# Newfoundland and Labrador
# Offshore Helicopter Safety Inquiry

## Phase 1b – Investigation Phase

**Submission of the**

**Canadian Association of Petroleum Producers**

**July 30, 2010**

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## Introduction

### Background

The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 90 per cent of Canada's natural gas and crude oil. CAPP's associate members provide a wide range of services that support the upstream crude oil and natural gas industry. Together CAPP's members and associate members are an important part of a $110-billion-a-year national industry that provides essential energy products. CAPP has offices in Calgary, AB and St. John's, NL. CAPP's mission is to enhance the economic sustainability of the Canadian upstream petroleum industry in a safe and environmentally and socially responsible manner, through constructive engagement and communication with governments, the public and stakeholders in the communities in which we operate.

This Inquiry arises from the crash of Helicopter Flight 491 with a terrible loss of lives and suffering to the sole survivor, families and friends. While the cause of the crash of Helicopter Flight 491 will not be known with certainty until the Transportation Safety Board (TSB) completes its investigation, this Inquiry has provided the opportunity to examine safety issues related to the transportation of workers to and from offshore facilities and explore the roles of the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) and the offshore petroleum industry in relation to safety. The upstream petroleum industry is committed to continuous improvement. The regulatory structure for offshore Newfoundland and Labrador oil and gas regulation is fundamentally sound. In regard to the purpose of this Inquiry, any improvements can and should be made within the existing regulatory structure.

The purpose of this Inquiry, as set out in its Terms of Reference, is to determine what improvements can be made so that the C-NLOPB can determine that the risks of helicopter transportation of offshore workers are as low as is reasonably practicable in the Newfoundland and Labrador Offshore Area. Specifically the Inquiry Commissioner will inquire into, report on, and make recommendations in respect of: safety plan requirements for operators and the role that operators play in ensuring that their safety plans, as represented to the C-NLOPB, are maintained by helicopter operators; search and rescue obligations of helicopter operators by way of contractual undertakings or

legislative or regulatory requirements; and the role of the C-NLOPB and other regulators in ensuring compliance with legislative requirements in respect of worker safety.[1]

CAPP is a party with standing in the Inquiry. CAPP participated in Phase 1a, the issue identification phase, and Inquiry counsel directed CAPP to give evidence on the following matters in that phase:

1. **HUEBA:** Helicopter Underwater Emergency Breathing Apparatus (HUEBA) is a new piece of safety equipment carried by all offshore workforce personnel on flights to and from offshore installations in Atlantic Canada. This is a compressed air device which was implemented in late April 2009 in Nova Scotia and May 2009 in Newfoundland and Labrador.
2. **Survival Suits:** CAPP's role in survival suits has been: review of the immersion suit standard in 1999 and 2005 (information sharing primarily), review of the helicopter passenger transportation suit system (2008-present), and coordination of operator response to regulator questions related to the E-452 and E-452 leakage testing (2009) (note: the E-452 was the suit worn by all offshore personnel during helicopter travel at the time CAPP's evidence was presented to the inquiry).
3. **Escape Evacuation and Rescue (EER)**: CAPP has been engaged with various parties since 1999 in the development of guidance for industry operators to meet their duties in respect of marine escape, evacuation and rescue (emergency response) for the Atlantic Canada offshore. (Note: involvement of helicopters is noted in the rescue/emergency response component of the guide). The EER Guide has now been completed. It has been widely distributed by CAPP[2] and filed with the Inquiry.
4. **CAPP participation in U.K. Helicopter Task Group**: *Oil and Gas UK*, the association representing offshore oil and gas companies and major service companies in the U.K., created a Helicopter Task Group following an offshore petroleum industry helicopter crash off the north-east coast of Scotland on April 1, 2009. The task group was assembled to address cross industry issues around helicopter safety. Learnings from their incidents as well as from Atlantic Canada have been and will continue to be shared.

The Issues for Consideration in this phase of the Inquiry were posted to the Inquiry website at the end of March 2010. The Inquiry then progressed to Phase 1b, the 'investigation' phase. Phase 1b has involved investigating the issues, consulting with any person or party the Commissioner deems appropriate and retaining consultants to prepare written reports on any of the issues identified. Six reports by four sets of consultants were provided to parties. The consultants presented their reports orally June 28-30, 2010.

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[1] Shortcut to: http://www.oshsi.nl.ca/userfiles/files/Terms%20of%20Reference%20amended%202010-02-11.pdf

[2] In addition to the those such as the Atlantic Canada industry and regulators most closely interested in the EER Guide, CAPP has posted the EER Guide on its both its public website www.capp.ca and member only website and made its general membership aware of the EER Guide through email distribution.

Phase 1b also provides the opportunity for parties to make written submissions related to any or all issues. Written submissions are due no later than July 30, 2010. Oral submissions expanding on the written submissions can also be made. Oral submissions are to take place at public hearings on Sept 8 to 10, 2010. The Commissioner will then proceed to write his report containing his findings and recommendations.

The Commissioner has advised that the Inquiry will not be 'forensic' in nature, will not assess blame, and will be forward looking with a view to improvement.

We are providing this submission on issues of particular interest to CAPP with a view to assisting the Commissioner with the investigation. The fact that this submission is selective and does not address all issues on the Inquiry issues list does not mean that CAPP is not interested in those issues.

**Helicopter Passenger Safety Issues Addressed in this Submission**

The Inquiry is focused on workplace safety specifically as it relates to the transport of workers offshore by helicopter. The Commissioner has identified the following issues that CAPP wishes to address in this submission:

> *Issue 1: Should there be a degree of separation within the C-NLOPB between offshore helicopter regulation and other offshore industry regulation?*
>
> *Issue 4: What are the most appropriate practices, standards and forms of interaction between the C-NLOPB and:*
>
> *a. ..*
> *b. industry associations*
> *c. ..*
> *d. ..*
> *e. ..*
>
> *and are these interactions sufficient to ensure requirements that are understood, timely, achievable and enforceable?*
>
> *Issue 12: What are the appropriate standards of offshore helicopter safety training to ensure that the risk to passengers is as low as is reasonably practicable, both during training and helicopter transport?*
>
> *Issue 13: What personal protective equipment (PPE) and clothing is necessary for helicopter passengers and pilots; what are the standards, and should the C-NLOPB require guidelines to ensure such equipment and clothing is properly fitted?*
>
> *Issue 19: Does the C-NLOPB have sufficient resources and expertise, including access to independent aviation expertise, to evaluate whether a proposal or plan*

*for helicopter transport from industry ensures that the risks of helicopter transport are as low as reasonably practicable?*

While the issues list sets out the issues in a formal manner, there are some regulatory issues of a more general nature, some of which have been touched on over the course of the Inquiry, and that may, depending perspective taken on broader issues, affect the specific.

