

PROPOSED AMENDMENTS TO THE ACCORD ACTS

to incorporate an

OFFSHORE OCCUPATIONAL HEALTH AND SAFETY REGIME

Government of Canada
Government of Newfoundland and Labrador
Government of Nova Scotia

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Contents

Introduction	1
Legislation being Amended	2
Governance	3
A. GENERAL MATTERS	
Purpose	4
Application	4
Allocation of Responsibility	4
Interpretation	5
Her Majesty	7
B. DUTIES AND RESPONSIBILITIES	
General Duty of Operators	7
Specific Duties of Operators	8
Duties Related to Transportation	8
Occupational Health and Safety Policy	9
Health and Safety Management System	9
Codes of Practice	9
Notification of Accidents	9
Duties of Employers	10
Occupational Health and Safety Program	11
Hazardous Materials	11
Duties of Supervisors	12
Duties of Employees	12
Limitation of Liability	12
Duties of Suppliers	13
Duties of Providers of Service	13
Duties of Owners	13
Duties of Interest Holders	14
Duties of Directors and Corporate Officials	14
C. RIGHT TO KNOW AND PARTICIPATE	
Communication of Information to Employees	14
Provision of Information to Committees	15
Workplace Committee	15
Special Committees	16
Workplace Monitoring	16
Occupational Health and Safety Coordinator for Temporary Worksites	16
D. REPORTING CONCERNS AND REFUSAL PROCESS	
Reporting Concerns	17
Right to Refuse Work or Transport	17
Nursing and Pregnant Employees	18
Monetary Complaints	18
Reprisals	18
E. ACTIVITIES OF THE BOARD AND CSO	
Activities of the Board	19
Authorization	19
Substitutions by the CSO	19

F. VERIFICATION AND COMPLIANCE	
Occupational Health and Safety Officers	20
Special Safety Officers	20
General Compliance Powers	20
Provision of Reports	22
Entry into Living Quarters	22
G. ENFORCEMENT POWERS	
Telewarrants	22
Assistance to Officers	22
Transportation and Accommodation	22
Warrant Provisions	23
Disposal of Seized Items	23
Non-Disturbance of Accident Scene	23
Providing Information	23
Prohibition on Publishing Information	23
Protection of Identity	23
Protection of Proprietary Information	24
Disclosure of Information between Agencies	24
Access to Information by Governments	24
Disclosure of Information in the Public Interest	24
Giving Evidence in Proceedings	25
Protection from Proceedings	25
Orders and Decisions	25
Posting of Documents Related to Orders	26
Review of Orders and Decisions	26
Appeals	27
Enforcement of Monetary Orders	28
Offences	28
Penalties	29
Creative Sentencing	29
Recovery of Fines	30
Time Limits	30
H. ADVISORY AND MINISTERIAL OVERSIGHT	
Advisory Council	30
Audits	31
Inquiries	31
Regulation-Making Powers	31
I. TRANSITIONAL AND CONSEQUENTIAL PROVISIONS	
Transitional Provisions	32
Coming into Force	33
Consequential Amendments to Other Parts of the Act	33
Consequential Amendments to Other Federal Acts	33
Consequential Amendments to Other Provincial Acts	34
Information on Submitting Written Comments	33

Introduction

The Atlantic Accords were signed in 1985 with Newfoundland and Labrador and in 1986 with Nova Scotia to facilitate the orderly development of petroleum resources in Canada's Atlantic offshore area.

The *Canada-Newfoundland and Labrador Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (the Accord Acts) and the respective mirror provincial legislation are the legal cornerstones for the management of oil and gas activity in the Canada-Newfoundland and Labrador and the Canada-Nova Scotia offshore areas. The Accord Acts established the Canada-Newfoundland and Labrador Offshore Petroleum Board (CNLOPB) and the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) (collectively the Offshore Boards) and made them responsible, on behalf of the federal government and the respective provincial government, for the joint management of petroleum resources in the offshore area.

The federal and provincial governments are responsible for establishing the regime for operational safety and occupational health and safety to be administered by the Offshore Boards.

While operational safety is addressed through regulations promulgated under the Accord Acts, for occupational health and safety there is a division of responsibilities between the provincial occupational health and safety regime and the Accord Acts. There is a general consensus amongst governments that the Accord Acts should be amended to clarify responsibilities and vest sole authority for occupational health and safety in the Accord Acts.

Worker health and safety is currently maintained by a binding obligation whereby the Offshore Boards append draft requirements (a hybrid of the Canada Labour Code and Provincial occupational health and safety regulations) as a condition of approval to work authorizations.

The three governments, in consultation with the Offshore Boards, have now developed the policy basis for the legislative amendments and are committed to proceeding in a timely manner. The underlying principles that have been agreed upon between the governments in this process include:

- Offshore occupational health and safety laws that provide workers with protection at least as good as that which exists for onshore workers;
- Protection of employee rights (to know, to participate, to refuse and to be protected from reprisal);
- Support for an occupational health and safety culture that recognizes the shared responsibilities in the workplace;
- Clear separation of occupational health and safety and production issues;

- Joint management by the federal and provincial governments;
- Comprehensive application to offshore petroleum activities; and
- An effective and efficient regulatory regime.

Within this framework, this document outlines the policy intent of the amendments proposed to the Accord Acts to ground an occupational health and safety regime for the east coast offshore areas in legislation.

Legislation to be Amended

To effect the proposed changes, amendments to the following statutes will be required:

- *Canada-Newfoundland Atlantic Accord Implementation Act*
- *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act Newfoundland and Labrador Act*
- *Canada-Nova Scotia Offshore Petroleum Resources Accord (Canada) Implementation Act*
- *Canada-Nova Scotia Offshore Petroleum Resources Accord (Nova Scotia) Implementation Act*

The proposed revisions will implement in law, an occupational health and safety regime in the offshore and make any necessary consequential amendments in accordance with the following details.

Governance

Following consultations in 2002/2003, Governments embarked on the development of a new governance model for the offshore oil and gas industry. Under this model, Provincial Ministers responsible for occupational health and safety will assume responsibility for oversight for this new Part of the Accord Acts. The Federal Minister of Natural Resources will, in consultation with the Federal Minister of Labour, maintain responsibility for the OHS regime at the federal level.

