

Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
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Submission regarding Bill C-69 – An Act to enact the *Impact Assessment Act* and the *Canadian Energy Regulator Act*, to amend the *Navigation Protection Act* and to make consequential amendments to other Acts

Synopsis of Key Issues

1. The *Impact Assessment Act* (IAA) must respect the joint management principles of the *Atlantic Accord Acts*. Federal Ministers and Cabinet cannot be given arbitrary, discretionary powers over matters under Accord Acts' jurisdiction.
2. The Designated Projects List (DPL) should exclude well understood, routine projects and activities with proven mitigations such as exploration, geophysical activities, and expansions to existing offshore projects. As well, any projects that have already undergone extensive environmental assessment processes should be excluded from further review. Full consultations with jurisdictions should occur prior to any changes being introduced. We recommend that the threshold for mining projects is consistent and globally competitive.
3. Timelines for environmental assessments processes must be globally competitive and not exceed those of comparable international jurisdictions.
4. The role of the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), as the "life-cycle regulator" in the Canada-Newfoundland and Labrador (C-NL) Offshore Area, for environmental assessment must be clarified in legislation.
5. Clarity around Regional Assessments (RA) is required regarding establishing provisions that constitute the desired outcome, assessment timelines, and the role of the C-NLOPB in the process.

Introduction

Introduced February 8, 2018, Bill C-69 proposes to repeal the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* and replace it with the *Impact Assessment Act*, which sets a new federal process for impact assessment of major projects, among other measures. The intent of this Bill is to provide a timelier and more certain regulatory process, which would facilitate development in an environmentally sustainable manner, with greater public support

and less uncertainty. However, the Government of Newfoundland and Labrador has serious concerns that the proposed Bill currently before the Senate will not meet these objectives. Throughout the passage of Bill C-69, our government has sought amendments in the Bill to reflect the federal government's commitment to decrease ambiguity on timelines, clarify the role of the C-NLOPB; enshrine a regional environmental assessment process; remove exploration wells from the designated project list; and respect the principles of the Atlantic Accord. To date, amendments to the Bill reflecting those commitments have not been forthcoming and industry lacks the certainty it requires to support long-term investment decisions. Our offshore oil and gas industry is part of a global marketplace. It must be globally competitive and environmental processes and requisite timelines must reflect that fact.

While the demand for oil is forecast to increase through to 2040, the global outlook for energy is changing. The U.S. Energy Information Administration forecasts that fossil fuels will still represent 77 per cent of global energy use for the near future, but a greening of fossil fuels is anticipated because of lower CO₂ emissions related to production and a transition to increase use of natural gas. Consequently, global energy companies focused on environmental sustainability are increasingly interested in offshore Newfoundland and Labrador (NL) low GHG production. Offshore East Coast emission intensity is 12 kg of CO₂ equivalent per barrel compared to the world average of 18 kg of CO₂ equivalent per barrel. Offshore NL oil is therefore produced with lower emissions per barrel than much of the world's production. Bill C-69 should not have the unintended consequences of promoting oil and gas development in other fuel sources with greater emissions intensities or in other jurisdictions with weaker environmental standards.

Thorough and timely environmental assessment (EA) processes are critical to a strong and robust oil and gas sector in the C-NL Offshore Area. The offshore oil and gas sector remains a vital component of the Newfoundland and Labrador economy through high skill employment, investment, business, and research and development opportunities. It is therefore essential that any legislation affecting the offshore ensure an effective and efficient regulatory regime while achieving the objectives of enhancing environmental protection. The following submission reiterates the Government of Newfoundland and Labrador's outstanding concerns with respect to provisions of Bill C-69.

Offshore Oil and Gas Industry and Advance 2030

The C-NL Offshore area covers approximately 1.8 million square kilometers and contains over 20 offshore basins, with only seven percent currently under license for petroleum exploration and development. There are 3.9 billion barrels of discovered oil reserves and resources (1.8 billion barrels produced to date) and 12.6 trillion cubic feet of discovered natural gas that remains to be developed. The four producing projects in our offshore are responsible for 25 per cent of Canada's light crude production with over \$56.1 billion in industry expenditures on exploration, development and operations from 1966 to 2016. Revenues account for 25 per cent of provincial GDP and 41 per cent of exports over the past 20 years. The industry has provided \$19.8 billion in provincial royalties as of March 31, 2017 with \$506 million spent on Research & Development/Education & Training since April 1, 2004. Recent studies estimate undiscovered

resources of 49.2 billion barrels of oil and 193.8 trillion cubic feet of natural gas in call for bids parcels in the West Orphan and Flemish Pass regions. This represents only two of the over 20 offshore basins that have been mapped.

