



Canada-Newfoundland Atlantic Accord Implementation Act (1987, c. 3)

Act current to September 17th, 2009

Attention: See coming into force provision and notes, where applicable.

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Canada-Newfoundland Atlantic Accord Implementation Act

1987, c. 3

[Assented to March 25th, 1987]

An Act to implement an agreement between the Government of Canada and the Government of Newfoundland and Labrador on offshore petroleum resource management and revenue sharing and to make related and consequential amendments

Preamble

Whereas the Government of Canada and the Government of Newfoundland and Labrador have entered into the Atlantic Accord and have agreed that neither Government will introduce amendments to this Act or any regulation made thereunder without the consent of both Governments:

Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Canada-Newfoundland Atlantic Accord Implementation Act*.

INTERPRETATION

Definitions

2. In this Act,

"Atlantic Accord"
« *Accord atlantique* »

"Atlantic Accord" means the Memorandum of Agreement between the Government of Canada and the Government of the Province on offshore petroleum resource management and revenue sharing dated February 11, 1985, and includes any amendments thereto;

"Board"
« *Office* »

"Board" means the Canada-Newfoundland Offshore Petroleum Board established by the joint

operation of section 9 of this Act and section 9 of the Provincial Act;

"Canada-Newfoundland benefits plan"
« *plan de retombées économiques* »

"Canada-Newfoundland benefits plan" means a plan submitted pursuant to subsection 45(2);

"Chief Executive Officer"
« *premier dirigeant* »

"Chief Executive Officer" means the Chief Executive Officer of the Board appointed pursuant to section 24;

"development plan"
« *plan de mise en valeur* »

"development plan" means a plan submitted pursuant to subsection 139(2) for the purpose of obtaining approval of the general approach of developing a pool or field as proposed in the plan;

"Federal Government"
« *gouvernement fédéral* »

"Federal Government" means the Governor in Council;

"Federal Minister"
« *ministre fédéral* »

"Federal Minister" means the Minister of Natural Resources;

"field"
« *champ* »

"field"

(a) means a general surface area underlain or appearing to be underlain by one or more pools, and

(b) includes the subsurface regions vertically beneath the general surface area referred to in paragraph (a);

"former regulations"
« *anciens règlements* »

"former regulations" means the *Canada Oil and Gas Land Regulations* made pursuant to the *Public Lands Grants Act* and the *Territorial Lands Act* and includes orders made pursuant to those Regulations;

"fundamental decision"
« *décision majeure* »

"fundamental decision" means a decision made by the Board respecting the exercise of a power or the performance of a duty pursuant to a provision of this Act that expressly provides for the exercise of the power or the performance of the duty subject to sections 31 to 40;

"gas"
« *gaz* »

"gas" means natural gas and includes all substances, other than oil, that are produced in association

with natural gas;

"government"

« *Version anglaise seulement* »

"government" means the Federal Government, the Provincial Government or both, as the context requires;

"Minister"

« *Version anglaise seulement* »

"Minister" means the Federal Minister, the Provincial Minister or both, as the context requires;

"offshore area"

« *zone extracôtière* » ou « *zone* »

"offshore area" means those submarine areas lying seaward of the low water mark of the Province and extending, at any location, as far as

(a) any prescribed line, or

(b) where no line is prescribed at that location, the outer edge of the continental margin or a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater;

"oil"

« *pétrole* »

"oil" means

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

(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;

"petroleum"

« *hydrocarbures* »

"petroleum" means oil or gas;

"pool"

« *gisement* »

"pool" means a natural underground reservoir containing or appearing to contain an accumulation of petroleum that is separated or appears to be separated from any other such accumulation;

"prescribed"

« *Version anglaise seulement* »

"prescribed" means prescribed by regulations made by the Governor in Council;

"Province"

« *province* »

"Province" means the province of Newfoundland;

"Provincial Act"
« *loi provinciale* »

"Provincial Act" means *The Canada-Newfoundland Atlantic Accord Implementation (Newfoundland) Act*, chapter 37 of the Statutes of Newfoundland, 1986;

"Provincial Government"
« *gouvernement provincial* »

"Provincial Government" means the lieutenant governor in council of the Province;

"Provincial Minister"
« *ministre provincial* »

"Provincial Minister" means the Minister of the Crown in right of the Province designated, pursuant to the Provincial Act, by the Provincial Government as the provincial minister for the purposes of the Provincial Act or any provision thereof.

1987, c. 3, s. 2; 1994, c. 41, s. 37.

Construction

3. For greater certainty, the provisions of this Act shall not be interpreted as providing a basis for any claim by or on behalf of any province in respect of any interest in or legislative jurisdiction over any offshore area or any living or non-living resources of any offshore area.

Precedence over other Acts of Parliament

4. In case of any inconsistency or conflict between

(a) this Act or any regulations made thereunder, and

(b) any other Act of Parliament that applies to the offshore area or any regulations made under that Act, except the *Labrador Inuit Land Claims Agreement Act*,

this Act and the regulations made thereunder take precedence.