- Provincial and Federal Ministers would jointly designate the occupational health and safety officers who would verify compliance with the occupational health and safety Part.
- Provincial and Federal Ministers have the ability to issue joint directives to the Offshore Board relating to occupational health and safety.
- Regulations would be jointly developed and federally both the Minister of Natural Resources and the Minister of Labour would seek Governor in Council approval for regulations. Provincially, the Minister responsible for occupational health and safety carries this responsibility.
- The new governance model also clarifies that the Provincial Minister or the Minister of Natural Resources could call an audit or inquiry into activities of the offshore board.
- An additional governance provision is the establishment of a tripartite advisory council to advise the Board and Ministers on matters relating to occupational health and safety and the administration of this Part of the Accord Act.

PROVISIONS OF THE OHS AMENDMENTS

A. GENERAL MATTERS

1 PURPOSE

This section outlines the purpose of the Part is to prevent accidents and injuries arising from the course of employment in the offshore area first by allocating responsibility among the various participants in the offshore industry and then by setting a hierarchy of preventative measures which includes: eliminating hazards, reducing the risk of hazards, protective measures against hazards.

2 APPLICATION

This Part applies to all activity related to the exploration and production of petroleum at a workplace situated in the offshore area.

Passengers in transit are covered explicitly, i.e. employees and other passengers immediately before and while they are being transported from the last point of embarkation on shore and a workplace in the offshore area or on the return voyage, as well as between workplaces in the offshore area.

The amendments specify that certain provincial social legislation applies in respect of employment on a marine installation or structure (e.g. labour standards), while the *Canada Labour Code* continues to apply with respect to employment on vessels excluded from the definition of marine installation or structure.

3 ALLOCATION OF RESPONSIBILITY

The allocation of responsibility specifies that the operator has overall responsibility for ensuring the health and safety of all persons engaged in carrying out work related to the operator's authorization.

It also identifies all of the various parties who have individual and shared responsibilities related to ensuring health and safety in the offshore and stipulates that these parties are responsible for cooperating and coordinating their efforts regarding health and safety.

The provision specifies that the imposition of specific obligations under this Part shall not limit the general obligations under this Part or the regulations.

4 INTERPRETATION

Key definitions which are important for the proposed new occupational health and safety section of the Accord Acts.

Employee – an individual who, in return for monetary compensation, performs work or services for an employer in respect of an authorized work or activity.

Employer – a person who employs, or contracts for the services of any individual, in respect of an authorized work or activity, if that person has the power to exercise direction and control over the individual's work at the workplace.

Operator – means a person who holds an authorization.

Health and safety officer – collective name used to refer to occupational health and safety officer and special officer.

Occupational health and safety officer – offshore board employee or person recommended by the Board to be designated for the purposes of verifying compliance with the occupational health and safety Part of the Accord Acts

Special officer – a non-Board employee designated to carry out duties under this Part under certain limited conditions.

Passenger craft – any aircraft or vessel used for the purpose of transporting employees to a workplace or between workplaces while and immediately before it is transporting employees.

Provincial Minister – the minister of the government of the Province who is responsible for occupational health and safety.

Provider of Service – any person or partnership who for commercial gain

a) provides services related to the placement with an operator or employer of individuals who, in return for monetary compensation, perform work or services for the operator or employer.

b) provides service that affect or could affect the health or safety of employees or other persons at a workplace, including an engineer, architect, a certifying authority or any person who provides information, advice or a certificate or affixes a professional seal or stamp.

Workplace – in relation to a work or activity for which an authorization has been issued means:

- a) any marine installation or structure where an employee is employed.
- b) any work-boat operating from a marine installation or structure that is used by an employee to perform routine maintenance or repair work.
- c) any dive site from which a diving operation is conducted.
- d) any underwater area where a diving operation is conducted by an employee.

Marine Installation or Structure –

(a) includes

- (i) any ship, including any ship used for construction, production, diving, geotechnical or seismic work
- (ii) any offshore drilling unit, including a mobile offshore drilling unit,
- (iii) any production platform, subsea installation, pipeline as defined in section 138, pumping station, living accommodation, storage structure or loading or landing platform, and
- (iv) any other work, or work within a class of works, prescribed under the provision allowing the Federal and Provincial Minister to modify the definition via regulation.

(b) does not include

- (i) any vessel, including any supply vessel, standby vessel, shuttle tanker or seismic chase vessel, that provides any supply or support services to a ship, installation, structure, work or anything else described in paragraph (a), unless the vessel is within a class of vessels that is prescribed by the Federal and Provincial Minister as part of the definition of marine installation or structure by regulation

workplace committee – an occupational health and safety committee made up of management and worker representatives.

special committee – an occupational health and safety committee created by order of the Chief Safety Officer to examine a specific issue or for a specific task.

Occupational health and safety coordinator – title accorded to a person selected by the operator to carry out certain functions of a workplace committee on a temporary workplace.

5 HER MAJESTY

Specifies that this Part of the Accord Act is binding on Her Majesty in right of Canada and respectively Her Majesty in right of the Province.

B. DUTIES AND RESPONSIBILITIES

OPERATORS

6 GENERAL DUTY

Generally, every operator must take all reasonable measures to ensure the health and safety of employees and any other person at the workplace or any passengers being transported to or from the workplace.

7 SPECIFIC DUTIES OF OPERATORS

Specifically, operators have duties related to the workplace:

- coordination: ensuring the coordination of all work and activities related to an authorization, particularly so that work and activities are conducted to minimize exposure to hazards, including hazardous materials;
- compliance: complying with the health and safety management system and ensuring that all other parties which have responsibilities also comply with that system, as well as ensuring that all parties under the operator's control comply with the provisions of the Part and the regulations;
- information: ensuring that information necessary for health and safety at the workplace is communicated, including that employees are made aware of known or foreseeable hazards;
- installations, etc.: ensuring that installations, facilities, equipment and materials are properly installed and safe;
- personal protective equipment and training: ensuring that all employees and other persons at the workplace are provided with and trained to use necessary facilities and personal protective equipment;
- authorizations: complying with the requirements of the authorization related to health and safety, rectifying instances of failure to comply, ensuring that all other parties who have responsibilities comply with the requirements of the authorization and that failures to comply are rectified, informing interest owners of the requirements of the authorization and any failures to comply with those requirements;
- committees: ensuring that committees receive support and training necessary to carry out their functions and to cooperate with those committees; ensuring that part of the workplace is examined visually once a month and that the entire workplace is examined once a year with the workplace committee participating in those examinations, and records being kept of examinations and any corrective actions taken as a result of the examination; and
- cooperation: cooperating with persons carrying out duties or functions under this Part that are related to occupational health and safety.