The positive economic impacts of our oil and gas industry extend beyond the province of Newfoundland and Labrador. In 2017, spending of the Newfoundland and Labrador oil and gas sector generated an estimated \$755 million worth of labour income in the rest of Canada and overall the sector boosted GDP in the rest of Canada by more than \$1.4 billion. The offshore sector also generates considerable tax revenue in the rest of Canada, which was estimated to be \$680 million in 2017. These economic contributions are expected to increase as our offshore sector expands.

Canada benefits greatly from the Newfoundland and Labrador oil and gas sector. These benefits are both direct and indirect. The Canada Hibernia Holding Corporation (CHHC) generated a profit of \$75 million in 2017 on net crude oil revenue of \$183 million from sales volume of 3.6 million barrels, and in that year, CHHC's cumulative dividends paid to the federal government exceeded \$2 billion. The federal government also benefits from significant indirect revenue streams received from activities in the Newfoundland and Labrador's offshore area including corporate income taxes, personal income taxes, sales taxes and other consumption taxes, as well as contributions to social insurance plans.

The C-NL offshore Area continues to build upon these past successes with \$3.9 billion in exploration work commitments in the last four years and eight new entrants in the Offshore Area in the past three years. Moreover, to take advantage of the great-untapped potential in the C-NL offshore area, our government, supported by the Federal Government, has announced Advance 2030 – A Plan for Growth in the Newfoundland and Labrador Oil and Gas industry. Our plan anticipates over 100 new exploratory well drilled and multiple basins producing over 650,000 barrels per day from new and existing projects. Continued interest and growth requires a regulatory regime that is efficient, effective, transparent and globally competitive. These factors, among others, are important in attracting and retaining investment opportunities to the benefit of our respective Governments. Newfoundland and Labrador compares favorably with competing international jurisdictions across a great many areas, borne out by the continued investment and commitments companies are making in the province. We are concerned that Bill C-69 undermines our position as a preferred investment location.

Mining Industry and Mining the Future 2030

The Government of Newfoundland and Labrador, working with industry partners, held provincial workshops, developed and, on November 2, 2018, launched Mining the Future 2030 with the following Vision Statement:

“Newfoundland and Labrador is a globally competitive, top tier jurisdiction for mineral exploration and development- one that is safe, environmentally responsible, maximizes benefits and opportunities and competitively produces quality products for global markets.”

Mining the Future 2030, is a plan to grow the Newfoundland and Labrador mining industry to create jobs throughout the province. Our geology positions Newfoundland and Labrador to be a global supplier of minerals, particularly while advancing a green economy. Great potential exists to further the industry in areas such as the Labrador Trough, Central Newfoundland's gold opportunities, and southern Labrador's rare earth elements potential. Fourteen mineral commodities are produced or mined in the province including iron (46 per cent of Canadian shipments), nickel (26 per cent of Canadian shipments), copper, cobalt, and gold. In 2018, the mining industry employed 4,800 people (excluding construction) throughout Newfoundland and Labrador accounting for \$2.9 billion in shipments contributing to 6.4 per cent of provincial GDP. The provincial mining industry is expected to rebound as it enters 2019, with a predicted increase of \$1.1 billion in mineral shipment value compared to 2018.

Without a clear pathway from discovery to development, investment may well flow to other global jurisdictions denying Canada the opportunity to responsibly produce products to satisfy growing market demand. Our future success, more especially in rural areas, depends on our ability to attract and support prospecting, mineral exploration, and development while working within an industry that is driven by commodity markets. To reach our full potential, we need to be competitive with clear and efficient regulatory processes that protect our environment while enabling opportunities to develop future Greenfield sites. Legislated timelines with a focus on global competitiveness will play a critical role in attracting new investment capital. As with our oil and gas industry, should NL and Canada fail to attract project development investment, this investment will flow to other jurisdictions that may possess less stringent environmental controls creating greater negative environmental impacts.

