

10-1-2003

## Liability for Marine Pollution from Offshore Operations

A William Moreira

*Stewart McKelvey Stirling Scales*

Cecily Strickland

*Stewart McKelvey Stirling Scales*

David Henley

*Stewart McKelvey Stirling Scales*

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>



Part of the [Oil, Gas, and Mineral Law Commons](#)

---

### Recommended Citation

A William Moreira, Cecily Strickland, and David Henley, "Liability for Marine Pollution from Offshore Operations" (2003) 26:2 Dal LJ 429.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact [hannah.steeves@dal.ca](mailto:hannah.steeves@dal.ca).

---

A. William Moreira, Q.C.\*    Liability for Marine Pollution from  
Cecily Y. Strickland        Offshore Operations  
David G. Henley

---

*This paper addresses various aspects of liability for marine pollution arising from offshore operations. The myriad of provincial, federal and international instruments which are relevant to pollution in the offshore generates complex compliance and liability issues. An operator may be subject to both criminal and civil liability for pollution under several different legislative regimes. This paper is divided into two parts. First, compliance considerations are reviewed with the primary compliance requirements under the various acts and regulations applicable to offshore operations highlighted. In the second part, the extent of civil liability for marine pollution is examined.*

*Cet article traite de divers aspects de la responsabilité pour la pollution des océans causée par les opérations extracôtières. La multitude d'instruments provinciaux, fédéraux et internationaux qui visent la pollution dans les zones extracôtières créent des problèmes complexes en ce qui a trait à la conformité et à la responsabilité. Un exploitant peut avoir une responsabilité criminelle et une responsabilité civile en matière de pollution, sous différents régimes législatifs. L'article est divisé en deux parties. L'auteur examine d'abord les questions de conformité et s'arrête particulièrement aux principales exigences en matière de conformité dans les lois et les règlements applicables aux opérations extracôtières. Dans la deuxième partie, la portée de la responsabilité civile pour la pollution marine est étudiée.*

---

\* A. William Moreira, Q.C. and David Henley of the Halifax, Nova Scotia office of Stewart McKelvey Stirling Scales and Cecily Strickland of the St. John's, Newfoundland and Labrador office of Stewart McKelvey Stirling Scales.

## *Introduction*

### *I. Compliance Considerations*

1. Canada Shipping Act
2. Accord Acts
3. Offshore Petroleum Production and Conservation Regulations
4. Offshore Area Petroleum Installations Regulations
5. Offshore Area Petroleum Geophysical Operations Regulations
6. Offshore Area Petroleum Drilling Regulations
7. Fisheries Act
8. Canadian Environmental Protection Act, 1999
9. Canada Water Act
10. National Energy Board Act
11. Migratory Birds Convention Act, 1994
12. Canada Marine Act
13. Fishing and Recreational Harbours Act
14. Oceans Act

### *II. Civil Liability for Pollution*

1. *Sovereignty and Jurisdiction*
2. *Pollution Liability – Introduction*
3. Fisheries Act
4. Arctic Waters Pollution Prevention Act
5. *Limitation of Liability*
6. *Ships Used in Offshore Operations Other than Drilling Units*
7. *Things Which Are Not Treated as Ships*
8. *In Respect of What Substances is Liability Imposed?*
9. *Who is Liable, and on What Basis?*
10. *Scope of Compensable Damages*
11. *Limitation of Liability*
12. *Jurisdiction and Process to Award Compensation*

## *Conclusion*

### *Introduction*

There is proliferation of federal legislation and regulation dealing with marine pollution. In the early 1970s, various federal departments waged a political struggle for control over environmental pollution. As a result, over a very short period the *Fisheries Act*,<sup>1</sup> the *Arctic Waters Pollution Prevention Act*,<sup>2</sup> the *Canada Water Act*,<sup>3</sup> the *Canada Shipping Act*<sup>4</sup> and the *Oil and Gas Production and Conservation Act*<sup>5</sup> were all enacted or amended to extend their coverage over various aspects of marine pollution. The environmental compliance requirements for the various federal statutes depend largely upon the location and nature of the particular activity in question. Failure to comply can result in prosecution or other sanctions depending upon which act governs.<sup>6</sup> In the following section, the statutes with the most direct effect on marine pollution will be surveyed. A chart summarizing the regulatory compliance requirements in the Atlantic offshore is attached to this paper as Appendix A. It should be mentioned, however, that there are a variety of other statutes which have some limited role in the regulation of marine pollution as well as some provincial statutes which purport to apply to the offshore. These are not dealt with in this paper.

In the second part of this paper the extent of civil liability will be examined.

---

1. R.S.C. 1985, F-14.

2. R.S.C. 1985, c. A-12 [AWPPA].

3. R.S.C. 1985, c. C-11.

4. R.S.C., c.S-9, as am. by S.C. 1998, c. 16, s. 3. The *Canada Shipping Act 2001* received assent on November 1, 2001 but will not come into force until a date to be fixed by order of the Governor in Council. It is understood that this will not occur until the regulations necessary to support the Act are in place. The *Canada Shipping Act 2001* clarifies and delineates the responsibilities of Transport Canada and the Department of Fisheries and Oceans in regard to pollution prevention. Parts 8 and 9 allocate the responsibilities among the departments. In Part 8 vessels and oil handling facilities are required to have an arrangement with the response organizations and certain declarations. As well, an oil handling facility must have an oil pollution prevention plan, an oil pollution emergency plan and the operator of an oil handling facility must take reasonable measures to implement these plans. In Part 9 the discharge of a prescribed pollutant is prohibited and vessels are required to take reasonable measures to implement oil pollution emergency plans in the event of an oil pollution incident. Separate offences, similar to those in the current *Canada Shipping Act*, are provided in each part, although it should be noted that the maximum term of imprisonment is now eighteen months.

5. R.S.C. 1970, c.O-4. Title of Act changed, see *Canada Oil and Gas Operations Act*, R.S.C. 1985, c. O-7.

6. Alastair R. Lucas & Constance D. Hunt, *Oil and Gas Law in Canada* (Toronto: Carswell, 1990) at 64. For example, while ship source oil pollution is generally prosecuted under the *Canada Shipping Act*, the Canada Nova Scotia Offshore Petroleum Board has tended to deal with such pollution within their jurisdiction through commercial sanctions related to their control over licensing.

## I. Compliance Considerations

### 1. Canada Shipping Act <sup>7</sup>

The *Canada Shipping Act* deals with marine pollution in Part XV, which applies to internal waters, the territorial sea and the Exclusive Economic Zone of Canada.<sup>8</sup> The Act applies to ships<sup>9</sup> and oil handling facilities.<sup>10</sup> Part XV, however, does not apply to a ship that is "on location and engaged in exploration or drilling for, or production, conservation or processing of, oil or gas."<sup>11</sup> This essentially cedes authority over certain oil and gas activities to the Offshore Petroleum Boards.

Part XV of the *Canada Shipping Act* specifically authorizes the Governor in Council to make regulations to implement MARPOL 73/78. Regulations include the *Board of Steamship Inspection Scale of Fees*,<sup>12</sup> the *Oil Pollution Prevention Regulation*,<sup>13</sup> the *Dangerous Chemicals and Noxious Liquid Substances Regulations*,<sup>14</sup> the *Lifesaving Equipment Regulations*<sup>15</sup> and the *Safety Management Regulations*.<sup>16</sup> The *International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990*<sup>17</sup> is also incorporated directly into the *Canada Shipping Act*. A duty to take reasonable measures to implement the oil pollution emergency plans is imposed on both the ships and oil handling facilities.<sup>18</sup>

A variety of offences are established within the Act and the court has broad powers to make an order accompanying the sentence of an offender.<sup>19</sup> The offences include discharge of a pollutant, failure to carry a certificate, disobeying a pollution prevention officer and general contraventions of the regulations. The Act grants broad jurisdiction to any court that would have cognizance of the offence.

7. *Canada Shipping Act*, *supra* note 4.

8. *Ibid.*, s. 655(1). Certain shipping safety control zones prescribed by the *Arctic Waters Pollution Prevention Act* are excluded from operation of the *Canada Shipping Act*.

9. *Ibid.*, s. 654. As defined in Part XV, "ship" includes any description of a vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion.

10. *Ibid.* As defined in Part XV, "oil handling facility" means a facility, including an oil terminal, that is used in the loading or unloading of oil to or from ships.

11. *Ibid.*, s. 655(2).

12. C.R.C., c. 1405.

13. S.O.R./93-3.

14. S.O.R./93-4.

15. C.R.C., c. 1436.

16. S.O.R./98-348.

17. 30 November 1990, 30 I.L.M. 800 (entered into force 13 May 1995).

18. *Canada Shipping Act*, *supra* note 4 at s. 660.3.

19. *Ibid.*, s. 644.1.

## 2. Accord Acts

The *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Acts*<sup>20</sup> and the *Canada-Newfoundland Atlantic Accord Implementation Acts*<sup>21</sup> (collectively the *Accord Acts*) implement agreements between the governments of Newfoundland and Labrador, Nova Scotia and Canada in regard to management of offshore petroleum resources and revenue. The *Accord Acts* prohibit a person from causing or permitting a spill on or from any portion of the offshore area.<sup>22</sup> The Acts provide for the appointment of a Chief Conservation Officer to whom any spill must be reported. Any person required to report a spill is further required to take all reasonable measures to prevent further damage.<sup>23</sup> The Chief Conservation Officer has broad powers to inspect, investigate and direct remediation.<sup>24</sup> An indictable offence under the Act carries a liability up to \$1,000,000 or imprisonment up to 5 years, or both.<sup>25</sup>

A point of note is that "spill," as it is defined in the *Accord Acts*, means a discharge, emission or escape of petroleum. This raises some difficulties in the application of the *Accord Acts*. Petroleum is defined within the Acts to mean oil or gas. The respective definitions of oil and gas are somewhat ambiguous in that they focus on gas, oil or hydrocarbons which derive from exploration or production activities. As will be discussed in more detail later in the paper, this leaves unclear the scope and extent of application of the provisions to spills or incidents which may occur at different stages of offshore operations.

