ATLANTIC CANADA OFFSHORE PETROLEUM EXPLORATION RIGHTS PERMITTING STUDY

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Executive Summary

Hundreds of thousands kilometres of seismic lines have been shot, and hundreds of exploration and production wells drilled, since offshore oil and gas exploration began in Atlantic Canada in the mid-1960s. Oil production has started from the Cohasset-Panuke, Hibernia and Terra Nova fields, gas is flowing from the Sable Offshore Energy Project, and further development projects are underway or in the regulatory review process.

This activity has raised concerns among those involved in such marine activities as fishing, aquaculture, tourism and marine transportation. In particular, some Nova Scotians are concerned about the effects of offshore petroleum activity on other industries. In this context, some have questioned the process for issuing offshore exploration licenses, including the timing and effectiveness of public consultation and environmental assessment.

In response to these and other concerns, this study examines the current processes for issuing offshore petroleum exploration rights in Atlantic Canada, through a comparative analysis of the practices in the region and selected other jurisdictions. In particular, it identifies the approaches being used to enable public input on questions relating to the environmental, economic and social impacts of the land nomination processes, and how that input takes place.

The research methodology comprised the following main elements:

- A review of the existing legislation, regulations and guidelines in Nova Scotia and Newfoundland and Labrador, so as to understand the rights issuance processes, the legislative and regulatory requirements and constraints, Board and Ministerial powers, and related matters;
- Interviews in Atlantic Canada to ensure a thorough understanding of the perspectives, interests and concerns of key individuals and groups, and the processes involved;
- The selection of five other jurisdictions – Australia, Norway, the United Kingdom, the United States (Alaska) and Alberta – for comparative purposes, and the establishment of criteria for this comparison;
- The collection of relevant legislation, regulations and related information, and interviews with representatives of government, the petroleum industry and interest groups, for these jurisdictions;
- The identification and preparation of a case study for each of these jurisdictions, and respecting the West Coast of Newfoundland, describing the application of the processes, and responses to them; and
- A comparison of the rights issuance processes in Atlantic Canada and the other jurisdictions, using the selected criteria.

The process for issuing exploration licenses in the offshore areas of Nova Scotia and Newfoundland and Labrador is essentially the same. Its main features are as follows:

Selection of blocks: Although the Canada-Nova Scotia and Canada-Newfoundland Offshore Petroleum Boards can put blocks of land up for bids on their own initiative, in practice they issue calls for bids in response to industry nominations. Since these are kept confidential, only internal
assessment and limited consultation with other government departments is undertaken before the Boards decide whether to issue a call for bids. The decision to make a call is a ‘fundamental decision’ and therefore referred to the responsible federal and provincial ministers. They may approve the call, jointly veto it, or defer the decision.

*Call for bids:* Calls for bids must be left open for at least 120 days. During this period the public can comment, although comments have not been very actively solicited and there is a low level of awareness of the calls among the general public.

*Strategic Environmental Assessments:* This period may also see a strategic environmental assessment (SEA) conducted; such assessments may also be undertaken for areas not yet included in a call for bids. The use of such SEAs is relatively recent, especially in Newfoundland and Labrador, but is becoming more common. The public has had an opportunity to comment on completed SEAs, and their input is being solicited during the preparation of the most recent one.

*Issuance of license:* A decision to issue a license following a call for bids is made on the basis of the proposed work expenditures. This is another ‘fundamental decision,’ referred to the responsible federal and provincial ministers, who may again approve it, jointly veto it, or defer the decision. Licenses may include conditions.

*Authorization of activities:* All proposed activities require specific authorization and are subject to an environmental review. Currently most exploration activities are reviewed under procedures established by each Board, and involve little public consultation, but recent amendments to Canadian Environmental Assessment Act regulations have made them subject to its procedures.

The remainder of the report compares the above Atlantic Canada rights issuance process, including its use of public consultation, with those used in Australia, Norway, the United Kingdom, the United States and Alberta. This comparison includes both federal states (Canada, the US and Australia) and unitary states (Norway and the UK). In the former case, there are differing relationships between the two levels of government. In Alberta, petroleum rights issuance is almost wholly a provincial concern, but Nova Scotia, Newfoundland and Labrador, Australia and Alaska use varying mechanisms for reconciling federal and state/provincial interests. They include federal/provincial Boards (Atlantic Canada), Joint Authority arrangements (Australia) and a range of inter-jurisdictional consultation and consistency review mechanisms (Alaska).

The rights issuance processes in all of the jurisdictions involve two stages: the selection of lands for licensing, and the awarding of licenses for these lands to oil and gas companies. The process for selecting lands involves oil companies through their being consulted by government (as in Australia and the UK) or formally or informally expressing their interest. In Norway, this takes place in the context of a lengthy process whereby new areas are assessed prior to being opened for exploration, with parliamentary approval being required. In the US there is a system of five-year leasing programs that set out the timing, size and location of lease sales in specified areas.

These requirements significantly increase the time it takes to issue licenses in new areas. They require long lead times and the petroleum industry regards the Alaska process in particular as
being long-winded and detrimental to activity. By contrast, the rights issuance processes used in Atlantic Canada, Australia, the UK and, especially, Alberta, are generally of relatively short duration. However, all the latter jurisdictions except Alberta now require, and some are increasingly requiring, SEAs, and this is extending the duration of their rights issuance processes.

All the jurisdictions provide for some degree of environmental review in the selection of lands for licensing, although this ranges from cursory reviews of general environmental and land use issues to detailed regional SEAs specific to oil and gas activities. While the use of SEAs is increasing, they vary in the range of issues addressed and depth of analysis undertaken. All jurisdictions also require further environmental reviews at the stage when exploration activities are proposed, as well as for any development and production activity.

There are two approaches to the second stage of the rights issuance process, in which companies are awarded licenses. They may be awarded through a competitive bidding system based on a single criterion (as in Atlantic Canada, Alaska and Alberta) or using a more subjective system in which the responsible government agency makes an assessment of applications based on various factors (as in Norway, the UK and Australia). The latter approach offers the opportunity to take environmental factors into consideration in assessing applications.

In most jurisdictions, the regulators play a passive role regarding the relationships between the companies seeking exploration rights. However, in Norway the state designates for each license both a project group of companies and a lead operator, which is responsible for the daily conduct of activities.

An extremely important aspect of the rights issuance process, and one that varies across the different jurisdictions, is the role, timing and use of public consultation. The report examines this in some detail, based on the following criteria: scope, clarity and openness, feedback, timing and duration, balance of interests, and satisfaction.

Scope: All jurisdictions conduct some form of environmental review before issuing exploration licenses. However, there are considerable differences in the scope of public participation in these reviews. It ranges from virtually no consultation in Alberta to extensive consultation in Alaska. Such consultation may be mandated by statute (as in Alaska, Norway and the UK) or be a matter of administrative practice (as is the case in Atlantic Canada). The matters addressed are generally limited to environmental issues and conflicts with other uses, primarily fishing. The consultation typically concerns regional issues rather than the issuance of specific licenses.

There is no statutory requirement for public consultation in connection with the Atlantic Canada license issuance process. However, although not required by the legislation or regulations, there have long been, at least in theory, opportunities for input. Furthermore, both Boards now conduct SEAs and the public is given an opportunity to comment on these. The first Nova Scotian SEAs covered lands included in calls for bids, but the CNSOPB recently released, for public comment, one covering lands not yet included in a call for bids. The CNOPB has indicated that it will conduct SEAs for lands included in future calls for bids, and has announced that its first SEA will examine the Laurentian Sub-basin.
However, the range of issues considered in these SEAs is limited compared with those in Norway and the UK. They do not consider such broader issues as sustainable development or the socio-economic effects of the proposed activities. Furthermore, the CNSOPB assessment process has not thus far seen comments from the public considered during the preparation of SEAs, although the public is being asked to review and provide comment on a draft of the Laurentian Sub-basin SEA.

The Atlantic Canada process provides greater scope for public consultation than is the case in Alberta and Australia. It is not as extensive as that used for Alaska OCS leases, which provides for multiple consultations, both for five-year programs and specific lease sales. However, the Alaska process is widely viewed as being overly complex.

Clarity and Openness: In Australia, the public are primarily involved through informal consultation. The other non-Atlantic Canada jurisdictions (except Alberta, where there is virtually no public involvement at the rights issuance stage) all provide for some formal consultation. However, even where there is a formal process, informal consultation also occurs and was generally viewed by informants as equally or even more important.

The processes used in the UK, Norway and Alaska all have more extensive notification and advertising procedures than are used in Atlantic Canada. The regulators in these jurisdictions are also more proactive in soliciting public input.

The complexity that results from highly formalized processes can lead to confusion and a lack of clarity. For example, this is the case for Alaska, where informants expressed a large number of concerns about the process being convoluted. Informants in Norway also expressed concerns about the complexity of guidelines.

Feedback: The UK, Norway and Alaska all publish reports of findings and decisions taken in connection with the rights issuance process or the opening up of areas for exploration. These reports include a discussion of concerns and comments received. However, they are not always responsive to specific concerns and it may not be clear what criteria were applied in arriving at decisions.

In Atlantic Canada, decisions to issue calls for bids are not accompanied by reasons or a discussion of issues and concerns. It is therefore not clear what factors the Boards take into account in arriving at these decisions and, in particular, how any public input is taken into account. However, Nova Scotian Board staff members have also indicated that they are open to discussing specific concerns with individuals.

Timing and Duration: In respect of the first of these issues, formal public involvement in the rights issuance processes in the different jurisdictions is largely provided as part of either early, strategic assessments or later assessments that are specific to exploration or development projects.
In the first case, in the US OCS a five-year plan must be approved before a leasing program can commence, and Norway has an extensive process to open new regions. The merits of consulting early in the rights issuance process are illustrated in Norway, with oil company representatives indicating that it heads off problems, saving time and money. Seeking public input prior to leasing an area, or to developing a project, builds trust between the proponent and the affected interests.

The other jurisdictions have generally placed a greater emphasis on assessments of specific exploration programs and development projects. However, there has been an increasing adoption of SEAs for lands that are, or may be, subject to calls for bids.

In terms of the duration of consultation, both Norway and the UK have consultation windows lasting three to four months. Alaskan consultation windows can be as short as 30 days. Australia holds land sales annually and provides only for informal consultation. As has been noted above, there is no public consultation in Alberta.

The Atlantic Canada Boards normally make calls for bids on an annual or semi-annual cycle. The calls are open for a minimum of 120 days, during which comments will be received. In addition, both Boards are now conducting SEAs, although the opportunity to comment may be short and (except for the Laurentian Sub-basin SEA) after the assessment has been completed.

**Balance of Interests and Satisfaction:** A number of interviewees in the different jurisdictions believe that the rights issuance process favours the petroleum industry. However, complex procedures, long lead times, legal challenges and the resulting costs and uncertainty can also greatly hamper oil companies. Interviewees expressed general satisfaction with the UK and Norway processes, while that in Alaska was criticized as overly complex and time-consuming.

The level of public satisfaction with each of the processes studied does not depend on the degree to which it, including the opportunity for consultation, is formalized. In fact, there was a high level of dissatisfaction with the process in Alaska, which appears to provide the greatest formal opportunity for consultation. The design of the process and, especially, the effectiveness of its implementation are also critical. Furthermore, informal consultation can be as important as formal consultative structures and result in greater satisfaction for all parties.

**Consultation Methods:** The research shows that, whatever formal or informal process is used, care must be taken with respect to consultation methods. Informal exchange is as important as the formal process requirements, establishing and maintaining trust is critical, and face-to-face interaction is important to this. Furthermore, consultation fatigue has been a problem for community groups in most jurisdictions, and may affect the quantity and quality of input. Such fatigue is commonly a result of the design of the consultation process, allied the fact that (unlike most regulators and oil companies) most of these lack the time and resources to participate effectively in consultation initiatives. As a consequence, successful consultation is as much a matter of methods as of the approval process design, and careful attention must be paid to such things as the timing of consultations, the particular consultation requirements of different groups, and the time and money costs to those consulted.
1 INTRODUCTION

This report examines the current processes for issuing offshore petroleum exploration rights in Atlantic Canada, through a comparative analysis of the practices in other jurisdictions. In particular, it reviews the approaches being used to ensure public input on questions relating to the environmental, economic and social impacts of the land nomination processes.

Since offshore oil and gas exploration began in Atlantic Canada in the mid-1960s, hundreds of thousands kilometers of seismic lines have been shot and more than 300 exploration and production wells drilled. During the last decade the level of activity has increased sharply with the start of oil production from the Cohasset-Panuke, Hibernia and Terra Nova fields, and natural gas production from the Sable Offshore Energy Project (SOEP). Further development projects are either underway (e.g. SOEP Tier 2 and White Rose) or at the approvals stage (e.g. Deep Panuke). This has been accompanied by an upsurge in the issuance of exploration licenses, and increased levels of concern among a number of those involved in marine activities such as fishing, aquaculture, tourism and marine transportation.

In particular, Nova Scotians have expressed concern about when and how they are consulted in the process of issuing offshore exploration licenses. Some members of fisheries, environmental and other groups have expressed a belief that the current process is inadequate and that they are engaged too late to provide effective and timely input. As a result of such concerns, some exploration has been delayed or halted. A recent example relates to the issuance of exploration rights for three parcels of land near Cape Breton Island. Local concerns caused the federal and provincial ministers to direct the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) to conduct a public review before a decision was made as to whether exploration activity should be considered.

1.1 Scope of Work

The main objective of this project is to examine the current processes for issuing offshore petroleum exploration rights within the context of existing legislative frameworks and public concerns in Atlantic Canada. In particular, it seeks to identify the approaches being utilized to ensure public input on questions relating to the environmental, economic and/or social impacts of the respective land nomination processes. The scope of work (Appendix 1) comprised, in summary:

- A review of existing relevant legislation, regulations and guidelines to understand the current rights issuance processes, the legislative and regulatory requirements and constraints, Board and Ministerial powers and other matters relating to the purpose of the work.

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1 It should be noted that, as is discussed in Section 2.5.4, the term ‘offshore’ has different meanings in the petroleum and fishing industries, and this has been a cause of confusion and conflict. While the oil industry uses it for all activities in a marine environment, the fishing industry reserves this term for deeper and more distant waters. This report uses the former meaning except when specified otherwise.
• Interviews with key individuals (hereafter ‘key informants,’ ‘informants’ or ‘interviewees’) to better understand their interests and the issues involved.

• The selection, in consultation with ACPI, of three to five other jurisdictions, the development criteria to be used in evaluating their rights issuance processes, and a review of their rights issuance and related legislation, processes and practices, with particular attention to: the posting of lands; the requirements for impact assessment; the responsibility for such assessments; how they are conducted and opportunities for public involvement; petroleum industry opinions of the processes; the reactions of others involved; and, the frequency of land postings and the process cycle time.

• An evaluation of the different rights issuance and related processes using the agreed upon criteria, including brief case studies of situations where the processes served or did not serve the interests of the interested parties (including the public) particularly well.

• A commentary on the utility of the existing Nova Scotia and Newfoundland and Labrador processes, including the identification of potential alternatives to existing processes, and constraints to implementing them.

The scope of work for the project specifically excluded:

• Making specific recommendations for change to the current process;

• Favouring any particular group’s position or showing bias in discussing and evaluating the alternatives; and

• Debating the issuance of rights in any specific area or the merits of arguments being advanced for or against the issuance of particular exploration licenses.

1.2 Methodology

This section summarizes the methodology used in undertaking this project. It comprised the following main elements:

1.2.1 Review of Atlantic Canada Processes

This saw a review of the existing legislation, regulations and guidelines in Nova Scotia and Newfoundland and Labrador to understand the current rights issuance processes, the legislative and regulatory requirements and constraints, Board and Ministerial powers and related matters.

In order to understand how these processes worked in practice, and related concerns, interviews were conducted with over 40 key informants in Atlantic Canada (Appendix 2) to ensure a thorough understanding of the processes and the informants’ interests and concerns. The interviewees included selected:

• representatives of aboriginal, fishing, aquaculture, tourism, business, local government and environmental groups;
• officials responsible for rights issuance matters in the CNSOPB and CNOPB;
• representatives of the provincial and federal governments; and
• representatives of the Canadian Association of Petroleum Producers and selected companies involved in Atlantic Canada offshore oil and gas activity.

The interviewees were primarily identified on the basis of the research team’s and ACPI’s knowledge and understanding of the petroleum industry and interested groups in each jurisdiction, and through a ‘snowballing’ process by which key informants were asked to identify possible other interviewees. In addition, the Nova Scotia key informants list was reviewed and supplemented by the project Steering Committee, which included the co-chairs of Petroleum and Fisheries Liaison Group (PFLG).

The interviews used a ‘structured-informal’ format to explore the pathways for the exchange of information between interest groups, with specific questions and discussions capturing concerns related to perceived exclusion from public input and notification. Most interviews took place on a ‘face-to-face’ basis, although some were undertaken by telephone.

It was originally planned to undertake interviews in Nova Scotia and Newfoundland and Labrador only, with emphasis on the first given the greater concern about this issue there. However, given the regional interests in Gulf of St. Lawrence activity that emerged through the research process, additional interviews were conducted with informants in New Brunswick and Prince Edward Island (PEI). In total, 22 people were interviewed in Nova Scotia, 15 in Newfoundland and Labrador, 3 in PEI and 1 in New Brunswick.

In addition, at a late stage of the research, it was decided to include a case study of rights issuance on the West Coast of Newfoundland in the 1980s and early 1990s, given the insights it provided relative to recent conflict over rights issuance off Cape Breton, Nova Scotia.

1.2.2 Review of Processes Used in Other Jurisdictions

Five other jurisdictions were selected for comparative purposes. Candidates were identified through a consultative process between the Project Team and ACPI, with input from the project Steering Committee, with a focus on finding jurisdictions with comparable regulatory, biophysical and socio-economic contexts, regulatory environments, and experience with rights issuance. The final selection was based on consultation with international contacts, a web-search of candidate sites, a review of petroleum industry guides and directories, and the professional judgment of Project Team members. It led to the following jurisdictions being chosen:

• Australia;
• Norway;
• the United Kingdom (UK);
• the United States (US) Outer Continental Shelf (Alaska); and
• Alberta.

The review saw the collection of relevant legislation, regulations and related information on rights issuance processes and associated issues through web-searches and telephone and e-mail
contact. The research also collected information on opinions of these processes from informants in interest groups (primarily environmental and fishing organizations), governments and the petroleum industry (Appendix 2).

Based on an identification of key issues and interests from the legislative review and key informant interviews, a set of criteria was established for comparing the Atlantic Canadian and other jurisdictions. The criteria selected were: the scope of each process, its clarity and openness, the degree to which it provided feedback, its timing and duration, its effectiveness in balancing the interests of different interests, and the degree to which they are satisfied with the process. These criteria are described in greater detail in Appendix 3.

The comparison was a desk-top exercise based on the information on each of the five jurisdictions, and the selected criteria. It included case study analysis of a selected project in each jurisdiction.

1.2.3 Research Synthesis and Reporting

Based on a review of draft information on current Atlantic Canada processes and a preliminary analysis of those in other jurisdictions, the Project Team discussed the utility of existing processes in Atlantic Canada and potential alternatives.

1.3 Report Format

The next two parts of this report (Sections 2 and 3) describe the rights issuance processes in Nova Scotia and Newfoundland and Labrador respectively. In each case, a description of the process, based on the review of the existing legislation, regulations and guidelines, is followed by a discussion of how it works in practice, and opinions as to its strengths and weaknesses, based on the key informant interviews. Sections 4 to 8 discuss the five comparative international and national jurisdictions: Australia, Norway, the UK, the US (Alaska) and Alberta. In each case, this includes the provision of a schematic representation of the license issuance process used. Lastly, Section 9 compares the rights issuance and consultation processes used in the different jurisdictions, based largely on the five pre-established criteria. A range of related material is included in appendices.
2 NOVA SCOTIA

2.1 The Canada-Nova Scotia Offshore Petroleum Board

The Canada-Nova Scotia Offshore Petroleum Board (CNSOPB), an independent agency of the federal and provincial governments, administers oil and gas activities in the Nova Scotia offshore area. It is constituted under both federal and provincial legislation; the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (the Accord Act) and the corresponding provincial legislation is the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act respectively. The provisions of these acts respecting the issuance of exploration licenses and approval of exploration work are essentially identical and for convenience reference will be to the federal act only.

2.2 The Licensing Process

The rights issuance process used in Nova Scotia and Newfoundland and Labrador are essentially the same, and are illustrated in Figure 1.

2.2.1 Strategic Plan

The Accord Act requires the CNSOPB to submit a strategic plan in January each year to the federal Minister of Natural Resources and the Nova Scotia Minister responsible for the Department of Energy respecting calls for bids, the issuance and terms and conditions of licenses and the exploration and development of the offshore area. In the past, this plan has not considered specific areas to be licensed because it has been the CNSOPB’s policy to require a nomination from the petroleum industry before making a call for bids. In any case, the federal and provincial governments have the opportunity to change or direct the policy of the Board following review of this plan.

