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Keith R. Evans*

Canadian East Coast Offshore Oil and Gas
Industry: Sustainable Development Through
Cooperative Federalism

For many years, development of the oil and gas potential off the east coast of Canada was delayed while the jurisdictional issues in respect of the area were resolved. While the provinces lost the major court battles on jurisdiction, political pressures combined with practical aspects of provincial involvement in the land bases for operations in the offshore area have resulted in pragmatic cooperation between the two levels of government and the establishment of joint administrative Boards to oversee exploration and development in the area. This paper explores the background to and the mechanics used for this pragmatic constitutional resolution and, in the context of certain specific exploration and development issues, addresses how the cooperative effort is implemented by the relevant Board and the two levels of government in an attempt to achieve sustainable development of the offshore area

La mise en valeur du potentiel en hydrocarbures de la côte Est du Canada a été retardée pendant de nombreuses années en attendant que soient résolues les questions de compétence territoriale. Même si les provinces ont perdu les grandes batailles juridiques sur ces questions, les pressions politiques et les aspects pratiques de la participation des provinces relativement aux bases terrestres des opérations en zone extracôtière ont eu comme résultat une collaboration pragmatique entre les deux ordres de gouvernement et la création d'instances administratives mixtes, les Offices, pour superviser l'exploration et la mise en valeur des ressources dans la région. L'auteur de ce document étudie le contexte et les moyens qui ont été employés pour arriver à cette solution constitutionnelle pragmatique. En outre, pour ce qui est de certaines questions relatives à l'exploration et à la mise en valeur, il explique comment l'Office compétent et les deux ordres de gouvernement collaborent pour tenter d'assurer le développement durable de la zone extracôtière

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Introduction

For many years, development of the oil and gas potential off the east coast of Canada was delayed while the jurisdictional issues in respect of the area were resolved. While the provinces lost the major court battles on jurisdiction, political pressures combined with practical aspects of provincial involvement in the land bases for operations in the offshore area have resulted in pragmatic cooperation between the two levels of government and the establishment of joint administrative Boards to oversee exploration and development in the area. This paper explores the background to and the mechanics used for this pragmatic constitutional resolution and, in the context of certain specific exploration and development issues, addresses how the cooperative effort is implemented by the relevant Board and the two levels of government in an attempt to achieve sustainable development of the offshore area.

I. *Constitutional Authority over the East Coast Offshore*

International law concepts conferring coastal states with economic rights over offshore areas postdates the establishment of Canada and the promulgation of its constitution in 1867. As a result, constitutional authority within Canada to legislate with respect to the exploration for and exploitation of mineral resources differs depending on whether the location in question is onshore or offshore.

The provinces have clear constitutional authority with respect to oil and gas activities conducted within the province:

1. All lands, mines, minerals and royalties belonging to the several provinces at the time of their confederation with Canada continue to belong to the province in question.¹
2. The provinces are also granted the power within Canada to legislate in respect of property and civil rights in the province.² Canadian law clearly establishes that mineral rights under the land are a property right for the owner of the land³ and hence subject to provincial jurisdiction under this head of provincial power.
3. Ancillary rights for the provinces in respect of the regulation of the onshore industry are found in the provincial constitutional right to make laws with respect to the management and sale of public lands,⁴ and the provincial general power in respect of all matters of a local or private nature.⁵
4. A constitutional amendment in 1982 confirmed the power of the provincial legislatures to make laws in relation to the exploration for non-renewable natural resources within a province, and for the development, conservation and management of such resources.⁶

By contrast, the right to explore and exploit mineral resources in the seabed below offshore waters has been held by the Supreme Court of Canada to stem from the sovereign rights of the coastal state⁷ as recognized in recent international law developments (such as the 1958 *Geneva Convention on the Continental Shelf*⁸), and not from the proprietary land rights

1. *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 109, reprinted in R.S.C. 1985, App. II, No. 5 and its relevant counterparts as additional provinces entered confederation after 1867 [*Constitution Act, 1867*].

2. *Ibid.* at s. 92(13).

3. *Borys v. Canadian Pacific Railway Company* (1953), 7 W.W.R. (N.S.) 546, [1953] 2 D.L.R. 65 (P.C.); *Prism Petroleum Ltd. v. Omega Hydrocarbons Ltd.* (1994), 149 A.R. 177, [1994] 6 W.W.R. 585 (Alta. C.A.). See the review of these and other cases on this issue by Van Penick, "Legal Framework in The Canadian Offshore" (Spring, 2001) 24 Dalhousie L.J. 1.

4. *Constitution Act, 1867*, *supra* note 1 at s. 92(5).

5. *Ibid.* at s. 92(16).

6. *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 added s. 92A to the *Constitution Act, 1867*.

7. In *Reference re: Seabed and subsoil of the continental shelf offshore Newfoundland*, [1984] 1 S.C.R. 86, (1984), 5 D.L.R. (4th) 385 (S.C.C.) [*Hibernia* reference].

8. 29 April 1958, 499 U.N.T.S. 311, 15 U.S.T. 471. Under Article 2(1) of the Convention the coastal state is noted as having foreign rights over the shelf for the purpose of exploring for and exploiting natural resources found there — a concept which is carried forward in Article 77(1) of the 1982 United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 3, 21 I.L.M. 1261. The *Oceans Act*, S.C. 1996, c. 31, s. 18 confirms Canada's claim over the shelf adjacent to Canadian territory for the purpose of exploring and exploiting natural resources in the seabed and subsoil thereof.

from which onshore jurisdiction has developed. By the time these offshore rights were recognized in international law, the sovereign state to which they were attached was Canada, and not its constituent provinces, giving Canada and not Newfoundland (or by extension, Nova Scotia), exclusive jurisdiction over the continental shelf. Similar reasoning had been applied earlier by the Supreme Court in finding that Canada, and not British Columbia, enjoyed both territorial sea and continental shelf rights off Canada's west coast, on the basis that those rights were recognized by international law as being enjoyed by a state possessing extraterritorial sovereignty.⁹

In the case of Newfoundland, the *Hibernia Reference* did not address the jurisdiction of the three-mile territorial sea around the province. An earlier Court of Appeal case had ruled in Newfoundland's favour on the question of jurisdiction over the three-mile limit, using Newfoundland's brief independent status prior to joining Canada and the *Terms of Union* with Canada as the basis for that decision.¹⁰ While certain aspects of that decision were criticised by the Supreme Court of Canada in the *Hibernia Reference*, the earlier Court of Appeal decision stands at the moment.

