number of others in terms of its impact on regulatory effectiveness and efficiency. Nonetheless, because it was consistently raised by operators, it is viewed as being a moderate priority. The first option could be achieved through a guidance letter to operators on the preparation of draft scope of work and the process for selection of a Certifying Authority. The second option will require an increased level of effort for consistent monitoring and auditing of CA activities.

**What work is in progress** The results of the "Lessons Learned Workshop" suggest that a multi-party discussion should take place to document requirements and application of Certificate of Fitness Guidelines and the role of CAs, involving CNOPB, CNSOPB, NEB, Transport Canada, the Canadian Association of Oilwell Drilling Contractors and the Canadian Association of Petroleum Producers. Workshop notes do not place a timeline on this initiative.

**Linkages** There is an indirect link with the use of RQFs, rig standards and vessel inspection and certification.



### Template # 11: Rig Standards, Vessel Inspection and Certification

<b>Description</b>	<p>The standards applied to mobile offshore drilling units (MODUs) differ between Nova Scotia and Newfoundland and Labrador, as does the responsibility for inspection and certification. In Nova Scotia the responsibility rests with the CNSOPB and is based on the International Maritime Organization (IMO) Code for the Construction and Equipment of Mobile Offshore Drilling Units (1989 MODU Code). In Newfoundland and Labrador, Transport Canada is responsible for inspection and certification based on Standards Respecting Mobile Offshore Drilling Units (TP6472) December 30, 1985 (the Canadian MODU Standards). As a result, drilling units operating in the East Coast offshore must comply with different standards in the Nova Scotia and Newfoundland and Labrador offshore areas. Because drilling units may move from one jurisdiction to another, the requirement to meet different standards administered by different organizations may require re-inspection and certification. Related to this is the issue of different agencies being responsible for inspection and certification of several other types of vessels in Nova Scotia versus Newfoundland and Labrador.</p>
<b>Context</b>	<p>The CNOPB issued Guidelines Respecting Drilling Programs in the Newfoundland and Labrador Offshore Area in January 2000. These guidelines cover Drilling Program Authorizations, Approval To Drill A Well, and records and reporting. In order to obtain authorization for a drilling program, the applicant must obtain a Certificate of Fitness for the drilling installation issued by one of the recognized Certifying Authorities. Among the regulations that must be complied with are the <i>Newfoundland Offshore Petroleum Drilling Regulations</i> which in turn reference Canadian MODU Standards. Newfoundland's guidelines require that foreign flagged vessels, including drilling units, must obtain a Letter of Compliance from Transport Canada indicating conformance with Canadian MODU Standards as referenced in the <i>Canada Shipping Act</i>. Therefore Transport Canada is responsible for both Canadian and foreign flagged drilling units and other vessels in the Newfoundland and Labrador offshore area.</p> <p>The CNSOPB issued draft Drilling Program Guidelines in April 2001. In many respects these guidelines are similar to the CNOPB's guidelines. One significant difference is that offshore drilling units must meet the IMO Code for the Construction and Equipment of Mobile Offshore Drilling Units (1989). If Canadian-flagged, the unit must also meet the requirements of the <i>Canada Shipping Act</i>. More generally, the responsibility for inspection and certification of vessels operating in the Nova Scotia offshore area is split between the CNSOPB and Transport Canada, according to a detailed Memorandum of Understanding signed in 2001. According to the MOU, the CNSOPB is responsible for the inspection and certification of foreign-flagged MODU's, foreign-flagged storage tankers, foreign-flagged accommodation vessels, and helicopter facilities. Transport Canada has the primary responsibility for other vessels although in all instances the CNSOPB requires both an Operator's Declaration and a <i>Canada Shipping Act</i> Certificate.</p> <p>In the case of both the Newfoundland and Labrador and Nova Scotia offshore areas the objectives are to ensure the safety of vessels operating offshore as well as the protection of the marine environment from pollution caused by ships and oil and gas activities. The intent is also to ensure that laws of general application such as the <i>Canada Shipping Act</i> are applied in the offshore area while at the same time recognizing the jurisdiction of the Offshore Boards over certain types of facilities and equipment.</p>

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** This issue is significant for companies operating in both the Nova Scotia and Newfoundland and Labrador offshore areas where they may be using the same drilling units in both jurisdictions. Because different standards have been adopted in each of the two jurisdictions, rigs initially inspected and certified to work in one jurisdiction as part of a Drilling Program Authorization will require re-certification under different standards if subsequently undertaking work in the other jurisdiction. Re-certification carries with it both time and cost components. In addition to the obvious cost required for re-inspection and re-certification, there is also the potential that having undergone rig modifications to meet requirements in the first jurisdiction, a second series of modifications will be required for the second jurisdiction. It also places an additional burden on the Nova Scotia Offshore Board should it need to re-certify a rig that has been working offshore Newfoundland and Labrador. It has implications for Transport Canada who would be called upon to inspect and certify the rig if it is moved from Nova Scotia to Newfoundland and Labrador.

A resolution of this issue would lead to the adoption of common standards and a common process for the certification of all vessels and equipment in the offshore areas. This would allow greater mobility between the east coast jurisdictions and reduce the level of regulatory effort on the part of the Boards and Transport Canada. This issue can be handled with a moderate degree of effort and without compromising the public policy objectives that are involved.

**What options exist** There are at least two options for adding consistency to rig standards and vessel inspection and certification:

1. The Boards could adopt a common set of MODU standards throughout the region and each Board could accept inspections carried out in the other's jurisdiction.
2. The CNSOPB could adopt the same approach as the CNOPB, that is rely on Transport Canada for the inspection of MODUs and the issuance of a Transport Canada Letter of Compliance.

The adoption of common MODU standards would likely require that Nova Scotia adopt the Canadian MODU standards. It is unlikely that Newfoundland and Labrador would be willing to adopt the IMO standards since these are viewed as being less stringent than the Canadian standards and perceived to be a relaxing of standards in the Newfoundland and Labrador offshore area. For Nova Scotia to adopt the Canadian MODU standards, this would mean that rigs certified elsewhere under IMO standards would have to be upgraded to meet the Canadian standards.

For the CNSOPB to adopt the same approach as the CNOPB would require a greater reliance on Transport Canada and a delegation of responsibility by the Board. The Board would still require a Certificate of Fitness as prescribed by the *Certificate of Fitness Regulations* and an Operator's Declaration in all cases. It would also mean the Certifying Authority would be able to rely on the *Canada Shipping Act* Certificate when issuing the Certificate of Fitness.

