

June 18, 2019



Dear [REDACTED]:

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* (File # NR-110-2019)

On June 14, 2019, the Department of Natural Resources received your request for access to the following records/information:

Please provide a copy of the letter sent by Minister Coady to Minister McKenna re specific amendments sought by NL to Bill C-69

I am pleased to inform you that a decision has been made by the Department of Natural Resources, confirmed by the Deputy Minister, to provide access to the requested records. The record is attached.

As set out in section 42 of the Act you may ask the Information and Privacy Commissioner to review the department's decision to provide access to the requested information. A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your request should identify your concerns with the department's response and why you are requesting a review.

The request for review may be addressed to the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P.O. Box 13004, Stn. A
St. John's, NL. A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

Pursuant to section 52 of the Act, you may also appeal directly to the Supreme Court

Trial Division within 15 business days after receiving the department's decision.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

For further details about how an access to information request is processed, please refer to the Access to Information Policy and Procedures Manual at <http://www.atipp.gov.nl.ca/info/index.html>.

If you have any questions, please feel free to contact me at 709-729-0463 or rhynes@gov.nl.ca.

Sincerely,

A handwritten signature in cursive script that reads "Rod Hynes".

Rod Hynes
ATIPP Coordinator

JUN 11 2019

The Honourable Catherine McKenna P.C., M.P.
Minister of Environment and Climate Change
200 Sacre-Coeur Boulevard
Gatineau, QC
K1A 0H3

Dear Minister McKenna:

I am writing regarding Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, and changes are required to correct errors, omissions and challenges in the Bill.

The Atlantic Accord Agreement, between Canada and the Province of Newfoundland and Labrador, dated February 11th, 1985, is critically important to Newfoundland and Labrador. The joint management regime that it establishes has been foundational to the success of the Province's offshore oil industry. The agreement, and the legislation that implements it, emphasizes Newfoundland and Labrador and Canada's commitment to jointly manage resources in the Canada-Newfoundland and Labrador (C-NL) Offshore Area. The Atlantic Accord recognizes the equality of both Governments in the management of resources in the C-NL Offshore. The Accord Acts also jointly establish the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB), to administer the relevant provisions of the Accord Acts and other relevant legislation. The key principles of joint management were further reaffirmed in the recent Atlantic Accord Review Agreement, dated April 1st, 2019, in which the federal and provincial governments committed to deepening joint management in the C-NL Offshore Area.

As I am sure you are aware, the Canadian Environmental Assessment Act, 2012 (CEAA 2012) negatively affected our offshore oil and gas industry, and undermined the principles of joint management by minimizing the role of the C-NLOPB in environmental assessments of offshore oil and gas projects. The current Bill is an improvement over CEAA 2012, and based on our current understanding the Nineteenth Report of the Standing Committee on Energy, the Environment and Natural Resources, respecting recommended amendments to Bill C-69, appears to have gone a long way towards addressing Newfoundland and Labrador's concerns with Bill C-69 as it was introduced.

However, there are two issues that remain to be rectified as well as drafting inconsistencies to be addressed in order to ensure that life-cycle regulators are treated consistently.

43 - Obligation to Refer

Exploration wells, other exploration activities and minor projects regulated under the Accord Acts are currently included as designated projects and therefore subject to a review panel under the Impact Assessment Act (IAA). Federal officials have nevertheless assured the Province that offshore exploratory wells will be exempt from project-specific Impact Assessments, as long as a Regional Assessment (RA) is in place and the federal Minister determines that the proposed project meets the conditions set out in the RA. CEAA 2012 provided the Federal Minister with the authority to establish a Committee to conduct an RA and the Province has developed an agreement thereunder with the federal government to conduct an RA of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador. This is the first RA under CEAA 2012 and it has been designed in such a way as to remain applicable under the IAA. Federal officials have reaffirmed their commitment to exempt offshore exploratory wells from undergoing a project-specific federal environmental assessment in areas where an RA has been carried out and where the proposed project conforms to the conditions set out in the regional assessment. My government appreciates these commitments, as they are respectful of the joint management regime.

Bill C-69 includes the notion that exploration wells and other well-understood activities with proven track records and mitigation measures will not be subject to Impact Assessments under the IAA and the RA process is one way to achieve that end. This is an important feature of Bill C-69. It is not the only way to correct this overreach in the legislation however. Another would be allowing projects to be subject to a review other than a full review panel, which could take years for a project that is usually completed in a couple months. As it stands, the IAA requires a panel review for all projects administered under the Accord Acts. This does not allow for reviews to be aligned with the significance of potential impacts and the consideration of other reviews that may be applicable. Given the joint management regime in place for the C-NL offshore area, the reference to the C-NLOPB should not have been included in s. 43.

48.1(4) - Review Panel Composition

A significant oversight in the amendments recommended in the Committee Report to the Senate is the composition of the review panels for projects in our offshore area. Amendments now require the C-NLOPB to be consulted on a panel's Terms of Reference, and allow a member of the C-NLOPB to act as chair. These are clearly positive developments, but further recommended amendments allow life-cycle regulators, other than the C-NLOPB, to constitute a majority on review panels. Multiple conversations with Senators, Senate officials and our colleagues have indicated that this was an inadvertent oversight.

My government believes that s.48.1 (3.1) be deleted, and s.48.1 (4) be amended to bring it in line with the provisions relevant to the *Nuclear Safety and Control Act* and the *Canadian Energy Regulator Act*.

Suggested language:

48.1 (4) The chairperson must be appointed from the roster under s. 50(d), and the persons appointed from the roster under s. 50(d) may constitute a majority of the members of the panel.