1987, c. 3, s. 4; 1992, c. 35, s. 44; 2005, c. 27, s. 18.

PRESCRIBING LIMITS OF OFFSHORE AREA AND SETTLEMENT PROCEDURE FOR DISPUTES

Regulations

5. (1) Subject to section 7, the Governor in Council may make regulations prescribing lines enclosing areas adjacent to the Province for the purpose of paragraph (a) of the definition "offshore area" in section 2.

Issue of charts

(2) The Federal Minister may cause charts to be issued setting out the offshore area or any portion thereof as may be set out consistent with the nature and scale of the chart.

Evidence

(3) In any legal or other proceedings, a chart purporting to be issued by or under the authority of the Federal Minister is conclusive proof of the limits of the offshore area or portion thereof set out in the chart without proof of the signature or official character of the person purporting to have issued the chart.

Definitions

6. (1) In this section,

"agreement"
« *accord* »

"agreement" means an agreement between the Government of Canada and the government of a province respecting resource management and revenue sharing in relation to activities respecting the exploration for or the production of petroleum carried out on any frontier lands;

"frontier lands"
« *terres domaniales* »

"frontier lands" means lands that belong to Her Majesty in right of Canada, or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources and that are situated in

(a) Yukon, the Northwest Territories, Nunavut or Sable Island, or

(b) those submarine areas, not within a province, adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater.

Disputes between neighbouring provinces

(2) Where a dispute between the Province and any other province that is a party to an agreement arises in relation to a line or portion thereof prescribed or to be prescribed for the purpose of the definition "offshore area" in section 2 and the Government of Canada is unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the Federal Minister deems appropriate, be referred to an impartial person, tribunal or body and settled by means of the procedure determined in accordance with subsection (3).

Procedures determined by Federal Minister

(3) For the purposes of this section, the person, tribunal or body to which a dispute is to be referred, the constitution and membership of any tribunal or body and the procedures for the settlement of a dispute shall be determined by the Federal Minister after consultation with the provinces concerned in the dispute.

Principles of international law to apply

(4) Where the procedure for the settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modifications as the circumstances require.

Approval of Provincial Minister not required before regulation made

(5) Notwithstanding section 7, where a dispute is settled pursuant to this section and a regulation under subsection 5(1) prescribing the line in relation to which the dispute arose is made in accordance with the settlement, the regulation is not subject to the procedure set out in section 7 with respect to the portion of the line to which the dispute related.

1987, c. 3, s. 6; 1993, c. 28, s. 78; 1998, c. 15, s. 18; 2002, c. 7, s. 108(E).

CONDITION PRECEDENT FOR CERTAIN REGULATIONS

Approval of Provincial Minister prior to making certain regulations

7. Before a regulation is made pursuant to subsection 5(1) or 41(7), section 64, subsection 67(2), section 118, subsection 122(1), 125(1), 149(1), 152(5) or 160(4) or section 203, the Federal Minister shall consult the Provincial Minister with respect to the proposed regulation and no regulation shall be so made without the approval of the Provincial Minister.

APPLICATION

Application

8. (1) This Act applies within the offshore area.

Excluded legislation

(2) Subject to section 101, the *Canada Petroleum Resources Act* and the *Canada Oil and Gas Operations Act* and any regulations made under those Acts do not apply within the offshore area.
1987, c. 3, s. 8; 1992, c. 35, s. 45.

PART I

JOINT MANAGEMENT

ESTABLISHMENT OF BOARD

Jointly established Board

9. (1) There is established by the joint operation of this Act and the Provincial Act a board to be known as the Canada-Newfoundland Offshore Petroleum Board.

Treated as Provincial entity

(2) Subject to subsections (3) and (4), the Board shall for all purposes be treated as having been established by or under a law of the Province.

Powers of corporation

(3) The Board has the legal powers and capacities of a corporation incorporated under the *Canada Business Corporations Act*, including those set out in section 21 of the *Interpretation Act*.

Dissolution of Board

(4) The Board may be dissolved only by the joint operation of an Act of Parliament and an Act of the Legislature of the Province.

1987, c. 3, s. 9; 1992, c. 35, s. 46; 1994, c. 24, s. 34(F).

Board consisting of seven members

10. (1) The Board shall consist of seven members.

Federal and Provincial appointees

(2) Three members of the Board are to be appointed by the Federal Government, three by the Provincial Government and the Chairman of the Board is to be appointed by both the Federal Government and the Provincial Government.

Vice-chairmen

(3) One or two members of the Board may be designated to be vice-chairmen of the Board if they are so designated by both the Federal Government and the Provincial Government.

Designation by both governments

(4) The designation of a vice-chairman of the Board pursuant to subsection (3) is effective after both governments have each made the designation.

Alternate members

(5) Each government may appoint one alternate member to act as a member of the Board in the absence of any of the members of the Board appointed by that government.