The Nova Scotia offshore jurisdiction has not been judicially settled. However, as Nova Scotia was one of the initial provinces which formed Canada in 1867, long before sovereign rights were recognized in the continental shelf area, it is unlikely that it would be in a better position than Newfoundland in this regard. In fact, after a review of the legal arguments which would be relevant to the Nova Scotia context, one author concludes:

By the reasoning of the Supreme Court ... and taking into account the circumstances of the pre-confederation colony of Nova Scotia, it will be virtually impossible to escape the conclusion that Canada, not Nova Scotia, holds the proprietary rights and legislative powers in the territorial sea and continental shelf off Nova Scotia.¹¹

With such clear court recognition of exclusive federal constitutional jurisdiction in the offshore area, it is perhaps odd that this paper deals with

9. In *Reference Re: Ownership of Off-Shore Mineral Rights (British Columbia)*, [1967] S.C.R. 792.

10. In *Reference Re: Mining and Natural Resources of the Continental Shelf (Nfld.)* (1983), 41 Nfld. & P.E.I.R. 271, (1983) 145 D.L.R. (3d) 9 (Nfld. C.A.).

11. Van Penick, *supra* note 3 at 15. Contrary to Mr. Penick's view, it may be that Nova Scotia has a basis for legislative jurisdiction in respect of areas in the Bay of Fundy and other bays and coastal areas, but the nature and strength of, and likely outcome in respect of, these claims need not be reviewed here (although see text accompanying note 73, *infra*), as the joint jurisdictional approach in respect of all east coast coastal waters, and as outlined herein, makes the issue redundant in this context.

sustainable development through cooperative federalism. Notwithstanding clear federal jurisdiction over the area (other than the possible three-mile territorial sea around Newfoundland and Nova Scotia's yet to be judicially determined status in respect of its territorial sea and coastal bays), joint governmental cooperation is needed due to the fact that it is virtually impossible to develop offshore resources without using land bases in Newfoundland and Nova Scotia. In respect of such land operations, the provincial governments involved would exercise quite considerable constitutional authority. Unless the governments cooperated to achieve development, the huge private investment necessary would not have been readily forthcoming. In addition, there were huge political factors at play in this area. The provinces of Newfoundland and Nova Scotia are among the poorest in Canada, and it was considered politically unacceptable to deny them involvement in and the economic benefit from natural resources which, had they been land based, would have been exclusively theirs to develop and regulate.

As a result, during the 1980s, the government of Canada, and the provincial governments in Nova Scotia and Newfoundland, negotiated and executed cooperative agreements¹² which allowed power and revenue sharing in the development of their respective offshore areas¹³ and created the stability required to attract private exploration and development funding. These agreements culminated in two sets of reciprocal legislation, namely the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*¹⁴ (federally) and the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*¹⁵ (provincially) for Newfoundland, and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*¹⁶ (federally) and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementa-*

12. The Nova Scotia agreement is entitled the "Canada-Nova Scotia Offshore Petroleum Resources Accord" and was concluded and signed by both governments and bears a date of 26 August 1986 [*Nova Scotia Accord*], replacing an earlier agreement dating from 1982. The Newfoundland agreement is called "The Atlantic Accord: Memorandum of Agreement between the Government of Canada and the Government of Newfoundland and Labrador on Offshore Oil and Gas Resource Management and Revenue Sharing" and is dated 11 February 1985.

13. As a result of a conflict in the relevant federal legislation dealing with the two offshore regimes, there was a dispute between Newfoundland and Nova Scotia in respect of what area fell within their respective offshore areas. This area, known as the Laurentian sub-Basin, was the subject of an arbitration process between the two provinces which concluded in 2002, granting most of the area to the Newfoundland offshore regime.

14. S.C. 1987, c. 3, as amended.

15. R.S.N.L. 1990, c. C-2.

16. S.C. 1988, c. 28. [*Federal NS Accord Act*].

*tion (Nova Scotia) Act*¹⁷ (provincially) for Nova Scotia. While there are some differences between the two sets of legislative initiatives, overall the basic cooperative regime established under the two regimes is similar. For simplicity, for the balance of this paper the Nova Scotia Accord and its Accord Acts will be the focus of attention.

In strict theory, the federal Parliament and the Nova Scotia legislature are each free to amend their respective legislation as they deem fit, notwithstanding legislative attempts to tie the two regimes together as closely as possible.¹⁸ This unilateral governmental authority gives the joint approach a somewhat (and largely unexpressed) shaky foundation which could be destroyed by a new political agenda within either government. The constitutional basis for the joint approach is also subject to question, given the clear Supreme Court support for exclusive federal jurisdiction over the offshore. Therefore the joint approach could result in an unanticipated court constitutional challenge in future. However, the viability of the Accord approach depends on continued reciprocal action on each side. As time goes by, significant levels of private investment pursuant to the Accord approach may lessen the prospect for a political challenge to the joint regime. However, the prospect for a constitutional challenge remains open, unless the Constitution is amended to deal with the political solution achieved through the Accords.¹⁹

One other area of possible future stress to the pragmatic resolution achieved by the Accord Acts is the position of Canada's First Nations in respect of claims of jurisdiction over offshore areas. At the moment, such jurisdictional claims are in their infancy, and the way in which they might impact, or require changes to, the bilateral coordinated approach evidenced in the Accords remains to be seen.

It is interesting to note, as outlined in the sister paper of Nathan Evans published here, that a similar joint legislative approach and joint adminis-

17. S.N.S. 1987, c. 3, [*NS Accord Act*]. The *NS Accord Act* and the *Federal NS Accord Act* will hereinafter be jointly referred to as the *NS Accord Acts*.

18. See, for example, the provision in s. 9(4) of *NS Accord Acts* specifying that the Canada-Nova Scotia Offshore Petroleum Board can only be dissolved by joint action. This is also reflective of the "private agreement" contractual approach seen in the Nova Scotia Accord itself, which again would require joint agreement to formally amend.