**What's the priority** Given the level of exploration commitments over the next 3-5 years, this issue has quite a high priority as a component of reducing drilling costs and facilitating the movement of drilling equipment between the two jurisdictions. In order to address it, Nova Scotia would have to renegotiate the Memorandum of Understanding with Transport Canada, likely using the CNOPB's MOU as a guide. Drilling Program Guidelines would have to be amended to reflect the change in approach. There does not appear to be any need to amend regulations since there is no reference in the *Drilling Regulations* to any particular standards related to drilling installations.

## PART 2 - ANALYSIS TEMPLATES

### **What work is in progress**

The “Lessons Learned Workshop” results suggest that meetings are to take place between representatives of the two Offshore Boards to document current approaches and to consider how the inconsistencies between the two Boards might be addressed.

### **Linkages**

This is related to the role of the Certifying Authorities in that it affects the standards that would be used for offshore drilling units, as well as the potential for them to rely on a *Canada Shipping Act* Certificate. It may also have some relationship with the issue of RQFs and a move towards performance-based regulations.

## Template # 12: Formation Flow Testing

### Description

The requirement to test prescribed pay thickness on first wells on a structure adds significantly to drilling costs, and the value gained from this requirement is being questioned.

### Context

The Offshore Boards have issued joint guidelines on data acquisition and reporting to assist operators in complying with regulatory requirements pertaining to well, pool and field evaluations, and to inform them as to the form and manner in which related information and data should be submitted to the Board. Guidelines assist operators in complying with the *Offshore Petroleum Drilling Regulations* and the *Offshore Area Petroleum Production and Conservation Regulations* for the respective offshore areas.

An operator is required to submit a proposed program for well evaluation as part of the application for an Approval to Drill a Well. The Board will seek to ensure that any program proposed provides for a comprehensive geological and reservoir evaluation, consistent with the class of well being drilled. The discussion here relates to the first exploration well drilled on a structure, rather than to subsequent wells or development drilling.

The guidelines indicate that programs for exploratory wells should provide a basic evaluation of all intervals and focus evaluation on intervals where hydrocarbons are encountered to ensure that a suitable basis for assessing any potential discovery is established. The Boards make a distinction in the guidelines between shallow water and deep water situations. Generally, unless otherwise approved, the operator of an exploration well is required to conduct a formation flow test over any formation where well porosity, permeability and hydrocarbon saturation (cuttings, cores, logs and wireline tests) indicates:

- ◆ for a well drilled in less than or equal to 400 metres of water, potential pay of 5 metres within a 10 metre gross stratigraphic interval; and,
- ◆ for a well drilled in greater than 400 metres of water, potential pay of 15 metres within a 50 metre gross stratigraphic interval.

Where an operator wishes to defer testing to a later date, a written request must be made to the Chief Conservation Officer outlining the reasons for the request. Where an approval to defer is granted, the operator must suspend the well in a manner that allows the well to be re-entered and tested at a later date. The Chief Conservation Officer also has the power to grant deviations from the regulations, and both Offshore Boards indicate a willingness to consider special cases where adjustments to flow testing requirements may be called for because of environmental, safety or practical reasons. The Nova Scotia Board has exercised some leniency recently in response to unusual circumstances.

## PART 2 - ANALYSIS TEMPLATES

### What needs to be addressed

Both governments and industry need accurate well data, albeit for different reasons. Governments require that data be collected, stored and reported because of its value in terms of documenting the potential for, and nature and extent of, public hydrocarbon resources. The interests of the governments in this regard is long term, as the owners of the resource. Industry operators need well data in order to make decisions about next drilling prospects and development options.

There appears to be no consensus among operators and regulators on the technical capability to substitute other data collection methods for flow testing. For first exploration wells on a structure, arguments have been made that well data may be acquired by alternate methods, and that current technology enables this. Given that data from second wells is generally more reliable than from first wells, there is a case that suggests that alternative and less costly means of acquiring data on first wells may be sufficient for both government and industry purposes. There is also an alternate view, that the technology is not yet sufficient to rely on alternate forms of testing to acquire the necessary data, and that the operator will want to have the testing equipment on site simply because of the high cost of re-entry should a well require a flow test.

The costs associated with formation flow testing break down generally into mobilization and demobilization costs, preparation time for testing (i.e., setting and cementing lining), and the time it takes to perform the testing. Where testing is a requirement, operators will be faced with mobilization costs, irrespective of the success of the well (only a percentage of wells successfully encounter hydrocarbons). Alternatively, if a well is successful and must be suspended and tested later, then the costs of bringing the equipment on-site or of re-entry are higher than would have otherwise been the case. The cost of flow testing a well were cited as increasing overall well costs by several million dollars.

Other aspects of this issue center on the timing of acquisition of well data as it affects costs, the reliability and utility of the data from first wells, whether the decision to test first wells on a structure should be an operator responsibility, and the influence that safety factors should have on the decision to test.

### What options exist

Understanding the flow testing issue requires a substantive technical understanding of the state and reliability of current technologies for acquiring well data, and on the subsequent use of that data. A solid technical evaluation of the available alternatives for testing, and their respective outputs, appears to be necessary. Such an initiative, to adequately address differing opinions, should see participation by the Offshore Boards, the National Energy Board (because of its responsibilities in adjacent Canadian waters), and representation from industry operators and well service companies.

Flow testing is only one aspect, however, of the factors contributing to high cost of drilling in offshore areas of Atlantic Canada. In this sense, it is not a stand alone item. Other factors include wireline logging, cutting full hole cores, requirements for backup equipment, removal of subsea wellheads, equipment sharing and use of burner booms. Given this array of considerations and the importance of high drilling costs to decisions about exploration drilling, it would seem reasonable to undertake an initiative that considers both the individual and combined effects of a defined list of cost factors. In this regard, a *Well Cost Task Group*, comprised of Board and industry technical experts, could be assigned the responsibility of examining flow testing and other well cost issues in a single initiative, reporting results as a package of proposals or recommendations to the Boards and governments.

## PART 2 - ANALYSIS TEMPLATES

<b>What's the priority</b>	Because of the high costs of testing, this issue appears as a high priority. The ability to address it effectively depends in large measure on establishing a general consensus on the adequacy of alternative testing methods, the reliability of respective results and the real costs involved. The Chief Conservation Officer can respond accordingly.
<b>What work is in progress</b>	<p>It should be noted that the CNOBP has reviewed this issue internally and may have documentation and conclusions that could form the basis for a further, joint assessment by the Boards.</p> <p>The CNSOPB is currently reviewing its position with respect to formation flow testing of exploration wells. It is anticipated that this review will be completed by the end of the third quarter of 2003.</p>
<b>Linkages</b>	Formation flow testing is one of a number of challenges associated with controlling the costs of drilling offshore wells.

