

October 12, 2018

letter sent electronically

Mr. Terry Hubbard, Vice President
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Ottawa, Ontario K1A 0H3

Dear Mr. Hubbard:

RE: Draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador

The Canadian Association of Petroleum Producers (CAPP) appreciates the opportunity to provide feedback on the Draft Agreement to Conduct a Regional Assessment (RA) of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador.

As previously stated, CAPP firmly believes that offshore exploration drilling should be excluded from the revised designated projects list. Offshore exploration drilling is a routine activity in the offshore petroleum industry, is short-term (1-4 months in duration) and is subject to specific environmental requirements and mitigations prior to approval by the appropriate Offshore Petroleum Board. In addition, once approved, the relevant Offshore Petroleum Board continues to monitor the activity for compliance. There is a large and well established knowledge base with respect to environmental impacts related to offshore exploration wells, demonstrating minimal environmental impacts from these activities. As such, offshore exploration wells should not be treated the same as major projects and should not require the same level of assessment.

Although CAPP's clear preference is the exclusion of exploration wells from the designated projects list going forward, CAPP supports the RA concept as a means of exclusion/substitution for the requirement for assessment under the *Canadian Environmental Assessment Act* (2012) and under the proposed *Impact Assessment Act*. However, we would caution that the value of the RA process is contingent on how it will be used. Specifically, the RA must be acceptable to all parties involved as an actual substitution to assessment requirements. This would mean that completion of an RA should eliminate or cut back substantially on any project-specific assessment requirements within the RA area. If there are still substantial project-specific assessment requirements then the RA process will only result in duplication and will not improve efficiency, which is a stated objective of governments in the draft agreement. CAPP therefore requests additional information related to how the RA will be used once completed and what, if any, project-specific assessment requirements will be implemented for future exploration programs in the RA area.

CAPP members understand the importance of maintaining public trust and want to ensure that the environmental regulatory review process fosters both public and investor confidence. Our relationships with indigenous groups, local communities, Canadians and other industries are critical to our success. For many

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of our member companies, these communities are not only where they operate, but where they live. As such, we wish to emphasize the importance of building and maintaining regulatory processes that provide certainty and consistency for all parties involved. To achieve certainty and consistency, the RA process must have predictable timelines and a well-defined scope. Proponents should be active participants in assessment preparations so they can leverage the full benefit of assessment as a planning tool and adjust their designs and execution plans as new information becomes available. Proponents also have relevant subject matter expertise and experience that should be utilized in the RA process. In addition, the RA decision making process must be transparent. Without these elements, investment in Canada's resources will likely diminish.

In order to retain investor confidence in Canada's offshore oil and gas industry, a predictable and consistent RA process with a clear regulatory framework is vital to creating growth and fostering innovation in the energy sector. Newfoundland and Labrador's oil and gas operators are committed to working with the Federal government, Canadian Environmental Assessment Agency, the Canada-Newfoundland and Labrador Offshore Petroleum Board, and the Province of Newfoundland and Labrador to deliver an RA in a timely and efficient manner.

Completion of the RA by Fall 2019 is crucial to avoiding multiple, simultaneous review panel assessments for exploration drilling should the *Impact Assessment Act* come into force by then, as it is currently drafted. To realize this deadline, there must be clear expectations set amongst all stakeholders and rights holders.

We appreciate the opportunity to provide comment on this draft agreement. Enclosed (Appendix A) are detailed comments on the Terms of Reference for your consideration. Should you have any questions regarding our submission please do not hesitate to contact me at (709)-724-4200.

Sincerely,



R. Paul Barnes
Director, Atlantic Canada and Arctic

cc:

Minister Catherine McKenna, Environment and Climate Change Canada
Minister Siobhan Coady, Newfoundland and Labrador Department of Natural Resources
Mr. Scott Tessier, Chair and CEO, Canada-Newfoundland and Labrador Offshore Petroleum Board

Appendix A. CAPP Detailed Comments on the Draft Agreement to Conduct a Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador

A.1. Key Areas of Discussion

The CAPP submission is structured on the themes:

- 1) Regional Assessment (RA)
- 2) Proposed governance model
- 3) Clearly defined roles and responsibilities of the lifecycle regulator, governments and agencies
- 4) Timeline certainty
- 5) Meaningful Indigenous engagement
- 6) Public participation
- 7) Specific CAPP recommendations on the Draft Agreement

A.2. Regional Assessment (RA)

The RA process can create significant efficiencies, transparency and clarity for both the operators and the regulatory authorities as it creates opportunities to leverage resources and expertise and establish best practices. This aligns with the Expert Panel Report recommendation that regional environmental assessment should be utilized and leveraged more. Exploration drilling is a good example of the type of activity that is appropriate for a regional assessment model.

When executed properly, RAs are a means to facilitate dialogue and regional land use and offshore planning that identifies Indigenous knowledge, biophysical, economic, and social components as well as reasonably foreseeable cumulative and regional/landscape impacts.

