



**GOVERNMENT OF NEWFOUNDLAND AND  
LABRADOR SUBMISSION TO THE OFFSHORE  
HELICOPTER SAFETY INQUIRY (PHASE 1B)**

**30 JULY 2010**

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The Offshore Helicopter Safety Inquiry was established by the Canada-Newfoundland and Labrador Offshore Petroleum Board following the March 12, 2009 crash of Cougar helicopter flight 491 in the Newfoundland and Labrador offshore area. The causes of the accident are being investigated by the Transportation Safety Board. The Offshore Helicopter Safety Inquiry will recommend improvements to the safety regime in the Newfoundland and Labrador area to ensure the risks of offshore helicopter transportation remain as low as reasonably practicable.

Offshore helicopter safety is a shared concern for many around the world. For example, the United Kingdom and Norway, both countries with robust safety regimes, have seen 51% and 57%, respectively, of their offshore workers indicating that they feel safe travelling by helicopter.<sup>1</sup>

In Canada, matters related to the safety and airworthiness of helicopters used in the transportation of workers to and from the offshore area remains within the exclusive jurisdiction of the federal government through Transport Canada. Worker safety while travelling to and from the Newfoundland and Labrador offshore area is a subject of regulation by the Canada – Newfoundland and Labrador Offshore Petroleum Board which was established by the Atlantic Accord Agreement.

The Atlantic Accord Agreement was signed on February 11, 1985 to facilitate the orderly development of petroleum resources in the Newfoundland and Labrador offshore area. The parties to the Agreement were the Government of Newfoundland and Labrador and the Government of Canada. Under the Agreement the parties agreed to establish the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) to

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<sup>1</sup> Graham Morrison, *Offshore Technology Report 2000/089: Helicopter Safety Offshore* (United Kingdom: Health and Safety Executive, 2001) at 41, online: <<http://www.hse.gov.uk/research/otopdf/2000/oto00089.pdf>>. [*Offshore Technology Report 2000/089: Helicopter Safety Offshore*] (Tab 1) (Volume 1 - Tab 2 of Commissioner's Reading Materials). In the Workers Survey conducted in the Newfoundland and Labrador offshore area, between 36% (responded 4 or 5 on scale) and 71% of workers (responded 3, 4, or 5, on the scale) indicated that they felt safe travelling in helicopters to and from their installation. Aerosafe Risk Management, *Passenger Survey Report, May 2010* (Washington, D.C.: Aerosafe Risk Management, May 2010) at 19 (Tab 2).

administer the relevant provisions of the Accord Acts. The Accord Acts are the federal and provincial legislation which were necessary to implement the Atlantic Accord Agreement. The C-NLOPB was thus established as the primary regulator responsible for the management of petroleum resources in the NL offshore area. The Government of Newfoundland and Labrador retained responsibility for industry promotion, the royalty regime and other provincial type revenues.

This submission explains the existing regulatory regime, discusses key reports on the regulation of the NL offshore area (Ocean Ranger Commission and Harrison Task Force), discusses the governance and regulatory regimes in place in other countries, and explains the proposed occupational health and safety amendments to the Accord Acts.

### **1. Current Provisions of the Accord Acts**

Under the Accord Acts, a C-NLOPB issued work authorization is required prior to commencing operations regarding any work or activity related to the exploration or drilling for, or production, conservation, processing or transportation of petroleum in the offshore area. The C-NLOPB may suspend or revoke an authorization for failure to comply with, contravention of, or default in respect of any condition of the authorization. Importantly, the authorization of the work or activity is flexible and provides the C-NLOPB with the ability to amend or require additional conditions related to the work or activity. This provides the C-NLOPB with a mechanism to ensure additional health and safety measures are taken if required.

The Accord Acts set out provisions which ensure that the C-NLOPB's safety officers and the Chief Safety Officer are fully empowered to make safety-based decisions. C-NLOPB safety officers ensure compliance with health and safety requirements. They have the power to order a company to cease operations if, in their opinion, the operations being conducted are likely to result in a serious safety hazard for workers. This authority is similar to the authority of provincial onshore safety officers with respect to requiring the suspension of work where there is an immediate safety or health concern.

The Accord Acts make safety a paramount consideration. For example, where there are reasonable grounds to believe an operation in relation to the exploration, drilling, production, conservation, processing or transportation of petroleum is likely to result in serious bodily injury, the Chief Safety Officer is empowered to order an operation cease. Further, an order made by a safety officer or the Chief Safety Officer prevails over an order made by a conservation officer or the Chief Conservation Officer to the extent of any inconsistency between the orders.

An important existing oversight mechanism in the Accord Acts is the requirement that, in the event of a fundamental decision, the C-NLOPB shall give notice to the federal and provincial energy ministers who shall approve or disapprove the decision within 30 days before the decision becomes final. Examples of fundamental decisions include the issuance of rights and approvals of development plans.

## **2. Ocean Ranger Commission and Harrison Task Force**

The Royal Commission on the Ocean Ranger Marine Disaster examined the February 1982 capsizing and sinking of Ocean Ranger, a mobile drilling unit, on the Grand Banks. The Commission's Report recommended ways to improve safety in the Newfoundland and Labrador offshore oil industry. The Ocean Ranger Commission undertook a detailed analysis of offshore safety issues by commissioning studies, meeting with professional experts in the field of safety from academia and industry, holding public hearings, visiting offshore rigs, training institutions and emergency facilities and participating in safety meetings with rig workers.

The Ocean Ranger Commission concluded that "the single window approach would appear to be the best institutional arrangement for regulating offshore oil operations" as long as appropriate steps such as "the establishment of a Safety Branch within the single

regulatory agency” were taken.<sup>2</sup> The Commission noted that with a single regulatory agency “competing jurisdictions, administrative overlap and lack of co-ordinated, consistent policy were diminished.”<sup>3</sup> The C-NLOPB follows this model.

The Ocean Ranger Commission made a total of 133 recommendations. Recommendation 86 stated:

That Canada maintain the approach of a single regulatory agency, in concept and in practice, in exercising regulatory control over MODUs and the varied aspects of their drilling operations including the standby role of vessels and the rescue role of helicopters under contract to industry.<sup>4</sup>

The Ocean Ranger Commission also found that:

Canada needed a uniquely Canadian offshore safety regulatory regime [...because...] existing laws were directed primarily to onshore oil and gas operations and that a uniquely hazardous environment existed in the northwest Atlantic. Regulations and standards developed for other parts of the world were not necessarily relevant to this environment.<sup>5</sup>

While the C-NLOPB is the primary regulator in the NL offshore area, there are other regulatory agencies which play a role in regulating specific aspects of offshore safety. For example, Transport Canada regulates marine and air transportation including offshore helicopter transportation and the C-NLOPB consults closely with Transport Canada on these matters.<sup>6</sup>

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<sup>2</sup> Royal Commission on the *Ocean Ranger* Marine Disaster, *Report Two: Safety Offshore Eastern Canada*, v. 2 (Ottawa: Supply and Services Canada, 1984-1985) at 140 [Ocean Ranger Commission Report] (Tab 3). A ‘single window regulator’ involves the allocation of full regulatory control for a particular area or industry to one agency or regulator.

<sup>3</sup> Ocean Ranger Commission Report, *supra* note 2 at 152 (Tab 3).

<sup>4</sup> Ocean Ranger Commission Report, *supra* note 2 at 152 (Tab 3).

<sup>5</sup> Rob Grant, Q.C., Will Moreira, Q.C. & David Henley, “Potential for Performance-Based Regulations in the Canadian Offshore Oil and Gas Industry” (2006) 44 Alta. L. Rev. 1 at para 68 [Potential for Performance-Based Regulations] (Tab 4).

<sup>6</sup> Transport Canada is the federal government department responsible for most transportation related policies and regulations. Some of Transport Canada responsibilities include setting standards for pilot testing and licensing, testing flight crewmembers on emergency response procedures, regulating marine pleasure craft and commercial vessels, certifying commercial shipping officers and crews on Canadian ships, setting standards for new and imported automotive vehicles and equipment, investigating vehicle defects, regulating the interprovincial truck and motor coach industry, establishing safety standards and

## 2.1 Harrison Task Force

After the Ocean Ranger Commission Report was issued a ministerial task force, the Harrison Task Force, was established to make recommendations regarding the implementation of the Ocean Ranger Commission Report. In a report issued on July 31, 1986 Task Force members supported the Ocean Ranger Commission's single window regulatory model and determined that effective safety regulation could not be 'parceled out':

It is also implicit that regulatory authority must extend to all functions performed as part of offshore oil and gas activities and to all equipment used in those activities. Effective safety regulation cannot be parceled out according to whether a particular function is a marine or an industrial function, or whether a particular piece of equipment is or is not a "ship".<sup>7</sup>

The Harrison Task Force reached some key conclusions regarding the importance of a single regulatory body in ensuring safety in the offshore:

Even if it were conceptually acceptable and practically possible to divide regulatory authority with respect to safety in offshore oil and gas activities, there would be dangers in doing so. Multiple authorities necessarily raise the possibility, if not the inevitability, of overlaps and duplication. Such overlaps and duplication not only impose a cost but, even more importantly, they also raise the spectre of confusion which in turn would have the detrimental effect of undermining industry's efforts to ensure safety. Confusion about jurisdiction also results in regulatory authorities not acting when they should.<sup>8</sup> [emphasis added]

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regulations for the transportation of dangerous goods, and developing and enforcing security regulations. See Transport Canada, *Organization: What We Do*, online: <http://www.tc.gc.ca/eng/aboutus-whatwedo.htm> (Tab 5).

<sup>7</sup> Harrison Task Force, *A Report to the Minister of Energy, Mines and Resources by the Minister's Task Force on Ocean Ranger Regulatory Recommendations*, (31 July 1986) at 27 [Harrison Task Force Report] (Tab 6).