### Template # 13: Import Duty on Rigs

<b>Description</b>	Canada imposes a Temporary Import Duty on most foreign flagged and non-duty paid vessels entering Canadian waters, including drilling rigs. This import duty can add substantive costs to the already high costs of drilling offshore wells.
<b>Context</b>	<p>Canada Customs and Revenue Agency (CCRA) places a Temporary Import Duty on most drilling rigs entering the country as a means of encouraging use of Canadian made units, including: drilling ships, drilling barges, drilling rigs, jack-up drilling platforms and other drilling platforms, combinations of the foregoing, and specified components such as iron for construction and diesel engines.</p> <p>This temporary admission program provides for short-term market needs that cannot be filled from the existing vessel capacity in Canada. Under this program, foreign and non-duty paid vessel operators may make an application to operate such vessels temporarily in Canada under a Coasting Trade Licence. Operators may be entitled to use foreign vessels on a duty-reduced basis when no suitable Canadian vessel is available to carry out the required operations.</p> <p>The Operator may apply to the CCRA for partial duty remission at the same time as applying for the Coasting Trade Licence. Most vessels are dutiable at 25 per cent of their appraised value. This valuation is based on two to three appraisals provided by recognized surveyors, brokers, or appraisers. Pursuant to s.4(a), <i>Vessel Duties Reduction or Removal Regulations</i>, where relief is granted through partial remission, duty is calculated at the rate of 1/120<sup>th</sup> of the duty rate per month, with the minimum payable being one month's duty and taxes.</p>
<b>What needs to be addressed</b>	<p>Import duty on drilling rigs, while intended originally to promote and protect Canadian shipbuilding industries, has not kept pace with current conditions. Construction of floating MODUs does not currently occur in Canada. Nor will this industry be developing in the foreseeable future because of the low demand for new rigs and the existence of low cost fabrication facilities offshore.</p> <p>Consequently, duties are protecting an industry that has not existed in Canada for many years. The net affect of the temporary import duty is to add substantive administrative costs to the price of drilling a well (e.g., \$2.1 M to the Newburn H-23 well). Any such factors that are substantive contributors to well costs are important because of the fact that the high costs of drilling are a significant determinant for exploration activity in the offshore areas.</p>
<b>What options exist</b>	Eliminating the Temporary Import Duty as it applies to MODUs has been suggested as a means of reflecting current realities in the industry and as an immediate opportunity to reduce offshore drilling costs. Such a change would require a change to the customs tariffs listed in Schedule A of the <i>Customs and Excise Offshore Application Act</i> . The Governor-in-Council, on the recommendation of the Minister of Finance, may make regulations reducing or removing any customs duties imposed under this Act on goods imported under tariff items 44000-1 to 44009-1 (which includes drilling units), inclusive in such circumstances and under such terms and conditions as are prescribed in the regulations. The CCRA would require an appropriate petition from affected jurisdictions to begin to consider changes to the Temporary Import Duty.

## PART 2 - ANALYSIS TEMPLATES

- What options exist** A second option would be to negotiate an exemption from import duties for drilling rigs for a fixed period of time, with the intention of reviewing the situation at a future date (e.g., five years). Such an exemption could be granted by the Minister under the current rules, would not require a regulatory change in the short term, and accommodates the possibility that the situation could change over a period of years. This approach might also build the necessary rationale for longer-term decision, as indicated in the first option.
- What's the priority** Temporary import duties apply to all foreign flagged and non-duty paid vessels. For expensive offshore exploration equipment, this translates into substantive cost considerations, and therefore a significant issue. It is also apparent that short-term remedies exist.
- What work is in progress** The Canadian Association of Oilwell Drilling Contractors has been doing some work on this issue, with support from the Canadian Association of Petroleum Producers.
- Linkages** The Temporary Import Duty and applicable taxes (GST) must be paid to CCRA before a Coasting Trade Licence will be issued. This issue is also linked to the issue of the high cost of drilling wells described in Template 12, although import duties were not included on the list of factors for consideration by the proposed Well Cost Task Group.



### Template # 14: Laws of General Application (*Oceans Act*, *SARA*, *CEAA*)

<b>Description</b>	New laws of general application ( <i>SARA</i> , <i>Oceans Act</i> , changes to <i>CEAA</i> ) require coordination with each other and with the offshore oil and gas regulatory regime if impacts of their implementation on the time and costs of regulatory processes are to be minimized.
<b>Context</b>	<p>The federal government has moved recently to put in place new legislation and strategies that will have implications for the processes for regulatory approvals of oil and gas activities in the offshore areas. Of particular interest are the <i>Species at Risk Act (SARA)</i>, the <i>Oceans Act</i> and its implementation strategy, and the recent changes to the <i>Canadian Environmental Assessment Act</i>. <i>CEAA</i> is addressed within the portion of this report devoted to the process of environmental assessment, but is mentioned here because of the linkages with environmental impacts on species at risk and the relationship with the “integrated management” component of Canada’s Oceans Strategy (COS).</p> <p>The <i>Accords</i> specify that the Canadian laws of general application apply in the offshore areas and that the federal government is responsible for decision making with respect to these laws. While there are variations in interpretation of the extent of these provisions when it comes to the regulation of oil and gas activities, this text assumes that all aspects of the various legislation, as proposed, will proceed on the schedule laid out by federal agencies.</p> <ol style="list-style-type: none"><li>1. Species At Risk Legislation</li></ol> <p>The <i>Species at Risk Act</i> came into force in June 2003, with the exception of prohibition and penalty provisions, due in June 2004. The <i>SARA</i> fulfils, in part, Canada’s commitments under the <i>United Nations Convention on Biological Diversity, 1992</i>. It aims to prevent wildlife species from becoming extinct and to secure the necessary actions for their recovery. Environment Canada is responsible for the overall administration of the Act. However, the Minister of Fisheries and Oceans is responsible for aquatic species, the Minister of Heritage is responsible for species in national parks and the Minister of Environment is responsible for all other species including migratory birds.</p> <p>The <i>SARA</i> affords protection to species listed under Schedule 1 of the Act. Species are put on the list based on federal government consideration of recommendations by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). Mandatory recovery strategies and management plans are required within specific time periods for all listed species. Schedule 1 currently lists 233 species.</p> <p>The <i>SARA</i> supports a cooperative approach by the federal, provincial and territorial governments to meeting this goal. The federal government’s lead role in protecting all listed species in areas of federal jurisdiction, including the oceans, is recognized under the <i>SARA</i>. Listed migratory birds and aquatic species are to be protected under the <i>SARA</i> wherever they are found in Canada.</p> <p>For species identified as extirpated, endangered or threatened, the <i>SARA</i> includes prohibitions against killing, harming, harassment, capturing or taking of individuals and against destroying or damaging their residences and critical habitat. Permits that will allow such actions may be granted if they are undertaken for scientific purposes, if they ultimately benefit the affected species or if they are incidental to other activities. In this sense, the legislation is quite prescriptive.</p>