A variety of regulations have been enacted pursuant to the *Accord Acts* which further expand upon the environmental protection and reporting requirements. These include the following.

20. *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (Canada)*, S.C. 1988, c. 28 [*Nova Scotia Accord Act (Nova Scotia)*]; *Canada – Nova Scotia Offshore Petroleum Resources Accord Implementation Act (Nova Scotia)*, S.N.S. 1987, c. 3 [*Nova Scotia Accord Act (Nova Scotia)*], see s. 198(5) of the *Nova Scotia Act*. See also note 21, s. 161(1) of the *Newfoundland Accord Act*.

21. *Canada-Newfoundland Atlantic Accord Implementation Act (Canada)*, S.C. 1987, c. 3 [*Newfoundland Accord Act (Canada)*]; *Canada-Newfoundland Atlantic Accord Implementation Act (Newfoundland and Labrador)*, R.S.N. 1990, c. C-2 [*Newfoundland Accord Act (Newfoundland)*].

22. S.158(1) of the *Nova Scotia Accord Act* and s.161(1) of the *Newfoundland Accord Act*.

23. *Ibid.*, ss.158(1), (2) & (3) of the *Nova Scotia Accord Act* and ss.161(1), (2) & (3) of the *Newfoundland Accord Act*.

24. *Ibid.*, s.186 of the *Nova Scotia Accord Act* and s.161(4) of the *Newfoundland Accord Act*.

25. *Ibid.*, s.191(2) of the *Nova Scotia Accord Act* and s.194(2) of the *Newfoundland Accord Act*. Prosecutions for these offences are subject to a two year limitation period.

### 3. Offshore Petroleum Production and Conservation Regulations<sup>26</sup>

Throughout the entire process, several approvals and authorizations are required by these regulations. A production operations authorization requires, among other things, that an environmental protection plan exist.<sup>27</sup> It is further provided that the operator "shall operate the well in a manner that is consistent with these regulations and that provides for...the protection of the environment."<sup>28</sup> The operator is obligated to ensure waste material produced is treated, handled and disposed of in accordance with this environmental protection plan.<sup>29</sup> A specific section is included for a safety plan and environmental protection plan. In this section an operator is required to develop and submit to the Chief Conservation Officer an environmental protection plan that provides for the protection of the natural environment and includes a variety of specific requirements.<sup>30</sup>

### 4. Offshore Area Petroleum Installations Regulations<sup>31</sup>

Section 3 of these regulations prohibits an operator from using the installation unless the equipment on the installation is arranged in accordance with the regulations to minimize damage to the environment.<sup>32</sup> These regulations are largely silent as to detailed environmental requirements; however, an operator is required to inform the Chief Conservation Officer on occurrence of a number of incidents including hydrocarbon or toxic fluid spills.<sup>33</sup>

### 5. Offshore Area Petroleum Geophysical Operations Regulations<sup>34</sup>

There are a variety of requirements imposed on an operator with respect to collecting and disposing of refuse produced as a result of a geophysical operation.<sup>35</sup> An operator is required to inform the Chief Conservation Officer and the Chief Safety Officer of serious accidents or incidents including those which constitute a threat to the environment.<sup>36</sup>

---

26. *Nova Scotia Offshore Petroleum Production and Conservation Regulations*, S.O.R./95-190 and the *Newfoundland Offshore Petroleum Production and Conservation Regulations*, S.O.R./95-103.

27. *Ibid.*, s. 8(2)(d).

28. *Ibid.*, s. 16(1).

29. *Ibid.*, s. 49(1).

30. *Ibid.*, s. 51(2).

31. *Nova Scotia Offshore Area Petroleum Installations Regulations*, S.O.R./95-191 and the *Newfoundland Offshore Area Petroleum Installations Regulations*, S.O.R./95-104.

32. *Ibid.*, s. 3.

33. *Ibid.*, s. 70(1).

34. *Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations*, S.O.R./95-144 and the *Newfoundland Offshore Area Petroleum Geophysical Operations Regulations*, S.O.R./95-344.

35. *Ibid.*, s. 10.

36. *Ibid.*, s. 27.

## 6. Offshore Area Petroleum Drilling Regulations<sup>37</sup>

Under these regulations, an operator is required to have contingency plans in place including a contingency plan for spills of oil or other pollutants.<sup>38</sup> The operator is further required to coordinate with any existing local or national contingency plans.<sup>39</sup> Operators are obligated to cease operations at a drill site where continuation causes or may cause pollution.<sup>40</sup> Operators are required to ensure that all waste material, drilling fluid and drill cuttings generated at a site are handled and disposed of in a manner that does not create a hazard to the natural environment.<sup>41</sup> Sewage, galley and other domestic waste material that might contribute to pollution must be disposed of in a manner approved by the Board.<sup>42</sup>

## 7. Fisheries Act<sup>43</sup>

Within the *Fisheries Act*, "Canadian fisheries waters" are defined as all waters in the fishing zones of Canada, all waters in the territorial sea of Canada, and all internal waters of Canada.<sup>44</sup> The Act prohibits the carrying on of any work or undertaking which results in harmful alteration, disruption or destruction of a fish habitat.<sup>45</sup> As well, the deposit of a deleterious substance in water frequented by fish is prohibited.<sup>46</sup> A deleterious substance is broadly defined and would include most petroleum products and waste products generated from vessels or offshore facilities. The *Fisheries Act* falls under the Minister of Fisheries and Oceans. It should be noted, however, that the order of a Fisheries Inspector will be subordinated to that of a Pollution Prevention Officer under the *Canada Shipping Act* where there is inconsistency. The same jurisdiction for courts and justices is granted under the *Fisheries Act* as is in the *Canada Shipping Act*.<sup>47</sup> In 1985 the administration of the pollution provisions of the *Fisheries Act* was devolved to the Minister of the Environment by a Memorandum of Understanding.

---

37. *Nova Scotia Offshore Area Petroleum Drilling Regulations*, S.O.R./92-676 and the *Newfoundland Offshore Area Petroleum Drilling Regulations*, S.O.R./93-23.

38. *Ibid.*, s. 64(1)(h).

39. *Ibid.*, s. 64(2).

40. *Ibid.*, s. 105(1)(a).

41. *Ibid.*, s. 112.

42. *Ibid.*, s. 114(a).

43. *Supra* note 1.

44. *Ibid.*, s. 2.

45. *Ibid.*, s. 35(1).

46. *Ibid.*, s. 36(3).

47. See *Fisheries Act*, *supra* note 1, s. 88, and *Shipping Act*, *supra* note 4, s. 610.

8. Canadian Environmental Protection Act, 1999<sup>48</sup>

The *Canadian Environmental Protection Act, 1999* has a number of provisions which potentially extend its application to the offshore. Under Part 4, Pollution Prevention, the Minister of the Environment may require a person or class of persons to prepare and implement a pollution prevention plan in regard to substances listed at Schedule 1. A number of these substances are present in offshore activities.<sup>49</sup> In the same context, under Parts 5 and 6, "toxic substance" is defined broadly and can easily include most substances emanating from offshore activity, including petroleum products. Persons responsible for these substances are required to report their presence to the Minister. The Act creates an obligation to report any release or likely release of a substance and to take all reasonable measures "consistent with the protection of the environment and public safety to prevent the release or, if it cannot be prevented, to remedy any dangerous condition or reduce or mitigate any danger to the environment or human life or health...."<sup>50</sup> These reporting and remediation requirements apply to anyone who has charge, management or control of a substance or who causes or contributes to their release.

There are a variety of Divisions to Part 7. Division 3 deals with disposal at sea. In this Division, disposal is defined broadly and includes the "deliberate disposal of a substance at sea from a ship, an aircraft, a platform or another structure."<sup>51</sup> Note that a disposal does not include disposals incidental to or derived from normal operations. As well, it does not relate to "discharge or storage directly arising from, or directly related to, the exploration for, exploitation of and associated off-shore processing of seabed mineral resources."<sup>52</sup> This part applies to the waters of Canada including the Exclusive Economic Zone.<sup>53</sup> Division 3 generally prevents the disposal at sea of a substance other than those classified as "waste or other matter". This applies to Canadian ships operating both in foreign jurisdictions and in the high seas. Provision is made for ministerial permits authorizing disposal of waste or other matter at sea.<sup>54</sup>

Division 7 deals with international water pollution. Water pollution

---

48. S.C. 1999, c. 33.

49. *Ibid.*, s. 56.

50. *Ibid.*, s. 95(1).

51. *Ibid.*, s. 122(1).

52. *Ibid.*

53. *Ibid.*, s. 122(2).

54. *Ibid.*, s. 127(1).

is defined broadly. This Division is designed to deal with water pollution which is released from a source in Canada that will have an effect on another country or will violate an international agreement. This Division requires a person who has charge of the substance before its release or who causes or contributes to the release to notify an enforcement officer and take all reasonable remediation measures. As well, reasonable effort to notify any member of the public who may be affected is required.<sup>55</sup>

Part 8 deals with environmental matters related to emergencies. "Environmental emergency" is defined as "an uncontrolled, unplanned or accidental release, or release in contravention of regulations made under this Part, of a substance into the environment; or the reasonable likelihood of such a release into the environment."<sup>56</sup> The same reporting and remedial measure requirements are imposed as in the previous divisions and parts.<sup>57</sup>

Part 10 consists of the enforcement provisions of the Act. Enforcement Officers are given broad powers of inspection to inspect any "place." Place is defined to include any platform anchored at sea, shipping container or conveyance.<sup>58</sup> Specifically, an Enforcement Officer is authorized to board any ship, platform or other structure anywhere in Canada or within Canadian waters where the Enforcement Officer believes on reasonable grounds that there is onboard a substance to be disposed of at sea.<sup>59</sup> Under the Act the court can issue a warrant for seizure of a ship, aircraft, platform or other structure where it can be established that there are reasonable grounds that an offence under the Act or regulations has been committed. This applies anywhere within Canadian waters.