<sup>8</sup> Harrison Task Force Report, *supra* note 7 at 29-30 (Tab 6). The Harrison Task Force's terms of reference focused on the implementation of the Ocean Ranger Commission Report and precluded the Task Force from further studying or recommending alternatives to the Accord Acts or the Ocean Ranger Commission Report. Nonetheless, the Harrison Task Force emphatically endorsed the Commission's single regulator model.

The Harrison Task Force was not only concerned with duplication and regulatory overlaps. The Task Force report also noted that:

In addition to overlaps and duplication among multiple authorities, a division of jurisdiction also raises a serious risk of gaps in the regulatory system. These may appear as gaps in the conferral of the jurisdictions of the respective authorities. They may also appear as a consequence of confusion about the extent of the jurisdiction conferred or even about the exercise of a conferred jurisdiction. For example, each of two regulatory authorities may believe that a particular matter is within the jurisdiction of the other or is being regulated by the other whereas in fact neither is regulating, notwithstanding a clear need. Such gaps may be outright dangerous.<sup>9</sup> [emphasis added]

With respect to the Ocean Ranger Commission's emphasis on the establishment of a Safety Branch within the single regulatory authority, the Harrison Task Force agreed with that recommendation:

The Hickman Commission recommended (Recommendation #88) the establishment within the single regulatory agency of a Safety Branch responsible, inter alia, for the development, application and monitoring of safety standards and for the analysis of safety data. Such a Branch would be precaution against the inherent risk that, in combining in one lead agency responsibility for regulating exploration, production and safety, "in the drive for energy self-sufficiency under conditions of economic stress, the price to be paid may be to compromise safety". The Task Force shares this concern and agrees that a distinct Safety Branch should be established.<sup>10</sup>

The Harrison Task Force concluded its report with a number of specific recommendations, including:

That regulatory authority with respect to oil and gas operations, including the safety of those operations, be singular and that, more specifically with respect to offshore operations, authority not be divided on the basis of distinctions between marine and industrial functions or between ships and other types of equipment.<sup>11</sup>

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<sup>9</sup> Harrison Task Force Report, *supra* note 7 at 29-30 (Tab 6).

<sup>10</sup> Harrison Task Force Report, *supra* note 7 at 70 (Tab 6).

<sup>11</sup> Harrison Task Force Report, *supra* note 7 at 88 (Tab 6).



While the Ocean Ranger Commission recommended, and the Harrison Task Force supported, a regionally based single window regulatory model, there are unique governance, geographic and regulatory considerations in other jurisdictions which have led to many different regulatory models, each designed to suit its particular offshore jurisdiction.

### **3. Regulatory Regimes in Other Jurisdictions**

The offshore oil and gas industry is regulated in many different ways in other offshore jurisdictions. As a result, it can be difficult to compare the regulatory regimes because there are substantial variations in governmental structures, industry size and geopolitical realities.

For example, while the United States has announced that it will create a separate safety entity under the Department of the Interior, the regulatory roles and activities in that jurisdiction are very different from offshore Newfoundland and Labrador. In the United States, the Gulf of Mexico offshore area is regulated by national level federal agencies. One of those agencies, the Minerals Management Service also has a royalty collection role. The CNOLPB has no comparable role. In Newfoundland and Labrador royalties are administered by the provincial Department of Natural Resources which also has responsibility for industry promotion.

Information regarding a selection of offshore jurisdictions indicates the variety of government systems and regulatory regimes in offshore areas around the world. Other countries with offshore regimes and central government systems, including the United Kingdom, Norway, New Zealand and Denmark have national level regulatory agencies. Although they are federal countries, the United States and Australia have national level offshore regulatory agencies which control the regulatory function for the entire country, no matter how unique the particular circumstances of any geographic region. In Canada, offshore oil operations occur in very disparate geographic areas, from the Arctic Ocean to

the waters off Nova Scotia and Newfoundland and Labrador. Both of the latter two regions have a regionally based regulatory agency for their offshore oil and gas industry.

### 3.1 United Kingdom

In the United Kingdom there are three primary agencies responsible for aspects of the regulation of the offshore oil and gas industry. The national Department of Energy and Climate Change is responsible for policy on the development of oil and gas resources. The national Health and Safety Executive has an offshore division with its Hazardous Installations Directorate which is responsible for the regulation of health and safety issues arising from offshore work activity. The UK's Civil Aviation Authority has a role in the regulation of aviation related aspects of the oil and gas industry.

The offshore industry in the United Kingdom, both in terms of the number of installations and persons employed, is significantly larger than the Newfoundland and Labrador offshore area. There are approximately 30,000 regular offshore workers in the UK offshore area and over 200 installations with helidecks.<sup>12</sup> There are about 100 aircraft operating in the UK area of the North Sea and about 50 in other North Sea countries. There is an enormous amount of helicopter traffic in the UK area of the North Sea. Indeed, the biggest civil heliports in the world are located in Aberdeen.<sup>13</sup>

In the United Kingdom there is not a distinct oil and gas safety regulator. Health and safety are regulated by laws of general application and these laws are administered by a national regulatory agency (Health and Safety Executive) with an offshore petroleum division. The Health and Safety Executive is responsible for the regulation of almost all risks to health and safety arising from all types of work activities. The HSE's Hazardous Installations Directorate (HID), Offshore Division carries out this mandate with respect to the offshore oil and gas industry. Responsibilities of the Offshore Division include safety case assessment, inspection, investigation, enforcement, provision of advice, guidance and information, research and development, operational policy and systems and support

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<sup>12</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, *supra* note 1 at 4-5 (Tab 1).

<sup>13</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, *supra* note 1 at 18 (Tab 1).

to frontline activities. Offshore visits by HSE (HID - Offshore Division) inspectors are one of the mechanisms used to carry out these responsibilities.

The Department of Energy and Climate Change (DECC) is responsible for developing and coordinating policy on the development of the oil and gas fields and for regulating the license regime. The DECC is responsible for petroleum operations and engineering, works authorizations and consents, and environmental matters such as environmental impact assessments and decommissioning of infrastructure.<sup>14</sup>

The United Kingdom is a member of the European Union and certain aspects of aviation are regulated at the European level by the European Aviation Safety Agency (EASA). EASA is responsible for the certification of specific models of aircraft, engines and/or parts.<sup>15</sup> EASA also monitors “the implementation of standards through inspections in the Member States and provides necessary technical expertise, training and research.”<sup>16</sup> However, national level authorities such as UK’s Civil Aviation Authority, continue to “carry out many operational tasks, such as certification of individual aircraft and licensing of pilots.”<sup>17</sup>

The UK’s Civil Aviation Authority’s regulation of the helicopter operators in relation to helicopter safety offshore, includes the activities at onshore heliports and when travelling in UK airspace.<sup>18</sup> In order to facilitate communication between the UK CAA and the HSE (HID – Offshore Division) there is a Memorandum of Understanding which addresses the interface of the agencies’ responsibilities.<sup>19</sup> The Helicopter Management Liaison Committee includes the CAA and North Sea operators and provides “a forum for

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<sup>14</sup> U.K. Department of Energy and Climate Change, *Oil and Gas*, online: <

[http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/oil\\_gas/oil\\_gas.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/oil_gas/oil_gas.aspx)> (Tab 7)

<sup>15</sup> European Aviation Safety Agency, *More about EASA*, online: < <http://www.easa.europa.eu/more-about-EASA.php>> [*More about EASA*] (Tab 8).

<sup>16</sup> *More about EASA*, supra note 15 (Tab 8).

<sup>17</sup> *More about EASA*, supra note 15 (Tab 8).

<sup>18</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, supra note 1 at 42 (Tab 1).

<sup>19</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, supra note 1 at 42 (Tab 1). Morrison notes that the regulatory regime is summarized in the joint HSE and CAA publication *How offshore helicopter travel is regulated*.

the mutual exchange of information and advice” but does not seem to include the HSE (HID – Offshore Division) as a member.<sup>20</sup>

The existence of multiple regulators in the UK offshore area has not been problem free. An Aberdeen University report found that:

...industry perceives the marine, offshore and aviation regulators as being insufficiently equipped to deal with interfaces between legislative jurisdictions. It is evident that liaison arrangements do exist, extending in several cases to formal Memoranda of Understanding and matrix-based models of the regulatory interfaces. These arrangements are insufficiently appreciated and understood in the industry.<sup>21</sup>

The Aberdeen University Report noted that the regulatory regime’s complexity was “a problem to many in the industry”<sup>22</sup> and suggested that “the responsibilities of the organizations and individuals taking part need to be better explained so that all the people involved in helicopter operations offshore clearly understands [sic] their respective roles.”<sup>23</sup>

The separation of safety regulation from other aspects of oil and gas regulation does not necessarily, in and of itself, enhance safety. In the United Kingdom, a 2007 review [UK Offshore Public Transport Helicopter Safety Record (1977-2006)] listed a large number of the changes which had led to improved helicopter safety. The separation of safety regulation from other aspects of offshore regulation was not included in that list.<sup>24</sup>

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<sup>20</sup> Civil Aviation Authority: Safety Regulation Group, *CAP 641: Report of the Review of Helicopter Offshore Safety and Survival* (February 1995) at 47, online: <http://www.caa.co.uk/docs/33/CAP641.PDF> (Tab 9) (Volume 1 - Tab 1 of the Commissioner’s Reading Materials).

<sup>21</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, *supra* note 1 at 46 (Tab 1).

<sup>22</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, *supra* note 1 at 47 (Tab 1).

<sup>23</sup> *Offshore Technology Report 2000/089: Helicopter Safety Offshore*, *supra* note 1 at 61 (Tab 1). Morrison cites: AUPEC, *Evaluation of the Offshore Safety Legislative Regime*, September 1999, Aberdeen University Petroleum and Economic Consultants Ltd.

