

January 10, 2019

**FACULTY OF  
ENVIRONMENTAL  
STUDIES**

123 BLDG ADDRESS  
4700 KEELE ST.  
TORONTO ON  
CANADA M3J 1P3  
T 416 123 4567  
EXT 12345  
F 416 123 4567  
gsfraser@yorku.ca

Honourable Amarjeet Sohi  
Minister of Natural Resources, Government of Canada  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Honourable Catherine McKenna  
Minister of Environment and Climate Change, Government of Canada  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Honourable Minister Siobhan Coady  
Minister of Natural Resources, Government of Newfoundland and Labrador  
Natural Resources Building, 7th Floor  
P.O. Box 8700  
St. John's, Newfoundland and Labrador  
A1B 4J6

**Re: Recommendation to Establish an Independent Environmental Authority  
for Newfoundland and Labrador's Offshore Oil and Gas Sector**

Dear Honourable Ministers,

Newfoundland and Labrador's (NL) offshore marine environment is a **biologically rich, ecologically unique, and globally significant region that is increasingly threatened by offshore oil and gas exploration and production**. Given the ongoing regulatory inadequacies revealed yet again in the aftermath of Husky's November 2018 oil spill, **we recommend that you begin the process for establishing an independent Environmental Authority**, similar to the independent Safety Regulator recommended by inquiry Commissioner Judge Robert Wells.<sup>1</sup> In what follows, we summarize the global ecological importance of this region, provide a context for the 2010 inquiry recommendations, and discuss the need for an independent Environmental Authority given those recommendations. We then propose a structure for an independent Environmental Authority to address longstanding environmental regulatory inadequacies in NL's offshore oil sector.

The Grand Bank is a highly diverse and productive environment<sup>2</sup> providing ecosystem services and ecological habitat of national and global importance. NL's offshore marine environment supports fisheries valued at \$1.4 billion in 2016,<sup>3</sup> and serves as habitat for more than forty million local and migratory marine birds,<sup>4</sup> including globally recognized seabird breeding colonies. Further, the region supports globally significant populations of marine mammals: humpback, fin, sperm, sei, and pilot whales; harbor porpoises (designated as a species of special concern



by the Committee on the Status of Endangered Wildlife in Canada); and multiple species of seals.<sup>5</sup> It is also a feeding area for endangered leatherback turtles.<sup>6</sup>

This ecologically significant offshore region is also a high-risk area for workers in the oil sector. The tragic crash of the Sikorsky S-92A helicopter in March 2009 once again focused public attention on the need for improved regulation of workers' safety in NL's offshore oil sector while raising questions about the adequacy of the regulatory regime surrounding environmental impacts. In the independent assessment of offshore helicopter safety established in response to this accident, Commissioner Judge Robert Wells noted the lack of independent safety staff and lack of transparency regarding the decision-making process of the Canada-Newfoundland and Labrador Offshore Petroleum Board (the C-NLOPB), the regulator for both worker safety and environmental protection. Therefore, he recommended the creation of an independent Safety Authority to oversee worker safety in the offshore sector.<sup>7</sup>

At the same time, Wells emphasized that safety and protection of the environment are intertwined, concluding that safety "encompasses prevention of injury, prevention of loss of life, and protection of the environment" (2010, p. 303). Our recommendation for an autonomous Environmental Authority mirrors Wells' recommendation for the reorganization of the regulatory regime and follows practices in other oil and gas producing jurisdictions.<sup>8</sup>

Environmental assessments of oil exploration and production activities predict significant risks associated with this industry—risks that could seriously compromise this globally important marine environment.<sup>9</sup> There is also mounting evidence that the C-NLOPB is unable to regulate to protect this environment. The C-NLOPB's reliance on corporate self-reporting on environmental impacts has resulted in poor data that makes it impossible to understand the environmental impacts of oil production operations in this region.<sup>10</sup> For example, industry is unable to follow a protocol which provides data on seabird attraction to light.<sup>11</sup> Yet despite evidence that self-reporting is flawed, the C-NLOPB has repeatedly resisted calls for independent observers on production platforms.<sup>12</sup>

Two recent events further underscore the need for a strengthened and independent Environmental Authority. In November, Husky's SeaRose FPSO, located at the South White Rose Extension site, tried to re-commence production in severe weather conditions (it had disconnected the day prior to prepare for one of the worst storms in decades). Oil spilled into the ocean—the largest spill in NL's history—from a separated subsea flow line connection. Swells were so high that Husky was unable to verify the flowlines and it was impossible to contain the spill due to the weather conditions.<sup>13</sup> Yet Husky's rushed reconnection leading to the spill was considered appropriate given existing procedures and it was authorized by the C-NLOPB. This spill followed a near-miss in May 2017 when Husky delayed disconnecting when an iceberg came within 180 metres of the facility. As noted by reporter David Maher, "Despite coming so close that the crew were told to 'brace for impact,' production continued."<sup>14</sup> These incidents show that the existing regulatory structure allows oil companies to act primarily in accordance with their economic interests to restart production as soon as possible, or continue with risky production, rather than to protect the environment.