How the RA will be used is a critical component of its effectiveness. The RA must be recognized as a tool for exclusion and/or substitution from CEAA 2012 assessments and future *Impact Assessment Act* requirements.

A.3. Proposed Governance Model

CAPP recommends including a clearly defined purpose and scope as part of the Draft Agreement and we offer the following suggestions.

A.3.1. Purpose

CAPP considers the RA as a tool for exclusion and/or substitution for an assessment under the *Impact Assessment Act* within the Newfoundland Offshore Region. The RA can be a well-defined process that improves the overall efficiency of offshore oil and gas development by contributing to improved decision-making, better quality cumulative assessments, and streamlined regulatory processes.

A.3.2. Scope

An effective RA for offshore oil and gas should include the following basic principles:

- Clearly defined roles and responsibilities of the lifecycle regulator, governments and agencies
 - Technical expertise required, competency, clear timelines and resources
- An evergreen document that continues to be updated with relevant information on science, technology and traditional knowledge
- Timelines for the various phases of the RA including:
 - Public consultation
 - Indigenous engagement
 - Process for addressing comments
 - Completion of the RA
 - Submission of the RA report to the federal and provincial Ministers
 - Decision by the Ministers
- Indigenous Knowledge is a key aspect that the RA needs to address. Indigenous Knowledge studies need to be included that are relevant to offshore activities and include appropriate representation of involved Indigenous groups. Do it once, and do it well.
- Indigenous engagement for an RA must be consistent with the level of thoroughness in operator-led EAs and fulfil the Crown's duty to consult
- Thorough scoping of issues to be considered in the assessment, through meaningful public participation and Indigenous consultation
- Consideration of environmental, social, and economic sustainability objectives for the region
- Use of sound accepted environmental assessment practices to ensure relevance to the draft *Impact Assessment Act*
- Documentation of areas, issues, effects, and mitigations that are well understood and those that are uncertain
- Government should also clearly define the consultation process, timelines and how concerns will be addressed. The consultation phase cannot be a means to delay.

A meaningful RA for offshore drilling must include all associated activities that would be scoped into an EA under *CEAA 2012*, including the geophysical surveys that are associated with each well. Wellsite surveys are required by the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) as a safety measure to identify potential hazards for each exploration well. Vertical seismic profiles (VSPs) are commonly used to delineate the specific petroleum resource targeted by each well. Wellsite surveys and VSPs are standard activities assessed as part of every offshore drilling environmental assessment.

Although delineation drilling is not an activity listed under the current *Regulations Designating Physical Activities*, we recommend it be considered within the scope of activities assessed within the RA since there is no distinction between activities or potential environmental effects for an exploration well and a delineation well. Inclusion of delineation wells into the RA would avoid the duplication of consultation and assessment for subsequent wells within each exploration licence.

An Environmental assessment for drilling an exploration well is a one- to five-month regulatory process in the United Kingdom and Norway. The levels of environmental protection in Norway and the United Kingdom are not less than Canada. These jurisdictions have applied a model that is appropriate for the activity of exploration drilling. The benefits of applying a similar model include: an improved cumulative effects assessment, reduced stakeholder fatigue allowing stakeholders to participate meaningfully in one detailed assessment, and regulatory consistency and efficiency.

A.4. Clearly defined roles and responsibilities of the lifecycle regulator, governments and agencies

A.4.1. Task Team

CAPP supports the establishment of a Task Team comprised of representatives and technical staff from the Canadian Environmental Assessment Agency, the C-NLOPB, Natural Resources Canada and the NL Department of Natural Resources to prepare the RA design, including objectives, work plan, process steps, knowledge and information requirements, resource needs and measures for public and Indigenous engagement.

A.4.2. Technical Advisory Group (TAG)

The Task Team will establish the TAG and seek its input on the existing information and knowledge related to offshore exploration drilling. The TAG will support the Task Team and the Committee, once established, to gather relevant data and information, conduct technical analysis, and provide expertise in relation to the RA.

CAPP generally supports the concept of the TAG, but not without a defined scope, including scope of technical expertise required. CAPP also believes that TAG members should be appointed by the Task Team to ensure transparency and that there should be a maximum cap on the number of TAG members to ensure an efficient process. Finally, the TAG should have representation from industry since industry has the necessary subject matter experts that are familiar with the NL offshore and potential environmental and social impacts. CAPP recommends that the Task Team and not the TAG consider ongoing follow-up and effects monitoring requirements, along with the need for periodic updates to meet the objectives of the RA as an effective tool to aid decision-making.

A.4.3. Committee under CEAA 2012

In the instance of the Regional Assessment of Offshore Oil and Gas Exploratory Drilling East of Newfoundland and Labrador CAPP recommends that the Minister not establish a Committee given the breadth of studies already conducted on the effects of exploration drilling offshore east coast Canada.