<sup>24</sup> John Burt Associates, Ltd, *UK Offshore Public Transport Helicopter Safety Record (1977-2006)*, (Oil and Gas UK, 2007) at Appendix 1: Safety Improvements and Initiatives (Tab 10) (Volume 1- Tab 10 of the Commissioner’s Reading Materials)

### 3.2 Norway

The Norwegian offshore area of the North Sea is regulated by a combination of three agencies, the Norwegian Petroleum Directorate (NPD), the Norwegian Petroleum Safety Authority (PSA) and the Norwegian Civil Aviation Authority (CAA – N). The Norwegian Petroleum Directorate is headquartered in Stavanger and reports to the national Ministry of Petroleum and Energy. The NPD has about 200 employees and is responsible for ensuring petroleum activities minimize discharges and emissions, collecting the carbon tax, conducting metering audits and collecting fees, making data and information available to the industry, the media and the general public, encouraging industry to develop solutions that benefit society at large, advising other Ministries, and creating its own regulations relating to resource management.

The Petroleum Safety Authority is located in Stavanger, with 160 staff. It is the health and safety regulator for the petroleum sector and reports to the national Ministry of Labour and Social Inclusion. The PSA assumed regulatory responsibility from the NPD for safety, emergency preparedness and the working environment in the petroleum sector. The PSA regulates technical and operational safety - including emergency preparedness - and the working environment in all phases of petroleum activity, such as planning, design, construction, operations and decommissioning. The national Ministry of Labour and Social Inclusion has delegated authority to the PSA to issue detailed regulations for safety and the working environment in the industry, and to take specific decisions in the form of permits and consents, orders, enforcement fines, halting of operations, prohibitions, dispensations and so forth. The Petroleum Safety Authority has a broad mandate over safety issues relating to all offshore oil activities and will work with the CAA-N to investigate helicopter incidents that occur within the context of the offshore oil industry.<sup>25</sup>

The Civil Aviation Authority in Norway has responsibility for the supervision of civil air traffic. The CAA-N oversees all helicopter operators in Norway. This includes oversight

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<sup>25</sup> Petroleum Safety Authority, *The PSA will Investigate Serious Helicopter Incidents*, online: <http://www.ptil.no/news/the-psa-will-investigate-serious-helicopter-incidents-article1035-79.html> (Tab 11).

of certification, surveillance, and onboard working environment.<sup>26</sup> Essentially, in terms of offshore helicopter transportation, CAA-N's responsibility extends specifically to matters involving aviation.

Although Norway is not a member of the European Union, Norway is subject to the European Aviation Safety Agency (EASA) through the Agreement on the European Economic Area.<sup>27</sup> The 2010 Norwegian Helicopter Safety Study noted that the implementation of this new European regime has "entailed comprehensive administrative work for Norwegian aviation."<sup>28</sup>

The 2010 Norwegian Helicopter Safety Study listed the most important contributing factors to risk reduction. These factors included items such as improved flight operational procedures and improved emergency preparedness. The study did not cite the creation of a separate oil and gas safety authority as a contributing factor, even though such a separation occurred during the period studied.<sup>29</sup>

It is clear that the civil aviation authorities can have an important effect on offshore helicopter transportation safety. The 2010 Norwegian Helicopter Safety Study noted that one of the most important potential threats to safety was the "lack of helicopters competence and resources regarding offshore helicopters in the Civil Aviation Authority – Norway."<sup>30</sup>

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<sup>26</sup> Civil Aviation Authority - Norway, *Air Carriers*, online: [http://www.caa.no/oversight/air\\_carriers/](http://www.caa.no/oversight/air_carriers/) (Tab 12).

<sup>27</sup> The Agreement on the European Economic Area provides a common set of rules for trade and economic relations between the 25 countries which are members of the European Union and the non-European Union states of Norway, Iceland, Liechtenstein, and Switzerland. See Royal Norwegian Embassy in Ottawa, *Norway, the Official Site in Canada: The EEA*, online: <http://www.emb-norway.ca/aboutnorway/government-and-policy/europe/eea/> (Tab 13)

<sup>28</sup> Ivonne A. Herrera, Solfrid Håbrekke, Tony Kråkenes, et al., *Helicopter Safety Study 3 (HSS-3)* (Norway: SINTEF Technology and Society, March 2010) at 43 [Helicopter Safety Study 3, SINTEF] (Tab 14) (Volume 1- Tab 13 of Commissioner's Reading Materials).

<sup>29</sup> Helicopter Safety Study 3, SINTEF, *supra* note 28 at 9 (Tab 14).

<sup>30</sup> Helicopter Safety Study 3, SINTEF, *supra* note 28 at 11 (Tab 14).

Concerns expressed by the Ocean Ranger Commission and the Harrison Task Force regarding regulatory overlap and regulatory gaps have remained an issue even in jurisdictions with separate petroleum safety authorities. For example, in Norway:

The responsibility concerning the supervision of helidecks has long been unclear and unfortunate, and this is a major concern in the industry. It is claimed that the regulations are unclear and leave room for interpretation. The helideck represents the interface between two supervisory domains; the facility and activities there (responsibility: PSA) and the flights to and from the facility (responsibility: CAA-N).<sup>31</sup>

### 3.3 Australia

In Australia the federal government and its agencies play a significant role in the regulation of the offshore industry. The jurisdiction of the federal government over the waters outside the three-nautical mile limit was confirmed by the 1979 Offshore Constitutional Settlement.<sup>32</sup> The Australian states retained the power to legislate in respect of all waters inside the three nautical mile limit. The Australian offshore oil and gas industry has 166 facilities.<sup>33</sup>

A 2001 report for the Australian federal government recommended the nationalization of the regulation of petroleum safety for the whole of Australia. The National Offshore Petroleum Safety Authority (NOPSA) is a federal agency created in 2005 to assume responsibility for regulating safety for the entire Australian offshore industry.<sup>34</sup> Its creation also removes the division of responsibility between federal and state/territorial waters.<sup>35</sup> NOPSA has approximately 60 staff members.<sup>36</sup>

Problems identified in the Australian offshore industry included “too many regulatory instruments and directions applicable to Australian offshore petroleum activities, overlap

<sup>31</sup> Helicopter Safety Study 3, SINTEF, *supra* note 28 at 44 (Tab 14).

<sup>32</sup> Potential for Performance-Based Regulations, *supra* note 5 at para 42 (Tab 4).

<sup>33</sup> Aerosafe Risk Management, *Review of Selected Offshore Petroleum Regulatory Regimes* (Washington, D.C., Aerosafe Risk Management, May 2010) at 28 [Review of Selected Offshore Petroleum Regulatory Regimes] (Tab 15).

<sup>34</sup> Potential for Performance-Based Regulations, *supra* note 5 at para 47 (Tab 4).

<sup>35</sup> Potential for Performance-Based Regulations, *supra* note 5 at para 47 (Tab 4).

<sup>36</sup> Review of Selected Offshore Petroleum Regulatory Regimes, *supra* note 33 at 30 (Tab 15).

of application and jurisdiction, unnecessary prescription, inconsistent interpretation by regulators.”<sup>37</sup>

Regulatory responsibility in the Australian offshore industry is now divided between three agencies, the Department of Resources, Energy and Tourism, the National Offshore Petroleum Safety Authority and the Australian Civil Aviation Authority. Each plays a role in the various aspects of offshore regulation. The federal Department of Resources, Energy and Tourism is responsible for the *Offshore Petroleum Act*. The Offshore Petroleum Act also sets out NOPSA’s role, authority and structure. NOPSA is tasked with developing and implementing effective monitoring and enforcement strategies to ensure compliance with occupational health and safety obligations as well as investigating incidents and accidents. NOPSA also undertakes safety case assessments and verifies operator implementation of risk management commitments.

### 3.4 New Zealand

New Zealand is a non-federal state with most matters controlled by the central government and its agencies.<sup>38</sup> The Maui field has one manned platform, one unmanned platform and one Floating Production, Storage and Off-take vessel (FPSO), and Taranaki field also has one FPSO.<sup>39</sup> The Tui field consists of four drilled wells all linked to the FPSO vessel, the Umuroa.<sup>40</sup>

There has been a considerable amount of exploration into other possible oil and gas fields, as the Maui field is currently in decline. These explorations include searches

<sup>37</sup> Potential for Performance-Based Regulations, *supra* note 5 at para 52 (Tab 4).

<sup>38</sup> John Wilson, “Government and nation - From colony to nation,” *Te Ara - the Encyclopedia of New Zealand* (3 March 2009), online: Government of New Zealand <<http://www.TeAra.govt.nz/en/government-and-nation/2>> (Tab 16).

<sup>39</sup> *New Zealand's Petroleum Basins* (Wellington, NZ: Crown Minerals, Ministry of Economic Development, 2004) at 8 and 21, online: <<http://www.crownminerals.govt.nz/cms/pdf-library/petroleum-publications-1/new-zealands-petroleum-basins-report>> [*New Zealand's Petroleum Basins*] (Tab 17)

<sup>40</sup> New Zealand Oil & Gas, Ltd., *Tui Area Oil Fields*, online: <http://www.nzog.net/tui> (Tab 18)



outside of the Taranaki basin extending from the Northland Basin to the Great South Basin.<sup>41</sup>

New Zealand's onshore and offshore oil and gas industry is governed by the Crown Minerals Group which is a subsidiary of the national Ministry of Economic Development. The Crown Minerals Group's role is to "advise on policy, operational regulation and promote investment in the minerals estate."<sup>42</sup> For example, the Crown Minerals Group is responsible for the issuance of permits to those wishing to mine petroleum.