2.2.2 Nomination of Lands

The Accord Act does not address the nomination procedure used by the CNSOPB, except that it contemplates requests to make calls for bids in s. 41(2). The nomination procedure is described in the Board’s 1993 Guidelines on the Issuance of Exploration Licenses. Although the Board can issue a call for bids in the absence of an expression of interest from the petroleum industry, so far it has done so only in response to industry nominations.

A nomination is a request that the CNSOPB make a call for bids in relation to particular lands not already subject to a license, or lands in respect of which an existing license is about to expire. The nominating company may suggest the configuration of the parcel. The Board is not bound to issue a call for bids in response to a nomination, and if it does, it is not bound by the configuration suggested by the company.
FIGURE 1: LICENSE ISSUANCE PROCESS FOR NOVA SCOTIA AND NEWFOUNDLAND

Consultation with federal and provincial Ministers

Nomination of lands by oil and gas companies

Assessment of nominations by Board

Board decision on call for bids

Issue call for bids

Notice to federal and provincial Ministers and publish decision

No call for bids issued

Joint veto

Ministers’ joint decision

No joint veto

Call for bids by Board and request for comments

Comments from public, stakeholder committees and gov’t departments

Strategic Environmental Assessment by Board and consider comments

Assessment by Board of bids, SEA and comments

Confidential bids submitted to Board

Do NOT accept bid/license

Board decision on bid

Accept bid/license

Notice of decision to accept bid to federal and provincial Ministers and publish

Bid rejected No license issued

Joint veto

Ministers’ joint decision

No joint veto

Exploration license issued

KEY

Opportunities for public input

Decisions

NOTE: SEA may be done at an earlier stage: see para. 2.2.6.
Nominations may be made at any time. However, the CNSOPB has established a regular cycle for the issuance of exploration licenses, involving a call for bids each June and December (although a call may not always be made). Nominations must be made no later than March 31 to be considered for the June call, or September 30 to be considered for the December call. These calls, if made, result in the issuance of licenses effective July 1, in the case of the December call, and January 1, in the case of the June call.

The identity of a company making a nomination is kept confidential. A company that nominates particular lands is not necessarily successful in acquiring them in a resulting call for bids, since other bidders could outbid it.

2.2.3 Excluded Areas and Integrated Management and Planning

The *Oceans Act* provides a statutory framework for integrated management and planning for the offshore area and the CNSOPB is currently involved in the Eastern Scotian Shelf Integrated Management Initiative (ESSIM), led by the Department of Fisheries and Oceans (DFO). Linkages to the Board’s regulatory process have not yet been clarified, but in the meantime there is a memorandum of understanding, and informal consultation occurs, between it and DFO.

Under ESSIM, DFO intends to create a collaborative management and planning structure that will be called the ESSIM Forum. This will function as a networked structure for engaging and linking federal and provincial government departments, boards and agencies, aboriginal groups, municipal and local authorities, oceans industry and resource user groups, the scientific research community and the general public. It would be formalized as an integrated management body as contemplated by the *Oceans Act*.

There are currently two areas for which the CNSOPB will not accept nominations: the Georges Bank moratorium area (this was the subject of a public hearing in 1999, following which the moratorium was extended) and the Sable Gully ‘Area of Interest’ identified by DFO as a potential protected area under the Marine Protected Areas Program. The CNSOPB’s *1999 Sable Gully Policy* and Area of Interest designation identify the area as sensitive in its class environmental screening report for seismic activities (discussed below). The Board will therefore not issue licenses in the area.

2.2.4 Initial Assessment of Nominated Parcels

After a nomination is received, Board staff conducts an internal assessment of the nominated parcel, paying particular attention to fisheries concerns and identifying environmentally sensitive areas. The Board uses the input of its Environmental Affairs Advisor and its understanding of fisheries concerns. It also consults with Natural Resources Canada and the Nova Scotia Department of Energy. At this point, the nominations are confidential and no attempt is made to solicit public comment; however, as is discussed below, the public is given an opportunity to comment after a call for bids is issued. The DFO does not participate at this stage because it requires that its comments and recommendations be transparent; however, it is consulted and provides comments after a call for bids is issued.
About 30 days after the deadline for nominations, the CNSOPB decides whether to issue a call for bids, taking into consideration the views of staff and the federal and provincial governments. Nominations can be, and have been, modified or excluded at this stage.

Notice of the CNSOPB’s decision is then sent to the federal and provincial Ministers. The decision to issue a call for bids is a ‘fundamental decision,’ meaning that the Ministers, acting jointly, can veto or temporarily suspend the decision for a further 30 days. (The provincial Minister acting alone may veto a fundamental decision respecting a call for bids related to the Bay of Fundy or the footprint of Sable Island.) The two Ministers can also issue directives to the CNSOPB in relation to fundamental decisions. If they do not veto or suspend the decision within 30 days, and subject to any joint directive, the CNSOPB issues the call for bids.

2.2.5 Call for Bids

The call is published in the federal and provincial Gazettes and advertised in various newspapers and magazines. A press release is issued and a notice is posted on the CNSOPB’s website. A call must be left open for at least 120 days, during which time:

- the call is considered by FEAC (see below);
- the public has the opportunity to comment and make written representations to the CNSOPB and the two governments (see below); and
- the CNSOPB may undertake a Strategic Environmental Assessment (SEA) (see below), which is posted on its website.

In the past, the Board has not responded in a formal manner to comments received with respect to calls for bids, although its staff members have informally discussed specific concerns with individuals.

2.2.6 Strategic Environmental Assessment

Strategic environmental assessments (SEAs) provide an initial overview of potential environmental issues and a basis for the more detailed project-specific assessments that are conducted before particular activities are authorized. As with calls for bids, the Board has not responded in a formal manner to comments received with respect to SEAs.

The CNSOPB recently conducted an SEA for an area of the Eastern Scotian Shelf that was not the subject of a call for bids (SEA report issued August 2002). The Board indicated in its report that this SEA would be used to determine whether a call for bids should be issued if nominations were received for lands in the study area and, if so, whether nominated parcels should be modified or be subject to special conditions. (For lands in this area, the license issuance process shown in Figure 1 would change to reflect the fact that an SEA has already been conducted.) The Board has not indicated whether it intends to conduct SEAs for other areas that have not yet been nominated or included in a call for bids, but if it does, the license issuance process would likewise be modified for those areas.
2.2.7 Issuance of Licenses

After the closing date for the call for bids, the CNSOPB considers the different bids, the proposed work expenditures, its SEA, any fisheries concerns, comments from the public, views expressed in meetings of FEAC and comments from provincial and federal government departments and agencies. Based on this information, the CNSOPB decides whether to issue new exploration licenses. The Board is not bound to issue a license for every parcel included in a call; for example, in Call for Bids NS97-2, it decided not to accept bids for Parcel No. 5 because of its proximity to the Sable Gully.

The decision to issue an exploration license is also a fundamental decision and the provincial and federal Ministers therefore have a second opportunity to veto or temporarily suspend the CNSOPB’s decision. The ministers can also issue a joint directive to the Board. They accordingly retain control over public policy concerning the offshore areas available for exploration and the rate of licensing. If there is no joint veto, suspension or contrary directive within 30 days of the Board’s decision, the Board issues exploration licenses to the winning bidders, subject to demonstration of financial responsibility and any conditions it may impose.

2.3 Authorization of Activities

Exploration licenses give companies the exclusive right to seek permission to conduct specific oil and gas exploration and testing activities. They must hold an operating license and a work authorization from the CNSOPB for each proposed activity, including each geophysical project, exploration well, delineation well, development project, diving program and production activity.

The CNSOPB has issued a number of Guidelines concerning aspects of exploratory activities pertaining to environmental concerns, including:

- Guidelines for Work Programs;
- Authorizations and Reports for Geophysical and Geological Programs;
- Guidelines Respecting Drilling Programs;
- Guidelines Respecting Financial Responsibility Requirements (including requirements related to emergency response and clean-up);
- Offshore Chemical Selection Guidelines;
- Offshore Waste Treatment Guidelines; and
- Guidelines Respecting Physical Environment Programs during Petroleum Drilling and Production Activities.

These and other Guidelines are posted on the Board’s website.

2.3.1 Environmental Assessment

Companies applying for a work authorization must file evidence of financial responsibility and comprehensive documentation concerning safety and environmental matters, including an Environmental Impact Statement (EIS), an Environmental Protection Plan and a Spill
Contingency Plan. These documents are reviewed by Board staff and provided to the Fisheries and Environmental Advisory Committee (FEAC) for comment.

The Fisheries and Environmental Advisory Committee is open to representatives of various federal and provincial government departments and fisheries and environmental organizations, but not the petroleum industry. At the exploration stage, it reviews all calls for bids and applications for work authorizations for proposed seismic and drilling programs. The terms of reference for FEAC are attached as Appendix 4 and the current members listed in Appendix 5.

Although DFO and Environment Canada are represented on FEAC, the Board also consults with them separately with respect to proposed seismic and drilling programs, pursuant to memoranda of understanding between the Board and each department. These memoranda are posted on the Board’s website, but do not provide opportunity for public input.

Any deficiencies and other comments on the EIS are taken up with the applicant company. This may result in additional information being filed, or a modification of the proposed work. The Board will not approve the work unless it is satisfied that there will be no significant adverse environmental effects. Conditions requiring appropriate mitigation measures may be attached to approvals.

Specific environmental assessment is required for each stage of exploration activity and for any development and production activity. For example, if a company wishes to drill an exploratory well following the completion of a seismic survey, a new environmental assessment and work authorization specific to that activity will be required.

The Board has not generally provided for public participation in connection with the environmental assessment of proposed works or activities (except through FEAC). However, as described below in section 2.3.3, the environmental assessment process under the Canadian Environmental Assessment Act (CEAA) will soon apply to the issuance of work authorizations. The procedures under CEAA include the opportunity for the public to examine a proposed project and provide comments, except in the case of relatively routine ‘screenings’ in circumstances where the responsible authority does not consider public participation to be appropriate.

2.3.2 Class Assessments

In 1998 the CNSOPB completed a class assessment for seismic surveys on the Scotian Shelf, and in 2000 it completed a generic assessment for exploration drilling on the Scotian Shelf and Slope. These assessments are publicly available on the CNSOPB website. They provide overviews of potential environmental effects and mitigation measures and serve to identify research priorities. They do not eliminate the need for project-specific assessments, but are used as reference documents in such assessments.
2.3.3 Canadian Environmental Assessment Act

The above environmental assessment procedures have been adopted by the CNSOPB as a matter of policy. To bring them within a comprehensive statutory framework, the Federal Authorities Regulations were amended in January 2001 to designate it as a ‘federal authority’ for purposes of the Canadian Environmental Assessment Act (CEAA).

This was the first step in making CEAA applicable to the Board, but amendments to the Law List Regulations are still needed before it will apply to CNSOPB approvals for exploration activities. The Regulatory Advisory Committee established to advise the federal Environment Minister on CEAA and environmental assessment policy is currently considering such amendments. Once they are made, the CEAA process will apply to the issuance of work authorizations by the CNSOPB, including the approval of seismic surveys and exploration wells. In the meantime, the Board is continuing to apply its own environmental assessment process, as described above.

The CEAA process will not apply to the issuance of exploration licenses or SEAs, which will continue to be conducted pursuant to the Board’s own procedures. This is because CEAA only applies to ‘projects’ and the Board and the Canadian Environmental Assessment Agency are of the view that there is no project to assess at the exploration license issuance stage.

2.4 Process Summary

In summary, there are various stages of review and consultation in the Nova Scotia process:

- After nominations are made, but before a call for bids is issued, the CNSOPB conducts a preliminary environmental assessment and consults with the federal and provincial governments, which can veto or temporarily suspend the call for bids, or issue a joint directive;

- After a call is issued, the CNSOPB normally undertakes a Strategic Environmental Assessment, which is posted on the Board’s website for public comments. Among other things, the assessment takes into account environmentally sensitive areas. The Fisheries and Environmental Advisory Committee, DFO, Environment Canada and the federal and provincial Ministers also review the call for bids.

- Depending on the results of its assessment and any comments received, the CNSOPB may decline to issue an exploration license even though it made a call for bids. The federal and provincial Ministers may also veto the issuance of an exploration license or issue a joint directive.

- Following the issuance of an exploration license, proposed activities and projects are specifically assessed before work authorizations are issued. All such authorization applications are reviewed by FEAC, DFO and Environment Canada.
• Separate environmental assessments are done for seismic and exploratory drilling programs and development and production activities.

2.5 Key Informant Commentary

The key informant interviews in Nova Scotia, New Brunswick and Prince Edward Island (PEI) provided a wide range of perspectives on the above rights issuance process, especially as it relates to public consultation and involvement. The majority of participants recognized the value in public input into a process involving resources and development. Many had clear ideas as to how and when the public should be involved, not least reflecting the fact that this was a controversial issue in Nova Scotia at the time the research was being conducted, with many of the interviews being held shortly before or after the public hearings on the issuance of exploration licenses off Cape Breton.

The rest of this section summarizes the findings of these interviews, focusing on the informants’ familiarity with the regulatory system, knowledge of the systems used in other jurisdictions, concerns respecting the current Nova Scotia process, and their thoughts respecting communications and notifications, government participation and the need for understanding and trust.

2.5.1 Familiarity with the CNSOPB System

Most interviewees had a detailed and accurate understanding of the current system for regulating offshore activity in Nova Scotia, although in some cases this was a result of the then recent Cape Breton hearings. However, some other informants who were not involved in the public review expressed concern about what they saw as a lack of transparency in the current process, which hindered their intervention in it. Respondents from other Maritime Provinces who were involved with fishing organizations also had a base understanding of the CNSOPB system.

When they were asked specifically about the rights issuance process, the interviewees were usually only familiar with it as it related to their interests. Furthermore, through the discussions a number of individuals forcefully expressed the opinion that any discussion of rights issuance must take place in the broader context of the entire resource development cycle, including the opportunities for consultation and involvement in its various stages.

In discussions with key informants from Nova Scotia, PEI and New Brunswick, the following points were brought forward:

• The majority of petroleum industry informants stated that the current CNSOPB Rights Issuance Process is predictable and appropriate for the current stage of development of the offshore petroleum industry in this region, with mechanisms in place to identify and assess effects on other interests;

• Petroleum industry informants and most federal and provincial government representatives generally agree that the existing exploration rights issuance process adequately identifies and assesses effects on the marine environment, given the
knowledge that in-depth environmental and socio-economic impact assessments are conducted prior to any development project;

- A small number of informants that have been involved in the East Coast offshore petroleum industry recognize that minor positive changes in the rights issuance process have been implemented since the 1980s; for example, there was approval of the fact that public input is requested at the time a call for bids is made but prior to award;

- A large number of key informants from the Maritime Provinces brought forward points that while the CNSOPB’s decisions directly affect the fishing industry, until recently there was no fishing industry representatives on the Board;

- Fishing and environmental representatives from Nova Scotia have stated that the CNSOPB cannot give proper consideration to concerns brought forward by the public because the time period between receiving comments and awarding licenses does not permit an appropriate evaluation; and

- Fishing and petroleum industry representatives both recognized that the CNSOPB’s process for inviting and receiving land nominations and issuing calls for bids is regular and predictable.

2.5.2 Knowledge of Other Jurisdictions

Many interviewees made reference to the Norwegian process, but in most cases these comments were based on anecdotal rather than direct knowledge. There was also some familiarity with the Newfoundland and Labrador system as a comparator, although it was recognized that it differed little from that in effect in Nova Scotia.

Petroleum industry informants commonly had the greatest experience of Norway and other jurisdictions, and were able to speak about them on the basis of direct knowledge. Some of these informants cited the leasing system used in the United States Outer Continental Shelf (OCS), especially as it applied in Alaska, as an example of a process that was long-winded and detrimental to development. They suggested that an issuance process lasting more than six months, and perhaps even one to two years, would be tolerable as long as it was administered properly and provided efficient and effective means by which interested parties could bring forward information on the areas under consideration.

2.5.3 Concerns

Most of the discussion of public involvement in the rights issuance process took place in the context of concerns about the fishery. Informants in Nova Scotia, New Brunswick and PEI, expressed general concern that petroleum activity could damage fishing activity and stocks, including in sensitive fishery nursery areas. Committees set up specifically to encourage

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2 In July 2002 the federal government appointed Brian Giroux, Executive Director of the Scotia Fundy Mobile Gear Fishermens’ Association, a Board member for a six-year term.
dialogue between the fishing groups and the proponents of the offshore petroleum industry do not always have full representation because the timing and location of meetings were not convenient for representatives from outside the Halifax area and there are no travel funds to allow their representatives to attend. It was also stated that some environmental and fishery representatives chose to remove themselves from committees and would not engage in dialogue with the petroleum industry. Interviewees emphasized that the fishing industry was in existence long before the offshore petroleum industry and posed no threat to it.

Various concerns were expressed respecting the place of public involvement in the rights issuance process, including concern that:

- confidentiality concerns at the nomination phase prevents open discussion of specific areas;
- some groups, including those representing aboriginal interests, are not adequately consulted during the process;
- while the existing CNSOPB system allows for input from fishing organizations through specific committees, their makeup does not represent all areas or allow for differences in fishing territories and practices; and
- pre-issuance consultation uses Halifax-based structures and processes, ignoring the facts that, for example, the Cape Breton licenses involved the Gulf Region fishery (different stocks, species and regulators) and an inshore fishery whose concerns for the nearshore are not brought forward by representatives currently on certain committees.

Generally, in respect to the last of these points, Cape Breton informants felt that the existing mechanisms are “Scotian Shelf-oriented” and that “everything happens in Halifax.” They, like many other representatives of fisheries, environmental and community groups, believe that consultation must involve all those affected. In the case of the licenses awarded off Cape Breton, this was seen as including all those who fish the Gulf of St. Lawrence, as is the case with the long-standing, ecosystem-based, fisheries management of that stock. Recognition of these differences was stated as something that was not properly addressed and informants from across the Maritimes believe that due diligence must include consultation with interests in the directly affected areas. Fishers in Nova Scotia, New Brunswick, PEI, Quebec and Newfoundland and Labrador would be consulted primarily through the DFO regional office in Moncton (rather than Halifax).

This is part of a larger example of what was widely perceived as a general problem of overlapping jurisdictions respecting marine activity, given that management and consultation initiatives must involve different provinces, agencies (e.g. CNSOPB, DFO, and the provincial Department of Fisheries and Aquaculture) and regions (the Shelf and Gulf). A process that is effective in providing input from environmental and fisheries organizations for exploration activity on the Scotian Shelf may not involve the appropriate interest groups for considering a Gulf of St. Lawrence license area.
Some parties see the rights issuance process as severely flawed because it allows the CNSOPB to issue licenses without an enforceable requirement to engage the public. It was commonly thought that:

- Consultation should be part of an integrated planning process before license issuance is even considered, as is seen to be the case in Norway. This should take into account the full range of potential costs and benefits, and hence recognize and reflect the full value (in terms of dollars, employment and exports) of the existing and potential fishery, tourism, petroleum and other sectors. It was stated that such an assessment should be conducted under CEAA guidelines.

- Such an assessment might result in a decision to: hold a region under moratorium (e.g. the Georges Bank); identify key areas where no activity should be permitted (e.g. the Gully); and/or identify areas where exploration might be permitted subject to certain conditions.

A number of respondents, including some from the fishing industry, thought that the closure of some areas under moratoria need not be for all time, because technological improvements and scientific research might subsequently permit exploration to proceed.

Interviewees from the Maritimes were concerned that once petroleum companies were issued the rights to explore, they would move forward step by step and there would be no opportunity for the consideration of local community concerns. Some did not believe that subsequent environmental assessments or consultations would be effective in addressing public concerns. One informant was concerned that, while public input was important, non-specialist community representatives might not be able to understand the scientific issues involved, and hence not be able to develop well-informed opinions.

It was stated by petroleum industry informants that the rights issuance process only gave companies the right to explore if their environmental assessments were approved. Each subsequent stage of activity was then subject to specific requirements, including a comprehensive assessment, review and consultation process as part of any development plan. There are clearly differences in understanding of how the process works and opinions as to its effectiveness.

Lastly, some Cape Breton interviewees strongly felt that licenses should only be issued for the area that the petroleum industry intends to explore; if a company indicates that it does not intend to explore in areas close to the shore, the nominated parcel should not include these areas.

2.5.4 Communications and Notification

The key informants stressed that the communications and notification process must provide appropriate and timely information to the relevant parties if they are to be effective in gathering input. Some parties stressed their view that there is no notification at the proper time, which in their minds should be well before the call for bids. An early and active consultation was seen as being likely to defuse prospective disputes.
In other discussion of the current communications and notification process:

- Fisheries, environmental and community group representatives stressed that consultation mechanisms should encourage the participation of the full range of interests, and include hearings, open houses and other events in or near all significant affected communities.