19. The constitutional issues are recognized in Article 42.01 of the Nova Scotia Accord, which notes a commitment to attempt to achieve a constitutional amendment to entrench the principles in the Accord. No such amendment has been made. By contrast, in Australia, as seen in Nathan Evans' sister paper published here, the joint approach in Australia seems better able to accommodate political change, as the Commonwealth Government appears able to flex or relax its muscle simply by redefining the role assigned to the State minister as the federal Designated Authority over such matters.

tration has been adopted in Australia, although in that country the well established jurisdiction of the States over (and property rights in) the territorial sea makes this joint approach more of a necessity. The weight of political and pragmatic commercial development issues have pushed Canada to a similar position even though the Canadian Supreme Court appears to have dealt a better hand to the federal government. However, in Australia where the relevant State minister is made the Designated Authority for many federal purposes, on a day-to-day administrative level, there is today less joint exercise of authority in Australia than we shall see exists in the comparable Canadian context.

II. *Administration of the Nova Scotia Offshore Area*

The *Nova Scotia Accord Acts* jointly establish the Canada-Nova Scotia Offshore Petroleum Board (Board)²⁰ with the general power of administration and management over the Nova Scotia offshore area.²¹ According to the Board's web site, its principal responsibilities include:

- ensuring the safe conduct of offshore operations;
- protection of the environment during offshore petroleum activities;
- management of offshore oil and gas resources;
- review of industrial benefits and employment opportunities;
- issuance of licences for offshore exploration and development;
- resource evaluation, data collection and distribution.²²

The Board is a separate entity, with the result that the overall administrative and management functions for the offshore area have been shifted from the respective government departments at both levels of government. However, as will be seen below, the Board does involve relevant government departments from both sides in respect of its review processes, as appropriate. The Board consists of five members, two appointed by each level of government for a six year, staggered term, with a Chairman who is appointed jointly.²³ Only one member of the Board from each government

20. *Federal NS Accord Act*, *supra* note 16 at s. 9(1); *NS Accord Act*, *supra* note 17 at s. 9(1).

21. The *NS Accord Acts* define the offshore area for Nova Scotia by a formal description in Schedules to the Act. As noted *supra* note 13, in one area there was a conflict with the Newfoundland offshore area in respect of the comparable Newfoundland legislation, which has now been resolved by an arbitration proceeding between the two provinces.

22. See the discussion of the Board's mandate as listed online: Canada-Nova Scotia Offshore Petroleum Board General Information <<http://www.cnsopb.ns.ca/Generalinfo/general.html>>.

23. *Federal NS Accord Act*, *supra* note 16 at s. 10; *NS Accord Act*, *supra* note 17 at s. 10.

can be employed in their respective public service.²⁴ Direct employees of the Board are not employed as public servants.²⁵

While the Board has been granted regulatory authority over the matters noted above, certain aspects of petroleum activities also fall under the regulatory authority of other agencies within both levels of government. With respect to these other agencies, the Board takes the lead role in coordinating regulatory activities. When an activity is first proposed to the Board, it sets up meetings of the various agencies with relevant jurisdiction to notify them of the proposed activity and to assist the applicants in identifying all the relevant regulatory requirements. In many cases, the Board has entered into Memoranda of Understanding with the appropriate departments and agencies to ensure effective coordination and to avoid duplication of work and activities. It is anticipated that further Memoranda of Understanding will be forthcoming so as to further enhance this process.

The exercise of a power or the performance of a duty or function by the Board is not subject to the review or approval of either government except in respect of defined fundamental decisions.²⁶ Fundamental decisions include, amongst others, such matters as requiring an interest owner to cease activities due to environmental or social problems, issuing a Call for Bids, issuing interests pursuant to a Call for Bids, issuing production licenses in certain instances, setting the terms and conditions of exploration licences, drilling orders, production licenses, significant discovery licenses and subsurface storage licenses, and the approval of a benefits plan.²⁷ Notice of any fundamental decision made by the Board must be given to the federal Minister of Natural Resources and provincially to the Minister responsible for Energy,²⁸ and these Ministers may act jointly to veto a fundamental decision made by the Board within thirty days of notification,²⁹ or within sixty days if the period for potential consideration of the fundamental decision has been extended by notice from either Minister.³⁰ The provincial Minister alone has the power to veto a Board decision in respect of a Board approval of the general approach of developing a pool or field under a development plan, or fundamental decisions in respect of a Call for Bids, or in respect of interests that are wholly within

24. *Ibid.* at s. 11(2) in each Act.

25. *Ibid.* at s. 26(3) in each Act.

26. *Ibid.* at s. 31 in each Act. See Also Nova Scotia Accord, *supra* note 12 at art. 12.02.

27. Nova Scotia Accord, *supra* note 12 at art. 13.02.

28. *Federal NS Accord Act*, *supra* note 16 at s. 32(1); *NS Accord Act*, *supra* note 17 at s.32(1).

29. *Ibid.* at s. 35(1)(a) in each Act.

30. *Ibid.* at s. 34(1) in each Act.

the Bay of Fundy area offshore, or in respect of Sable Island.³¹ The federal Minister has a unilateral veto power over a fundamental decision of the Board, or can override a provincial Ministerial veto, but only in the event that the decision in question unreasonably delays the attainment of security of supply.³² In the event the Ministers do not exercise their veto powers within the time limits noted, the decision becomes effective and should be implemented.³³

The fundamental decision review process is designed to allow the federal and provincial governments an overriding ability to review and control major aspects of the offshore administrative and management process, while leaving the initial decision in these areas to the independent Board process. Given the high degree of interaction between the Board and the relevant government departments in both levels of government, intervention by the Ministers pursuant to the formal veto powers will likely be rare. In addition, it is possible for the Ministers to jointly issue directives to the Board in a number of matters, such as with respect to matters relating to fundamental decisions and the benefits plans of various applicants,³⁴ which again will likely reduce the need for formal implementation of the veto powers.

In certain instances, namely the declaration of a significant discovery or any amendment or revocation thereof,³⁵ the issuance of an order to drill,³⁶ the declaration of a commercial discovery or any amendment or revocation thereof,³⁷ and the reduction of the term of an interest,³⁸ a party affected by the decision can request a hearing before a separately constituted Oil and Gas Committee of the Board. The Board is to consider the recommendations of the Committee following on from those hearings before making a decision on the listed matters.³⁹ In addition, the Board may at any time ask the Oil and Gas Committee for a report or recommendation in respect of any question, matter, or thing relating to the conservation, production, storage, processing or transportation of petroleum.⁴⁰

31. *Ibid.* at s. 35(1)(b) in each Act.