Both onshore and offshore safety issues fall under the Occupational Safety and Health Service, within the Department of Labour. The Occupational Safety and Health Service administers the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999, made under the *Health and Safety in Employment Act 1992*.<sup>43</sup>

Environmental matters surrounding offshore installations are regulated by Maritime New Zealand (formerly the Maritime Safety Authority). The discharge of waste is governed by the Maritime Protection Rules made under the *Maritime Transport Act*.<sup>44</sup> Aviation safety is governed by the Civil Aviation Authority of New Zealand, an agency of the Ministry of Transport. This includes regulation of helicopters which fly to and from the offshore installations. New Zealand's Civil Aviation Authority is responsible for establishing civil aviation safety standards and monitoring adherence to the standards. The Civil Aviation Authority is also responsible for the investigation of aviation accidents and incidents.<sup>45</sup>

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<sup>41</sup> *New Zealand's Petroleum Basins*, *supra* note 39 at 10, 32, 62 (Tab 17).

<sup>42</sup> Crown Minerals (Government of New Zealand), *Business Units* (18 September 2009), online: Government of New Zealand <http://www.crownminerals.govt.nz/cms/about> (Tab 19)

<sup>43</sup> Crown Minerals (Government of New Zealand), *Legislation* (24 October 2008), online: <http://www.crownminerals.govt.nz/cms/petroleum/legislation> (Tab 20)

<sup>44</sup> Maritime New Zealand, *Requirements for vessels, installations and ports*, online: <<http://www.maritimenz.govt.nz/Environmental/Environmental-requirements/Environmental-requirements.asp>> (Tab 21)

<sup>45</sup> Civil Aviation Authority of New Zealand, *About the CAA*, online: <http://www.caa.govt.nz/> (Tab 22)

Overall, New Zealand has a small sized industry and a number of different regulatory departments and agencies which each play a role in the regulation of the offshore oil and gas industry.

### 3.5 United States

In the United States the offshore oil and gas industry is regulated by national level agencies which report to the federal government. After the Deepwater Horizon incident in the Gulf of Mexico,<sup>46</sup> there was an announcement of further changes to the regulatory structure in the United States. The process of reforming the offshore oil and gas regulatory structure began in January 2009.<sup>47</sup> There were clear and substantial concerns which existed prior to the Deepwater Horizon incident.

The Department of the Interior's Minerals Management Service (MMS) was created in 1982 with a mandate to collect revenues from oil and gas, coal patch and renewable energy resources.<sup>48</sup> The United States Coast Guard (USCG) has responsibility to verify compliance of offshore vessels, facilities and mobile offshore drilling units however, since 2002; the MMS is "responsible for inspecting oil platforms on behalf of the Coast Guard, using Coast Guard regulations."<sup>49</sup> A recent Department of the Interior report noted that:

Since its inception, MMS has been challenged by real and perceived conflicts of interest. These challenges have been identified in critical reports issued by the Office of the Inspector General (OIG) and the Government Accountability Office (GAO)

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<sup>46</sup> On April 20, 2010 there was an explosion on the Deepwater Horizon, a semi-submersible drilling rig. The explosion killed eleven crew members and resulted in a fire which caused the Deepwater Horizon to sink on April 22, 2010. The sinking of the Deepwater Horizon caused oil to continue to spill unabated from the well on the seafloor, resulting in the largest offshore oil spill in United States history.

<sup>47</sup> United States Department of the Interior, *Salazar Divides MMS's Three Conflicting Missions* (Washington: 19 May 2010) online: <http://www.doi.gov/news/pressreleases> [*Salazar Divides MMS's Three Conflicting Missions*] (Tab 23).

<sup>48</sup> *Salazar Divides MMS's Three Conflicting Missions*, *supra* note 47 (Tab 23)

<sup>49</sup> Statement of Rear Admiral Kevin Cook, Director of Prevention Policy, United States Coast Guard, "Worker Health and Safety Standards Related to the Oil Industry, Oil Rigs and Drilling," Before the House Committee on Education and Labor, June 23, 2010. online: <http://edlabor.house.gov/documents/111/pdf/testimony/20100623AdmiralCookTestimony.pdf> (Tab 24)

describing ethical lapses, structural weaknesses in auditing, and other management issues.”<sup>50</sup>

The offshore oil and gas industry in the Gulf of Mexico is very large with about 6000 installations and 4000 helidecks.<sup>51</sup> Regarding inspections in the Gulf of Mexico region, the acting Chief of the Office of Offshore Regulatory Programs recently testified before the House of Representatives Committee on Education and Labor that since 2003 “the MMS conducted almost 4, 000 fixed platform inspections on behalf of the USCG.”<sup>52</sup> He also acknowledged that conducting annual safety checks was a challenge because there were only 56 inspectors in the Gulf which had more than 3, 500 offshore rigs.<sup>53</sup> There will be a 10% increase in the number of offshore inspectors in the 2011 budget.<sup>54</sup>

The Mineral Management Service has responsibility not only for regulating the offshore industry but also for collecting revenue and royalties from that industry. The Mineral Management Service collects approximately \$13 billion annually which represents 95% of the revenues collected by the entire Department of the Interior.<sup>55</sup> A similar structure does not exist in the Newfoundland and Labrador offshore jurisdiction.

A 2008 report by the Department of the Interior’s Office of the Inspector General said that the management reporting structure should be “seriously reconsidered” and that it was imperative to have “management oversight in immediate proximity, not some 1, 500

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<sup>50</sup> Department of the Interior, *Implementation Report: Reorganization of the Minerals Management Service*, (July 14, 2010), at 4, online:

<http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=38543%20>  
[*Implementation Report: Reorganization of the Minerals Management Service*] (Tab 25).

<sup>51</sup> Review of Selected Offshore Petroleum Regulatory Regimes, *supra* note 33 at 16 and 18 (Tab 15).

<sup>52</sup> Statement of Doug Slitor, Acting Chief, Office of Offshore Regulatory Programs, Bureau of Ocean Energy Management, Regulation and Enforcement, Before the House Committee on Education and Labor, June 23, 2010, at 3, online:

<http://edlabor.house.gov/documents/111/pdf/testimony/20100623DougSlitorTestimony.pdf> (Tab 26).

<sup>53</sup> Elana Schor, “MMS Moving to Mandate Safety Standards for Rig Workers,” *The New York Times*, June 23, 2010, online: <http://www.nytimes.com/gwire/2010/06/23/23greenwire-mms-moving-to-mandate-safety-standards-for-rig-57025.html> (Tab 27)

<sup>54</sup> *Statement of Secretary Salazar before the Committee on Oversight and Government Reform on the Continuing Reform of the OCS Program*, (July 22, 2010), online:

[http://www.doi.gov/news/speeches/2010\\_07\\_22\\_testimony\\_ks.cfm](http://www.doi.gov/news/speeches/2010_07_22_testimony_ks.cfm) (Tab 28)

<sup>55</sup> *Salazar Divides MMS’s Three Conflicting Mission*, *supra* note 47 (Tab 23)

miles away in Washington, DC.”<sup>56</sup> The Government of Newfoundland and Labrador notes that it is important that the primary regulatory agency for the Newfoundland and Labrador offshore areas be based in this province.

The Office of the Inspector General also found that MMS marketing staff would arrange for amendments to bids or contracts at the request of oil company representatives. This resulted in a direct loss of government revenues with the Office of the Inspector General estimating the value of the “amendments not in favor of the government to be approximately \$4.4 million.”<sup>57</sup>

Problems were not limited to the revenue collection branch of the Mineral Management Service. A 2010 report by the Office of the Inspector General noted that MMS inspectors and supervisors in the Gulf of Mexico region had received trips, misused government computers, and falsified inspection reports. The former regional supervisor was terminated and pled guilty to making false statements.<sup>58</sup> The Office of the Inspector General’s 2010 report noted that one source provided information that:

...operating company personnel completed the inspection forms using pencils, and MMS inspectors would write on top of the pencil in ink and turn in the completed form. The investigators found that “anyone from MMS involved in the platform inspections could authorize the inspection form, and inspectors routinely signed each other’s names on the forms.”<sup>59</sup>

Problems were also not limited to regulation in the Gulf of Mexico region. A March 2010 Government Accountability Office report found that the MMS Alaska office had not followed proper information sharing policies and this practice hindered the ability of

<sup>56</sup> Earl E. Devaney, Inspector General, “Letter re: OIG Investigations of MMS Employees” (9 September 2008), *Investigative Report: MMS Oil Marketing Group – Lakewood*, (United States Department of the Interior, Office of Inspector General, 19 August 2008) at 4, online: <http://www.doioig.gov/images/stories/reports/pdf/RdKInvestigation.pdf>. [*Investigative Report: MMS Oil Marketing Group – Lakewood*] (Tab 29).

<sup>57</sup> *Investigative Report: MMS Oil Marketing Group – Lakewood*, *supra* note 56 at 11 (Tab 29).

<sup>58</sup> Office of the Inspector General (United States Department of the Interior), *Investigative Report: Island Operating Company, et al.* (31 March 2010) at 1-2, online: <http://www.doioig.gov/images/stories/reports/pdf/IslandOperatingCo.pdf> [*Investigative Report: Island Operating Company, et al.*] (Tab 30)

<sup>59</sup> *Investigative Report: Island Operating Company, et al.*, *supra* note 58 at 7 (Tab 30).

MMS scientists to complete “sound environmental analyses.”<sup>60</sup> The Alaskan office had not developed an environmental guidance handbook as required by MMS policy and instead claimed to “rely on institutional knowledge of experienced staff” even though there had been “high staff turnover in recent years.”<sup>61</sup>

A restructuring of the Minerals Management Service was announced on May 19, 2010. Pending the implementation of that restructuring, the Minerals Management Service was renamed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOE). At this time, the roles and functions of the BOE are the same as the old MMS.

Department of the Interior officials have prepared an Implementation Report regarding how to go about implementing the proposed reorganization. The Implementation Report is currently with congressional leaders for their review and comment.<sup>62</sup> The proposed reorganization will involve dividing the Bureau of Ocean Energy Management, Regulation and Enforcement into two bureaus and one office. The new entities will be named the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement and the Office of Natural Resources Revenue.