1. Federal Minister/Cabinet Powers

A key fundamental principle of the Atlantic Accord Agreement is the joint management of the C-NL Offshore Area by both the Governments of Canada and Newfoundland and Labrador. The Agreement jointly established the C-NLOPB to administer all provisions of the *Canada Newfoundland and Labrador Atlantic Accord Implementation Act* and the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act (Accord Acts)* on behalf of our respective governments. A critical principle underpinning this arrangement are the principles of joint-management and shared jurisdiction. It is therefore unreasonable that federal Ministers and Cabinet hold arbitrary, discretionary powers over matters under the Accord Acts' jurisdiction. The Federal Minister should be required to consult the Provincial Minister on such matters. The Bill's current iteration nevertheless provides total discretion to the Minister regarding whether to designate a project, and even projects not on the Project list could find themselves subject to review. This results in considerable uncertainty for proponents, workers as well as government and does not respect the principles underlying the Accord Acts.

The IAA also affords the Minister and Cabinet the power and discretion to pause, suspend or cancel a project throughout the project assessment life cycle. Such discretionary powers do not respect the joint management principles of the Accord Acts. It also increases the uncertainty of project proponents with respect to a timely and efficient regulatory process. Our government maintains there should be some minimum threshold for designation that guides the Minister.

There should be objective standards rooted in science-based evidence, similar to those used to develop the Project List, to guide the Minister's decision-making. Moreover, in order to respect the principles of the Accord Acts, the Federal Minister must consult the Provincial Minister on decisions that have potentially significant impacts on our offshore industry.

Our government understands that it is reasonable to have some flexibility for the Minister and Cabinet through different parts of the regulatory process in order to accommodate exceptional circumstances or requirements. However, the current Bill has some aspects that seem arbitrary. For example, the Act reasonably requires that where the Minister extends a timeline, she or he must provide justification for the extension and the reasons for granting the extension. The same does not apply when the Governor in Council approves or recommends the extension. This undermines process transparency and discipline. Moreover, it seems excessive to allow an extension of the time limit for the decision issued beyond 30 days for a Ministerial decision or 90 days for a Governor in Council decision. Even under exceptional circumstances, one extension of up to 90 days by the Minister should be sufficient. At a bare minimum, any extension of timelines provided for in the proposed IAA should contain the rationale, including those made by the Governor in Council.

2. Designated Project List

Bill C-69 includes provisions to revise the Designated Project List (DPL) identified in the *Canadian Environmental Assessment Act, 2012*. There is little in the way of transparency or clear criteria describing how to carry out or apply revisions, or even what types of activities may require an impact assessment. The current Bill nevertheless proposes that such a Project List requires impact assessments only for those projects that have the most potential for adverse effects related to the environment. The Bill allows for projects with lesser effects to continue to be subject to other federal regulatory processes such as those regulated by "life-cycle regulators" of which the Act cites the C-NLOPB as an example. However, as currently proposed the Bill requires that an impact assessment be referred to a review panel if the designated project includes physical activities that are regulated under the Accord Acts.

A well-defined DPL is required to address project proponent concerns regarding regulatory uncertainty both in our offshore oil and gas and mining sectors. Clearly identified criteria focused on the most complex, environmentally sensitive/challenging projects with long-term operational life cycles is therefore critical. Project activities that are of short duration, smaller in scale, with minimal environmental effects and are regularly occurring should be subject to approval and authorization from the life-cycle regulator. The DPL should exclude generally routine projects and activities with proven mitigations such as exploration, geophysical activities, and expansions to existing offshore projects. The Bill also does not exclude projects that have already undergone extensive environmental assessment processes from further review.

Exploratory wells, geological and geophysical surveys should be exempt from the DPL. These activities are of short duration and are subject to specific requirements, including environmental processes, prior to approval by the C-NLOPB. In addition, once approved, the C-NLOPB continues to monitor the work or activity for compliance. Exploratory wells meet the criteria of

short duration, minimal environmental effects and a large well-established knowledge base with respect to environmental impacts related to these activities. The primary environmental concern during exploratory drilling is the effects of drilling waste and other discharges associated with the program. The potential environmental effects associated with such programs are low, due to the small volumes discharged and the short-term nature of drilling activity, which is normally 60-90 days. Mitigation of the potential effects on the environment of drilling are addressed through engineering and environmental design criteria, industry standards, and environmental monitoring.

A joint regional environmental assessment for offshore exploratory drilling is appropriate given the brief time duration of drilling operations and the application of an extensive suite of standards and mitigation measures (e.g., Offshore Waste Treatment Guidelines) in place. There is also a low potential for environmental effects from routine discharges/emissions, because companies wishing to conduct exploratory drilling in Canadian marine waters may be required to put in place additional or enhanced environmental mitigation measures reducing the risk of harm to marine life and/or to validate environmental assessment predictions. The potential cumulative effects will make a minor contribution, if any, to overall effects given the extensive mitigation and monitoring measures including ongoing communications with other ocean users.