32. *Ibid.* at s. 35(1)(a) in each Act. However, see *NS Accord Act*, *supra* note 17 at s. 35(3): where this federal veto power is implemented, the provincial Minister can ask that the National Energy Board confirm the validity of the situation in respect of security of supply.

33. *Ibid.* at ss. 32 in each Act.

34. *Ibid.* at ss. 41(1) in each Act.

35. *Ibid.* at s. 74 and s. 77 respectively.

36. *Ibid.* at s. 79 and s. 82 respectively.

37. *Ibid.* at s. 81 and s. 84 respectively.

38. *Ibid.* at s. 82(3) and s. 85(3) respectively.

39. See the Committee provisions *ibid.* at ss. 127/145 and ss. 126/138 respectively.

40. *Ibid.* at s. 151 and s. 144 respectively.

Subject to the intervention of the Ministers or the Oil and Gas Committee as outlined above, the Board itself has the authority to issue a Work Authorization for any work or activity associated with oil and gas exploration, development, or production in the Nova Scotia offshore area,⁴¹ as well as for work activities associated with the construction, installation, and commissioning of production installations and for decommissioning and abandonment. Each separate Work Authorization is the subject of specific requirements, all of which are outlined in detail by the Regulatory Roadmap for Nova Scotia issued by the Atlantic Canada Petroleum Institute.⁴² The Board will review the documents submitted for the relevant Work Authorization and consult with a range of interested federal and provincial departments, including Fisheries and Oceans Canada, the Canadian Environmental Assessment Agency, Natural Resources Canada, the NS Department of Environment and Labour, the NS Department of Fisheries, Transport Canada and the NS Petroleum Directorate.⁴³

The Board is given the power to conduct a public review in relation to the exercise of any of its duties in any case where the Board is of the view that it is in the public interest to do so.⁴⁴ In addition, other government agencies and departments also have public review authority and responsibilities. To avoid the prospect of multiple public reviews, the Board has been able to arrange for a single joint public review for the Sable Gas Project, involving Environment Canada, Natural Resources Canada, the Nova Scotia Department of Environment, the Nova Scotia Department of Natural Resources, the National Energy Board and the Board.⁴⁵

The Board actually has established several committees to assist in its review of various major areas of interest. One such committee is the Board's Fisheries and Environmental Advisory Committee (FEAC) which is comprised of groups having an interest in environmental matters, representatives of the federal and provincial departments of fisheries and various Nova Scotian fishing associations, non-governmental agencies and native groups. Another committee is the Benefits Review Committee, which is comprised of representatives from the Board, Natural Resources Canada,

41 *Ibid.* at s. 142(b) and s. 135(1) respectively

42 Atlantic Canada Petroleum Institute & Erlandson & Associates Consultants, *Offshore Oil and Gas Approvals in Atlantic Canada: A guide to regulatory approval processes for oil and natural gas exploration and production in the Nova Scotia Offshore Area - The Regulatory Roadmaps Project (June 2001)* [unpublished] [Nova Scotia Regulatory Roadmap].

43 *Ibid.* at 1-4.

44 *Federal NS Accord Act*, *supra* note 16 at s. 44, *NS Accord Act*, *supra* note 17 at s. 44.

45 See the Board Decision Reports in respect of the Sable Offshore Energy Project online: Canada-Nova Scotia Offshore Petroleum Board <<http://www.cnsopb.ns.ca/>> at s. 1.0.5 [SOEP Decision].

the NS Petroleum Directorate and such other government agencies and departments as may be appropriate. The Committee reviews and comments on any required Canada-Nova Scotia Benefits Plan, and confers regularly for the purpose of consultations regarding ongoing activities associated with benefits matters. This Committee helps meet the requirement in the legislation that the Board consult with the Ministers as to the extent to which the Benefits Plan meets with legislated requirements.

The issuance of a Work Authorization by the Board is not a one-stop shop approval. Depending on the nature of the work, other licenses, permits, approvals or authorizations from other government departments and agencies may be required. These can include, amongst others, a Canadian Environmental Assessment Agency Determination, a Fisheries Act Authorization, a Disposal at Sea Permit, and where onshore activities will be necessary, various provincial approvals and permits.⁴⁶

Having explored the framework in place for administration of the offshore area, it is now possible to turn to the issue of how sustainable development is achieved, either through this cooperative mechanism itself, or through federal approvals that run parallel to the formal administrative structure. To do so, the paper will focus on four specific areas:

1. The Canada-Nova Scotia Benefits Plan requirements
2. Environmental Assessment requirements
3. Fisheries protection requirements
4. Marine Protected Areas

III. *The Canada-Nova Scotia Benefits Plan*

The provinces of Nova Scotia and Newfoundland are clearly economically disadvantaged areas of Canada. One of the predominant political motivations in respect of fostering sustainable development of the offshore area is the desire to ensure that this region can benefit economically from offshore exploration and production activity. This would allow the Atlantic region itself to be sustainably developed so as to reduce its economic dependence on cash transfers from the more wealthy provinces. While it is important to ensure that the region's existing and historically important industries (such as fisheries and tourism) are not damaged by the offshore activity (issues which will be addressed in later parts of this paper), one of the key objectives of the joint regime established under the cooperative

46. Nova Scotia Regulatory Roadmap, *supra* note 42 at 1-5.

federalism represented in the Accords is to ensure local economic benefit. This is achieved through the requirement for operators, in order to obtain the work authorizations they need for exploration or development work, to file and obtain approval of well defined Benefits Plans in the affected province. Again, this paper will focus on the Nova Scotia provisions.

A "Canada-Nova Scotia benefits plan":

means a plan for the employment of Canadians, and, in particular, members of the labour force of the Province and, ... for providing manufacturers, consultants, contractors and service companies in the Province and other parts of Canada with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.⁴⁷

The need for a Benefits Plan can be dispensed with, but only with the consent of both Ministers,⁴⁸ and the Ministers can also become involved in terms of issuing directives in respect of such plans.⁴⁹ Clearly it is intended that Nova Scotians should have priority to economic benefit over other Canadians. There are in fact four separate aspects of provincial benefit which need to be addressed in Nova Scotia Benefit Plans:⁵⁰

1. the applicant should be committed, before carrying out any work or activity in the offshore area, to establishing an office in Nova Scotia, *where appropriate levels of decision-making take place* (emphasis added);
2. individuals resident in Nova Scotia shall be given first consideration for training and employment in the work to which the Plan relates (and collective agreements entered into by the applicant should allow for this to apply). This extends to the need for specific succession plans for the replacement of individuals in positions initially held by non-Canadians;⁵¹
3. to ensure that local residents become qualified for appropriate positions at all levels of employment, there should be a defined

47. *Federal NS Accord Act*, *supra* note 16 at s. 45(1); *NS Accord Act*, *supra* note 17 at s. 45(1).