8 DUTIES OF OPERATORS RELATED TO TRANSPORTATION

Operators have specific duties to ensure that, each time before being transported, all employees and any other passengers receive any information or instruction necessary for their health and safety and are provided with contact information for the purposes of exercising a refusal.

Operators must also ensure that all passengers are provided with any training as well as equipment, clothing, devices or materials necessary for their health and safety and that they are provided any information or training necessary for their proper use.

9 OCCUPATIONAL HEALTH AND SAFETY POLICY

Each operator must develop a written occupational health and safety policy, in consultation with each employer at the workplace and the workplace committee, which contains the commitments of the operator to health and safety and sets out the responsibilities of the various employers related to health and safety. The operator must review it every three years.

10 HEALTH AND SAFETY MANAGEMENT SYSTEM

The operator will be responsible, in consultation with the workplace committee, for the development and implementation of an occupational health and safety management system that fosters a culture of workplace safety. The health and safety management system is for the purposes of implementing the operator's health and safety policy and ensuring compliance with this Part. It must set out:

- how the operator will identify, assess and manage risks to the safety of employees;
- the roles of persons responsible for implementing the health and safety management system, and the allocation of resources;
- the procedures for carrying out work and responding to emergencies, as well as the procedures for dealing with failures to comply with the system and enquiries into accidents, and auditing the effectiveness of the system.

11 CODES OF PRACTICE

The Chief Safety Officer may require the operator or any employer to develop or adopt a code of practice.

12 NOTIFICATION OF ACCIDENTS

Every operator must inform the Chief Safety Officer of any accident, incident, occupational disease or other hazardous occurrence as soon as it becomes known to the operator. The operator must also enquire into the accident etc. and keep records of its enquiry.

Each year the operator must submit a written report setting out data on all accidents, incidents etc as well as the number of disabling injuries and minor injuries during the previous calendar year. This report is to be available to the Chief Safety Officer and the workplace committee.

EMPLOYERS, SUPERVISORS AND EMPLOYEES

13 DUTIES OF EMPLOYERS

The duties of employers are drawn from those of operators, with appropriate modifications.

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

Specifically, employers have duties related to:

- coordination: ensuring the coordination of their work and activities with those of the operator and other employers;
- compliance: ensuring that the health and safety management system is complied with, carrying out any responsibilities assigned by the system, and ensuring that their employees comply with the provisions of the Part and the regulations;
- communication: determining the impact of work or activities on occupational health and safety and ensuring that any other employer's affected are provided adequate information and communicating information necessary for health and safety of employees or other persons at the workplace
- information: ensuring that supervisors and employees are made aware of known or foreseeable hazards, ensuring that work and activities are conducted to minimize exposure to hazards;
- equipment and training: ensuring that all employees are provided with and trained to use necessary facilities and personal protective equipment and provided necessary training;
- authorizations: ensuring that the requirements of the authorization related to health and safety are complied with, recording all instances of non-compliance and reporting those to the operator;
- equipment and materials: ensuring that all equipment, material, machines etc. are properly installed and maintained;
- special committees: ensuring that special committees receive support and training necessary to carry out their functions and to cooperate with those committees, ensuring that part of the workplace under their control is examined visually once a month and that the entire workplace

is examined once a year with the workplace committee participating in those examinations; and

- cooperation: cooperating with persons carrying out duties or functions under this Part that are related to occupational health and safety.

14 OCCUPATIONAL HEALTH AND SAFETY PROGRAM

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

The health and safety program will set out:

- how the employer will identify, assess and manage risks to the safety of employees;
- the roles and accountabilities of persons responsible for implementing the health and safety policy;
- the training and supervision required to ensure health and safety in the workplace;
- the establishment and operation of special committees;
- the preparation of written procedures; the procedures for dealing with failures to comply with the system, procedures for enquiries into accidents and the procedures for auditing the effectiveness of the system.

15 HAZARDOUS MATERIALS

While the operator has a duty to ensure overall coordination of the handling and storage of hazardous materials, the employer has specific duties regarding hazardous materials. For every workplace controlled by an employer, that employer must ensure that:

- concentrations of hazardous materials meet prescribed standards;
- all hazardous materials are handled in the prescribed manner;
- all hazardous materials are identified in the prescribed manner with additional necessary information subject to the *Hazardous Materials Information Review Act* made available to employees;
- it enquires into instances of exposure to hazardous materials and maintains records of exposures to hazardous substances.

An employer has a duty to provide, as soon as practicable after an exposure to hazardous materials has occurred, any information that may assist a medical professional in making a diagnosis or providing medical treatment. A medical professional receiving such information must keep it confidential.

16 DUTIES OF SUPERVISORS

Generally, every supervisor must take all reasonable measures to ensure the health and safety of employees and other persons under their supervision.

Specifically every supervisor must:

- ensure that all employees comply with the provisions of the Part and the regulations;
- inform their employer of known or foreseeable hazards and, provide employees with written instructions on procedures or measures to be taken for the protection of health and safety; and
- report any failure to comply with the provisions of the Act or the regulations to their employer.

17 DUTIES OF EMPLOYEES

Generally, every employee must take all reasonable measures to protect their own health and safety at the workplace or on a passenger craft.

Specifically every employee must:

- cooperate with their employer, the operator and other employees to protect health and safety;
- properly use or wear required or provided personal protective equipment and take all reasonable measures to ensure that other employees properly use or wear personal protective equipment;
- cooperate with committees and cooperate with any person who performs duties under this Part or the authorization;
- follow instructions for the purposes of ensuring occupational health and safety; and
- report to their employer any thing or circumstance that could be hazardous in the workplace.

Every employee must, immediately before and during transportation on a passenger craft:

- cooperate with the operator, employer and any person operating the craft to protect the health and safety of passengers on that craft;
- use or wear all personal protective equipment or devices required by regulation, the operator or any person operating the passenger craft.

18 LIMITATION OF LIABILITY

No employee who comes to the assistance of another person or carries out emergency measures is personally liable for any injury or damage that may result unless the injury is caused by wilful misconduct or gross negligence.

No member of a committee or an occupational health and safety coordinator is personally liable for anything done or omitted to be done by the person in good faith in serving as a member of a workplace committee or as the occupational health and safety coordinator (see section 27).

SUPPLIERS AND PROVIDERS OF SERVICE

19 DUTIES OF SUPPLIERS

Generally, every supplier must take all reasonable measures to ensure that any thing they supply is in a safe condition.

