

Getting It Right

Bringing Democracy to Decisions in Nova Scotia's Offshore

"The only difference between offshore Nova Scotia and the mainland is there's more water and more fish! It's all one province!"

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for

Campaign to Protect Offshore Nova Scotia (C-PONS)

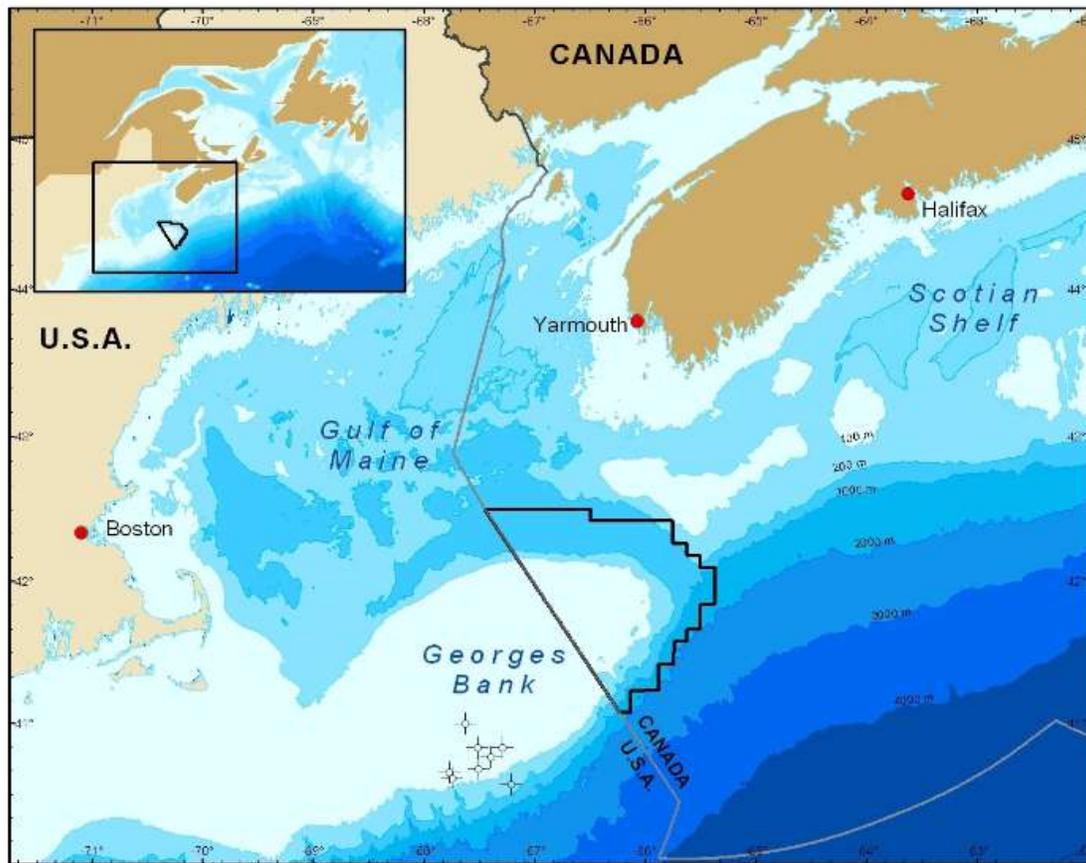
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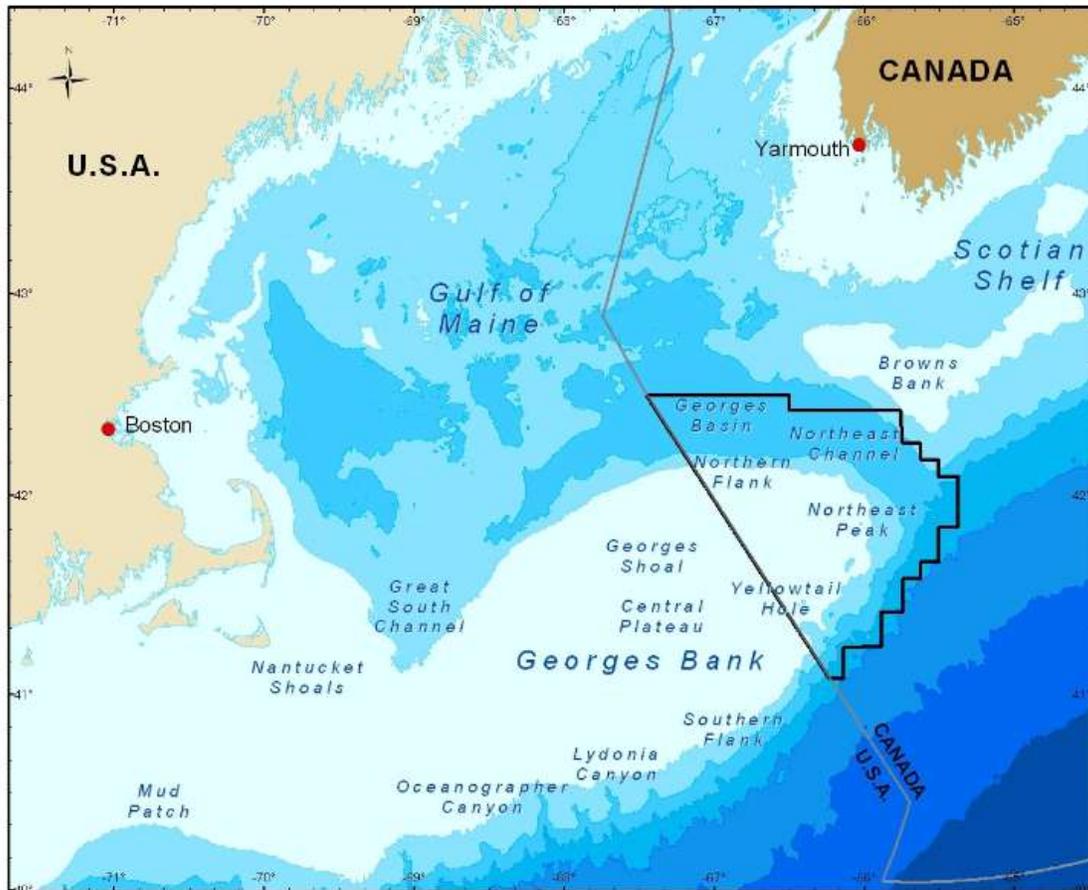
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1. Maps of Southwestern Nova Scotia Offshore