3. Information Requirements and Timelines

Timelines for environmental assessment processes must be globally competitive and not exceed those of comparable international jurisdictions (i.e., United Kingdom/Norway). Project approvals in the C-NL Offshore Area must not become overly burdensome in terms of information requirements and timelines. They must remain reasonable to allow for timely development. Bill C-69 establishes timelines for impact assessments extended into the planning and decision phases. It introduces a new mandatory early planning and engagement phase as well as a mechanism of “stopping the clock” for legislated timelines. Our Government is concerned the proposed requirements could result in lengthy delays in the assessment process that could unnecessarily impede development of projects in the Offshore Area.

Under *CEAA 2012*, the EA process takes on average 2.5 years. The automatic deferral of all offshore activities on the DPL to a review panel imposes timelines that are longer and more uncertain than under the current process. The timeline provisions also allow the Minister to establish a time limit that is longer than 300 days to a limit of 600 days. This will result in a process that is 3-years or longer for every project - longer than it currently takes under *CEAA 2012*. This is clearly excessive for short duration projects, such as exploration wells. The new process also includes three phases in the review panel process - early planning, impact assessment and decision-making - a procedure that could take up to 870 days or longer. This timeframe is an unnecessary regulatory burden, potentially undermining development opportunities and the global competitiveness of the C-NL Offshore Area.

If applied correctly, an early planning phase could provide some advantages, but the current iteration in the Act is unnecessarily onerous. The early planning phase should, but does not, establish a clear framework for the review process. For example, the requirement to provide a

notice that sets out how to address issues raised by the public and Indigenous groups is unnecessary and duplicative at the early stage of the assessment. This information will be set out in the information and studies provided by the proponent in the impact assessment. Also, there are too few intermediate decision milestones identified, preventing proponents from having a clear sense of whether the project should advance or not. In addition, if lifecycle regulator cooperation agreements are not established in advance, it will be extremely difficult to execute activities jointly with lifecycle regulators during early planning – which is a goal of the legislation. It is also unclear if the proponent will be able to proceed to decision on whether an impact assessment is required if information is considered to be lacking, where there are no constraints on how frequently additional information can be requested. As well, undertaking a 180-day early planning phase for projects that are adequately addressed by regional assessments or other means is not effective use of industry, stakeholders, or government's time and resources. A more structured model of how regional and strategic assessments are to be considered in early planning is necessary to reduce duplication of efforts.

The Act also calls for significantly increased consultations with Indigenous peoples, special interest groups and the public. The Government of Newfoundland and Labrador fully supports an open, transparent and inclusive process that fully consider the views of all parties affected. Our government supports fully discharging the duty to consult Indigenous people as set out by the jurisprudence on this duty. However, given the unique constitutional character of Indigenous rights, not every situation triggers this duty. The duty to consult Indigenous people should be extended to those Indigenous organizations in situations where the duty to consult is triggered. Those situations would involve credible evidence of rights or their assertion, and a demonstrated or at least a reasonable causal connection between the potential adverse impacts on those rights. Science-based evidence demonstrating the likelihood of direct effects from a proposed project should determine whom governments consult. Groups directly affected should be identifying early in the planning phase to ensure certainty in the process and to avoid any unnecessary delays as the process unfolds. Decision-makers should have discretion to focus public participation on those directly affected and those having relevant information and expertise. Without clearly articulating that discretion in the Act, such decisions are vulnerable to legal challenge.

We understand that federal internal guidelines are being created to manage public participation within a designated project assessment process. The nature, scope and costs of such public participation requires careful consideration with decision making authority resting with the review panel to ensure effective participation and reasonable costs.

4. Role of the Life-Cycle Regulator

As regulator on behalf of the federal and provincial governments, the C-NLOPB has a mandate to administer the provisions of the Atlantic Accord and regulations promulgated thereunder. The Board oversees operator compliance with those statutory provisions, and facilitates the exploration for and development of hydrocarbon resources in a manner that conforms to legislation related to, among other things, worker safety and environmental protection. The C-NLOPB has effectively served in this role for over 30 years and has developed significant

expertise and knowledge in its role, an expertise that would be extremely difficult to replicate. It is critical that the federal government enhances the opportunities to incorporate the C-NLOPB in the new process to the fullest extent possible.

