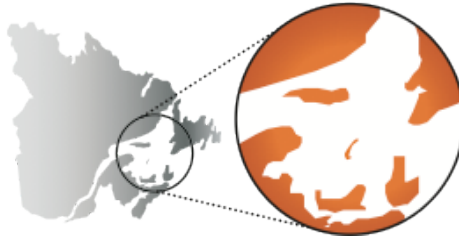


ST-LAWRENCE
COALITION
SAINT-LAURENT



OIL AND GAS
FOR A
MORATORIUM
IN THE GULF

Canadian Environmental Assessment Act 2012

Regulations designating physical activities

Amendment Proposal

Presented to

**Mr. John McCauley
Director, Legislative and Regulatory Affairs**

Canadian Environmental Assessment Agency

by

The St. Lawrence Coalition

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ST. LAWRENCE COALITION

The St. Lawrence Coalition has as its primary objective the securing of a moratorium on oil and gas activities in all of the Gulf of St. Lawrence. Conscious of the unique, fragile and complex character of the Gulf, the Coalition strives to rally around this position not only the coastal communities that depend on the health of the Gulf but also the population of the five Gulf provinces.

The St. Lawrence Coalition brings together First Nations and non-aboriginal people from 80 organizations and associations, as well as 3,800 citizens of varied economic backgrounds from the five coastal provinces. The steering committee of the Coalition is formed by Attention Fragîles, the David Suzuki Foundation, Nature Québec and the Canadian Parks and Wilderness Society (Quebec section).

The Coalition has developed, during the last two years, a unique expertise on offshore hydrocarbons in the Gulf of St. Lawrence. We have become a credible source and are regularly asked by media, politicians and various associations to inform them on the evolution of this complex file.

RECOMMENDATION

Considering the immense environmental impacts that may be caused by the drilling of exploratory wells in open sea, impacts made evident by the tragedy in the Gulf of Mexico, which was caused by an exploratory well;

Considering the known impacts of seismic surveys on aquatic wildlife, particularly on aquatic mammals;

Considering the magnitude of concerns by the public regarding the drilling of exploratory wells, concerns which, in the Gulf of St. Lawrence, have led to the request for a Review Panel for the Old Harry project;

Considering the number of public concerns regarding the real impacts of marine seismic surveys;

Considering the frequent usage conflicts observed in Eastern Canada, between seismic surveys and fisheries-related activities;

The St. Lawrence Coalition recommends that the *Regulations designating physical activities* be amended in order to include the following activities:

The following offshore exploration work for oil or natural gas:

- **Seismic surveys;**
- **Exploratory drilling.**

1. Context

a. **The Canadian Environmental Assessment Act, 2012 (CEAA 2012)**

The implementation of bill C-38, on July 6, 2012, has led to a complete rewrite of *The Canadian Environmental Assessment Act* (CEAA), replacing it with the CEAA 2012. One of the major impacts of this new law is to considerably restrict the types of projects susceptible to being submitted to the procedure of environmental assessment¹. In the past, with the CEAA, certain actions by a federal entity, such as the issuing of a permit, would act as a trigger to begin the process of an environmental assessment. Then, there would either be a “Comprehensive Study” for major projects that were listed in the *Comprehensive Study List Regulations*, or a “Screening” for all other projects.

b. ***Regulations prescribing physical activities***

From now on, because of the CEAA 2012, only certain major projects, listed in the new *Regulations Designating Physical Activities*, will be subject to environmental assessments. This new regulation is based largely on the old *Comprehensive Study List Regulations*. As a result, many projects that in the past were not on this detailed list (ex: exploratory drilling and seismic surveys), and that were subject to a simple screening, have not been included in the new *Regulations Designating Physical Activities*. This means that they will no longer be subject to any environmental assessment. Notably, this will be the case for exploratory drilling and seismic surveys.

In the case of offshore environments like the Gulf of St. Lawrence, the only projects that will now be subject to environmental assessment, under the new *Regulations Designating Physical Activities* will be **oil or gas production projects**:

Sect. 10. The construction, installation and operation of a facility for the production of oil or gas, if the facility is located offshore (...)

c. ***Exclusion of exploratory drilling from the comprehensive list in 2005***

Until 2005, exploratory drilling was on the comprehensive study list, and thus subject to a mandatory environmental assessment of the “Comprehensive Study” type. Had exploratory drilling remained on this list, it would now probably be included in the *Regulations Designating Physical Activities* and would still be subject to an environmental assessment.