- Some fisheries representatives noted that ‘offshore’ has different meanings in the fishing and petroleum industries, and this can cause confusion and conflict. While the fishing industry reserves this term for deeper and more distant waters, contrasting it with inshore, near-shore and mid-shore activity, which generally involve the operation of progressively larger vessels, the petroleum industry uses it for all marine activities. The petroleum industry’s use of its definition when addressing fisheries concerns was seen as insensitive and perhaps a sign of disrespect.

- Those who are not already paid to represent the interests of particular groups should have access to financial support to defray the costs of intervening; this might cover the costs of the participant’s travel, accommodations, meals and time, and the costs of accessing expertise, through some form of intervenor funding.

- The FEAC and PFLG committees are seen as good mechanisms for dialogue and communications. It was stated that these committees were not restricted and it was indicated that no one representing a valid interest would be refused membership.

However, the communications and notification activities of the CNSOPB received mixed comments. In particular, they were seen as being largely passive; it was noted that while the information is in the public domain (i.e. on a website and in newspapers), people will only find it if they know where and when to look, but this requires more attention and effort than can be reasonably be expected of groups and individuals with a wide range of non-petroleum related concerns.

Some individuals stated that they would not participate in the environmental review of impact discussions because they were not open and transparent to the public. For example, DFO does not become involved at early stages of evaluation. Clearly various federal and provincial departments do not share the same interpretation of public information and consultation as other departments. It was stated that notification and consultation should be limited to representative organizations that are affected, in opposition to the argument that all communities and individuals must be engaged in discussions prior to nomination of offshore licenses.

2.5.5 Understanding and Trust

The terms ‘trust,’ ‘perception,’ ‘information,’ ‘timing’ and ‘how it is communicated’ were all commonly brought up by key informants during discussion of communication and other aspects of the process. There is recognition that petroleum industry activity may be acceptable and in the
public interest, and some petroleum industry representatives were noted and applauded for their openness and honesty. However, it was strongly indicated that there is currently a low level of trust in respect to some areas and activity, with many suggesting that the main problem is not with the petroleum industry itself, but with the regulators and, perhaps, the provisions of the Accord Act. Specifically, it was indicated that the CNSOPB current requirements for notification and consultation are inadequate and ineffective in engaging community-based groups.
3 NEWFOUNDLAND AND LABRADOR

3.1 The Canada-Newfoundland Offshore Petroleum Board and its Activities

Oil and gas activities in the Newfoundland and Labrador offshore area are administered by the Canada-Newfoundland Offshore Petroleum Board (CNOPB) under legislation similar to that described for Nova Scotia. The federal legislation is the Canada-Newfoundland Atlantic Accord Implementation Act (the Newfoundland Accord Act) and the corresponding provincial legislation is The Canada-Newfoundland Atlantic Accord Implementation (Newfoundland) Act. The Oceans Act provisions related to integrated management and planning apply in the same way as for Nova Scotia. A formal structure for integrated management and planning has not yet been developed, but in the meantime the CNOPB consults informally with DFO.

The rights issuance process is essentially the same as for Nova Scotia (see Figure 1), but there are a number of differences:

- In Nova Scotia, an annual review occurs prior to the call for nominations. In Newfoundland and Labrador, a plan of interests is submitted to governments in January of each year, following the call for nominations in mid-November.

- Unlike the CNSOPB, which issues a call for bids twice a year (provided that nominations are received), the CNOPB only issues one call each year.

- In Nova Scotia, the decision to make a call for bids is made with input from governments, because the CNSOPB has interpreted the issuance of licenses as being a fundamental decision. Such approval of licenses is made after the closing of the call for bids and, if there is no ministerial veto or suspension within 30 days, the Board can issue licences. In Newfoundland and Labrador the decision is a Board decision and is not made in consultation with governments. Both it and the draft licence terms and conditions are presented to governments. They have 30 days to approve them, since they are both fundamental decisions. As a result, there is no delay relating to the issuance of licences once the call closes and the successful bidder submits the requisite fees and security documentation.

- Until recently, the CNOPB did not conduct strategic environmental assessments (SEAs) of parcels included in a call for bids. However, in October 2002 the CNOPB (in collaboration with the CNSOPB, given that some of the area is under its jurisdiction) issued a request for proposals for an SEA in the Laurentian Sub-basin, and the CNOPB intends to conduct SEAs with respect to all future land sales.

- After a call for bids is issued, the CNOPB consults with the Newfoundland Environmental Advisory Committee (NEAC), which is composed of representatives of the federal and provincial departments responsible for fisheries, environment and natural resources. There is no public participation in NEAC and the CNOPB does not have the equivalent of Nova Scotia’s Fisheries and Environmental Advisory Committee. However,
while calls for bids are published and information on the current call is posted on the CNOPB’s website, and any comments would have been considered, there is only a very limited public awareness that this is the case and hence little input has been received.

- The CNOPB intends to change its approach in this regard and has indicated that, starting with the next call for bids, it will seek public input. The Board is also in the process of establishing a new liaison committee that will be composed of representatives of the petroleum industry and fishing interests. The latter are expected to be represented by the Fisheries Association of Newfoundland and Labrador (FANL) and the Fish, Food and Allied Workers (FFAW) that represents fisheries workers in Newfoundland and Labrador. It is not yet clear whether the new committee will be involved with the issuance of exploration licenses, but FANL and FFAW input will be invited in connection with strategic environmental assessments.

- Unlike the CNSOPB, the CNOPB has not designated any portions of the offshore as sensitive or excluded areas, although an area in the vicinity of Gilbert Bay, Labrador, is under consideration by DFO as a possible marine protected area.

- Approvals for work are handled in basically the same manner as in Nova Scotia, although the CNOPB has not conducted any class or generic assessments. As with the CNSOPB, the CNOPB has been designated as a ‘federal authority’ for purposes of the Canadian Environmental Assessment Act, but until amendments are made to the Law List Regulations and Comprehensive Study List Regulations, CEAA will not generally apply to CNOPB approvals for exploration activities.

3.2 Key Informant Commentary

Compared to the key informants in the Maritimes, those in Newfoundland and Labrador had generally low levels of familiarity with, and few specific concerns with respect to, the exploration license issuance process. Some thought that this difference in understanding and concern might result from the fact that the main petroleum industry activity in Newfoundland and Labrador, on the Grand Banks, is far offshore, unlike the contentious activity off the Cape Breton region of Nova Scotia. However, it was also recognized that there has been little concern about activity in other parts of the Newfoundland and Labrador offshore area, including near-shore shallow-water seismic and drilling on the West Coast, adjacent to and within sight of the Port-au-Port Peninsula.

It was also suggested, by fishing industry and environmental group representatives, that the relative lack of concern partly results from the fact that they had insufficient information about petroleum industry activity. For example, fishing industry representatives indicated that there has been “liaison” but no “lively discussion” with the petroleum industry respecting rights issuance, and that this is because the fishing industry has insufficient information about petroleum activity. This was seen as preventing an ‘informed consultation’ and the development of specific concerns.
Fishing sources also noted that theirs is a diverse and demanding industry that has recently had to deal with many crises, such as the ground-fish moratoria. These have overextended the limited resources of industry organizations and representatives and, as a consequence, prevented them from giving petroleum activity much attention. Given this, and the fact that there has been commercial fishing in Newfoundland and Labrador waters for hundreds of years, there was some resentment that the relatively newly arrived petroleum industry has not taken the lead in education and consultation initiatives about its effects and interactions with other ocean users. This is being addressed through the One Ocean initiative, a recent joint fishing and petroleum industry secretariat that will discuss and study a range of issues of mutual concern in Newfoundland and Labrador.

A number of fishing industry and community informants expressed a concern that the CNOPB had been partly co-opted by the petroleum industry. It was felt that this was reflected, not least, in the fact that the process for issuing work authorizations is not clear and transparent to outside groups and individuals, limiting both their awareness of issues and any debate about them and the process.

It is the case that the current permit issuance process, as described above, provides only limited opportunities for public input. Officials noted that, while the Board is open to input when call for bids notification is placed on their website, it is not proactive in seeking such input and has not received any. However, as has already been noted, the Board plans to change this and, starting with its next call for bids, it will more actively seek public input.

In other key informant consultations, some interviewees indicated that:

- There is a need for a broad consultation on license issuance, providing increased opportunities for input by such groups as the Newfoundland Wildlife Federation and the Protected Areas Association. The Fisheries Conservation Council was suggested as an interesting model for how this might work.

- The *Oceans Act* also requires integrated management, and that is what is needed in respect to petroleum activity. However, it was suggested that there is currently little communication on this topic between the Board, federal departments and provincial departments.

- It is important that Marine Protected Areas, where no activity would be permitted, be designated. For example, the Southeast Shoal was identified as an area with unique speciation, and it was argued that it is also important to protect nursery areas. However, it was thought that in many cases the designation of such areas would have to await more DFO fisheries research so as to be able to identify areas that should not be open to exploration.

- Special care should be taken of ‘core’ resources/species that are critical to the ecosystem, and the limits to exploratory activity should have a temporal as well as a spatial dimension (that is, there should be times when activity is prohibited). The latter currently
happens at the specific activity approval stage, but should be formalized with respect to all activity.
CASE STUDY 1: NEWFOUNDLAND WEST COAST

In May 1977, the Government of Newfoundland and Labrador issued *A White Paper Respecting the Administration and Disposition of Petroleum Belonging to Her Majesty in the Right of the Province of Newfoundland*. It stressed the importance of local involvement in the planning of offshore activity. It specified three ways in which this was to be ensured:

- Public hearings will be held prior to inviting companies to apply for designated blocks to determine if the area should be opened up for exploration and development;
- All permits will be tabled for a certain period in the House after being approved in principle by the Minister and before being confirmed by the Cabinet. This will give the opportunity for further representations; and
- Public hearings will be held prior to the approval of the development plan for any oil and gas discoveries made. (p20)

The approach set out in the White Paper was reflected in the *Newfoundland and Labrador Petroleum Regulations, 1977, under The Petroleum and Natural Gas Act*. This required that, prior to opening any area for petroleum exploration and production, the Minister publicize the fact that this was intended and hold a public enquiry by a Commissioner appointed under *The Public Enquiries Act*. The Commissioner was to hold public hearings in at least two communities in or adjacent to the area in question.

This approach was implemented on the West Coast of Newfoundland in the early 1980s, with respect to both onshore and offshore areas. It occurred in the context of a broader province-wide government program of public education that included holding courses, establishing specialist Offshore Petroleum Information Committees, and funding fact-finding visits to other areas experiencing petroleum activity.

The West Coast process saw the provincial Petroleum Directorate engage in a comprehensive public involvement program. Two Steering Groups were established: one respecting the Port au Port and St. George’s Bay area, based in Stephenville, and one respecting the Northern Peninsula, based in Parson’s Pond. These groups were tasked with working with community leaders and interest groups to deliver a comprehensive and intensive public education and consultation process. Meetings were held to familiarize interested individuals and groups with such topics as the petroleum industry, its activities, the geological potential of the area, and the applicable legislation. Town hall meetings and meetings with special interest groups were also held. These discussions saw fisheries and environmental issues predominate, especially related to inshore impacts, the effects on lobster and shrimp and compensation arrangements.

On the basis of these and other consultations, the Steering Committees prepared and submitted to the Petroleum Directorate reports outlining local interests and concerns with respect to potential activity. Based on these reports, and consultation with other provincial government departments, the Petroleum Directorate prepared a review of issues that examined such topics as the impact on the fishery, land-use concerns and environmental sensitivities.
It was only at this stage that, in 1981, the Petroleum Directorate sought industry nomination of lands. The Minister of Mines and Energy decided to have these reviewed by an internal government process (rather than by a Commissioner), based on the Directorate’s own analysis and the input from the Steering Committees. All nominated lands were approved and a call for bids issued, but no bids were received at this time.

With the passage of the Atlantic Accord Implementation Acts in 1986, the above process was superceded by that described in the body of this section of this report. However, the approach used in the early 1980s, and the base of local understanding it created, had lasting value. Not least, they prepared people for, and helped set the model for the CNOPB’s first offshore land sales, in 1988, and the Province’s first onshore sales, in 1992. These saw a thorough review of materials from the earlier consultation, and led to a requirement that bidders agree to participate in public education and consultation as part of the call for bids process.

This consultation formed part of what was effectively a West Coast strategic environmental assessment, although that terminology was not used at the time. This involved a number of components, including:

- The above noted public education and consultation process;
- Trajectory modeling related to a possible spill; and
- Coastal sensitivity mapping (funded by the Environmental Studies Revolving Funds).

This led to a report to the CNOPB. The main local issues that emerged at this stage were related to employment and other potential economic benefits.

In discussions with civil servants involved in the above-noted West Coast experience, a number of lessons were identified, including:

- Ministers, MHAs and development associations can be valuable sources of input respecting community issues and concerns;
- While there can be consultation burn-out in communities that have seen multiple consultations, at same time there may be a good turnout in communities newly involved in the process;
- Open houses are superior to town hall meetings because they permit a fuller and more open exchange; and
- The calibre and commitment of company representatives is critical to a successful consultation, and it is important to work with company from the outset.

References:


4 AUSTRALIA

Australia is the first of the five comparative international and national jurisdictions investigated as a basis for evaluating current rights issuance processes in Atlantic Canada. In Australia, a federal state or Commonwealth, the six state and two territorial governments have jurisdiction over offshore petroleum activities within adjacent coastal waters (landward of three nautical miles), while the Commonwealth has jurisdiction over exploration and development activities beyond this, pursuant to the Petroleum (Submerged Lands) Act 1967.

However, the states and territories share administrative responsibility within offshore areas adjacent to their coastal zones through Joint Authority (JA) arrangements, pursuant to ‘mirror’ legislation. Each JA comprises the Commonwealth Minister for Industry, Tourism and Resources and the relevant state/territory Minister for Minerals and Energy (or equivalent). In addition, the state/territory Ministers administer some day-to-day operations.

4.1 The Licensing Process

The legislation currently makes provision for granting companies five types of title:

- exploration permits – which provide exclusive rights to undertake seismic surveys and drilling in a defined area;
- retention leases – which are granted to holder of exploration permit, where a discovery is not currently commercial but is expected to become so;
- production licenses – which are granted to holder of exploration permit or retention lease, for the recovery of petroleum following a commercial discovery;
- infrastructure licenses – which are granted to enable the construction of offshore facilities for petroleum storage and processing; and
- pipeline licenses – which are granted for transporting petroleum by pipeline between offshore facilities or to processing plants.

In areas not covered by titles, companies may be granted a special prospecting authority to undertake seismic or other geophysical or geo-chemical surveys. This is a non-exclusive right to explore an area prior to the invitation for applications for an exploration permit. A special prospecting authority over an area does not provide any rights in relation to the award of an exploration permit.

Under the Australian process (see Figure 2), prospective acreage, identified by the Commonwealth in consultation with the State/Territory Mines Departments, the Australian Geological Survey Association and the petroleum industry, is released each year by the applicable JA and made available for exploration permits under a work program bidding system. Under this, applicants are required to propose a six-year exploration program. The first three
years are the ‘minimum guaranteed work program’ that must be completed in the period to avoid cancellation of the permit. The applicant also identifies a ‘secondary work program’ covering the rest of the permit period; this work is guaranteed on a year-to-year basis, providing the permittee a greater degree of flexibility. Exploration permits may be renewed for further five-year periods; however, half of the permit area must be relinquished at each renewal.

Applications are assessed on the basis of which work program bid is most likely to achieve the fullest assessment of the petroleum potential within the permit area in the minimum guaranteed period, recognizing the essential role of drilling wells in the discovery of petroleum.

There is also provision for a cash bidding system but it has only been used for a limited number of highly prospective areas, and it has not been used since 1992.

Except for certain environmentally sensitive areas, such as the Great Barrier Reef Marine Park, operations are permitted on most parts of the continental shelf. There are currently 13 Marine Reserves in Commonwealth waters. These are classified according to the International Union for Conservation of Nature and Natural Resources (IUCN) Reserves Classification system. Activities within these reserves must be consistent with the relevant plan of management and IUCN classification, which, in some cases, may allow for oil and gas exploration and production.

When areas proposed for release have been selected, the JA engages in a formal consultation with relevant Commonwealth agencies that have responsibility for other activities in these areas, such as the Australian Maritime Safety Authority, the Australian Fisheries Management Authority, the Department of Defence and Environment Australia. Areas are subject to an informal, non-public, environmental assessment by the JA before release and permit award, and conditions may be imposed upon successful bidders. Companies preparing work program bids for these areas are forewarned by the JA of special conditions including environmental sensitivities that may apply to areas in the acreage release process.

Approval must be sought for specific exploration activities under an exploration permit. A number of environmental statutes are applicable. In addition to the requirements contained in the Petroleum (Submerged Lands) Act 1967, the most significant environmental statute is the Environment Protection and Biodiversity Conservation Act, 1999 (EPBC Act), which is the Federal environment protection statute. It is administered by Environment Australia and applies to the entire Commonwealth offshore area, as well as to key listed species that may be present in state/territory-administered waters. As a general guide, new installations and production activities require approval under this Act, while most exploration activities do not.

In addition to a case-by-case environmental approval, a strategic EIA related to offshore petroleum exploration and appraisal activities in offshore areas is currently being conducted under the provisions of the EPBC Act. This strategic EIA is being conducted by the Department of Industry, Tourism and Resources, and will include extensive public consultation, including the publishing of draft and final Terms of Reference, as well as consultation on the assessment documentation.
FIGURE 2: LICENSE ISSUANCE PROCESS FOR AUSTRALIA

KEY

Opportunity for public input

Decisions

JA consults with Energy Departments and oil companies to select lands for release

Informal consultations may occur with stakeholders and oil companies

JA selects lands for release

JA consults with other interested agencies and conducts Environmental Impact Assessment

JA decides on release and conditions

JA decides not to release lands

JA releases lands and invites proposals

JA does not approve any proposal

Lands not released. Process stops.

Applicants propose work programs

JA assesses proposals and selects winner

JA does not approve any proposal

JA approves winning proposal

JA issues Exploration Permit
4.2 The Scope and Effectiveness of Consultation

4.2.1 Scope of Consultations

There is no formal public consultation prior to the release of lands for exploration permits. It is required only under the EPBC Act for specific projects, and hence subsequent to the rights issuance process. However, informal consultations may still occur between the petroleum industry and local communities, environmental NGOs, the fishing industry and other interest groups.

Given the fact that there is no formal consultation, it is not possible to review its characteristics re clarity and openness, feedback and timing and duration.

4.2.2 Satisfaction

Notwithstanding the lack of formal pre-licensing opportunities for public input, key informants appear to be moderately satisfied with the current rights issuance processes, and with the general trend in Australia towards improved consultative relations between the petroleum industry and affected interests. By and large the petroleum industry is comfortable with the requirements imposed upon them. The environment NGOs, on the other hand, have expressed some dissatisfaction with the extent to which they are informed during rights issuance and subsequent exploration and development, and the time they are given to respond when consulted. The NGOs find the current informal approach to consultation better than in the past, but still not entirely satisfactory.

For example, a representative of the World Wildlife Fund (Australia) (WWF) indicated that the organization views the current processes for public and NGO involvement, both formal and informal, as ‘briefings’ rather than consultations. She commented that there is no opportunity for dialogue under the current procedures. What companies call ‘consultation’ merely involves providing information on what they plan to do, or are already doing. Moreover, this informal interaction does not usually occur until a significant amount of work has already been done and the company is fairly confident a license will be issued.

The WWF representative described the informal consultations between the petroleum industry and environmental NGOs as “sensitive.” In general, the petroleum industry has been unwilling to discuss such matters as climate change or renewable energy, both of which are important to environmental conservation groups. The WWF representative did add, however, that some “forward-thinking” companies have begun to consider these issues.

She also said the WWF would like to see more face-to-face interaction with the proponents at an early stage, rather than web postings under the EPBC Act. She pointed out that it is difficult to obtain feedback because confidentiality laws protect much of the information on decisions, and she suggested that, if face-to-face meetings were held between companies and NGOs, this would be less of an issue because many matters could be discussed in confidence.
Even the EPBC Act, the interviewee noted, has been far more effective in matters unrelated to petroleum activity. She cited the example of Defense Department sonar testing in Blue Whale Territory, which the WWF heard about and commented upon through the EPBC process, and which was subsequently stopped. This referral process is less effective in dealing with oil and gas matters, however, because the Commonwealth government tends to view such development as being in the national interest.

Petroleum industry representatives indicated that they are reasonably comfortable with established consultation processes. They are happy that issues are addressed through informal consultation at an early stage, although there are concerns about the potential, at the project approvals stage, for project delays and the associated costs. However, the situation offshore is seen as much better than that onshore, where some companies are negotiating with aboriginal groups; in some cases environmental issues have not been resolved after five years consideration.