A variety of regulations has been enacted under this Act including the *Ocean Dumping Regulations, 1988*,<sup>60</sup> the *Disposal at Sea Regulations*,<sup>61</sup> and the *Regulations Respecting Applications for Permits for Disposal at Sea*.<sup>62</sup>

---

55. *Ibid.*, s. 179(1).

56. *Ibid.*, s. 193.

57. *Ibid.*, s. 201(1).

58. *Ibid.*, s. 216.

59. *Ibid.*, s. 218(8).

60. S.O.R./89-500.

61. S.O.R./2001-275. This regulation indicates the information to be provided on reporting pursuant to the Act.

62. S.O.R./2001-276.

### 9. Canada Water Act<sup>63</sup>

The *Canada Water Act* falls within the purview of the Minister of the Environment. Its scope includes federal waters which includes waters under the exclusive legislative jurisdiction of Parliament.<sup>64</sup> However, other definitions suggest that it may not be intended that this apply to offshore waters.<sup>65</sup> It is prohibited for any person to deposit or permit the deposit of waste in any waters within a designated water quality management area.<sup>66</sup> It is doubtful that the Minister of the Environment would seek to lay a charge for depositing waste under this legislation when existing powers are provided more extensively under the *Canadian Environmental Protection Act* and the *Fisheries Act*. However, this could occur if the substance deposited fell outside of the definition of substance or deleterious substance but did constitute waste as defined within the *Canada Water Act*. There are as yet no regulations under the *Canada Water Act*.

### 10. National Energy Board Act<sup>67</sup>

The National Energy Board is an independent federal agency but does provide advice to the Minister of Natural Resources. The Board is responsible for the regulation of the construction and operation of pipelines which cross interprovincial and international boundaries; the export and import of oil and natural gas; and the exploration and development of oil and gas resources in the frontier areas.<sup>68</sup> The National Energy Board has jurisdiction over certain pipelines within the offshore areas by virtue of the definition of pipeline.<sup>69</sup> While the definition of offshore area is somewhat unclear in regard to whether it applies to lands or the offshore area in general, a variety of sections within the *Accords Acts* contemplate that the National Energy Board has some jurisdiction over offshore pipelines.<sup>70</sup>

There are no specific pollution provisions within the *National Energy Board Act*. It is provided, however, at section 48(2) that the Board may make regulations governing various aspects of pipelines and providing

63. R.S.C. 1985, c. C-11.

64. *Ibid.*, s. 2(1).

65. For example, "international waters" is defined as waters of rivers that flow across the international boundary between the United States and Canada.

66. *Ibid.*, s. 9.

67. R.S.C. 1985, c. N-7.

68. *Seizing the Opportunity: Nova Scotia's Energy Strategy*, Vol. 2, Part II, Section 7 (Halifax: Communications Nova Scotia, 2001) at 8.

69. *Ibid.*, s. 2.

70. See for example, *Nova Scotia Accord Act*, *supra* note 20, s. 46(1) where the Board is required to enter into memoranda of understanding with appropriate departments and agencies in relation to, *inter alia*, a Nova Scotia trunk line.

for the protection of the environment.<sup>71</sup> Contravention of such a regulation is an offence under the Act and punishable on summary conviction.<sup>72</sup> As well, the Board is empowered to designate any person as an inspection officer for the purpose of ensuring the protection of the environment.<sup>73</sup> These officers have broad powers to inspect pipelines, pipeline facilities, examine records, and to direct necessary tests.<sup>74</sup> An inspection officer is empowered to make an order, where he or she has reasonable grounds to believe there is a hazard to the environment relating to a pipeline.<sup>75</sup> Such an order may suspend work or require the persons involved to take necessary measures to protect the environment. Failure to comply with such an order is also an offence under the Act.<sup>76</sup>

#### 11. Migratory Birds Convention Act, 1994<sup>77</sup>

This Act implements the *Convention for the Protection of Migratory Birds in Canada and the United States*. The Act is administered by the Department of the Environment. The *Migratory Birds Regulations*<sup>78</sup> make it an offence to deposit or permit to be deposited oil, oil waste, or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds.<sup>79</sup> The Regulations specifically provide for application to the territorial waters of Canada.<sup>80</sup> The Act provides that contravention of the regulations is an offence punishable by fine or imprisonment on both summary and indictable offences<sup>81</sup>. It should be noted that fines may be cumulative. Specifically, a fine imposed for an offence involving more than one migratory bird can be calculated as though each migratory bird was the subject of a separate offence, with a total fine based on the number of birds.<sup>82</sup> This may have significant financial impact. Prosecutions under the *Migratory Birds Convention Act* have been increasing and recent cases

---

71. *National Energy Board Act*, *supra* note 67, s. 48(2).

72. *Ibid.*, s. 48(3).

73. *Ibid.*, s. 49(1)(b).

74. *Ibid.*, s. 49(2).

75. *Ibid.*, s. 51.1(1).

76. *Ibid.*, s. 51.4(1).

77. S.C. 1994, c. 22.

78. C.R.C., c. 1035.

79. *Ibid.*, s. 35(1).

80. *Ibid.*, s. 3.

81. *Ibid.*, s. 13(1).

82. *Ibid.*, s. 13(4).

establish that prosecutors are willing to proceed under multiple statutes.<sup>83</sup>

## 12. Canada Marine Act<sup>84</sup>

The *Canada Marine Act* deals with port facilities and establishes Canadian port authorities. The Act is administered by the Department of Transport. The port authority is empowered to regulate and control port traffic. In particular, the port authority may impose movement restrictions on vessels where there is pollution or a pollution threat.<sup>85</sup> Vessels who fail to comply are subject to prosecution under the Act.<sup>86</sup> A number of regulations have been enacted with the most relevant being the *Port Authorities Operations Regulations*.<sup>87</sup> The regulations prohibit or restrict a variety of activities within a port which can include pollution.<sup>88</sup> Any persons involved in an environmental emergency is required to report the emergency to the Port Authority.<sup>89</sup> As well, the *Public Harbours Regulations*<sup>90</sup> prohibit the draining, discharging or depositing of anything which may cause a nuisance or endanger persons or property. A number of designated public harbours are located around the coast of Nova Scotia.

## 13. Fishing and Recreational Harbours Act<sup>91</sup>

This Act is administered by the Department of Fisheries and Oceans. The Governor-in-Council is empowered to make regulations concerning the control of pollution in any scheduled harbour.<sup>92</sup> The Minister is empowered to designate enforcement officers who may board vessels, inspect documents, or prohibit the use of harbours where the enforcement officer has reasonable grounds to believe there is non-compliance with the act or regulations. This Act does not apply to ports as defined within the *Canada*

---

83. For example, in *R. v. Neptune Bulk Terminals (Canada) Ltd.* (2001), 37 C.E.L.R. (N.S.) 282 (B.C. Prov. Ct.) a spill of canola oil resulted in a total of \$30,000 in fines for offences committed against the *Migratory Birds Convention Act*. In *R. v. M/V Elm*, [1998] N.J. No. 111 (Nfld. Prov. Ct.) multiple charges were for a slick sighted by an airborne Fisheries Officer off the south coast of Newfoundland. The trial resulted in acquittal but the case was striking in the variety of charges pursued by the prosecution, including offences under the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *Canada Shipping Act* and the *Migratory Birds Convention Act*.

84. S.C. 1998, c. 10.

85. *Ibid.*, s. 58(2).

86. *Ibid.*, s. 59(1).

87. S.O.R./2000-55.

88. *Ibid.*, ss. 5 & 6.

89. *Ibid.*, s. 17.

90. S.O.R./83-654. These Regulations were repealed and replaced by *Public Ports and Public Port Facilities Regulations*, S.O.R./2001-154.

91. R.S.C. 1985, c. F-24.

92. *Ibid.*, s. 9.

*Marine Act*, however, the scheduled harbours are extensive.<sup>93</sup> A contravention of the Act or regulations results in an offence with a maximum fine of \$25,000 or imprisonment not exceeding six months or both.<sup>94</sup> The regulations provide that “no person shall dispose of garbage, sewage or waste at a harbour except in a place especially provided therefor or as directed by the harbour manager.”<sup>95</sup> As well, there is a prohibition against unauthorized discharge from a vessel of gasoline, oil or other fuels.<sup>96</sup>

#### 14. Oceans Act<sup>97</sup>

The *Oceans Act* provides for the application of provincial laws to internal waters and the territorial sea through implementation by regulation. Further extension by regulation of provincial laws to the Exclusive Economic Zone is provided for in section 21 but only to the extent of application to continental shelf installations as provided in section 20. That is, the federal government may specifically extend application of provincial laws, through regulation, to marine installations, artificial islands and their regulated safety zone within the Exclusive Economic Zone or the continental shelf.<sup>98</sup> In this regard, provincial laws can operate within the Exclusive Economic Zone but only through the restraining filter of section 20. To date the only regulatory extension of provincial laws has related to the Confederation Bridge area between Prince Edward Island and New Brunswick.<sup>99</sup> Federal laws are held to apply to marine installations or structures from the time they are attached to the continental shelf in connection with exploration or exploitation and artificial islands. Federal laws extend to any designated safety zones around these structures.<sup>100</sup>

While the offshore litigation cases have clearly established federal authority over the continental shelf and over the British Columbia territorial sea, there is still uncertainty as to how the Supreme Court might rule upon the claims of the Atlantic Provinces. In particular Newfoundland

---

93. S.C. 2001, c. 6. The Schedule included, at the date of this paper, 301 such harbours.

94. *Fishing and Recreational Harbours Act*, *supra* note 91, s. 20.