Specifically every supplier must:

- ensure that any thing they supply complies with the regulations; and
- if there is an obligation to maintain the thing in safe condition that they comply with that obligation.

20 DUTIES OF PROVIDERS OF SERVICE

Generally, every provider of service must take all reasonable measures to ensure that no person at a workplace is endangered as a result of the provision of services.

Specifically every provider of service must:

- ensure, that in respect of any services that they provide related to the placement of individuals, that those individuals have all the required qualifications and certifications;
- ensure that any information they provide in connection with the provision of services is accurate; and
- ensure, that to the extent practicable, that any person who is likely to rely on their advice, certificate, stamp etc. will not be in contravention of this Part as result of that reliance.

OWNERS, INTEREST OWNERS & CORPORATE OFFICIALS

21 DUTIES OF OWNERS

Generally, owners must take all reasonable measures to ensure that any workplace in which they have right, title or interest is delivered and maintained so as to ensure the health and safety of any person at that workplace.

Owners also must inform the operator of any known or foreseeable hazard that could assist the operator in reducing the risks posed by the hazard

and to assess whether the provisions of the Part, the regulations and any requirements of the authorization are being complied with.

22 DUTIES OF INTEREST HOLDERS

Interest holders must take all reasonable measures to ensure that the operator complies with the provisions of the Part, the regulations, and any requirements of the authorization or those undertaken in the declaration.

23 DUTIES OF DIRECTORS AND CORPORATE OFFICIALS

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

C. RIGHT TO KNOW AND PARTICIPATE

24 COMMUNICATION OF INFORMATION TO EMPLOYEES

Mandatory communication of information relevant to occupational health and safety will be required of both operators and employers. Some information will be proactively posted, whereas other information must be made available upon request.

Operators must post:

- the occupational health and safety policy;
- contact information for the reporting of health and safety concerns to the Offshore Board; and
- the names of members of committees and their most recent minutes.

The operator is also required to make the following information available upon request:

- a document describing the occupational health and safety management system;
- a copy of this Part and the regulations;
- any material incorporated by reference into this Part;
- any code of practice required by the Chief Safety Officer; and
- any information that would enable employees to become acquainted with their rights and responsibilities under this Part.

Employers must make the following information available upon request:

- the names and contact information of special committee members;
- the minutes of special committee meetings;
- a copy of the employer's occupational health and safety program;

- any code of practice required by the Chief Safety Officer; and
- a copy of an order made by a health and safety officer.

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

25 PROVISION OF INFORMATION TO COMMITTEES

Operators or employers who prepare or commission reports regarding examinations, monitoring, or tests for the purposes of occupational health and safety must immediately upon completion notify committees of the report's existence and if requested provide a copy.

Where the report contains proprietary information or confidential personal information the report must still be provided in an edited form. Employees are also entitled to see this edited version of such reports.

Operators and employers who receive requests for information other than reports have 21 days to respond to the committee in writing.

26 WORKPLACE COMMITTEE

The operator is required to establish one workplace health and safety committee for each workplace they control, with an exception for temporary workplaces where a coordinator must be appointed (see Section 27).

The committee's membership is to be made up of half management and half employee representatives. The committee will determine its own rules of procedures. Employees serving on a committee must be provided time off to conduct committee business and to receive training related to committee membership.

The workplace committee must:

- consider all complaints with respect to occupational health and safety;
- participate in visual examinations of the workplace with the operator or employer;
- maintain minutes of their meetings and records in the form and manner approved by the Chief Safety Officer; and
- perform any other duties that are assigned by the Chief Safety Officer.

In addition, workplace committees may also:

- seek to identify those things or circumstances in the workplace that could endanger the health or safety of employees and advise on procedures to deal with those things or circumstances;

- advise the operator or employer on the development of occupational health and safety policies, systems or programs as well as the provision of personal protective equipment; and
- make recommendations for the improvement of occupational health and safety.

27 SPECIAL COMMITTEES

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

28 WORKPLACE MONITORING

The workplace committee may choose an employee to act as an observer of any workplace monitoring program. This would include observing the set up of or any change to systems for monitoring conditions at the workplace.

29 OCCUPATIONAL HEALTH AND SAFETY COORDINATOR for TEMPORARY WORKSITES

Where an authorization is for six months or less, the operator shall designate an employee to serve as the occupational health and safety coordinator for that workplace. The operator must ensure that the occupational health and safety coordinator receives any prescribed training in health and safety and is informed of their responsibilities.

The occupational health and safety coordinator has duties similar to workplace committees, that is he or she must:

- consider all complaints with respect to occupational health and safety;
- assist in carrying out employer enquiries into exposure to hazardous materials;
- maintain records in the form and manner approved by the Chief Safety Officer; and
- perform any other duties assigned by the Chief Safety Officer.

Also, the occupational health and safety coordinator may make recommendations for the improvement of occupational health and safety.

D. REPORTING CONCERNS AND REFUSAL PROCESSES

30 REPORTING CONCERNS

An employee who has reasonable cause to believe that there has been a contravention of the Part or that there is likely to be an accident or incident must bring the issue to the attention of his or her supervisor. The supervisor and employer must try to resolve it, if it is not remedied to the employee's satisfaction; they have the right to contact their employer and the health and safety officer.

31 RIGHT TO REFUSE WORK OR TRANSPORT

Refusal to work: An employee may refuse to perform an activity if the employee has reasonable cause to believe the performance of the activity constitutes a danger to himself or another person. However, an employee may not refuse to work if the refusal would put the life, health or safety of another person directly in danger or the danger is inherent to the work of the employee.

The employee must first inform their supervisor of the refusal. If the matter cannot be resolved satisfactorily between the employee and supervisor, the refusal to work will be examined by the employer, the workplace committee and a health and safety officer. Decisions by a health and safety officer regarding the existence of danger are subject to review by the Chief Safety Officer, with the right of appeal to an independent board.

Refusal to be transported: An employee may refuse to be transported on a passenger craft if the employee has reasonable cause to believe that being transported constitutes a danger to the employee. A transport refusal must immediately be reported to the operator. The operator must then inform all the other passengers that a refusal has been lodged before any other passenger can be transported.

If the matter cannot be remedied to the employee's satisfaction by the operator, then every refusal to be transported will be examined by the operator and a health and safety officer. The workplace committee may make recommendations that it considers appropriate.

Protections: For both refusal to work and refusal to be transported, there is pay protection, protection against reprisals, reassignment to alternate work with appropriated protections.

