

A Framework for Effective Environmental Regulation in Newfoundland and Labrador's Offshore Oil and Gas Sector: Applying Lessons from the Offshore Helicopter Safety Inquiry

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Submitted to Honourable Premier Kathy Dunderdale, Premier of Newfoundland and Labrador

CC:

- Honourable Shawn Skinner, Minister of Natural Resources, Government of Newfoundland and Labrador
- Honourable Christian Paradis, Minister of Natural Resources, Government of Canada
- Honourable Peter Kent, Minister of the Environment, Government of Canada
- Max Ruelokke, C-NLOPB Chairman and CEO
- Honourable Robert Wells QC., Commissioner of the Inquiry into Matters Respecting Helicopter Passenger Safety for Workers in the Newfoundland and Labrador Offshore Area

Synopsis

The tragic crash of the Sikorsky S-92A helicopter on March 12, 2009, focused public attention on the need for improved regulation of workers' safety in Newfoundland and Labrador's offshore while also raising questions about the adequacy of the regulatory regime surrounding environmental impacts. Safety risks are great in the offshore and so are environmental risks—the BP Deepwater Horizon drill rig explosion in the Gulf of Mexico on April 20, 2010, which took nearly five months to seal and resulted in worker deaths and the contamination of thousands of hectares of ocean, is yet another stark reminder of this fact.

On the basis that worker safety and environmental protection are not independent, we **recommend the establishment of an independent Environmental Authority**, similar to the proposal of an independent Safety Authority. **The Environmental Authority would have three branches: 1) Offshore Waste Treatment Guidelines Compliance, 2) Emergency Response, and 3) Environmental Effects Monitoring Programs Approval and Oversight.**

"Regulators are servants of the public."

Honourable Robert Wells, Helicopter Safety Report 2010 (pg 114)

In October 2010, an independent assessment of offshore helicopter safety under the jurisdiction of the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) was released.¹ In this report, Honourable Robert Wells recommends a Safety Authority, which would be independent from the C-NLOPB, to oversee worker safety in the offshore sector. This recommendation was needed owing to several problems

¹ Wells, R. 2010. Offshore Helicopter Safety Inquiry. Volume 1 Report and Recommendations, Phase I. A report submitted to the C-NLOPB available at www.cnlopb.nl.ca/pdfs/ohsi/ohsir_vol1.pdf.

within the current regulatory system deemed inadequate for ensuring the protection of workers. Problems with the safety aspects of the regulations are paralleled by problems in the environmental regulatory system:

- 1) Lack of safety staff. Only a single individual acts as the Chief Safety Officer with the enormous responsibility of determining if operations should be shut down when safety is at risk. This position lacks the “stature” and “organizational strength” to address safety issues in the new era of offshore oil development (Wells 2010, pg 278). This problem will be exacerbated by the C-NLOPB’s switch to a new performance-based regulatory approach that will require significant new staffing capacity to ensure compliance with safety standards.
- 2) Lack of autonomous safety staff. The Chief Safety Officer is an employee of the C-NLOPB which could place the person in a conflict of interest. It may also risk he or she experiencing “regulatory capture”, where individuals in the regulatory role are compromised due to close working relationships with industry. A “completely autonomous” safety authority is therefore recommended (Wells, pg 276-277).
- 3) Lack of transparency regarding Board decisions. Wells notes that “very little information is disseminated [...] about the decisions it undertakes, the plans and activities of the operators [...] or the audits it conducts to verify compliance” (Wells, pg 71).

Given these problems, Judge Wells recommends the creation of a Safety Authority, fully autonomous from the C-NLOPB. A Safety Authority can draw on more safety staff and better engage with the public, as well as communicate decision-making processes. This model follows the best practices implemented in similar jurisdictions such as Australia, Norway and the United Kingdom which have “separated safety regulatory roles from other offshore regulatory roles such as licensing and authorizing exploration and production” (pg 83).

Similar problems are evident in the environmental protection regulation in the offshore.² Primarily, there is a lack of independent environmental staff as well as a lack of transparency regarding Board decisions on environmental matters. To address these problems, an environmental regulation body that is independent from the C-NLOPB is required, to be housed alongside the new Safety Authority.

This Environmental Authority would need three main branches related to the key activities involved in protecting the environment during offshore oil and gas activities. These are elaborated below. It is also critical that the Environmental Authority be engaged in all stages of offshore activities, from selecting lands available for leasing to decommissioning.

1) Offshore Waste Treatment Guidelines Compliance (compliance to performance standards). Similar to Judge Wells’ recommendation for enhanced safety personnel, compliance of Waste Treatment Guidelines needs to be “supported by an advisory board of independent persons with widely differing backgrounds” (pg 278). The Advisory Board should include members of the public, scientists and persons knowledgeable about policy, all independent from the oil and gas industry, who have the capacity to evaluate what is technically feasible for performance standards.

2) Emergency Response. Emergency response is the responsibility of the operators; however, the immediate and longer-term outcomes of the environmental effects of spills should be documented and measured by a team of experts trained in seabird and marine mammal identification, survey protocols and marine ecology.

² Fraser, G.S. and J. Ellis 2008. The Canada-Newfoundland Atlantic Accord Implementation Act: Transparency of the environmental management of the offshore oil and gas industry. *Marine Policy* 33: 312-316.

They would report their findings to the Environmental Authority and its Advisory Board. The Environmental Authority needs to ensure on the ground capacity necessary for the collection of such information, as well as to ensure appropriate follow-up measures are taken.

3) Environmental Effects Monitoring (EEM) Programs Approval and Oversight. EEM is a long-term, large scale scientific endeavor to analyze ongoing and cumulative effects of offshore oil and gas activities. Scientific expertise is required to approve EEM design, evaluate the results and disseminate outcomes to the Environmental Authority. Oversight of EEM should be conducted by an independent science advisory board with experts from across Canada. Given the current climate of federal environmental policy, it is not recommended that Environment Canada play a significant role in the proposed EEM board because its employees, including key research scientists, are subject to political constraints on interaction with media and the public. An effective EEM program must be able to efficiently communicate findings to the public and stakeholders.

Guiding Principle: Transparency

To reduce real or perceived conflicts of interest and build trust between regulators and the public, the new Environmental Authority would need to be fully committed to transparency. Throughout each of its branches, a crucial role for the Environmental Authority would be to disseminate information to the public on a regular basis particularly on the outcomes of audits on compliance of Waste Treatment Guidelines, of surveys conducted after spills and of ongoing results associated with EEM programs.

One current barrier to transparency is how environmental data are deemed to be the proprietary information of the operators. Therefore this framework would require the amendment of the Canada-Newfoundland Atlantic Accord Implementation Act section 119 regarding disclosure of information to ensure data necessary for proper environmental monitoring is accessible to third-party scrutiny.

In his final observation of Volume 1 of the “Offshore Helicopter Safety Inquiry,” Judge Wells observes the intertwined and inter-dependent nature of protecting workers and the environment. He writes that “The interests and concerns of the public extend especially to safety, which encompasses prevention of injury, prevention of loss of life, and protection of the environment” (pg. 303). His recommendations for the reorganization of the regulatory regime protecting workers’ safety apply to the regulation regime protecting the environment: both require an increase of staff with sufficient expertise and who are independent of the C-NLOPB and the oil and gas industry. The creation of an autonomous Safety Authority and an Environmental Authority, as in other oil and gas development jurisdictions, is a critical step in increasing the transparency of environmental protection and reducing apparent conflict of interest within the C-NLOPB.

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