Joint appointees

(6) Notwithstanding subsection (2) or (5), any member or alternate member of the Board may be appointed by both the Federal Government and the Provincial Government.

Qualifications

11. (1) No member of the Board shall, during the term of office of that member on the Board, be employed in the Public Service of Canada or be a civil servant in the Province.

Definitions

(2) In this section,

"civil servant"
« *fonctionnaire* »

"civil servant" has the same meaning as in the Provincial Act;

"Public Service of Canada"
« *administration fédérale* »

"Public Service of Canada" has the meaning given the expression "public service" in the *Public Service Labour Relations Act*, and includes any portion of the federal public administration designated by order in council pursuant to this subsection and for the purposes of subsection (1) as part of the Public Service of Canada.

1987, c. 3, s. 11; 2003, c. 22, s. 117(E).

Deemed consultation between governments re Chairman

12. (1) Consultation between the two governments with respect to the selection of the Chairman of the Board shall be deemed to commence

(a) six months prior to the expiration of the term of office of the incumbent Chairman, or

(b) where applicable, on the date of receipt by the Board of notice of the death, resignation or termination of appointment of the incumbent Chairman,

whichever occurs earlier.

Where no agreement on Chairman

(2) Where the two governments fail to agree on the appointment of the Chairman of the Board within three months after the commencement of consultation between the governments, the Chairman shall be selected by a panel, consisting of three members and constituted in accordance with this section, unless, at any time prior to the selection of the Chairman by the panel, the two governments agree on the appointment.

Appointment of members of panel

(3) One member of the panel shall be appointed by each government within thirty days after the expiration of the three months referred to in subsection (2).

Chairman of panel

(4) The chairman of the panel shall be appointed

(a) jointly by the two members of the panel appointed pursuant to subsection (3) within thirty days after the later of the two appointments made pursuant to that subsection; or

(b) where the two members of the panel fail to agree on the appointment of the chairman of the panel within the thirty day period referred to in paragraph (a), by the Chief Justice of Newfoundland within thirty days after the expiration of that period.

Selection of Chairman of Board within sixty days

(5) The Chairman of the Board shall be selected by the panel within sixty days after the appointment of the chairman of the panel.

Decision of panel binding

(6) The decision of the panel selecting a Chairman of the Board is final and binding on both governments.

Salaries of joint appointees

13. (1) Subject to section 15, the salary and other terms and conditions of the appointment of the Chairman of the Board or any other member or alternate member appointed by both governments, including the effective date of the appointment, shall be fixed by an order of the Federal Government and an order of the Provincial Government after agreement has been reached by both governments on the salary and other terms and conditions.

Salaries of separate appointees

(2) The salary and other terms and conditions of the appointment of any member appointed by either the Federal Government or the Provincial Government shall be agreed on by both governments.

Absence or incapacity of Chairman

14. The Board shall designate a member to act as Chairman of the Board during any absence or incapacity of the Chairman or vacancy in the office of Chairman, and that person, while acting as Chairman, has and may exercise all of the powers and perform all of the duties and functions of the

Chairman.

Term of first Chairman

15. (1) The first Chairman of the Board shall be appointed for a term of seven years.

Terms of first members

(2) The first three members of the Board to be appointed by each government shall be appointed for terms of four, five and six years, respectively.

Terms of office after initial term

(3) On the expiration of the initial terms of office referred to in subsections (1) and (2), the Chairman and members of the Board shall be appointed for terms of six years.

Good behaviour

(4) A member of the Board, including the Chairman, shall hold office during good behaviour, but may be removed for cause

(a) where the member is appointed by either government, by that government; or

(b) where the member is appointed by both governments, by both governments.

Re-appointment

(5) On the expiration of a term of office, the Chairman or a member of the Board is eligible for re-appointment for one or more further terms.

Conflict of interest guidelines

16. (1) Members of the Board, including the Chairman, and the Chief Executive Officer appointed pursuant to section 24 shall be subject to conflict of interest guidelines established jointly by the Federal Minister and Provincial Minister and are not subject to any conflict of interest guidelines established by the Federal Government.

Insurance

(2) The Board shall purchase and maintain insurance for the benefit of a person who is a present or former member, officer or employee of the Board, and the heirs or legal representatives of that person, against any liability incurred by that person in the capacity as such a member, officer or employee, except where the liability relates to a failure to act honestly and in good faith with regard to the best interests of the Board.

Expenditures for insurance

(3) For greater certainty, the expenditures of the Board associated with purchasing and maintaining the insurance referred to in subsection (2) shall form part of the budget or revised budget of the Board in respect of a fiscal year.

Power to indemnify

(4) Notwithstanding subsection (2), where the Board has established to the satisfaction of the Federal Minister the impossibility of purchasing and maintaining the insurance referred to in subsection (2), the Government of Canada shall, subject to subsection (6), indemnify a person who

is a present or former member, officer or employee of the Board, or the heirs or legal representatives of that person, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which that person is a party by reason of being or having been such a member, officer or employee, if that person

(a) acted honestly and in good faith with a view to the best interests of the Board; and

(b) in the case of any criminal or administrative action or proceeding that is enforced by a monetary penalty, believed, on reasonable grounds, that the conduct in issue was lawful.