Georges Bank Moratorium (outlined in black) and the international boundary between the economic zones of Canada and the US. Browns and La Have Banks are to the Northeast of Georges Bank (Source, DFO, 2011)



Submarine structures neighbouring the area covered by the moratorium on oil industry activity on the Canadian portion of Georges Bank (Source: DFO, 2011)

A substantial portion (estimated at 60%) of the province's income from the fishery comes from Georges, Browns, La Have, and Baccaro Banks, the Bay of Fundy and surrounding waters. Key lobster, scallop and groundfish spawning sites have been identified within and neighbouring the currents that connect proposed drilling sites to the twice-daily massive inflow and outflow of tides from the Bay of Fundy (160 billion tonnes - more water than the world's freshwater rivers combined!). Since Georges Bank is also key to United States East Coast fishing communities, our neighbours have a stake in our stewardship of those resources - or lack thereof.

2. Introduction

On October 20th, 2015, one day after the federal election, the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) announced that it had awarded Shell Canada Limited a license to drill an exploratory oil well on the edge of the Scotian Shelf, about 250 kilometres south of Shelburne.

The ruling took many Nova Scotians by surprise, given the area's proximity to the province's sustainable fishery, worth between \$1 and \$2 billion annually to the province's economy. Surprise, because a serious oil spill in Nova Scotia's offshore would also threaten the coastline and coastal environment of the province and the beauty so prized by residents and the essential draw for our tourist industry, worth as much as another \$2 billion a year. Surprise, too, since the decision involved limited public involvement, minimal public outreach and, hence, minimal informed public debate.

Of course, while the CNSOPB and the provincial government, among other boosters of offshore oil exploration and development justify decisions like this in terms of their, often unspecified, economic benefits, this is far more than a choice among economic options. The protection of a highly vulnerable, complex and integrated marine ecology on which we all depend, but barely understand, appears to rate as an afterthought at best. That's not good enough.

With the fresh memory of BP's Deepwater Horizon disaster in the Gulf of Mexico on their minds, Nova Scotians were also surprised that the CNSOPB, and the Canadian Environmental Assessment Agency, had originally considered giving Shell three weeks to get capping equipment to the drill site in, as the Board put it, "the unlikely event of a blow-out". After significant public protest, the Board reduced that time in Shell's licence to just under two weeks - still an inexplicable delay to most independent observers. The Shell well-site is located in water half again as deep as Deepwater Horizon. The deeper the water, the more problematic the technological challenge. This site is among the deepest in the world.

Shell has now been drilling its Cheshire well since October 23rd, 2015, while public concern is mounting over whether the rewards of development in the Shelburne Basin and Scotian Shelf justify the risks. The big question is: How do we know? The decision-making process for deciding such questions of vital importance to Nova Scotians, our communities, our environment and our economic livelihoods lacks legitimacy, exhibits a pro-industry bias, and can't be trusted.

This paper is a call for reform of that process. Reform should take place before further decisions are taken that put our economic and environmental futures at risk without robust democratic participation by those most affected.

3. What is the Canada-Nova Scotia Offshore Petroleum Board?

In 1986, oil industry interest in drilling for oil and gas on Georges Bank, in the heart of the most productive fishing ground on the East Coast, led to vocal public opposition. The federal and provincial governments responded by agreeing on a regulatory process for adjudicating applications by the oil industry to explore on the continental shelf. The federal and provincial governments signed the Canada-Nova Scotia Offshore Petroleum Accord on August 26th, 1986 and passed parallel federal and provincial Implementation Acts.

