November 27, 2018

By Courier and E-mail

Senate Standing Committee on
Energy, the Environment and Natural Resources
c/o
Senate of Canada
Committees Directorate
40 rue Elgin Street
Ottawa ON K1A0A4

Attention: Maxime Fortin
Committee Clerk

RE: Comments - Division 5 and Division 22 of Bill C-86

Thank you for granting the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) the opportunity to present its comments in writing rather than appearing before this Senate Committee given the recent events in the Canada-Newfoundland and Labrador Offshore Area (Offshore Area) this month. Although the Committee has sought our comments only in relation to Division 5 of Bill C-86, I believe it is also important to comment on concerns noted in the Canada Shipping Act amendments found in Division 22.

Division 5 – Greenhouse Gas Emissions Pricing

Protection of the environment is one of the key mandates of the C-NLOPB. In that regard, the C-NLOPB has the requisite expertise and understanding of emissions from installations in the Offshore Area. As such and recognizing the principled approach to a single regulator for the Offshore Area, the C-NLOPB is supportive of Division 5 of the Bill which grants the C-NLOPB the necessary jurisdiction to facilitate the regulation of greenhouse gas emissions pricing in the Offshore Area. The C-NLOPB has been engaged on this initiative and intends to enter into a memorandum of understanding with the Government of Newfoundland and Labrador to assist in the administration and implementation of its Management of Greenhouse Gas Act as it applies to certain prescribed petroleum-related activities in the Offshore Area. The C-NLOPB should never have accountability without the requisite legislative authority and these provisions will expedite the implementation of this framework in the Offshore Area.
Division 5 – Other Topics in the Offshore Area (Occupational Health and Safety Act)

With respect to Division 5 commentary, I acknowledge the tremendous participation of C-NLOPB staff in providing technical support to the working group charged with drafting the Regulations for Part III.1 – Occupational Health and Safety of the Accord Acts. It is imperative that an updated regulatory package is enacted for the Offshore Area. Accordingly, the C-NLOPB is supportive of the provision in section 179 of Division 5 of this Bill which amends the Offshore Health and Safety Act to postpone the repeal of certain regulations. To do otherwise would create uncertainty and a gap in the regulatory framework given these transitional regulations are effective only to December 31, 2019. This amendment will afford the time necessary to have a comprehensive updated suite of occupational health and safety regulations finalized and enacted no later than December 31, 2020. It is imperative there are no further delays and the requisite priority assigned to this initiative.

We look forward to these changes and do not have any concern with the enactment of these Divisions of the Bill.

Division 22 – Canada Shipping Act, 2001

Our final comment relates to the amendments to the Canada Shipping Act. Both the Terra Nova FPSO (Floating Production Storage Offloading) and the SeaRose FPSO are Canadian flagged vessels to which the Canada Shipping Act would apply when these vessels are not attached to a spider buoy conducting activities authorized pursuant to the Accord Acts.

Given the dual jurisdiction, the C-NLOPB has collaborated with Transport Canada – Marine Branch and in 2014 entered into a Memorandum of Understanding with Transport Canada (MOU) to clarify roles and responsibilities and to avoid duplication of work. To better understand the complexity of jurisdiction, annexed please find the Annex to this MOU.

Several of these amendments as discussed below, create uncertainty for the C-NLOPB in the delivery of its mandate.

Paragraph 10(1)(c) of the Canada Shipping Act is to be replaced by the following:

(c) enter into agreements or arrangements respecting the administration or enforcement of any provision of this Act or the regulations and authorize any person or organization — including a provincial government, a local authority and a government, council or other entity authorized to act on behalf of an Indigenous group — with whom or which an agreement or arrangement is entered into to exercise the powers or perform the duties and functions under this Act that are specified in the agreement or arrangement.

Although this list is not exhaustive, it would be preferable if the C-NLOPB, who is referred to as a federal authority in Bill C-69, could be included in this list. This would afford greater collaboration and support the single regulator approach to oversight of offshore safety and protection of the environment.

The proposed section 35.1 in Division 22 provides new regulation making authority extending to mooring and marine management systems. In subsection 205.124(1) of the Accord Acts, passenger craft regulations cannot be enacted without recommendation from the Minister of Transport. One would have expected that the Minister of Natural Resources would have been granted equivalent
input on the regulations contemplated in these proposed amendments. Such regulations made in isolation could create conflict or inconsistency and negatively impact the safety of petroleum operations on these FPSOs operating in the Offshore Area. Such conflicts or inconsistency is best avoided by effective legislative drafting now at Bill stage, and cannot be addressed by MOUs.

Sincerely,

Scott Tessier
Chair & CEO

Enclosure

c: The Honourable Amarjeet Sohi, P.C., M.P.

The Honourable Siobhan Coady, MHA
### Jurisdictional Roles and Responsibilities of the Canada-Newfoundland and Labrador Offshore Petroleum Board and Transport Canada Marine Safety and Security