The Act describes review panels conducted jointly with life-cycle regulators but only include them as minority representation on the panel. This does not fully incorporate the expertise of the C-NLOPB in the process. In fact, in cases of a review panel involving a life-cycle regulator such as the C-NLOPB, Bill C-69 requires that review panel members selected from the C-NLOPB's roster cannot constitute the majority of the members of the panel. This limitation is unreasonable and counterproductive in our government's view. Prior to CEAA 2012 the C-NLOPB was the responsible authority for performing all environmental assessments in the offshore area. They have expertise in all the areas of offshore oil and gas operations and are responsible for all other operational approvals in the C-NL Offshore Area. To not to fully utilize this expertise would undermine the underlying purpose of the IAA to perform more effective and efficient impact assessments. The Review processes should leverage the unique expertise of both provincial and federal lifecycle regulators, not minimize their participation. As this is the policy intent, the C-NLOPB's authority should be enshrined in legislation and not regulations.

On the request of certain jurisdictions, the Federal Minister may approve the use of that jurisdiction's assessment process in substitution of an impact assessment under the Act. Under a review panel, the federal Minister may also enter into an agreement with certain jurisdictions to jointly establish a review panel and prescribe the conduct of the impact assessment. The inclusion of a variety of levels and types of impact assessment processes will help align the scale, scope, and type of assessment with the particular circumstances, nature, scope and potential impact risks associated with a designated project. Unfortunately, such flexibility is inapplicable in the C-NL Offshore area under the Act. Oil and natural gas activities regulated under the Accord Acts require a mandatory review panel, and the Minister has no discretion to permit substitutions or joint panel reviews. As a result, the Act provides no means to align the scale and type of assessment process to the particular designated offshore project. This shortcoming needs to be addressed.

5. Regional Assessments

Bill C-69 allows the federal Minister to initiate Regional and Strategic Assessments, but these processes are not well defined in the proposed legislation. Jointly developed and appropriately applied Regional Assessments (RA) can be beneficial to reduce duplication of efforts, provided there is a structured model to incorporate RAs in early planning. Clarity is required regarding establishing provisions that constitute the desired outcome, assessment timelines, and the role of the C-NLOPB in the process. The current Act includes no mandated triggers or timelines, and there is no clear role for the C-NLOPB in these processes. The RA process should clearly define an activity's function, structure, objectives and processes involved as well as the decision-making procedure and the criteria involved. The Act should also define how these results apply to future activities and how they fit in future decision-making. This will help to avoid needless delays and duplication of comparable assessment processes. The RA process

should be enshrined in legislation not regulations in order to provide clarity and certainty of the process and outcome.

The C-NLOPB has been conducting Strategic Environmental Assessments (SEAs) in the C-NL Offshore Area since 2002. These have examined the environmental effects associated with various offshore plans, programs or policy proposals, while allowing for the incorporation of environmental considerations at the earliest stages of program planning. These SEAs inform the mitigation measures that have allowed for the successful completion of numerous offshore exploration and development projects without significant adverse effects on the marine environment. The C-NLOPB has the expertise and knowledge to carry out these assessments, it is the most suited and best-placed regulator to conduct such assessments in the C-NL Offshore Area, and the Act should reflect their role in doing so.

Currently, federal officials (CEA Agency and Natural Resources Canada), Provincial officials (NL Natural Resources and Intergovernmental Affairs) and the C-NLOPB are working to implement a Regional Assessment study under *CEAA 2012*. The proposed study will gather evidence-based knowledge on the potential effects of existing or future physical activities in a defined offshore area. This assessment will identify mitigation measures to allow for the exclusion of exploration drilling projects from the DPL. Once the RA is completed, applications for exploratory wells will not be subject to approval and authorization by the C-NLOPB. If the Project List ultimately includes exploratory wells, applications for drilling outside a defined regional assessment could undergo a panel review and an unnecessarily lengthy review process.

If implemented properly, SEAs and Regional Assessments could serve as the forum needed for considered discussions on public policy issues such as climate change, sustainability, and the intersection of sex and gender with other identity factors. Addressing these concerns in a SEA or Regional Assessment could define a framework to assess whether an individual project is compliant with a given public policy objective. Therefore, not every project would lead to overly broad policy debates that are far beyond the ability of any single project to address.