The legislation established a moratorium on oil and gas activities on the Canadian portion of Georges Bank, until January 2000. That moratorium has now been extended three more times – until 2022. A similar moratorium governs activity on the US side of the Bank, also extended indefinitely by President Obama in February, 2016. In fact, Americans, too are concerned about Canada’s readiness to encourage further exploration so near fishing grounds that ignore international boundaries.

In 1990, the Implementation Acts also established the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) to regulate the issuing of licences for exploration and development of oil and gas resources in the offshore.

Responsibilities of the CNSOPB

According to the Board, its responsibilities include,

- health and safety of offshore workers,
- protection of the environment,
- management and conservation of offshore petroleum resources,
- compliance with the provisions of the Accord Acts that deal with Canada-Nova Scotia employment, industrial benefits
- issuance of licences for offshore exploration and development, and
- resource evaluation, data collection, curation and distribution.

Environmental Assessments of offshore activities were until recently a joint undertaking, with the federal Environmental Assessment Agency taking the lead role and the CNSOPB having a subservient, but overlapping responsibility. In June of 2015, the Harper government, as part of its streamlining (some might say denigration) of federal environmental assessments, passed regulations handing over full responsibility for future environmental assessments in the Nova Scotian offshore to the CNSOPB.

Public Hearings

Though the Board does not stress this, its powers under the Act (Sec. 44) include the power to hold public hearings as it sees fit. A public hearing took place in 2007 regarding development of the South Panuke gas field off Sable Island. The CNSOPB's website lists more than a dozen exploration licences granted since then without public hearings, though there were limited hearings on the Shell application to explore in the Shelburne Basin.

Interestingly, the Board also has the power to fund public participation in environmental assessments. That power extends not simply to costs of intervention, but also might extend to covering legal representation and costs of calling independent expert witnesses. At any rate, this is a power the CNSOPB has been less than enthusiastic about embracing to date.

The Board's history, where public participation is concerned, has tended to see it as something to be "managed" and limited if at all possible. Public presentations and "open houses" have stressed an industry viewpoint, denying the existence of science-based controversy, where such controversy exists, and limiting public access to expert opinions that the Board regards as contradicting its decisions. From a public interest standpoint, this is regrettable to say the least. Worse, it breeds mistrust of the Board's reassurances.

Membership of the CNSOPB

The Board consists of five members, two chosen by the provincial government, two by the federal government, and a Chair, jointly appointed. Their terms run for 6 years and are renewable. There are also two alternate members, one provincially and one federally appointed.

There is a limitation on the number of public servants (2) who can be board members at one time, but no limit on private sector or industry members. In fact, four of the five permanent members of today's Board have oil industry backgrounds. None are independent experts on the environment, the fishery, tourism, or the economics of long-term energy policy.

The Board is served by a small in-house staff. It is also interesting to note that its organizational structure has separate divisions for IT, Geology, Finance and Operational Health and Safety. Environmental matters fall under the Health and Safety division. One might question why the environment has no division of its own.

Granting Exploration and Development Licences

The federal and provincial governments have agreed that all of Canada's offshore territory, except those areas covered by a moratorium (Georges Bank) or granted other protection, is open for oil and gas exploration.

So, how does the CNSOPB decide where exploration takes place?

The process begins with "nomination" by oil companies, or other persons, and the Board itself, of Crown lands in the offshore that are of interest to them as potential properties. Then, every April, the Board will announce a "Call for Bids" designed to elicit competitive interest in designated Crown lands, including those nominated by companies.

Exploration licences may be awarded to the highest bidders on each lease, after basic environmental and other concerns have been addressed by the Board. Exploration includes the initial seismic work necessary before a drilling program can be designed. The Board attaches whatever conditions it deems appropriate to the licences it issues. Licences are dependent on the licensee maintaining a certain level of activity and investment and they last for a maximum of 9 years.

Once the Board announces a Call for Bids, it allows a 60-day period for written public submissions on the merits or demerits of industry activity in the designated lease areas. To date, the Board has seen fit not to seek more effective public participation with full public hearings and funded participation.

Should the lease site prove promising, a company can then apply for a "Significant Discovery" licence to allow further work proving up the resource. Finally, the Board may grant a "Production Licence", declaring a commercial discovery and giving the company the right to produce and ownership of the product.

Throughout this process, the Board has the power to define appropriate conditions, timing and limits to activities that might disturb the fishery, threaten the marine ecology or interfere with renewable resource activities, like fishing. Once drilling begins, or development takes place, the Board is responsible for protecting against pollution from operational activities on a day-to-day basis.

Is Today's CNSOPB What We Need?

No one can deny that Canada and Nova Scotia need a regulatory agency with the power to determine whether development of offshore petroleum resources is in the public interest, and if so, under what conditions such development should proceed.