A petroleum industry informant commented that the current process creates the potential for a great deal of litigation. Perhaps indicating the ineffectiveness of the informal consultation processes, he mentioned a recent case where a company was frustrated in its attempts to consult with unwilling NGOs, which later took legal action when the project began. Petroleum industry informants also noted that there is some concern within their industry that consultation can delay the approval of projects, with resultant costs.
CASE STUDY 2: THE SYDNEY BASIN PROJECT, AUSTRALIA

In 1997, the Australian government invited applications to explore offshore areas of the Sydney Basin. These areas cover approximately 9500 km² and stretch along the coastline of New South Wales (NSW) from Newcastle to the south of Sydney. Bids for the exploration rights to the offshore component of the Sydney Basin, in an area known as NSW 97-1, closed in November 1997. However, the Australian government did not approve exploration until July 1999, naming Flare Petroleum as the successful bidder.

The close proximity of NSW 97-1 to Australia's largest domestic oil and gas marketplace made it an attractive area for exploration. The Australian and NSW governments were both eager to open the area as a part of the Discovery 2000 program, a $35 million state government initiative to encourage and promote exploration for offshore petroleum in NSW that ran from 1994 till 2000.

Flare Petroleum planned to spend nearly 14 million dollars on the exploration of the area over a period of six years, including a 750km seismic survey and the drilling of two wells. Prior to the arrival of Flare, seismic exploration in the offshore component of the Sydney Basin identified ten prospective leads. The Sealion Lead, widely regarded for years as the most likely to host oil or gas, proved to be a contentious choice because it is located just six kilometres from the nearest point of the NSW coast.

The Flare exploration program was controversial because this first attempt to explore the Sydney Basin is close to densely populated beachside communities that depend on tourism. Opposition came from a variety of sources. Residents of Waverly, a satellite of Sydney, were outraged over the possibility of oil activity being conducted so close to their community. According to the Mayor, the opening of the Basin to exploration would set a dangerous precedent and any full-scale drilling operation would have devastating consequences. In July 1999 he called on the NSW government and the federal Department of Industry, Science and Resources to reverse their decision to permit exploration. A councillor from Waverly argued that the federal Minister was not interested in hearing public submissions on the matter, and his decision to issue the permit was made regardless of community objections.

Environmental groups also opposed oil exploration in the Sydney Basin. In 1997, when the federal government first opened it to exploration, the Australian Conservation Federation raised concerns about the effect of seismic surveys on whales migrating through the area. The Green Party was also concerned about the consequences of oil exploration so close to the coast. Oil spills and the effects on whale migration were the party’s chief concerns with the project, and it vowed to work with municipal governments to reverse the decision to award exploration rights to Flare.

Lee Rhinnanon, a Green Party member of the NSW legislature, felt that the consultation process that led to Flare’s obtaining a license was inadequate, and she indicated that most of the organisations working with the Green Party are frustrated with the process. She believes that such groups have little influence on government respecting the opening of areas to exploration. Then, when an area like the Sydney Basin is opened, enquiries into specific exploration plans are often misrepresented by the company concerned. In this case, Rhinnanon noted that Flare
immediately promoted any exchange that did occur between itself and environmental groups as constituting effective consultation.

In January 2002, two and a half years after being granted an exploration license, Flare Petroleum commenced its offshore exploration program. However, in August 2002, Flare’s parent company, Daytona Oil, announced that the exploration in the Sealion Lead was being halted due to environmental sensitivities, with efforts being concentrated on exploring prospects further off the coast.

References:


Town of Waverly, Letter written by Mayor Paul Pearce to Senator Nick Minchin, Minister for Industry, Sciences and Resources, July 12, 1999.

5 NORWAY

In Norway, a unitary state, the legal basis for government regulation of the petroleum sector is the Petroleum Activities Act 1996 (Petroleum Act). This specifies that the Norwegian state has the proprietary right to subsea petroleum deposits and the exclusive right to resource management on the Norwegian Continental Shelf. The Ministry of Petroleum and Energy (MPE) has overall responsibility for operations on the Continental Shelf and it and the Norwegian Petroleum Directorate (NPD) administer the activities on the shelf, with the MPE having given the NPD the authority to administrate certain operations.

5.1 Opening of Areas for Exploration

The Petroleum Act requires environmental impact assessments (EIAs) as part of the input for decision-making at several stages in petroleum operations. In the first of these, such studies are required before any area is opened for petroleum activities (see Figure 3). From 1986 until 1998 a working group for petroleum activity EIAs, the Arbeidsgruppen for Konsekvens-Utredninger av Petroleumsvirksomhet (AKUP), carried out these assessments. It consisted of experts in marine biology, ecology and fisheries. Its evaluations, and subsequent public input, formed the basis of the MPE’s recommendation to the Norwegian parliament, the Storting. While the Petroleum Act indicates the MPE can make the decision itself, it can also choose to request that the Storting decide and in practice this has always happened. It undertakes an overall assessment of the advantages and disadvantages of pursuing petroleum operations in the area, and petroleum activities will not be permitted if the disadvantages are sufficiently serious. Both the Storting and the government can also impose special conditions on an area, such as prohibiting drilling during certain periods.

Legislative requirements for the initial assessment of new areas include a public announcement and the provision of a period of at least three months for the provision of public comments to the MPE. The procedures followed for public notification and input are otherwise at the discretion of the MPE, but the public comment period is generally advertised in newspapers, and letters may also be sent to interested parties. The MPE receives public input by written submission, and it may also hold public hearings.3,4

3 It should be noted that, as is described later, informal consultation is very important in Norway. In particular, petroleum and fisheries informants commented that the two groups have established a good dialogue in the last 10 to 15 years.

4 A similar process is used for project and regional EIAs, which occur after rights issuance. Project EIAs form part of the Plan for Development and Operation a licensee must submit prior to developing a licensed area. Regional EIAs provide an overview of the environmental impacts across wide areas and background information for project EIAs. They were established under a 1997 amendment to the Petroleum Act, and so far assessments have been carried for the Norwegian Sea, North Sea and Barents Sea.
FIGURE 3: LICENSE ISSUANCE PROCESS FOR NORWAY

KEY

□ Opportunity for public input

△ Decisions

Area not opened

Do NOT consider area

Consider area

MPE decides on considering area

Environmental Impact Assessment (EIA) by AKUP

MPE considers EIA and comments

Recommend opening area

Parliament decision on area

Open area

Call for nominations for blocks in open areas by MPE

Oil companies submit nominations to MPE

Oil companies submit applications to MPE

Companies enter into Operating Agreement

MPE reviews nominated blocks and invites applications for specific blocks

MPE reviews applications and discusses them with companies

MPE assembles project group and appoints operator

MPE issues Production license

Comments from public and stakeholders

Do NOT recommend

Do NOT open area

Do NOT recommend

Opportunity for public input
Such assessments have now been undertaken for all of the Norwegian Continental Shelf. In some cases, this has led to a decision not to open areas for petroleum activity. This is the case for Skagerakk area of the North Sea, some coastal near areas in the middle and north of the Norwegian Sea, and the Troms II area of the Barents Sea. These areas are not permanently closed, but cannot be opened until after a new EIA has been conducted.

5.2 The Licensing Process

5.2.1 Exploration Licenses

The Petroleum Act provides that when an area is opened to petroleum activities, companies can apply to the NPD for an exploration license. This gives the right to explore for petroleum through geological, petro-physical, geo-chemical and geo-technical surveys, including shallow drilling. However, it does not entitle the holder to conduct regular exploration drilling, or confer an exclusive right to explore the area mentioned in the license, or any preferential right when production licenses are granted. The NPD may limit an individual license to apply to particular types of exploration. They are generally granted for a period of three years.

5.2.2 Production Licenses

A production license gives an exclusive right to explore for and produce petroleum within a specified geographical area and includes some exploration activities in its scope. A production license that permits exploration drilling will only be issued in respect of an area that has already been opened for petroleum activity.

Each production license is awarded for an initial exploration period of up to ten years. The decision on the length of the initial period is made on the basis of block specific circumstances. A specified work obligation, consisting of seismic and/or drilling activity, must be met during this period. Providing the work obligation has been completed by the end of this period, and the discovery of significant reserves, the licensees are generally entitled to retain up to half the acreage for a period of up to 30 years.

Production licenses are normally awarded through licensing rounds. The process is summarized below. It should be noted that there is no public consultation during this process.

5.2.3 Nomination and Announcement

The nomination and announcement process sees the MPE invite companies to nominate blocks in a specified area that is already open to petroleum activity. On the basis of these nominations and the NPD’s evaluation of the areas, the MPE decides which blocks to announce in the licensing round. The announcement specifies the terms and criteria on which awards will be based.

The identities of the companies nominating blocks are kept confidential. The announcement is published through notification in the Norwegian Gazette and the Official Journal of the European Communities, and stipulates a minimum 90-day time limit for the filing of applications.
5.2.4 Application

Companies submit an application that describes the technical work they have completed on the block, and their proposed work obligation, technical skills, subsurface plan and marketing plan. These applications are due three months after the announcement is made.

5.2.5 Evaluation

In the interest of furthering the best possible resource management, production licenses are granted on the basis of the technical competence and financial capacity of the applicant, and its plan for exploration and production in the area for which the license is sought. The MPE reviews the applications and has meetings with the companies about their proposed plans, including their work obligations, participating shares, and the length of initial period. This usually takes two months to complete.

5.2.6 Award

On the basis of the applications, the MPE designates the group of companies, and the operator, it considers is best suited for the license. The operator is responsible for the daily conduct of operations in accordance with the license terms. The Act makes the award of a license conditional on the licensees concluding a joint operating agreement governing the relations between the partners.

5.3 The Scope and Effectiveness of Consultation

5.3.1 Scope of the Consultations

All forms of assessment deal primarily with the potential for oil and gas activity to harm the environment, but at successive levels the discussion becomes more focused:

- The impact assessment that occurs before regions are opened identifies potential environmental consequences of the activity and possible social and economic effects stemming from any petroleum production.

- Regional EIAs are undertaken prior to the start of production in any region. They too deal with broad concerns, including a description of all existing, planned and foreseen petroleum activity in an area, accident risks, the sensitivity of environmental resources, and the fisheries and socio-economic impacts; however, they focus on how an area should be explored and developed, rather than whether or not this should occur.

- Project-specific EIAs are comprised mainly of: a technical description of how the project design process meets the criteria for environmental acceptance, an evaluation of environmental risks, implementation of mitigating measures, a local monitoring program and an assessment of local effects.
An official of the Environmental Department in Finnmark County indicated that the scope of the EIAs tends to be narrow, and does not consider “grand scale” effects on the climate and environment. This is particularly the case with project-specific EIAs that, for example, are concerned only with the immediate environmental effects of drilling. A petroleum industry informant agreed that the scope of the EIAs tend to be restricted to “scientific matters” such as plants, seabirds, fishing activity and spawning. A national fisheries informant said his organization generally talks about fisheries and environmental questions, and concerns about the consequences of increased activity in an area, during all EIA processes. He agreed that the scope of issues addressed and range of groups consulted narrows with each EIA stage, and that at the project-specific EIA stage specific concerns such as the type of rigs and equipment that will be utilized are usually addressed.

However, in terms of the issues raised through public consultation, the scope can actually be quite broad. The public is free to address any issues they wish in written submissions or during public meetings.

5.3.2 Clarity and Openness

There is a minimum 90-day public review period for EIAs, during which the public and interested organizations can submit written comments. A notice of public review is published in a newspaper, inviting organizations and individuals to submit written comments. The MPE may also require companies to distribute letters to households in the affected area, inviting individuals and organizations to submit comments or attend a public meeting. While such meetings are not explicitly required for EIAs, the MPE may choose to hold them for the assessment prior to opening areas, and may encourage companies to hold them prior to other assessments, depending on the level of public interest.

The MPE and the petroleum industry actively solicit comments from interested groups and organizations. Both the MPE and oil companies, for example, contact the Norwegian Fishermen’s Organization to ask it to submit comments during the various assessments. The organization then also contacts local affiliates and asks them to participate. However, a representative of the Bellona Foundation, a Norwegian environmental group, says the groups the MPE contacts seem selective, largely based on unofficial lists of organizations that have been active respecting oil and gas matters in the past.

According to a national fisheries informant, the EIA process is not very transparent. His organization is aware when it begins, but does not have the opportunity to participate until later. He notes, however, that this is not necessarily a problem, because final decisions are not made until the consultation process is complete. In his words, not being involved until a later stage “might actually be something good” because his organization can then comment on everything in an EIA at once. Furthermore, the Bellona Foundation representative believes the EIA process is transparent, although he contends clarity is a problem because there are detailed and complex guidelines that vary with each area under assessment.

The interviewee from the Finnmark County Environmental Department expressed the view that the range of public participation should be wider. The intention is that the review process
involves all those that might be affected, but in his opinion it fails in this regard. He also thinks people are not as active as they should be, largely because they do not come to understand how the development will affect them until late in the process.

5.3.3 Feedback

The Storting makes the final decision on the acceptability of a project after the plan has been assessed. It produces a report that explains the reasons for opening or not opening an area for development, or for permitting developments to proceed. However, while this report is publicly available, the Storting’s findings are not specifically sent to the interested groups.

5.3.4 Timing and Duration

As has been seen above, the consultation period on EIAs is at least 90 days, although it may last as long as four months where a new area is being opened. Consultation is a required component of:

- EIAs that are required prior to opening areas for licensing;
- EIAs that are required prior to permitting project development; and
- regional EIAs, that may be undertaken in areas where several developments are occurring.

It takes six to seven years to complete the assessments prior to opening new areas for licensing. They are time-consuming in part because they involve numerous scientific studies by government departments and semi-public organizations. The consultation occurs soon after the MPE presents a draft of areas to be opened, before the above studies have been undertaken: Section 3-1 of the Petroleum Activities Act requires that it ‘be made known through public announcement which areas are planned to be opened for petroleum activities, and the nature and extent of the activities in question. Interested parties shall be given a period of time of no less than three months to present their views.’

5.3.5 Satisfaction

Petroleum industry informants are generally satisfied with the consultation process. They believe their industry has been given a fair opportunity to participate, and are happy that consultation allows them to adjust early and mitigate potential conflicts with fishers, local communities and environmental groups. One petroleum industry representative commented that, generally speaking, any negative views held by fishing and other groups usually result from their lack of detailed knowledge about what is occurring respecting petroleum activity in their area. He also observed that environmental groups are pushing companies to improve their technology, which the petroleum industry sees as a positive development. Furthermore, an effective consultation with concerned organizations is seen as commonly saving the industry time and money.

A national fisheries informant argued that the regional EIA process could be better, but that it is a step forward. The petroleum industry, he said, still tries to limit discussion about uncertainties in exploration and production, but he says the regional EIA makes it much easier for his industry to plan for the long term. However, while most informants are satisfied with the assessments that
occur prior to opening an area and the regional EIAs, some expressed concerns about the project-specific assessments.

For example, the national fisheries informant believed the project-specific EIA process is ineffective. However, he noted that the fishing industry might share the blame for the ineffectiveness of this process, because while it often identifies problems with a proposed project, it rarely offers solutions. “Maybe [we] should be more specific when proposing what it is we want to do,” he suggested.

Bellona believes it will take more time to obtain the expertise it needs to analyze the upcoming Barents Sea regional EIA. It also says its researchers require more information in the regional EIAs, so they can provide more detailed responses about the potential effects of exploration on the marine environment.
CASE STUDY 3: THE SNOEHVIT PROJECT, NORWAY

Snoehvit is a Norwegian offshore project expected to produce annually roughly 5.6 billion cubic metres of Liquefied Natural Gas (LNG), and an unspecified amount of condensate (light oil), for 30 years from the Hammerfest basin of the southern Barents Sea. (As such, this project is of comparable size to the Sable Island Offshore Energy Project in Nova Scotia.) The gas will be sent through a 160 km subsea pipeline to onshore facilities on Melkoya Island, near Hammerfest. Four large carriers will transport the LNG from Melkoya Island to terminals in the United States and southern Europe. The condensate will be removed at Melkoya and shipped separately. The project’s leaseholders consist of a partnership of petroleum companies led by the Norwegian operator, Statoil, with a 22 percent interest in the US$5.24 billion project (Oil and Gas International, 2002).

The Norwegian government presented plans to open the Barents Sea in 1984. A detailed Environmental Impact Assessment (EIA), analysing the biophysical and socio-economic impacts (resulting from a study program of more than 30 projects) for that area was completed in 1988 by the MPE. The area was opened for petroleum activities in 1989. Much of the rest of the Barents Sea still is not open for exploration.

The Snoehvit plan has been contentious, both because it is the first Barents Sea development, and because it is located in prime fishing grounds. Environmental NGOs are concerned that Snoehvit represents the first of many developments in the Barents Sea – the final part of the Norwegian Continental Shelf to open to development -- and are concerned about the effects on fish and other species in the area. The Norwegian fishing industry is also concerned about the effects of the project on their activities: the Barents Sea is a key area, producing more than 500,000 tonnes of fish annually.

The 1989 EIA considered the potential effects of oil spills, the effects of exploration and development on fish resources and fishing activities, and the socio-economic consequences. It concluded that fishing activities, particularly small-boat activities, could be significantly affected. It also concluded that the Snoehvit project alone was unlikely to solve the economic ills of local communities.

During the public consultation stage for the Plan for Development and Operation (PDO) and its accompanying EIA, the main issues raised were: the economic importance of the development to local industry; CO₂ emissions; emissions into the sea; and again, impact on the fishing industry. Moreover, fishing and environmental interests emphasized the lack of knowledge about the effects of long-term year-round activity.

The Snoehvit project was approved by Norway’s Parliament in early March 2002, after the partnership in the Statoil-operated project submitted its PDO (along with the project-specific EIA) in October 2001. The consortium will start building the installation in spring 2003, and begin operation in late 2005.
Environmental interests express satisfaction with the opportunities they have been given to provide input with respect to Snoehvit, but they are concerned that this input has been ineffective in postponing the development until further environmental studies have been conducted in the southern Barents Sea. According to one environmental informant, the MPE has reacted to the concerns of environmental NGOs by insisting that they will be addressed later on, or that the concerns simply do not outweigh the economic benefits of Snoehvit. The NGOs argued this may colour the conclusions of EIAs. They also complained that many agencies and groups with interests related to the project, including the Polar Institute, State Pollution Authority, and the Directorate for Nature Administration, were neglected during the review process.

Environmental groups also complained about the speed with which the government accepted the Snoehvit PDO. It was submitted in October 2001 and approved by the Storting in March 2002 – less than six months after submission. The environmental NGO informant contended that the project was approved far too quickly because the operators pressured the government, arguing they had contracts to fulfil.

The fishing industry has been satisfied with some aspects of the Snoehvit consultation process. They have formed a good dialogue with Statoil, and have discussed concerns with the project’s developers directly. The fishing industry’s primary concerns were pollution and the obstruction of fishing routes by petroleum installations. However, as has been seen, the Snoehvit project involves transporting gas through a pipeline to onshore facilities. This has largely alleviated concerns of both pollution and obstruction, because the design of pipeline used to extract and transport the gas will still allow trawling. Nevertheless, a fisheries informant argued the project-specific EIA for Snoehvit was “not good enough;” the scope was too narrow, the process was too closed, and it favoured the petroleum industry over other interests.

A local fisheries informant believed, however, that had the project involved a large offshore installation that obstructed fish harvesting and posed significant pollution risks, “we would have a lot a problems.” He doubted that his organization would have much influence in that situation.

Snoehvit’s operators are also quite satisfied with the consultation processes. The consultations have allowed them to adjust early and mitigate potential conflicts. One industry informant indicated that environmental groups have pushed the industry to improve technology, which it sees as a positive consequence of consultation.

In an attempt to address the concerns of both the fishing industry and environmental organizations, the Norwegian government has announced that it will conduct an assessment of the impact of all commercial activity in the Barents Sea in order to develop a holistic management plan for that area before further petroleum developments are approved (Ministry of Petroleum and Energy, 2002).

References:

Oil and Gas International. 2002.  
UNITED KINGDOM

In the United Kingdom (UK), the Department of Trade and Industry (DTI) is responsible for oil and gas activity on the continental shelf under the Petroleum Act 1998. Exclusive exploration and production rights are conferred through Production Licenses. Exploration Licenses may also be issued to any company that wants to carry out non-exclusive geophysical exploration and shallow drilling (up to 350 metres in depth) over any area of the continental shelf not covered at the time by a Production License. The Exploration License itself does not entitle the holder to carry out any exploration activities as these are consented separately. These Exploration Licenses allow reconnaissance exploration that, among other things, may assist in the selection of areas to be included in Production Licenses. Exploration and appraisal drilling, and production, are not permitted under an Exploration License.

6.1 The Licensing Process

Exploration Licenses are valid for three years and may be renewed for a further three. An applicant may apply for a license at any time. Consent must be obtained for specific exploration activities conducted pursuant to such a license.

In the UK system (Figure 4), production Licenses are normally awarded following a licensing round in which large areas are offered simultaneously. Such rounds have been held approximately every two years since 1964. Prior to a round being announced, the DTI consults with other government departments and various non-governmental organizations (NGOs) to establish whether it is practicable to license particular blocks or areas. For recent rounds Strategic Environmental Assessment (SEA) has been carried out to assess the environmental impact of licensing acreage. Those deemed suitable are announced through a notice in the Official Journal of the European Communities that identifies the blocks, the date applications will be received, and the criteria by which they will be assessed and licenses awarded. A minimum of 90 days must elapse between the announcement and the closing date for applications.