CAPP will begin this submission with a general discussion of the purpose of regulation, the attributes of the regulator, the role of industry in relation to the regulator, and the role of other stakeholders as well as some other of the more general questions that have come up during the Inquiry. CAPP will then address the issues noted above as set out on the issues list.

## General Discussion

### Purpose of Workplace Safety Regulation

Put in its simplest form regulation exists to ensure that private activity conforms to social standards. All human activity is subject to social standards.[3] Social standards flow from a shared acceptance that our behaviour should conform to the standards. Regulation is effective – and also tolerable -- because that shared acceptance in itself leads to conformity to the standards. Corporations -- no less than individuals -- share the acceptance of social standards and support social standards with their own corporate policies and their actions.

As such, when we focus on the regulatory model, the starting point should be on how regulation can most effectively and efficiently reinforce beliefs and behaviours that are already well-developed, how to ensure clarity of expectations, how best to approach enforcement, and how to instill public confidence that behaviours do conform to accepted norms.

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[3] The Backgrounder to a 2005 Government of Canada report on progress on regulatory renewal describes the pervasiveness of regulation, as well as the interdependence of social, environmental, and economic objectives as follows:
*"Regulation, in its broadest sense, is a principle, rule, or condition that governs the behaviour of citizens and enterprises. Regulation is used by governments, in combination with other instruments, such as voluntary standards and taxation, to achieve public policy objectives. Regulation protects our health, safety and the environment and it plays a role in virtually every aspect of our lives: the products and services we use, the medication we consume, and the food we eat."*
*"Smart Regulation is aimed at improving the Government of Canada's regulatory system so that it can keep pace with today's realities and our evolving needs. This means building a regulatory system that is more effective in safeguarding the health and safety of all Canadians, ensuring a clean and sustainable environment, and creating the conditions for an innovative and competitive economy. In meeting these goals, Smart Regulation recognizes the interdependence of social, environmental, and economic objectives. It strives for a better coordinated system that remains forward-thinking, progressive and accountable to the citizens it serves."*
Shortcut to: http://www.tbs-sct.gc.ca/media/nr-cp/2005/1028-eng.asp

Worker safety is the focus of this Inquiry. Canada stands among the world leaders in worker safety. Protection of worker safety is a powerful Canadian social value[4], rests on strong social acceptance[5], is reflected as a core value in the Canadian offshore legislative scheme[6], is supported by laws of general application[7], and is the top priority for those doing business in the Newfoundland and Labrador offshore[8]. CAPP itself has a committee dedicated to managing safety matters of common concern to industry in the Atlantic Canada offshore areas, the CAPP Atlantic Canada Safety Committee, which reports directly to and is under the direction of the CAPP Atlantic Canada Executive Policy Group (AC EPG)[9].

The reports and evidence of the Inquiry consultants clearly demonstrate that the regulatory regime in Canada has led to levels of safety that are on a par with global peers. While Aerosafe notes that there are some 20 different regulatory regimes with significant differences existing between different countries[10] and while Aerosafe seems to have its preferences[11], the fact as reported by Taber is that: "*Based on the information presented in this report, offshore helicopter travel in Canada is at or above safety levels in other regions around the world.*"[12]

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[4] Legislative changes beginning in the 19th century and continuing throughout the 20th century fundamentally altered the legal and regulatory framework for worker safety that had existed under judge made common law. Both the federal and provincial governments have Ministers responsible for worker safety in accordance with policies that recognize the right of workers to healthy and safe workplaces. See, for example, shortcut to: http://www.hrsdc.gc.ca/eng/labour/health_safety/index.shtml and shortcut to: http://www.gs.gov.nl.ca/ohs/index.html

[5] Canada has participated in the work of the International Labour Organization since its creation. The ILO, created in 1919 by the Treaty of Versailles ending the World War, placed "*Protection of the worker against sickness, disease and injury arising out of his employment*" as among the priorities identified in the Preamble to its Constitution and these words still remain in the ILO Constitution. The Declaration of Philadelphia adopted during the Second World War makes "*adequate protection for the life and health of workers in all occupations*" a solemn obligation and the Declaration was made a part of the ILO Constitution. The ILO was made part of the United Nations in 1946 and was its first specialized agency. Shortcut to: http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm . All jurisdictions in Canada have made worker safety a priority and have enacted legislation and created regulation to achieve this. Shortcut to: http://www.rhdcc.gc.ca/eng/lp/ila/Representing_Canada/Canada_participation.shtml

[6] Safety is explicitly identified as a key priority in the authorization of offshore operations. Part III of the *Canada-Newfoundland Atlantic Accord Implementation Act* contains a very important purpose clause that states in section 135.1(a) "*The purpose of this part is to promote … safety ….*" Shortcut to: http://laws.justice.gc.ca/eng/C-7.5/

[7] Laws of general application apply to offshore operations subject to inconsistency or conflict (s.4) and provincial occupational health and safety law applies within the terms established by section 152 *Canada-Newfoundland Atlantic Accord Implementation Act.* Shortcut to: http://laws.justice.gc.ca/eng/C-7.5/

[8] Shortcut to: http://www.oshsi.nl.ca/userfiles/files/P00116.pdf (slide 149)

[9] CAPP provided the Inquiry with a description of CAPP governance in Phase 1a. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/P00059.PDF CAPP has a well-structured organization to manage petroleum industry issues in Atlantic Canada under the auspices of the Atlantic Canada Executive Policy Group.

[10] Aerosafe, Review of Selected Offshore Petroleum regulatory Regimes, p.2, Introduction

[11] Aerosafe, Review of Selected Offshore Petroleum regulatory Regimes,, Pp 54 and 55, Conclusion, where Aerosafe appears to prefer regimes where safety is separated from operations.

[12] Taber, Offshore Helicopter Safety Report, p. 55, Conclusions

Safety is about risk management. Nothing in life is absolutely risk-free. For those things we do choose to undertake, the goal is to do them as safely as is reasonable and practical or, put another way, with a risk that is As Low as Reasonably Practicable (the 'ALARP' principle).[13] This is done by identifying hazards/risks and developing and implementing mitigation plans to achieve the ALARP principle.