Our marine resources are subject to competing demands, many of them the result of sustainable, centuries-old activities, like fishing, that support a substantial proportion of the province's communities, economy and population. It is imperative that a regulatory agency charged with determining the public interest should take those competing claims into account and accord them the weight they deserve in its decisions. It is imperative, too, that the Board recognize in more than words, its responsibility to manage and protect the fragile marine ecosystem whose importance extends far beyond narrowly economic considerations.

The research and evidence on which agency decisions are based must reflect the best independent science, and not be overly dependent on oil industry research.

Those decisions must be transparent and democratically accountable if they are to be trusted. An informed and involved public is essential. Full and exhaustive public hearings must therefore be a key ingredient in the process.

It is hard to conclude that the CNSOPB, as currently constituted, and given its actions and interpretation of its mandate to date, meets the criteria for a representative and robust democratic public interest agency.

4. What's at stake?

In April, 2010, BP's Deepwater Horizon oil well, drilling in water just under a mile deep in the Gulf of Mexico, exploded when its blow-out preventer failed. Before it was finally capped almost 3 months later, 4.9 million barrels of oil had escaped.

The spill has cost the Gulf fishery and tourist industries more than \$25 billion. Six years later, the toll on the Gulf's ecology and marine life continues to mount. In 2012, BP pleaded guilty to 11 counts of manslaughter as well as lying to Congress. The company has paid over \$42 billion in settlements and another \$40 billion in clean-up costs.

If such disasters have a silver lining, and it is hard to see them that way, it is that we can benefit by learning from them. An enormous amount of research has taken place on the causes and impact of the BP spill. The industry tells us today that they have learned the lessons and they govern their approach to oil exploration and development in the offshore here in Canada. The CNSOPB, likewise, is quick to claim that its decisions reflect those lessons.

Unfortunately, there is much room for doubt. In fact, there is not one relevant reference to any studies dated after 2010 in the Shell Environmental Impact Statement (EIS) (J Davis, COAC).

Let's not forget also that there have already been two major blowouts on the Scotian Shelf, both in the 1980s.

"In the early 1980s, two discovery wells - Shell's Uniacke G-72 and Mobil's West Venture N-91 - actually blew wild. The Uniacke well, which was being drilled from the semi-submersible rig Vinland, took about ten days to bring under control. By contrast, the blowout at West Venture took eight months to shut in. The direct cost of bringing this one well under control was \$200 million." (J. Davis, COAC)

If these had been oil wells, and not natural gas and condensates, the Scotian Shelf could still be recovering.

The "Unlikely Event"

The phrase, "in the unlikely event of a blow-out" was freely used to describe BP's "fail-safe" approach to its Gulf exploration site, suggesting it would never be called upon. So, too, the CNSOPB's and Shell's literature talks in terms of the "unlikely event" when describing precautions taken on Nova Scotia's offshore. It is, of course, that very "unlikely event" that we must be prepared for. It should be our starting point and objective, and not a phrase designed primarily for casual reassurance.

The Lifeblood of Southwestern Nova Scotia Communities

2016 is a good year in which to underline the importance of a healthy sustainable fishery to the communities and economy of Southwestern Nova Scotia. Record lobster catches at good prices, rebounding haddock catches, healthy scallop and halibut harvests, and growing export revenues all point to a reliable long-term contribution to the economy nearing the \$2 billion-a-year mark. What's more, a large proportion of those returns go to individual harvesters at the community level and the income is spent locally. The activity supports thousands of fishers directly and thousands more Nova Scotians when their incomes are spent near home.

A substantial portion (estimated at 60%) of the province's income from the fishery comes from Georges, Browns, La Have, and Baccaro Banks, the Bay of Fundy and surrounding waters. Key lobster, scallop and groundfish spawning sites have been identified within and neighbouring the currents that connect proposed drilling sites to the twice daily massive inflow and outflow of tides from the Bay of Fundy (160 billion tonnes - more water than the world's freshwater rivers combined!).

Our offshore region, an incredible source of nature's sustainable bounty, is now threatened by human-induced climate change and by the risk of oil spills resulting from offshore oil activity. It's not as if the two are unrelated, but our primary concern here is minimizing the risk from the latter.

While Shell's Cheshire well is being drilled on the southern slope of the Scotia Shelf in deeper water than the fishery grounds, future lease sites lie on the Shelf itself, in the midst of, or adjacent to, protected and known nursery zones for critically important commercial species. (For more detail on these sites and recent research findings on the fishery, contact the Clean Ocean Action Committee (COAC), an advocacy group representing fishers in Southwest NS)

This is the context we need to keep in mind when assessing what constitutes "acceptable risk" in developing potential offshore oil and gas deposits. On the one hand, is the proposed development of a non-renewable resource with a limited future (if we take our global warming commitments seriously) and with a limited contribution to the provincial economy. On the other hand, is the protection and maintenance of a renewable, sustainable resource, the fishery, whose gift to Nova Scotians keeps on giving, year after year after year, sustaining a way of life and economic base in communities all the way from Halifax to Digby and beyond.