## PART 2 - ANALYSIS TEMPLATES

### Context

The *SARA* requires that all federal environmental assessments of projects that are likely to affect listed species be conducted in a prescribed manner. Under *CEAA*, adverse effects on *SARA*-listed wildlife species, their critical habitats or their individual residences must be considered in the assessment of environmental effects. For any federal environmental assessment of a project that is likely to affect a listed species or its critical habitat, *SARA* (s. 79) requires that: written notification be provided to the competent Ministers, adverse effects on a listed species and its critical habitat be identified, measures to avoid or lessen those effects be taken in a manner that is consistent with any applicable recovery strategy and action plans, and that effects be monitored.

Environment Canada (EC) views environmental assessment as a key opportunity for proponents to describe the due-diligence provisions they will implement in siting, designing and managing a project so as to comply with environmental legislation. In taking such an approach, environmental assessments can facilitate and focus subsequent approvals processes.

#### 2. *Oceans Act* and Implementation Strategy

The *Canada Oceans Act, 1997* establishes an integrated management and planning regime for Canada's ocean areas, within the responsibility of Fisheries and Oceans Canada. "Canada's Oceans Strategy" (COS) is the July 2002 federal statement of policy based on the *Oceans Act*. It promotes ecosystem-based management based on three core principles: sustainable development, integrated management and precautionary approach. Understanding marine ecosystems to support science-based decisions and other protection, where needed, is a key commitment under COS. The primary means of implementation of COS is through integrated management initiatives (IM), such as the Eastern Scotian Shelf Integrated Management project, which includes the Gully area. COS reflects the Act's significant powers for planning and management of uses in the marine environment:

- ◆ Establish integrated management plans in all marine waters within Canadian jurisdiction;
- ◆ Designate Marine Protected Areas by regulation for resources and habitats in need of special protection;
- ◆ Designate by regulation Marine Environmental Quality requirements and standards;
- ◆ DFO as lead federal authority in oceans with concomitant responsibility to coordinate federal programs and policies affecting oceans; and
- ◆ DFO minister responsible for all oceans-related matters not assigned by law to other federal authorities.

The capacity to fully implement the Strategy has not yet been identified, but the legislation contemplates the coordination of federal activities and the cooperative effort of federal agencies to comply with IM outcomes. One such linkage is with regional environmental assessments as contemplated by recent changes to the *CEAA*. Both processes are intended to provide assessment of environmental features over broad geographic areas, including identifying areas and resources likely to be subject to special scrutiny or management measures, evaluation of cumulative effects, and incorporating scientific and traditional knowledge. Public involvement in the integrated management process is intended to provide the mechanism by which federal regulators can meet their COS obligations.

## PART 2 - ANALYSIS TEMPLATES

### What needs to be addressed

The introduction of new federal legislation and regulations governing oceans planning and management create a number of questions with respect to the implications for the regulatory procedures currently in place. The key issue here is the ability of the federal government to coordinate among and between these new initiatives and to facilitate their smooth integration into the existing policy and regulatory framework.

The effect of *SARA* on oil and gas approvals is not yet fully understood. Under the new legislation, species of concern will be identified and listed, and recovery strategies and action plans developed. Based on these recovery strategies, critical habitats may be identified and designated, including use conditions and prohibitions on certain activities. A permitting function could be applied that could effect operators and operations, and could add to operating conditions for authorizations issued by the offshore Boards. Industrial operations in marine environments are likely to be most affected by concern for critical habitats for marine species that are endangered (Beluga Whale, Blue Whale, Right Whale, Leatherback Turtle, Atlantic Cod), threatened (Northern Wolffish, Spotted Wolffish) or of special concern (Fin Whale, Harbour Porpoise, Sowerby's Beaked Whale, Atlantic Wolffish).

Defining critical habitats and risk management can be expected to be areas requiring significant discussion, particularly in light of the need to consider critical and recovery habitats in environmental assessments.

In terms of COS, the implications of full implementation of the integrated management and MPA components are still to be worked out. Some questions include:

- ◆ Can the integrated management and regional strategic environmental assessments be linked, and could they contribute to regulatory streamlining?
- ◆ What would trigger a regional environmental assessment?
- ◆ What products would be delivered and to whom?
- ◆ What degree of public involvement would be required?

There is the potential for integrated planning under COS to take the form of protracted public discussions that could affect the flexibility of federal regulators (including offshore Boards) to issue authorizations while processes are in progress. Other uncertainties include:

- ◆ Concern about security of existing commitments, contracts and licences;
- ◆ Capacity to deliver IM planning results in reasonable timeframes;
- ◆ Capacity to manage public involvement in the process; and
- ◆ Uncertainty about the process by which MPAs will be identified?

Putting these new laws of general application into practice is a significant challenge for the federal agencies responsible, particularly in the collaborative environment envisioned by the Integrated Management component of COS; the ability or inability to deliver on coordination requirements will be very visible. The responsibility will be on the federal authorities to ensure a relatively seamless integration of this new legislation with the current policy and regulatory regime. Leadership in implementation will be very important, as will be the delivery capacity within the agencies.

## PART 2 - ANALYSIS TEMPLATES

- What options exist** The speed of implementation of this new legislation is implemented will affect the opportunities for its integration into existing policies, plans and procedures. The preferred approach will be to ensure that while IM processes are developed and advanced, existing regulatory processes are consistent with the intent and broad objectives of integrated management.
- A second consideration would be to construct clear terms of reference as a pre-requisite to integrated management processes that lays out the policy framework with respect to existing commitments, and describes the capacity to make decisions during the period that plans are in-progress. An early focus will likely be integration of factors at the environmental assessment stage (such as for species at risk, marine environmental quality, and sensitive areas). Efforts to implement a comprehensive regional environmental assessment under *CEAA* would allow for broad socio-economic and environmental decisions and narrow the subsequent environmental assessment requirements for industrial activities.
- An added opportunity for integration exists through ensuring that industrial interests are directly represented on Species Recovery Teams under *SARA*, so that access to non-renewable resource values is an integral consideration at the planning stage.
- What's the priority** The details of implementation of these new laws of general application are in the process of being worked out. It is at this stage that the best opportunity likely exists for collaboration among affected parties and agencies with respect to the processes and potential implications of application. These discussions are underway now at various levels of detail, suggesting a high priority for engaging.
- What work is in progress** Significant effort is being expended within the responsible federal agencies to put new laws into practice. Pilot Projects such as ESSIM are laying the groundwork for future oceans planning and management. Efforts are underway to link COS and *SARA* with *CEAA*.
- Linkages** There are linkages between the introduction of new laws of general application and the purpose and scope of the regulatory effectiveness initiative. Multi-party cooperation under the auspices of the Roundtable is driven, in part, by a common commitment and understanding. Related to this is the notion of “smart regulation” and the expectation that federal agencies will be in a position to contribute to that initiative (refer also to Template 1).