The Implementation Report indicates that the transfer of the revenue collection function to the Office of Natural Resources Revenue can occur in an accelerated manner, possibly as early as October 2010. The Implementation Report notes that creation of bureaus for resource management and safety and environmental enforcement is less clear cut:

The two Bureaus will be created from a single bureau in which functions and process are tightly interconnected, making separation complicated and demanding. For that reason, the task of separating the bureau into two new Bureaus will require a careful

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<sup>60</sup> United States Government Accountability Office, *Offshore Oil and Gas Development: Additional Guidance Would Help Strengthen the Minerals Management Service's Assessment of Environmental Impacts in the North Aleutian Basin*, March 2010, online: <http://www.gao.gov/new.items/d10276.pdf> at pp. 20-21 [Government Accountability Office Report] (Tab 31).

<sup>61</sup> Government Accountability Office Report, *supra*, note 60 at pp. 20-21 (Tab 31).

<sup>62</sup> United States Department of the Interior, *Salazar Receives Implementation Plan for Restructuring the Department's Offshore Energy Missions* (Washington: 14 July 2010) online: <http://www.doi.gov/news/pressreleases/Salazar-Receives-Implementation-Plan-for-Restructuring-the-Departments-Offshore-Energy-Missions.cfm#> (Tab 32).

and deliberate process to clearly define how roles and responsibilities will be divided, how ongoing interactions will be managed, what administrative resources each entity will need, where and when new personnel will be added, etc. Thus, the Plan calls for 6 months of employee engagement and communication, detailed analysis, and planning to effect the creation of the new Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement, with a phased implementation beginning in January 2011 and continuing for at least the following 12 months.<sup>63</sup>

The Implementation Report also noted that “the division of various permitting processes between BOEM and BSEE will be subject to further analysis during the implementation of the reorganization.”<sup>64</sup> While the Implementation Report calls for two bureaus, both will report to the Assistant Secretary for Land and Minerals Management and will be “maintaining administration and budget functions as a substantially single unit.”<sup>65</sup> Features of this proposed regulatory structure appear to be similar to that of the CNLOPB. The Implementation Report does not call for the bureaus to be independent agencies like the Environmental Protection Agency or the National Transportation Safety Board.<sup>66</sup>

The Implementation Report does not identify how the proposed safety and environmental bureau will interact with the United States Coast Guard, the Federal Aviation Administration, the Occupational Safety and Health Administration or other regulatory agencies which may have involvement in aspects of offshore oil and gas regulation.

While the United States has recently decided to significantly alter its offshore regulatory system, it is clear that these changes were in part a result of systemic problems faced by the regulatory agencies involved. No similar problems have been identified in respect of the Newfoundland and Labrador offshore area.

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<sup>63</sup> *Implementation Report: Reorganization of the Minerals Management Service*, *supra* note 50 at 6 (Tab 25).

<sup>64</sup> *Implementation Report: Reorganization of the Minerals Management Service*, *supra* note 50 at 9, footnote 2 (Tab 25).

<sup>65</sup> *Implementation Report: Reorganization of the Minerals Management Service*, *supra* note 50 at 12 (Tab 25). The Implementation Report notes that the structure of these functions will be subject to “further analysis during implementation of the reorganization.” [page 12 at footnote 3].

<sup>66</sup> Government of the United States Organization Chart, online: [http://bensguide.gpo.gov/files/gov\\_chart.pdf](http://bensguide.gpo.gov/files/gov_chart.pdf) (Tab 33)

### 3.6 Denmark

Denmark is a non-federal state in the North Sea region. The Danish offshore area has 10 companies operating across 19 producing fields of various sizes.<sup>67</sup> Denmark's offshore oil and gas industry, including health and safety on offshore installations, is regulated by the Danish Energy Agency (DEA). The DEA was established in 1976 and reports to the Ministry of Climate and Energy.

There are a number of different types of installations in the Danish offshore area. There are about 10 platforms with accommodation facilities ranging from 5 to 98 people. There are also a number of unmanned installations with helidecks (5) and without helidecks (7) as well as a number of wellhead installations (15).<sup>68</sup> There are approximately 3,000 people who work on the offshore installations.<sup>69</sup>

The Danish Energy Agency is the issuing authority for various permits and approvals required to operate in the Danish North Sea area.<sup>70</sup> These include operation permits, manning and organization plan approvals and contingency plan approvals. Obtaining an operating permit requires "an evaluation of safety and health conditions for the installation and the operational conditions (Safety and Health Review / Safety Case)."<sup>71</sup>

The Danish Energy Agency is responsible for supervising compliance with the Danish Offshore Safety Act. The Danish Offshore Safety Act entered into force in July 2006 and

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<sup>67</sup> Danish Energy Agency, *Denmark's Oil and Gas Production and Subsoil Use, 2009*, online: < [http://www.ens.dk/Documents/Netboghandel%20-%20publikationer/2010/Denmarks\\_oil\\_and\\_gas\\_production.pdf](http://www.ens.dk/Documents/Netboghandel%20-%20publikationer/2010/Denmarks_oil_and_gas_production.pdf) > at 25 [*Denmark's Oil and Gas Production and Subsoil Use, 2009*] (Tab 34).

<sup>68</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009*, supra note 67 at 108-147 (Tab 34). These figures are a result of compiling information from *Appendix B: Producing Fields*.

<sup>69</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009*, supra note 67 at 35 (Tab 34).

<sup>70</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009*, supra note 67 at 96 (Tab 34). The Danish Energy Agency notes "Corporate income tax and hydrocarbon tax are collected by SKAT (the Danish Central Tax Administration), while the DEA administers profit sharing and the collection of royalty, the oil pipeline tariff and compensatory fee. Moreover, the DEA supervises the metering of the amounts of oil and gas produced on which the assessment of state revenue is based."

<sup>71</sup> Danish Energy Agency, *Oil and Gas: Health and Safety*, online: < [http://www.ens.dk/en-US/OilAndGas/Health\\_and\\_Safety/Sider/Forside.aspx](http://www.ens.dk/en-US/OilAndGas/Health_and_Safety/Sider/Forside.aspx) > (Tab 35).

regulates the safety of offshore installations and employee health and safety.<sup>72</sup> This legislation requires that “the risk of accidents on offshore installations must be reduced so that it is As Low As Reasonably Practicable.”<sup>73</sup>

The Danish Energy Agency has a variety of tools that it uses to supervise compliance. These tools include unannounced inspections which currently occur at a rate of two to five per year. The Danish Energy Agency has noted that because “transport to these installations takes place by helicopter, unannounced inspections will often be known from around the time when the representatives of the DEA meet in the departure lounge at Esbjerg Airport.”<sup>74</sup>

The Danish Energy Agency is the authority responsible for health and safety on offshore installations excluding offshore wind farms. Offshore oil and gas installations in the Danish North Sea are not covered by the Danish Working Environment Authority which is responsible only for onshore regulation.<sup>75</sup> Other regulatory agencies which do play a role in respect of offshore regulation are the Danish Maritime Authority, the Danish Environmental Protection Agency, the Danish National Board of Health and the Danish Civil Aviation Administration (CAA-DK).<sup>76</sup>

The CAA-DK is responsible for helicopter safety including helidecks.<sup>77</sup> Denmark is a member of the European Union and thus is also subject to the European Aviation Safety Agency. In Denmark the CAA-DK is responsible to the Ministry of Transport and regulates by “setting standards for the flight safety of civil aviation and in supervising compliance with the standards for commercial and private operators in civil aviation.”<sup>78</sup>

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<sup>72</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 35 (Tab 34).*

<sup>73</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 36 (Tab 34).*

<sup>74</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 38 (Tab 34).*

<sup>75</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 54 (Tab 34).*

<sup>76</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 54 (Tab 34).*

The roles of the various other regulatory agencies are described at page 54.

<sup>77</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 54 (Tab 34).*

<sup>78</sup> Danish Civil Aviation Administration, *About CAA-DK*, Online: <  
[http://www.slv.dk/index.php?option=com\\_content&task=view&id=258&Itemid=296](http://www.slv.dk/index.php?option=com_content&task=view&id=258&Itemid=296)> (Tab 36). See also  
 Danish Civil Aviation Administration, *Air law & Regulation*, Online: <  
[http://www.slv.dk/index.php?option=com\\_content&task=view&id=254&Itemid=292](http://www.slv.dk/index.php?option=com_content&task=view&id=254&Itemid=292)> (Tab 37).



The Danish Offshore Safety Act also appoints an Offshore Safety Council to assist in the drafting of health and safety regulations, monitor technical and social developments and discuss issues covered by the legislation.<sup>79</sup> The Council meets four times per year and includes members from professional associations, labour groups, industry, and representatives of the various regulatory agencies including the CAA-DK and the DEA.<sup>80</sup>

The Danish Energy Agency is also a member of the North Sea Offshore Authorities Forum which is a forum for “the public authorities of North Sea countries that deals mainly with health and safety issues on offshore installations.”<sup>81</sup>

Safety in the offshore oil and gas industry is an important issue that is regulated in many different ways around the world. Some jurisdictions regulate through their national occupational health and safety department or agency (New Zealand and the United Kingdom), some have a separate national offshore petroleum safety agency (Australia and Norway), some have a national or regional offshore regulatory agency whose mandate includes safety regulation (Denmark and Newfoundland and Labrador/Nova Scotia), some have an evolving process that will likely result in a mixture of these (United States). Across all of these jurisdictions, it is the civil aviation regulator which has primary responsibility for offshore helicopter safety.