Should the decision to approve oil and gas exploration in such a sensitive zone be left to a handful of oil industry veterans, with minimal public involvement, let alone influence? The answer seems self-evident.

What of the Coastal Marine Environment?

Of course, as we have already said, this is not just about economic sustainability, but the protection of our entire marine ecosystem, as critically important to Nova Scotians as our on-shore ecosystems.

A major oil spill in Nova Scotia's offshore would not only be a disaster for our fishery and subsurface ecology, but it is likely that it would also threaten the beautiful coastline that we who live here, and those who visit us, have come to know and cherish.

In fact, it was the lessons from the BP disaster in the Gulf of Mexico that led more than 100 communities on the US Eastern seaboard to successfully petition President Obama to ban offshore drilling along the entire East Coast of the US. (NYT, Guardian, 15 March 2016)

Surprisingly (or not), CNSOPB discussion of the potential impact of a major spill in the offshore here, barely mentions risk to the coastal marine environment. We can only assume it is because it doesn't occur to the Board that such impact would also be catastrophic and should, therefore, enter into the equation of its decisions. Or, perhaps, the Board regards such damage as so unlikely as to be worth the risk?

The tourism sector of the economy is another sustainable, predictable source of revenue to the provincial economy, amounting by some estimates to two billion dollars a year. The Ivany Report calls for doubling those revenues in the next ten

years. Placing that crucial economic sector at unnecessary risk might be regarded as foolhardy.

5. What if the “Unlikely Event” Happens?

“Shell first discovered oil in the Niger delta in 1956. According to Amnesty International, more than 13 million barrels of oil have been spilt in the delta, twice as much as by BP in last year’s Gulf of Mexico spill.” The Guardian, 3 August, 2011

“An examination of Shell’s operations around the world makes it clear that the company operates with a brazen disregard for the safety of its own workers, the needs of local communities both here in the United States and internationally, and the long-term impact of drilling on the environment.” 2012 Report on Shell Oil’s woeful environmental and human rights record by Alaska Wilderness League

“A £22,500 fine imposed on the energy giant Shell as punishment for the worst North Sea oil spill in a decade has been dismissed as “paltry” by environmental campaigners... The leak from the Gannet Alpha platform in August 2011 was the worst in the region in 10 years and saw more than 200 tons of oil – about 1,300 barrels – flood into the sea.” The Independent, 24 Nov. 2015

The day after the 2015 federal election, Nova Scotia Premier Stephen McNeil *“sent a memo to every media outlet in Nova Scotia declaiming how thrilled he is that Shell Canada has chosen the fragile fishing grounds off the Scotian shelf to drill for oil and trumpeting Shell’s “strong safety and environmental and health and safety record.”* South Coast Today, October 22, 2015

Suppose the CNSOPB approves drilling for oil in the offshore, concluding as they have in the case of Shell’s Cheshire well that the risk of a major disaster is manageable? What happens if they’re wrong?

The lessons of BP’s Gulf Horizon disaster are once again relevant.

BP Horizon had only one blow-out preventer, or BOP. The BOP is the first line of defense that is supposed to seal the well immediately following an explosion at the well-head. BP’s failed to do the job. Shell’s response is to have three BOPs on the Cheshire well and to argue that their BOPs have advanced far beyond that of BP’s inadequate technology.

“In the unlikely event” that Shell’s triple BOP system fails, the next line of defense is a capping stack, a piece of mobile equipment several storeys high that must be lowered from the surface down over the well-head to seal it off. The CNSOPB has

given Shell 12 days after a catastrophic blow-out to get a capping stack into place to begin that process. The nearest stack is in Norway. It is interesting to note that the State of Alaska requires a capping stack to be available within 24 hours after a blow-out. Is our offshore not worth the same consideration?

According to the CBC, Shell's health and safety and environment manager, Scott Jardine, says the marginal risk doesn't justify placing a capping stack nearby. How does he get to make that determination for us?

The CNSOPB seems to have bought Shell's self-interested message. Justifying the decision to allow Shell 12 days, Stuart Pinks, the CEO of the CNSOPB, argues it isn't feasible to have a capping stack handy, pointing to the \$20-\$30 million cost of building one. The thought that this might simply be a necessary cost of production for anyone interested in drilling on our offshore doesn't seem to have occurred to him. Certainly, relative to the Shell's overall \$1.3 billion spending commitment, the cost of a capping stack nearby appears marginal.

What about the Oil Pollution?

Another post-blow-out concern is what to do about the spread of oil and other toxic products in the plume from the blown-out well site.

Again, the Gulf Horizons experience is valuable. The use of dispersants to break down the oil on the surface and to spread it throughout the water column has both promoters and well-informed critics.