The reports and evidence of the Inquiry consultants also make it clear that it is often the case that decisions on appropriate safety measures can involve a difficult balancing of multiple factors where different people - reasonable people who have the same concern for safety - can come to different conclusions when presented with the same issue. Coleshaw, for example, speaks of various conflicts in objectives such as the balance between thermal protection and buoyancy where the former increases the length of time a suit may protect the wearer from the cold while the latter can cause problems in underwater escape.[14] Taber has, likewise, emphasized that any new proposal for a safety measure should lead to an assessment of other safety measures to ensure that some new risk factor has not been inadvertently increased.[15] In any such balancing of factors, different people may strike the balance differently. The mere fact that someone has decided to do something one way in designing a safety model or system while another person has decided to do it a different way does not by itself imply that one decision is better than the other.

The goals of workplace safety, in broad terms, are to prevent illness, injuries, and fatalities and to promote safe practices.[16] These goals are addressed in the regulatory framework governing offshore petroleum exploration and development.

In the case of Newfoundland and Labrador offshore petroleum activity the goals of regulation are found in the specific governing legislation and the mandate of the regulator created by that legislation as well as laws of general application. The C-NLOPB provides a succinct statement of its mandate and role under the legislative scheme on its website. Safety is, as should be expected, paramount along with environmental protection. The mandate and role are as follows:

> *"MANDATE*
> *To interpret and apply the provisions of the Atlantic Accord and the Atlantic Accord Implementation Acts to all activities of operators in the Newfoundland and Labrador Offshore Area; and, to oversee operator compliance with those statutory provisions.*
>
> *ROLE*
> *In the implementation of its mandate, the role of the C-NLOPB is to facilitate the exploration for and development of the hydrocarbon resources in the*

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[13] This principle is identified in the Purpose clause of the Inquiry's mandate.
[14] Coleshaw p.6
[15] Taber p.9, for example, discusses this in connection with stroking seats.
[16] See for example the Canadian Centre for Occupational Health and Safety. Shortcut to: http://www.ccohs.ca/ccohs.html

*Newfoundland and Labrador Offshore Area in a manner that conforms to the statutory provisions for:*

- *worker safety;*
- *environmental protection and safety;*
- *effective management of land tenure;*
- *maximum hydrocarbon recovery and value; and,*
- *Canada/Newfoundland & Labrador benefits.*

*While the legislation does not prioritize these mandates, worker safety and environmental protection will be paramount in all Board decisions.*

*OBJECTIVES*
*SAFETY*

- *To verify that operators have appropriate safety plans in place.*
- *To verify, through audits and inspections, that operators follow their safety plans and applicable statutory requirements.*
- *To verify, through compliance actions, that deviations from approved plans and applicable statutory requirements are corrected.*

*ENVIRONMENT*

- *To verify that operators assess and provide for effects of the environment on the safety of their operations.*
- *To verify that operators perform an environmental assessment pursuant to Canadian regulations, of the effects of their operations on the environment, and prepare a plan and provide for mitigation where appropriate.*
- *To verify, through compliance actions, that operators comply with their environmental plans.*

*RESOURCE MANAGEMENT*

- *Effective and efficient administration of land tenure.*
- *Oversight of production activities for consistency with maximum recovery, good oilfield practice, production accounting and approved plans.*
- *To build a knowledge base for the Newfoundland & Labrador Offshore Area through the acquisition and curation of data from exploration and production activity.*

*BENEFITS*

- *To verify operators have an approved Canada/Newfoundland & Labrador Benefits Plan that addresses their statutory obligations."*[17]

Safety and protection of the environment are, as stated in the above passage from the C-NLOPB, paramount values under this regulatory framework. Protection of safety and the environment do not exist as abstractions: they arise from and are integral to the management of the offshore petroleum resource. Knowledge and expertise in the one informs the others. This is reflected in the establishment of a single regulator for the Newfoundland and Labrador offshore.

[17] Shortcut to: http://www.cnlopb.nl.ca/abt_mandate.shtml

Having a single regulator with both safety and other operational responsibilities is not a unique arrangement. In Canada it predates the creation of the C-NLOPB and CNSOPB. The National Energy Board (NEB) has a similar model – a model that has worked successfully for 60 years. The NEB is an independent federal agency established to regulate, within Canada, international and inter-provincial aspects of the Canadian oil, gas and electric utility industries. It also has jurisdiction over oil and gas activities in offshore areas in Canada under legislation similar in a number of significant respects to that governing the C-NLOPB.[18] The purpose of the NEB is to promote safety and security, environmental protection and efficient energy infrastructure and markets in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade.[19] Like the C-NLOPB, safety and protection of the environment are core values which underlie the regulatory framework. Like the C-NLOPB, worker safety is a key element of a comprehensive safety focus that considers all aspects of safety of the undertakings and facilities regulated.

Safety in the Newfoundland Labrador offshore has a clear and distinct priority that is separate to a significant degree from other aspects of offshore regulation. Safety at the C-NLOPB is the direct responsibility of the Chief Safety Officer (CSO). The CSO is also Manager, Operations and Safety and reports directly to the Chair and CEO. However, the CSO holds an independent office with a clear statutory role to ensure safety in offshore oil and gas operations.[20] The CSO directs a team of Safety Officers who closely monitor operations and conduct inspections and safety audits. The level of scrutiny of individual operations and the industry generally is very high. Safety Officers are present on the offshore facilities for significant periods of time. In regard to worker safety this also means that the safety officers are physically present among the workforce on the facilities for significant periods of time. These are very strong features of the C-NLOPB model. The CSO has the authority to shut down unsafe practices and will do so when necessary.

Safety in the context of C-NLOPB regulation of offshore activities includes protection of workers as well as protection of the environment and vessels, installations, or aircraft from offshore operations. As such safety and operations are two sides of the same coin in that good equipment and operating practices are integral to safety. The C-NLOPB's safety objectives are: to verify that operators have appropriate safety plans in place which are part of the operator's safety management systems, to verify, through audits and inspections, that operators follow their safety plans and applicable statutory requirements, and to verify, through compliance actions, that deviations from their plans and applicable statutory requirements are corrected.[21]

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[18] In regard to its offshore jurisdiction, the NEB, like the C-NLOPB, has safety as a key purpose in the exercise of its jurisdiction to authorize offshore operations and also has a Chief Safety Officer and a Chief Conservation Officer. See *Canada Oil and Gas Operations Act.* Shortcut to: http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/ct/cndlndgsprtnsct-eng.html#s2_1

[19] Shortcut to: http://www.neb-one.gc.ca/clf-nsi/rthnb/whwrndrgvrnnc/whwrndrgvrnnc-eng.html

[20] The role of the CSO is clearly described in detail on the C-NLOPB website for all to see. Shortcut to: http://www.cnlopb.nl.ca/safe_compliance.shtml

[21] Exhibit P-00030 Power Point Presentation of Howard Pike Slide 3 of 31

The role and mandate of the C-NLOPB is governed by the Canada-Newfoundland Atlantic Accord Implementation Act. According to Section 138.2 of the Act, "*The Board shall, before issuing an authorization for a work or activity... consider the safety of the work or activity by reviewing, in consultation with the Chief Safety Officer, the system as a whole and its components, including the structures, facilities, equipment, operating procedures and personnel*[22]".