### Template # 15: Foreign Worker Approvals

#### Description

The Offshore Boards provide advice to HRDC on the technical requirements related to positions for which an application has been made under the Foreign Worker Program. The CNSOPB also manages a review and approval process for such applications that mirrors that of HRDC. “Sign off” on foreign worker applications are made by both CNSOPB and HRDC in Nova Scotia, creating the possibility of one organization approving a request while the other does not. A significant workload is associated with this process for the CNSOPB, and time delays and administrative burden are also of concern to operators.

#### Context

Citizenship & Immigration Canada exercises legislative responsibility for foreign workers in Canada, including Canadian waters, pursuant to s. 5(3) of the *Immigration Act*. An exception to CIC’s legislative authority is with respect to seismic operations performed in Canadian waters beyond 12 nm from the baselines. In general, all other operations are subject to the federal *Immigration Act* and its related regulations, pursuant to which only Canadian citizens and permanent residents (otherwise known as landed immigrants) may work in Canada, without obtaining an Employment Authorization from CIC. In addition, CIC will meet ships upon arrival in Canadian waters to inspect the credentials of its foreign workers.

CIC’s focus is on the worker; that is, on the ability to do the job, on health of the worker and on matters related to security and criminality. Generally speaking, before an Immigration Officer can issue an Employment Authorization, he or she needs a labour market opinion from HRDC as to whether this would have a positive or negative effect on the Canadian labour market and economy. To form this opinion, HRDC will work with the Employer to examine the specifics of the job offer, ensure that the wages and working conditions offered are acceptable within the context of the Canadian labour market, and consider whether the job might easily be filled from within the domestic workforce. Once satisfied, the HRDC will communicate findings to the CIC by way of an Employment Validation. In the case of workers coming in under GATS or NAFTA, it is the Offshore Boards that are notified by the operator, rather than HRDC. Typically, the Boards will approve these requests.

Section 45(3)(b) of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* requires that a Board-approved benefits plan contain provisions to ensure that individuals resident in the Province be given first consideration for training and employment in the work program. In this regard, a Memorandum of Understanding (January 2001) exists between HRDC and the CNSOPB that establishes a mechanism to govern the exchange of employment information and advice. To ensure that Nova Scotian’s are given first consideration, the CNSOPB manages a process by which it receives the same application information as HRDC and conducts its own review of applications for foreign workers.

In Newfoundland and Labrador, the CNOPB defers to the national HRDC/CIC program for foreign worker authorizations. As in the case of Nova Scotia, HRDC liaises with the provincial agency responsible for employment, the CNOPB, customs brokers and CIC in making its labour market determinations.

## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** The level of effort to administer a program to review foreign worker applications is a significant one for the CNSOPB. The intended outcome is an assurance that Nova Scotians receive first consideration for employment and training. Preliminary investigation indicates, however, that while the work undertaken by CNSOPB has served primarily as a check and balance in the system, it has not substantially affected decisions taken by the responsible federal agencies. If this observation is valid, it would suggest that the level of effort in managing a parallel program may not be generating results for the Province beyond those already in place through HRDC/CIC. It should be noted that the CNSOPB is currently examining the approach taken by the CNOPB with a view to updated CNSOPB practices.

Operators understand that the jurisdiction for foreign worker authorization rests with Canada, rather than with the Provinces. Concern exists with respect to the need to provide matching application information to the CNSOPB and the cost and time associated with dealing with a second agency that does not have jurisdiction, to acquire a foreign worker authorization. An added concern is that criteria for approvals may vary between the CNSOPB and HRDC/CIC in respect of a particular application (a current example exists).

Efficiency in the system requires adequate and timely information exchange between HRDC, technical experts, customs brokers, CIC and employment agencies of the respective provincial governments. Beyond the question of duplication of application review efforts, HRDC has suggested that there may be opportunities to improve and streamline the flow of information.

**What options exist** HRDC in Newfoundland and Labrador has suggested that there may be opportunities to improve the way in which information and communications are managed in that province. To explore these, HRDC has suggested a working meeting(s) involving the key parties to the process: HRDC, CIC, CNOPB, NL Department of Human Resources and Employment, and the local customs brokers. Such a working session(s) would track the communications with respect to foreign worker applications and the flow of necessary information between parties, with a view to improving timing and effectiveness of communications and streamlining information needs.

The CNSOPB is currently gathering information about the foreign worker authorization process that is in place in Newfoundland and Labrador. The intention is to use that information to evaluate the CNSOPB program.

An opportunity exists to connect the CNSOPB interest in reviewing its practices, with the working session proposed by HRDC in Newfoundland and Labrador. This has the potential to address common questions using the collective experience of both Boards and federal and provincial agencies in both provinces. HRDC in Newfoundland and Labrador has indicated a willingness to take a lead role in managing a working meeting, and endorsement by the Regulatory Effectiveness Steering Committee would provide the necessary impetus.

**What's the priority** This suggestion of a joint working meeting, as described above, offers a manageable, short-term approach to dealing with efficiency in the process and to aligning authorization procedures, to the extent practical. While not a high priority in Newfoundland and Labrador, any opportunity in the short term to rationalize the Nova Scotia procedures would be of immediate value.

## PART 2 - ANALYSIS TEMPLATES

### **What work is in progress**

The CNSOPB is currently collecting information relative to the approach taken to foreign worker applications by the CNOPB. HRDC in Newfoundland and Labrador has offered to lead a joint working meeting involving affected parties in that province.

### **Linkages**

Clarity and consistency of regulatory procedures will help with improved understanding and compliance by the industry. This in turn can affect the atmosphere and confidence surrounding the implementation of Benefits Plans.

The use of foreign crews on a foreign ship creates a relationship between HRDC and the Canadian Transportation Agency's responsibility for issuing a decision with respect to a Coasting Trade License. Approvals for foreign workers follows CTA approvals. No specific issue has been identified with respect to this link.