The terms of Shell's exploration licence indicate the CNSOPB would favour the use of Corexit, a dispersant also used by BP in the Gulf disaster and a product of Nalco, a company owned by oil companies. The industry likes Corexit, because they say it breaks up the oil and makes it easier for natural organisms to consume and degrade it. It's also cosmetically attractive, removing the slicks that show up on the evening TV news, while dispersing the oil below the surface throughout the water column. Once more, the CNSOPB's literature follows the industry's lead and extols the benefits of Corexit.

The trouble is, recent research from the Gulf casts doubt on the suggestion that Corexit helps in the natural degradation of the oil. Research also underlines the destructive impact of dispersed oil in the water column on organisms essential to the marine ecology and fishery. Some researchers conclude dispersants make matters worse and it would be best to allow the oil to spread on the surface and degrade naturally.

Whatever one's position in this debate, one thing we might all agree on is that we need to hear the arguments of all the researchers and to make up our minds for ourselves. A robust public hearing process would allow for such an informed public

debate. In its absence, the reassurances of the CNSOPB, as currently constituted, are less than comforting.

And the company *is* fallible..... As Nathan Blades, of Nova Scotia Fish Packers, says, "This is the North Atlantic! Stuff happens!"

And Shell has an unenviable record. Witness this CBC report on its latest failure:

Shell Canada offshore drill incident drops equipment to sea floor

By Brett Ruskin, [CBC News](#): 7 MARCH 2016

Severe weather caused a piece of equipment to break off a ship being used by Shell Canada to drill an exploratory oil well off the coast of Nova Scotia.

An official with Shell Canada confirmed Monday that the incident occurred on Saturday, about 225 kilometres offshore at the Cheshire well. The well is part of the company's Shelburne Basin venture exploration drilling project.

A spokesperson for Shell Canada said in an email that workers on the Stena IceMAX — referred to by the company as the rig — had disconnected from the well in preparation for severe weather that was approaching.

One of the safety precautions included "isolating the well using the blowout preventer (BOP) system."

"Shortly after the well had been secured and the rig moved away from the well location, high waves and heave caused the riser tensioner system to release, resulting in the riser and lower marine riser package — which connects the rig to the well during drilling — to fall to the seabed," Cameron Yost said.

The riser is a flexible pipe that connects the surface ship to the sea floor. The water in that area is about 2,000 metres deep.

The riser is about the same length, and is now lying on the ocean floor.

No workers were injured.

6. Where Is the Provincial Pay-Off?

It is exceedingly difficult to get beyond the promotional literature of the government and industry to obtain reliable estimates of local economic impact from oil industry activity in Nova Scotia. Industry and government data stress gross investment figures and fail to provide accurate measures of local impact, apart from royalty and other government revenues.

Apart from a small number of direct jobs in the oil industry and those available in local suppliers and service companies, one gets the impression that the real driver

behind the province's apparent gung-ho approach to oil and gas exploration is the government's dream of royalty revenues from any eventual production. In the decade between 2003 and 2013, a decade that saw Sable Island gas pretty much come and go, those revenues barely broke an average of \$300 million annually. That's not peanuts, but it is small pickings compared to long-term, annual, and sustainable, revenues from the fishery and tourism.

In a cash-strapped province like ours, with a record of singularly unimaginative government responses to our economic challenges, it is easy to see the political appeal of an apparent golden goose in the offshore. Such dreaming can lead to desperation that justifies risky decisions like those the CNSOPB has made regarding exploration in the offshore.

Is that dreaming realistic, or even warranted, considering the risks?

Consider the fact that financial experts now regard investment in major new non-renewable energy projects as excessively risky. The former Governor of the Bank of Canada, now Governor of the Bank of England, Mark Carney, the IMF, and other major financial institutions now conclude that a large percentage of the world's proven reserves of fossil fuels (as much as 75% by some counts) must stay in the ground if we are to meet internationally agreed upon targets for emissions reduction and avoid catastrophic climate change.

Consider also that, at the time of writing, the private sector costs for deep-water oil production amount to more than \$75 per barrel and today's price is about \$40 per barrel. There isn't much room for squeezing royalties from eventual production unless the price of oil exceeds informed estimates of future prices by a long shot!

Consider, too, that pressure is mounting to cut the enormous subsidies for non-renewable resource development in Canada and elsewhere in the world. The removal of those subsidies (more than \$30 billion a year in Canada alone, according to the IMF) will further alter the economics of offshore oil development and production.

Finally, how does development of non-renewable fossil fuels in the offshore fit into a long-term energy plan for Nova Scotia, a plan that recognizes the potential industrial benefits from a serious commitment to a renewable energy future? There is little reason to believe the hard thinking has been done to answer this question. There is, however, reason to believe that the provincial economy would be far better off were the government to invest in its renewable energy future and avoid the massive risks of digging for oil in the offshore.

Let's at least have the debate.