**Attributes of a High Quality Regulator**

Regulators are servants of the public. Expected attributes include:

- Commitment to the legislated policy goals of regulation and a well considered approach and organizational structure: professionalism and dedication
- Objectivity and neutrality towards all who are affected by regulation: neither favouratism nor prejudice
- Knowledgeable and well informed on the matters regulated: subject matter expertise
- Open to information and views of those affected by regulation: accessible and open to fresh ideas
- Consistency in approach and decisions: predictable
- Approach and decisions grounded on a sound appreciation of what is reasonably achievable: practical and balanced
- Even handed approach and decisions that communicate clearly rationales and expectations: fair and transparent

The C-NLOPB possesses all these attributes. There is no evidence to the contrary. This should not be surprising. It should be obvious that the design of the model of regulation has these attributes in mind.

**Role of Industry**

Industry is accountable for the safety and protection of its workforce, its operations, and the environment. Industry brings enormous depth of knowledge, experience, systems, and processes. This depth of expertise comes from the fact that the industry has been operating successfully for many years, has adapted to many different operating environments, and continues to adapt as circumstances change. Developing energy resources safely is critical to success.

Given that a key goal of regulation is to make well informed decisions, it is simple common sense that the regulator should welcome the knowledge and expertise that industry can contribute to any discussion.

Indeed, sound regulatory practice dictates that regulators invest in collaborative partnerships with stakeholders.[23]

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[22] Shortcut to: http://laws.justice.gc.ca/eng/C-7.5/

[23] *The Regulatory Craft*, Malcolm K. Sparrow, Brookings Institution Press, Washington D.C., 2000, p.100.

Acceptance of an industry view is never a foregone conclusion and decisions can and do differ from what industry would propose. The positions that any party presents to the regulator must be credible and persuasive.

Industry associations like CAPP, form precisely because governments want to make well informed polices and industry associations provide a vehicle for efficient communication between industry and government on issues that affect industry generally.[24] Conversely, industry has an obvious stake in well informed decision making and industry associations provide industry the ability to efficiently provide an industry view. Wherever government policy and regulation affects an industry that has multiple companies, industry associations of one form or another can be found. Such associations are, and they must as a matter of law be, voluntary. In free market economies, only a limited range of things can be undertaken by industry associations and, even within that range of activity, the members of the association must be free to pursue their own point of view when they do not agree with other members. CAPP plays this role in the Atlantic Canada offshore.

CAPP has a well-structured organization to manage petroleum industry issues in Atlantic Canada under the auspices of the Atlantic Canada Executive Policy Group. CAPP's organization in Atlantic Canada was described in the evidence in Phase 1a.[25]

**Stakeholder Consultation**

The C-NLOPB has the ability to consult and often does consult with various stakeholders on its various initiatives. Environmental groups, drilling contractors, the workforce, certifying authorities, and other government entities have all been invited to provide, and have provided, input to C-NLOPB initiatives. The C-NLOPB also has MOUs with other government entities to co-ordinate, co-operate and avoid duplication.[26]

With regard to the offshore workforce the avenues for access to the C-NLOPB are substantial and include, through worker representatives of the Occupational Health and Safety (OHS) Committees: regular meetings with safety officers, attendance at opening and closing safety audit meetings, access to audit and inspection reports, being engaged in investigation of cases of right to refuse unsafe work, and the annual C-NLOPB meeting with the OHS Committees. In addition, any worker may make a complaint directly to the Board. The frequent presence of safety officers on board facilities provides another practical means of access.

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[24] Counsel for CEP observed that there is merit in a single point of contact by the C-NLOPB with an industry association such as CAPP. Transcript February 18, 2010 20:23. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf

[25] Shortcut to: http://www.oshsi.nl.ca/userfiles/files/P00059.PDF

[26] MOUs exist, for example, with Environment Canada on environmental emergencies and with Transport Canada on certain marine matters.

**Regulation and the Public Interest**

Regulation, as noted above, exists to serve the public interest. There are theories that would challenge that this is what occurs in practice. These theories are well known: they have been around for as long as regulation. Policy makers also know of these theories and have designed systems to reinforce service in the public interest. The reading list issued by the Commissioner includes readings on regulatory capture. What is 'regulatory capture"? The Economist provides a concise definition:

> *"Regulatory capture*
> *Gamekeeper turns poacher or, at least, helps poacher. The theory of regulatory capture was set out by Richard Posner, an economist and lawyer at the University of Chicago, who argued that "REGULATION is not about the public interest at all, but is a process, by which interest groups seek to promote their private interest ... Over time, regulatory agencies come to be dominated by the industries regulated." Most economists are less extreme, arguing that regulation often does good but is always at RISK of being captured by the regulated firms*."[27]

In short, regulatory capture is about the failure of regulation and about private organizations that are not aligned in their business principles with the public interest. Let us be clear, while regulatory capture is an interesting concept that academics have debated for a century or more, the simple question is this: what evidence is there in relation to the issue of helicopter passenger safety that the C-NLOPB does not value safety? There is none. Indeed counsel for the Communications, Energy, and Paperworkers Union, while clearly probing vigorously potential areas for improvement, said this to the C-NLOPB Chief Safety Officer when he testified in February: "*People could say I'm giving you a hard time here this morning, but I don't doubt for a moment that you're a man who cares about the people who work out there.*"[28]

The CSO is very aware of the need to maintain objectivity in the safety role of the C-NLOPB. It is for this reason that the CSO regularly rotates Safety Officers from one facility to another so they do not become "*too familiar, as it were*."[29]

The size of the industry and geography conspire to put the CSO and the Safety Officers into the same communities as workers and their families. The Safety Officers when on the facilities are in contact with workers daily. If there is capture it is by the entire community and the value that the entire community places on safety. This is precisely the kind of contact that reinforces values, expectations, and performance in the service of the public interest.