Additional Issues

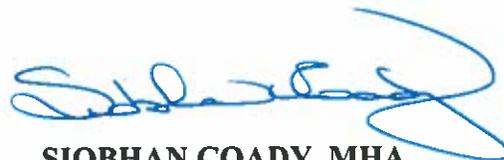
As well, there are a number drafting inconsistencies in the Bill that if not addressed can lead to issues with statutory interpretation. I have attached a list of drafting inconsistencies.

It is also our understanding that the provisions of Bill C-69 will not come into force until a later date in the C-NL offshore area to allow the appropriate Accord Act amendments to be developed and implemented. It is critical that implementation of this important legislation is not rushed and ample time is given to do so correctly.

Continued interest and growth in our offshore oil and gas industry requires a regulatory regime that is efficient, effective, transparent and globally competitive. These factors, among others, are important in attracting and retaining investment opportunities to the benefit of our respective Governments. I am pleased to see that substantial amendments have been proposed by the Senate that go a long way towards respecting the joint management regime and have significantly improved the Bill. These should be accepted in their entirety. It is also imperative that changes to s. 43 and s. 48 be corrected as identified.

My government remains committed to developing our resources in a sustainable manner while ensuring that we maximize the value of resources for the people of our Province. Please let me know if you have any questions or concerns or if there are any clarifications I can provide.

Sincerely,

A handwritten signature in blue ink, appearing to read "Siobhan Coady".

SIOBHAN COADY, MHA
St. John's West
Minister

cc: Hon. Amarjeet Sohi, P.C., M.P.
Hon. Seamus O'Regan, P.C., M.P.
Gudie Hutchings, M.P.
Yvonne Jones, M.P.
Ken McDonald, M.P.
Churence Rogers, M.P.
Scott Simms, M.P.
Nick Whalen, M.P.
Hon. George Furey, Senator
Hon. Grant Mitchell, Senator
Hon. Norman Doyle, Senator
Hon. Fabian Manning, Senator
Hon. Elizabeth Marshall, Senator
Hon. Mohamed Ravalia, Senator
Hon. David Wells, Senator

Amendments to Bill C-69 to Address Drafting Inconsistencies

The following is a list of drafting inconsistencies contained in the *Impact Assessment Act (IAA)* contained in Bill C-69, taking into account the Senate's recommended amendments in the Nineteenth Report (**Report**):

- **S. 48.1(3.1) & (4)**: In the *IAA*, as amended by the Report the following amendments were made for life-cycle regulators under the *Nuclear Safety and Control Act* and the *(Canadian Energy Regulator Act)*, but not the Canada Newfoundland Offshore Petroleum Board (**CNLOPB**) and the Canada-Nova Scotia Offshore Petroleum Board (**CNSOPB**):

- the requirement that members appointed from the roster under s. 50 do not form a majority of the Review Panel has been eliminated; and
- a requirement has been introduced that the chair must be appointed from the roster under s. 50.

It is required that s. 48.1(3.1) be deleted, and s. 48.1(4) be amended to bring it in line with the provisions relevant to the *Nuclear Safety and Control Act* and the *Canadian Energy Regulator Act*:

- 48(4) The chairperson must be appointed from the roster under s. 50(d), and the persons appointed from the roster under s. 50(d) may constitute a majority of the members of the panel.

- **S. 21**: there is a requirement in two different sections of the *IAA*, as amended by the Report, that two members of the Review Panel be appointed by the Minister of ECC, on the recommendation of the chair of the (**CNLOPB**) (s. 48.1 and s. 21(5)(b)). However, the requirements under each section differ slightly:

- Under s. 48.1 and 50(d), the two appointees must come from the roster under s. 50(d), and must either be members of the CNLOPB board, or selected by the Minister in consultation with the Board and the Minister of NRCan (s. 3(b)), while,
- Under s. 21(5)(b), the two appointees must be members of the CNLOPB (s. 1(m)(v)).

The Province anticipates interpretation issues if this inconsistency is not addressed, since it will not be clear whether individuals beyond CNLOPB board members are eligible to be included on the roster. We believe that it was the intention of the committee that roster members be recruited from a wider pool than the CNLOPB board (i.e. the process under s. 48.1/50(d)). The Province requests that s. 21(5)(b) (under s. 1(m)(v) of the Report) is deleted.

- **S. 68(1)**: In the *IAA*, as amended by the Report, the Minister of ECC may not amend in condition in a decision statement, where that condition is already included in a licence under the *Nuclear Safety and Control Act*, *Canadian Energy Regulator Act*, or the *Canada Oil and Gas Operations Act*. This amendment avoids a situation where an operator is required to request an amendment to a licence in response to an action of the Minister of ECC under the *IAA*, despite potential conflicts with the life-cycle regulator's governing legislation. However, this amendment was not made for the Accord Acts. This could lead to issues if the Minister of ECC were to amend a condition of a decision statement, where the condition was already a requirement of an authorization under the Accord Acts. We believe this oversight should be addressed by amending s. 68(1) to specify that where a condition of a decision statement is also a requirement of an approval or authorization of the CNLOPB, the Minister of ECC may not amend that condition (s. 1(aj)(iii) of the Report):

- s. 68(1) [...] however, the Minister is not permitted to amend the decision statement to change the decision included in it or to remove, add or amend conditions in the decision statement referred to in
 - (a) subsection 67(1), (2) or (3); or
 - (b) subsection 67(3.1), where the condition is a requirement of an approval or authorization under the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.