7. Norway Sets the Bar High

Canada and Nova Scotia have much to learn from Norway, a country that is a model of management of offshore oil resources with experience stretching back over many decades. Like Nova Scotia, Norway has a vital and sustainable, thriving fishing industry. The difference is that in decisions about what oil and gas activity to approve offshore, Norway gives protecting its treasured fishery high priority.

Where CNSOPB's CEO, Stuart Pinks rules out removing any particularly vulnerable areas of our fishery from oil and gas exploration, the situation in Norway is the reverse. All of Norway's offshore is off-limits to oil and gas activity until the Norwegian Parliament decides otherwise, and only after approving a Strategic Environmental Impact Assessment (EIA) in which the impact on the fishery is a paramount consideration.

To illustrate, a recent inquiry into the impact of opening up an area in the Norwegian offshore that includes key fishery and spawning grounds "*was led by the Ministry of the Environment, with participation by the ministries of Fisheries, Trade, Justice, and Foreign Affairs. About 30 directorates, agencies, and research institutes were involved. The first Lofoten–Barents Sea management plan was presented as a white paper to the Norwegian Parliament and ratified in June 2006..... Government recognized that the consequences of underestimating the environmental risk in a uniquely valuable and sensitive area such as Lofoten–Vesterålen would be much more serious than in any other part of the Norwegian marine environment. Faced with such uncertainty and dire potential consequences, they felt that **the precautionary approach should come into play** and the government should refrain from allowing potentially harmful petroleum activity until all problems are resolved." (J. Davis, COAC)*

The contrast with the practice in Nova Scotia could not be more stark. Here, the presumption is on behalf of oil industry activity. Nova Scotians must fight to be heard in the decision to grant exploration licences to the oil industry in the offshore. In Norway, the tables are reversed. The oil industry must make a case strong enough to overcome the concerns of a wide range of government departments and agencies, independent scientists, and parliamentarians who represent those Norwegians most affected by industry activity.

Ironically, in early December 2015, the CNSOPB awarded an exploration licence to Norway's state-owned oil company, Statoil, in waters adjacent to Georges Bank, raising legitimate fear in our fishery industry. It's unlikely such development would go ahead in Norway, where key fishery zones are out of bounds to the oil industry. At any rate, such an award would not have taken place in Norway without approval of an EIA for the area by the Norwegian parliament, an assessment that would highlight the implications of exploration and development for the fishery and

tourism. It is hard to fault Statoil for taking advantage of our laxity in defending our sustainable fishery. The Norwegians know a good deal when they see one! We're the suckers.

How might our leasing process look if we took the Norwegian practice as our guide? A moratorium on oil and gas exploration has worked on Georges Bank. Why should we not simply extend it as a matter of course to the whole of the fishery? Oil companies would then be required to make a case for exceptions, providing their evidence in a public forum representative of the population at large. Those most affected would make the final decision. What's wrong with that?

8. Is the CNSOPB an Example of “Regulatory Capture”?

What is “regulatory capture”?

George Stigler, a Nobel Prize-winning economist, coined the term “regulatory capture” to describe the process by which regulatory agencies, created to protect the public interest, become dominated by the very industries they must regulate. Sound familiar?

In Canada, regulatory capture happens for a variety of reasons. While corporations have their research and intervention costs paid for publicly as tax write-offs, public interest or community intervenors rarely receive such support. The regulatory agencies, themselves, may not have the resources to invest in their own independent research. It all adds up to a playing field heavily tilted towards development proponents and their arguments.

To make matters worse, agencies increasingly operate without adequate public hearings, where communities can educate themselves about the issues raised by a proposal and have their views heard. The erosion of environmental assessment in Canada, has further weakened the definition of the public interest in each case.

Inappropriate appointments to regulatory agencies are yet another reason for their loss of legitimacy. Agencies are dominated by political appointees, often connected to the industries they regulate, facts that undermine public trust in their findings. Conflicts of interest, cultural at least, abound. The Canada-Nova Scotia Offshore Petroleum Board (CNSOPB), for example, has five permanent and two alternative members. Five of the seven have oil industry backgrounds!

Scott Vaughan, the former federal Commissioner of the Environment and Sustainable Development, pointed to the regulatory failings of the CNSOPB in his section of a federal Auditor-General's report in 2013, when he said, “more remains to be done to implement risk-based audits of the operators' management systems,

and to establish formal arrangements for obtaining independent observation of offshore oil and gas activities.”

Vaughan’s comments echoed those of an independent assessment of BP’s Gulf Horizons blow-out. That study by the University of California at Berkeley concluded that “the organizational causes of this disaster are deeply rooted in the histories and cultures of the offshore oil and gas industry and the governance provided by the associated public regulatory agencies. [...] This disaster involves an international industry and its governance.”