One central solution to this ineffective regulatory system is the establishment of an **independent Environmental Authority that prioritizes environmental protection, has adequate staff who are knowledgeable about marine ecosystems, and provides greater transparency in environmentally-related decision-making.** This Environmental Authority should cover all stages of offshore activities from leasing to decommissioning, with a focus on, but not limited to, the following:

1. Offshore Waste Treatment Guidelines<sup>15</sup> Compliance (compliance to performance standards). Similar to Judge Wells' recommendation for enhanced safety personnel, compliance of Waste Treatment Guidelines needs to be supported by an independent advisory board with a diverse range of interests and expertise. An Advisory Board should be established to include members of the public, scientists, and people knowledgeable about policy—all independent from the oil and gas industry—who have the capacity to evaluate performance standards.
2. Emergency Response. Emergency response is the responsibility of the operators; however, the immediate and longer-term outcomes of the environmental effects of spills should be documented and measured by a team of experts trained in seabird and marine mammal identification, survey protocols, and marine ecology. These experts would report their findings to the Environmental Authority and its Advisory Board. The Environmental Authority needs to ensure on-the-ground capacity necessary for the collection of such information, as well as to ensure appropriate follow-up measures are taken.
3. Environmental Effects Monitoring (EEM) Programs Approval and Oversight.<sup>16</sup> EEM is a long-term, large scale scientific endeavor to analyze ongoing and cumulative effects of offshore oil and gas activities. Scientific expertise is required to approve EEM design, evaluate the results, and disseminate outcomes to the Environmental Authority. Oversight of EEM should be conducted by an independent science advisory board with experts from across Canada. An effective EEM program must be able to efficiently communicate findings to the public and stakeholders.

While undertaking these regulatory activities, an independent Environmental Authority would need to be fully committed to **transparency to reduce real or perceived conflicts of interest and build trust between regulators and the public.** Throughout each of its branches, a crucial role for the Environmental Authority would be to disseminate information to the public on a regular basis particularly on the outcomes of audits on compliance to Waste Treatment Guidelines, surveys conducted after spills, and EEM programs. One current barrier to transparency is that environmental data are deemed to be the proprietary information of the operators. Therefore, this framework would require the amendment of the *Canada-Newfoundland Atlantic Accord Implementation Act* section 119 regarding disclosure of information to ensure data necessary for proper environmental monitoring is available for third-party scrutiny. Notably, Environmental Response Plans and Spill Response Plans for operators should be in the public domain.<sup>17</sup>

NL's globally ecologically important offshore marine environment is threatened in multiple ways by oil development particularly due to spills, but also due to permitted waste discharges, marine noise, light pollution, and flaring.<sup>18</sup> Yet, as vividly

demonstrated once again with Husky's November spill, our existing regulatory system is unable to provide sufficient protection for this ecosystem.

Significant environmental regulatory change is urgently required in NL's offshore oil and gas sector and the establishment of an independent Environmental Authority is one important element of this necessary transformation. We urge you to take a leadership role in reforming the environmental regulatory process in NL's offshore. We look forward to your response.

Sincerely,



Dr. G.S. Fraser  
Associate Professor, Faculty of  
Environmental Studies, York University  
gsfraser@yorku.ca



Dr. A.V. Carter  
Assistant Professor, Department of  
Political Science, University of Waterloo  
angela.carter@uwaterloo.ca

---

<sup>1</sup> Wells, R. 2010. Canada-Newfoundland and Labrador Public Inquiry into Offshore Helicopter Safety Inquiry. Volume 1: Report and Recommendations. Submitted to the Canada-Newfoundland and Labrador Offshore Petroleum Board. [https://www.cnlopb.ca/wp-content/uploads/ohsi/ohsir\\_vol1.pdf](https://www.cnlopb.ca/wp-content/uploads/ohsi/ohsir_vol1.pdf)

<sup>2</sup> Archambault, P., et al. 2010. From Sea to Sea: Canada's Three Oceans of Biodiversity. *PLOS ONE*, 5(8), e12182. doi:10.1371/journal.pone.0012182

<sup>3</sup> Government of Newfoundland and Labrador. The Economy 2017. <https://www.economics.gov.nl.ca/E2017/TheEconomy2017.pdf>

<sup>4</sup> Montevecchi, W., et al. 2012. Tracking Seabirds to Identify Ecologically Important and High Risk Marine Areas in the Western North Atlantic. *Biological Conservation*, 156, 62–71; Montevecchi, W. and Tuck L. 1987. Newfoundland Birds: Exploitation, Study, Conservation. Cambridge, MA: Nuttall Club.