<table>
<thead>
<tr>
<th>Vessel / Installation Type</th>
<th>Location &amp; Status (within offshore area)</th>
<th>Applicable Act(s)</th>
<th>Enforcement Responsibility for:</th>
<th>Marine Ship Safety&lt;sup&gt;(1)&lt;/sup&gt;</th>
<th>OSH</th>
<th>Environmental Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Accord Acts Canada Oil and Gas Operations Act (with respect to ship safety)</td>
<td>CSA 2001 Safety / Navigation</td>
<td>CLC</td>
<td>CTA</td>
<td>CTA - LoC or CoF</td>
</tr>
<tr>
<td>Installation&lt;sup&gt;(1)&lt;/sup&gt; (Foreign Flagged)</td>
<td>On Location in offshore area with valid authorization.</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>CoF</td>
</tr>
<tr>
<td></td>
<td>Off location but in offshore area with a valid authorization</td>
<td>Y</td>
<td>Y&lt;sup&gt;(2)&lt;/sup&gt;</td>
<td>N</td>
<td>Y</td>
<td>CoF</td>
</tr>
<tr>
<td></td>
<td>Off location and in offshore area without a valid authorization.</td>
<td>N</td>
<td>Y&lt;sup&gt;(2)&lt;/sup&gt;</td>
<td>N</td>
<td>Y</td>
<td>C-NLOPB</td>
</tr>
<tr>
<td>Installation&lt;sup&gt;(1)&lt;/sup&gt; (not flagged)</td>
<td>On Location in offshore area with valid authorization.</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>C-NLOPB</td>
</tr>
<tr>
<td></td>
<td>Off location but in offshore area with a valid authorization</td>
<td>Y</td>
<td>Y&lt;sup&gt;(2)&lt;/sup&gt;</td>
<td>N</td>
<td>N</td>
<td>C-NLOPB&lt;sup&gt;(3)&lt;/sup&gt; or CoF</td>
</tr>
<tr>
<td></td>
<td>Off location and in offshore area without a valid authorization.</td>
<td>N</td>
<td>Y&lt;sup&gt;(2)&lt;/sup&gt;</td>
<td>N</td>
<td>N</td>
<td>C-NLOPB</td>
</tr>
<tr>
<td>Installation&lt;sup&gt;(1)&lt;/sup&gt; (Canadian flaged)</td>
<td>On Location in offshore area with valid authorization.</td>
<td>Y</td>
<td>Y&lt;sup&gt;(3)&lt;/sup&gt;</td>
<td>N</td>
<td>N&lt;sup&gt;(4)&lt;/sup&gt;</td>
<td>Both, C-NLOPB is lead</td>
</tr>
<tr>
<td></td>
<td>Off Location but in offshore area with a valid authorization</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>Both&lt;sup&gt;(3)&lt;/sup&gt;, TCMSS is lead</td>
</tr>
<tr>
<td></td>
<td>Off location and in offshore area without a valid authorization</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>Both&lt;sup&gt;(3)&lt;/sup&gt;, TCMSS is Lead</td>
</tr>
<tr>
<td>Supply, Support Vessel (Canadian flaged)</td>
<td>engaged in support to authorized activity in offshore area</td>
<td>Y</td>
<td>Y</td>
<td>Y&lt;sup&gt;(5)&lt;/sup&gt;</td>
<td>N</td>
<td>Both, TCMSS lead</td>
</tr>
</tbody>
</table>
### Jurisdictional Roles and Responsibilities of the Canada-Newfoundland and Labrador Offshore Petroleum Board and Transport Canada Marine Safety and Security

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<tr>
<td></td>
<td></td>
<td>Accord Acts (within offshore area)</td>
<td>Marine/Ship Safety (3)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>CSA 2001 Safety &amp; Navigation</td>
<td>CTA - LoC or CoF</td>
</tr>
<tr>
<td>Supply, Support Vessel (foreign flagged)</td>
<td>engaged in support to authorized activity in offshore area</td>
<td>Y Y N Y</td>
<td>LoC</td>
</tr>
<tr>
<td>Vessels engaging in Seismic, Construction activities (Canadian flagged)</td>
<td>Engaged in Authorized activity in offshore area</td>
<td>Y Y N(11) N(12)</td>
<td>Both, TCMSS lead</td>
</tr>
<tr>
<td>Vessels engaging in Seismic, Construction activities (foreign flagged)</td>
<td>Engaged in Authorized Activity in offshore area</td>
<td>Y Y N Y</td>
<td>LoC(9)</td>
</tr>
</tbody>
</table>

**Acronyms:**
- **C-NLOPB**: Canada-Newfoundland and Labrador Offshore Petroleum Board
- **TCMSS**: Department of Transportation - Marine Safety & Security Division
- **CSA**: Canada Shipping Act
- **CLC**: Canada Labour Code
- **CTA**: Coasting Trade Act
Jurisdictional Roles and Responsibilities of the Canada-Newfoundland and Labrador Offshore Petroleum Board and Transport Canada Marine Safety and Security

Footnotes:

(1) Up to and including an offloading connection.

(2) With respect to pollution events, or safety of navigation (reference Part 9, Section 186, CSA).

(3) Includes navigation.

(4) When any installation that is under a valid authorization is under tow, or is loaded on a vessel as cargo, Marine/Ship Safety is responsibility of the tow or cargo vessel (refer to Supply, Support Vessel section of the table) and the OHS regulatory responsibility for the Installation would be within the jurisdiction of the C-NLOPB.

(5) Lead determined on case-by-case basis to be agreed between the Participants at the time a relevant incident has been brought to their attention.

(6) Limited to where CSA augments the Accord Acts.

(7) When Installation is not flagged and under tow, or is loaded on a vessel as cargo, OSH is responsibility of the tow or cargo vessel (refer to Supply, Support Vessel section of the table).

(8) The OHS of the crew is the regulatory responsibility of the Flag State. However, the OHS of passengers in transit to installations is the regulatory responsibility of the C-NLOPB.

(9) CTA process/LoC not required for vessels engaging in seismic activities.

(10) Canadian non-duty paid installations and vessels do require CTA clearances and licenses.

(11) In accordance with the Accord Acts, a seismic or construction vessel would be considered a marine installation or structure.

AGREED

THE BOARD

[Signature]

[Name]

[Position]

[Date]

TCMSS

[Signature]

[Name]

[Position]

[Date]