The sequence of events that have led to the removal of exploratory drilling from the comprehensive study list in 2005 shows this move was strongly disputed:

- Creation in 2003 of a sub-committee of the Department of Environment on the question of offshore exploratory drilling²;
- In 2004, a report requested of a consulting firm concluded that exploratory drilling has only minor and localised impacts;
- Many members of the sub-committee strongly disputed this report and found it deficient, notably in regards to impacts on habitats and cumulative effects;
- Despite the reluctance of members of the sub-committee, the Environment Minister went ahead in 2005 with a regulation project abolishing comprehensive studies for offshore exploratory drilling;
- During the publication of the regulation project in the Official Gazette and the mandatory consultation period, ENGOs, scientists and fisheries groups wrote more than 150 comments, mostly denouncing the proposed regulatory change. Despite these critics, the regulation was adopted.

2. Exploratory drilling

Offshore oil and gas operations, whether at the time of exploration or extraction, have a large number of risks. Contrary to certain beliefs, the drilling of exploratory wells is not benign and is even considered by many as the most dangerous step:

« (...) drilling the first exploratory well on a geological structure is the most hazardous activity during the hydrocarbon development process. A major well blowout is more likely at this time than any other »^{3,4}

Since this drilling occurs at great depths, where physical conditions are not well known, the risk of encountering unexpected pressures or gas pockets is multiplied. This was the case in

¹ http://www.ecojustice.ca/files/ceaa-backgrounder-1/at_download/file

² <http://gazette.gc.ca/archives/p2/2005/2005-11-30/html/sor-dors335-fra.html>

³ Porta, L. and Bankes, N. 2011. *Becoming Arctic-Ready: Policy Recommendations for Reforming Canada's Approach to Licensing and Regulating Offshore Oil and Gas in the Arctic.*

⁴ Ross, S.L., et al. 1977. *Oil Spill Countermeasures: The Beaufort Sea and the Search for Oil* (Department of

February of 2012, in Alaska, when 42,000 gallons of drilling mud were spilled after a gas pocket exploded in a simple exploratory well⁵.

The cases of spills from exploratory wells are both numerous and severe. Also, we must not forget that the two worst accidents to ever occur on an offshore platform occurred while drilling exploratory wells:

- Deepwater Horizon (2010), Gulf of Mexico: 490,000 tons
- Ixtoc I (1979/80), Gulf of Mexico: 454,000 tons.

a. Environmental impacts

Recent oil spill simulations for the Old Harry site (Gulf of St. Lawrence) performed by Environment Canada⁶, as well as by the David Suzuki Foundation⁷, have shown that any important incident would have very high probabilities of hitting shore, even if it is an exploratory well. In addition, Environment Canada has very severely criticized the unrealistic simulations presented by Corridor Resources in its impact study⁸. This strong criticism by Environment Canada was made during the course of a formal environmental assessment under the old CEAA. The new CEAA 2012 regime abolishes environmental evaluations for all future exploratory drilling and would thus deprive the public of the precious counter-expertise from specialists such as Environment Canada.

b. Public concerns

Even in the case of “simple” exploratory wells, offshore drilling generates huge concerns among the public. The Old Harry project is an eloquent example. Since the official tabling of the project by Corridor Resources in Feb. 2011, concerns of environmental organizations, tourism associations, scientists, First Nations, and numerous municipalities have multiplied all across the Gulf provinces. Two simple examples will show the scale of these concerns:

Fisheries and the Environment).

⁵ <http://www.lawyersandsettlements.com/articles/asbestos-drilling-mud/drilling-mud-asbestos-lawsuit-17431.html#.UCZIGWh5134>

⁶ <http://www.cnlopb.nl.ca/pdfs/corridorresinc/ecommentsosm.pdf>

⁷ <http://www.davidsuzuki.org/fr/champs-d'intervention/oceans-et-eau-douce/enjeux-et-recherche/planification-marine-et-conservation/quelles-seraient-les-effets-dun-deversement-de-petrole-dans-le-golfe-du-saint-la/>

⁸ <http://www.cnlopb.nl.ca/pdfs/corridorresinc/oilspillen.pdf>

- In the spring of 2011, numerous citizens and groups have demanded that the Old Harry project be referred to a federal review panel. In addition, the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) have themselves requested a review panel from the Environment Minister, arguing that in their 26 years they have never encountered such concerns in the public⁹;
- A Strategic Environmental Assessment (SEA) is currently being done in Quebec on oil activities in the Gulf of St. Lawrence and Bay des Chaleurs. A series of meetings with citizens, local stakeholders, and First Nations was organized by the consultant. In the close to twenty meetings that were held, almost all the participants expressed their concerns.

3. Seismic surveys

The high intensity sound waves produced during seismic surveys do not leave visible traces on the surface of the water. However, among the scientific community, opinion is far from unanimous that they are harmless¹⁰. Results are constantly being accumulated on the potential impacts that seismic surveys can have on numerous species such as marine mammals and commercial fish. The public, including the commercial fishermen, are very wary of these surveys which, in addition, are often a source of conflict with fishermen's associations.