#### **4. Proposed Accord Act Amendments to Enhance Occupational Health and Safety**

The *Canada-Newfoundland and Labrador Accord Implementation Act* and the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* are the legal cornerstones for the management of oil and gas activity in the Newfoundland and Labrador offshore area. The Accord Acts established the Canada-

<sup>79</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 56 (Tab 34).*

<sup>80</sup> *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 56 (Tab 34).*

<sup>81</sup> Other Forum member countries include The Faroe Islands, The Netherlands, Ireland, Norway, Sweden, Germany and the United Kingdom. *Denmark's Oil and Gas Production and Subsoil Use, 2009, supra note 67 at 60 (Tab 34).*

Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) and made it responsible, on behalf of the federal government and the provincial government, for the joint management of petroleum resources in the offshore area.

The federal and provincial governments are responsible for establishing the regime for operational safety and occupational health and safety (OHS) to be administered by the C-NLOPB. Operational safety is addressed through regulations promulgated under the Accord Acts. OHS currently involves a division of responsibilities between the provincial occupational health and safety regime and the Accord Acts. As noted in the Province's Phase 1A submission, it is difficult to determine which aspects of the provincial OHS legislation relate to occupational health as opposed to occupational safety and it is equally difficult to draft regulations under the Accord Acts that relate solely to occupational safety. As a result, the C-NLOPB uses the terms and conditions of work authorizations as a means to ensure a comprehensive and enforceable OHS regime.

Under a Memorandum of Understanding (MOU) concluded between the Government of Newfoundland and Labrador, Natural Resources Canada and the C-NLOPB, the C-NLOPB is committed to take into account regulatory practice in the Province and in other offshore jurisdictions in formulating recommendations or establishing OHS guidelines for the offshore area and, where appropriate, to promote consistency with other offshore jurisdictions in Canada. The MOU also provides that the C-NLOPB will consult with government departments to ensure that the OHS regime implemented was consistent to the extent relevant with the OHS regime implemented by the Province.

The Government of Newfoundland and Labrador, the Government of Nova Scotia, and the Federal Government, in consultation with C-NSOPB and C-NLOPB, have now developed the policy basis for the proposed OHS legislative amendments and are committed to proceeding in a timely manner. Governments have agreed that consistency in the East Coast offshore regimes is a desired outcome.

Key governance features of proposed OHS amendments include the ability for the responsible provincial or federal minister to call an audit or inquiry into the activities of the C-NLOPB. The proposed amendments would also establish a tripartite Advisory Council to advise the C-NLOPB and government ministers regarding occupational health and safety and the administration of the OHS part of the Accord Acts.

This new governance model will include clarified lines of accountability. The proposed amendments would provide that the operators, employers, supervisors, suppliers and providers of service, owners, interest holders and corporate individuals are responsible for coordinating their activities regarding health and safety at the workplace. Specifically, in relation to helicopter transportation, the proposed OHS amendments will apply to passenger craft which includes the transportation of workers by aircraft or vessel to and from as well as between installations.

Currently, in Newfoundland and Labrador, the provincial Minister of Natural Resources has responsibility for offshore safety. Under the proposed amendments, there will be a separation of oversight responsibilities. The provincial Minister of Government Services, who is also responsible for onshore OHS, will have ministerial responsibility for offshore OHS oversight. This separation of roles will provide additional assurance that there is no conflict or appearance of conflict between the Ministry of Natural Resources role in promoting offshore development and the Ministry of Government Services role in overseeing the C-NLOPB's regulation of offshore OHS. The minister with oversight responsibility will be entitled to any OHS information and documentation under the control of the C-NLOPB. This change in ministerial oversight responsibility cannot be made without amendments to the Accord Acts because the provincial Minister of Natural Resources is specified as the responsible minister in the Atlantic Accord implementation legislation.

The Accord Acts amendment process has also involved important engagement with stakeholders. As noted in the Province's Phase 1A submission, information sessions were held earlier this year. Stakeholder information sessions occurred on April 14, 2010 in

Halifax and April 16, 2010 in St. John's. A summary of the proposed amendments was distributed at the sessions and was also made available to the public on the Department of Natural Resources' website.<sup>82</sup> An advance copy was provided to the Commissioner and Inquiry Counsel.

In addition to the presentations at these stakeholder information sessions, presentations regarding the proposed amendments were conducted via teleconference call by representatives of the Province, the federal government, and the C-NLOPB to both rotations of the Joint OHS Committees for each Operator. During each presentation an invitation was extended directly to the committee members to comment on the proposed amendments. The information sessions and subsequent meetings with stakeholders were well attended and the submissions received from the various parties were extremely beneficial to the governments. The Province, in conjunction with the Nova Scotia government, and the federal government, continues to work on the proposed amendments and it is anticipated that the legislatures in Newfoundland and Labrador and Nova Scotia and the federal Parliament will consider the proposed amendments in fall 2010 legislative session.

The proposed amendments will not impact on the safety or airworthiness of helicopters used in the transportation of workers to and from the offshore as these matters are within the exclusive jurisdiction of Transport Canada.

The underlying principles in the proposed amendments include offshore OHS laws that provide workers with protections equivalent to those which exist for onshore workers; the continued protection of employee rights (to know, to participate, to refuse, protection from reprisal); an OHS culture which recognizes the shared responsibilities in the workplace; a clear separation of OHS and production issues; joint management by the

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<sup>82</sup> See Governments of Canada, Nova Scotia, and Newfoundland and Labrador, *Amending the Accord Acts To Incorporate an Occupational Health and Safety Regime*, online: <http://www.gs.gov.nl.ca/ohs/OHSOffshoreconsultationDeck.pdf> (Tab 38). See also Governments of Canada, Nova Scotia, and Newfoundland and Labrador, *Proposed Amendments to the Accord Acts to Incorporate an Offshore Occupational Health and Safety Regime*, April 2010, online: < <http://www.gs.gov.nl.ca/ohs/offshoresummaryDoc.pdf>> (Tab 39).

federal and provincial governments; and an effective and efficient regulatory and enforcement regime including a governance model with oversight by the provincial minister responsible for onshore OHS.

#### **4.1 Provisions of the Proposed OHS Amendments**

The purpose of the proposed OHS amendments is to prevent accidents and injuries arising from the course of employment in the offshore area. The operator will have overall responsibility for ensuring the health and safety of all persons engaged in carrying out work related to the operator's authorization. The proposed amendments will apply to all activity related to the exploration and production of petroleum at a workplace situated in the offshore area.

Passengers in transit, including by helicopter, are covered explicitly. The proposed OHS amendments will apply to employees and other passengers immediately before and while they are being transported from the last point of embarkation on shore and a workplace in the offshore area or on the return voyage, as well as between workplaces in the offshore area.

Key definitions in the proposed new OHS section of the Accord Acts result in broad protections for individuals employed in the offshore Newfoundland and Labrador area. The definition of workplace includes, in relation to which an authorization has been issued, any marine installation or structure where an employee is employed, any work-boat operating from a marine installation or structure that is used by an employee to perform routine maintenance or repair work, any dive site from which a diving operation is conducted, and any underwater area where a diving operation is conducted by an employee. Further definitions are noted in the information session documents. See Tab 39.

## **4.2 Role of the Chief Safety Officer**

Under the proposed OHS amendments, when an application for an authorization is made, the Chief Safety Officer must consider the potential impact of the work on the health and safety of the employees and make written recommendations to the C-NLOPB. The CNLOPB may also add additional OHS requirements to an authorization.

The Chief Safety Officer may require the operator or any employer to develop or adopt a code of practice. Every operator must also inform the Chief Safety Officer of any accident, incident, occupational disease or other hazardous occurrence as soon as it becomes known to the operator. The operator must also enquire into the accident, incident etc. and keep records of its enquiry. The operator must submit a yearly written report setting out data on all injuries, incidents, and accidents. This report is to be available to the Chief Safety Officer and the workplace committee.

The Chief Safety Officer may order the operator or an employer to establish a special committee for particular OHS purposes as well as set out the mandate, duties and functions of any special committee that they order created. An operator or employer receiving such an order has 15 days to establish the committee.

The C-NLOPB, alone, or in partnership with the federal government, the provincial government, a foreign government or with any organization that carries out similar functions may undertake research into the causes and means of preventing occupational injury and illness, commission and publish OHS studies, compile and disseminate OHS information and undertake programs to prevent or reduce injuries or occupational illnesses.

## **4.3 Duties and Responsibilities: Operators**

Under the proposed amendments every operator must take all reasonable measures to ensure the health and safety of employees and any other person at the workplace or any

passengers being transported to or from the workplace. Operators' duties will include the coordination of all work and activities related to an authorization, compliance with the health and safety management system, ensuring that employees are made aware of known or foreseeable hazards and are provided with and trained to use personal protective equipment, complying with the requirements of the authorization related to health and safety, ensuring that committees receive the necessary support and training to carry out their functions, and cooperating with persons carrying out duties or functions under the OHS Part of the Accord Acts. A complete list of the operator duties and responsibilities is found at page 8 of Tab 39.

Importantly, operators will also have specific duties in relation to transportation. Operators will have to ensure that, each time before being transported, all employees and any other passengers receive any information or instruction necessary for their health and safety including contact information for the purposes of exercising a work refusal. Operators must also ensure that all passengers are provided with training and personal protective equipment necessary for their health and safety.

Each operator will be required to have a written OHS policy, in consultation with each employer at the workplace and the workplace committee, which contains the commitments of the operator to health and safety and sets out the responsibilities of the various employers in relation to health and safety. The operator will also be required to review the policy every three years.

The operator will be responsible, in consultation with the workplace committee, for the development, implementation and maintenance of an OHS management system that fosters a culture of workplace safety. The system will set out how the operator will identify, assess and manage risks to the safety of employees, the implementation of the health and safety management system, the procedures for responding to emergencies, failures to comply with the system and enquiries into accidents, and auditing the effectiveness of the system.

#### **4.4 Duties and Responsibilities: Employers**

Every employer must take all reasonable measures to ensure the health and safety of employees and any other person at a workplace controlled by the employer, to ensure the health and safety of their employees at a workplace not directly under their control and of their employees while and immediately before being transported on a passenger craft.