## Template # 16: Acquiring a Coasting Trade Licence

<b>Description</b>	<p>Foreign-flagged vessels operating in Canadian waters require approval from the Canadian Transportation Agency and issuance of a Coasting Trade Licence by the Minister of National Revenue. It has been suggested that CTA approvals can take an extended period of time. In addition, if drilling programs or offshore activities take longer than expected and extend beyond the term of the Coasting Trade Licence, the extension of the licence requires re-starting the process. If applications are opposed, the adjudication process can take a significant amount of time to complete. The need to consider the use of a Canadian registered vessel may also have an affect on operating costs if Canadian registered vessels are more expensive that those with foreign flags.</p>
<b>Context</b>	<p>Pursuant to subsections 4(1) and 5 of the <i>Coasting Trade Act</i>, and the provisions of the <i>Customs and Excise Offshore Application Act</i>, the <i>Customs Act</i> and the <i>Customs Tariff</i>, the Canadian Transportation Agency and Canada Customs and Revenue Agency, in association with Transport Canada, are responsible for administering a temporary admission program for foreign registered vessels. Under this program, foreign and non-duty paid vessel operators may make an application to the CTA (formerly the National Transportation Agency) to operate such vessels temporarily in Canada under a Coasting Trade Licence (Form C48), and on a duty-reduced basis when no suitable Canadian vessel is available to carry out the required operations (s.8(1), <i>Coasting Trade Act</i>). This federal program applies to all foreign vessels, including vessels for the transportation of passengers.</p> <p>The primary intent of the <i>Coasting Trade Act</i> is to protect the interests of the operators of Canadian registered ships, while allowing temporary access to foreign ships when suitable Canadian registered ships are not available.</p> <p>The CTA is currently completing its revised guidelines for the Coasting Trade Licence application process. These guidelines aim to clarify the roles and responsibilities of parties involved in the application process and to provide options for processing different types of applications. The guidelines also clarify the legislative mandate and administrative obligations of the CTA, and describe the information required by the CTA to make determinations pursuant to the <i>Coasting Trade Act</i>.</p>
<b>What needs to be addressed</b>	<p>Preliminary assessment indicates that the CTA process for reviewing applications for foreign registered vessels is relatively efficient, with most applications being addressed with a two-week period. There is no restriction on when an application can be made to the CTA. New guidelines provide a better indication of timelines, and there is an explicit need identified within the guidelines to fast track some applications. Efficiency is improving as experience with the oil and gas sector increases (e.g., familiarity with available vessels, understanding of economic drivers).</p> <p>Problems with timing and contractual issues arise when a party objects to a CTA decision. Such an objection, however, must not be frivolous or in abuse of the system. The CTA has the power to refuse to hear such an objection. CTA decisions must be rendered in 120 days according to statute.</p>



## PART 2 - ANALYSIS TEMPLATES

**What needs to be addressed** Concerns exist with respect to potentially higher costs of Canadian registered vessels. Recent experience indicates a willingness by the CTA to consider financial factors in an increasingly important way, and the legislation enables this. The onus remains, however, on the applicant and potential contractors to negotiate agreements with respect to their business relationships; the CTA is not a broker of such agreements.

It is likely that one source of concern has been from operators who pursue business arrangements with offshore ships and then find that approvals are subsequently required before such ships can work in Canada. However, as long as Canada maintains a policy of Canadian vessels where “suitable and available,” there will be a program of examination and due diligence that operators can expect to encounter. The system exists to protect the interests of owners, operators and workers of Canadian registered vessels. The offshore oil and gas industry can expect to come under scrutiny with respect to its use of Canadian registered vessels.

A further concern is related to expiry of the licence while activities are still underway. A Coasting Trade Licence may be extended, but only if the application and review process for the licence is re-started. While this protects the integrity of the system from abuse, it also places significant strain on operators who legitimately require more time to complete operations. The new CTA guidelines address this problem by allowing for a fast track approval where circumstances warrant. Such approvals can be made within a day and be given verbally.

**What options exist** There are no suggested approaches to improving effectiveness or efficiency, and no further work is suggested at this time. New guidelines that are about to come into effect are explicitly intended to address the concerns identified above. In addition, research in this project suggests that the process is relatively efficient in its current form. Previous opportunities to delay decisions through frivolous or unfounded submissions seems to be addressed, both in the new guidelines and through recent determinations by the CTA.

Greater emphasis could be placed on ensuring that operators understand the need for foreign vessel approvals at the time that contracts are negotiated.

**What’s the priority** This is not a current priority. Experience with the application of the revised guidelines over a period of time is required to assess their effectiveness in addressing concerns.

**What work is in progress** New CTA guidelines are in the process of being completed.

**Linkages** Foreign Worker Approvals, see Template 15.

## PART 2 - ANALYSIS TEMPLATES

### ADDENDUM: BENEFITS PLANS AND REPORTING

Benefits can be looked at from two broad perspectives: the first being the regulatory requirements of Benefits Plans & Reporting administered by the Offshore Boards; and the second being activities undertaken by governments (particularly provincial), supplier associations and individual supplier companies. The emphasis in this second instance is on creating industrial and employment opportunities for firms and individuals resident in Nova Scotia and Newfoundland and Labrador.

At the outset of this project, the mandate was to look at issues related to differences and inconsistencies in the practices of the two Offshore Boards, assess areas of duplication and overlap, and develop examples of how regulatory processes might be adjusted to achieve greater efficiency. In conducting the secondary research and interviews, consideration was given to all issues raised, including the regulatory aspects of benefits, but excluded those areas considered to be within the mandate of the Industrial Opportunities Task Force and its working groups.

Subsequent project direction assigned all of the benefits-related responsibilities to the Industrial Opportunities Task Force, and further investigation of benefits issues was not undertaken. There was, however, a desire to capture the information collected in this project as it relates to benefits, for the purposes of informing the work of the Industrial Opportunities Task Force. This Addendum summarizes these findings under three broad headings – interpretation of requirements, benefits reporting requirements, and research and development (R&D) expenditures.

#### Interpretation of Requirements

Section 45 of the *Accord Acts* sets out the requirements for Benefits Plans. Such plans are a prerequisite before the Boards can issue a work authorization for any proposed activity. The requirements revolve around the concepts of full and fair opportunity to participate on a competitive basis in the supply of goods and services, and first consideration when local goods and

services are competitive in terms fair market value. Other requirements relate to research and development expenditures, the training and employment of disadvantaged individuals and groups, and expenditures for education and training.

During the interview process related to this project a number of issues were raised concerning the interpretation of benefits plan requirements. Each is briefly described below.