<sup>5</sup> Archambault et al., 2010.

<sup>6</sup> James, M., Ottensmeyer, C., and Myers, R. 2005. Identification of High-Use Habitat and Threats to Leatherback Sea Turtles in Northern Waters: New Directions for Conservation. *Ecology Letters*, 8, 195-201; Vanderzwaag, D. and Hutchings, J. 2005. Canada's Marine Species at Risk: Science and Law at the Helm, but a Sea of Uncertainty. *Ocean Development and International Law*, 36, 219-259.

<sup>7</sup> Wells, 2010. The Government of NL accepted this recommendation yet was unable to implement the change.

<sup>8</sup> Wells, 2010; see also Burke, C., Montevecchi, W., and Wiese, F. 2012. Inadequate Environmental Monitoring around Offshore Oil and Gas Platforms on the Grand Bank of Eastern Canada: Are Risks to Marine Birds Known? *Journal of Environmental Management* 104, 121-126.

<sup>9</sup> For example, ExxonMobil Canada Properties. 2011. Hebron Project, Comprehensive Study Report. St. John's, NL, as well as Ainsworth, C., et al. 2017. Impacts of the Deepwater Horizon Oil Spill Evaluated using an End-to-End Ecosystem Model. *PLOS ONE*, 13(1), e0190840. <https://doi.org/10.1371/journal.pone.0190840>

<sup>10</sup> Burke et al. 2012; Fraser, G. and Carter, A. 2018. Seabird Attraction to Artificial Light in Newfoundland and Labrador's Offshore Oil Fields: Documenting Failed Regulatory Governance. *Ocean Yearbook*, 32, 267-282; Fraser, G., and Racine, V. 2016. An Evaluation of the Reporting and Response to Small Hydrocarbon Spills from Offshore Oil Production Projects, Newfoundland, Canada: Implications for Seabird Conservation. *Marine Pollution Bulletin*, 107, 36-45.

<sup>11</sup> Fraser and Carter, 2018.; see also Ronconi, R., Allard, K., and Taylor, P. 2015. Bird Interactions with Offshore Oil and Gas Platforms: A Review of Impacts and Monitoring Techniques. *Journal of Environmental Management*, 147, 34-45

<sup>12</sup> Burke et al., 2012; Fraser and Carter, 2018; Fraser and Racine, 2016; Fraser, G. and Russell J. 2016. Following Up on Uncertain Environmental Assessment Predictions: The Case of Offshore Oil Projects and

---

Seabirds Off Newfoundland and Labrador. *Journal of Environmental Assessment, Policy and Management*, 18(1): 33 pages.

<sup>13</sup> Weather conditions impeding spill containment or clean up are prevalent on the Grand Bank (Turner, M. 2010. Review of Offshore Oil Spill Prevention and Remediation Requirements and Practices in Newfoundland and Labrador. Report submitted to the Department of Natural Resources, Government of Newfoundland and Labrador. <https://www.cnlopb.ca/incidents/ibdec102018/>)

<sup>14</sup> Maher, D. 2018, November 20. 'We followed our procedures,' Husky says of oil spill in Newfoundland offshore. *The Telegram*. Retrieved from <https://www.thetelegram.com/news/local/we-followed-our-procedures-husky-says-of-oil-spill-in-newfoundland-offshore-261257/>

<sup>15</sup> National Energy Board, C-NLOPB, and C-NSOPB. 2010. Waste Treatment Guidelines. <https://www.cnlopb.ca/wp-content/uploads/guidelines/owtg1012e.pdf>

<sup>16</sup> Fraser and Russell, 2016.

<sup>17</sup> Fraser and Racine, 2017; see also Fraser, G. and Ellis, J. 2008. The Canada-Newfoundland Atlantic Accord Implementation Act: Transparency of the Environmental Management of the Offshore Oil and Gas Industry. *Marine Policy*, 33, 312-316.

<sup>18</sup> See, for example, Fraser and Carter, 2018; Fraser and Racine, 2016; Lee, K. et al. 2011. Consideration of the Potential Impacts on the Marine Environment Associated with Offshore Petroleum Exploration and Development Activities. Canadian Science Advisory Secretariat, DFO.