95. *Fishing and Recreational Harbours Regulations*, S.O.R./78/767, s. 25.

96. *Ibid.*, s. 24.

97. S.C. 1996, c. 31.

98. *Canada Shipping Act 2001*, *supra* note 4, s. 20 and 21.

99. *Confederation Bridge Area Provincial (P.E.I.) Laws Application Regulations*, S.O.R./97-375. This regulation extends the laws of Prince Edward Island to the Confederation Bridge Area which is defined in Schedule B of the regulation.

100. *Ibid.*, s. 20(1). The *Nova Scotia Offshore Area Petroleum Drilling Regulations*, S.O.R./92-676, s. 75(1) and the *Newfoundland Offshore Area Petroleum Drilling Regulations*, S.O.R./93-23, s. 75(1), establish a safety zone of 500m around drilling installations. Significant restrictions are imposed on entering this zone.

may have a sufficiently unique and strong case.<sup>101</sup> Though the extent of provincial jurisdiction in the offshore for the Atlantic Provinces has not been finally determined, events have largely been overtaken by the implementation of the *Accord Acts*.<sup>102</sup> In spite of the provisions of the *Oceans Act* and the *Accord Acts*, there is provincial legislation which purports to apply to the offshore. Examples in Nova Scotia are the *Pipeline Act*<sup>103</sup> and the *Energy and Mineral Resources Conservation Act*.<sup>104</sup>

## II. Civil Liability for Pollution

### 1. Sovereignty and Jurisdiction

Because offshore operations, by definition, occur "offshore", it is necessary to first consider the jurisdiction of Canadian lawmakers to purport to impose civil liability regimes in respect of those operations. Scope of jurisdiction is defined both geographically, and in terms of subject-matter.

The primary international instrument dealing with offshore jurisdiction is the 1982 *United Nations Convention on the Law of the Sea*.<sup>105</sup> Consideration of the impact, and import, of this instrument is complicated by the fact that Canada has not yet seen fit to ratify it. Although consideration of all the implications of this lack of ratification is beyond the scope of this paper, it can for present purposes be said that UNCLOS is in many respects taken as a codification of customary international law (effective even in the absence of treaty, whether ratified or not). It is at least arguable that Canada's jurisdiction as a coastal state is co-extensive with the provisions of UNCLOS which deal with that subject. It can in any event be stated with reasonable confidence that Canada's sovereignty and jurisdiction in the offshore (at least as recognized by public international law) would not in any event be greater than that for which UNCLOS provides.

Under UNCLOS, the Exclusive Economic Zone ("EEZ") of a coastal state extends 200 nautical miles from coastal baselines. In addition to

---

101. Lucas & Hunt, *supra* note 6 at 73.

102. The province of Nova Scotia still purports to exercise some jurisdiction in offshore areas. In its *Energy Strategy*, *supra* note 68, Vol. 1, at 37, the government states a policy that the CNSOPB will conduct public consultation before exploration rights are issued within 18 km of the mainland. This 18 km line is repeated elsewhere in the *Energy Strategy*.

103. R.S.N.S. 1989, c. 345.

104. R.S.N.S. 1989, c. 147.

105. *United Nations Convention on the Law of the Sea*, 10 December 1982, 21 ILM 1261 (1982) (entered into force 10 December 1982) [UNCLOS].

limited sovereignty within the EEZ, coastal states have additional, but more limited, sovereignty in respect of that portion (if any) of the Continental Shelf (as defined in UNCLOS) which extends further seaward than the outer limit of the EEZ. Although Canada has not yet taken steps under international law to declare the outer limits of its Continental Shelf, it is generally accepted that the Nose and Tail of the Grand Banks of Newfoundland are areas of Canada's Continental Shelf which do extend beyond Canada's EEZ.

Provisions of UNCLOS relevant to this discussion are the following:

Article 56(1):

In the exclusive economic zone, the coastal State has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
  - (i) the establishment and use of artificial islands, installations and structures;
  - (ii) marine scientific research;
  - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

Article 77

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with

living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

#### Article 81

The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

By the *Oceans Act*<sup>106</sup> Canada purports to assert, substantially *verbatim*, the maritime sovereignty and jurisdictions for which the above-quoted articles of UNCLOS provide:

- Section 13(1) declares the existence of an “exclusive economic zone of Canada,” extending 200 nautical miles seaward from baselines, in which (14(1)) Canada claims “sovereign rights ... for the purpose of exploring and exploiting, conserving and managing the natural resources ... of the seabed and its subsoil”; and claims also “jurisdiction with regard to ... the establishment and use of artificial islands, installations and structures” and “the protection and preservation of the marine environment.”
- Section 17(1) declares there to be a “continental shelf of Canada” consisting of “the seabed and subsoil of the submarine areas ... that extend beyond the territorial sea of Canada throughout the natural prolongation of the land area of Canada ... to the outer edge of the continental margin, determined in the manner under international law that results in the maximum extent of the continental shelf of Canada ...”. Under section 18, Canada claims “sovereign rights over the continental shelf of Canada for the purpose of exploring it and exploiting the mineral and other non-living resources of the seabed and subsoil of the continental shelf of Canada ....”

Note that under Article 56(1)(b)(iii) of UNCLOS the coastal state has, and under section 14(b)(iii) of the *Oceans Act* Canada claims, sovereign rights *within the EEZ* in respect of pollution prevention and protection of the marine environment. However, in Article 77 of UNCLOS, and in section 18 of the *Oceans Act*, there is no similar grant or claim of jurisdiction in respect of the continental shelf. An area of uncertainty immediately

---

106. *Supra* note 97.

becomes apparent. The argument is available that Canadian laws respecting pollution liability do not apply to, or in respect of, spills of pollutants which occur outside Canada's EEZ. In the specific context of offshore installations located on the continental shelf outside the limits of the EEZ, the argument could be countered on the basis that pollution prevention and compensation are matters necessarily ancillary to regulation of offshore mineral exploration on the continental shelf, as authorized both by UNCLOS, Article 81, and *Oceans Act*, section 18. Resolution of these competing positions will have to await clarification by the courts.

## 2. *Pollution Liability – Introduction*

Legislation governing, and creating, civil liabilities in the Canadian offshore apply in part to activities, and in part to physical things. Thus, in an examination of potential statutory liability for the escape of pollutants into the marine environment, it is necessary to consider both the thing from which the pollutant has escaped, and the activity in which that thing was engaged at the time of the escape. In the case particularly of mobile drilling, production and/or storage units, as will be seen, different legal regimes apply depending upon whether the unit is on station and engaged in (as the case may be) drilling, production or storage, or is in its mobile mode between, or en route to or from, such assignments.

The primary Canadian legislation governing liability for pollution from ships is Part 6 of the *Marine Liability Act*.<sup>107</sup> In some waters (generally, those north of 60°N), the *Arctic Waters Pollution Prevention Act*<sup>108</sup> also, and independently, applies, and is separately discussed below.

Part 6 of the *Marine Liability Act* deals almost exclusively with civil liability for oil pollution (the sole exception to this exclusivity is discussed below). Oil is defined as follows:

“oil”, except in sections 93 to 99<sup>109</sup>, means oil of any kind or in any form and includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes but does not include dredged spoil.

It is generally accepted that Part 6 was intended by Parliament to apply to pollution from fuel and lubricating oils used on ships, in addition to crude

---

107. S.C. 2001, c. 6.

108. *Supra* note 2.

109. Sections 93 to 99 create an obligation for owners of “Contributing Oil” to pay amounts into the Ship Source Oil Pollution Fund, and are not material to the issues discussed in this paper.

or refined products carried as cargo in tankers (which is the international position under treaty). The above definition, however, could be read more broadly — for example, it has not been determined whether petroleum-based drilling muds would or could be considered “oil” for purposes of this definition. This esoteric debate could have significant practical consequences because, as will be demonstrated, when pollutants escape from “ships” the scope of civil liability varies considerably depending whether or not the pollutant is “oil” to which Part 6 applies.

Part 6 itself is declared not to apply to certain kinds of equipment which are engaged in specified offshore activities:

49. (1) This Part does not apply to a drilling ship that is on location and engaged in the exploration or exploitation of the sea-bed or its subsoil in so far as a discharge of a pollutant emanates from those activities.
- (2) This Part does not apply to a floating storage unit or floating production, storage and offloading unit unless it is carrying oil as a cargo on a voyage to or from a port or terminal outside an offshore oil field.

Note that there is some arguable inconsistency in these exclusionary provisions. Subsection (1) limits the exclusion to discharges which “emanate from” exploration or exploitation activities. Clearly, a discharge of hydrocarbons from the well itself would be excluded from the operation of Part 6; however, if the spill from the “drilling ship” were of fuel or lubricating oils onboard the ship for the purpose of consumption, it could be argued that such discharge does not “emanate from” the specified activities, and so is subject to Part 6.

In contrast, subsection (2) appears to exempt from the application of Part 6 any spill of any petroleum or petroleum product from a floating production, storage and offloading facility (FPSO), unless the FPSO at the time of the spill is off-station and engaged in the transportation of product.