Moreover, the obvious counter-balance to any fear of capture by one stakeholder is to ensure a strong voice for others. In that regard and as noted above, various structured means exist for workers to communicate any concerns about safety including through the

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[27] Shortcut to: http://www.economist.com/research/Economics/alphabetic.cfm?letter=R
[28] Transcript, February 18, 2010, 82:2-6 Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf
[29] Transcript February 17, 2010 71:3-7. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF17.pdf

OHS Committees. There is also an anonymous card system in place for raising concerns at all facilities where workers are located. Likewise, the C-NLOPB has systems in place to track and address any concerns raised by anyone.

Institutional arrangements are designed to ensure objectivity in the service of the public interest. The staff of the C-NLOPB are, in common parlance, public servants.[30] As public servants they serve under conditions designed to preserve their independence and make them immune from influence. The CSO is a public servant and the person presently occupying the office of CSO is a long service public servant. The C-NLOPB is governed by an independent Board that is subject to public scrutiny and operating in a context of ministerial accountability. The CSO holds an independent office and as Manager, Operations and Safety, reports directly to the Chair and CEO. The CSO has always had, and continues to have, the full support of the Board in matters of safety.[31] The CSO and Safety Officers have statutory authority that they exercise independently.

This Inquiry was initiated by the C-NLOPB and clearly demonstrates an interest to learn from accidents and to improve worker safety. The CSO also spoke of the C-NLOPB inviting the Norwegian Petroleum Safety Authority to review C-NLOPB safety regulation.[32]

In the broadest sense it is society that gives the petroleum industry a social license to operate. There can also be no doubt that the C-NLOPB, which is charged with the responsibility of regulating the offshore, works hard every day in the public interest. The industry also is called on to work hard to earn the social license and meet the expectations of the C-NLOPB every day.

**Regulatory Models**

The model of regulation employed in the Newfoundland and Labrador offshore rests on a wealth of experience.

In the 19th century, many of the things that we now assume will be addressed by a regulator were left to civil courts applying judge-made laws that had grown up by precedent over centuries. Judges would decide cases using civil procedure and rules of evidence. This judicial model was not successful: judges however well intentioned were not subject matter experts, judges were completely independent from public policy making and judge-made law could not adapt to the changes brought about by the

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[30] The C-NLOPB is a body corporate and a separate employer within the broad public service framework and so is not a part of the public service in the sense, for example, of being subject to public service staff relations laws and other central controls. However, the officers and employees of the C-NLOPB do retain the all important job mobility of public servants within the public service such that they can compete for positions within the public service and are not limited to career opportunities within a small organization. See section 25 *Canada-Newfoundland Atlantic Accord Implementation Act*. Shortcut to: http://laws.justice.gc.ca/eng/C-7.5/

[31] Transcript February 17, 2010 253:15. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF17.pdf

[32] Transcript February 18, 2010 114-115, 169-170. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf

industrial revolution, judicial adjudication was backward looking not preventative, cases were decided as they were presented with no ongoing supervisory activity, the judicial process was costly and inefficient, and overall was an ineffective tool for issues that required ongoing administrative action and oversight.[33]

The modern regulatory body emerged in the early part of the 20th century and many variations of the model exist. Some of these bodies have powers that are quasi-judicial while others are more akin to a branch of government albeit very specialized and subject to administrative law duties of fairness and judicial review. Common features are their specialized nature and ability to exercise regulatory oversight on an ongoing basis with a range of approval and remedial powers supported by staffs of professional public servants.

For much of the 20th century the regulatory model was highly interventionist with a command/control approach. The regulator would in effect control the business in great detail and issue inflexible commands on what should be done, how it should be done, and when it should be done. This model also came to be seen as inefficient and ineffective.

The current approach is for the regulator to set the goals, to allow industry flexibility to meet the goals, and to exercise oversight.[34] Goal oriented regulation is detailed and systematically addresses all issues of concern to safety. Likewise the companies subject to regulation must demonstrate to the satisfaction of the regulator that they are achieving or exceeding the required level of safety with detailed concrete programs that address all issues of concern.

All the consultants to the inquiry have reported that goal oriented regulation is the modern approach and, most important, that it is an effective approach.

The C-NLOPB is a fully modern regulator that is moving towards goal oriented regulation with an organizational design appropriate for offshore Newfoundland and Labrador.[35] The goal-based model is sound. The regulatory structure with a single regulator is fundamentally sound. There is no need to change the structure of regulation by introducing another regulatory body for safety in the Newfoundland Labrador offshore.

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[33] See e.g. the discussion in the context of economic regulation in *The Regulation of Public Utilities*, Phillips, C.F., Public Utility Reports Inc., 3rd ed., 1993, p.128-129.

[34] The CEO of the CNSOPB gives an example of a "prescriptive" vs "goal-oriented" regulatory requirement is a 2009 OTANS conference presentation. See Shortcut to: http://www.cnsopb.ns.ca/pdfs/stuart-template.pdf
The NEB May 27-28, 2009 Forum proceedings also provide insight on the NEB's goal oriented approach to matters including safety. Shortcut to: http://www.neb-one.gc.ca/clf-nsi/rsftyndthnvrnmnt/sfty/nbfrm2009/nbfrmprcdng2009/nbfrmprcdng2009-eng.html

[35] See the Frontier and Offshore Regulatory Renewal Initiative (FORRI):
Shortcut to: http://www.nrcan-rncan.gc.ca/eneene/sources/offext/iniini-eng.php

**Continuous Improvement**

The upstream petroleum industry is committed to continuous improvement. Innovation, adaptation, and improvement are hallmarks of this industry in an ever changing world.

Changes that are brought about through this Inquiry should be grounded on demonstrated opportunities for change and sound reason to believe the change will lead to a significant net improvement over the current situation.

**Specific Issues Identified by the Commissioner**

Below are some comments/perspectives related to five of the key issues raised by the Commissioner for further examination in Phase 1b.

***Issue 1: Should there be a degree of separation within the C-NLOPB between offshore helicopter regulation and other offshore industry regulation?***

As observed above in the general discussion, there is already a separation within the C-NLOPB of the safety role: the CSO holds an independent office and has an independent statutory role that all the evidence indicates is exercised effectively by experienced and professional public servants.

