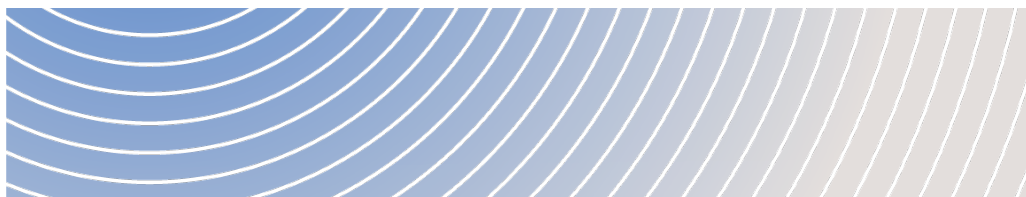




Memorandum of Understanding Between the Impact Assessment Agency of Canada and the Canada-Newfoundland and Labrador Offshore Petroleum Board



April 2021



Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

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**Memorandum of
Understanding
Between
The Impact Assessment
Agency of Canada (the
"Agency")
- and -
The Canada-Newfoundland
and Labrador Offshore
Petroleum Board ("the
Board")
hereinafter collectively
referred to as the
"Parties"**

WHEREAS under the federal *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, S.C. 1987, c. 3 and the provincial *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*, RSNL 1990 c. C-2 ("the Accord Acts"), the Board has responsibility for



administering the provisions of the Accord Acts on behalf of the Government of Canada and Government of Newfoundland and Labrador, including matters respecting safety and protection of the environment in the Canada-Newfoundland and Labrador Offshore Area (the "Offshore Area");

AND WHEREAS the Agency has responsibilities for the impact assessment of certain physical activities pursuant to the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1 (IAA) and its regulations;

AND WHEREAS the Agency has objectives as described in section 155 of the IAA;

AND WHEREAS the Board and the Agency each have assessment processes established through legislation that include the assessment of effects, timelines for review and decisions, public participation and conditions for approval that are supported by compliance, enforcement and follow-up activities;

AND WHEREAS under section 65 and 68 of IAA, the Minister of Environment and Climate Change has the authority to issue Decision Statements with conditions and amend Decision Statements respecting certain petroleum-related activities in the Offshore Area and the Board has certain authority under section 138.01 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and section 134.1 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* respecting Authorizations;

AND WHEREAS the Agency has established a Compliance and Enforcement Policy for the IAA;

AND WHEREAS under paragraph 112(1)(a.2) of the IAA, the Minister of Environment and Climate Change has established *Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells)*;

AND WHEREAS the Parties wish to avoid unnecessary duplication, contribute to clarity and certainty and facilitate the efficient use of resources in the timely delivery of their respective regulatory responsibilities;

AND WHEREAS it is appropriate to describe more formally the process to be followed by the Parties in respect of matters of mutual concern and the understanding among them in relation to the effective administration of compliance verification and enforcement in respect of conditions set out in the *Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells)* and in Decision Statements issued by the Agency respecting certain petroleum-related activities in the Offshore Area.

THEREFORE, the Parties agree as follows:

1. DEFINITIONS

"Agency Designate" means the persons designated to act on behalf of the Agency for the purposes of this MOU;

"Authorization" means an authorization for petroleum-related work or activity in the Offshore Area, and the terms and conditions contained in it, issued in respect of a designated project by the Board in accordance with section 138 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and



section 134 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*;

"Board Designate" means the persons designated to act on behalf of the Board for the purposes of this MOU;

"Board Environmental Conservation Officer" means a Conservation Officer designated by the Federal and Provincial Ministers in accordance with subsection 188(2) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and subsection 184(2) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*, and who has responsibility for compliance verification and enforcement in respect of environmental matters under the Accord Acts;

"Decision Statement" means a Decision Statement issued to a proponent in relation to a designated project in the Offshore Area in accordance with section 65 of the IAA or a Decision Statement that was issued under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) that is deemed, as per section 184, to be a Decision Statement under the IAA;

"Minister" means the Minister of Environment and Climate Change Canada;

"Offshore Area Designated Project" means a designated project under the IAA that requires an Authorization from the Board;

"Proponent" means proponent as defined in section 2 of the IAA; and

"Regulations" means the *Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells)*.

2. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to:

- a. ensure effective coordination and avoid duplication of work and activities between the Board and the Agency in the delivery of their respective mandates respecting compliance and enforcement;
- b. establish the lead role for the Board regarding the compliance verification and enforcement of conditions set out in (i) CEAA 2012 Decision Statements, (ii) IAA Decision Statements, and (iii) Schedule 2 of the Regulations;
- c. establish procedures for communications and the exchange of information between the Board and the Agency in relation to a proponent's compliance with the conditions referenced in subsection 2 (b) herein above and where changes to a project require amendments to a Decision Statement, as per Section 68 and 69 of the IAA, for Offshore Area Designated Projects issued by the Minister; and
- d. establish the procedure for the designation of Board Environmental Conservation Officers or other Board employees as IAAC Enforcement Officers ("IAAC Enforcement Officers").