48. *Ibid.* at s. 45(6)(b) in each Act.

49. *Ibid.* at s. 41(1) in each Act.

50. *Ibid.* at s. 45(3) in each Act.

51. See Guidelines entitled "Industrial Benefits and Employment Plan - Nova Scotia Offshore Area (1994, 15 p.," online: Canada-Nova Scotia Offshore Petroleum Board <<http://www.cnsopb.ns.ca/>> at s. 5.4 [Plan Guidelines].

educational and training programme specified, as well as research and development activities in Nova Scotia;

4. first consideration should be given to services provided from within Nova Scotia and to goods locally manufactured, provided those services and goods are competitive in terms of fair market price, quality and delivery.

In order to be resident of Nova Scotia for these purposes, an individual must be a Canadian citizen or landed immigrant who has resided in Nova Scotia for the immediately preceding six months prior to project hiring, and for corporations, the entity must have an operating office duly registered for provincial business and must have controlling shareholders resident in the province. To be a resident of Canada, an individual must be Canadian born and not have relinquished his or her Canadian citizenship, or be a landed immigrant. To be a Canadian corporation, the entity must have an operating office registered somewhere in Canada and have controlling shareholders who qualify as Canadian residents (as defined above).⁵² In addition, the Board is given the power to require that the applicant include provisions in the Benefits Plan to ensure that disadvantaged individuals and groups have access to training and employment opportunities, and for such individuals and for companies controlled by such individuals to participate in the supply of needed goods and services.⁵³

The legislative philosophy in respect of these provisions has been described by the Board as follows:

It is important that those with an interest in this matter understand ... that the *Accord Implementation Acts* do not require targets or quotas for Nova Scotian or Canadian participation in offshore projects. As the Panel stated, the legislation "is not based on an interventionist philosophy of mandatory requirements or rigid commitments." Rather, the *Accord Implementation Acts* put in place requirements that the Proponents give Nova Scotians and other Canadians a full and fair opportunity to participate on a competitive basis as well as providing first consideration to Nova Scotians.⁵⁴

In order to assess the commitment of the applicant to local benefits in the four categories noted above, the applicant needs to provide a host of infor-

52. *Ibid.* at ss. 11(f) & 11(g).

53. *Federal NS Accord Act, supra* note 16 at s. 45(4), *NS Accord Act, supra* note 17 at s. 45(4).

54. SOEP Decision, *supra* note 45 at s. 2.1.1.

mation in any Benefits Plan submitted, the key elements of which have been summarized as follows:

- a sufficiently comprehensive description to provide a broad overview of the work proposed;
- an estimate of the project's demands for goods and services, by phase, for each of the major components in terms of quantities, values, timing and probable sources;
- forecasts of total program expenditures and direct employment created by major component, by region, and by year;
- an assessment of the economic impact of each phase of the project;
- a summary of opportunities associated with the project;
- a description of the specific initiatives proposed which are directed to maximizing the benefits accruing to Canada and Nova Scotia;
- an identification of the nature and number of positions to be initially filled by foreign nationals;
- an outline of plans and expenditures that are to be made for research and development, and education and training within the province; and
- the Operator shall ensure that its major contractors adopt the industrial benefits obligations of the Operator for ensuring full and fair access and maximizing industrial benefits opportunities in all subcontracting activities.⁵⁵

While the Plan is a technical requirement for all work authorization applications submitted to the Board, effectively, there are only two Plan requirements. The first relates to work authorizations for exploratory activity — this Plan will generally be less extensive due to the smaller size of the work force normally engaged in these activities. A second, more extensive Plan needs to be filed and approved when an application is made in the context of a Development Application. It is this second Plan which, if approved, will cover all work authorizations for development and production activities.

The Board recommends that operators maintain an open consultation with the Board and relevant government departments in respect of the development of any Plan. As noted above, the Board has established a Benefits Review Committee to assist in respect of issues relating to Benefit Plans. Once a Plan is submitted and approved, the Board requires

55. Nova Scotia Regulatory Roadmap, *supra* note 42 at I-7 & I-8, summarizing the Plan Guidelines, *supra* note 51.

the applicant to introduce an effective monitoring and reporting process to match the reality against the submissions made in the Plan. In particular, operators must file a report within 90 days of completion of each major component of a project. This specific "end of project" report can be waived if a system of semi-annual and annual reports on ongoing progress in meeting the commitments of a Plan are instituted.⁵⁶

The Board, in granting approval of a Plan, can impose conditions in respect of the approval. In respect of the approval of the Sable Offshore Energy project, some thirteen conditions were made in respect of that Plan, including:⁵⁷

1. The need to submit, within specified time frames, detailed Employment and Training Plans, and Research and Development Plans. These conditions were designed to overcome certain general commitments made in the original application. Quarterly reporting against the final approvals in these areas was also required.
2. To help address possible disadvantages for local companies in respect of international competitiveness due to lack of experience, the Proponents were required to establish a programme satisfactory to the Board to promote the effective transfer of technology from the Proponents, their Alliance Partners and major contractors to Nova Scotian and other Canadian individuals and companies. Technology transfer included encouraging and facilitating the formation of joint ventures and licensing agreements.
3. The Proponents were to consider Canada-Nova Scotia content when evaluating bids. Where bids were otherwise equal, the bid containing the highest level of Canada-Nova Scotia content was to be selected. If Nova Scotian and other Canadian suppliers were seen as not being competitive or had failed to qualify to bid, the Proponent was to advise them and the Board of the deficiencies and shortcomings for purposes of future bidding.
4. The Proponents, Alliance Partners and their major contractors were to examine ways of providing local suppliers, contractors and personnel with long-term contracts and employment, not just in

56. For the specific consultation, monitoring and reporting requirements, see Plan Guidelines, *supra* note 51 at s. 8.

57. SOEP Decision, *supra* note 45.

respect of this project, but also in respect of other Canadian and international projects, which could count towards local content.

