April 24, 2019

Senator Rosa Galvez, Chair
Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Galvez:

Please find attached a submission on behalf of the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) 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.

While the C-NLOPB appreciates having been provided with an opportunity to appear in person before the Standing Senate Committee on Energy, the Environment and Natural Resources in St. John’s, we have taken this approach given the Newfoundland and Labrador election campaign and our federal-provincial mandate under the Atlantic Accord.

I trust the attached information will be of value in the Committee’s important study of Bill C-69. I would be pleased to be of further assistance upon request.

Yours truly,

Scott Tessier
Chief Executive Officer

Attachment

c: The Honourable Siobhan Coady, MHA
   The Honourable Catherine McKenna, P.C., M.P.
   The Honourable Amerjeet Sohi, P.C., M.P.
Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB)
Submission to the Standing Senate Committee on Energy, the Environment and Natural Resources Regarding Bill C-69

April 24, 2019

Introduction

• For over 30 years, the C-NLOPB has served as the effective, independent regulator of petroleum-related activities in the Canada-Newfoundland and Labrador Offshore Area, with a mandate that includes oversight of safety, environmental protection, resource management and industrial benefits.

• Safety and environmental protection are paramount in all Board decisions. The Board does not promote the petroleum industry. Our responsibility for the administration of land tenure and our regulatory oversight of industrial benefits should never be conflated with industry promotion.

• The C-NLOPB is an arm’s length product and agent of joint management under the Atlantic Accord between the federal government and the Government of Newfoundland and Labrador.

• The C-NLOPB is in a unique position to comment on Bill C-69 given our significant technical expertise and experience in regulating a range of offshore oil and gas activities since the mid-1980s, and our depth and breadth of experience in environmental assessments (EAs).

• Since 2003, the Board has completed 63 project EAs and an additional seven Strategic Environmental Assessments (SEAs), along with one SEA Update. Public comments are invited at several stages in these processes and in the interest of transparency, a wide range of relevant documents are posted publicly.

• The C-NLOPB is currently updating the SEA for the Labrador Shelf, an initiative that is being co-chaired by the Nunatsiavut Government.

• In April 2018, when the C-NLOPB appeared before the House of Commons Standing Committee on Environment and Sustainable Development as part of its review of Bill C-69, we indicated that the C-NLOPB supported the objectives of the proposed legislation.

• We noted at that time the C-NLOPB was pleased that Bill C-69 undertook to respect the principles of joint management, along with recognizing the importance of the Atlantic Accord.

• We were also pleased to see in related documents, released when Bill C-69 was initially tabled, that projects with potential for smaller effects in areas of federal jurisdiction would continue to be subject to other regulatory processes under life-cycle regulators, like the C-NLOPB.
• In April 2018, it was very “early days” in our understanding of the Impact Assessment process per Bill C-69, including what role the C-NLOPB would play and how the new Impact Assessment process intersected with the Board’s regulatory mandate per Atlantic Accord legislation.

• Since last summer, staff from both the C-NLOPB and the Canada-Nova Scotia Offshore Petroleum Board, along with officials from the Governments of Newfoundland and Labrador and Nova Scotia have had significant engagement with officials from the Canadian Environmental Assessment Agency (“the Agency”) and Natural Resources Canada (NRCan). The focus has been to further detail the various steps in the new Impact Assessment process, highlighting the roles to be played by the Agency, the two Offshore Boards and the Governments of Newfoundland and Labrador and Nova Scotia in each step of the process.

• This staff-level Working Group is making good progress in detailing how the Impact Assessment process outlined in Bill C-69 can be integrated and coordinated to the extent possible with the Offshore Boards’ regulatory processes. As we do so, there is a firm and strong commitment by all parties to respect the role and mandate of the two Offshore Boards, and to uphold the fundamental joint management principles in the Atlantic Accord.

• More recently, the Government of Newfoundland and Labrador provided its submission to the Standing Senate Committee on Energy, the Environment and Natural Resources regarding Bill C-69. An overarching point in that submission was that joint management principles and the role of the C-NLOPB must be clarified in Bill C-69. In this context, the province’s submission recommended a number of amendments to the Bill for the Standing Senate Committee’s consideration, and the C-NLOPB acknowledges and appreciates the provincial government’s support of its work to date.

• This submission from the C-NLOPB will reflect back on the questions and issues which we posed in April 2018 in presenting to the House of Commons Standing Committee, and offer a current C-NLOPB perspective.

One Window Regulatory Approach

• The first question the C-NLOPB raised in April 2018 was with respect to the single window approach, in the spirit of joint management and “one project, one review”.

• We noted then that the C-NLOPB’s single window approach had worked effectively for over 30 years, in one of the world’s harshest offshore environments.