Conclusion

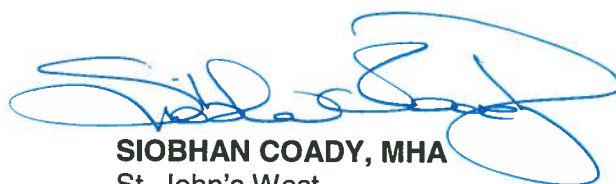
The stated policy intent of Bill C-69 is to provide a more rigorous and efficient assessment process with reduced legislated timelines and clearer upfront requirements, but many crucial aspects of the proposed legislation do not fully reflect this. While well intentioned, Bill C-69 could simply deter investment in the C-NL Offshore and in our mining sector without improving environmental protection or increasing public acceptance of a particular development or activity. It is also clear that Bill-69, as currently written, does not fully respect the principles of the Atlantic Accord with respect to joint management and shared jurisdiction.

Our government maintains a clear commitment to environmental protection built upon an evidence-based balanced approach. This should apply to all decisions on future economic development. Bill C-69 must balance economic opportunities with clear, prudent and time-sensitive environmental assessments to ensure effective government oversight and regulation.

To disadvantage Newfoundland and Labrador with negative short and long-term consequences, without improved outcomes would serve neither the federal nor provincial policy goals.

Thank you for the opportunity to comment on Bill C-69 and I remain available to discuss our concerns at a mutually convenient time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Siobhan Coady".

SIOBHAN COADY, MHA
St. John's West
Minister

- c. Honourable Dwight Ball
Premier of Newfoundland and Labrador

- Honourable Graham Letto
Minister of Municipal and Environmental Affairs

- Honourable Tom Osborne
Minister of Finance

- Honourable Sherry Gambin-Walsh
Minister of Service NL

- Honourable Catherine McKenna
Minister of Environment and Climate Change

- Honourable Amarjeet Sohi
Minister of Natural Resources Canada

- Honourable Bill Morneau
Minister of Finance

- Honourable Seamus O'Regan,
Minister of Indigenous Services

- Mr. Churence Rogers, MP - Bonavista-Burin-Trinity

- Mr. Nick Whalen, MP - St. John's East

- Mr. Ken McDonald, MP - Avalon

- Ms. Gudie Hutchings, MP - Long Range Mountains

- Ms. Yvonne Jones, MP - Labrador

- Mr. Scott Simms, MP - Coast of Bays-Central-Notre Dame

Government of Newfoundland and Labrador

Department of Natural Resources

Submission to the Senate Standing Committee on Energy, the Environment and Natural Resources

Re: Bill C-69

Proposed Amendments and Rationale

1. Federal Minister/Cabinet Powers

The *Impact Assessment Act (IAA)* must respect the joint management principles of the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (Accord Acts)*. Federal Ministers and Cabinet cannot be given arbitrary, discretionary powers over matters under *Accord Acts* jurisdiction.

- A fundamental principle of the Atlantic Accord Agreement, between Canada and Newfoundland and Labrador (February 11th, 1985), is the joint management of the Canada-Newfoundland and Labrador (C-NL) Offshore Area by both the Governments of Canada and Newfoundland and Labrador. The Agreement jointly established the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) to administer the relevant provisions of the *Accord Acts* and other relevant legislation (s. 3), including the administration of technical regulations related to environmental protection (s. 24(d)).
- The 2019 Atlantic Accord Agreement emphasized Newfoundland and Labrador and Canada's commitment to jointly manage offshore petroleum development and marine conservation plan ocean conservation and petroleum activity, as well as to deepen and strengthen joint management in the C-NL Offshore Area. These commitments are consistent with the traditional role of the C-NLOPB, the life-cycle regulator, as the responsible authority for EA.
- As currently written, however, the *IAA* affords the Federal Minister of Environment and Climate Change (ECC) and Cabinet the power and discretion to pause, suspend or cancel a project throughout the project assessment life cycle.
- These discretionary powers violate the joint management principles of the *Accord Acts*. As well, they create the potential for the further politicization of the regulatory system and resource projects, and increase the uncertainty of project proponents.
- In order to fully respect the principles of the *Accord Acts*, the Provincial Minister of Natural Resources should be involved in all decisions that influence the oil and gas activities in the C-NL Offshore Area.