Note also, in this context, that “ship” is defined in various ways in different pieces of Canadian legislation<sup>110</sup> and the meaning of “ship” can vary depending upon the operational or legal context in which the defini-

---

110. See for example *Canada Shipping Act*, *supra* note 4, s. 2; 109 and 654; *Federal Court Act*, R.S.C. 1985, c. F-7; *Marine Liability Act*, *supra* note 93, s. 47.

tion is applied. However, it is generally accepted in Canadian maritime law that a semi-submersible offshore drilling unit is a “ship,”<sup>111</sup> and therefore that the reference in section 49(1) above to “drilling ship” very probably includes such a unit. Canadian law has yet to determine, in any context, whether a jack-up rig, at any or all times, is also a “ship.”<sup>112</sup>

In respect, therefore, of spills of “oil” (as defined in *Marine Liability Act*, section 47) from units or operations which are not excluded by section 49, the civil liability regime created by Part 6 of the *Marine Liability Act* applies. That regime, in substance, does two distinct things:

- It implements in Canada the 1969 and 1971 international conventions on (respectively) civil liability for oil pollution and compensation for oil pollution, as those conventions have been amended from time to time; and
- It creates an additional Canada-specific compensation regime for oil pollution damage to which the conventions mentioned above do not apply.

It is critical to note that the conventions apply only to persistent oil carried in bulk as cargo by sea-going tankers, and that many provisions of Part 6 of the *Marine Liability Act* apply to any oil (both bunker and cargo) carried in or spilled from any ships (both tankers and other kinds of ships).

In cases of spills to which the conventions apply:

- The shipowner is strictly liable for “oil pollution damage”<sup>113</sup> caused by the spill (s. 51(1));
- The shipowner’s liability is limited to an amount between 3 million SDR’s<sup>114</sup> and 59.7 million SDR’s, depending on the tonnage of the ship (s. 54(1)) unless the oil pollution damage is caused by the owner’s “personal act or omission” committed intentionally or recklessly (S. 54(2)), in which latter case liability is unlimited;
- Parties other than the shipowner are not liable. Specifically, s. 57(2)

---

111. See generally, Wylie Spicer, “Some Admiralty Issues in Offshore Oil and Gas Development” (1982) 20 Alta L. Rev. 153, and more specifically, *Husky Oil Operations Ltd. v. Saint John Shipbuilding Limited*, [1997] 3 S.C.R. 1210 at 85, McLachlin, J.

112. Although it is understood that under United States law a jack-up rig is a “ship”, this view was strongly criticized in a lengthy dissenting opinion in *Demette v. Falcon Drilling Co.* 253 F. 3d 840 (5th Cir. 2001).

113. *Marine Liability Act*, *supra* note 93, s. 47. Defined as “loss or damage outside the ship caused by contamination resulting from the discharge of oil from the ship.”

114. Special Drawing Rights issued by the International Monetary Fund. In approximate terms, 1SDR = C\$2.00.

provides that (among others) the shipowner's employees and crew members, the pilot of the ship, and the charterer, manager and operator of the ship, are not liable for oil pollution damage.

- The International Oil Pollution Compensation Fund ("IOPC Fund"), created by the 1971 convention, is an automatic party to litigation arising from the spill (s. 73).

Note that the IOPC Fund's limit of liability is (under a recent Protocol to the convention) 202 million SDR's and is not dependent upon the tonnage of the ship which caused the pollution incident. Thus, the IOPC Fund pays compensation for any damages exceeding the shipowner's limit of liability, up to the Fund's liability limit (Part 6, *Marine Liability Act*, s. 75).

In the event that there are oil pollution damages in Canada to which the conventions apply and which exceed the limit of the IOPC Fund's liability, the Canadian Ship Source Oil Pollution Fund (SOPF) pays the excess (*Marine Liability Act* s. 84). In this sense, the SOPF is known as the fund of last resort in Canada.

In cases of spills to which the conventions do not apply:

- The shipowner is strictly liable for oil pollution damage and for costs of remedial, preventive or restorative measures related to oil pollution (ss. 51(1)(a) and (b));
- The shipowner's liability is limited pursuant to the *1996 Limitation of Liability for Maritime Claims Convention*, adopted in Canada by *Marine Liability Act*, Part 3 (see discussion below).

In all cases:

- Action may be brought *in rem* against the ship;
- The shipowner's liability does not depend upon proof of fault or negligence; the only defences are act of war, certain deliberate acts of third parties, and gross negligence of public authorities in the maintenance of navigational aides (s. 51(3));
- The claimant has the option of presenting his claim directly to the SOPF (s. 85(1)), in which case the SOPF is required to make a compensation offer to the claimant unless the SOPF can demonstrate that the source of the oil pollution was not a ship (ss. 84; 86(1)). On making any payment to a claimant, the SOPF becomes subrogated to the claimant's rights against the owner of the ship (if known) which caused the damage (s. 87(3)(c)). In this sense, the SOPF is known also as the fund of first resort in Canada.

Two further points should be noted in respect of Part 6 of the *Marine Liability Act*:

- In respect of substances which are not "oil" (as defined), the shipowner

is liable to reimburse the government for costs of preventing, remedying, etc. any pollution (i.e., not confined to oil) where the expenses have been incurred pursuant to the direction of the Minister of Fisheries and Oceans under s. 678 of the *Canada Shipping Act*<sup>115</sup> (*Marine Liability Act*, s. 51(c)). This is because s. 678 is included in Part XV of the *Canada Shipping Act*, which Part applies to all pollutants, not just oil. However, under Part 6 of the *Marine Liability Act*, private claimants, and the government in all other circumstances, are limited to claiming compensation for oil pollution damage.

- Under Part 6 of the *Marine Liability Act*, s. 88, certain kinds of persons engaged in the fishing industry in Canada are given the right to claim against the SOPF for lost income caused by discharge of oil from a ship “not otherwise recoverable under this Part.” It is unclear what, if any, additional remedy this section gives persons who come within its application. There is no indication on the face of Part 6 of the *Marine Liability Act* that lost income (or other consequential losses) are not within the definition of “oil pollution damage,” generally recoverable by anyone against the wrongdoing ship or directly against the SOPF. Further, it is not clear in what circumstances fishermen’s losses caused by discharge of oil from a ship would “not otherwise [be] recoverable” under Part 6 of the *Marine Liability Act*. It could perhaps be argued that “oil pollution damage” as used in Part 6 of the *Marine Liability Act* does not include lost income, because otherwise the section 88 provisions for fishermen would be redundant. It remains to be seen whether this argument would be accepted by the courts (or by SOPF), in a case in which lost income was claimed by a person to whom section 88 does not apply.

### 3. Fisheries Act<sup>116</sup>

In addition to, and independent of, liabilities under Part 6 of the *Marine Liability Act*, as noted earlier the *Fisheries Act*, section 36(3) prohibits the deposit of a deleterious substance into waters frequented by fish and provides for civil liability in respect of such substances. In the event of such a deposit, persons civilly liable, jointly and severally, are (*Fisheries Act*, section 41(1)):

- The owner of the substance;
- Persons who have charge, management or control of the substance; and

---

115. *Supra* note 4.

116. *Supra* note 1.

- Persons who cause or contribute to the discharge of the substance, in proportion to their respective degrees of total fault.<sup>117</sup>

These persons are liable to:

- the federal government to reimburse for costs reasonably incurred to prevent the discharge or to counteract, remedy or mitigate its effects (s. 42(1)); and
- licensed commercial fishermen in respect of their losses of income resulting either from the deposit of the substance, or from a prohibition against fishing imposed as a result of the deposit (s. 42(3)).

Civil liability under subsections 42(1) and (3) is absolute and is not dependent on proof of fault or negligence. Defences are limited to an act of war, act of God, or intentional acts of third parties (s. 42(4)).

*Fisheries Act* s. 42(7) is important, and is set out here *verbatim*:

(7) Subsections (1) to (3) do not apply in respect of any deposit of a deleterious substance that, within the meaning of Part XV of the *Canada Shipping Act*, constitutes a discharge of a pollutant caused by or otherwise attributable to a ship.

The *Canada Shipping Act* Part XV, as was discussed above, applies to discharges from ships of *all* pollutants, not just oil.

The practical importance is this. In the case of fisheries affected by discharges from ships of oil, licensed commercial fishermen (among others) have a civil remedy under the *Marine Liability Act*, section 88. However, if a fishery is affected by discharge from a ship of a deleterious substance which is not oil but which is still a "pollutant" for purposes of *Canada Shipping Act* Part XV, (and there are a large number of such substances prescribed by regulations) affected fishermen have no remedy against either the ship or the SOPF under Part 6 of the *Marine Liability Act* because the relevant *Marine Liability Act* sections apply only to *oil* pollution damage; nor, by reason of the *Fisheries Act*, section 42(7), do fishermen have a cause of action against the owner of the substance or the persons who caused its discharge, because section 42(3) of the *Fisheries Act* is declared not to apply. For these reasons, the generally-held view is that the *Fisheries Act*, section 42(3), provides an effective civil remedy only in cases of marine pollution affecting commercial fisheries which emanates

---

117. Note that in contrast to the *Marine Liability Act*, *supra* note 93, Part 6, the shipowner is not liable under the *Fisheries Act*, unless the shipowner happens, on the facts, to be a person whose fault caused or contributed to the discharge.

from things other than “ships.” In the case of a discharge of a pollutant which is not “oil” from a unit which is not a “ship,” fishermen may have a civil remedy under section 42(3), but in practical terms, if the activity which has resulted in that discharge is one which is regulated by the Accord legislation, discussed in detail below, fishermen have, and may be more likely to pursue, a statutory claim against the holder of the oil and gas licence issued pursuant to that legislation.