3. AUTHORITY

3.1 This MOU is entered into pursuant to section 46 of the Accord Acts.

3.2 It is not intended, nor will it be interpreted, that this MOU creates, imposes, or implies any statutory or legal duties, rights, obligations, liabilities, claims or actions on or against the Parties. It is further not intended, nor will it be interpreted that this MOU gives to the Parties any power or authority that they do not otherwise hold nor does it relieve, exclude or prohibit the Parties from performing any duties that they are responsible for under the applicable statutory authority by which they operate. For greater certainty, this MOU is not legally binding.

4. ROLES AND RESPONSIBILITIES

General

4.1 The Agency has identified their respective designate under section 6 herein for the purposes of administering the MOU and for responding to any questions or providing clarification on information requests respecting the conditions referenced in subsection 2 (b) herein. Such requests are to be made by the public, Indigenous groups and stakeholders directly to the Agency, and the Board will direct any such requests it receives to the Agency's designate in section 6 herein.

Decision Statement Conditions

4.2 The Board will be responsible for verifying compliance with the conditions set out in Decision Statements, and collaborate with the Agency prior to taking any enforcement actions.

4.3 The Board will communicate with the Agency upon the receipt of information that a change to a project, which has a Decision Statement for Offshore Area Designated Projects issued by the Minister, is being contemplated.

4.4 As required, the Agency, as the lead, will work collaboratively with the Board in the development of any necessary proposed amendments to a Decision Statement for Offshore Area Designated Projects issued by the Minister to facilitate the incorporation of those amendments into an Authorization.

Regulations

4.5 The Agency will be responsible for ensuring that the information requirements under section 3 of the Regulations are met.



4.6 Upon request, the Board will provide technical advice to the Agency in its review of information provided by a proponent proposing to be excluded from the IAA pursuant to the Regulations.

4.7 The Agency will inform the Board in writing when the Agency agrees with the proponent's position that a project is excluded from the IAA pursuant to the Regulations.

4.8 The Board will be responsible for verifying compliance with the conditions set out in Schedule 2 of the Regulations, and obtain Agency approval, in accordance with any established Agency decision-making frameworks, prior to taking any enforcement actions.

4.9 The Board will be responsible for ensuring that proponents comply with the various consultation requirements outlined in the conditions set out in Schedule 2, referenced in subsection 2 (b) herein.

4.10 Upon request, the Agency will provide information, training and support to a Board Environmental Conservation Officer designated as an IAAC Enforcement Officer respecting any condition set out in Schedule 2 of the Regulations.

5. COMMUNICATION OF INFORMATION

5.1 Upon request and subject to a) the Agency, in accordance with subsection 119(6) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and section 115(6) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*, protecting any privileged data or information in the same manner as such data or information is protected by the Board, and b) the *Privacy Act* and the *Access to Information Act* as applicable, the Board will provide the Agency with any reports required to be published under Part III of the Accord Acts and any other information in respect of the exploration and drilling for and the production, conservation and transportation of petroleum in the Offshore Area related to conditions referenced in subsection 2 (b) herein.

5.2 Upon request and to the extent permitted by law, the Agency will provide information and advice to the Board on matters that may impact the administration of Part III of the Accord Acts respecting the conditions referenced in subsection 2 (b) herein.

5.3 Upon request and to the extent permitted by law as outlined in subsection 5.1, the Board will provide information and advice to the Agency:

- a. to help inform the Agency's follow-up activities to determine effectiveness of mitigation measures and accuracy of predictions of assessments; and
- b. that may impact the development, administration, enforcement and amendments of conditions referenced in subsection 2 (b) herein.

5.4 It is understood by the Board and the Agency that information referred to in subsections 5.1-5.3 herein is subject to any privilege or confidentiality that may attach to that information.

5.5 The Parties agree to advise each other:



- a. of any court proceedings or court decisions of which they are aware that may affect the interpretation of the IAA and its application to the conditions referenced in subsection 2 (b) herein or conditions of any judicial or quasi-judicial proceedings or decisions that may affect the interpretation of Part III of the Accord Acts and its respective application in the Offshore Area;
- b. of any court proceedings or court decisions of which they are aware that may interpret or impact the administration and enforcement authority under the IAA or the Accord Acts; and
- c. of any policy changes, or any new policy or guidance that either the Board or the Agency may implement.