32 NURSING AND PREGNANT EMPLOYEES

Pregnant and nursing employees may temporarily withdraw from work if they believe that there may be a danger to themselves or to their infant. Their employer may assign them to other work, if there is no other work assigned, during that temporary period their pay and benefits will be protected as if they were working.

An employee who is pregnant or nursing may request that her employer modify her job from the beginning of the pregnancy to the end of the 24th week following the birth.

33 MONETARY COMPLAINTS

If an employee feels they have not been paid wages or benefits as a result of a work refusal process, the temporary withdrawal from work of a nursing or pregnant woman, committee duties, workplace monitoring or attending a hearing has the right to file a complaint.

The complaint process is the same as that for the reprisal process (see section 34)

34 REPRISALS

Reprisal actions by a person or organization against an employee are prohibited. The reprisal process closely mirrors the onshore model in each province.

Specifically no employee shall be penalized for:

- seeking to establish or acting as a member of a committee;
- acting as an observer of a workplace monitoring program;
- making a complaint;
- exercising their right to refuse work or to be transported;
- seeking information to which employees are entitled;
- testifying in any proceeding or inquiry established under this Part; and
- giving information to anyone performing duties or functions related to this Act.

An organization may take disciplinary action against an employee if it can be demonstrated that the employee has wilfully abused his or her rights.

In Nova Scotia, upon completing an examination of a reprisal complaint, an occupational health and safety officer may:

- order the reinstatement of an employee;
- the payment of wages and benefits;
- the removal of any official reprimand from the records; and

- the reinstatement of an employee to a union.

In Newfoundland and Labrador all reprisal complaints will be made to the Labour Relations Board for investigation and resolution and the Labour Relations Board will have the authority to make the orders noted above.

E. ACTIVITIES OF THE BOARD AND CHIEF SAFETY OFFICER

35 ACTIVITIES OF THE BOARD

Research and Programs: The Board, alone, or in partnership with the Government of Canada, a provincial government, a foreign government or with any organization that carries out similar functions may:

- undertake research into the causes and means of preventing occupational injury and illness;
- commission and publish studies on occupational health and safety;
- compile and disseminate information regarding occupational health and safety;
- undertake programs to prevent or reduce injuries;
- undertake programs of non-invasive medical monitoring or require any employer to do so.

36 AUTHORIZATION

When an application for an authorization is made, the Chief Safety Officer must consider the potential impact of the work on the health and safety of the employees and make written recommendations to the Board. The Board may add additional requirements to an authorization related to occupational health and safety.

37 SUBSTITUTIONS BY CSO

The Chief Safety Officer may permit the use of specified equipment, methods, measures or standards in lieu of those required by regulation if he or she is satisfied that the protection of worker's health and safety would not be diminished. The CSO may specify conditions and the time period for the substitutions.

The legislation includes the procedures that must be followed to apply to the Chief Safety Officer for a substitution, including who must be informed that a substitution has been requested and how long they have to provide views, as well as the ability of the CSO to reconsider the matter.

F. VERIFICATION & COMPLIANCE¹

38 OCCUPATIONAL HEALTH AND SAFETY OFFICERS

Officers of the Offshore Boards who will be responsible for verifying compliance with this Part will be called occupational health and safety officers. They will be designated by the Provincial Minister responsible for occupational health and safety and then in turn by the Federal Minister of Natural Resources where they are satisfied that the proposed candidate is qualified to perform the duties of an occupational health and safety officer. The provisions also allow for the Board to recommend a non-Board employee to the Provincial Minister for such a designation.

39 SPECIAL SAFETY OFFICERS

The Provincial Minister may appoint a special officer, who is not an Offshore Board employee in circumstances where the Provincial Minister is satisfied that the existing provisions of the Accords Acts are not sufficient to address the issue and where there is a serious threat to the health or safety of offshore workers in the near term. The Federal Minister of Natural Resources must also be satisfied of these conditions and will consult with the federal Minister of Labour before designating the officer.

40 GENERAL COMPLIANCE POWERS

Health and safety officers may issue orders when in a place. In addition, due to the nature of the offshore oil and gas industry they may also issue certain orders remotely.

Health and safety officers who are verifying compliance with the Part will have a series of powers. These powers may be exercised at any time on any of the following persons:

- a person in charge of any place used for work or activity to which the Part applies;
- a person in charge of a place in which the officer has reasonable grounds to believe that there is anything to which the Part applies; or
- an employee, supervisor, interest holder; owner, provider of service or supplier.

¹ ***A Note on certain terminology**

During the drafting of this bill, federal drafting conventions changed and words like “enforcement”, “inspection” and “investigation” will no longer appear in new federal legislation. Terms like “verifying compliance”, “examine”, “examination”, or “enquire into” will now be used.

Powers on Entry

The following are the types of orders a health and safety officer may make upon entry to a place or any passenger craft:

- carry out examinations, tests or monitoring or otherwise enquire into any matter relating to occupational health and safety;
- take samples and dispose of those samples;
- take photographs and measurements, make recordings and drawings and use any systems in the place for capturing images;
- use any computer system to examine data;
- prepare a document based on data;
- use any copying equipment to make copies;
- remove anything for examination or testing; be accompanied or assisted while in the place by any person the officer considers necessary;
- meet in private with any person, with that person's agreement; and
- use any of the general order-making powers.

A health and safety officer who removes or orders anything removed will return it to the person from whom it was removed if so requested unless it is required for the purpose of prosecution under the Part.

General Powers

The following are the types of general orders a health and safety officer may make:

- to carry out examinations, tests or monitoring or to otherwise enquire into any matter relating to occupational health and safety;
- to take samples;
- to take photographs, measurements, recordings and drawings;
- to accompany or assist the officer while the officer is in a place;
- to produce a document or other thing or to prepare a document based on data;
- an order to provide information or to prepare and produce a document based on information;
- to ensure that all or part of a place or anything in that place not be disturbed for a reasonable period pending an enquiry;
- to order anything be removed from a place and send to the officer for examination or testing;
- to facilitate communications between the officer and any person.

Where an officer is verifying compliance at a place, a person representing the employer and an employee representative of the workplace committee shall be given an opportunity to accompany the officer during his or her examination of the workplace.

41 PROVISION OF REPORTS

A health and safety officer has a duty to provide copies of all written reports on occupational health and safety examinations, monitoring or testing carried out by the officer to the operator and the employer.

42 ENTRY INTO LIVING QUARTERS

A health and safety officer may normally not enter any living quarters without the prior consent of the occupant of the living quarters. However, they may enter under the authority of a warrant or to ensure that prescribed lifesaving equipment is readily available and that the quarters are in a condition sufficient to ensure the health and safety of employees.