There is also already a degree of separation between offshore helicopter regulation and other offshore industry regulation as Transport Canada is the primary regulator for the aviation industry in Canada. As described by the C-NLOPB during its testimony in February 2010, there is some overlapping jurisdiction between Transport Canada and the C-NLOPB as the C-NLOPB would have an interest in offshore helicopter regulation from the perspective of safety of the offshore workforce[36]. While there is some overlap, the overlap between Transport Canada and the C-NLOPB works because occupational safety of the passengers is the C-NLOPB focus while operational safety of the actual aircraft is the focus of Transport Canada. At the same time, an MOU between the C-NLOPB and Transport Canada could improve clarity and solidify roles related to helicopter safety.

With regard to the question of separating the safety role from other roles within the C-NLOPB one must first consider the value of having one party regulate the "whole" rather than subdividing industry regulation amongst parties. The C-NLOPB, as noted above in the general discussion, currently has the ability to consider safety in all aspects of C-NLOPB regulation and oversight. Safety Plans are tied to work authorizations and in order to get a work authorization a company first has to present a plan to the C-NLOPB which is acceptable and meets various requirements. Fragmenting industry regulation could potentially lead to communication issues (between industry and the regulator(s) and between divisions within regulator or among regulators) and a lack of appreciation

[36] Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF17.pdf and also Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf

for the big picture. Adding one more regulator or player adds one more boundary with attendant issues of delineation, potential gaps, overlap, and grey areas.[37]

Sound regulatory practice, therefore, militates in favour of consolidation of authority not fragmentation. By way of example, the NEB has authority over safety under its governing legislation. There is also federal safety legislation, the *Canada Labour Code, Part II*, applicable to the undertakings and facilities regulated by the NEB. To address this, NEB safety inspectors have since 1987 been authorized to enforce the *Canada Labour Code, Part II*.[38] For an example of how this enforcement authority is exercised, see the NEB February 2009 report on a fatality investigation.[39]

The issue of separating aspects of safety regulation has been raised several times during the inquiry. The Commissioner has mentioned regulatory models where there is a separate regulator for safety issues from other issues regulated. Structural questions such as whether to look at safety holistically as an aspect of regulation of the whole activity or to segregate safety are complex and go well beyond the question of the safety of transportation by helicopter of workers to offshore facilities. It is not clear how the mandate of the Inquiry in regard to helicopter passenger transport extends to such broad issues. To the extent that the focus is limited to having a safety regulator for helicopter transport distinct from other aspects of offshore oil and gas regulation, that regulator already exists: it is Transport Canada and helicopter safety is a Transport Canada responsibility. However, the fact that some jurisdictions may have chosen to adopt a separate safety regulator does not in and of itself mean that changing to this model will lead to an overall net improvement in safety regulation for helicopter passenger transport in the Newfoundland and Labrador offshore. An evaluation of the pros and cons of the current model and an alternate model is required. The issue came up briefly when the C-NLOPB Chief Safety Officer was testifying and he said he thought that changing the model could lead to a loss in effectiveness and that the current model was to be preferred.[40] CAPP would concur.

***Issue 4: What are the most appropriate practices, standards and forms of interaction between the C-NLOPB and... (b) industry associations... and are these interactions sufficient to ensure requirements that are understood, timely, achievable and enforceable?***

As the association representing upstream oil and gas companies, CAPP has considerable interest in part b of this issue, which focuses on the relationship between the C-NLOPB and industry associations. There are many examples of how the relationship between the C-NLOPB and CAPP has worked well in the past. One of the examples is the effort of the C-NLOPB, the CNSOPB, CAPP, drilling contractors, and regional training

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[37] Transcript February 17, 2010 254-256. Transcript February 18, 2010, 176-179. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF17.pdf and Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf

[38] Shortcut to: http://www.neb-one.gc.ca/clf-nsi/rthnb/whwrndrgvrnnc/rrspnsblt-eng.html

[39] Shortcut to: http://www.neb-one.gc.ca/clf-nsi/rsftyndthnvrnmnt/sfty/rfrncmtrl/nbrdgkrrbrtpmpsttn2008_03_24-eng.pdf

[40] Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF17.pdf

institutions on the Training and Qualifications Committee (TQC). The TQC will be discussed further in response to Issue 12 relating to training standards. As a general comment, the TQC manages a document related to training entitled Atlantic Canada Offshore Petroleum Industry Standard Practice for the Training and Qualifications of Personnel (the *TQSP*). The TQC is an example of an open and transparent process where, as described in the TQC terms of reference, CAPP is the custodian of the *TQSP* while the C-NLOPB and CNSOPB are the entities who ensure compliance in the administration by operators of the *TQSP* through audits and inspections.

Interaction between CAPP and the C-NLOPB is as frequent as the issues may require. These may be the more formal interactions through a standing body such as the TQC or may be of an ad hoc nature by way of CAPP collecting and providing feedback from members on C-NLOPB guidelines. CAPP will also provide updates to the C-NLOPB on any issues of interest. Depending on the issue, the C-NLOPB may go directly to the operators.[41] These interactions reflect the open lines of communications that exist between the C-NLOPB and stakeholders. This openness to receive information from stakeholders is the norm for a modern regulatory body.[42] The interactions between the C-NLOPB and CAPP are essential to ensure that regulatory requirements are understood, timely, fair, achievable and enforceable. It would be counterproductive to discourage, or to place barriers to, these vital communications. It would also be counterproductive to constrain the discretion of the C-NLOPB as to the various options for seeking input and information. Indeed as noted above, good regulatory practice calls for engagement between the regulator and stakeholders. The form and nature of engagement should be dictated by the circumstances and the nature of the issue or problem not by predetermined generic prescriptions.

During CAPP's testimony, one issue of considerable interest was the implementation of the Helicopter Underwater Emergency Breathing Apparatus (HUEBA) in Atlantic Canada. Specifically, questions were raised relating to the length of time it took to implement the compressed air HUEBA offshore Atlantic Canada and the decision making and communication processes used.[43]

The implementation of HUEBA was a particularly complex issue involving novel aspects and requiring many levels of expertise. Following the implementation CAPP committed to undertaking a review of the lessons learned from the implementation of HUEBA. The lessons learned exercise was completed and has been submitted to the Inquiry. The purpose of the exercise was to identify continuous improvement opportunities regarding the process by which issues of joint concern to the Atlantic Canada oil and gas industry can be worked through CAPP.