In this case, the effective establishment of the Task Team and TAG is sufficient to draft the report, finalize the report based on any comments received, and submit the final report to the Ministers. Further the Task Team and TAG can be responsible for identifying and addressing knowledge gaps and, as appropriate, making recommendations to address any gaps.

The Committee should also be required to engage with industry and any others that have knowledge relevant to the Regional Assessment or whose interests and uses may be affected by exploratory drilling. Industry should have the ability to review geographic coordinates and project types that were considered as part of the regional assessment before finalization to avoid factual errors.

A.5. Timeline Certainty

CAPP is concerned that the draft Agreement will result in an onerous process of Committee and TAG appointments and consultation and proposed timelines will not be met. Also, without a scope for conducting public and Indigenous consultation, a firm process for addressing comments during the RA process and when the report is made available for public comment is critical given that the timeline for the Committee to submit its Report to the Ministers is no later than Fall 2019.

The timeline is ambitious given that appointments to the Committee are made by the federal Minister of Environment as well as the remaining three members appointed by the federal Minister of Environment in consultation with the other Ministers. Amendments to the Terms of Reference should not be permitted that would extend the timeline. This timeline must include a firm wrap-up

of public and Indigenous consultation on the draft Report. Opportunities to “stop the clock” on the RA process, which frequently occurs today in the environmental assessment process, must be limited to very specific circumstances, which can be established through federal policy. The decision to extend timelines in the future should only be determined at the Ministerial level.

A.6. Meaningful Indigenous Consultation

Our starting point in terms of Indigenous participation in any Impact Assessment process is engagement that is meaningful, predictable, and provides an effective use of funding and resources to meet community, company, and regulator consultation objectives.

Additionally, a major challenge for resource development in Canada is the multiplicity of consultation processes across jurisdictions. There is no consistency or standard approach to assist resource developers or Indigenous peoples. A more standardized or harmonized approach would allow all involved, including Indigenous peoples, to more easily measure the quality of engagement processes.

A.7. Public Participation in Impact Assessment

CAPP is of the opinion that it is critical to distinguish between potentially directly and adversely impacted parties and interested parties in the assessment process. Engagement should continue to focus on potentially directly and adversely impacted parties while allowing access to information to any interested parties in order to improve overall transparency and confidence in the process. Undifferentiated inclusion could result in an unmanageable consultation process and could dilute the voice of those potentially affected by a proposed project. Allowing public opinion to politicize decision making would conflict with the principal of a fact-based process based on clear rules and principals.

A.8. Draft Agreement – Specific CAPP recommendations

- In Appendix A sections 2.2 and 2.3, require a clear outcome for the report that describes the types of projects that will be either (a) identified on the designated project list regulation and completely excluded from further project assessment providing or (b) identified on the designated project list regulation and will require reduced project assessment. For those described as (b) describe what factors will be omitted in future reduced project assessments.
- The “Factors to be Considered in the RA” (Appendix C) go beyond *CEAA 2012* requirements and should be considered equivalent with the new Act.
- The number of TAG members and scope of technical expertise of members should be defined in the draft Agreement. A cap should be placed on the number of TAG members to

ensure an efficient process including representation from industry. TAG members should be appointed by the Task Team to ensure transparency.

- The costs of conducting the RA should fall to the Agency and Natural Resources Canada. Industry should not be responsible for covering the costs incurred by the C-NLOPB.
- The Terms of Reference should include a clear decision making process, outline the responsibility of the Minister once the report is received and include clear timelines related to the decision making process. Detail should be added to the Terms of Reference to outline the Minister's responsibility once the report is received and to include these expected timelines. Without that, the RA process remains uncertain.
- The Agreement should outline predictable/expedited timelines for all phases of the RA (establishment of the Committee, appointments by the Minister, establishment of a TAG, meeting schedules, public and Indigenous consultation and open houses). Timeline and process for closing out comments when the Draft Report is made public should also be included.
- Opportunities to "stop the clock", which frequently occurs today, must be limited to very specific circumstances, which can be established through federal policy, and the decision to extend timelines must be determined at the Ministerial level.
- As suggested by the Panel, CAPP believes that the federal government should be required to report their success in meeting the established timelines.
- Indigenous Engagement for the RA must be consistent with the level of thoroughness as an operator-led environmental assessment and fulfill the Crown's duty to consult.
- Provisions for updates must also be included in the terms of reference for the RA, as they are for environmental assessments under the Canada-Newfoundland and Labrador Offshore Petroleum Board. Changes in species at risk, protected areas and commercial fishing for example, must be reconsidered periodically to ensure mitigation and monitoring requirements are appropriate. Likewise changes in drilling technology may require an update to mitigations or monitoring requirements. Periodically, proponents would demonstrate they have considered any new information and whether the mitigations proposed in the RA are appropriate. If new data were continually added to the RA, the document would continue to be fit for purpose. Any updates or changes to the scope of the RA should be made available for comment.