Companies may also request, outside the licensing round process, that specific block(s) be offered. A company making such a request must demonstrate why the area should be licensed before it might otherwise be offered. If such a case is accepted, the block(s) may be offered either through the usual procedure or, in particular circumstances set out in the Regulations, through an invitation restricted to holders of licenses contiguous with the unlicensed area.

Each application is assessed and graded according to a marking scheme that is common for that round. The criteria used primarily relate to the technical competence of the applicant company, with consideration given to its exploration rationale, work program and environmental credentials. This program, which may include seismic and/or the drilling activity, covers the initial term of the license and reflects the prospectivity perceived by the applicant and is a significant part of the marking criteria.
FIGURE 4: LICENSE ISSUANCE PROCESS FOR UNITED KINGDOM

KEY

Opportunity for public input

Decisions

Consultations with govt departments, NGOs and others, incl. public as appropriate

DTI considers lands to include in licensing round

DTI selects provisional areas

Notice of licensing round in Official Journal

DTI assesses applications and Strategic Environmental Assessment (SEA)

DTI decides on issuance of licenses

Oil companies submit applications including environmental assessment

Consultation with stakeholders in preparing SEA consultation report

Stakeholder comment on SEA consultation document

DTI conducts SEA under direction of steering group. SEA process includes consultation

Do NOT issue license

Issue license

Secretary of State awards Petroleum Production Licenses (may have conditions or restrictions attached)

No license issued
6.2 Environmental Management

Environmental protection is a primary consideration in deciding whether to offer areas for licensing and to license specific blocks. Some blocks may be excluded from the final list of those offered on the basis of input received during the consultation phase. Where blocks are offered, they may be subject to environmental conditions restricting the activity or its timing.

Environmental information is required in support of license applications, with applicants having to demonstrate how their work program will take such considerations into account. This includes the submission of a short environmental assessment, which evaluates the area’s environmental resources and the possible effects of oil and gas operations on them. Applicants must also demonstrate their environmental credentials by submitting their Company Environmental Policy and Environmental Management System. The latter describes how the company plans and manages its commitment to the environment. The applicant’s environmental record is also considered.

Following the evaluation of applications, the Secretary of State makes awards and announces them in Parliament. Successful applicants receive an offer that sets out the terms and conditions, if any, of the license. Any such conditions are policed through a consents procedure, in that consent to well applications is not given unless there has been compliance with the license conditions.

It should be noted that having a Production License does not grant the proponent the right to explore for or produce petroleum. The DTI requires further assessment of specific activities, and these provide further opportunities for public input. A project-specific EIA, for example, involves consultation between DTI and the same organizations and groups consulted for the SEAs (see below). As part of the EIA process, notices are issued requesting public comment. However, project-specific EIAs occur after licenses have been issued.

During the 1990s it was increasingly argued that the process for examining the environmental impact of new licensing rounds was not thorough or transparent. In particular, the lack of a strategic EIA, or of a constructive and open debate about related concerns, was seen as a defect. As a result, the 19th Round saw a Strategic Environmental Assessment (SEA) conducted and presented as part of consultations. A steering group comprised of representatives from the petroleum industry and environmental NGOs, and environmental management experts, oversaw and critically reviewed the SEA.

The areas offered for licensing were declared as provisional and subject to withdrawal, or the imposition of conditions, following the assessment of potential environmental impact. Interested parties were provided with an opportunity to discuss their concerns with the Department’s environmental advisors before final decisions were made. The DTI indicated that, if requested, it would provide feedback on the impact of views expressed.

The SEAs will become a legal requirement in 2004, when European Union (EU) states will be required to comply with European Parliament Directive 2001/42/EC. However, the DTI has
already implemented the SEA procedure and will again apply it to the 20th Offshore Licensing Round, in 2002.

The choice of lands for licencing, and nature of approved activities, may be constrained by the *Habitats Directive* and the *Wild Birds Directive*, which require EU member states to nominate sites as, respectively, Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). Once they are so designated, these areas are subject to protection measures, with the *Directives* seeking to prevent the disturbance, deterioration or destruction of designated species and their breeding sites or resting places.

The *Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001* seek to ensure that offshore oil and gas activities are carried out in a manner consistent with the *Directives*. These regulations dictate that the Secretary of State may only grant an oil and gas license, consent, approval or authorization of any type after having ascertained that the activity will not have an adverse effect on the integrity of a site. The decision as to whether there is a likely significant effect is made by DTI in consultation with the relevant nature conservancy body and, as appropriate, the general public.

While formal processes of public involvement are an important part of the approvals process, other interactions between the petroleum industry and interest groups are critical in addressing community concerns. For example, a National Federation of Fishermen’s Organizations official contended that direct interaction between the fishing and oil industries is the most effective means of consultation. It is his experience that “face to face discussions with the oil and gas sector have effectively removed or reduced almost all of the major issues in UK waters.” He compared the current positive relationship between the industries, developed primarily through the Fisheries and Offshore Oil Consultative Group, to the 1970s, when there was considerable tension resulting from the installation of production platforms and pipelines in traditional fishing grounds.

### 6.3 The Scope and Effectiveness of Consultation

#### 6.3.1 Scope of the Consultation

Public officials and representatives from environmental NGOs listed a wide range of groups consulted, including the Joint Nature Conservation Council, fisheries representatives, the Scottish Executive and the Welsh Assembly, and government departments ranging from the Departments of Defence to Environment, Food and Rural Affairs. The consultees contacted directly for their views are generally representatives of oil companies, consulting companies, government agencies, county councils and environmental NGOs. Comments from the general public, in the form of web postings and written submissions, are also welcomed.

The issues discussed are usually limited to environmental matters. The SEA addresses the potential environmental consequences of opening an area to exploration, and includes a consideration of: environmental protection objectives and standards for the proposed area; existing environmental problems in the area; the environmental consequences of the proposed action; and, arrangements for monitoring environmental effects.
Broader policy issues related to continued production in UK waters, and the sustainable development of petroleum reserves, are generally not considered. The SEA consultation document for the North Sea area does contain a brief assessment of effects of the area’s development on the UK society and economy, and on the wider objectives of the UK government (e.g. respecting energy and fisheries policy), but these issues are eclipsed by environmental concerns in terms of content and detail. A representative of the Marine Conservation Society (MCS) commented that the SEA process is not the appropriate place for a discussion of economic and social issues. She noted that these topics are covered elsewhere, albeit without public consultation, and argued that, given the social and economic as well as environmental significance of these issues, they should be the subject of more consultation.

6.3.2 Clarity and Openness

Consultations for the Directives are generally advertised in local newspapers and on the Internet for a minimum of 28 days. For the SEA process, the DTI produces a consultation document which it makes available through its website, as a CD-ROM and in a limited number of printed copies. In the words of one official consulted for this study, “anybody with any interest can have access.” There is a 90-day period for public comment.

During the drafting of the consultation document, the DTI also consults with interest groups at a dialogue meeting. Regulations also require the DTI to make a publicly accessible room available with information on proposals. A list of statutory consultees is automatically involved in the SEA process and in determining whether a proposal is consistent with the Habitats and EIA directives. The input of consultees is invited in the form of written submissions. To the DTI official’s knowledge, there is no state support of public groups to assist them in commenting on the SEA, or in any other consultations.

A senior representative of the World Wildlife Fund (United Kingdom) (WWF (UK)), which belongs to the SEA steering committee, says her group believes that the SEA website gives people enough opportunity to participate. In her opinion, the real problem is engaging people in the process. However, another interviewee commented that most people are unaware of the licensing rounds, and there are few options for public participation other than written submissions. To her knowledge there is little or no involvement of the general public in the SEA process.

6.3.3 Feedback

The representative of the MCS indicated that while she has heard that the DTI sometimes posts web responses to comments it has received during the SEA process, her organization does not get a direct response to its input and has not been invited to meetings where the DTI might try to address its concerns.

The WWF (UK) representative also commented that there is no public indication of the criteria used in deciding which blocks are opened up for licensing. In the past, the DTI has cited commercial confidentiality in explaining why such details about the decision-making process are
not released. Neither environmental groups nor the petroleum industry know the basis for the DTI’s decisions. The government has acknowledged this problem and indicated it is working to remedy it.

6.3.4 Timing and Duration

The SEA process occurs before licensing in large offshore areas. It has already been noted that there is a three-month period for public comment, which the interviewee at the MCS says seems too short for her organization to respond as fully as it would like. Public officials and the WWF (UK) representative noted that the first SEA took nearly a year to complete, and that the current SEA will take at least that long.

6.3.5 Satisfaction

In one public official’s opinion, the SEA process balances the interests of the petroleum industry and those of environmental groups, local communities and other non-governmental organizations, such that “all seem to be happy.” She believes that environmental groups have taken oil and gas exploration off their list of major issues. Moreover, she cited a public lack of interest in participating in the SEA process as a sign of its effectiveness. When it was first initiated, the DTI planned to hold a regular series of public meetings with environmental groups but, after the initial meetings, people stopped attending. However, it was noted that one group, Greenpeace, does not participate in the consultation process as a matter of principle.

The WWF (UK) representative indicated her belief that the SEA process is trying to be fair. The SEA steering group consists of environmental representatives, petroleum industry representatives and independent consultants. They try to make the process equitable, but ultimately the DTI runs it and is responsible for ensuring oil and gas development in the UK. She went on to say that the WWF is very pleased with its involvement in the process, although she did note that some licensing decisions have been made despite a lack of proper information; for example, the DTI was using seabird data that were over 20 years old. Furthermore, the SEAs completed thus far deal with areas far offshore; the third SEA will deal with inshore waters and may involve quite a different process from the earlier assessments.

The Marine Conservation Society is also reasonably satisfied with the SEA; it had been calling for such a process for a long time, and has found it to be quite an easy way to provide input. However, their representative commented that most NGOs are feeling consultation fatigue, because they are always being consulted on the latest developments.
Liverpool Bay is located in the eastern Irish Sea along the coasts of North Wales and North West England. In 1988, the government of the United Kingdom invited applications to explore areas of Liverpool Bay under the 11th Offshore Licensing Round. On 29 June 1989, the Department of Energy announced that an exploration permit for Liverpool Bay was awarded to Hamilton Oil. Exploration activities carried out by Hamilton Oil during 1990 were the first to locate significant supplies of oil and gas in the Hamilton field. The discovery of the Douglas field in 1990, and the Hamilton North field in 1991 followed the original Hamilton field discovery. In that same year, BHP Billiton Petroleum became the current lessee, and after being granted additional acreage in the 12th Round of Licensing, discovered the Lennox field in 1992.

Unlike most offshore oil projects in the United Kingdom’s North Sea, the Liverpool Bay fields are nearshore. The Lennox field lies only eight kilometres off the tourist beaches of Southport and the Douglas field is situated 24 kilometres from the north coast of Wales. In addition, 1.5 million people live within the five-mile coastal belt of the fields and the biodiversity of Liverpool Bay includes a series of vulnerable wildlife habitats.

Despite these facts, there was no opposition to whether Liverpool Bay should be considered for exploration or to the granting of an exploration license to Hamilton Oil. An informant from the Joint Nature Conservation Council, (the JNCC is a government advisory body that comments on all proposals for oil and gas exploration licenses in UK waters beyond 12 nautical miles), noted that because the Liverpool Bay area is a comparatively poor region of the country, many see the “riches” of oil and gas and may have a different attitude to environmental risks than in other regions of the country. The JNCC official also added that by the time the Liverpool Bay fields had been discovered, there had been quite a lot of experience with offshore oil development in the United Kingdom and no “devastation” had transpired.

English Nature (a government funded agency whose purpose is to promote the conservation of England's environment), claimed that the risk of an oil spill damaging the coastline was one of the more contentious issues as to whether the area should been considered for exploration. According to an official with BHP, the company was cognizant of such concerns and decided to widen the scope of consultations, inviting interested parties to comment on the company’s specific exploration plans. National organizations such the Royal Society for the Protection of Birds and English Nature, as well as local conservation organizations such as the Dee Estuary Conservation Group, were involved in some of the consultation meetings that were held dealing with the company’s plans. Non-technical summaries of information were also made available to the general public.

For each of the offshore production facilities and associated pipelines, a formal Environmental Impact Assessment (EIA) was prepared, in consultation with the regulatory authorities and others specified in license conditions. The EIA identified the main concerns and suggested potential mitigation measures. One of the key issues to be addressed was the loss of a winter roosting area for up to 100,000 birds. Concerns were expressed about the potential impact on local bird populations of helicopter traffic between the onshore terminal and the offshore
platforms. As a result, plans to develop a helipad near nesting areas were cancelled. The Liverpool Bay project also met all other environmental requirements.

Opinions about the pre-licensing consultation process was mixed. According to the JNCC, the mechanisms in place for consultations are working well. Further, the Department of Trade and Industry follows the advice of the JNCC in most instances when it comes to consultations before issuing exploration licenses. However, concerns had been raised during the consultation process leading up to whether Liverpool Bay should have been considered for exploration. For example, the nearby community of Sefton expressed some reservations with the consultation process. They argued that before an exploration permit had been granted, a more comprehensive consultation process should be developed. This would have included a longer consultation period before exploration permits are awarded and an examination of the company’s specific proposals for oil exploration. Sefton Council also felt a system for notifying companies of areas subject to special conditions should be developed to avoid causing further troubles. The Sefton Council advised the government to take the value and sensitivity of the coast fully into account when making future deliberations on releasing acreage for oil exploration. In 1995, the Town of Sefton suggested because of the conservation value of the surrounding coastlines, further exploration and development licenses in Liverpool Bay should be prohibited.

Another group involved in consultations was the Countryside Council of Wales (CCW). An official with the CCW recalled that while consultations with the company had been sufficient, there had been some problems. The informant suggests that consultations on all matters was too brief and charged that BHP did not build in enough time for the CCW to makes comments, nor to change their exploration plans if they felt that it was necessary. According the CCW official, the timing of various proposed exploration activities was also a problem. The CCW advised the company that exploration drilling should not be done during the winter months due to the migration of certain bird populations. Despite these contentions, the Countryside Council of Wales was generally satisfied with the process.

The Liverpool Bay Project, BHP’s largest single undertaking has been ongoing since 1994. The total recoverable reserves in Liverpool Bay are estimated by BHP to be in excess of 150 million barrels of oil and 1.2 trillion ft$^3$ of gas. With peak oil production expected to average some 70,000 barrels per day, and a peak gas capacity of 300 million ft$^3$ per day, the life of the development is projected to be at least 20 years.

References:


7 UNITED STATES

The United States (US), like Canada and Australia, is a federal state. The main US federal statutes governing petroleum activity in waters outside the three-mile or twelve-mile limits of State jurisdiction are the Outer Continental Shelf Lands Act (OCSLA) and the Coastal Zone Management Act of 1972 (CZMA). However, their application can only be fully understood in the context of its inter-relationships with the legislation of the adjacent State and other federal laws including the National Environmental Policy Act, the Endangered Species Act and the Marine Mammal Protection Act. This section of the report first describes the provisions and workings of the above federal legislation. Alaska is then discussed as an example of its application (see Figure 5), given what are seen as being general similarities of context between that state and Atlantic Canada.

7.1 Outer Continental Shelf Lands Act

The OCSLA provides that the subsoil and seabed of the outer continental shelf (OCS) are subject to the jurisdiction, control and power of disposition of the US. The policy identifies the OCS as a ‘vital national resource... which should be made available for expeditious and orderly development, subject to environmental safeguards.’ It also recognizes that the exploration of minerals will have impacts on coastal and non-coastal areas of States, that State and local governments may require assistance in protecting their coastal zones, and that they are entitled to an opportunity to participate ‘to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf.’

7.1.1 The Authorization of Lease Sales

The federal government leases mineral rights on the OCS. A lease is an authorization to pursue exploration for, or development and production of, minerals. The Secretary of the Interior is responsible for administering the leasing of the OCS, granting leases to the highest responsible qualified bidder(s) and prescribing related regulations.

The Minerals Management Service (MMS), US Department of the Interior, prepares and administers five-year leasing programs that set out the timing, size, and location of lease sales. In preparing these leasing programs the Secretary must invite and consider input from:

- any interested federal agency,
- the Governor of any State that may be affected by the program, and
- the executive of any affected local government in an affected State.

An environmental analysis of the proposed program is conducted and published for comment. At least 60 days before publication of a proposed program in the Federal Register, the Secretary must provide the program to the Governor of any affected State. If the State provides a timely request that it be modified, the Secretary must reply giving reasons for granting or denying the request, in whole or in part.
FIGURE 5:
LICENSE ISSUANCE PROCESS
FOR ALASKA OCS

KEY

- [ ] Opportunity for public input
- [ ] Decisions

1. MMS consults with federal, state and local agencies and public
2. State consistency review
3. Comments from public and various state agencies
4. MMS establishes procedures for managing leasing programs
5. MMS prepares proposal for 5 year leasing program
6. Sec of Int gives notice of proposed 5 year program to state
7. State consistency review
8. State reviews proposed program
9. Sec of Int publishes 5 Year Lease program
10. MMS modifies program if it accepts comments
11. MMS holds public hearings in local communities
12. MMS considers comments
13. MMS consultation process
14. MMS holds public lease sale
15. Comments from public and agencies
16. Oil companies submit bids for leases
17. Leases issued to winning bidders
The Secretary must also establish procedures for the provision of public notice of, and participation in development of, the leasing program, and periodic consultation with:

- State and local governments;
- oil and gas lessees and permittees; and
- representatives of individuals or organizations engaged in other activity (including fishing, shellfish recovery and recreational activities) in the OCS.

### 7.1.2 The Leasing Process

The Governor or executive of, respectively, any affected State or local government may submit to the Secretary, within 60 days of notice of a lease sale, recommendations concerning its size, timing or location. The Secretary approves the recommendation if he or she believes it balances the national interest and the wellbeing of citizens of the affected State, and he or she must give written reasons for accepting or rejecting recommendations.

The MMS administers the competitive bidding for leases for the exploration, development and production of resources offshore; for each lease sale, it applies one or more of a variety of bidding systems it has available. Under a lease a company may apply for permits to explore and develop the mineral resources within that area. The MMS reviews applications to ensure the activity will be conducted in a safe and environmentally sound manner and that key interests are addressed.

Before exploration or development and production can begin, the leaseholder must submit an exploration or development and production plan. The plans are approved if they comply with all applicable regulations and the provisions of the lease or leases involved. The MMS will approve an exploration plan, within 30 days of submission. A development and production plan will be approved within 120 days unless a more in-depth environmental analysis is required, in which case the plan may be approved within 60 days of release of the final environmental analysis. The MMS can require modifications to ensure the plan’s consistency with the regulations and conditions. Furthermore, the MMS will not permit plan activity that affects any land or water use or natural resources of the coastal zone of a State with a CZMA-approved coastal zone management program unless the State agrees with the consistency certification accompanying the plan.

### 7.1.3 Environmental Protection

The MMS is responsible for safe offshore operations and environmental protection. Its environmental protection activities begin with the leasing processes and continue through to production and decommissioning.

For any area or region included in a lease, the Secretary must conduct an environmental assessment study of the impacts on human, marine and coastal environments. Such studies must be commenced no later than six months before the holding of a lease sale. After an area or region has been leased and developed, the Secretary must conduct further studies to monitor, identify
and compare any changes in the quality and productivity of the human, marine and coastal environments.

The Secretary is also required to consider available relevant environmental information in making decisions relating to exploration plans and in developing regulations and lease conditions. Further, at the end of every three years, he or she must submit to Congress, and make available to the public, an assessment of the cumulative effect of OCS activities on the human, marine and coastal environments.

Lastly, the MMS oversees an Environmental Program, the goals of which include:

- providing scientific and technical information to support decisions on the offshore oil and gas program which may affect environmental, social and economic conditions;
- monitoring of post-lease mineral resource development to determine environmental effects and impacts; and
- collecting and making available to the public information needed to analyse, discuss and guide future decisions on exploration, development and production of lease sales.

### 7.2 Coastal Zone Management Act

The CZMA encourages states to develop and manage programs to achieve ‘wise use’ of the land and water resources, and to ‘give full consideration to ecological, cultural, historic and aesthetic values as well as the needs for compatible economic development,’ of coastal zones. The federal government may make grants to eligible states to assist with coastal zone management programs, which are meant to provide for such things as:

- protecting natural resources,
- minimizing damage to life and property,
- giving priority consideration to coastal-dependent uses, and
- establishing orderly processes for locating facilities related to energy and national defence (the definition of energy facility includes any equipment used primarily in the exploration for an energy resource).

Public participation plays an important role in the coastal zone management process. There must be opportunities for public participation in all aspects of state management programs, including the use of public notices, opportunities for comment, public hearings, technical and financial assistance and public education. Such programs are reviewed by the Secretary of Commerce, who must provide an opportunity for public participation, including holding public meetings and allowing the submission of written and oral comments during the review process. The Secretary is required to provide 45 days’ notice of any public hearing, and a final report must be prepared within 120 days of the last such meeting and provided to all participant persons and organizations. If there is serious disagreement between a federal agency and the state concerning the development or implementation of a program, either party may seek Secretarial mediation from the Department of Commerce and applicants for permits may appeal a state decision to the
Secretary of Commerce. Both of these processes must include public hearings in the local area concerned.