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[41] Transcript February 17, 2010 235:4-17. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF17.pdf

[42] Transcript February 18, 2010 14:1. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf

[43] The oral evidence of Dr. Coleshaw is that, while disappointing, many issues involving improvements to helicopter passenger safety in scenarios involving ditching or crashes in water are difficult and are not quickly resolved. Transcript for June 29, 2010 35:5. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELJ29.pdf

The lessons learned highlighted several process elements that worked well, including the rigorousness of the process, documentation of decisions and research throughout the process and the value of a joint industry approach. It was determined that the existing processes that work well for handling most issues as between the Board and CAPP and within the CAPP structure do need improvement in the case of issues as complex as HUEBA. The lessons learned exercise identified the following opportunities for improvement for particularly complex issues:

- *Stakeholder Engagement:* Stakeholder communication protocols and processes, including communication with the OHS Committees, require greater effectiveness and visibility within project management.
- *Interface between CAPP and the Regulator:* Ensuring Regulator(s) expectations for deliverables and timelines are clearly articulated requires more attention as a first step in project management. Formal reporting of progress should be provided to the Regulator(s) at regular intervals.
- *CAPP Internal Process:* Project management should be enhanced to identify an AC EPG project champion with the responsibility to monitor the project to ensure that it is progressing in accordance with expectations.
- *CAPP Member Company Engagement and Support:* Project management should be further enhanced to:
    - support member company engagement and alignment,
    - utilize a project terms of reference document that is provided to all CAPP members and committees working on the project to ensure clear communication of expectations and responsibilities throughout the duration of the project,
    - document in the project terms of reference the nature of the project, project scope, roles, responsibilities, deliverables, key milestones, timelines, reporting relationships and requirements, resources available to the project including CAPP member and external resources, and the avenues for elevating and resolving issues,
    - be monitored by committee members to ensure they are current and to facilitate succession and management of change initiatives.

These recommendations have been adopted by CAPP and apply to particularly complex issues like HUEBA. They fully address, among other things, the relationship of the C-NLOPB and CAPP.

***Issue 12: What are the appropriate standards of offshore helicopter safety training to ensure that the risk to passengers is as low as is reasonably practicable, both during training and helicopter transport?***

It is CAPP's view that the current mechanism for determining the appropriate standard, the Training and Qualifications Committee (TQC), is the appropriate mechanism for setting standards related to offshore helicopter safety training. The TQC is a collaborative effort between CAPP, the Canadian Association of Oilwell Drilling Contractors (CAODC), training institutions, and regulators. The TQC is the body responsible for the Atlantic Canada Offshore Petroleum Industry Standard Practice for the Training and

Qualifications of Personnel (the TQSP). Feedback mechanisms and annual reviews have been built into the TQSP to ensure that there are opportunities for engagement of the workforce and other stakeholders.

The Commissioner has mentioned the Atlantic Accord reference to a Training Standards Board. Specifically, Section 136.2 of the Canada-Newfoundland Atlantic Accord Implementation Act[44] states that the Provincial Minister may approve the establishment of such a Board by the federal Ministers, the purpose of which is outlined in Section 5.5(1) and 5.5(2) of the *Canada Oil and Gas Operations Act*[45]. The Act provides as follows:

> ***5.5*** *(1) The federal Ministers, with the approval of the Provincial Ministers, may establish a board, to be known as the Offshore Oil and Gas Training Standards Advisory Board, consisting of not more than nine members, each of whom has special knowledge respecting offshore oil and gas operations or respecting training for such operations.*
>
> *(2) The Board shall inquire as to existing training standards and, where necessary, develop or encourage the development of training standards and shall recommend the adoption of training standards to the federal and Provincial Ministers and to the Boards referred to in subsection 5.4(1). (1992, c. 35, s. 12).*

This provision dates back almost 20 years, well before there was significant offshore oil and gas development in Atlantic Canada. The Board contemplated was not established. The need has been met by other means. The TQC was formed by the collaborative efforts of C-NLOPB, the CNSOPB, the CAODC, and CAPP to develop and maintain the TQSP.

The TQC has in the result fulfilled the purpose of the Training Standards Advisory Board as described in the legislation. It has done so in a very economically efficient and effective manner. The TQC has in fact moved beyond recommending and developing training standards into other functions to ensure the quality of training related to the offshore oil and gas industry remains high. The collaborative approach to training as evidenced in the TQC effectively taps into the expertise of industry and training institutions as well as the regulatory oversight of both offshore petroleum boards in Atlantic Canada. The TQC reports to the CNSOPB and the C-NLOPB as well as to the CAPP Atlantic Canada Safety Committee. CAPP is described in the TQC terms of reference as the custodian of the TQSP while the Boards are described as the entities who have an enforcement role in the administration of the TQSP. The terms of reference also specify that the TQC will consult other affected parties such as offshore workforces and other key stakeholders, as and when necessary and that every reasonable effort will be made to consult affected parties before decisions are made. For example, the TQC engages the workforce by sending proposed changes and updates, via the installation owners' OHS Committees, for review and comment. The TQC sends a Change Request summary to the OHS Committees and endeavours to do so at least 45 days prior to approval. Comments will be accepted for review by the TQC as part of the approval process.

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[44] Shortcut to: http://laws.justice.gc.ca/en/C-7.5/index.html?noCookie
[45] Shortcut to: http://laws.justice.gc.ca/en/O-7/index.html?noCookie

The TQC has put in place an inclusive process by which stakeholders involved in offshore training, those with the expertise as well as those with the responsibility for oversight, work together to ensure that training for the offshore workforce in Atlantic Canada is the most appropriate for the offshore environment in Atlantic Canada. The process is founded on the principle of continuous improvement so the document is a living document, updated regularly with processes built in to receive feedback from key players in the offshore, including the workforce. The TQC has not only developed training and qualifications requirements but has become a vehicle through which suggested improvements to the TQSP can be tabled and discussed by experts and regulators. Further, the TQC has moved into an evaluation role of course quality for offshore training. The effectiveness of the TQC has with all due respect made the issue of a Training Standards Advisory Board moot. There is no present need that would warrant the creation of an entirely new structure for training standards or justify the significant undertaking this would represent. The development of training standards involves a great many things other than helicopter passenger safety and involves substantial considerations and implications beyond the focus of this Inquiry

The TQC is currently undergoing a course quality review to ensure that training institutions are meeting the requirements of the TQSP. The course quality review is a transparent, flexible process whereby a third party industry consultant together with industry experts review training courses and make recommendations to training institutes on areas where there is a potential for improvement. The Basic Survival Training (BST) and Basic Survival Training Recurrent (BST-R) courses at both the Marine Institute – Offshore Safety and Survival Centre in Newfoundland and Labrador and Survival Systems Training Limited in Nova Scotia were reviewed in 2009. During the quality review, the TQC identified that the nature of the high-level TQSP had resulted in the development of different approaches to training in Newfoundland and Labrador versus Nova Scotia. While the ability to adapt training to meet the needs of users which may vary depending on jurisdiction is valued, the TQC identified that the standard can be improved by the development of performance based learning objectives which would have the effect of achieving higher levels of consistency in training program delivery and has made the review of the BST/BST-R course content a priority work item for 2010. The TQC will evaluate the programs offered locally and in comparison to international jurisdictions to determine appropriate TQSP content.