5. For contracts in excess of \$250,000, lists of pre-qualified contractors, bidders lists and proposed final contract awards were to be made to the Board to allow it to assess whether the Proponents were meeting the full and fair opportunity and first consideration requirements for locals.
6. Estimates of Canadian and Nova Scotia content on various parts of the project were included in the Plan. The Board required that in the event that the actual content fell below the estimates, the shortfall was to be justified and appropriate measures were to be identified to enhance future local content.

These conditions give a good indication of the significance of the Benefit Plan to the approval process and show that it is clearly the key component in meeting the objective of sustainable development of the local economies.

IV. Environmental Assessment Requirements

As one would expect in the oil and gas industry, environmental safeguards form a key component of sustainable development. To deal with this aspect of its mandate, the Board *may* require an applicant for any work authorization to prepare and submit both an Environmental Impact Statement (EIS) and an Environmental Protection Plan (EPP). A comprehensive EIS and EPP *must* be filed at the time of making a Development Application, and these documents will normally cover work effected during the development and production stages until a Production Operations Authorization (POA) is required. At that stage, the EIS/EPP must be formally *approved* by the Board before a POA authorization is given.⁵⁸

The EIS is generally expected to include:

- details of the proposed energy source;
 - a description of substances which will be discharged into the marine environment during the normal course of operations;
 - details of fishing activities that are ongoing in the area of the fieldwork;
- and

58. See Nova Scotia Regulatory Roadmap, *supra* note 42 at I-11 & I-12.

- plans for co-ordinating the program with fishing interests in the area.⁵⁹

As one might expect, the EPP goes on to set out the measures suggested by the Applicant to protect the environment during its operations. In the context of the comprehensive Plan required for development and production activities, the EPP should include:

- a description of the program established to monitor and the measures adopted to minimize or mitigate the effect on the natural environment of routine operations on production installation;
- contingency plans for response to, and mitigation of, the accidental spill of petroleum or hazardous substances;
- a description of equipment and procedures for treatment, handling and disposal of waste material;
- compliance monitoring programs to ensure that the composition of spilled waste material is in accordance with the limits specified in the environmental protection plan;
- a summary of the chemical substances intended for use in operations and maintenance on the production installation;
- plans for environmental restoration of the production site following termination of production.⁶⁰

To assist both the Board and Applicants in terms of environmental assessments, the Board has adopted a class assessment for seismic exploration on the Scotian Shelf. This applies to requests submitted to undertake 2D and 3D seismic surveys using airguns or airgun arrays in respect of the Shelf, and is valid for five years and for an operating period between April 1 and October 31.⁶¹ A similar generic assessment is being considered for exploration drilling on the Scotian Shelf, which identifies and assesses potential environmental effects of drilling, identifies generic mitigation measures and operating conditions, and identifies the environmental assessment requirements for individual wells. In other words, it identifies the common components of exploration drilling and outlines a methodology and information source for individual assessments, allowing each particular EPP to focus on the specifics of each individual well within that general framework.⁶²

The above outlines the specific requirements of the Board, which as

59. *Ibid.* at p. 1-11.

60. *Ibid.*

61. *Ibid.* at p. 2-8.

62. *Ibid.* at p. 3-9.

noted is itself a manifestation of cooperative federalism. In addition to the Board requirements, there is significant overlap amongst various provincial and federal agencies and departments in this area. Legislative jurisdiction over the environment is not specifically addressed in the Canadian Constitution, with the result that both levels of government have jurisdiction in their respective legislative areas to regulate environmental issues. As noted in Nathan Evans' sister paper, in Australia, where the Commonwealth Government has recently acknowledged and exercised its environmental jurisdiction, this is an area of current conflict which will require resolution in that jurisdiction, while in Canada it appears to be subject to coordinated management under the Accord approach. Coordination of the competing agencies in Canada is partly addressed through the establishment of the Board's FEAC Committee, outlined above. In addition, in a number of cases, a formal Environmental Assessment under the *Canadian Environmental Assessment Act*⁶³ may have to be undertaken. This Act is currently in the process of fundamental and formal amendments by the Government of Canada,⁶⁴ but in any event the complex and formal structure of assessments under that legislation is beyond the scope of this paper.⁶⁵

The overlapping jurisdiction inherent in this area gives rise to the prospect of multiple environmental reviews and assessments having to be prepared, carrying with it the risk of protracted and costly legal battles over jurisdictional issues — prospects which were sure to lessen development interest by private investors. As a result, this has been a key area in which cooperative federalism has been able to fashion a possible solution. For example, under the *CEAA*, joint review panels can be constituted on a case-by-case basis,⁶⁶ and the Federal Minister of the Environment is permitted to enter into agreements with the provinces or conclude arrangements for assessment processes.⁶⁷ Furthermore, as we have seen, the NS Accord Acts mandate the Board to avoid duplication of work and activities and to conclude memoranda of understanding in respect of environmental regulation.⁶⁸ A Memorandum of Understanding has been concluded between the Board and Environment Canada, and one is in draft form, but

63. S.C. 1992, c 37 [*CEAA*].

64. Bill C-9, *An Act to amend the Canadian Environmental Assessment Act*, 2nd Sess., 37th Parl., 2003 (assented to 11 June, 2003).

65. For a general overview of this legislative scheme as it exists under the current Act, see the Nova Scotia Regulatory Roadmap, *supra* note 42 at Ch. 15.

66. *Supra* note 63 at s. 40.

67. *Ibid.* at s. 58(1)(c).

68. *Federal NS Accord Act*, *supra* note 16 at s. 46(1); *NS Accord Act*, *supra* note 17 at s. 50(1).

subject to revision, with the Department of Fisheries and Oceans. In addition, there has in fact been a joint review panel for the Nova Scotia offshore area under the *CEAA*. In 1997, the Sable Gas Project, a proposal for an offshore natural gas development in Nova Scotia, was conducted jointly with the National Energy Board, the Board, and the Ministers of Natural Resources and the Environment for Canada and for the Province of Nova Scotia.⁶⁹ A similar joint effort involving the Newfoundland Board, and the federal and provincial governments was undertaken for the Terra Nova Development Project in Newfoundland.