Additional Coverage

(5) Where the Board has purchased and maintained insurance referred to in subsection (2), the Government of Canada shall indemnify a person referred to in that subsection, or the heirs or legal representatives of that person, for any liability incurred by that person in accordance with this section to the extent that the insurance purchased for the benefit of that person does not cover such liability.

Amount to settle an action

(6) The Government of Canada is not obliged to indemnify anyone pursuant to subsection (4) against an amount paid to settle an action unless the amount so paid was approved by the Government of Canada.

Both governments share costs of indemnification

(7) Where the Government of the Province has indemnified a person referred to in subsection (4), or the heirs or legal representatives of that person, pursuant to section 16 of the Provincial Act, the Government of Canada may pay to the Government of the Province one-half of the amount so indemnified.

Payable out of Consolidated Revenue Fund

(8) Any amount payable in respect of indemnification under this section may be paid out of the Consolidated Revenue Fund.

FUNCTIONS OF BOARD

Functions of Board

17. (1) The Board shall perform such duties and functions as are conferred or imposed on the Board by or pursuant to the Atlantic Accord or this Act.

Proposed amendments

(2) The Board may make recommendations to both governments with respect to proposed amendments to this Act, the Provincial Act and any regulations made under those Acts.

Access to information by governments

18. (1) The Federal Minister and the Provincial Minister are entitled to access to any information or documentation relating to petroleum resource activities in the offshore area that is provided for the purposes of this Act or any regulation made thereunder and such information or documentation shall, on the request of either Minister, be disclosed to that Minister without requiring the consent of the party who provided the information or documentation.

Applicable provision

(2) Section 119 applies, with such modifications as the circumstances require, in respect of any disclosure of information or documentation or the production or giving of evidence relating thereto by a Minister as if the references in that section to the administration or enforcement of a Part of this Act included references to the administration or enforcement of the Provincial Act or any Part thereof.

ADMINISTRATION

Meetings of Board

19. A meeting of the Board shall be held

(a) once every month unless the members of the Board unanimously agree to defer such a meeting; and

(b) at any other time

(i) at the call of the Chairman of the Board,

(ii) on the request of any two members of the Board, or

(iii) on the request of the Federal Minister or the Provincial Minister to review any matter referred to it by that Minister.

Quorum

20. (1) Four members constitute a quorum of the Board.

Majority vote

(2) Where, in the absence of unanimous agreement, a vote is required to be taken in respect of a decision of the Board, the decision shall be made on the basis of a majority vote of the members of the Board.

Location of offices and staff

21. The principal office and staff of the Board shall be located in the Province.

Storage of information

22. The Board shall establish, maintain and operate a facility in the Province for the storage and curatorship of all geophysical records and geological and hydrocarbon samples relating to the offshore area.

By-laws and guidelines

23. Subject to this Act and the Atlantic Accord, the Board may

(a) make by-laws respecting

(i) the members, officers and employees of the Board,

(ii) the attendance and participation, including voting rights, at meetings of the Board of alternate members of the Board appointed pursuant to subsection 10(5),

- (iii) the manner of appointing the officers and employees of the Board on the basis of selection according to merit, including the holding of open competitions therefor,
- (iv) the procedures to be followed in the performance of any of the duties and functions of the Board,
- (v) the conduct of meetings of the Board,
- (vi) the manner of dealing with matters and business before the Board, and
- (vii) generally, the carrying on of the work of the Board and the management of the internal affairs thereof; and

(b) establish conflict of interest guidelines respecting persons employed by the Board pursuant to subsection 25(1).

Chief Executive Officer

24. (1) There shall be a Chief Executive Officer of the Board who

(a) where both the Federal Government and the Provincial Government appoint the Chairman as Chief Executive Officer, is the Chairman of the Board; or

(b) in any other case, is to be appointed by the Board by means of an open competition.

Approval required

(2) The appointment of a Chief Executive Officer pursuant to paragraph (1)(b) is subject to the approval of both governments.

Panel to choose Chief Executive Officer in the absence of agreement

(3) Where either government fails to make an appointment pursuant to paragraph (1)(a) or to approve the appointment of a Chief Executive Officer pursuant to paragraph (1)(b), the Chief Executive Officer shall be appointed by both the Federal Government and the Provincial Government after having been selected in accordance with section 12 and that section applies, with such modifications as the circumstances require, to the selection of the Chief Executive Officer.

Application of subsection 13(1)

(4) Subsection 13(1) applies, with such modifications as the circumstances require, to the appointment of the Chief Executive Officer pursuant to paragraph (1)(a) or subsection (3).

Absence or incapacity of Chief Executive Officer

(5) The Board shall designate a person to act as Chief Executive Officer during any absence or incapacity of that Officer or vacancy in the office of Chief Executive Officer and that person, while acting as Chief Executive Officer, has and may exercise all the powers and perform all of the duties and functions of that office.