#### 4. Arctic Waters Pollution Prevention Act

As noted above, this Act generally applies to pollution (not necessarily from shipping) in waters north of the 60<sup>th</sup> parallel. As a general statement, section 4(1) of the *AWPPA* prohibits persons and ships from depositing “waste”<sup>118</sup> into Arctic waters.

In the event of such a deposit, owners of a ship and owners of cargo on board a ship are jointly and severally liable for the federal government’s remedial and mitigative costs and for “all actual loss or damage incurred by other persons.”<sup>119</sup> By section 7, liability is absolute and does not depend upon proof of negligence, subject to (in effect) a contributory negligence defence to the extent that any person claiming to have suffered damage can be shown to have contributed to the deposit of the waste.

By section 9, liability is limited as prescribed by regulations. Under applicable regulations the limit is 312.7 SDR’s per ton, to a maximum of 13.9 million SDR’s<sup>120</sup>, depending upon the tonnage of the ship.

Section 2.1 of the *AWPPA* declares that:

In the event of an inconsistency between the provisions of this Act, or any regulation made under this Act, and the provisions of Part 6 of the *Marine Liability Act*, the provisions of that Part prevail to the extent of the inconsistency.

There is one (at least) important potential area of inconsistency which must be considered. If the *AWPPA* waste is persistent oil carried in bulk as cargo by a tanker, such that the relevant international conventions apply, Part 6 of the *Marine Liability Act* provides that only the shipowner (and not the cargo owner) is liable. In view of the need to give effect to

---

118. *Supra* note 2, s. 2. “Waste” is defined in terms very similar to the definition of “pollutant” in *Canada Shipping Act*, *supra* note 4, s. 654.

119. *AWPPA*, *supra* note 2, ss. 6(1)(c) and 6(2).

120. See *Canada Shipping Act Gold Franc Conversion Regulations*, SOR/78-73.

international conventions which Canada has ratified, it is suggested that a Canadian court would excuse the cargo owner from *AWPPA* liability on this basis, should it be demonstrated that the conventions apply.

### 5. *Limitation of Liability*

In traditional shipping law, the liability of ship owners, charterers and managers for most kinds of maritime claims is capable of being limited under a complex, and internationally-accepted, formula related (in general terms) to the size of the ship. In Canada, limitation of liability is a stand-alone subject now dealt with in Part 3 of the *Marine Liability Act*.

Definitions contained in section 25(1) of that Act, include the following:

“ship” ... does not include ... a floating platform constructed for the purpose of exploring or exploiting the natural resources or the subsoil of the sea-bed.

Similarly, Article 15(5)(b) of the 1976 *Convention on Limitation of Liability for Maritime Claims*,<sup>121</sup> attached as Schedule 1 to the *Marine Liability Act* and declared by section 26 of that Act to have force of law in Canada, provides:

This Convention shall not apply to ... floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

Accordingly, “floating platforms”, their owners and those responsible for damage caused by their operations, are not entitled to limit their liability under Part 3 of the *Marine Liability Act*, even if (or to the extent that) those units are “ships,” and even if, or to the extent that, such units are not otherwise entitled to limit their liability under Part 6 of the *Marine Liability Act*, because of the exclusions in section 49, discussed above.

It is an open question whether an FPSO is a unit in respect of which limitation of liability is excluded by section 25 and Art. 15(5) quoted above. It would seem that for purposes of the *Limitation Convention* and of Part 3 of the *Marine Liability Act* that this is an all-or-nothing proposition: if an FPSO is something constructed for the purpose to which the

---

121. *Convention on Limitation of Liability for Maritime Claims*, 19 November 1976, 16 I.L.M. 606 [*Limitation Convention*]. Canada has incorporated the limitation amounts from the *Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims*, 1976, 35 I.L.M. 1406.

above exclusion addresses itself, then it is not entitled to limitation in any circumstances. This is to be contrasted with section 49(2), as contained in Part 6 of the *Marine Liability Act*, under which an FPSO, when engaged in transportation of product, is liable under that Part but is (apparently) entitled to a corresponding limitation of liability.

#### 6. *Ships Used in Offshore Operations Other than Drilling Units*

By way of concluding comment it must be borne in mind that oil and gas operations offshore eastern Canada typically employ traditional “ships” in addition to drilling or production platforms. Those ships, operating as ships, are both subject to the pollution liability risks summarized above, and also take the benefit of statutory limitation of liability. To the extent that contractual arrangements between licence holders and the owners of support vessels deal with allocation of liability risks, it is important to be aware that different liability regimes may apply to support vessels than to drilling and production units, and to ensure that contractual allocations of liability take into account the various exposures, exemptions and limitations which the general law applies in respect of these different kinds of offshore equipment.

#### 7. *Things Which Are Not Treated as Ships*

The *Canada Oil and Gas Operations Act*<sup>122</sup> applies (section 3) in respect of oil and gas exploration, drilling, production, processing and transportation in (among other places) submarine areas in the territorial sea or continental shelf of Canada. In addition, mirror federal and provincial legislation implementing the Canada-Newfoundland Atlantic Accord<sup>123</sup> and the Canada-Nova Scotia Offshore Petroleum Resources Accord<sup>124</sup> respectively apply in the Newfoundland and Nova Scotia offshore areas as defined in those statutes. Provisions of all these statutes, as they relate to civil liability for marine pollution, are substantially similar. References in this paper will be to the *Newfoundland Accord Act (Canada)*; concordant sections of the *Canada Oil and Gas Operations Act* and of the *Nova Scotia Accord Act (Canada)* will be given in the footnotes.

---

122. S.C. 1994, c. 22 [COGOA].

123. *Supra* note 21.

124. *Supra* note 20.

In respect of escapes of pollutants, the provision primarily establishing civil liability is section 162(1)<sup>125</sup>:

162. (1) Where any discharge, emission or escape of petroleum that is authorized by regulation, or any spill, occurs in any portion of the off-shore area,

(a) the person who is required to obtain an authorization under paragraph 138(1)(b) in respect of the work or activity from which the spill or authorized discharge, emission or escape of petroleum emanated is liable, without proof of fault or negligence, up to any prescribed limit of liability, for

- (i) all actual loss or damage incurred by any person as a result of the spill or the authorized discharge, emission or escape of petroleum, and
- (ii) the costs and expenses reasonably incurred by the Board or Her Majesty in right of Canada or the Province or any other person in taking any action or measure in relation to the spill or the authorized discharge, emission or escape of petroleum; and

(b) all persons to whose fault or negligence the spill or the authorized discharge, emission or escape of petroleum is attributable or who are by law responsible for others to whose fault or negligence the spill or the authorized discharge, emission or escape of petroleum is attributable are jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for all actual loss or damage incurred by any person as a result of the spill or the authorized discharge, emission or escape of petroleum.

#### 8. *In Respect of What Substances is Liability Imposed?*

A number of points must be noted in respect of the above-quoted section.

Liability is imposed only in respect of discharges of "petroleum."<sup>126</sup> Petroleum is defined to mean "oil or gas", and in the same section, oil and gas are respectively defined as follows:

"oil" means

- (a) crude oil regardless of gravity produced at a well head in liquid form, and

125. *COGOA*, *supra* note 122, s. 26(1); *Nova Scotia Accord Act*, *supra* note 20, s. 167(1).

126. "Spill", one of the terms used in s. 162(1), is in turn defined to mean an escape or discharge of petroleum: *Nova Scotia Accord Act*, *supra* note 20, s. 160(1); *COGOA*, *supra* note 122, s. 24(1).

- (b) any other hydrocarbons, except coal and gas, and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the seabed or subsoil thereof of the offshore area;

“gas” means natural gas and includes all substances, other than oil, that are produced in association with natural gas.<sup>127</sup>

There has as yet been no determination, under any of these statutes, whether the term “any other hydrocarbons” as used in clause (b) of the definition of “oil” would include refined products (such as consumable fuel or lubricating oil) or any other petroleum-based manufactured product. “Hydrocarbons” is not a defined term in the legislation. It therefore remains open for argument that the civil liability regime created in respect of offshore oil and gas operations applies only in respect of discharges or spills of hydrocarbons which are being explored for, or produced, by those operations.

There therefore appears to be a gap in the civil liability regime applicable to “discharges” and “spills” from drilling and production units used in offshore operations, the size of which gap is itself uncertain. Units engaged in drilling or production are exempted from the application of Part 6 of the *Marine Liability Act*, in any event. Spills or discharges from those units of pollutants which are not “petroleum” are not the subject of a liability regime under the statutes, and if, as a matter of definition, “petroleum” means only substances which are the subject of exploration or production activities, there is similarly no liability regime in respect of spills of fuels, lubricants or other oil-based products from such units.

In addition to discharges of (certain) pollutants, civil liability is also imposed in respect of “debris” from offshore operations. Section 162(2)<sup>128</sup> provides:

- (2) Where any person incurs actual loss or damage as a result of debris or the Board or Her Majesty in right of Canada or the Province reasonably incurs any costs or expenses in taking any remedial action in relation to debris,
  - (a) the person who is required to obtain an authorization under paragraph 138(1)(b) in respect of the work or activity from which the

---

127. *Supra* notes 20 and 21, s. 2.

128. *COGOA*, *supra* note 122, s. 26(2); *Nova Scotia Accord Act*, *supra* note 20, s. 167(2).

debris originated is liable, without proof of fault or negligence, up to any prescribed limit of liability, for all such actual loss or damage and all such costs or expenses; and

- (b) all persons to whose fault or negligence the debris is attributable or who are by law responsible for others to whose fault or negligence the debris is attributable are jointly and severally liable, to the extent determined according to the degree of the fault or negligence proved against them, for all such actual loss or damage and all such costs or expenses.