The course quality review and upcoming BST and BST-R performance based standards development speak to the value of the collaborative approach to training in Atlantic Canada and the transparency and continuous improvement values built into the TQSP. In addition to this work, the TQC will also be examining the recently created “Helicopter Awareness Course” in the United Kingdom to see if such a course should be developed for the Atlantic Canada offshore area and included in the TQSP in the future.

***Issue: 13: What personal protective equipment and clothing is necessary for helicopter passengers and pilots; what are the standards, and should the C-NLOPB require guidelines to ensure such equipment and clothing is properly fitted?***

Offshore operators in Atlantic Canada evaluate on an ongoing basis types of personal protective equipment (PPE) and other safety equipment they provide to the offshore workforce. Survival suits, for example, are a current area of focus for operators. There are two Canadian General Standards Board (CGSB) standards related to survival suits in Canada: the Helicopter Passenger Transportation Suit System (CAN/CGSB 65.17-99) and the Immersion Suit System (CAN/CGSB 65.16-05). CAPP currently has a seat on the CGSB Committee responsible for the management of both standards. As discussed in previous sections of this submission, relying on the expertise brought to bear of organizations like the CGSB is common practice for regulators in Canada and in other jurisdictions.

The CGSB helicopter passenger transportation suit system standard is currently under review by a CGSB Committee. A CGSB Committee is comprised of members with an interest in the "outcome", i.e. end users (operators & labour), regulators, producers (including manufacturers), general interest (including academic). The CGSB strives to maintain a balance among the producer, general interest, user and regulatory interests voting to approve a standard. Membership on committees is reviewed on an on-going basis. Stakeholders not wishing to become voting members are able to still participate by becoming information members. As such, the CGSB process is an inclusive process that includes representatives from a wide range of interests including representatives of workers who actually will wear the suits. CAPP is participating on the review committee for this project.

During the review period, industry has sought to improve the evaluation of water ingress in order to achieve greater knowledge about suit system performance. In June and July 2009 CAPP worked with researchers to develop new water ingress test methodology incorporating more realistic conditions (submerged helicopter egress, vital actions, survival at sea and realistic weather conditions). The new test methodology is robust and rigorous. Though the water ingress methodology is not yet part of the CGSB helicopter suit standard, support has been expressed by the CGSB Committee for inclusion in the standard following a review by a CGSB working group tasked with evaluating the proposed methodology. This is an example of the continuous improvement approach industry takes to safety.

A report by the National Research Council, Institute for Ocean Technology (NRC IOT) was prepared for the Inquiry. The NRC IOT sits on the CGSB Committee engaged in the review of this suit standard. The issues identified by NRC IOT are very much a consideration in the review of the standard.

There is currently no guideline related to proper fit of the suits. The procedures that have been adopted by operators to ensure suits fit properly before allowing workers to fly offshore in helicopters has been identified by the TSB as a recommended practice. CAPP

will also be discussing the work of the UK Helicopter Task Force with the CAPP Atlantic Canada Safety Committee in relation to best practices related to PPE and clothing for helicopter travel. The discussion with CAPP's Safety Committee will focus on learnings from the UK to ensure that these learnings are brought forward from that jurisdiction to the Atlantic Canada offshore

***Issue 19: Does the C-NLOPB have sufficient resources and expertise, including access to independent aviation expertise, to evaluate whether a proposal or plan for helicopter transport from industry ensures that the risks of helicopter transport are as low as reasonably practicable****?*

CAPP strongly supports having a regulator with the proper level of resources and expertise, as well as access to and connections to other bodies with expertise, to make regulation effective and efficient.

The resources and expertise required by the C-NLOPB are dictated by its role as regulator. The regulator oversees the operator but it is the operator that is responsible for the operation and so the regulator does not have the responsibilities of the operator.[46] The regulator does not need the full suite of expertise possessed by the operator. The regulator does not need to have pilots who know how to fly a helicopter, or search and rescue technicians, or tool pushers or any of a myriad of other skills that the operator will need to employ. The goal of regulation is not to populate the regulator with one of every skilled occupation involved in offshore petroleum activity. The regulator needs to have the expertise appropriate for oversight: the expertise to assess the soundness of proposals, plans, and procedures for facilities and operations in the context of offshore petroleum operations. The regulator can also retain consultants to assist it on matters that do not justify a full time staff member. The expertise of other bodies, including other government entities, can also be obtained without the need to duplicate resources.

Nor does the regulator need to re-invent the wheel. It is entirely appropriate for the regulator to rely on the expertise of others whether that is CSA standards for offshore structures, CGSB standards for survival suits, certification of vessels by credible international bodies, or any other credible source of expertise including the learning that comes from doing, namely, industry best practices. Offshore operators bring to bear significant expertise in the proposals, plans, and procedures for their operations. This is exactly what one would expect from a business culture that values safe, reliable operations. When the regulator is satisfied with the due diligence of what is proposed it is entirely appropriate to reflect that in operating authorizations.

On occasion one hears the comment that a regulator is not doing its job because not enough (or any) proposals are denied. Comments like that are ill-informed. An enormous amount of work goes into proposals and plans. It is not surprising then that outright

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[46] Transcript February 18, 2010 114-115 where it was noted that the Norwegian Petroleum Safety Authority's one comment about the C-NLOPB approach to safety regulation was that it was too involved in the detail and should be at a higher level. Shortcut to: http://www.oshsi.nl.ca/userfiles/files/HELF18.pdf

denial is rare and it is more common for discussion to focus on terms and conditions for approval.

While we consider the C-NLOPB is appropriately resourced in terms of expertise, CAPP strongly advocates for and stresses the importance of ensuring the C-NLOPB is well resourced and staffed, including at the Board of Directors level, so that it can provide the appropriate level of oversight.

**Conclusion**

In conclusion, CAPP welcomes this opportunity to assist the Inquiry. In regard to the issues addressed above, CAPP is of the view that the overall structures of regulation are appropriate and provide a sound framework within which continuous improvement in safety can be achieved.

All of which is respectfully submitted by the Canadian Association of Petroleum Producers

July 30, 2010