A justice may issue a warrant authorizing the entry into living quarters where the justice is satisfied that: entry into living quarters is necessary to verify compliance with the Part; and entry to living quarters has been refused or there is reasonable grounds to believe it would be refused.

A health and safety officer who executes a warrant to enter living quarters shall not use force unless the use of force has been expressly authorized in the warrant.

G. ENFORCEMENT POWERS

44 TELEWARRANTS

Given the realities of the offshore industry, warrants under this Part may be issued by telephone or other means of telecommunication on application by the health and safety officer by one of those means.

45 ASSISTANCE TO OFFICERS

Every person at a place entered by a health and safety officer in order to verify compliance must give the officer all reasonable assistance.

46 TRANSPORTATION AND ACCOMMODATION

In order to facilitate the verification of compliance of the Part by health and safety officers, the operator must provide the officer and any person accompanying them suitable return transportation and suitable accommodation at the workplace.

47 WARRANT PROVISIONS

Provisions have been included which establish a warrant scheme where needed for enforcement activities. (It should also be noted that despite the existence of an independent warrant scheme nothing precludes the use of a section 487 warrant under the *Criminal Code*.)

Health and safety officers are provided with an authority to exercise the powers described without a warrant if the conditions for a warrant exist but by reason of exigent circumstances it would not be practicable to obtain.

48 DISPOSAL OF SEIZED ITEMS

The disposition of forfeited items will be pursuant to the *Criminal Code of Canada*.

49 NON-DISTURBANCE OF ACCIDENT SCENE

In cases of an accident at a workplace or on a passenger craft that results in serious injury or death, no person may disturb the scene unless authorized by a health and safety officer. However, the preceding does not apply if the person is attending to injured persons, trying to prevent further injury or trying to prevent damage or loss of property.

50 PROVIDING INFORMATION

No one is to prevent an employee from providing information to a health and safety officer who is carrying out their duties or functions.

51 PROHIBITION ON PUBLISHING INFORMATION

No person may publish or disclose the results of activities carried out by a health and safety officer verifying compliance with this Part or under a warrant issued under this Part.

52 PROTECTION OF IDENTITY

The identity of anyone who provided information related to the administration and enforcement of this Part must not be divulged except under terms and conditions provided by a court or tribunal.

53 PROTECTION OF PROPRIETARY INFORMATION

Information related to commercially confidential information, trade secrets etc. that is obtained during visits to verify compliance must not be disclosed by the health and safety officer conducting the examination or anyone accompanying a health and safety officer for the purposes of verifying compliance.

54 DISCLOSURE OF INFORMATION BETWEEN AGENCIES

Despite previous prohibitions on disclosing information, the Chief Safety Officer may disclose information with respect to occupational health and safety to government officials, government agencies and foreign governments where he or she is of the opinion that the disclosure is in the interest of health and safety. The Chief Safety Officer may set the conditions of further disclosure on the information.

Officials of the federal government, its agencies and the provincial government and its agencies may also disclose information to the Chief Safety Officer if it is deemed to be in the interest of health and safety.

Information or documentation disclosed under these provisions may not be further disclosed without written consent of the person to whom it relates or subject to conditions set by the Chief Safety Officer.

55 ACCESS TO INFORMATION BY GOVERNMENTS

The Federal Minister and the Provincial Minister are entitled to any information or documentation related to occupational health and safety under control of the Offshore Board upon request. Such a disclosure does not require the consent of the person to whom the information or document relates.

The Ministers may not further disclose the information without the written consent of the person to whom the information or document relates.

56 DISCLOSURE OF INFORMATION IN THE PUBLIC INTEREST

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

57 GIVING EVIDENCE IN PROCEEDINGS

No health and safety officer or any person who has assisted an officer in carrying out duties under this Part may be required to give testimony in civil or administrative proceedings outside those undertaken under this Part with regard to information obtained in carrying out those duties and functions.

58 PROTECTION FROM PROCEEDINGS

A health and safety officer or anyone working under their authority cannot be named in an action or other proceedings for any act or omission committed in good faith while conducting their duties and functions.

59 ORDERS AND DECISIONS

Health and safety officers may issue orders and decisions related to danger whether they are physically present or not in the place to which the order refers. The recipient of an order must provide the officer with a notice of compliance within a time specified by the officer. Such a notice must describe how the person has complied with the order.

Contravention Orders: A health and safety officer who believes that a provision of this Part or the regulations is being contravened or has recently been contravened may order the person to terminate the contravention within a specified time period and/or to take specified steps to ensure the contravention does not re-occur.

Danger Orders: Where a health and safety officer believes that the operation of any thing, the performance of a specific activity or the condition of a workplace or passenger craft constitutes a danger, the officer may order any person to take measures to correct the hazard or condition within a specified time or protect any person from the danger.

Where the officer is of the opinion that the danger cannot otherwise be corrected immediately, the officer may order that the thing, activity or place not be used until the order is complied with. In such cases a copy of the order is to be affixed to or near the thing, place or site of the activity and the order may not be removed until the officer authorizes.

Priority of Orders: In the event of inconsistency between orders of different officers, an order of an occupational health and safety officer prevails over an order made by an operational safety officer, a conservation officer or the Chief Conservation Officer where any inconsistency exists between the orders.

Similarly, an order of a special officer prevails over an order made by an occupational health and safety officer, the Chief Safety Officer, an operational safety officer, a conservation officer or the Chief Conservation Officer where any inconsistency exists between the orders.

61 POSTING OF DOCUMENTS RELATED TO ORDERS

As part of the internal communication system, every operator or employer must as soon as practicable after receiving a copy of an order, a notice of compliance, an application for review, a notice of appeal, a decision on a review or an appeal, or an order on an appeal post it in a prominent place in the workplace and provide a copy to the workplace committee.

Where such a document contains proprietary information, the person posting has an obligation to edit the document to protect that information and to obtain the written approval of a health and safety officer for the edits.

All documents must be posted for the time necessary for employees to inform themselves of the content or for at least 30 days. If this is not possible, a copy of the information must be provided to each employee.

62 REVIEW OF ORDERS AND DECISIONS

Work refusal decisions and substantive orders, with some exceptions, must be reviewed by the Chief Safety Officer before being appealed to the external body. An application for review, however, will not stay the order unless a stay is specifically granted by the Chief Safety Officer. For all decisions where the statute does not provide an explicit appeal route, the normal judicial remedy is available (to a provincial court). For example, orders made while an officer is verifying compliance.