• Specifically, we raised the question of how the Board’s existing one window approach would work with the creation of the new Impact Assessment Agency, and noted that Bill C-69 was silent on such matters of potential conflict between regulators.

• We now have more clarity on the respective roles that are likely for the Board and the new Impact Assessment Agency.
Based on the discussions to date of the aforementioned Working Group, it is clear that the Agency, NRCan and the Government of Newfoundland and Labrador want the C-NLOPB to play a substantive and direct role in all stages of the Impact Assessment process.

We are confident that there is a shared intention for the Board’s regulatory review and approval process, including the Development Application process for development projects and the associated joint management principles, to be respected in the implementation of Bill C-69.

**Compliance and Enforcement**

- In our presentation to the House of Commons Standing Committee, we also referenced Bill C-69 provisions respecting the appointment and powers of enforcement officers, which could deviate from the one window approach, and overlap with the duties and responsibilities of C-NLOPB officers.

- This concern arose due to the fact both the *Atlantic Accord Implementation Acts* and Bill C-69 contain provisions related to compliance and enforcement activities, which presents the potential for duplication and overlap, a significant deviation from the single window approach that considers safety and environmental protection in all decisions and orders of the Board.

- A similar issue exists today with respect to the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* and the *Atlantic Accord Implementation Acts*. To address this concern, in January 2019 the C-NLOPB and the Agency entered into a Memorandum of Understanding (MOU) for Compliance and Enforcement of *CEAA 2012 Decision Statements/Conditions*.

- Per this MOU, selected C-NLOPB staff will be designated under *CEAA 2012* as CEAA Enforcement Officers, and the C-NLOPB will take the lead role in ensuring the compliance and enforcement of conditions associated with recent and pending *CEAA 2012* decisions in the Canada-Newfoundland and Labrador Offshore Area.

- While this MOU pertains to *CEAA 2012* decisions, a similar issue exists with respect to C-69 Impact Assessment Decision Statements/Conditions. There are two potential mechanisms to confirm this approach with respect to Bill C-69:
  - A similar MOU could be entered into for Bill C-69 decisions; or
  - Bill C-69 could be amended to explicitly reference the lead role the C-NLOPB will have in compliance and enforcement of *Impact Assessment Act* decisions. It is noteworthy that Bill C-69 already recognizes a similar lead compliance and enforcement role for other lifecycle regulators, namely the new Canadian Energy Regulator and the Canadian Nuclear Safety Commission (but not for the two Offshore Boards).
Role and Authority of the C-NLOPB

• In our presentation to the House of Commons Standing Committee, we noted that the C-NLOPB had questions regarding the timing for our Development Application process to commence (vis-à-vis the Impact Assessment process), and the linkage between decisions from the Impact Assessment process (which would be exclusively federal) and the Board’s Development Application review (with decisions by both the federal and provincial governments).

• The federal/provincial/Offshore Boards’ Working Group process referenced above has given us further clarity on how this process is expected to work.

• The C-NLOPB’s intent would be to utilize, to the degree possible, the outcomes of the Impact Assessment process to satisfy our legislative requirements for an environmental review to be part of our Development Application process. This approach would be entirely consistent with the “one project, one review” philosophy of Bill C-69.

• Similarly, there are aspects of the Offshore Boards’ Development Application process, including the requirements for a Socio-Economic Impact Statement and a Diversity Plan, which contain information and commitments from project proponents that could be relevant in the Impact Assessment process.

• In a real-time effort to test some of the key provisions of Bill C-69, the C-NLOPB and the Agency recently entered into an MOU for the review of the proposed Bay du Nord Development Project in the Canada-Newfoundland and Labrador Offshore Area.

• As the Bay du Nord Development Project continues to be progressed by the project proponent (Equinor Canada Ltd.), the C-NLOPB and the Agency are working to ensure the timely delivery of both the Agency’s Environmental Assessment process and the C-NLOPB’s Development Application process.

• The goal of the MOU is to ensure an effective, coordinated, and to the extent possible, integrated and concurrent discharge of respective environmental and regulatory responsibilities, with respect to this project.

• In so doing, the intent is to test a number of aspects proposed in Bill C-69, including:
  o The C-NLOPB will utilize, to the extent possible, the outcome of the Environmental Assessment process to satisfy C-NLOPB requirements in our Development Application process (in short, there would not be a need to duplicate the work being done in the Agency’s Environmental Assessment process with the Board’s Development Application process);
  o Socio-economic information, including gender analysis, would be “front-ended” to the degree possible in the Environmental Assessment process;
  o Targeted completion of the Environmental Assessment process in 300 days from the determination of a complete Environmental Impact Statement; and
An Integrated Management Committee will be established to ensure collaboration and cooperation.