6. DESIGNATES

6.1 The following is the title of the Board Designate and contact information for the purposes of communication of information in relation to this MOU:

Senior Advisor, Regulatory Reform and Public Engagement

Canada-Newfoundland and Labrador Offshore Petroleum Board

The Tower Corporate Campus, 240 Waterford Bridge Road, West Campus Hall, Suite 1700

St. John's NL

Telephone: 709-778-1418

Email: tmurphy@cnlopb.ca

6.2 The following is the title of the Board Designate and contact information for the purposes of giving Notice as required by this MOU:

Director of Environmental Affairs

Canada-Newfoundland and Labrador Offshore Petroleum Board

The Tower Corporate Campus, 240 Waterford Bridge Road, West Campus Hall, Suite 1700

St. John's NL

Telephone: 709-778-4232

Email: eyoung@cnlopb.ca

6.3 The following is the title of the Agency Designate and contact information for the purposes of communication of information in relation to this MOU:

Director, Compliance, Enforcement and Follow-Up

Impact Assessment Agency of Canada

160 Elgin Street, 22nd Floor

Ottawa ON

Telephone: 613-716-6312

Email: philip.seeto@canada.ca

6.4 A Party may change the designate or contact information of any designate by giving notice to the other Party in writing.



7. CONFLICT RESOLUTION

7.1 Issues that arise in relation to this MOU that cannot be resolved by the respective Agency Designate and the Board Designate will be referred to the Agency's Vice President of Operations and the Chief Executive Officer of the Board for resolution.

8. DESIGNATION OF OFFICERS

8.1 In addition to the requisite skills, qualifications and training requirements identified by the Board for Board Environmental Conservation Officers or other Board employees, the requirements to be designated under subsection 120(1) of the IAA as an IAAC Enforcement Officer are set out in Annex 1 attached to this MOU. It is understood by the Parties that these training and competency requirements may be amended from time to time.

8.2 Board Environmental Conservation Officers to be designated as IAAC Enforcement Officers will be trained in accordance with the requirements of, and maintain eligibility for the necessary certifications in relation to, such designation.

8.3 Where specific training courses and refresher training courses are identified by the Agency, the cost of completing these courses by Board Environmental Conservation Officers designated as IAAC Enforcement Officers will be paid by the Agency. Any additional health assessments required for these Agency specific courses are also to be paid by the Agency. All such costs will be pre-approved by the Agency.

8.4 Upon the Board being satisfied that a Board Environmental Conservation Officer or other employee meets the necessary skills, qualifications and training requirements for an IAAC Enforcement Officer, the Board will initiate the process to recommend that person as an IAAC Enforcement Officer by forwarding a recommendation to the Agency Designate that a Board Environmental Conservation Officer or other employee be designated as an IAAC Enforcement Officer. It is understood that such a request must be accompanied by the curriculum vitae and training qualifications of the candidate for designation and a signed recommendation from the Board's Chief Conservation Officer.

8.5 The Agency will advise the Board in writing of the date on which it has received a recommendation of designation pursuant to section 8.4 herein.

8.6 The designation will be limited to compliance and enforcement activities under the IAA for projects excluded from a project-specific impact assessment under the Regulations.

8.7 Within 30 days of receipt of a recommendation by the Board in section 8.4, the Agency will notify the Board in writing when a recommended Board Environmental Conservation Officer or employee has been designated as an IAAC Enforcement Officer and the scope of the matters for which such officer has been designated.

8.8 The Board will immediately give Notice to the Agency in writing if the IAAC Enforcement Officer ceases to remain an employee of the Board or becomes unable to meet or maintain the requirements in Annex 1.



8.9 For greater certainty, designations of IAAC Enforcement Officers will be made on an individual basis (i.e. not in relation to a class of individuals or positions within the Board).

9. OTHER

9.1 The Parties may provide services to one another in support of matters that may impact the administration of compliance and enforcement in addition to those matters identified in this MOU. Such services will be provided upon such terms as may be agreed by the Parties from time to time.

10. AMENDMENT AND ANNEXES

10.1 This MOU and its annexes may be amended upon the mutual consent of the Parties. Unless another date is agreed, an amendment will become effective upon the date of the last signature of the Agency or the Board.

10.2 Any document describing a co-operative arrangement affecting this MOU which may, from time to time, be concluded between the Agency and the Board, or any other document which the Parties agree, may be annexed to this MOU.

10.3 Notwithstanding the above, the Parties will meet as frequently as necessary, but not less frequently than annually to review the operation of this MOU and discuss whether to renew or amend the MOU.

11. TERMINATION

11.1 Any party wishing to terminate this MOU shall submit a written notification with sufficient Notice to prevent unreasonable disruption to the activities of the other parties.

12. ENTIRE UNDERTAKINGS

12.1 This MOU supersedes all previous discussions relating to the subject matter unless otherwise incorporated by reference in this MOU.

13. EFFECTIVE DATE

13.1 This MOU is effective from and after the date of the last signature.



14. APPROVALS

14.1 The Parties have signed, in duplicate, this MOU on the dates indicated below.

Original signed by

Roger Grimes
Chair
Canada-Newfoundland and Labrador Offshore
Petroleum Board

January 26, 2021

Date

Original signed by

David McGovern
President
Impact Assessment Agency of Canada

January 18, 2021

Date