What goes to review: Any decision of an occupational health and safety officer related to a refusal or any order of an occupational health safety officer may be appealed **except** the following which go directly to external appeal:

- any of the above orders or decisions made by the Chief Safety Officer in his capacity as an occupational health and safety officer;
- in Nova Scotia, decisions or orders related to monetary or reprisal complaints (In Newfoundland and Labrador, these are referred directly to the Labour Relations Board.).

Note also that these same decisions or orders of a special officer go directly to appeal.

Who may seek review: Any person, or a union representing them, who is directly affected by a decision of an occupational health and safety officer related to a work refusal or by an order of an occupational health safety officer.

Time Period: The review must be filed within 45 days of the issuance of the order or decision.

Chief Safety Officer Process: Upon receipt of an application for a review, the Chief Safety Officer must conduct their review without delay; in doing so they may consider new information and may decide to confirm, vary or revoke the original decision or order.

Chief Safety Officer Decision: The Chief Safety Officer must provide their decision along with reasons in writing to the operator, the applicant and any other employer, provider of service, employee or union concerned. A party that is unhappy with the decision may appeal it.

63 APPEALS

Appeals follow the provincial schemes. Thus, in Newfoundland and Labrador the appeal is to the Labour Relations Board, while in Nova Scotia the appeal is to an appeal panel. Employees who attend an appeal as a party or witness will be paid wages and benefits as if they had worked during that time.

What may be appealed: Any decision that a Chief Safety Officer makes on a review application may be appealed. Additionally, the following orders or decisions go directly to appeal:

- any Chief Safety Officer decision, made in his capacity as an occupational health and safety officer, related to a refusal or any order;
- any order by the Chief Safety Officer that an operator or employer must establish a special committee;
- in Nova Scotia, any health and safety officers' decision or order made in relation to wages and benefits complaints or reprisal complaints;
- any order of a special officer.

Who may appeal: Any person, or a union representing them, who is directly affected by an order or decision specified above.

Time Period: The appeal must be filed within 45 days of the issuance of the order or decision.

Stay: An application for an appeal will not stay the order unless a stay is specifically granted. An exception is for the Nova Scotia appeal of a health and safety officer's order in relation to wages and benefits complaint or reprisal complaint. These are automatically stayed.

Appeals Process: The appeals are conducted in accordance with provincial legislation.

Appeals Decision: The appeal board may uphold, vary or revoke the original decision or order and may make any order that the original decision-maker could have made in relation to that matter.

64 ENFORCEMENT OF MONETARY ORDERS

An order of an occupational health and safety officer in Nova Scotia or of the Labour Relations Board in Newfoundland and Labrador related to wages and benefits or reinstatement in relation to a reprisal investigation will be made an order of the Supreme Court of the Province for the purpose of its enforcement and will be enforced in the same manner as any order of that Court.

In Nova Scotia, the Chief Safety Officer may also request that the Director of Labour Standards of the Province enforce the order.

In Newfoundland and Labrador, the order may be enforced through the Sherriff's Office.

65 OFFENCES

Every person is guilty of an offence who:

- contravenes any provision of this Part;
- makes a false entry or statement;
- destroys, damages or falsifies any report etc. required under this Part;
- fails to comply with the order of a health and safety officer;
- fails to comply with a requirement of the Chief Safety Officer to develop or adopt a code of practice;
- fails to comply with a decision of the Chief Safety Officer related to a review; or
- fails to comply with the decision or order of an appeal panel in Nova Scotia or the Labour Relations Board in Newfoundland and Labrador.

Despite the general offence provisions, a person who contravenes the duty clauses related to recording instances of contravention or non-compliance will not be guilty of an offence and the recording of such instances of non-compliance or contravention will not be used as evidence

in any criminal proceeding other than a prosecution under sections 123, 136 or 137 of the *Criminal Code*.

If a corporation commits an offence under this Part, any person who directed, authorized or participated in the commission of the offence is liable on conviction whether or not the corporation has been prosecuted or convicted.

In a prosecution for an offence under this Part it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not that person has been prosecuted for the offence.

Where an offence under this Part is committed on more than one day or continues for more than one day, it shall be deemed to be a separate offence for each day on which the offence was committed or continued.

In any proceeding under this Part, an information may include more than one offence committed by the same person and all those offences may be tried concurrently.

66 PENALTIES

Every person who is guilty of an offence is liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment not exceeding one year, and on conviction on indictment to a fine not exceeding \$1,000,000 or imprisonment for a term not exceeding five years.

If a person convicted by way of summary proceeding does not pay a fine imposed they will not be imprisoned as a result.

67 CREATIVE SENTENCING

If a person is convicted of an offence under this Part, the court may, in addition to any other punishment that may be imposed, make the following orders:

- prohibit the offender from committing an act or engaging in any activity that may result in a continuation of the offence;
- to take any measure deemed necessary to avoid any harm to health or safety that may result from the act or to remedy any harm that has resulted from it;
- direct the offender to publish the facts related to the case;
- direct, within three years, the offender to provide the Chief Safety Officer any information on the offender's activities that the court deems appropriate;

- direct the offender to pay the Offshore Board a sum of money it considers appropriate to conduct research, education and/or training related to occupational health and safety;
- direct the offender to perform community service; or
- direct the offender to post a bond that the court consider appropriate to ensure compliance with any condition required.

68 RECOVERY OF FINES

If a person is convicted of an offence and does not pay the fine imposed, the prosecutor may enter the amount of the fine and any other related costs in the Supreme Court of the Province. The judgement will be then be enforceable in the same manner as if it were a judgment rendered in that Court in civil proceedings.

69 TIME LIMITS

Proceedings by way of summary conviction may be instituted at any time within but not longer than three years from the date on which the offence occurred. The prosecutor and defendant may choose to waive the time limit.

Proceedings by way of indictment have no time limit.

H. ADVISORY AND MINISTERIAL OVERSIGHT

70 ADVISORY COUNCIL

A provision exists allowing for the creation of an advisory council to be comprised of an equal number of representatives of employees and industry. Also the governments of Canada and the Province are to be members and the Chief Safety Officer is to be an *ex officio* member. Half the members are to be appointed by the Provincial Minister responsible for occupational health and safety and the other half by the Federal Ministers of Natural Resources and Labour jointly. Members are appointed for a term of not more than five years.