- Related to the issue of role and authority of the C-NLOPB, the wording of Section 8 of Bill C-69 seemingly places a restriction on the Board’s discretion. As drafted, it is the new Impact Assessment Agency, not the C-NLOPB, which determines what is in the public interest. With respect to activities in the Canada-Newfoundland and Labrador Offshore Area, there is a clear role for the Board in making such a determination.

**Panel Review**

- Another aspect of Bill C-69 about which the C-NLOPB had questions on last April was the requirement for the federal Minister to refer any physical activities that are designated projects and regulated under the Atlantic Accord Implementation Acts to a Panel review. The Standing Senate Committee may wish to consider an amendment to the draft Bill to provide flexibility for an Impact Assessment Agency-led review, depending on the nature of the activity to be assessed.

- A related point is that, per the current version of Bill C-69, two of the five Panel members to conduct an Impact Assessment must be from a roster of Offshore Board members. While this provision ensures involvement from the relevant Offshore Board, the proposed Act limits the roster of potential Panel members as being from members of that Offshore Board (i.e., appointed as Board members).

- It would be preferable if the proposed Bill included flexibility to allow the Board to recommend qualified Panel candidates from a broader pool than Board members. This would better ensure that we could access Panel members with the required skill sets and availability, depending on the timing and nature of the project activity being assessed.

**Revised Designated Project List/Regional Assessment of Exploratory Drilling**

- A continued, outstanding question for the C-NLOPB is with respect to which offshore activities will be included as designated activities/projects on the revised draft Designated Project List for the new Bill. Our understanding is that a revised draft Designated Project List is to be released by the Government of Canada for public input in the near term. A key question is how exploratory drilling will be treated going forward vis-à-vis the new Impact Assessment process.

- Since early 2018, the C-NLOPB has been working closely with the Agency, NRCan and the Newfoundland and Labrador Department of Natural Resources on the design of a Regional Assessment of Offshore Exploratory Drilling, East of Newfoundland and Labrador, to be conducted pursuant to CEAA, 2012.
On April 15, 2019, the Minister of Environment and Climate Change Canada announced the launch of this Regional Assessment. The objective of this study is to improve the efficiency of environmental assessment as it applies to oil and gas exploratory drilling, while at the same time ensuring the highest standards of environmental protection continue to be applied and maintained.

In making this announcement, the Government of Canada indicated it remains committed to the approach outlined in an earlier Consultation Paper on Regulations Designating Physical Activities (Project List), which would exempt offshore exploratory wells from undergoing a project-specific federal environmental assessment in areas where a regional assessment has been carried out, and where the proposed project conforms with the conditions set out in the regional assessment.

The C-NLOPB has been working closely with the Agency on virtually all aspects of this planned Regional Assessment, and would anticipate playing a similar role in any regional studies/assessments conducted pursuant to Bill C-69.

As currently drafted, Bill C-69 does not include any policy intent for the use of regional assessments to be undertaken pursuant to the new legislation, and it is unclear whether or how the regional study/assessment will contribute to an Impact Assessment for a project. Furthermore, it would be better if the legislation specified a role for the C-NLOPB when a regional assessment is being planned/ carried out in the Canada-Newfoundland and Labrador Offshore Area.

Minister's Power – Designation of Physical Activities, Amending Decision Statements and Substitution

- The ad hoc discretion embedded in the Bill for the federal Minister to designate non-Designated Project List activities for Panel review creates uncertainty for the C-NLOPB in the Board’s administration of licences.

- As we indicated in April 2018, in the spirit of joint management, our expectation is that this Ministerial discretion would be exercised minimally and such decisions would be taken in consultation with the C-NLOPB and the Government of Newfoundland and Labrador, if the project in question is in the Canada-Newfoundland and Labrador Offshore Area.

- With respect to the Minister’s power to amend a Decision Statement, our expectation again is that this power would be exercised in consultation with the C-NLOPB when the Decision Statement applies to activity in the Canada-Newfoundland and Labrador Offshore Area.

- Regarding the Minister’s power related to Substitutions, consideration should be given to including the C-NLOPB in the list of jurisdictions for a substituted process.
Conclusion

- In conclusion, the C-NLOPB continues to support the overall stated objectives of Bill C-69.

- Over the past year, the C-NLOPB has devoted a significant amount of time and effort towards ensuring the new Impact Assessment process can work well in practice with the Board’s long-standing and proven regulatory review process.

- The Standing Senate Committee can be assured that when the new legislation comes into force, the C-NLOPB will be prepared and ready to do its part to ensure the resulting regulatory review process is efficient and effective, the Impact Assessment process is integrated and coordinated to the extent possible with the Board’s Development Application process, and reflects the requirements of both Bill C-69 and the Atlantic Accord Implementation Acts.

- Thank you again for the opportunity to make this submission on this most important matter and the C-NLOPB wishes Senators well in their deliberations.