Staff of the Board

25. (1) The Board may, on the recommendation of the Chief Executive Officer, employ such other officers and such employees as are necessary to properly perform the duties and functions of the Board under this Act and the Atlantic Accord.

Method of selection

(2) The appointment of every person employed pursuant to subsection (1) shall be based on selection according to merit.

Presumption

(3) Except as provided in subsection (4), every person employed pursuant to subsection (1) is deemed not to be employed in the federal public administration or the public service of the Province.

Mobility of staff

(4) For the purpose of being eligible for appointment to a position in the public service by an appointment process under the *Public Service Employment Act*,

(a) any person who, immediately prior to being employed by the Board, was employed in the public service shall be deemed to be a person employed in the public service in the Department of Energy, Mines and Resources in the location where that person is performing duties for the Board and in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the Board; and

(b) any person who, immediately prior to being employed by the Board, was not employed in the public service shall, two years after being employed by the Board, be deemed to be a person employed in the public service in the Department of Energy, Mines and Resources in the location where that person is performing duties for the Board and in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the Board.

Definition of "public service"

(5) In this section, "public service" has the same meaning as in the *Public Service Labour Relations Act*.

1987, c. 3, s. 25; 2003, c. 22, ss. 118, 225(E), 231.

Auditor

26. The Board shall appoint an auditor, for such term as is set by the Board, for the purposes of auditing the financial statements of the Board.

Budget

27. (1) The Chief Executive Officer shall, in respect of each fiscal year, prepare a budget for the Board sufficient to permit the Board to properly exercise its powers and perform its duties and functions.

Submission to governments

(2) Following approval of the budget by the Board, the budget shall be submitted to the Federal Minister and the Provincial Minister, at such time as may be specified by each Minister, for their consideration and approval.

Revised budget

(3) Where it appears that the actual aggregate of the expenditures of the Board in respect of any fiscal year is likely to be substantially greater or less than that estimated in its budget in respect of that fiscal year, the Board shall submit to both Ministers for their consideration and approval a

revised budget in respect of that fiscal year containing such particulars as may be requested by either Minister.

Payment of operating costs

(4) The Government of Canada shall pay one-half of the aggregate of the expenditures set out in the budget or revised budget, where applicable, submitted and approved pursuant to this section in respect of each fiscal year.

Appropriation

(5) Subject to any other Act of Parliament that appropriates moneys for the payment required by subsection (4), the sums required for such payment shall be paid out of the Consolidated Revenue Fund from time to time as required.

Access to books and accounts

28. Subject to subsection 18(2), both the Federal Minister and the Provincial Minister are entitled to have access to the books and accounts of the Board.

Annual report

29. (1) The Board shall, in respect of each fiscal year, prepare a report and submit it to the Federal Minister and the Provincial Minister not later than ninety days after the expiration of that fiscal year.

Contents of report

(2) Each annual report submitted pursuant to subsection (1) shall contain an audited financial statement and a description of the activities of the Board during the fiscal year covered by the report.

Tabling of report

(3) The Federal Minister shall cause the annual report referred to in this section

(a) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the report is submitted to the Federal Minister; or

(b) where it is not possible to cause the report to be laid pursuant to paragraph (a) within thirty days after the day the report is submitted to the Federal Minister, to be published within that thirty day period.

DECISIONS IN RELATION TO OFFSHORE MANAGEMENT

Board's decisions final

30. Subject to this Act, the exercise of a power or the performance of a duty by the Board pursuant to this Act is final and not subject to the review or approval of either government or either Minister.

Notice of fundamental decisions

31. (1) Where a fundamental decision is made by the Board, the Board shall, forthwith after making the decision, give written notice of that decision to the Federal Minister and the Provincial Minister.

Advice by Ministers to Board

(2) Within thirty days after receipt of a notice of a fundamental decision pursuant to subsection (1), the Federal Minister and the Provincial Minister shall each advise, in writing, the Board and each other whether that Minister approves or disapproves that decision and where the Board does not receive the advice within those thirty days, the Board shall be deemed, for the purposes of section 32, to be advised, in writing, on the expiration of that period, of the approval of that decision by that Minister.

Conditions for implementation of fundamental decision

32. (1) A fundamental decision shall not be implemented unless the Board is advised, in writing, that

(a) both the Federal Minister and the Provincial Minister approve that decision; or

(b) in any other case, the Minister having authority in relation to that decision, as determined under section 34, approves that decision and, where the other Minister has exercised the power to suspend the approval of that decision pursuant to section 39,

(i) the period of suspension referred to in that section has expired, or

(ii) agreement is reached between both Ministers to approve that decision,

whichever occurs first.

Compliance with advice or governments

(2) Where the conditions referred to in subsection (1) have been satisfied in respect of a fundamental decision, that decision shall be implemented forthwith by the Board.