Once a management program is approved, any person submitting an exploration or development and production plan to the Secretary for a leased area pursuant to the OCSLA must attach to the plan a certification that the proposed activities comply with, and will be carried out in a manner consistent with, the program. A federal agency cannot grant a permit for an exploration or development and production program until it receives state concurrence with the certification or the Secretary of Commerce has overridden the State’s objection.

7.3 The Application of OCS Legislation in Alaska

Given the provisions of the OCSLA and CZMA, their application can only be fully understood in the context of its inter-relationships with the legislation of the adjacent State. In this report, Alaska will be discussed as an example of the application of the foregoing, given general similarities of context with Atlantic Canada.

The Alaska Coastal Management Program implements state legislation passed in 1977. It improves the management of coastal land and water uses, and natural resources, by creating a network of local, state, federal and applicant interests in the project approval process. The relationships created under the Program help ensure that all aspects of a project are considered during a single review and approval process. This approach is designed to promote the economic and environmental productivity of Alaska’s coastal resources.

The Program requires that projects in or affecting Alaska’s coastal zone be reviewed by coastal resource management professionals for consistency with the Program’s enforceable policies and standards. The Alaska Program has incorporated local district programs into the State program. These enforceable policies and standards ensure that development interests observe the standards set out by the state and coastal communities. A finding of consistency with the Program must be obtained before federal, state or local permits are issued for a project. All proposed activities in offshore, including federal, waters that will have a ‘reasonably foreseeable effect’ on coastal resources and uses, must receive certification of consistency with the state-wide enforceable policies and standards of the Program. This applies to federal lease sales and to proposed petroleum exploration and development projects.

As discussed above, the MMS establishes five-year leasing programs and holds lease sales in federal waters off Alaska. Both processes provide for public notice, public participation, and consultation with the state, an invitation to the state and local governments to comment, and a broad invitation for public comment. The state’s role in federal offshore activity comes through both the requirements of the OCSLA and the Coastal Zone Consistency Review process. If there is a serious disagreement between the MMS and Alaska concerning a development – for instance if the MMS approves a lease sale or project which the state finds inconsistent with its Coastal Zone Plan – the MMS or the applicant can appeal the decision to the Secretary of Commerce. However, such appeals are rare.
7.4 The Scope and Effectiveness of Consultation

The following section discusses the role and effectiveness of public involvement in the above process in Alaska, based on a review of secondary sources and key informant consultation. It focuses on the criteria established for the comparison of the different jurisdictions.

7.4.1 Scope of the Consultation

State Consistency Review

As was noted above, the scope of the Consistency Review process respecting federal offshore waters is limited to activities that will have a reasonably foreseeable effect on coastal resources and uses. One of the state official’s consulted noted that it is sometimes difficult to get agreement between the state and the federal government as to the nature of a reasonably foreseeable effect. In practice, the Consistency Review is limited to environmental issues, and usually the primary concern for the state is any activity that could eventually lead to an oil spill.

The Consistency Review process involves a number of state agencies, including the Departments of Natural Resources, Fish and Game, Environmental Conservation, Community and Economic Development, Transportation and the Division of Governmental Co-ordination in the Governor’s Office. Each conducts its own review of whether a proposed lease sale or project is consistent with its laws and regulations, while the Division of Governmental Co-ordination ensures that all the reviews occur at approximately the same time.

Federal Lease Sales

Under the OCSLA, the state must be consulted prior to a lease sale, and the MMS must also consult with ‘other interested parties.’ The issues raised during the federal lease sale consultations have consistently related to the oil spill response capability and the protection of subsistence lifestyles.

7.4.2 Clarity and Openness

State Consistency Review

Agencies are required to place public notices in a newspaper with statewide circulation, and, as a matter of procedure, reviews are posted on the Internet. In the case of issues with potential for wide public interest, television and radio advertisements may also be used, although this is not required. Moreover, the Department of Governmental Co-ordination maintains an e-mail distribution list for updating people with an interest in the Consistency Review process.

One public official interviewed for this study noted that the state has not been entirely effective in notifying the native community of stages in the Consistency Review process and opportunities for input. In native cultures, he observed, there is a strong oral tradition that the state’s current process of notification does not accommodate as well as it might. A local activist agreed with this observation.
The state does not normally hold public hearings for Consistency Reviews. State agencies may hold public meetings at their own discretion if a proposal is of particular significance, or if local people request a meeting. Otherwise the normal procedure is to accept written submissions from the public.

Federal Lease Sales

There is a 30-day comment period for federal consultations, with notice in the Federal Register being the only legal requirement. The MMS also:

- holds public hearings in areas where it is considering issuing leases, with an official with the MMS Alaska OCS Region indicating that for the most recent proposed lease sales, it held meetings in eight villages on the North Slope and four in Cook Inlet;

- sends out letters informing interested parties of the process although, according to one informant, the criteria for ‘interested parties’ are not obvious; and

- maintains an e-mail distribution list of approximately 400 interested individuals and organizations that are informed of events.

There appears to be very limited awareness of opportunities for input in the federal five-year program in Alaska. A state official noted that the federal government asks for very little such input from the state, and nearly all state and local informants focused their comments on the Consistency Review, Lease Sale or exploration plan consultations. An MMS official commented that, because the review of leases and developments is a very complex process involving many different agencies, people who want to be involved have to make a real effort to understand it.

7.4.3 Timing and Duration

State Consistency Review

Consistency Reviews occur prior to a lease sale and any exploration or development. The public review period is normally 30 days, but it can vary from agency to agency. If additional information is requested, it may be extended by an additional ten days. The consultation usually adds 30 to 45 days to the process, but it can add as many as 60 days. State agencies, including local governments, can request additional information from the MMS or the proponent within the first 25 days of public review, and it can take some time to gather that information. The process ends nine days after that additional information is released to the public for comment.

Federal Lease Sales

Public consultation occurs during the development of the five-year program, prior to lease sales on five-year program areas, and prior to approval of exploration plans. The OCSLA requires that the federal government make a decision within 30 days. Once again highlighting the complexity of the Alaskan process, the law often requires that federal approval be given before the state
Consistency Review is completed. However, consistency with the Alaska Coastal Management Plan is also required for approval.

7.4.4 Feedback

State Consistency Review

The Director of the Coastal Management Program issues a Consistency Determination Finding, which reviews each standard and explains how the proposed activity is or is not consistent with it. Public concerns are normally addressed in this document they are sometimes addressed individually by letter. For their part, individual departments also inform the public through Basis for Decision papers. An official of the Alaska Department of Environmental Conservation also indicated that it is not uncommon for his agency to produce and distribute public responsiveness papers that address concerns raised during the comment period.

Federal Lease Sales

The Department of the Interior produces a decision document for lease programs and sales. The only concerns that are specifically responded to are those of the State of Alaska. This document is available to the public, but this is not widely publicized.

7.4.5 Satisfaction

Informants expressed a large number of concerns about the current consultation and approvals process. According to one public official, the petroleum industry believes it is so convoluted, and success of applications for lease and exploration so unpredictable, that it is limiting investment in Alaska. The industry has indicated that it will be seriously harmed unless there is a greater certainty of outcome, and it has described the current regulations as unlawful, unpredictable and useless. Environmental groups have also taken those responsible for the process to task, arguing that no one is happy with it.

A local activist observed that, particularly in the case of communities on the North Slope where most new developments are being proposed, the number of consultative meetings and requests for input is problematic. Native people are “bombarded with information at the last minute” and have little time and few resources to respond. An MMS official agreed that native villages on the North Slope do not have the expertise to deal with the information given them and are “burned out” by all the opportunities to comment. Interviewees also felt that the consultations often fail to address the problems raised by interested parties. However, North Slope officials argued that the Consistency Review process is much more open than the federal process, with better opportunities for public involvement.
CASE STUDY 5: THE NORTHSTAR PROJECT, UNITED STATES

The Northstar field, discovered in 1983 by Shell, is located in the Alaskan Beaufort Sea, six miles from Prudhoe Bay on the North Slope of Alaska. It contains an estimated 175 million barrels of recoverable oil equivalent. The current lessee of the field, BP Exploration (Alaska) Inc., estimates it will cost US$700 million to develop the field. (BP Amoco, 1999)

The project is in both federal and state waters, and is subject to approval processes for both jurisdictions. It is the first entirely offshore oil and gas development in the Arctic, consisting of a facility built on an artificial island, with oil transported to shore through a subsea pipeline.

Concern with the Northstar development came primarily from environmental activists and the Inupiat community on the North Slope. The field is located in the migration territory of the Bowhead whale. Groups like Greenpeace are worried that the project may bring harm to this endangered whale species. North Slope natives are also concerned about the Bowhead population because they hunt the whales as part of their subsistence lifestyle. The primary concern of both groups is that the pipeline may be susceptible to damage from sea ice in the region, which scours the sea floor. More generally, the Inupiat people are wary of the effects of petroleum development on their culture.

The issues of oil spill response, subsistence whaling, and preservation of the Inupiat culture have been raised at all of the many opportunities for public input. Federally, public comments were provided during the development of the five-year leasing program, the lease sale, and the exploration and development planning stages. At the state level, departments solicited public comments during the Alaska Coastal Management Plan Consistency Review.

Opponents to the project felt the state and federal public consultations were not useful. They see the consultations as “window dressing,” where they raise objections that are largely ignored by regulators and companies. One state informant said that frustration commonly emerges when public participants believe the issues they raised at the early project approval stages (prior to leasing, for example) have not subsequently been addressed. An activist familiar with the Northstar project likened the consultations to a “dog and pony show.”

Federal officials and activists also noted that consultation fatigue developed among North Slope residents in particular. There were many public meetings and submissions on matters that require extensive knowledge and expertise, and local native representatives in particular felt overwhelmed.

Finally, one environmental activist suggested that the North Slope Borough’s approval of the Northstar project put pressure on the MMS to approve the project. The Borough, comprising of eight villages with a total population of 7500, authorized the project, changing the zoning of the project area from a conservation district to a resource development district, in December 1998 (BP Amoco, 1999). Our informant argued that the federal US Fish and Wildlife Service initially had reservations about the project, but that the MMS ultimately felt “their hands were tied” by state support. Production began in the Northstar field in 2001.
Reference

8 ALBERTA

Alberta provides an example of another exploration rights issuance system within Canada, albeit related to onshore petroleum resources. The Province of Alberta owns most petroleum rights, with the remainder (about 19% of the total area) owned by the federal government on behalf of First Nations or in national parks, or held under freehold rights by individuals and companies. The following discussion deals only with the issuance of Crown rights by the Province of Alberta.

8.1 The Licensing Process

In the Alberta process (Figure 6), rights are issued in the form of licenses through a competitive sealed bid auction system. They are issued and administered by the Department of Energy (DOE) pursuant to the Mines and Minerals Act. Public offerings of rights, called ‘land sales,’ are held every two weeks. Approximately eight weeks prior to the sale, notice of the parcels being offered is distributed to a mailing list of companies and individuals and is published on the department’s website. There is no formal procedure for public consultation with respect to particular sales.

No tenure agreement conveying rights is necessary for methods of exploration other than drilling wells. This means that geophysical work may be performed subject only to access permission from the surface owner and non-exclusive operating authority from the Department of Sustainable Resource Development.

A minerals tenure agreement only grants rights to the subsurface, and the holder must also obtain a right of access from the surface landowner or occupant before starting activity. Surface rights on public lands in agricultural or settled areas are jointly managed by the Department of Environmental Protection and the Department of Agriculture, Food and Rural Development (AFRD), while the former department has sole responsibility for forested lands. These agencies can issue a Mineral Surface Lease or License of Occupation, which may include environmental protection provisions. If the surface is privately owned, a surface lease must be negotiated with the landowner or occupant. If they cannot reach agreement, the company can apply to the Surface Rights Board for a right of entry order under the Surface Rights Act. This sets out a negotiation and hearing procedure to resolve disputes and can determinate compensation and damages if necessary.
FIGURE 6:
LICENSE ISSUANCE PROCESS
FOR ALBERTA

Integrated Resource Plan (IRP)

Public consultation (may be outdated)

Approval of IRP by Cabinet

Monitor and revise IRP

Oil companies submit requests that lands be posted

Dept of Energy reviews

Approve

CMDRC review and approval

Disapprove

Not offered in land sale

Approve

Public notice of land sale

Oil companies bid

Land sale

License issued to highest bidder

KEY

Opportunity for public input

Decisions

Protected area
While the Alberta Energy and Utilities Board (EUB) is not involved in the rights issuance process, it does regulate operations after they have been issued, deciding on applications for licenses, permits, and approvals of proposed energy and resource development projects. The EUB sets out minimum public consultation and disclosure requirements, which vary based on the type of project. Persons whose rights may be directly and adversely affected by a proposed project are entitled to receive notice of an application. If concerns and objections cannot be resolved during the consultation process, the EUB may facilitate meetings between the concerned groups and proponent, or may appoint a mediator. As a final option, the Board may convene a public hearing. Public officials note that they try to avoid the hearing stage whenever possible.

While there is extensive opportunity for public input at the stage when activities are being reviewed, there is no public consultation in connection with the rights issuance process. However, there is public consultation as part of the Integrated Resource Management and Planning system.

Integrated Resource Management sets out eight categories of land zones in the province. Zone 1 is a prime protection area, where oil and gas exploration and development would rarely be permitted, while Zone 8 is a facility development area, where exploration and development would likely be acceptable. This system helps determine which resources should be developed in the context of environmental and land conservation concerns.

Within this framework, Integrated Resource Plans (IRP) provides a mechanism for balancing resource development, conservation and the protection and maintenance of public lands and resources. They are specific to certain provincial lands and make reference to zoning, restricted areas and land surface access. The IRP process involves developing plans at the regional, sub-regional and local levels in five stages:

- information gathering;
- consideration of options;
- development of a plan (i.e. zoning decisions, use guidelines);
- implementation of the plan; and
- monitoring and revision (usually reviewed every five years).

The process provides an opportunity for the public to comment and participate at each stage. Except for small local IRPs, which are approved by the Minister of Environmental Protection, these plans must be approved by the Cabinet.

Some public consultation occurred during the development of IRPs, more than 20 years ago. The local environmental activist consulted for this study thought that all of them are now outdated, and that even when they were developed the quality of public involvement was poor.

Any proposed exploration plan is reviewed under the terms of an existing IRP to determine compatibility with approved land use zoning and other conditions. All IRPs have provisions
concerning petroleum exploration and development, which permit (with or without restrictions) or forbid exploration activities.

The interdepartmental Crown Mineral Disposition Review Committee (CMDRC) must approve all issuances of mineral rights. The Committee includes representatives of AFRD, Community Development, Municipal Affairs, Transportation and Utilities, the EUB and DOE. It reviews all proposed dispositions to identify actual or potential environmental impacts and may recommend land use or surface access restrictions. The Committee does not conduct a detailed environmental assessment but often an assessment will have been conducted earlier. If a proposed exploration activity is restricted or prohibited by CMDRC, the applicant can still enter into a tenure agreement, but the agreement may be subject to conditions limiting or prohibiting surface access. While the CMDRC identifies existing restrictions and may impose further land use restriction, it is important to note that it does not consult with the public.

Special areas can be protected under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*. An example of this is the designation of two areas in the Whaleback region of Southwestern Alberta. (See Case Study 6, below) The DOE maintains a Restricted Areas Book that lists all designated protected land areas, including research study areas and recreation areas. Mineral rights are not granted in such areas.

### 8.2 The Scope and Effectiveness of Consultation

#### 8.2.1 Scope of the Consultation

Alberta therefore has no formal public consultation during the issuance of exploration rights. The main opportunity for such consultation comes during the development application process, with the EUB requiring that proponents of activity conduct “full and effective” consultations with affected parties during the application process, prior to submitting an application. For this reason, the rest of this section discusses levels of satisfaction with the post-rights issuance consultation.

#### 8.2.2 Satisfaction

The onus is on the proponents to conduct these consultations, and their scope, method, transparency and duration is at the discretion of the proponent and varies considerably between applications. The scope is usually broad, covering all outstanding social, economic and environmental issues of concern to the proponent, the affected public or NGOs. The consultations occur during the EUB application process, prior to the submission of an application. If there are outstanding issues following submission of an application, the EUB may hold a public hearing, although it generally tries to avoid doing so. The EUB issues comprehensive decision reports that address all of the major issues raised; these reports are publicly available and posted on the EUB website.

It is important to note that, while there is significant variation in the transparency of consultation and opportunities for public involvement, the EUB ultimately decides if full and effective consultations have been conducted. “Some companies have done a lousy job of consulting,” one petroleum industry interviewee noted, and the Board usually rejects such projects. The EUB has
made it clear to all applicants their application will not succeed unless it addresses the concerns of the public.

This application process places significant responsibilities on the petroleum industry, and there is a great deal of variation in the methods and outcomes of public involvement. Nevertheless, the process appears to work effectively because the EUB enforces its consultation requirements. The Board has made it clear that companies which fail to make an effort to address public concerns put their development applications in jeopardy. Public officials noted that the Board’s process has been subject to few legal challenges, and is a “very defensible process.”

The Albertan environmental activist interviewed for this study has experience with public consultations around the world, and believes the process for petroleum developments in Alberta is “probably fairer and more comprehensive than in most jurisdictions.” However, she indicated dissatisfaction with the absence of formal consultation opportunities prior to leasing, and emphasized that local environmental groups have lobbied the provincial government for many years to introduce pre-leasing consultation.

She also noted that the EUB hearing process can be adversarial, but argued that this puts pressure on the petroleum industry to resolve issues so as to avoid hearings. Most applications are approved, but many are rejected by the EUB or withdrawn by the proponent before ever reaching the hearing stage. She has found the process very useful.

From the perspective of the petroleum industry representative, consultations have in some respects gone beyond adding value to the application process and become inefficient and burdensome. Some intervenors get involved inappropriately and seek to act as quasi-regulatory authorities. Arguing that they must give approval to proposals before projects can proceed, they demand time and resources to analyze applications. This extends the timelines for development and, in the opinion of this interviewee, rarely adds any value to the project. Similarly, a representative of Environment Alberta commented that the petroleum industry would like to focus more closely on the core concerns of intervenors, rather than trying to address all issues. He indicated that he hears from the petroleum industry that the EUB consultation process is inefficient and sometimes clouds important issues.

However, a lack of certainty of the outcome of applications is not a serious, petroleum industry-wide concern. The petroleum industry source argued that most unsuccessful proponents “are really authors of their own circumstances” in that if they consulted meaningfully, and adequately addressed social, economic and environmental concerns, they could expect their project to be approved.
CASE STUDY 6: THE WHALEBACK AREA, ALBERTA

In 1994, Amoco Canada submitted an application to the Alberta Energy Resources Conservation Board (ERCB) (the predecessor to the EUB) for a license to drill an exploratory well near Maycroft in the Whaleback, part of the Bob Creek Wildland Area, about 130 km southwest of Calgary. The company estimated the Whaleback area held 1.2 trillion cubic feet of sour gas (Barnes and Sexty, 1996). The Board approves about 14,000 wells every year, but few applications go to public hearing, and even fewer are denied. Amoco’s application, however, was rejected after a public hearing because of a lack of proper consultation, and wildlife and public safety issues.

The Whaleback project was opposed by a coalition of local residents and environmental groups (chiefly the Alberta Wilderness Association). Maycroft is a small agricultural community, and local farmers were worried about how the project might affect their livelihoods. Environmental groups were concerned about the effects of petroleum development on the wildlife habitat in the region.

The Board saw Amoco’s public consultation as ‘reactive rather than proactive’ and ‘advisory rather than consultative.’ (Barnes and Sexty, 1996) A local resident said that Amoco’s consultation techniques were “appalling,” and added that the company was “bullying, arrogant, and deceitful.” The first time the residents of Maycroft were consulted was at the same time they were notified that Amoco wanted to build a 2.6 km road to the well site, less than a week before the proposed start of construction. Local people did not know what was happening and were completely unfamiliar with oil and gas development.

The ERCB blamed Amoco for the area residents’ reactions, noting that it did not inform area residents of the scope of their plans until late in the licensing process (Barnes and Sexty, 1996). One former official stated that the company “knew the process, they had been through it before. It wasn’t out of ignorance they failed; they just didn’t take the stakeholders seriously enough. They approached the ERCB process as just another rubber stamp.”

Another key consideration for the ERCB was the environmental significance of the Whaleback region. It has been described by the Department of Renewable Resources at the University of Alberta as ‘the largest remaining undeveloped example of a montane ecoregion in Alberta.’ It is winter range for Alberta’s largest elk herd, and over 80 species of birds. The ERCB was not convinced that Amoco’s proposal would not result in an appreciable net loss of wildlife habitat.