- At the very least, the Federal Minister must consult the Provincial Minister of Natural Resources on all decisions related to oil and gas activities in the C-NL Offshore Area.
- The Provincial Minister's agreement should be required for decisions that could halt the process and prevent a particular project from moving forward in the C-NL Offshore Area.
- **PROPOSED AMENDMENTS:**
 - The Federal Minister of ECC must consult with the provincial Minister of Natural Resources prior to exercising a the following powers:
 - designating a physical activity under s. 9(1);
 - suspending a time limit under s. 9(5), 18(6), 28(9), and 37(6);
 - referring a matter to a review panel under s. 36;
 - extending a time limit under s. 37(3), 37.1(2);
 - developing the panel's terms of reference under s. 48.1;
 - make public interest determination under s.60;
 - Establishing conditions under s. 64;
 - amending a decision statement under s. 68;
 - making regulations under s. 112(c).
 - The Federal Minister of ECC must obtain the approval of the Provincial Minister prior to exercising the power to:
 - Issue an opinion under s. 17;
 - terminate the assessment under s.58(3);
 - establish a regional assessment under s. 93;
 - establish a strategic assessment under s. 95.

2. Designated Project List

The Designated Projects List (DPL) should exclude well-understood, routine projects and activities with proven mitigations such as exploration, geophysical activities, and expansions to existing offshore projects. As well, any projects that have already undergone extensive environmental assessment processes should be excluded from further review.

- A well-defined DPL is required to address project proponent concerns regarding regulatory uncertainty. Projects should only be placed on the on DPL using clearly identified criteria focused on identifying the most complex, environmentally sensitive/challenging projects with long-term operational life cycles.
- Exploratory wells, geophysical activities, expansions of existing offshore projects must be exempt from the DPL.
- In addition, projects that have undergone previous extensive environmental assessment processes, including regional assessments, strategic environmental assessments or geographic areas that have undergone multiple project-specific environmental assessments, should be screened out by the Impact Assessment Agency early in the process. This should not be considered as part of the early planning phase.
- Well-established project activities that are of short duration, small in scale, have minimal environmental effects, and are frequently occurring should not be considered as designated projects and should be subject to approval and authorization from the life-cycle regulator.
- C-69 requires that an impact assessment be referred to a review panel if the project includes physical activities that are regulated under the *Accord Acts*. The Federal Minister of ECC has no discretion to consider alternatives to a joint review panel. As a result, Bill C-69 provides no means to align the scale and type of assessment process to the particular designated offshore project. This shortcoming needs to be addressed, while maintaining the role of the life-cycle regulator in the assessment.
- **PROPOSED AMENDMENTS:**
 - The definition of designated project should be limited to complex, environmentally sensitive/challenging projects with long-term operational life cycles, under s. 2 and 9;
 - Regulations designating a physical activity or class of physical activities as designated projects, in relation to a matter regulated under the *Accord Acts*, pursuant to section 109, should only be made in consultation with the Provincial Minister of NR;
 - The Agency may conduct an impact assessment of a matter regulated under the *Accord Acts*, together with the life-cycle regulator.

3. Information Requirements and Timelines

Timelines for environmental assessments processes must be globally competitive and not exceed those of comparable international jurisdictions.

- Project approvals in the C-NL Offshore Area must not become overly burdensome in terms of information requirements and timelines, and must remain reasonable to allow for timely development.
- Bill C-69 does very little to decrease ambiguity on timelines and mandates several new steps and processes which have the effect of increasing uncertainty rather than improving the regulatory regime.

- The automatic deferral of all offshore activities on the DPL to a review panel would impose timelines that are longer and more uncertain than under CEAA 2012.
- Despite the stated policy intent to do so, the early planning phase does not establish a clear framework for the review process. The timeline provisions allow the Minister to establish a time limit for submission of an impact assessment report that is no longer than 300 days, but can be extended to a period of no longer than 600 days, and as well be further extended by the Minister up to 90 days, or by Cabinet indefinitely. This is excessive for short duration projects, such as exploration wells.
- Timelines should be in line with proposed amendments to CEAA 2012 - 12 months from receipt of a complete application to decision. Timelines must be comparable to other international offshore jurisdictions as well – 6 - 18 months.
- A more structured model of how regional and strategic assessments fit in early planning is necessary to reduce duplication of efforts.
- Groups directly affected by a particular project should be identified early in the planning phase to ensure certainty in the process and to avoid any unnecessary delays.
- Decision-makers should have discretion to focus public participation on those directly affected and those having relevant information and expertise. That discretion should be articulated in the Act, in order to decrease vulnerability to legal review.