Definitions

33. In this section and sections 34 to 37,

"security of supply"

« *sécurité des approvisionnements* »

"security of supply", in respect of any period, means the anticipation of self-sufficiency during each of the five calendar years in that period, taking into account the aggregate of anticipated additions to producing capacity and anticipated adjustments to refining capacity;

"self-sufficiency"

« *autosuffisance* »

"self-sufficiency" means a volume of suitable crude oil and equivalent substances available from domestic Canadian hydrocarbon producing capacity that is adequate to supply the total feedstock requirements of Canadian refineries necessary to satisfy the total refined product requirements of Canada, excluding those feedstock requirements necessary to produce specialty refined products;

"suitable crude oil and equivalent substances"

« *pétrole brut et substances assimilées acceptables* »

"suitable crude oil and equivalent substances" means those substances that are appropriate for processing in Canadian refineries and that are potentially deliverable to Canadian refineries.

Role of Ministers prior to self-sufficiency and security of supply

34. (1) Where, in respect of any period referred to in subsection 35(2) or (3), a determination is made that self-sufficiency and security of supply do not exist, the Federal Minister has authority in relation to any fundamental decision, other than a fundamental decision referred to in subsection (2), made during that period.

Development plan approval

(2) Subject to subsection (3), the Provincial Minister has authority in relation to a fundamental decision referred to in paragraph 139(4)(a).

Federal Minister's power to override development plan approval

(3) Where the approval or disapproval by the Provincial Minister of a fundamental decision referred to in paragraph 139(4)(a) would unreasonably delay the attainment of self-sufficiency or security of supply, the Federal Minister may substitute therefor the approval or disapproval, as the case may be, of the Federal Minister, and where the Federal Minister does so, that Minister shall, for the purposes of this Act, be considered to have authority in relation to that fundamental decision.

Role of Ministers after self-sufficiency and security of supply

(4) Where, in respect of any period referred to in subsection 35(3), a determination is made that self-sufficiency and security of supply exist, the Provincial Minister has authority in relation to any fundamental decision made during that period.

Determination binding

35. (1) For the purposes of this Act, where a determination referred to in subsection 34(1) or (4) is made by both governments or by a panel pursuant to section 36 or 37 or is deemed to have been made pursuant to subsection (2), it is final and binding for the duration of the period in respect of which it is made.

Initial period

(2) For the purposes of section 34, the first period shall commence on January 1, 1986 and terminate on December 31, 1990 and, in respect of that period, a determination shall be deemed to have been made, for all purposes of this Act, that self-sufficiency and security of supply do not exist.

Subsequent periods

(3) For the purposes of section 34, each period following the period referred to in subsection (2) shall commence on the expiration of the period immediately preceding that period and shall be for a duration of five successive calendar years.

Where no agreement on determinations re self-sufficiency

36. (1) Consultation between the two governments with respect to the making of a determination referred to in subsection 34(1) or (4) shall be deemed to commence one year prior to the expiration of every period in respect of which such a determination is made.

Appointment of panel members

(2) Where the two governments fail to agree on a determination referred to in subsection (1) within three months after the commencement of consultation between the governments, the

determination shall be made by a panel consisting of three members, constituted in accordance with subsections 12(3) and (4), within sixty days after the appointment of the chairman of the panel unless, at any time prior thereto, the two governments agree on the determination.

Determination of unreasonable delay

37. (1) Where, within sixty days after an approval or disapproval by the Provincial Minister pursuant to subsection 34(2), the two governments fail to agree whether the approval or disapproval would unreasonably delay the attainment of self-sufficiency or security of supply, that determination shall be made by a panel consisting of three members constituted in accordance with subsection (2), within forty-five days after the appointment of the chairman of the panel.

Constitution of panel

(2) For the purposes of subsection (1), one member of the panel shall be appointed by each government within thirty days after the sixty days referred to in subsection (1) and the chairman of the panel shall be appointed in accordance with subsection 12(4) and for that purpose, subsection 12(4) applies, with such modifications as the circumstances require.

Determination not subject to review

38. Where a determination referred to in section 36 or 37 is made by a panel pursuant to that section, that determination is not subject to be reviewed or set aside by any government, court or other body.

Suspensive vetoes

39. (1) The Minister who does not have authority in relation to a fundamental decision, as determined under section 34, may, on giving written notice to the Board and the Minister who has such authority, suspend, during a period of ninety days, the approval of the fundamental decision by the Minister who has that authority.

Commencement of period

(2) The period of ninety days referred to in subsection (1) commences on the day the Board is advised, in accordance with subsection 31(2), of the approval of the fundamental decision by the Minister having authority in relation to the fundamental decision.

Supply shortfall

40. (1) Notwithstanding any other provision of this Act, in the event of a sudden domestic or import supply shortfall of suitable crude oil and equivalent substances, the Board shall, on request by the Federal Minister, cause production of suitable crude oil and equivalent substances to be increased, consistent with good oil field practice.