#### Benefits Plans Guidelines

In early 1994, the CNSOPB issued Benefits and Employment Plan Guidelines that apply to both exploration and development activities. The CNOBP has taken a somewhat different approach and has embedded benefits plan requirements for development activities within Development Application Guidelines. Call for bid documents include as an appendix Exploration Benefits Plan Guidelines. In all cases the guidelines are quite prescriptive in nature and in the CNOBP's case they provide somewhat more detail about the kind of information desired in certain sections of the benefits plan. The CNOBP guidelines place greater emphasis on procurement and contracting processes. With respect to monitoring and reporting requirements for benefits plans related to development, the CNOBP establishes these in consultation with the proponent following the submission of the benefits plan. The guidelines are important in that they reflect the Board's expectations regarding the content of the benefits plans and their philosophy for administering benefits.

Operators have expressed concerns about a range of benefits issues including differences in the Newfoundland and Labrador and Nova Scotia guidelines and benefits reporting requirements. The CNSOPB is currently undertaking a comparison of their guidelines with those of Newfoundland and Labrador and acknowledges that their guidelines are in need of updating. There appears to be some desire to undertake a joint review of benefits guidelines in an effort to work towards a common set, but steps have not yet been taken in that direction.

## **ADDENDUM: BENEFITS PLANS AND REPORTING**

### **Benefits Plan Approval and Provincial Role**

Benefits plans are a prerequisite before the Boards can authorize any work or activity. The responsibility for approving benefits plans rest with the Offshore Boards, albeit with the requirement to consult with the provinces. In the case of Nova Scotia a Benefits Advisory Committee has been formed and is involved in the review of benefits plans as well as procurement activities by operators. The role of the provinces is advisory, although they may enter into direct discussions with operators in advance of the submission of benefits plan and to discuss the procurement of items of strategic importance. The CNOPB does not have a Benefits Advisory Committee. It consults directly and collectively with the operator and major stakeholders in a project or activity, but does so without a standing committee structure.

The provinces do not have legislated authority with respect to the approval of benefits plans, but are often regarded by the public as having the responsibility for achieving local benefits. This in turn has led to situations where the governments, the Boards and operators are somewhat at odds with respect to the perceived level of involvement and influence that each should bring to benefits plans.

Recent experience with the White Rose Project in Newfoundland and Labrador has provided some clarity with respect to the roles of the Boards in relation to those of the province and the operator. The position of the CNOPB with respect to its interpretation of its benefits responsibilities is clearly articulated in the White Rose decision report. Provincial policy in Newfoundland and Labrador appears to support the Board's position. Of particular value in the White Rose example was the dialogue between the province and the proponent at an early stage to discuss expectations and opportunities for local project benefits. The proponent was, as a result, in a much better position to acquire knowledge about local and Canadian capability and capacity, and to respond to expectations.

It is important to note that the Boards, as regulators, do not have a role in benefits negotiations and hence there must be a strong working relationship between the Boards and the provinces. In Nova Scotia the provincial energy strategy has identified a desire to explore Offshore Strategic Energy Agreements (OSEAs) with proponents that provide a strategic understanding of the possible opportunities for economic development and capacity building within the province. Conceptually this policy approach is moving in the same direction as that of Newfoundland and Labrador.

### **Benefits Plans for Exploration**

Benefits plans are a required condition for the approval of exploration programs. With over 30 years of exploration activity and in excess of 300 exploration wells drilled on the East Coast, the activities involved during the exploration phase are well understood. The capability and capacity of Canadian and local workers and suppliers to contribute to exploration activities is also well known. As a result the nature and outcome of benefits for exploration programs has become predictable, giving rise to the question of whether or not there is a continued need for the types of benefits plans that have traditionally been required.

Past experience and investigations by the provinces and Industry Canada (IC) suggest that the percentages of Canadian content in any exploration project can now be accurately predicted. For example, exploration expenditures are dominated by rig costs which account for in the order of 45% of total program costs, with major drilling services accounting for another 15%. Canadian content is predictable at about 20% of well costs, predominately in the areas of air support, catering and marine base services. These elements are best purchased locally in any event. As a consequence, benefits plans for exploration have been described as largely routine. There is a significant workload for operators in the preparation of these exploration benefits plans and reports, and for the Boards and governments in their review and the subsequent monitoring activities.

## ADDENDUM: BENEFITS PLANS AND REPORTING

There are at least two possible approaches for reducing benefits plan requirements at the exploration stage. The first is to waive the requirement for a benefits plan for exploration drilling. Section 45 (2) of both the Newfoundland and Labrador and Nova Scotia *Accord Acts* contemplates this possibility.

The second approach is to develop a standardized template for submitting benefits plan information related to exploration activity. This approach would focus attention on the specific items where Canadian or local content is reasonable to expect, and to audit what has been achieved after the fact. In essence the Boards would be utilizing their experience to rationalize requirements and to lessen their own administrative burden as well as that being placed on the operators. The level of effort required for these exploration benefits plans would be proportionate to the magnitude of possible benefits that can be generated locally. An additional impact of moving in this direction is that it would incrementally build trust between the regulators, industry and the operators.

### Development Stage Benefits Plans

Because of the magnitude and diversity of benefits that can arise through development activities, a more comprehensive benefits plan is a reasonable expectation at this stage. Interviews with company personnel indicated that they are looking for clear, consistent benefits guidelines in both jurisdictions that reflect the intent of the legislation. None of those interviewed disagreed with the benefits aspects of the legislation, however concerns were expressed about the amount of administrative burden and what some viewed as interference in business practices. Benefits plans do not establish targets but rather are expected to set out processes that the companies will use to ensure that the legislative requirements are met and to give some sense of the local content that might be expected. There is much opposition to targets because of the potential impact on being able to undertake procurement on the basis of best value.

In the interviews with government personnel, expectations were quite clearly stated. These included the maximization of local content recog-

nizing that there are constraints on local capacity and capability. Governments are also looking for meaningful programs for research and development, and education and training. Most notably they are taking a more strategic and focused view of industrial benefits with greater emphasis on the development of local capacity being generated in the right areas to provide longer term benefits. Also implicit in these interviews was the desire to avoid issues that could have serious political implications.

Based on the comments received it appears that there is some common ground with respect to the desired outcome from benefits plan requirements. There seems to be recognition of the value of basing benefits plans on agreed upon strategic priorities and a shared interest in the successful implementation of the plans. Successful implementation was generally interpreted to mean the generation of local benefit, operational flexibilities, assurances that commitments are met, and improving the level of performance and trust. The consequence of moving in this direction is a reduced requirement for monitoring and reporting, less potential for intervention in business decisions, an increased sustainable provincial and regional capacity, and increased emphasis on auditing performance.