- **PROPOSED AMENDMENTS:**

- To reduce timelines, amendments are required to:
 - reduce the time that the submission of an impact assessment can be extended under s. 37.1;
 - provide an option for an agency led impact assessment, upon consultation with the Minister of NR and with the participation of the C-NLOPB;
 - add a deadline for:
 - posting a copy of an assessment on Internet site under s. 55;
 - Submission of a regional assessment under s. 93; and
 - Submission of a strategic assessment under s. 95;
 - Remove the ability to extend a time to issue a Decision Statement under s. 65(3).

Reasons of Governor in Council decision to extend timelines must be posted, under s. 18(5); 28(8); 37(5); and 65(7).

- The discretion of the Governor in Council to extend timelines indefinitely should be limited to 90 days under s. 18(4); 28(7); 37(4), and 65(6).
- To provide more certainty, amendments are required to :
 - Clarify proponent prohibitions under s. 7 to ensure they are directly related to an impact on the environment;
 - Allow flexibility regarding factors to consider in an impact assessment, under s. 22;

- Allow the Agency to control public participation, under s. 11 and 27;
- Clarify the factors to be considered in a determination of public interest to ensure that a decision maker will consider the economic and social effects of a designated project, under s. 63;

4. Role of the Life-Cycle Regulator

The role of the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), as the “life-cycle regulator” in the C-NL Offshore Area, for environmental assessments must be enshrined in legislation in order to align with the policy intent of fully incorporating its expertise.

- The C-NLOPB, as the “life-cycle regulator” for activities in the C-NL Offshore Area, should be designated as responsible for all environmental assessment processes as was previously conceived and enacted in federal environmental assessment legislation. The C-NLOPB should be designated as the authority responsible for all aspects of an impact assessment, prior to submission to the Minister of ECC.
- Under the current iteration of C-69, the C-NLOPB is not the responsible authority for all aspects of the IA. The Act also minimizes the C-NLOPB’s role in the IA process. Review panels conducted jointly with life-cycle regulators only include them as minority representation on the panel. This does not fully incorporate the expertise of the C-NLOPB in the process.
- The C-NLOPB has the expertise in all areas of offshore oil and gas operations and is responsible for all other operational approvals in the C-NL Offshore Area. To not fully utilize this expertise would undermine the underlying purpose of the *IAA* to perform more effective and efficient impact assessments. The assessment process should leverage the unique expertise of the lifecycle regulator, not minimize their participation. The C-NLOPB’s authority in the assessment process should be expanded, and this authority should be enshrined in legislation and not left to regulations.
- **PROPOSED AMENDMENTS:**
 - The C-NLOPB should be designated as responsible for all environmental assessment processes in the offshore area;
 - To more fully incorporate the life-cycle regulator in the process and show respect for the principles of joint management under the *Accord Acts* if the C-NLOPB is not designated as the Responsible authority, amendments are needed to:
 - Require the participation and approval of the C-NLOPB in Agency-led Impact Assessments, under s. 21;
 - Allow the C-NLOPB to constitute a majority of a review panel, under s. 48.1(4);
 - Remove requirement that panel members have to be board members by eliminating 50 (d).

5. Regional Assessments

Clarity around Regional Assessments (RAs) is required and the legislation should incorporate provisions that identify the desired outcome, assessment timelines, and the role of the C-NLOPB in the process.

- Regional Assessments can be beneficial if developed and used appropriately. A structured model of how RAs fit in early planning if avoiding the duplication of efforts is the goal.
- Bill C-69, as currently written, has no mandated provisions that guarantee that a Regional Assessment process will be successful and no mandated triggers or timelines for their completion. The proposed Act must set out clear provisions that address these issues and includes cooperation with life-cycle regulators.
- The Act should also enshrine the policy intent on how the results of RAs will apply to future activities and how they fit in future decision-making. Offshore exploration wells should be exempt from undergoing project-specific federal environmental assessment in areas where an RA has been carried out and the proposed project conforms to the conditions set out in the RA.
- The role of the RA should be enshrined in legislation not in regulations in order to provide clarity and certainty of the process and outcome.
- **PROPOSED AMENDMENTS:**
 - To provide clarity around Regional Assessments, amendments are required to require the C-NLOPB to perform a regional assessment under s. 93;
 - To provide clarity around Strategic Assessments, amendments are required to require the C-NLOPB to participate in a Strategic Assessments under s. 95.