Employers will also have specific duties related to the coordination of their work and activities with those of the operator and other employers and compliance with the health and safety management system. A complete list of employer duties in the proposed OHS amendments is found at page 10 of Tab 39.

While the operator is responsible for the overall system, each employer that employs five or more employees or for whom the Chief Safety Officer requires it, must develop and implement an OHS program. The employer's OHS program, like the operator's policy, fosters a culture of workplace safety and implements the operator's health and safety policy.

Every supervisor must take all reasonable measures to ensure the health and safety of employees and other persons under their supervision. Specifically, every supervisor must ensure that all employees comply with the OHS provisions, inform their employer of known or foreseeable hazards and, provide employees with written instructions on procedures or measures to be taken for the protection of health and safety, report any failure to comply with the provisions of the Act or the regulations to their employer.

#### **4.5 Duties and Responsibilities: Employees**

Every employee must take all reasonable measures to protect their own health and safety at the workplace or on a passenger craft. Specifically, every employee must cooperate with their employer, the operator and other employees to protect health and safety, properly use or wear their personal protective equipment and take all reasonable



measures to ensure that other employees properly use or wear personal protective equipment, cooperate with committees and cooperate with any person who performs duties under this Part or the authorization, follow instructions for the purposes of ensuring OHS, and report to their employer any thing or circumstance that could be hazardous in the workplace.

In relation to transportation, every employee must, immediately before and during transportation on a passenger craft, cooperate with the operator, employer and any person operating the craft, and use or wear all personal protective equipment or devices required by regulation, the operator or any person operating the passenger craft.

#### **4.6 Duties and Responsibilities: Providers of Service, Owners, Interest Holders, Directors and Corporate Officials**

Generally, every provider of service must take all reasonable measures to ensure that no person at a workplace is endangered as a result of the provision of services. Specifically, every provider of service must ensure that, in respect of any services that they provide related to the placement of individuals, those individuals have all the required qualifications and certifications; ensure that any information they provide in connection with the provision of services is accurate; and ensure that, to the extent practicable, any person who is likely to rely on their advice, certificate, stamp etc. will not be in contravention of this Part as result of that reliance.

Owners must take all reasonable measures to ensure that any workplace in which they have right, title or interest is delivered and maintained so as to ensure the health and safety of any person at that workplace. Owners also must inform the operator of known or foreseeable hazard(s) that could assist the operator in reducing the risks posed by the hazard(s) and to assess whether there is compliance with the OHS Part, the regulations, and the authorization requirements.

Interest holders must take all reasonable measures to ensure that the operator complies with the provisions of the Part, the regulations, and any requirements of the authorization. Directors and officers of a corporation that carries out work under an authorization must take all reasonable measures to ensure that the corporation complies with the provisions of the Part, the regulations and any requirements of the authorization or those undertaken in the declaration.

#### **4.7 Right to Know and Participate; Communication of Information to Employees**

Mandatory communication of OHS information will be required of both operators and employers. Operators must post the OHS policy, contact information for the reporting of health and safety concerns to the C-NLOPB, and committee member names and their most recent minutes. The operator is also required to make certain information available upon request including a document describing the OHS management system, a copy of the OHS Part and regulations, any code of practice required by the Chief Safety Officer, and any information that would enable employees to become aware of their rights and responsibilities under this Part.

The Chief Safety Officer may require the operator or employer or both to provide certain information to employees in a time and manner of his or her choosing.

#### **4.8 Workplace Committees**

The operator is required to establish one workplace health and safety committee for each workplace they control, with an exception for temporary workplaces where a coordinator must be appointed. The committee's membership is to be made up of one half management and one half employee representatives. The committee will determine its own rules of procedures. Employees serving on a committee must be provided time off to conduct committee business and to receive training related to committee membership.

Operators/employers must immediately notify committees regarding the completion of any prepared or commissioned OHS reports about examinations, monitoring or tests, and if requested, provide a copy. Operators/employers who receive requests for information other than reports have 21 days to respond to the committee in writing.

Under the proposed OHS amendments, the workplace committee must consider all OHS complaints, participate in visual examinations of the workplace with the operator or employer, maintain minutes of their meetings and records, and perform any other CSO assigned duties. In addition, workplace committees may also seek to identify dangers to employee health or safety and advise on procedures to address those dangers, advise the operator/employer on the development of OHS policies, systems or programs as well as the provision of personal protective equipment, and make recommendations for the improvement of occupational health and safety. The workplace committee may choose an employee to act as an observer of any workplace monitoring program, including the set up of or any change to systems for monitoring health and safety conditions at the workplace.

These important provisions will allow employees to continue to make valuable contributions to the health and safety of their offshore workplaces.

The proposed OHS amendments also include appropriate protections for workers at temporary worksites. Where an authorization is for six months or less and there is no equivalent joint OHS committee, the operator will be required to designate an employee to serve as the OHS coordinator for that workplace and ensure that they receive any prescribed training and are informed of their responsibilities. The OHS coordinator has duties similar to workplace committees in that they must consider all complaints with respect to OHS, assist in carrying out employer enquiries into exposure to hazardous materials, maintain records in the form and manner approved by the Chief Safety Officer, and perform any other duties assigned by the Chief Safety Officer.

#### 4.9 Reporting Concerns and Refusal Processes

The proposed OHS amendments will protect the rights of employees to refuse unsafe work. An employee may refuse to perform an activity if the employee has reasonable cause to believe the performance of the activity constitutes a danger to themselves or another person. The employee must first inform their supervisor of the refusal and if the matter cannot be resolved satisfactorily between the employee and supervisor, the work refusal will be examined first by the employer, the workplace committee and, if a resolution is not found, a health and safety officer. Decisions by a health and safety officer regarding the existence of danger are subject to review by the Chief Safety Officer, with the right of appeal to the provincial Labour Relations Board.

Regarding helicopter transportation, it is important to note that the right to refuse includes the right to refuse to be transported if an employee has reasonable cause to believe that being transported constitutes a danger to the employee. A transport refusal must immediately be reported to the operator who must then inform all the other passengers that a refusal has been lodged before any other passenger can be transported. If the matter cannot be remedied to the employee's satisfaction by the operator, then every refusal to be transported will be examined first by the operator and if unresolved to the employee's satisfaction, a health and safety officer. The workplace committee must be notified and may make recommendations that it considers appropriate with respect to any such refusals.

Reprisal actions against an employee are prohibited and the reprisal allegation and resolution process closely mirrors the onshore model. No employee can be penalized for seeking to establish or acting as a member of a committee, acting as an observer of a workplace monitoring program, making a complaint, exercising their right to refuse work or to be transported, seeking OHS related information to which employees are entitled, testifying in any proceeding or inquiry established under the Accord Acts, or giving information to anyone performing duties or functions related to the Accord Acts.

#### 4.10 Verification and Compliance

The proposed OHS amendments will not only establish a comprehensive set of health and safety rights and responsibilities, they will also set out robust verification and compliance mechanisms.

Officers of the CNLOPB who will be responsible for verifying compliance will be called occupational health and safety officers and will be designated as such by the Minister of Government Services and the Federal Minister of Natural Resources. The C-NLOPB may also recommend a non-Board employee to the Provincial Minister for such a designation.

Health and safety officers who are verifying compliance will have a variety of powers. For example, upon entry to a place or any passenger craft, a health and safety officer may make an order to carry out examinations, tests or monitoring in relation to OHS, take samples, photographs and measurements, make recordings, drawings and copies, use any computer system to examine data, remove anything for examination or testing, be accompanied or assisted while in the place by any person the officer considers necessary, meet in private with any person, with that person's agreement and use any of the general order-making powers.

A health and safety officer may also make a number of different types of orders including, but not limited to, an order to provide information, an order to ensure that anything in a place not be disturbed for a reasonable period pending an enquiry, to order anything be removed from a place and sent to the officer for examination or testing, and to facilitate communications between the officer and any person.

When an officer is verifying compliance, an employer representative and an employee representative of the workplace committee will have an opportunity to accompany the officer during the workplace examination. Every person at a place entered by a health and safety officer in order to verify compliance must give the officer all reasonable assistance. A health and safety officer has a duty to provide copies of all written reports

on OHS examinations, monitoring or testing carried out by the officer to the operator and the employer. Health and safety officers are provided with an authority to exercise the powers described without a warrant if the conditions for a warrant exist but by reason of exigent circumstances it would not be practicable to obtain.

The proposed OHS amendments also contain provisions to ensure that workers feel confident in disclosing information to the CNLOPB. The identity of anyone who provided information related to OHS administration and enforcement must not be divulged except under terms and conditions provided by a court or tribunal. The proposed amendments also include protections for commercially confidential information.

#### **4.11 Disclosure of Information**

The Chief Safety Officer may disclose OHS information to government officials, government agencies and foreign governments where the CSO is of the opinion that the disclosure is in the interest of health and safety. The Chief Safety Officer may set the conditions for further disclosure of the information.

The Federal Minister and the Provincial Minister are also entitled to any OHS information or documentation under the control of the CNLOPB, upon request. Such disclosure does not require the consent of the person to whom the information or document relates however, the Ministers may not further disclose the information without the written consent of that person.

The CNLOPB, on the recommendation of the Chief Safety Officer, may release information related to any accident, incident, occupational disease or other hazardous occurrence if it deems that the public interest in making the disclosure outweighs the potential harm from such a disclosure.

#### 4.12 Orders and Decisions

The proposed OHS amendments recognize the realities of the offshore industry and thus, health and safety officers may issue orders and decisions related to danger even if they are not physically present in the place referred to in the order. The recipient of an order must provide the officer with a notice of compliance describing how they have complied with the order within a time specified by the officer.