The highly controversial nature of seismic surveys, among the scientific community as well as in the general public, should convince us that they deserve true environmental assessments.

a. Environmental impacts

The high intensity submarine sound waves can directly affect the physical integrity of certain species by causing internal lesions and even death¹¹. Behavioural changes are frequently observed with possible consequences on the species' survival rate. In addition, the sound waves generated in the water greatly increase the surrounding sound level hundreds, if not thousands, of kilometres away, interfering with marine mammals that depend on sound for numerous activities such as communication, feeding and travel.

⁹ http://www.cnlopb.nl.ca/pdfs/corridorresinc/letter_re_corridor_resources.pdf

¹⁰ <http://www.nrdc.org/oceans/files/seismic.pdf>

¹¹ <http://www.cnlopb.nl.ca/pdfs/husky/h3dea01.pdf>

b. Public concerns

Seismic survey projects generate deep concerns in the public. Two events will convince us that the public holds deep concerns about seismic surveys and believes that adequate environmental assessments should be mandatory:

- In 2002, a seismic program project in the St. Lawrence Estuary and Gulf has produced protests of such magnitude in Quebec that a public inquiry by the BAPE (Bureau d'audiences publiques sur l'environnement) was performed in 2004¹². All seismic projects in Quebec have been suspended since then;
- A seismic project west of Cape Breton, tabled in 1998, has generated concerns of such magnitude in the Maritimes that a federal review panel was put in place with a final report produced in 2002. The report¹³ talked about the fragility of the Gulf, and no seismic survey has been authorized in that part of the Gulf since that date.

c. Conflicts with fishermen

Offshore seismic surveys regularly spark conflicts with stakeholders, particularly fishermen's associations. These conflicts centre on direct impacts on the marine fauna, and on surveyors' lack of respect for fishing zones. Three recent examples in Eastern Canada show clearly that offshore seismic surveys are a potential source of conflict and necessitate adequate environmental assessments:

- Last June, the Fish, Food, and Allied Workers (FFAW), the largest fishing association in Newfoundland, has asked for the revocation of licenses of the seismic firm MIK because of repeated violations of fishing zones.

*"We've had enough of it," Mr. McCurdy said. "This is the second year in a row that seismic companies have interfered with our fishery."*¹⁴

¹² <http://www.bape.gouv.qc.ca/sections/rapports/publications/bape193.pdf>

¹³ <http://www.sierraclub.ca/national/action-alert/cape-breton-alert/commission-report-o-g-cb.pdf>

¹⁴ http://www.ffaw.nf.ca/?Content=News_and_Events/Current_News/General_News/FFAW_Calls_on_CNLOPB_to_Revoke_Seismic_Permit

- Seismic surveys will soon be held by Multi Klient Invest off the coast of Labrador. The Inuit of the Nunatsiavut Government repeatedly ask for better consultation by the company, since they seem to ignore their demands¹⁵.
- In the Magdalen Islands, fishing associations have deplored the lack of consultation with them during the planning of seismic surveys¹⁶.

4. Discretionary powers of the Environment Minister

Persuant to sect. 14(2) of CEAA 2012, the Environment Minister can, at his discretion, designate on a case by case basis, certain individual projects that will be subject to the environmental assessment procedure. He can do it if he judges that the project could cause negative environmental impacts or that public concerns justify it. However, this possibility is entirely discretionary and doesn't seem to be defined in any way. Each time a seismic or drilling project is proposed, it will be necessary for the public to ask the Minister to designate the project and order an environmental assessment. This procedure will be extremely time-consuming, and there is no assurance that the Minister will go with the public request and order an environmental assessment.

Given the high level of concerns produced by offshore seismic and exploratory drilling projects, it is quite probable that public campaigns to obtain an environmental assessment will be organized every time a project is tabled. These concerns, coupled with the high level of environmental risk of these two activities, justify, in our view, the inclusion of offshore exploratory drilling and seismic surveys in the *Regulations Designating Physical Activities*.

Note : The writing of this document has greatly benefited from technical help offered by Ecojustice (<http://www.ecojustice.ca/>)

¹⁵ <http://www.cnlopb.nl.ca/pdfs/mkiseislab/ngresponse.pdf>

¹⁶ <http://www.cfim.ca/archives/-/pub/bS76/content/387232-la-prospection-sismique-seme-l-inquietude;jsessionid=D745389EADFECE58BC7ECF1B05A58BA4?redirect=%2Fweb%2Fcfim-iles-de-la-madeleine%2Farchives>