Canada's obligations under IEA

(2) Notwithstanding any other provision of this Act, where the Government of Canada has obligations with respect to the allocation of petroleum pursuant to the Agreement On An International Energy Program dated November 18, 1974, the Board shall, where directed to do so by the Federal Minister and during the period that those obligations continue, take such measures as are necessary to comply with those obligations and as are fair and equitable in relation to other hydrocarbon producing regions of Canada.

Definition of "shortfall of petroleum deliveries in the Province"

41. (1) For the purposes of this section "shortfall of petroleum deliveries in the Province" means deliveries of petroleum that are inadequate to supply, on commercial terms,

(a) the end use consumption and feedstock requirements of industrial facilities that are in place in the Province on the day of the coming into force of this Act;

(b) the feedstock requirements of the refining facilities at Come-by-Chance if those facilities were operating at capacity on the day of the coming into force of this Act or any refining facility constructed in the Province to replace those facilities; or

(c) the feedstock requirements of any refining facility located in the Province that was not in place on the coming into force of this Act, other than a facility referred to in paragraph (b), where the feedstock requirements required to satisfy the demand of industrial capacity, on the day of the coming into force of this Act, in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland have been met.

Notice by Provincial Minister to holders of production licences

(2) Where there is a shortfall of petroleum deliveries in the Province, the Provincial Minister may, after consulting with the Federal Minister, give notice to holders of production licences in the offshore area that the facilities in paragraphs (1)(a), (b) and (c) that are specified in the notice have, during the term of the notice, the first option to acquire, on commercial terms, petroleum produced in the offshore area unless a sales contract with respect to that petroleum has been entered into prior to the giving of the notice.

Later contracts subject to notice

(3) Any contract entered into after the giving of the notice referred to in subsection (2) shall be deemed to be varied or suspended to the extent necessary to give effect to that notice.

Term of notice

(4) The term of a notice given under subsection (2) is the period during which a shortfall of petroleum deliveries in the Province continues to exist.

Arbitration in case of dispute whether shortfall exists

(5) Where the Federal Minister or a holder of a production licence to whom a notice has been given under subsection (2) does not agree with the Provincial Minister that a shortfall of petroleum deliveries in the Province exists or continues to exist, the matter shall be referred to arbitration in the manner prescribed.

Notice ceases to have effect

(6) Where it is determined pursuant to arbitration that a shortfall of petroleum deliveries in the Province does not exist or continue to exist, the notice given under subsection (2) shall be deemed to be revoked and ceases to have effect on the date on which the determination is made.

Regulations

(7) Subject to section 7, the Governor in Council may make regulations for carrying out the purposes and provisions of this section and, without limiting the generality of the foregoing, may make regulations

- (a) defining the expression “commercial terms” or providing for arbitration to establish commercial terms in any particular case;
- (b) governing, for the purposes of this section, arbitration and the making of arbitration orders and appeals from and enforcement of arbitration orders; and
- (c) prescribing the manner of exercising a first option to acquire that is granted pursuant to a notice given under subsection (2).

MINISTERIAL DIRECTIVES

Ministerial directives

42. (1) The Federal Minister and the Provincial Minister may jointly issue to the Board written directives in relation to

- (a) fundamental decisions;
- (b) decisions made by the Board respecting the exercise of a power pursuant to paragraph 56(1)(b);
- (c) public reviews conducted pursuant to section 44;
- (d) Canada-Newfoundland benefits plans and any of the provisions thereof; and
- (e) studies to be conducted by the Board and advice with respect to policy issues to be given by the Board to the Federal Minister and the Provincial Minister.

Directives binding

(2) The Board shall comply with a directive issued under subsection (1).

Directives deemed not to be statutory instruments

(3) Directives issued under subsection (1) shall be deemed not to be statutory instruments for the purposes of the *Statutory Instruments Act*.

Notice in Canada Gazette

(4) Where a directive is issued under subsection (1), a notice shall be published in the *Canada Gazette* that the directive has been issued and that the text thereof is available for inspection by any person on request made to the Board.

PLAN FOR INTERESTS

Plan for interests

43. (1) During the first month of each calendar year, the Board shall submit to the Federal Minister and the Provincial Minister a plan outlining the anticipated decisions of the Board during that calendar year respecting the making of calls for bids pursuant to Part II with respect to interests to be issued in relation to portions of the offshore area and the issuance and terms and conditions of such interests.

Revised plan

(2) Where the Minister having authority in relation to fundamental decisions, as determined under subsection 34(1) or (4), is of the opinion that a plan referred to in subsection (1) does not

provide adequately for the attainment or maintenance of self-sufficiency and security of supply within the meaning of section 33, that Minister may reject the plan and where that Minister does so, shall inform the Board of the reasons for so doing.

Idem

(3) Where the Board is informed of a Minister's rejection of its plan and the reasons therefor, the Board shall, within sixty days after being so informed, prepare a revised plan outlining the anticipated decisions of the Board referred to in subsection (1), taking into account those reasons, and submit the revised plan to the Federal Minister and the Provincial Minister.