This kind of joint action is not without its problems. These include the delays that are inherent in establishing the process for the cooperative assessment and negotiating and concluding the agreement with respect thereto; dealing with potentially conflicting procedural requirements; and ensuring the review authority is properly mandated under each of the relevant legislative regimes.⁷⁰ After a review of the trend toward cooperative assessments and the problems that still exist with them, one commentator reviews in detail the stress inherent in the cooperative approach and concludes:

In summary, the benefits of "one window" assessment, which include the possible avoidance of jurisdictional concerns, the completeness of environmental impact assessments and the avoidance of interjurisdictional duplication and overlap, are clear. However, it is likely too early to determine if those benefits can be fully realized in light of some of the impediments to success.

With time, a number of the present problems with cooperative assessment processes may be addressed. The greater use of cooperative environmental assessment processes by federal and provincial departments and agencies can result in the establishment of process "precedents" which will reduce the time and resources required by the parties to initiate the process. If that occurs, the use of cooperative environmental assessment processes will likely increase and the concerns of proponents about the time required to implement new processes may diminish. The need to ensure that new processes do not violate the rules of natural justice or the statutory requirements of the cooperating federal and provincial departments or

69. "Review of the *Canadian Environmental Assessment Act*: A Discussion Paper for Public Consultation", December 1999, online: Canadian Environmental Assessment Agency <http://www.ceaa.gc.ca/013/001/0002/0001/index_e.htm>.

70. See a discussion of these and other issues in Judith Hanebury, Q.C., "Cooperative Environmental Assessments: Their Increasing Role in Oil and Gas Projects" (Spring, 2001) 24 *Dalhousie L.J.* 87.

agencies will continue, but the effort necessary to accomplish this objective can be minimized. This can occur as a result of the increased experience that will come as a result of the greater use of such mechanisms. As well, some legislative amendments may be required to smooth out conflicting statutory overlaps. Finally, while such cooperative assessment mechanisms may avoid jurisdictional friction points and therefore reduce the risk of legal challenge of an environmental assessment on the basis of constitutional issues it should not be forgotten that it may increase the number of legal challenges of the cooperative environmental assessment processes utilized. Parties unhappy with a substantive environmental decision and frustrated by the courts' deference toward such decisions, may increasingly look to procedural issues as a method to overturn the decision. The case law on jurisdictional friction points related to environmental impact assessment may be replaced by case law that examines procedural friction points.⁷¹

V. *Fisheries Protection Requirements*

There is little constitutional overlap in respect of jurisdiction over fisheries in the offshore area as the Canadian Constitution gives the federal government jurisdiction over sea coast and inland fisheries.⁷² The situation is less clear in respect of fisheries jurisdiction in the Bay of Fundy and certain provincial bays⁷³ which may have formed part of a province at the time of confederation. Notwithstanding this slight ambiguity, it is generally the federal government, acting through the Department of Fisheries and Oceans, which has overall responsibility for economic, ecological and scientific interest in the ocean area offshore the east coast of Canada. While the provincial governments also have involved Departments of Fisheries in the coordination process outlined above, the provincial departments in question have a mandate to supervise, develop and promote the processing and marketing of the fishing industry within their respective boundaries. As a result, the operation of cooperative federalism in this area is largely one of coordination between the Boards and the other relevant federal players in this area.

As a result, the Nova Scotia Regulatory Roadmap indicates that in appropriate circumstances, entities seeking work authorisations from the Board may be required to obtain approvals from the federal Department of

71. *Ibid.* at 107-08.

72. *Constitution Act, 1867*, *supra* note 1 at s. 91(12).

73. Aldo Chircop & Bruce A. Marchand, "Oceans Act: Uncharted Seas for Offshore Development in Atlantic Canada?" (Spring, 2001) 24 *Dalhousie L.J.* 23 at 33 [Chircop & Marchand].

Fisheries and Oceans.⁷⁴ To further the efforts in respect of joint coordination, and as noted above, a draft Memorandum of Understanding has been formulated with the federal Department and the Board in Nova Scotia, and one has been concluded amongst the Newfoundland Board, the Federal Department of Fisheries and Oceans, the Department of Energy, Mines & Resources and the Newfoundland Department of Energy and its Intergovernmental Affairs Secretariat.⁷⁵

One of the key links between sustainability of fisheries and offshore oil and gas development is a provision in the *Fisheries Act* which provides that "no person shall carry on any work or undertaking that results in harmful alteration, disruption or destruction of fish habitat."⁷⁶ This section creates an offence for which a substantial fine may be imposed. To the extent that an operator is concerned that exploration or development activities might infringe this section, it can seek an authorization under s. 35(2) of the Act, in which case no contravention will exist. However, an authorization here will not permit activities which would result in the deposition of deleterious substances into the ocean.⁷⁷

One needs to be concerned with these provisions when the activities in question will take place in an area in which a fish habitat exists. "Fish habitat" is defined as "spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes."⁷⁸ If there is such a presence, and the activities may result in harmful alteration, disruption or destruction of that habitat,⁷⁹ then the Department of Fisheries and Oceans has a hierarchy of options for dealing with the danger.⁸⁰

1. Project relocation. The Department prefers to maintain natural habitats due to the complexity of factors which create such habitats. In cases where the project represents substantial risk to critical habitats (such as species survival), where the habitat's productive

74. See for example the statements to this effect in Nova Scotia Regulatory Roadmap, *supra* note 42 at I-5.

75. Atlantic Canada Petroleum Institute & Erlandson & Associates Consultants, *Offshore Oil and Gas Approvals in Atlantic Canada - A guide to regulatory approval processes for oil and natural gas exploration and production in the Newfoundland Offshore Area - The Regulatory Roadmaps Project* (June 2001) at A-16 [unpublished] [Newfoundland Regulatory Roadmap].

76. *Fisheries Act*, R.S.C. 1985, c. F-14, s. 35(1).

77. *Ibid.* s. 36(3). Certain deposits are permitted by regulation under s. 36(4)

78. *Ibid.* s. 34(1).

79. For a review of the factors of concern in this aspect, see the Nova Scotia Regulatory Roadmap, *supra* note 42 at 16-4 & 16-5.

80. *Ibid.* at p. 16-5.

capacity is high, or needed for critical stages of a fish species, relocation is clearly the preferred option;

2. Project redesign is the next option if relocation is not possible;
3. Mitigation of adverse impacts appears to be the fall back where relocation or redesign are not possible. If the impact of a project can be fully mitigated, an authorization is not needed and the Department will issue a Letter of Advice to this effect.⁸¹ Mitigation measures can include setting time windows for work or re-arranging or compressing work schedules, selecting the least harmful of equipment, materials and methods, etc.