“Debris” is defined (section 160(2))<sup>129</sup>:

(2) In sections 162 and 165, “debris” means any installation or structure that was put in place in the course of any work or activity required to be authorized under paragraph 138(1)(b) and that has been abandoned without such authorization as may be required by or pursuant to this Part, or any material that has broken away or been jettisoned or displaced in the course of any such work or activity.

It appears from this definition that when abandonment is authorized by appropriate regulatory order, the abandoned equipment ceases to be “debris” as defined, and so no liability appears to be imposed in respect of any resulting damage or losses. If, however, equipment is abandoned without authorization, or if physical equipment or some part thereof is lost during the course of operations, civil liability is imposed on essentially the same legal basis as that which applies to escapes of pollutants.

#### 9. *Who is Liable, and on What Basis?*

The holder of the licence under which exploration or production activities are being conducted is liable without proof of fault (s.162(1)(a); s. 162(2)(a)<sup>130</sup>). This is in stark contrast to Part 6 of the *Marine Liability Act*, under which the shipowner, and no other party, is liable. In offshore operations, it is rare, if ever, that the licence holder will be the owner of the offshore drilling unit.

In addition, any person to whose fault or negligence the spill or discharge of petroleum (s.162(1)(b)) or the loss of debris (s.162(2)(b)) is legally attributable also is liable, jointly and severally, for resulting

129. *COGOA*, *supra* note 122, s. 24(2); *Nova Scotia Accord Act*, *supra* note 20, s. 165(2).

130. *COGOA*, *supra* note 122, s. 26; *Nova Scotia Accord Act*, *supra* note 20, s. 167.

compensable losses or damages. It appears from the use of the phrase “any person” that this additional “fault-based” regime applies to the licence-holder, should it be the one (or one of the ones) at fault — a material consideration because, as is discussed below, fault-based liability, for either spills or debris, is unlimited in amount.

#### 10. *Scope of Compensable Damages*

“Any person” may claim for, and subject to limitation (if applicable) recover “actual loss or damage” incurred as a result of a spill (s. 162(1)(a)(i)) or as a result of debris (s. 162(2)). “Actual loss or damage” is defined (s. 160(3)<sup>131</sup>):

(3) In section 162, “actual loss or damage” includes loss of income, including future income, and, with respect to any aboriginal peoples of Canada, includes loss of hunting, fishing and gathering opportunities.

Loss of or damage to physical property would appear to be relatively straightforward in terms of proof of causation, and in terms of compensability. However, the classes or kinds of persons who may claim for lost income, and the required degree of proximity between the pollution event (or the debris) and the alleged loss which is required in order to be compensable, are neither limited nor addressed in the legislation. All that the statute requires is that the loss be “a result of” the spill (or debris). In the case of a serious pollution event from an offshore installation — particularly one relatively close to a coast — one can readily conceive lost income claims by (among others) fishermen, fish plant operators or employees, aquaculturists, or owners and operators of coastal tourist attractions or other allegedly environmentally-sensitive businesses. All issues of recoverability in Canada of such losses are open at present, and remain to be addressed by the courts in appropriate cases.

In addition to private losses caused by pollutants or debris, there is liability to compensate the regulatory Board and/or the federal or provincial government in respect of “costs or expenses reasonably incurred” by any of them “in relation to” the escape of pollutant (s. 162(1)(a)(ii)) or the debris (s.162(2)). The only apparent limitation on recoverability of such costs and expenses is that same be “reasonably incurred”, which it is hoped would include the requirement to be reasonable in amount.

---

131. COGOA, *supra* note 122, s. 24(3); *Nova Scotia Accord Act*, *supra* note 20, s. 165(3).

### 11. *Limitation of Liability*

There are two potential sources of limitation of liability contemplated by the legislation; however the practical availability of either is somewhat restricted.

The licence-holder's no-fault liability under section 162(1)(a) (for escape of pollutant) and under section 162(2)(a) (for debris) is "up to any prescribed limit of liability". At present, the prescribed limit is generally C\$30 million.<sup>132</sup> In the event that the fault or negligence of the licence holder is proved, the licence holder is not entitled to the benefit of this limitation (section 162(1)(b)).

In addition, liability under the subject legislation can be limited under other laws or legislation, if applicable. Section 162(2.1) provides:

(2.1) Where subsection (1) or (2) applies, no person is liable for more than the greater of the prescribed limit referred to in paragraph (1)(a) or (2)(a), as the case may be, and the amount for which the person would be liable under any other law for the same occurrence.

The most likely practical application of this subsection is where some entity incurs a liability to which the *Marine Liability Act* applies, and takes the benefit of limitation of liability under Part 3 or perhaps Part 6 of that Act. In that situation, it appears that the liable entity takes the benefit of the most favourable (to it) limitation amount.

### 12. *Jurisdiction and Process to Award Compensation*

Compensation claims under section 162 "may be sued for and recovered in any court of competent jurisdiction in Canada" (s. 162(3)). In the case of the Newfoundland or Nova Scotia offshore areas, there may be some question whether the Trial Division of the Federal Court of Canada would be a court of competent jurisdiction, because the applicable substantive law governing the compensation claim is created by mirror federal and provincial legislation, and the Federal Court is constitutionally limited to administration of "the laws of Canada."<sup>133</sup> It is probable that the supe-

---

132. *Canada-Newfoundland Oil and Gas Spills and Debris Liability Regulations* SOR/88-262; *Canada-Nova Scotia Oil and Gas Spills and Debris Liability Regulations*, SOR/95-123; *Oil and Gas Spills and Debris Liability Regulations*, SOR/87-331. Note that under these regulations, a C\$40 million limit applies in respect of operations in northern waters.

133. *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, s. 101.

rior courts of those provinces would be courts of competent jurisdiction, assuming that the person against which the compensation claim is asserted has a corporate presence in the province and is amendable to the jurisdiction of the provincial superior court.

The legislation additionally provides, however, as follows in sections 163(2) and (3)<sup>134</sup>:

163. (2) The Board may require that moneys in an amount not exceeding the amount prescribed for any case or class of cases, or determined by the Board in the absence of regulations, be paid out of the funds available under the letter of credit, guarantee or indemnity bond or other form of financial responsibility provided pursuant to subsection (1), in respect of any claim for which proceedings may be instituted under section 162, whether or not such proceedings have been instituted.

(3) Where payment is required under subsection (2), it shall be made in such manner, subject to such conditions and procedures and to or for the benefit of such persons or classes of persons as may be prescribed by the regulations for any case or class of cases, or as may be required by the Board in the absence of regulations.

There are no regulations, but the Canada-Newfoundland and Canada-Nova Scotia Offshore Petroleum Boards have jointly issued a document titled, *Compensation Guidelines Respecting Damages Related to Offshore Petroleum Activity*, dated March, 2002 (“Guidelines”). It is noted that the boards appear to require a claimant to first attempt resolution of the claim through direct negotiation with the licence-holder (Guidelines, section 2.2.1). In the event that process does not result in settlement, the claimant may elect (but is apparently not required) to present the compensation claim to the appropriate board, and the board, upon review of the claim, “may award a damage settlement” (Guidelines, section 2.2.2). Both under the Guidelines, section 2.2.3, and under the legislation (s. 163(4)), the claimant may still, if dissatisfied with the board’s award, sue in court in respect of the compensation claim.

### *Conclusion*

Despite the number and complexity of statutes which purport to regulate marine pollution in offshore eastern Canada, the discussion above demonstrates that there remains some uncertainty regarding the scope of

---

134. COGOA, *supra* note 122, s. 27; *Nova Scotia Accord Act*, *supra* note 20, s. 168.

application of some of those statutes, and in fact regarding whether some activities or events, which one would assume to be illegal and to give rise to compensation obligations, are in fact covered by any of those statutes.

Certain more troublesome areas may be summarized:

- In the event of a marine pollution incident, the propensity of federal authorities to prosecute under multiple statutes, possibly under instructions from multiple line departments, greatly complicates the handling, defence and potential resolution of resulting criminal proceedings.
- Further in the event of a marine pollution incident, the existence of multiple reporting obligations, in many cases to separate departments who cannot be relied upon to communicate with each other, creates a risk of prosecution for non-reporting, through inadvertent failure to make all required reports.
- Whether Canada has, or even claims, jurisdiction in respect of marine pollution in places where, geographically, offshore activities are conducted on the continental shelf of Canada but beyond the Exclusive Economic Zone of Canada.
- Whether under the *Accord Acts* criminal, regulatory or civil responsibility in respect of discharges of pollutants from offshore drilling or production units are restricted to hydrocarbons which are being explored for or produced by those units. If the scope of application of the *Accord Acts* is so restricted, the regime(s) applicable to such discharges will depend upon such things as whether the source of the discharge is a drilling unit engaged in drilling (exempted from *Canada Shipping Act*, Part XV and Part 6 of the *Marine Liability Act*); whether the discharge is in northern waters (if not, the *Arctic Waters Pollution Prevention Act* does not apply); and whether the compensation claimant is a licensed commercial fisherman (if not, no entitlement to a civil remedy under the *Fisheries Act*).
- In almost all cases, if the pollutant which escapes is neither oil nor a petroleum product, the availability of a civil remedy under either the *Accord Acts* or Part 6 of the *Marine Liability Act*, is highly restricted, if available at all.

In the case of a serious offshore casualty resulting in extensive pollution damage, each of multiple potentially liable parties may be subject to differing statutory civil liability regimes, be responsible to compensate different categories of claimants for different kinds of losses, and may be entitled to different limitations of liabilities. These varying exposures

need to be taken into consideration not only in the hypothetical event that such a casualty occurs, but also in the everyday world of risk management by, and contractual allocation of risks among, commercial participants in practically every facet of offshore activity.