Furthermore, the project was being considered just as Alberta’s Ministry of Environment was implementing a protected areas initiative, the Special Places 2000 program. The Board felt that the Whaleback was a serious candidate for the program, and believed that it would be wrong to approve Amoco’s application prior to the area’s consideration as a Special Place. Upon rejection, Amoco would still be entitled to resubmit another application at a later date. Premier Klein in fact announced in May 1999 that the Whaleback would be protected under the Special Places program.
Local residents and environmentalists were happy that they “got their day in court.” Through the ERCB hearing process, says one resident, “we forced Amoco to give us the full [development plan for the area]… the effects were spelled out in some detail.” Moreover, the case has set a precedent, in that the EUB has indicated that successful applications must include full and extensive consultation prior to the submission of a well application. Petroleum industry executives acknowledge this is now an essential requirement to any successful application.

However, the EUB has discretion in identifying the affected groups or interested parties. This is significant, because only they can force a public hearing. According to a number of sources, the Board has been interpreting the definition of ‘interested parties’ more narrowly in recent years, limiting it to residents in the immediate area. Some informants believe this means the broader public interest is being ignored.

The local and environmental groups were also disappointed that there is no pre-leasing consultation. The coalition raised the issue of pre-leasing consultation with the ERCB at the time of the application hearings, arguing the EUB could “save itself a lot of grief by never putting some areas up for lease.” In the words of one local resident, the Minerals Dispensation Review Committee, which approves licenses, is only a “rubber stamp.”

References


9 ANALYSIS

This section of the report compares the rights issuance processes used in Atlantic Canada, Australia, Norway, the United Kingdom, the United States and Alberta, as described in the earlier sections. It provides, first, an overview of the processes, and then a detailed comparison of the means they use for public consultation, largely based on the criteria set out in Appendix 3 -- scope, clarity and openness, feedback, timing and duration, balance of interests, and satisfaction. There is also a discussion of the importance of using effective consultation methods.

9.1 Rights Issuance Processes

The jurisdictions examined by this report include both federal states (Canada, the US and Australia) and unitary states (Norway and the UK). In the former case, there are differing relationships between the two levels of government. In Alberta, petroleum rights issuance is almost wholly a provincial concern, but Nova Scotia, Newfoundland and Labrador, Australia and Alaska use varying mechanisms for reconciling federal and state/provincial interests. They include federal/provincial Boards (Atlantic Canada), Joint Authority arrangements (Australia) and a range of inter-jurisdictional consultation and consistency review mechanisms (Alaska).

The rights issuance processes in all of the jurisdictions involve two stages: the selection of lands for licensing, and the awarding of licenses for these lands to oil and gas companies. The process for selecting lands involves oil companies through their being consulted by government (as in Australia and the UK) or formally or informally expressing their interest. In Norway, this takes place in the context of a lengthy process whereby new areas are assessed prior to being opened for exploration, with parliamentary approval being required. In the US there is a system of five-year leasing programs that set out the timing, size and location of lease sales in specified areas.

These requirements significantly increase the time it takes to issue licenses in new areas. They require long lead times and the petroleum industry regards the Alaska process in particular as being long-winded and detrimental to activity. By contrast, the rights issuance processes used in Atlantic Canada, Australia, the UK and, especially, Alberta, are generally of relatively short duration. However, all the latter jurisdictions except Alberta now require, and some are increasingly requiring, SEAs, and this is extending the duration of their rights issuance processes.

All the jurisdictions provide for some degree of environmental review in the selection of lands for licensing, although this ranges from cursory reviews of general environmental and land use issues to detailed regional SEAs specific to oil and gas activities. While the use of SEAs is increasing, they vary in the range of issues addressed and depth of analysis undertaken. All jurisdictions also require further environmental reviews at the stage when exploration activities are proposed, as well as for any development and production activity.

There are two approaches to the second stage of the rights issuance process, in which companies are awarded licenses. They may be awarded through a competitive bidding system based on a single criterion (as in Atlantic Canada, Alaska and Alberta) or using a more subjective system in
which the responsible government agency makes an assessment of applications based on various factors (as in Norway, the UK and Australia). The latter approach offers the opportunity to take environmental factors into consideration in assessing applications.

In most jurisdictions, the regulators play a passive role regarding the relationships between the companies seeking exploration rights. However, in Norway the state designates for each license both a project group of companies and a lead operator, which is responsible for the daily conduct of activities.

9.2 Scope of Consultation

In considering the scope of public consultation within the rights issuance process, the jurisdictional studies established whether consultation was required or optional and examined the range of issues addressed and individuals and groups consulted.

The regulatory agencies in all the jurisdictions conduct some form of environmental review before issuing exploration licenses and, as part of this, consult with other government departments. However, there are considerable differences in the scope of public participation in these reviews. It ranges from virtually no consultation in Alberta to extensive consultation in Alaska. Public consultation may be mandated by statute (as in Alaska, Norway and the UK) or be a matter of administrative practice even though not required by statute (as is the case in Atlantic Canada). The matters addressed are generally limited to environmental issues and conflicts with other uses, primarily fishing. Where consultation is conducted, it typically concerns regional issues rather than the issuance of specific licenses.

Public consultation in connection with the Atlantic Canada license issuance process is not required by statute. Some informants saw this lack of an enforceable requirement as a flaw. However, although not required by the legislation or regulations, there have long been, at least in theory, some opportunities for input. Furthermore, the CNSOPB and CNOPB now conduct strategic environmental assessments (SEAs) and the public is given some opportunities to comment on these and the lands they review. The first Nova Scotian SEAs covered lands included in calls for bids, but the CNSOPB recently released, for public comment, an SEA covering lands not yet included in a call for bids. The CNOPB has indicated that it will conduct SEAs for lands included in future calls for bids, with its first SEA examining the Laurentian Sub-basin.

However, compared with the Norwegian and UK processes, the range of issues considered in the Atlantic Canada SEAs is limited, focusing on the environmental effects of oil and gas activities on specifically-identified ‘valued ecosystem components,’ which are for the most part species of fish, birds, marine mammals and other marine life. They do not consider such broader issues as sustainable development or the socio-economic effects of the proposed activities. Furthermore, as discussed below in Section 9.4, the CNSOPB assessment process has not thus far seen comments from the public considered as part of the SEA preparation process, since they are received after it is completed. However, public consultation is part of the process being used in preparing the Laurentian Sub-basin SEA, which is being undertaken by the CNOPB in collaboration with the CNSOPB.
The current Atlantic Canada process does provide greater scope for public consultation than is the case in Alberta and Australia. It is not as extensive as that used for Alaska OCS leases, which provides for multiple consultations, both for five-year programs and specific lease sales. However, the Alaska process has been widely criticized as being overly complex.

9.3 Clarity and Openness of Consultation

In examining the clarity and openness of the rights issuance process in the various jurisdictions, the research considered the extent to which the public is aware of the process and the options provided for its input. It also looked at whether the consultation is active or passive (i.e., whether it is widely publicized and to what degree the regulator initiates, promotes and facilitates the consultation) and what support, if any, is available to assist intervenors in making their case.

It was found that the consultation can be formal or informal. In Australia, the public are primarily involved through informal consultation. The other jurisdictions (except Alberta, where there is virtually no public involvement at the rights issuance stage) all provide for some degree of formal consultation. However, it should be noted that even where there is a formal process, informal consultation also occurs and was generally viewed by informants as equally or even more important.

The processes used in the UK, Norway and Alaska all have more extensive notification and advertising procedures than are used in Atlantic Canada and the regulators in these jurisdictions are also more proactive in soliciting public input.

The complexity that results from highly formalized processes can lead to confusion and a lack of clarity. For example, this is the case for Alaska, where informants expressed a large number of concerns about the process being convoluted. Informants in Norway also expressed concerns about the complexity of guidelines.

In Nova Scotia, many interviewees believe they have a thorough understanding of the current system for regulating offshore activity, partly as a result of the Cape Breton hearings. Others (and most Newfoundland and Labrador interviewees) are unfamiliar with the process and the opportunities to comment on calls for bids and SEAs although, as was noted above, the practice of conducting SEAs is recent. Although information is available if people look for it (for example on the Boards’ websites), the Boards have not made the general public aware of the process for issuing licenses and opportunities for them to comment. Interviewees indicated that the Boards’ current requirements for notification and consultation are inadequate and ineffective in engaging community groups.

9.4 Feedback on Consultation

The research also examined how much feedback is provided with respect to rights issuance decisions, the input on which decisions are based, and the ways in which input affects decisions.
The UK, Norway and Alaska all publish reports of findings and decisions taken in connection with the rights issuance process or the opening up of areas for exploration. These reports and decisions include a discussion of concerns and comments received. However, they are not always responsive to specific concerns and it may not be clear what criteria were applied in arriving at decisions. Generally, those providing input find it hard to get direct responses to their concerns.

In Atlantic Canada, decisions of the Boards to issue calls for bids are not accompanied by reasons or a discussion of issues and concerns. It is therefore not clear what factors the Boards take into account in arriving at these decisions and, in particular, how any comments made by the public are taken into account. However, as was noted above, the newly announced Newfoundland and Labrador process sees comments being considered as part of the SEA preparation. Nova Scotian Board staff members have also indicated that they are open to discussing specific concerns with individuals.

It should also be noted that, as has recently been the case in Cape Breton, public expressions of concern can lead to a ministerial decision to hold additional consultations after licenses have been issued. This usually reflects dissatisfaction with opportunities for input during the formal process.

### 9.5 Timing and Duration of Consultation

This criterion was concerned with when consultation is conducted, how long it takes, and how much time, if any, it adds to the rights issuance process.

In respect of the first of these issues, formal public involvement in the petroleum exploration rights issuance processes in the different jurisdictions studied is largely provided as part of either early, strategic assessments or later assessments that are specific to exploration or development projects.

In respect of the first of these possibilities, in the US OCS a five-year plan must be approved before a leasing program can commence, and in Norway there is an extensive process to open up new regions, with a requirement for a strategic EIA and involving ultimate approval by Parliament. These processes require long lead times; petroleum industry interviewees regarded the Alaska process in particular as being long-winded and detrimental to activity. The other jurisdictions have generally placed a greater emphasis on assessments of specific exploration programs and development projects. However, there has been an increasing adoption of SEAs for lands that are, or may be, subject to calls for bids.

In respect of the duration of consultation, both Norway and the UK have consultation windows of three to four months. In Alaska, despite the long lead-time resulting from multiple processes, consultation windows can be as short as 30 days. Australia holds land sales annually and provides only for informal consultation. In Alberta, land sales are held every two weeks and only eight weeks’ notice is provided of the lands to be offered. However, as has been noted above, there is no public consultation.
In Atlantic Canada, the Boards have normally made calls for bids on an annual or semi-annual cycle, although recently they have sometimes chosen not to. The Accord Acts require that calls be left open for a minimum of 120 days, during which comments will be received. In addition, both Boards are now conducting SEAs. However, the opportunity to comment on an SEA may be short; for example, a comment period of only 30 days was allowed for the last one in Nova Scotia, released by the CNSOPB in August 2002. Some informants believe that the CNSOPB cannot give proper consideration to public concerns because the period between receiving comments and awarding licenses does not permit it.

It is apparent from the interviews in the different jurisdictions that consultation should start early in the rights issuance process. The merits of this are illustrated in Norway, with company representatives indicating that early consultations head off possible problems, saving time and money. Seeking input from public prior to leasing an area, or to developing a project, builds trust between the proponent and the affected interests. Informants indicated that local communities and environmental organizations, for instance, like to see their concerns addressed in applications, because it indicates that companies are making an effort to work with them.

It is also clear from the research that too much consultation can also be problematic. Consultation fatigue or ‘burn-out’ has been a problem for community groups in most jurisdictions, and may affect both the quantity and quality of their input. It is particularly problematic in sparsely populated areas and when areas are subject to multiple projects and hence consultations. Such fatigue results from the fact that community groups commonly lack the time and resources to participate effectively in consultation initiatives. This is in contrast with the petroleum industry and regulatory agencies, which are usually able to muster a range of specialist expertise.

### 9.6 Consultation Balance of Interests and Satisfaction

The research found that the effectiveness of consultation mechanisms in balancing the interests of the petroleum industry and others is closely related to the level of satisfaction of these groups, and the discussion of these two criteria has been combined in this section.

A number of interviewees in the different jurisdictions expressed the opinion that the rights issuance process favours the petroleum industry. However, it is also the case that complex procedures, long lead times, legal challenges and the resulting costs and uncertainty can hamper and delay oil companies in conducting their activities. Informants expressed general satisfaction with the UK and Norway processes, while that in Alaska was generally criticized as too complex and time-consuming, without necessarily providing benefits to the public. The Australian and Albertan processes provide limited opportunities for public input and hence appear to favour the interests of the petroleum industry.

The perception by some that the Atlantic Canada regulatory system favours the petroleum industry may have been valid in the past, although other interests have long been influential. For

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[5] The latter problem is diminished when there is an effective consultation as part of decisions as to whether to open up a new area to exploration.
example, fishing interests caused a moratorium to be imposed on exploration activity on Georges Bank, and environmental concerns resulted a de facto moratorium in the area of the “Gully,” despite the existence of an adjacent significant discovery. The introduction of SEAs, and the increasing opportunities they are providing for the public to comment as part of that process, has strengthened the position of non-petroleum industry groups and the general public.

The level of public satisfaction with each of the rights issuance processes studied does not depend on the degree to which it, including the opportunity for consultation, is formalized. In fact, there was a high level of dissatisfaction with the Alaska process, which appears to provide the greatest formal opportunity for public consultation. It is evident that too many regulatory requirements and too much consultation can result in fatigue. Furthermore, informal consultation between oil and gas companies and such groups can be as important as formal consultative structures and result in greater satisfaction for all parties.

9.7 Consultation Methods

The above analysis reviews the processes used in the different jurisdictions based on the criteria established early in the study. However, it is also clear from the research that while failures of consultation have been an important cause of disputes in various jurisdictions (and, indeed, related to projects in other industries), such disputes cannot solely be blamed on the formal processes involved. Instead, the consultation specified in legislation and regulations are only able to address the concerns of fishers, environmentalists and other community groups when the consultation mechanisms are effective. In particular:

- However good the formal process, it cannot in and of itself create, and it will not work without, trust. Furthermore, trust is critical to an effective consultation.

- Face-to-face interaction is critical to establishing trust. A UK informant noted the importance of having fishing industry representative bodies meet directly with oil company representatives. Fisheries informants in Norway, and environmental informants in the UK and Australia, also emphasized the importance of face-to-face interaction to successful consultation.

As a consequence, success in public consultation respecting petroleum exploration rights issuance is as much a matter of consultation methods and techniques as of the design of the rights approval process itself. For example, while this study did not set out to evaluate consultation methods, it is clear from the research that it is important that oil companies and regulatory authorities:

- have access to public consultation personnel who are fully familiar with the local economic, social and cultural context and public consultation theory and practice.

- actively solicit and facilitate input, rather than just providing opportunities for it.

- consult early in the rights issuance process and periodically thereafter.
• recognize and seek to minimize, or compensate for, the time and money costs of consultation to community group representatives.

• be flexible with respect to methods of consultation. Although written submissions and hearings are common means of seeking input, other methods such as individual letters, open houses, kitchen table meetings and workshops are employed elsewhere and could supplement current practices in Atlantic Canada.

• recognize the different consultation requirements of different groups. For example, merchant mariners and deep-sea fishermen may have difficulty participating in traditional consultation initiatives, given their extended absences from home. Similarly, Albertan and Alaskan sources called for special efforts to facilitate consultation with aboriginal people, with it being noted that conventional means were generally ineffective.

• seek to provide those consulted with feedback as to the role their input played in the decision-making process.

• make special efforts to: establish and maintain relationships between the fishing and oil industries; be familiar with ecosystem-based fisheries management approaches; and ensure that consultation and management initiatives respect them.

It is also important to note that, while there must always be attempts to facilitate input, limited participation in formal initiatives may not be a sign of failure or an indication that they are unnecessary. It may instead be a reflection of an effectiveness of both formal and informal mechanisms, with the former still valued as an opportunity for input, whether or not used. However, the effectiveness of consultation options will only be maintained if they are subject to regular review.

Addressing the above issues is a matter of good consultation practice and need not involve great expense. Having initially established trust, only relatively low levels of interaction may be required to maintain it. On the other hand, any failure of trust may have very expensive consequences. This is evidenced, for example, by the time and money costs to all groups of the dispute over the Cape Breton exploration licenses, including those associated with holding the hearings, preparing briefs and presentations, attending the hearings and related meetings, the preparation of the Commissioner’s report and, for the oil companies involved, the delays in approval of their plans.
APPENDIX 1: PROJECT TERMS OF REFERENCE

PURPOSE

The purpose of this Request for Proposals (RFP) is to examine the current processes for issuing offshore petroleum exploration rights on Canada’s East Coast, through a comparative analysis of the practice in other jurisdictions. In particular, the researcher will identify the approaches being utilized to ensure public input on questions relating to the environmental, economic and/or social impacts of the respective land nomination processes. The pros and cons of each approach are to be identified and conclusions drawn with respect to the existing East Coast processes.

INTRODUCTION AND BACKGROUND

The Atlantic Canada Petroleum Institute (ACPI) embodies a partnership between the oil and gas industry and public sector institutions. ACPI identifies, prioritizes, and supports activities related to oil and gas in applied and basis research, education and training, and specific to this study, public policy.

Since oil and gas exploration began on the East Coast over thirty years ago, more than 300 petroleum exploration and production wells have been drilled and many hundreds of thousands of seismic lines shot. During the last decade the level of activity has increased sharply with the commencement of oil production from the Cohasset - Panuke and Hibernia projects, and natural gas production from the Sable Offshore Energy Project (SOEP). Further development projects are underway or planned including Terra Nova, Tier II of SOEP, White Rose and Deep Panuke. Accompanying these development activities has been an upsurge in the issuance of exploration interests, some of these in the near shore areas. The growth in petroleum activity is leading to increased levels of concern among a number of those involved in traditional activities in the marine environment such as fish resource harvesting, aquaculture, tourism, marine transportation, etc.

Offshore exploration rights are granted to oil and gas companies pursuant to the provisions of the Canada Nova Scotia and Canada Newfoundland Offshore Accord legislation. The existing regulatory approval process goes through a number of well defined steps ultimately leading to the granting of exploration rights to companies in the oil and gas industry. The process allows companies to nominate, on a confidential basis, parcels of land that are of interest to them. Nominations are submitted to the regulators, the Canada Nova Scotia Offshore Petroleum Board (CNSOPB) and the Canada Newfoundland Offshore Petroleum Board (CNOPB) (hereafter collectively referred to as the ‘Boards’). A decision is made by the Boards on whether or not to issue a Call for Bids following consultation with the responsible federal and provincial government departments. At this stage the Boards and/or the responsible government departments may also consult with other departments or agencies to obtain information related to fishing, environmental issues or other matters concerning the nominated lands. A decision to issue a Call for Bids is reviewable by the two governments (referred to as a fundamental decision) and can be vetoed. If no veto is exercised, the Call for Bids proceeds and is publicly announced. Companies normally have a period of 120 days to submit their bids and indicate the dollar value of the exploration work commitment they are prepared to undertake if successful.
At this stage of the process in Nova Scotia, the general public is invited to comment and to make written representations to the Board and governments on the parcels being offered for bid. In addition the CNSOPB’s Fisheries and Environmental Advisory Committee (FEAC) has the opportunity to comment, and Board staff may carry out a strategic environmental assessment of the nominated parcels to provide an initial overview of potential issues.

When considering the bids received in response to the Call, the Boards take account of the size of the work commitment “bid” and, in Nova Scotia, any information gathered on the nominated parcels through strategic environmental assessment, FEAC or the invitation for public comment. The Boards then make decisions on whether or not to award Exploration Licenses. The Boards are not bound to issue rights for each parcel nominated. Furthermore the award of exploration rights is a fundamental decision that can be vetoed by the federal and provincial ministers.

Stakeholders have expressed growing concerns about when and how they are consulted in the process of issuing offshore exploration rights. Among others, members of the fishing, environmental and tourism communities have expressed the belief that the process in place is inadequate and that they are engaged too late to provide effective and timely input. As a result of concerns expressed by stakeholders, some exploration activity has been delayed and/or halted indefinitely. A recent example is the high level of public concern regarding the issuance of exploration rights and planned seismic programs for several parcels of lands offshore Cape Breton Island. This caused the federal and provincial ministers to exercise their legislative powers and issue a directive to the CNSOPB requiring it to conduct a public review before any exploration activity could be authorized.

The Boards have expressed the view that the existing process provides a fair balance between the commercial interests and confidentiality concerns of the petroleum companies, and the rights of affected parties to provide input and influence decisions. It has been noted that an Exploration License does not give a company the right to conduct oil and gas activities. Rather, the granting of a license is the beginning of a process that requires license holders to obtain separate Board approvals for each planned activity with the public being given the opportunity to provide input throughout. Each request for a work authorization must include, among other things, an Environmental Impact Statement and an Environmental Protection Plan.