A health and safety officer who believes that there is or has been a contravention may order the person to terminate the contravention within a specified time and/or to take specified steps to ensure the contravention does not re-occur. Further, where a health and safety officer believes that the operation of any thing, the performance of a specific activity or the condition of a workplace or passenger craft constitutes a danger, the officer may order any person to take measures to correct the hazard or condition within a specified time or protect any person from the danger. If the officer is of the opinion that the danger cannot otherwise be corrected immediately, the officer may order that the thing, activity or place not be used until the order is complied with.

The prioritization of safety is clear throughout the proposed amendments. In the event of inconsistency between orders made by different officers, an order of an occupational health and safety officer prevails over an order made by an operational safety officer, a conservation officer or the Chief Conservation Officer. Similarly, an order of a special officer prevails over an order made by an occupational health and safety officer, the Chief Safety Officer, an operational safety officer, a conservation officer or the Chief Conservation Officer where any inconsistency exists between the orders.

Work refusal decisions and substantive orders must be reviewed by the Chief Safety Officer before being appealed to the external body. Any decision of an OHS officer related to a refusal or any order of an OHS officer may be appealed to the CSO. Decisions or orders of a special officer, as well as orders that an operator or employer must establish a special committee, will go directly to external appeal. In Newfoundland

and Labrador, decisions or orders related to reprisal complaints are referred directly to the Labour Relations Board.

#### **4.13 Offences and Penalties**

The proposed OHS amendments will also contain robust enforcement mechanisms. Offences will include making a false entry or statement, destroying, damaging or falsifying any report, failure to comply with the order of an OHS officer or to comply with a requirement of the CSO to develop or adopt a code of practice or to comply with a decision of the CSO related to a review, or failure to comply with the decision or order of the Labour Relations Board. Proceedings by way of summary conviction may be instituted up to three years from the date on which the offence occurred. Proceedings by way of indictment have no time limit.

Penalties for summary conviction offences are as high as fines of \$100, 000 or up to one year imprisonment. Penalties for indictable offences are as high as fines of up to \$1, 000, 000 or up to 5 years imprisonment. The Court will also have broad powers to make orders, including prohibiting the offender from committing an act or engaging in any activity that may result in a continuation of the offence, taking any measure deemed necessary to avoid any harm to health or safety that may result from the act or to remedy any harm that has resulted from it, directing the offender to publish the facts related to the case, directing that within three years the offender to provide the CSO any information on the offender's activities that the court deems appropriate, directing the offender to pay the Board a sum of money it considers appropriate to conduct OHS research, education and/or training, directing the offender to perform community service, or directing the offender to post a bond that the court consider appropriate to ensure compliance with any condition required.



#### 4.14 Advisory Council, Audits and Inquiries, Ministerial Oversight

The proposed OHS amendments will enhance government oversight. New oversight mechanisms include an Advisory Council, and the ability to conduct audits and inquiries into occupational health and safety issues. The proposed Advisory Council will be comprised of an equal number of representatives of employees and industry. The federal and provincial governments will also be members and the Chief Safety Officer will be an *ex officio* member. One half of the Advisory Council members will be appointed by the Minister of Government Services (the Provincial Minister responsible for OHS) and the other half of the members will be appointed by the Federal Ministers of Natural Resources and Labour jointly. Members are appointed for a maximum term of five years. The Advisory Council will advise the Board and the Ministers on the administration of OHS Part of the Accord Acts and any other matter respecting occupational health and safety that the Board or the Ministers refers to it.

The audit provisions allow the Provincial Minister, the Federal Minister, or the Ministers jointly to appoint an auditor to measure and report on the effectiveness of the Board in administering the proposed OHS amendments. Any report shall be made to both Ministers and the Board and the Board must reply to the audit within 60 days of the receipt of the auditor's report. Both Ministers will receive a copy of the Board's reply. This provision creates the possibility of an independent assessment of the Board's efficacy with the authority to direct improvements.

A further oversight provision is the ability to call inquiries. The Federal Minister or the Provincial Minister or both jointly may appoint a person(s) to inquire into and report on OHS matters. The C-NLOPB may also initiate an inquiry on its own. A person appointed by the Federal Minister, by the two Ministers jointly or by the Board will have all the powers of a commissioner under Part I of the federal *Inquiries Act*. If both the C-NLOPB and Minister(s) have called an inquiry into a matter, the Minister(s) may direct the Board to terminate its inquiry and provide all records and evidence collected to the person appointed by the Minister(s).

The C-NLOPB's annual report will also be required to have a specific section on OHS and the Board must appoint an audit and evaluation committee. A joint directive power for the federal Minister of Natural Resources and the Provincial Minister responsible for OHS has been created and includes the ability to direct the Board to implement recommendations arising from an audit or inquiry.

An additional oversight provision is the creation of the role of a special safety officer. A special safety officer is a non-Board employee who is designated to carry out certain duties under the OHS Part of the Accord Acts. The Provincial Minister may appoint a special officer, in circumstances where the Provincial Minister is satisfied that the existing provisions of the Accord Acts are not sufficient to address the issue and where there is a serious threat to the health or safety of offshore workers in the near term. The Federal Minister of Natural Resources must also be satisfied of these conditions and will consult with the federal Minister of Labour before designating the officer.

#### **4.15 Regulation Making Powers**

The proposed OHS amendments will also allow for regulation making powers. Regulations may be made in a number of areas including, but not limited to, the establishment of fire safety and emergency measures, the establishment of standards for equipment that may be used by employees, specifying the persons responsible for ensuring that regulated standards are complied with, and the operation of the Advisory Council. The regulation making power also includes a catch-all as there are provisions throughout the text of the Bill relating to things which may be prescribed through regulation. The regulations may incorporate any material by reference regardless of source and may be fixed at a specific point in time (static) or change as the incorporated material changes (ambulatory).

## **5. Conclusion**

The Offshore Helicopter Safety Inquiry was established by the CNLOPB following the March 12, 2009 crash of Cougar helicopter flight 491. The causes of the accident are being investigated by the Transportation Safety Board. The Offshore Helicopter Safety Inquiry will recommend improvements to the safety regime in the Newfoundland and Labrador area to ensure the risks of offshore helicopter transportation remain as low as reasonably practicable.

The Ocean Ranger Commission concluded that “the single window approach would appear to be the best institutional arrangement for regulating offshore oil operations” as long as appropriate steps such as “the establishment of a Safety Branch within the single regulatory agency” were taken.<sup>83</sup> The Commission noted that with a single regulatory agency “competing jurisdictions, administrative overlap and lack of co-ordinated, consistent policy were diminished.”<sup>84</sup>

After the Ocean Ranger Commission Report was issued a ministerial task force, the Harrison Task Force, was established to make recommendations regarding the implementation of the Ocean Ranger Commission Report. In a report issued on July 31, 1986 Task Force members supported the Ocean Ranger Commission’s single window regulatory model and determined that effective safety regulation could not be ‘parceled out’.

While the C-NLOPB is the primary regulator in the NL offshore area, there are other regulatory agencies which play a role in regulating specific aspects of offshore safety. For example, Transport Canada regulates marine and air transportation including offshore helicopter transportation and the C-NLOPB consults closely with Transport Canada on these matters

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<sup>83</sup> Ocean Ranger Commission Report, *supra* note 2 at 140 (Tab 3).

<sup>84</sup> Ocean Ranger Commission Report, *supra* note 2 at 152 (Tab 3).

Safety in the offshore oil and gas industry is an important issue that is regulated in many different ways around the world. Some jurisdictions regulate through their national occupational health and safety department or agency (New Zealand and the United Kingdom), some have a separate national offshore petroleum safety agency (Australia and Norway), some have a national or regional offshore regulatory agency whose mandate includes safety regulation (Denmark and Newfoundland and Labrador/Nova Scotia), some have an evolving process that will likely result in a mixture of these (United States). Across all of these jurisdictions, it is the civil aviation regulator which has primary responsibility for offshore helicopter safety.

Upcoming Accord Act Amendments will enhance occupational health and safety in the NL and NS offshore. This new governance model will include clarified lines of accountability. The proposed OHS amendments would provide that the operators, employers, supervisors, suppliers and providers of service, owners, interest holders and corporate individuals are responsible for coordinating their activities regarding health and safety at the workplace. Specifically, in relation to helicopter transportation, the proposed OHS amendments will apply to passenger craft which includes the transportation of workers by aircraft or vessel to and from as well as between installations.

The proposed amendments will provide the CSO and health and safety officers with the enforcement tools and mechanisms to ensure that there is an appropriate level of accountability for the parties with obligations and responsibilities under the new OHS regime, allowing for a comprehensive, and offshore specific, regulatory environment.

Key governance features of proposed OHS amendments to the Accord Acts include the ability for the responsible provincial or federal minister to call an audit or inquiry into the activities of the C-NLOPB. The proposed amendments would also establish a tripartite advisory council to advise the C-NLOPB and government ministers regarding occupational health and safety and the administration of the OHS part of the Accord Acts.

Currently, in Newfoundland and Labrador, the provincial Minister of Natural Resources has responsibility for offshore safety. Under the proposed amendments, there will be a separation of oversight responsibilities. The provincial Minister of Government Services, who is also responsible for onshore OHS, will have ministerial responsibility for offshore OHS oversight. This separation of roles will provide additional assurance that there is no conflict or appearance of conflict between the Ministry of Natural Resources role in promoting offshore development and the Ministry of Government Services role in overseeing the C-NLOPB's regulation of offshore OHS. The minister with oversight responsibility will be entitled to any OHS information and documentation under the control of the C-NLOPB.

The underlying principles in the proposed amendments include offshore OHS laws that provide workers with protections equivalent to those which exist for onshore workers; the continued protection of employee rights (to know, to participate, to refuse, protection from reprisal); an OHS culture which recognizes the shared responsibilities in the workplace; a clear separation of OHS and production issues; joint management by the federal and provincial governments; and an effective and efficient regulatory and enforcement regime.

It is anticipated that the legislature in Newfoundland and Labrador and the federal Parliament will consider the proposed occupational health and safety amendments in the fall 2010 legislative session.