## APPENDIX A

## Environmental Regulatory Compliance Requirements in the Offshore (Atlantic)

Legislation/ Regulation	Agency Responsible	Reporting Requirement	Written Report Required	Plan Required	Potential Offences
<i>Canada Shipping Act</i> , R.S.C. 1985, c. S-9.	Transport Canada Department of Fisheries and Oceans			<p>s. 660.2 Oil Pollution Emergency Plan. There is also a requirement for an arrangement with a Response Organization and a declaration in regard to insurance.</p>	<p>S. 664 Discharge of pollutant</p> <p>s. 665 Failure to have on board required certificates (Oil Pollution Prevention Certificate and others)</p> <p>s. 666 Failure to comply with order of Pollution Prevention Officer.</p> <p>S. 667 General failure to comply with regulations</p>
<i>Oil Pollution Prevention Regulations</i> , S.O.R./93-3 ( <i>Canada Shipping Act</i> ).	Transport Canada Department of Fisheries and Oceans			<p>s. 5 Oil Record Book</p> <p>s. 6 Oil Pollution Prevention Certificates</p> <p>s. 8 Copies of plans and specs</p> <p>s. 45.1 Shipboard Oil Pollution and Emergency Plan</p>	<p>s. 28 Prohibits discharge of oil or oily mixture in Canadian waters, subject to exceptions.</p>
<i>Pollutant Discharge Reporting Regulations</i> , S.O.R./95-351 ( <i>Canada Shipping Act</i> ).	Transport Canada Department of Fisheries and Oceans	s. 5 Report discharge of pollutant to a Pollution Prevention Officer			s. 667

<i>Shipping Casualties Reporting Regulations</i> , S.O.R./ 85-514 ( <i>Canada Shipping Act</i> ).	Transport Canada Department of Fisheries and Oceans	s. 4 In the event of a shipping casualty, accident or dangerous occurrence, report incident immediately by radio to a Canadian Radio Ship Reporting Station and to the Canadian Coast Guard's Operations Centre	Yes	s. 667
<i>Garbage Pollution Prevention Regulations</i> , C.R.C., c. 1424 ( <i>Canada Shipping Act</i> ).	Transport Canada Department of Fisheries and Oceans	s. 4 Prohibits discharge of garbage into specified Canadian waters.		
<i>Dangerous Goods Shipping Regulations</i> , S.O.R. 80/951 ( <i>Canada Shipping Act</i> ).	Transport Canada Department of Fisheries and Oceans	s. 11 Where a ship or person is at any time in serious and imminent danger by reason of an occurrence while dangerous goods are being handled, the Coast Guard, Ship Safety Office or Steamship Inspector shall be notified by the quickest means available.		s. 667
<i>Canadian Environmental Protection Act</i> , 1999, S.C. 1999, c. 33.	Environment Canada	s. 56 Pollution Prevention Plan. Environmental Emergency Plan.	Yes	s. 125, 126, 185 Restrictions on disposal at sea, incineration at sea, hazardous wastes; requirement for permits. ss. 95, 179, 201 Requirement to take remedial measures on release.
<i>Navigable Waters Protection Act</i> , R.S.C. 1985, c. N-22.	Transport Canada	s. 15 If incident creates obstruction or hazard in navigation, notify Minister of Transport or the Chief Officer of Customs and Excise at the nearest port.		ss. 21-22 Depositing various materials in navigable waters. s. 19(2) Failure to comply with an Order of the Minister.

## Environmental Regulatory Compliance Requirements in the Offshore (Atlantic)

Legislation/Regulation	Agency Responsible	Reporting Requirement	Written Report Required	Plan Required	Potential Offences
<i>Transportation of Dangerous Goods Act</i> , 1992, S.C. 1992, c. 34.	Transport Canada	s. 18(1) Duty to report release of dangerous goods and to take reasonable measures to reduce or eliminate danger to public safety.		s. 7 Emergency Response Assistance Plan.	S. 33 General contravention of Act or Regs.
<i>Transportation Safety Board Regulations</i> , S.O.R./92-446 ( <i>Canadian Transportation Accident Investigation and Safety Board Act</i> ).	Transportation Safety Board	ss. 2 and 3 A marine accident or incident must be reported to the Transportation Safety Board as soon as possible and by the quickest means available	Yes		s. 35(2) of the Act, general contravention of the regulations.
<i>Fisheries Act</i> , R.S.C. 1985, c. F-14.	Department of Fisheries and Oceans	s. 38(4) Where there is a deposit of "deleterious substance" in water and there is actual or imminent damage or danger to fish habitat or fish, a report of the occurrence shall be made to a Fisheries Inspector			s. 36(3) Deposit of a deleterious substance in water frequented by fish.
<i>Migratory Birds Regulations</i> , C.R.C. c.1035 ( <i>Migratory Birds Convention Act</i> , 1994).	Environment Canada				s. 35(1) Deposit oil, oil wastes or substances harmful to migratory birds.
<i>Wildlife Area Regulations</i> , C.R.C. c.1609 ( <i>Canada Wildlife Act</i> ).	Environment Canada				s. 3 Dump or deposit waste or substance which would degrade or alter quality of environment in a wildlife area.

<i>Canada Water Act</i> , R.S.C. 1985, c. C-11.	Environment Canada				s. 9 Deposit waste (broadly defined) in a water quality management area.
<i>National Energy Board Act Part VI (Oil and Gas) Regulations</i> , S.O.R./96-244 ( <i>National Energy Board Act</i> ).	National Energy Board		ss. 13, 20, 23, 25 With Exportation License applications must provide information regarding potential environmental effects and resulting social effects.		
<i>Canada National Parks Act</i> , S.C. 2000, c. 32	Minister of Heritage				s. 32 Failure to take reasonable measures to prevent degradation of natural environment when substance discharged in a park.
<i>Port Authorities Operations Regulations</i> , S.O.R./2000-55 ( <i>Canada Marine Act</i> ).	Port Authority Transport Canada		Yes	s. 5 General prohibitions which could include pollution. s. 6 Prohibitions for specific ports as provided in Schedule 1	
<i>Public Harbours Regulations</i> , S.O.R./83-654 ( <i>Canada Marine Act</i> ).	Transport Canada			s. 13 It is an offense to discharge anything in the water or on the shore which would damage property, vessels, cause a nuisance or endanger persons or property.	
<i>Canada Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> , S.C. 1988, c. 28.	CNSOPB		s. 166(2)(NS)/s. 161(2)(NL) Report any spill to the Chief Conservation Officer.		S. 166(1)(NS)/s. 161(1)(NL) spills prohibited in offshore area. S. 166(3)(NS)/s. 161(3)(NL) duty to take reasonable measures
<i>Canada Newfoundland Atlantic Accord Implementation Act</i> , S.C. 1987, c. 3.	CNLOPB				s. 199(1)(NS)/s. 194(1)(NL) general offense

## Environmental Regulatory Compliance Requirements in the Offshore (Atlantic)

Legislation/ Regulation	Agency Responsible	Reporting Requirement	Written Report Required	Plan Required	Potential Offences
<i>Nova Scotia Offshore Petroleum Installations Regulations</i> , S.O.R./95-191.	CNSOPB	s. 70 In the event of an accident relating to person or property, including loss of life, missing person, serious injury, imminent threat to safety of personnel or to the public, fire, explosion, loss of well control, hydrocarbon or toxic fluid spills or significant damage to a pipeline, equipment or installation, notify Chief Safety Officer and the Chief Conservation Officer	Yes		s. 199(1)(NS)/s. 194(1)(NL) of the Act s. 71 any contravention is an offense.
<i>Newfoundland Offshore Petroleum Installations Regulations</i> , S.O.R./95-104.	CNLOPB				
<i>Nova Scotia Offshore Area Petroleum Diving Regulations</i> , S.O.R./95-189.	CNSOPB	s. 6 In the event of an accident relating to diving notify Chief Safety Officer	Yes	Schedule II Emergency Procedures Contingency Plan.	s. 199(1)(NS)/s. 194(1)(NL) of the Act, general contraventions s. 72 any contravention is an offense.
<i>Newfoundland Offshore Area Petroleum Diving Regulations</i> , S.O.R./88-601.	CNLOPB				
<i>Nova Scotia Offshore Petroleum Drilling Regulations</i> , S.O.R./92-676.	CNSOPB	s. 145 In the event of an accident relating to loss of life, missing person, serious injury, imminent threat to safety of personnel or to the public, fire, explosion, loss of well control, hydrocarbon or toxic fluid spills or significant damage to a pipeline, equipment or installation, notify Chief Conservation Officer	Yes	s. 64 Contingency Plan	s. 199(1)(NS)/s. 194(1)(NL) of the Act, general contraventions s. 203 any contravention is an offense.
<i>Newfoundland Offshore Petroleum Drilling Regulations</i> , S.O.R./93-23.	CNLOPB				

<p><i>Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations, S.O.R. /95-144. Newfoundland Offshore Area Petroleum Geophysical Operations Regulations, S.O.R. / 95-344.</i></p>	<p>CNSOPB</p> <p>CNLOPB</p>	<p>s. 27</p> <p>In the event of a serious accident or incident during a geophysical operation that constitutes a threat to the environment, notify both the Chief Conservation Officer and Chief Safety Officer</p>	<p>Yes</p>	<p>s. 199(1)(NS)/s. 194(1)(NL) of the Act, general contraventions</p>
<p><i>Draft Offshore Petroleum Health and Safety Regulations</i></p>	<p>CNSOPB</p>	<p>s. 15.4</p> <p>In the event of a hazardous occurrence caused by fire, exposing, flooding or spill of a hazardous substance, notify Chief Safety Officer as soon as possible but not later than 24 hours after the occurrence</p>	<p>Yes</p>	<p>s. 199(1)(NS)/s. 194(1)(NL) of the Act, general contraventions</p>