ISSUES

Some of the important issues that the consultant will need to address in carrying out this work are as follows:

- A desire by the public for direct and meaningful involvement prior to nominations or a Call for Bids.
- A rights issuance process that is based on the premise that all lands are open for nominations and licensing unless specifically closed through legislation, regulatory action or political decision, compared to one where lands are closed to exploration unless opened as a result of some public process.
Some stakeholders believe that there should be a greater degree of openness in reviewing lands posted for bids. Currently public input is invited when a Call for Bids is issued or after exploration licenses are granted, not prior to or when nominations are received. The review of nominations is viewed as closed involving only the Boards and governments.

Some stakeholders perceive the Boards as too closely aligned to the interests of the petroleum industry, and thus mistrust Board processes.

The current rights issuance processes used by the CNSOPB and CNOPB are well established and have been used for over ten years. However concerns over rights issuance processes have existed for a number of years. More recently the significant controversy that has arisen with the issuance of exploration rights in the near shore area of Nova Scotia has focused further attention on the issue. Some argue that the processes have worked well and served all interests fairly and adequately, while others take the opposite viewpoint.

There is an apparent lack of understanding of the rights and obligations that flow from an Exploration License and in particular the requirement for Environmental Impact Statements and Environmental Protection Plans prior to conducting any activity. Some question if the real issue is more public education so that the public is better aware of the scrutiny that takes place and the opportunities for public involvement.

Legislative changes to the governing Accord statutes have proven to be both time-consuming and difficult. Some argue that any proposed change in process must be undertaken within the constraints of existing legislation.

Given the cost of offshore exploration and the potential value of any discoveries, there is desire by the petroleum industry for confidentiality to protect companies’ commercial interests and competitive position in land acquisition. Others such as the fishing industry believe that broader socio-economic and environmental considerations should override any confidentiality concerns.

Industry is extremely focused on reducing project cycle time, and is concerned about any process change that has the potential of increasing the time and cost of an already complex regulatory process.

The impact of overlapping jurisdiction between the Boards and other agencies, i.e. the integrated management mandate of the DFO pursuant to the Ocean’s Act.

**Scope of Work**

- Review existing relevant legislation, regulations and guidelines (Accord Acts, CEAA, Oceans Act) to understand the current rights issuance processes, the legislative and regulatory requirements and constraints, Board and Ministerial powers and any other matters that relate to the purpose of this work.

- Conduct interviews with key individuals to better understand the issues, the stakeholders and their interests. In addition to officials responsible for rights issuance and environmental/socio-economic matters in the two Boards, the two provincial
governments and the federal government should be interviewed. The petroleum industry’s perspective should be canvassed through the Canadian Association of Petroleum Producers and representative companies involved in East Coast exploration. Fishing industry representatives are to be included in the list of interviewees to ensure that their views on rights issuance and related issues are fully captured.

- In consultation with ACPI select a number of other jurisdictions (3 to 5) and develop a set of criteria to be used in the evaluation of the jurisdictions’ rights issuance processes. These criteria should reflect in an unbiased manner the interests of the various stakeholders and the principles of fairness, openness, objectivity, balance and commercial integrity.

- Carry out a review of the selected jurisdictions’ rights issuance and other related legislation, processes and practices. In particular attention should be paid to:
  - the posting of lands;
  - the requirements for impact assessment (environmental, social and economic) prior to, during and following the award of exploration rights;
  - the responsibility for such assessments;
  - how the assessments are conducted and opportunities for public involvement;
  - petroleum industry opinions of the processes;
  - concerns or positive reactions from the range of stakeholders;
  - the frequency of land postings and the cycle time to complete the process.

- Evaluate the various rights issuance and related processes (for example environmental and socio-economic reviews) using the agreed upon criteria. Several specific examples, in the form of brief case studies, should be provided of situations where the processes served the interests of the various stakeholders particularly well, and where they did not.

- Based on the evaluation of the various rights issuance processes, comment on the utility of the existing processes governing the two East Coast Accord Areas. Identify potential alternatives to existing processes, noting any constraints on implementing the possible changes. Prepare a draft report describing in detail the work carried out and the results from each of the above tasks. Submit this report to the ACPI for review.

- Based on comments received prepare a final report on this project and deliver it to ACPI.

In order to provide further clarity with respect to the scope of work, it is important to understand what this project is not intended to do. Specifically it will not:

- Make specific recommendations for changes to the current process but rather identify and evaluate alternatives.
➢ Favour any particular group’s position or show any particular bias in discussing and evaluating the various alternatives.

➢ Enter into the debate on the issuance of rights in any specific area or discuss the merits of arguments being advanced for or against the issuance of particular exploration licenses.

**Project Management and Deliverables**

The project will be managed by ACPI with overall direction provided by a steering committee. The contractor is required to provide ACPI with the following deliverables:

➢ Three (3) copies of the draft report for review
➢ Five (5) copies of the final report in hard copy as well as in electronic form in both Microsoft Word and PDF formats
➢ A Microsoft Power Point presentation with notes no more than twenty minutes in length
➢ Copies of all relevant materials collected in carrying out this project, in electronic form where possible, for later reference

Note that the contractor should be prepared to present the results of this work to two meetings of key stakeholders, one in Nova Scotia and a second in Newfoundland.

**LEVEL OF EFFORT**

The budget for this study has been estimated at $20,000 to $25,000 for labour. It is expected that there will be additional costs for travel, meetings, printing and communications.

**Proposals**

Proposals in response to this RFP must be submitted to the Atlantic Canada Petroleum Institute on or before June 18th, 2001 to the attention of Kate Moran, R&D Manager. Proposals are to include the following:

➢ A discussion of the project scope and the methodology that will be used in carrying out the work.
➢ Individual project tasks together with the estimated resources (person days, travel, expenses, etc.) for each
➢ A project schedule showing the start and completion dates for each task as well as significant project milestones
➢ A description of the structure of the project team, the project manager, the individuals who will carry out the work and their resumes. Experience with similar types of projects should be identified
➢ A project budget providing salary costs, travel and expenses. Per diem rates should be provided for each individual

An indication of how the proposal and project team will help develop public policy research capabilities, as they pertain to the oil and gas sector, within the Atlantic Region
APPENDIX 2: KEY INFORMANTS CONSULTED

This appendix identifies the key informants consulted in the course of the research. However, in some cases (for example, government employees concerned about making critical comments about current policies) informants were only willing to provide input given assurances of anonymity. In such cases, only a generic description of the informant is provided.

Nova Scotia

Steve Bigelow, CNSOPB
Jeff Brownstein, Maritime Fishermen’s Union
Osborne Burke, North of Smokey Fishermen’s Association
Mark Butler, Ecology Action Centre
Bernd Christmas, Membertou First Nation
Herman Deveau, Inverness North Fishermen’s Association
Wayne Eddy, Eastern Shore Fishermen’s Protective Association
Doug Gregory, Shell Canada
Percy Haynes, Save Our Seas Coalition
John Hogg, EnCanan
Doug Hollett, Marathon Canada
Phil Lemke, Exxon-Mobil
Ian MacDonald, Gulf Nova Scotia Fisheries Petroleum Advisory Board
Jack MacDonald, Petroleum Directorate, Government of Nova Scotia
Norm Miller, Corridor Resources Ltd.
Ted Potter, Department of Fisheries and Oceans Canada
Robert Rangeley, Marine Program Director, Atlantic Region, World Wildlife Fund
Eric Roe, Clearwater Fine Foods Ltd.
Dick Stewart, Atlantic Herring Cooperative
Roger Stirling, Seafood Producers Association of Nova Scotia
Peter Underwood, Department of Fisheries, Government of Nova Scotia
Chris Wickens, Hunt Oil of Canada

New Brunswick

Jean Saint-Cyr, Federation Regional of Acadian Professional Persons

Prince Edward Island

Ken Campbell, fisheries representative
Ruth Inniss, PEI Council of Professional Harvesters
Roy McLellan, PEI Fishermen’s Association

Newfoundland and Labrador

Fred Allan, Department of Mines and Energy
John Andrews, CNOPB
Reg Anstey, Fish Food and Allied Workers Union
Paul Barnes, Canadian Association of Petroleum Producers
David Burley, CNOPB
Susan Churchill, CNOPB
Phonse Fagan, Department of Mines and Energy
David Hawkins, Department of Mines and Energy
Jon Lien, Department of Psychology, Memorial University
Earle McCurdy, Fish Food and Allied Workers Union
Bill Montevecchi, Department of Psychology, Memorial University
Dawn Mercer, Department of Fisheries and Oceans Canada
Alistair O’Reilly, Fisheries Association of Newfoundland and Labrador
George Rose, Fisheries Conservation Chair, Marine Institute

Australia

Graham Cobby, Department of Mineral and Petroleum, Government of Western Australia
Public official, Environment Australia
Petroleum industry representatives
Australian environmental organization representative

Norway

Bjorn Fossen, Statoil
Orjan Werner Jenssen, Environment Department, County Council of Finnmark
Ottar Minsaas, Exploration and Resource Development Department, Oljeindustriens Landsforening (Norwegian Oil Industry Association)
Ivar Sagen, Finnmark Fiskarlag (local fishing industry group)
Bernhard Vigen, Bellona Foundation
Ministry of Petroleum and Energy, Government of Norway
National fisheries representative

United Kingdom

David Bevan, National Federation of Fisherman’s Organizations
Wendy Kennedy, Oil and Gas Directorate, Department of Trade and Industry, Government of the United Kingdom
Melissa Morton, Marine Conservation Society
Dr. Sian Pullen, World Wildlife Fund (United Kingdom)

United States

Steven Schmitz, Division of Oil and Gas, Department of Natural Resources, State of Alaska
Paul Stang, Minerals Management Service, Alaska Outer Continental Shelf Region
Matt Rader, Division of Oil and Gas, Department of Natural Resources, State of Alaska
Jeff Mach, Department of Environmental Conservation, State of Alaska
Local public officials, North Slope Borough, Alaska
Public official, Government of Alaska
Public official, Minerals Management Service
Local activist, North Slope Borough

**Alberta**

Terry Bachynski, Suncor Energy Inc.
Rick George, Department of Environment, Government of Alberta
Patti Humphrey, Department of Environment, Government of Alberta
Martha Kostuch, environmental activist
Brenda Ponde, Department of Energy, Government of Alberta
Keith Sadler, Alberta Energy and Utilities Board
Ian Scott, Canadian Association of Petroleum Producers
James Tweedie, local activist, Maycroft, Alberta
Former Alberta Energy And Resource Conservation Board official
APPENDIX 3: CRITERIA USED IN COMPARING JURISDICTIONS

The following criteria will be used in comparing the issuance and consultation processes used by the different national and international jurisdictions studied.

Scope:

Is consultation required or optional? How wide or narrow is its scope, in terms of range of issues addressed and stakeholders consulted?

Clarity and Openness:

How clear and transparent is the issuance process and the options it provides for stakeholder input?

Is there a wide awareness of it and the options it provides for stakeholder input? How active or passive is the consultation (i.e. is it widely publicized; to what degree does the regulator initiate, promote and facilitate the consultation)? What support, if any, is available to assist stakeholders in making their case?

Feedback:

How much feedback is provided re any rights issuance decision, the input on which it was based, and the ways in which stakeholder input affected it?

Timing and Duration:

Does consultation occur before, during and/or after the rights issuance process?

How long does it take? How much time, if any, does it add to the approvals process?

Balance of Interests:

How effectively does the consultation mechanism balance the interests of the oil industry and other stakeholders?

How effective is it in protecting commercial confidentiality?

Satisfaction:

How satisfied are the main environmental, fisheries and oil industry groups with the consultation process?
APPENDIX 4: TERMS OF REFERENCE FOR THE NOVA SCOTIA FISHERIES AND ENVIRONMENTAL ADVISORY COMMITTEE

Background

Under the 1982 Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing, a Canada-Nova Scotia Fisheries Advisory Committee (FAC) and a Canada-Nova Scotia Offshore Environmental Coordinating Committee was established by the Canada Oil and Gas Lands Administration, the offshore petroleum regulator at that time. In 1986 the Canada-Nova Scotia Offshore Petroleum Resources Accord, which replaced the 1982 agreement retained the FAC. Both committees were inactive in the early 1990s.

To provide a forum for close consultation with the fishing and regulatory communities, the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) established a Fisheries Liaison Committee and an Environmental Coordinating Committee (ECC) in 1994. To fulfill the requirements of the Accord and to provide the liaison desired by the CNSOPB, it was decided at a January 1995 meeting of the Fisheries Liaison Committee to reactivate the Canada-Nova Scotia Fisheries Advisory Committee and to eliminate the Fisheries Liaison Committee.

An increase in offshore activity in the late 1990’s resulted in an accompanying increase in the number of committee meetings, committee membership and the flow of information. In addition, the CNSOPB had over time expanded the role of the committee to provide advice on broader environmental and fisheries issues such as effects monitoring programs, class screenings, environmental procedures and policies, and seismic and exploration drilling programs.

The CNSOPB values the advice provided by a committee representing a diversity of organizations and interests. At a joint ECC/FAC meeting held in June 1999, the CNSOPB agreed to update the Terms of Reference for both committees to reflect operational changes and to provide for more effective consultation and advice. Recognizing that all recent meetings had been jointly held, and that members of both committees have valued each other’s opinions, the CNSOPB decided to combine the ECC and FAC into a Fisheries and Environmental Advisory Committee (FEAC). Although recently updated, these Terms of Reference are considered "living documents", and may be updated at the request of committee members or the CNSOPB.

Purpose

The Canada-Nova Scotia Fisheries and Environmental Advisory Committee will operate for the following purposes:

- to provide the CNSOPB with a broader depth of expertise and knowledge which will enhance its ability to develop measures
- to protect the marine environment;
- to provide a forum for the exchange of information on matters of mutual concern to the fishing industry and the oil and gas industry;
to provide a forum where government agencies, the fishing industry, aboriginal groups, environmental and other groups are informed, and have the opportunity to provide advice, on proposed oil and gas exploration and development activities in a timely fashion;

to provide advice to the CNSOPB on matters related to offshore oil and gas exploration and development relevant to the fishery and the marine environment;

to provide advice to the CNSOPB on draft environmental guidelines, regulations, policies and procedures;

to advise the CNSOPB if there are any regulatory requirements under other legislation that require authorizations related to the environmental or fisheries aspects of a proposed activity;

to address fisheries compensation policy issues;

to provide information to the Board on the location, seasons and gear types of marine fisheries, so as to avoid conflicts at sea;

to provide information (location, important seasons, resources at risk) to the Board on fish habitat and sensitive marine ecosystems, to prevent potential damage to these resources; and

to address other matters related to the interaction of oil and gas and fishing activities.

Membership

Several government departments and agencies have a regulatory role for the offshore. As lead agency for environmental matters related to offshore petroleum activities, the CNSOPB will use the FEAC for the exchange of information between industry and the regulatory community. The FEAC will consist of one or more representatives of the Nova Scotia Department of Fisheries, the Department of Fisheries and Oceans, Environment Canada, Natural Resources Canada, Transport Canada, the Canadian Environmental Assessment Agency, the Nova Scotia Department of the Environment and the Nova Scotia Petroleum Directorate.

The CNSOPB recognizes the importance of public access and meaningful input to the regulation of offshore activities. Membership on the FEAC will therefore include nominees of the fishing industry, environmental groups and aboriginal groups. In addition, the Board may, on occasion, hold open public meetings to address certain issues.

Membership has yet to be denied to interested groups, however a ceiling on the number of members may be placed for logistical reasons and to allow the committee to effectively function. Membership will not include the offshore petroleum sector, however representatives from this sector will be invited to discuss relevant issues at committee meetings.

Any costs incurred to attend meetings are at the member’s own expense.

Secretariat

The secretariat of the committee shall be the CNSOPB.
Chair

The committee will be chaired by the CNSOPB. The only exception to this is when part of the committee is acting as the FAC, as established under the Accord Legislation. When the FAC is discussing matters for the purpose of providing advice to the fisheries ministers, the committee may be chaired by representatives of the Nova Scotia Department of Fisheries or the Canada Department of Fisheries and Oceans.

Information Exchange and Dissemination

The CNSOPB recognizes that information exchange and consultation is one of the principal functions of the FEAC. FEAC members are therefore encouraged to widely distribute information provided to them by the CNSOPB to their own organization’s membership. The widespread distribution of information will help in informing a broader public of proposed offshore oil and gas activities. There may be instances where, due to confidentiality provisions in the Canada — Nova Scotia Accord Legislation, distribution of these materials would be restricted. These restrictions usually relate to the competitive nature of specific company information, which would be kept confidential from potential competitors in the petroleum sector. This information, and associated restrictions, will be clearly identified.

Information will be provided to committee members as early in the regulatory decision-making process as possible, prior to decisions being undertaken. For example, information on Calls for Bids will be sent to committee members at the time of the initial press release to the media and public. At the discretion of the Board, and with the concurrence of the nominee (as nominations are confidential), the Board may consult with committee members on individual nominated parcels prior to the issuance of a Call.

Relevant environmental information provided as part of a project authorization (i.e. drilling environmental assessments, location of seismic programs) will be distributed to committee members upon receipt and initial review by the CNSOPB’s Advisor, Environmental Affairs. The CNSOPB will consider adding as a condition of an authorization comments/suggestions expressed by committee members, or will ask potential operators to rectify these concerns prior to granting approval. Similarly, the CNSOPB will also distribute information for comment on the location and proposed timing of exploration drilling programs prior to authorization decisions being undertaken. The CNSOPB will also provide information to the general public through its homepage on the internet. The CNSOPB will also become part of the Public Registry being updated for Federal Authorities under the Canadian Environmental Assessment Act.

Meetings

Meetings will be held at the call of the secretariat, either on its own initiative or at the request of the members. Meetings will be held each quarter per calendar year. Minutes from each meeting will be prepared by the CNSOPB and will be disseminated to members within 3 weeks of the date of the meeting. These minutes will be accessible to any interested member of the public, and will be added to the CNSOPB’s homepage on the internet (www.cnsopb.ns.ca).
To accommodate legislative requirements for a Fisheries Advisory Committee, it may be appropriate in certain circumstances to excuse certain CNSOPB members to enable the other members to discuss specific matters relevant to the fishery. For meetings where the full committee is not present, any report shall indicate that the report represents the views of only the segments of the committee that were represented.

**FEAC Sub-Committees and Working Groups**

Sub-committees or working groups from the FEAC may be initiated as a forum to further examine specific items which were raised during FEAC meetings. An example of this is the working group struck in late 1999 to evaluate options for enhanced communications between the seismic and fishing industries to minimize the potential for conflict at sea. These sub-committees may be supplemented by petroleum industry representatives and/or other individuals if warranted.

Sub-committees and/or working groups will provide updates of their activities, and any reports or other materials to the FEAC.

**Decisions**

The FEAC is an advisory body to the CNSOPB. As such, opinions of each individual member are important to the CNSOPB. The CNSOPB is empowered under the Canada-Nova Scotia Accord Legislation to render decisions on offshore oil and gas issues, however it will endeavor, as a first option, to explore consensus options. If an unanimous decision is not reached, dissenting options or opinions will be recorded in the meeting minutes. Objections may also be referred to the Chair and the Chair will undertake to relay these objections to the person making the decision at the CNSOPB.

As the CNSOPB possesses the final decision-making responsibility (with the exception of the federal and provincial government’s ability to jointly veto or alter fundamental decisions), membership on the FEAC will not be inferred or construed as an endorsement of CNSOPB decisions or policy. Committee members are encouraged, however, to send any dissenting opinions, or other concerns not adequately addressed at a committee meeting to the attention of the Chief Executive Officer (CEO), CNSOPB. The CEO will, in turn, respond to written submissions with the rationale for the decision undertaken by the CNSOPB. For activities which also require authorizations by Environment Canada and the Department of Fisheries and Oceans, the two departments shall provide a similar opportunity for committee members to express opposing views.

Updated: April 3, 2000
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<tr>
<th>Organization</th>
<th>Person</th>
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<tr>
<td>Area 24 Crab Fishermen’s Assoc.</td>
<td>Robert Anderson</td>
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<td>Atlantic Canadian Mobile Shrimp Assoc.</td>
<td>Mac W. Schrader</td>
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<td>Atlantic Herring Co-op Ltd.</td>
<td>Dick Stewart</td>
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<td>John Angel</td>
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<td>C/O Paulette Pottie</td>
<td>Director, Coordination and</td>
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<td>Provincial Liaison Atlantic</td>
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<td>Clearwater Fine Foods Inc.</td>
<td>Christine Penney</td>
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<td>Barbara Pike</td>
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<td>Ted Potter</td>
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<td>Denny Morrow</td>
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<td>NS Department of Agriculture and Fisheries</td>
<td>Greg Roach</td>
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<td>Patricia Hinch</td>
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<td>Jack MacDonald</td>
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<td>Roger Stirling</td>
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<td>Sandra Farwell Scarfone</td>
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<td>Bruno Marcocchio</td>
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<td>Fred Kennedy</td>
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<tr>
<td>Association</td>
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