The Council is to advise the Offshore Board and the Ministers on the administration of this Part and any other matter respecting occupational health and safety that the Offshore Board or the Ministers refers to it.

Remuneration is to be fixed by the Ministers as well as any reasonable living and travel expenses incurred in the performance of the council functions.

71 AUDITS

The Federal Minister or the Provincial Minister or the Ministers jointly may appoint an auditor to measure and report on the effectiveness of the Board in administering this Part. Any report shall be made to both Ministers and the Board.

The auditor may exercise all the powers of a commissioner under Part I of the *Inquiries Act*.

The Offshore Board must reply to the audit within 60 days of the receipt of the auditor's report. Both Ministers will receive a copy of the Board's reply.

The cost of the audit will be borne by the Minister who calls for the audit and in cases where the audit has been jointly called, the costs will be borne by the Board.

72 INQUIRIES

The Federal Minister or the Provincial Minister or jointly may appoint a person or persons to inquire into and report on matters related to occupational health and safety. The Offshore Board may also initiate an inquiry on its own.

A person appointed by the Federal Minister, by the two Ministers jointly or by the Board will have all the powers of a commissioner under Part I of the *Inquiries Act*.

In a case where the Minister or Ministers call an inquiry into a matter and discover that the Offshore Board has also called an inquiry under section 165 NL or section 170 NS into the same matter the Minister or Ministers may direct the Board to terminate its inquiry and provide all records and evidence collected to the person appointed by the Minister or Ministers.

The cost of the inquiry will be borne by the Minister who calls for the inquiry and in cases where the inquiry has been jointly called, the costs will be borne by the Board.

73 REGULATION-MAKING POWERS

Regulations may be made, including in the following areas:

- define certain terms;
- establishing rules in respect of occupational health and safety policies and programs;

- on entry and exit from marine platforms and occupancy for those structures;
- on work in confined spaces;
- on ergonomic standards;
- on the design, installation and maintenance of equipment and machinery related to marine installations;
- on the establishment of standards for equipment that may be used by employees;
- specifying the persons responsible for ensuring that regulated standards are complied with;
- on standards related to levels or limits for ventilation, lighting, temperature, humidity, sound, vibration and radiation;
- on the establishment of fire safety and emergency measures;
- on sanitary and personal facilities and first aid and health services;
- on protection against violence in the workplace;
- on the keeping of records;
- on the production and transmission of documents;
- on the sending and issuance of documents in electronic form
- on the use of the Chief Safety Officer's power of substitution;
- on the operation of the Advisory Council;

The regulation making power also includes a catch-all as there are provisions throughout the text of the Bill relating to things which may be prescribed through regulation.

The regulations may incorporate any material by reference regardless of source and may be fixed at a specific point in time (static) or change as the incorporated material changes (ambulatory).

H. TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

74 TRANSITIONAL PROVISIONS

The *Oil and Gas Occupational Health and Safety Regulations* made under the *Canada Labour Code* apply until such time as regulations are promulgated under this Part.

Where provisions of the *Oil and Gas Health and Safety Regulations* do not specify who is bound by an obligation, the obligation is to be binding on the employer and another provision stipulates that the operator has a duty to ensure the employer complies with its responsibility.

The Chief Safety Officer has a power to permit the use of specified equipment, methods, measures or standards in lieu of those required by the *Oil and Gas Health and Safety Regulations* similar to the substitution power included in the Part.

The provision also confirms that for the purpose of the section a list of terms defined in the Part maintain the same meaning in the transitional period.

Some provisions related to occupational health and safety found in the Part III regulations will also apply during the transitional period or until such time as regulations are promulgated under the occupational health and safety Part.

75 COMING INTO FORCE

The amendments to the Accord Acts and certain consequential amendments come into force on a date to be set by order of the Governor in Council.

76 CONSEQUENTIAL AMENDMENTS TO OTHER PARTS OF THE ACT

- Revise the name of the *Canada-Newfoundland Atlantic Accord Implementation Act* to include Labrador. This change will also be included as a consequential amendments to other Acts.
- The Offshore Boards must appoint an audit and evaluation committee.
- A specific reference to occupational health and safety has been included in the requirements for the Offshore Board's annual report.
- A joint directive power for the federal Minister of Natural Resources and the Provincial Minister responsible for OHS has been created.
- Eliminate the current ability of the Offshore Boards to designate the same person as the Chief Safety Officer, the Chief Conservation Officer and the Chief Executive Officer.
- For clarity renaming safety officers as operational safety officers who will continue to enforce Part III of the Accord Acts.
- Clarify the situations where provincial social legislation applies and specify that in any conflict of jurisdiction or application the Accord Act prevails.
- Clarifies that an offence includes a violation of an order of an Offshore Installation Manager only when that official is acting in a prescribed emergency situation.

77 CONSEQUENTIAL AMENDMENTS TO OTHER FEDERAL ACTS

The following pieces of legislation will be amended to reflect the new name of the *Canada-Newfoundland Atlantic Accord Implementation Act*.

- The *Access to Information Act*;
- The *Canada Oil and Gas Operations Act*;
- The *Canada Revenue Agency Act*;

- The *Canada Environmental Assessment Act*;
- The *Excise Tax Act*;
- The *Federal-Provincial Fiscal Arrangements Act*;
- The *Hibernia Development Project Act*;
- The *Income Tax Act*; and
- The *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act*

Schedule II of the Access to Information Act will be amended to include certain provisions of the new Part of the Accord Acts.

*The *Canada Labour Code* will be amended – this will be the subject of a separate consultation process conducted by the Labour Program at Human Resources and Skills Development Canada.

78 CONSEQUENTIAL AMENDMENTS TO PROVINCIAL ACTS

As needed

Comments

Please provide written comments by May 31, 2010 to:

OffshoreOHSComments@nrcan.gc.ca

Or

Offshore OHS Comments
Frontier Lands Management Division
Natural Resources Canada
580 Booth Street
Ottawa, ON K1A 0G1

Questions

Newfoundland and Labrador Contact:

Fred Allen

Email: fredallen@gov.nl.ca

Phone: 709-729-2778

Documents available online:

Department of Government Services <http://www.gs.gov.nl.ca/>

Department of Natural Resources <http://www.nr.gov.nl.ca/>

Nova Scotia Contact:

Kim A Himmelman

Email: HIMMELKA@gov.ns.ca

Phone: 902.424.7131

Documents available online:

Department of Energy <http://gov.ns.ca/energy/>

Department of Labour and Workforce Development <http://gov.ns.ca/lwd/>