Some of the possible approaches that were identified at the development plan stage were for the Offshore Boards to develop common benefits guidelines that provide a more consistent approach to benefits plan requirements and administration. Also mentioned was the importance of gaining a mutual understanding and agreement on strategic priorities through discussions between operators, the provinces and Canada that can be reflected in benefits plans prior to their submission and approval. A third aspect was to shift the focus in benefits plans towards performance based outcomes rather than a more prescriptive approach.

A number of implications of this approach at the development stage were cited. The first was the potential for high level strategies and partnerships to evolve at an appropriate time in the development process. Secondly it would tend to focus effort on what is important and achievable

## **ADDENDUM: BENEFITS PLANS AND REPORTING**

rather than scrutinizing each and every contract awarded over a particular dollar value. In addition, it will foster a better understanding between the provinces, federal government, boards and operators on what is strategically important. The consistency in guidelines and practices between the two Boards results in a greater level of clarity, understanding and repeatability. It is important to note that the role of the Boards remains unchanged and is clearly focused on the regulatory aspects of benefits.

### **Benefits Reporting Requirements**

#### **Procurement and Contract Award**

The CNSOPB Benefits Plans Guidelines require that the Board be advised of an operator's intentions regarding the prequalification of supplies and contractors, the development lists of bidders for procurement purposes, invitations to tender, and contract award. Prior approval must be received from the Board for activities involving the purchases of goods and services where the value exceeds \$50,000 dollars. A subsequent information bulletin issued in December 1999 indicated that the \$50,000 benchmark may be increased by the Board's CEO in light of overall expected project expenditures. Interviews with Board personnel indicated that this limit has been raised to \$100,000 dollars.

The Nova Scotia Board requires that for contracts exceeding \$100,000, the operator must provide a letter with the proposed bidders list for review by the Benefits Review Committee, and that a response will be provided to the operator of the acceptability of the bid list within two days. Operators must also advise the Board of contract awards 24 hours prior to the contract actually being awarded.

The CNOBP focuses on the review of those procurement and contracting decisions that have significant national or provincial implications (referred to as designated contracts). For development projects their monitoring and reporting requirements are established in consultation with a proponent after submission of the benefits plans. Comments made during interviews indicate that the Board asks for a list of expected contract awards on either a monthly or quarterly

basis, and that approximately 20% of these are selected for monitoring based on their significant potential to the province.

The differences between the two Boards with respect to their approaches to procurement and contract award are significant and have important implications for operators with respect to the amount of information that they must provide to the Boards and the level of reporting that is required. These differences affect the Board's involvement in procurement and contracting decisions. They also affect Board and operator workloads relative to the utility and the use of the resulting information.

#### **Monitoring and Reporting**

Reporting of expenditure and employment levels, as well as other activities that form part of the benefits plan, are required by both the Newfoundland and Labrador and Nova Scotia Boards. In both cases the objective is to ensure that the principles of the benefits plans are being followed and obligations are being met. However there are some significant differences in the reporting requirements of the two Boards.

The CNOBP's guidelines for benefits plans associated with exploration activity require semi-annual employment reports, well expenditure reports within three month of well completion, and an annual report summarizing the previous year's activities. Benefits reports for development projects are not specified in guidelines, but rather reporting requirements are established in consultation with the proponent after submission of the benefits plan.

In the case of Nova Scotia the benefits plan guidelines establish reporting requirements that apply to all activities for which a benefits plan has been submitted. For each major component of a project a report is required within 90 days of the completion of the work; however this requirement may be waived for ongoing projects requiring semi-annual or annual reports. Semi-annual reports are required on employment, education and training activities, research and development, procurement activities and any special initiatives. Annual reports are also to be submit-

## ADDENDUM: BENEFITS PLANS AND REPORTING

ted that provide a summary of the previous year's activities as well as plans for the upcoming year.

Canadian and provincial contents are based on the Canadian General Standard Board's definitions. During interviews, operators expressed the view that monitoring and reporting activities related to benefits go beyond the intent of the Accord legislation. This was particularly true in Nova Scotia where some felt that the level of reporting was partially in response to provincial requests for more extensive information through the Board.

### Research and Development

Benefits plan requirements include plans for research and development (R&D) projects, and associated expenditures in Nova Scotia and Newfoundland and Labrador respectively. Up to this point no guidance has been provided to operators on an appropriate level of research and development expenditures related to the type of activity covered by the particular benefits plan. In essence, this has been a negotiation to arrive at an agreement about what is reasonable under the circumstances and to reflect that agreement in the benefits plans. As a result there has been little consistency between projects or activities.

The CNOPB has developed draft guidelines for research and development expenditures to indicate expected levels of spending associated with development activities. These may become joint guidelines if adopted by the Nova Scotia Board, or alternatively they may be modified or the CNOSP may develop its own. The draft guidelines do not address R & D expenditures related to exploration. Because the guidelines are not generally available for review and comment, it is not clear whether or not they will also cover expectations with respect to ongoing production activities.

Research and development projects and the associated expenditures are only credited against R&D commitments if carried out in the particular province. Expenditures on research and development outside the relevant province are not treated as complying with the benefits plan requirements and no credit is given against commitments.

Both Nova Scotia and Newfoundland and Labrador have noted the strategic importance of enhancing provincial research and development capacity and capability related to oil and gas. Research focused on the particular challenges presented by the operating environment, improving understanding of the resource base and optimizing production in both offshore areas is viewed as a significant contributor to the development of a sustainable offshore industry with increased local participation. Furthermore, interviewees saw the importance of being able to leverage local research to achieve world-class capability in certain niche areas. While the value of collaborative research activities extending beyond provincial boundaries is recognized, the explicit policy of both provinces is to maximize R&D expenditures within the individual provinces and to expand their research capacity.

Given the relatively small size of the region and the limited history of petroleum industry activity, there are limits on local research and development capability and capacity. Within individual institutions or provinces it is even more limited. A further R&D consideration is that by limiting research and development expenditures to a particular province, it becomes more difficult to capitalize on the synergies between research institutions and researchers that could be achieved through research and development that extends across the region. This also affects the capability of the region and its institutions to reach a critical mass for research and development in relation to other competitors in the world. In turn, there is an affect on regional academic and economic development opportunities for Atlantic Canada that might emerge from research results that are valuable to other jurisdictions.

Because the provincial requirements related to R&D expenditures are contained within the *Accord Acts*, this issue is somewhat difficult to address. The Boards may have some flexibility in their interpretation of how R & D expenditures are administered. Some form of coordinated regional approach to R & D would indeed be valuable, and might be accomplished by recognizing that inter-provincial expenditures are likely to balance out over time, thereby addressing to some extent the concerns of individual provinces.

**ADDENDUM: BENEFITS PLANS AND REPORTING**