In the event that none of these options is viable, a s. 35(2) authorization should be obtained, and in this event, a *CEAA* environmental assessment is triggered. An authorization will generally be granted only if the harmful effects can be "compensated." Any authorization granted will contain terms and conditions to deal with the compensation aspects of the approval and the Department will require the applicant to enter into a Compensation Agreement. The Nova Scotia Regulatory Roadmap describes the list of options, in order of preference, for developing these Compensation Agreements:

- create similar habitat at or near the development site within the same ecological unit;
- create similar habitat in a different ecological unit that supports the same stock or species;
- increase the productive capacity of existing habitat at or near the development site and within the same ecological unit;
- increase the productive capacity of a different ecological unit that supports the same stock or species; and/or
- increase the productive capacity of existing habitat for a different stock or different species of fish either on or off site.⁸²

81. *Ibid.* at p. 16-6

82. *Ibid.* at p. 16-7.

VI. *Marine Protected Areas*

While the topic of Marine Protected Areas is not an issue in the context of the subject of sustainable development through cooperative federalism, no paper on the topic of sustainable development in the east coast offshore area would be complete without a reference to this concept. Under the *Oceans Act*, a Marine Protected Area is an area of the sea (encompassing inland waters, the territorial sea and the economic zone) which has been designated for special protection for one or more of the following reasons:

- (a) the conservation and protection of commercial and non-commercial fishery resources, including marine mammals and their habitats;
- (b) the conservation and protection of endangered or threatened marine species and their habitats;
- (c) the conservation and protection of unique habitats;
- (d) the conservation and protection of marine areas of high biodiversity or biological productivity; and
- (e) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister.⁸³

The Minister is given the mandate, in the context of the development of integrated management plans, to lead and coordinate the development and implementation of a national system of marine protected areas.⁸⁴ Management plans for such areas can limit or prohibit oil and gas activities therein, or may include use restrictions and specify buffer zones. It is likely that the "preservation of the ecosystem will be paramount where proposed uses or conflicting uses would add an unacceptable risk to the ecosystem."⁸⁵

No area on the east coast has yet been designated such an area, but there are areas that have been designated as areas of interest. Gilbert Bay, Labrador and Eastport, Newfoundland, have been so designated,⁸⁶ as has the Sable Gully in Nova Scotia.⁸⁷ It has been reported that the Department

83. *Oceans Act*, S.C. 1996, c. 31, s. 35(1).

84. *Ibid.* at s. 35(2). This need is reemphasized in the recently released document "Canada's Ocean Strategy" online: Fisheries and Oceans Canada – Canadian Waters <<http://www.dfo-mpo.gc.ca/canwaters-eauxcan/index.html>>.

85. Chircop & Marchand, *supra* note 73 at 45.

86. Newfoundland Regulatory Roadmap, *supra* note 75 at I-4.

87. Nova Scotia Regulatory Roadmap, *supra* note 42 at I-5.

of Fisheries and Oceans intends to have the Gully designated a Marine Protected Area in 2002⁸⁸ with a draft management plan anticipated for the summer,⁸⁹ although this now appears premature. In the meantime, the Gully is off limits for seismic and drilling activity, although areas close to the Gully have been leased.⁹⁰

The Sable Gully is located approximately 200 kilometres off the mainland of Nova Scotia, east of Sable Island. It is a steep walled canyon some 70 kilometres long and 20 kilometres wide, and with a depth of up to two kilometres. It has a rich marine life, including deep sea corals and a population of northern bottlenose whales. Certain fishing practices pose a threat to both the whales and the deep sea coral, and the oil and gas industry does likewise — the noise from drilling and support ship activity can be a problem for the whales (and dolphins), and the discharge of drilling muds and produced water is of concern to corals, whales and other marine life in this unique habitat.

If the area is designated a Marine Protected Area, the details of the management plan for the area will define whether any oil and gas development will be permitted in the area, and as noted above, could even result in certain restrictions in adjacent areas. It is possible that interests or licenses might already have been granted to companies for such adjacent areas, and there is a danger that the restrictions imposed in the context of protection of the Gully could restrict or curtail current rights, or increase the anticipated costs of pursuing planned activities under licenses and rights already granted. The current licensing regimes make no assurances, and do not provide for compensation or recourse for such changes,⁹¹ and therefore the proposed management plan will be watched with interest by those companies which have acquired rights under the regulatory regimes in adjacent areas. As can be seen in the sister paper by Nathan Evans published here, Australia's Ocean Policy has committed to removing the restriction there on establishing marine protected areas in areas where there are pre-existing lease rights, with the result that there too protection will be paramount to the economic interest of industry.

88. Jerry Lockett, "Sable Gully: Environmentalists have high hopes that the government will finally declare this offshore canyon a protected area", *Halifax Chronicle Herald* (26 January 2002) E1.

89. "Underwater Haven: Will Ottawa protect a unique marine habitat?" *Maclean's* (22 April 2002) 46.

90. Lockett, *supra* note 88.

91. Chircop & Marchand, *supra* note 73 at 46.

Conclusion

Constitutional power over the east coast offshore area appears to rest with the federal government. Notwithstanding the sole and exclusive nature of this power, provincial jurisdiction over ancillary operational activities and strong political pressures have resulted in a significant cooperative effort between the two levels of government in respect of the regulation of oil and gas development in the area — cooperation which has allowed private investment to begin to operate offshore in a cost effective manner. The key regulatory body established to oversee this development is a joint federal-provincial initiative, which in turn, where necessary, liaises and helps coordinate the interaction with other government agencies and departments in both levels of government. Joint pragmatic solutions, such as the committee approach adopted by the Board to help coordinate input from various regulators charged with aspects of sustainable development, and the establishment of joint review panels such as was achieved with the *CEAA* indicate the extent of the success of the process to date. However, the industry and its cooperative regulatory regime are still in relative infancy, and time is needed to determine if this pragmatic and cooperative federalism will withstand the usual inter-governmental friction and the dichotomy of exclusive powers inherent in Canadian federalism, the yet to be formulated or delimited jurisdictional status of First Nations in the offshore area, and political change in any level of government involved in the administration of the respective joint areas.