Finally, the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling Report to the President of the United States added its voice in similar conclusions, including:

- “The explosive loss of the Macondo well could have been prevented.
- The immediate causes of the Macondo well blowout can be traced to a series of identifiable mistakes made by BP, Halliburton, and Transocean that reveal such systematic failures in risk management that they place in doubt the safety culture of the entire industry.
- Deepwater energy exploration and production, particularly at the frontiers of experience, involve risks for which neither industry nor government has adequately prepared, but for which they can and must be prepared in the future.
- To assure human safety and environmental protection, regulatory oversight of leasing, energy exploration, and production require reforms even beyond those significant reforms already initiated since the *Deepwater Horizon* disaster. Fundamental reform will be needed in both the structure of those in charge of regulatory oversight and their internal decision making process to ensure their political autonomy.” (emphasis added)

9. Regulation of the Nova Scotia Offshore is Broken

Let’s summarize the problems with our current regulatory regime:

- **Inadequate risk assessment** of drilling activity in deep water, the likelihood of spills and blow-outs and risks to the fishery, marine and littoral ecology, the tourism industry and the economy and communities dependent on them.
- **Failure to ensure an immediate response to spills and blow-outs** with appropriate technology on-site, including a capping stack.
- **Failure to ensure that lease holders on the Scotian Shelf have the demonstrated capacity to clean up an offshore oil spill** and to get the oil off, and out of, our ocean.

- **Failure to incorporate lessons from BP's Deepwater Horizon disaster**, especially research showing use of dispersants aggravates harm to marine species, and the cultural problems in the regulatory process.
- **Inadequate weight given to the risk to Georges, Browns, Baccaro, La Have Banks, and other critical fisheries and spawning areas**, and the need to ensure zero risk of pollution – permanently removing these key areas from any future drilling activity, in consultation with fishers and independent marine scientists.
- **Failure to give appropriate weight to the importance of a sustainable fishery and its spin-offs in the regional economy.**
- **Failure to assess risks to the coastal marine environment to the tourism industry and our communities.**
- **Failure to ensure full community input** through widespread public hearings, with publicly-funded, independent expert witnesses and impartial dissemination of the latest research findings.
- **Failure to address the unrepresentative membership of the CNSOPB** and to ensure a non-oil industry majority, and community, municipal and renewable industry representation.
- **Failure to create a non-partisan process for appointments to the Board**
- **Lack of a transparent decision-making process** to expose the CNSOPB's decision-making and the weight given to competing arguments before it.

10. Conclusion

Some of us may believe the offshore oil industry and renewable activities, like the fishery and tourism, can co-exist. Others of us may believe that the time for pursuing additional, expensive, non-renewable energy resources is past, morally, financially, and scientifically speaking. That is a subject for an essential public debate. But it is beyond our scope here.

Despite such differences, we can at least agree that decisions about offshore development should take place with all the facts on the table, all the research, all the informed opinion, and that the decision-making process be transparent and allow for full public participation and debate. Those charged with rendering a verdict must represent all interests at stake. Only such a process can leave us reasonably confident the outcome is democratic, in the public interest, and based on the evidence.

We do not have such a process, nor such confidence, today.

This paper provides the basis for a campaign to reform the current inadequate and undemocratic process for determining the public interest in developments on Nova Scotia's offshore. We urge you to join us in advocating immediate reform of the CNSOPB to address its fatal shortcomings.

Our Recommendations For a Democratically Effective CNSOPB

- 1. Make the Board more broadly representative of the community, enlarging it as necessary.**
- 2. An appointments process that is non-partisan and democratic.**
- 3. Mandatory public hearings, not simply at the whim of the Board.**
- 4. Funding for public interest intervention and independent expert witnesses.**
- 5. Better in-house research capacity for the CNSOPB and a higher priority for environmental and socio-economic research.**
- 6. Readiness to say "no" to the industry, when necessary, taking particularly vulnerable fishery zones off the table for future oil industry activity.**
- 7. Mandatory transparent, and accountable decision-making.**

11. Addendum:

Election Promises – Is There Reason to Hope?

In their 2015 election platform, the federal Liberals promised, “*We will make environmental assessments credible again. While governments grant permits for resource development, only communities can grant permission (emphasis added).*”

After his election, Prime Minister Trudeau issued a “mandate letter” instructing Environment and Climate Change Minister Catherine McKenna, amongst other things, to

“introduce fair new processes that will:

Restore robust oversight and thorough environmental assessments of areas under federal jurisdiction, while also working with provinces and territories to avoid duplication;

Ensure that decisions are based on science, facts, and evidence, and serve the public's interest;

Provide ways for Canadians to express their views and opportunities for experts to meaningfully participate; and

Require project advocates to choose the best technologies available to reduce environmental impacts.”

It would be hard to claim that recent decisions by the Canada-Nova Scotia Offshore Development Board come close to meeting those criteria. If the federal government lives up to its word, then we can expect a radical change in the make-up of the CNSOPB, the process for deciding where the search for hydrocarbons offshore can safely take place, community involvement in assessing the pros and cons of offshore oil drilling, and determining the conditions a developer must meet if a project is to go ahead.

Without such reform, decisions of the CNSOPB will continue to lack both credibility and legitimacy.

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