Application of subsections (2) and (3) to revised plan

(4) Subsections (2) and (3) apply, with such modifications as the circumstances require, with respect to a revised plan submitted pursuant to subsection (3).

PUBLIC REVIEW

Public review

44. (1) Subject to any directives issued under subsection 42(1), the Board shall conduct a public review in relation to any potential development of a pool or field unless the Board is of the opinion that the public hearing is not required on any ground the Board considers to be in the public interest.

Powers of Board

(2) Where a public review is conducted in relation to any potential development of a pool or field, the Board may

(a) establish terms of reference and a timetable that will permit a comprehensive review of all aspects of the development, including those within the authority of Parliament or of the Legislature of the Province;

(b) appoint one or more commissioners and, where there is to be more than one commissioner, appoint as commissioners persons nominated by each of the governments in recognition of the authority of Ministers of the Crown in right of Canada or of the Province under any Act of Parliament or of the Legislature of the Province, other than this Act or the Provincial Act, in relation to the development;

(c) where the potential development has been proposed to the Board by any person, require that person to submit and make available for public distribution a preliminary development plan, an environmental impact statement, a socio-economic impact statement, a preliminary Canada-Newfoundland benefits plan and any other plan specified by the Board; and

(d) cause the commissioners to hold public hearings in appropriate locations in the Province or elsewhere in Canada and report thereon to the Board, the Federal Minister and the Provincial Minister.

Powers of commissioners

(3) On the request of the Board, the Federal Government may, subject to such terms and conditions as it considers necessary, confer on the commissioners appointed pursuant to paragraph (2)(b) all or any of the powers conferred on persons appointed as commissioners under Part I of the *Inquiries Act*.

Time limit for Board's recommendations on a plan

(4) The commissioners shall make their recommendations respecting any preliminary plan or statement submitted pursuant to paragraph (2)(c) within two hundred and seventy days after their receipt of the plan or statement or such shorter period as may be set by the Board.

CANADA-NEWFOUNDLAND BENEFITS PLAN

Definition of "Canada-Newfoundland benefits plan"

45. (1) In this section, "Canada-Newfoundland benefits plan" means a plan for the employment of Canadians and, in particular, members of the labour force of the Province and, subject to paragraph (3)(d), for providing manufacturers, consultants, contractors and service companies in the Province and other parts of Canada with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

Canadian and Newfoundland participation

(2) Before the Board may approve any development plan pursuant to subsection 139(4) or authorize any work or activity under paragraph 138(1)(b), a Canada-Newfoundland benefits plan shall be submitted to and approved by the Board, unless the Board directs that that requirement need not be complied with.

Particular provisions of plan

- (3) A Canada-Newfoundland benefits plan shall contain provisions intended to ensure that
- (a) before carrying out any work or activity in the offshore area, the corporation or other body submitting the plan shall establish in the Province an office where appropriate levels of decision-making are to take place;
 - (b) consistent with the *Canadian Charter of Rights and Freedoms*, individuals resident in the Province shall be given first consideration for training and employment in the work program for which the plan was submitted and any collective agreement entered into by the corporation or other body submitting the plan and an organization of employees respecting terms and conditions of employment in the offshore area shall contain provisions consistent with this paragraph;
 - (c) expenditures shall be made for research and development to be carried out in the Province and for education and training to be provided in the Province; and
 - (d) first consideration shall be given to services provided from within the Province and to goods manufactured in the Province, where those services and goods are competitive in terms of fair market price, quality and delivery.

Affirmative action programs

(4) The Board may require that any Canada-Newfoundland benefits plan include provisions to ensure that disadvantaged individuals or groups have access to training and employment opportunities and to enable such individuals or groups or corporations owned or cooperatives operated by them to participate in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

Duties of Board in reviewing plans

(5) In reviewing any Canada-Newfoundland benefits plan, the Board shall consult with both Ministers on the extent to which the plan meets the requirements set out in subsections (1), (3) and (4).

Directives

(6) Subject to any directives issued under subsection 42(1), the Board may approve any Canada-Newfoundland benefits plan.

1987, c. 3, s. 45; 1992, c. 35, s. 47.

COORDINATION OF GOVERNMENT DEPARTMENTS AND AGENCIES

Coordination

46. (1) The Board shall, to ensure effective coordination and avoid duplication of work and activities, conclude with the appropriate departments and agencies of the Government of Canada and of the Government of the Province memoranda of understanding in relation to

- (a) environmental regulation;
- (b) emergency measures;
- (c) coast guard and other marine regulation;
- (d) employment and industrial benefits for Canadians in general and the people of the Province in particular and the review and evaluation procedures to be followed by both governments and the Board in relation to such benefits;
- (e) occupational health and safety; and
- (f) such other matters as are appropriate.

Idem

(2) The Federal Minister and the Provincial Minister shall be parties to any memorandum of understanding concluded in relation to a matter referred to in paragraph (1)(d).

PART II

PETROLEUM RESOURCES

INTERPRETATION

Definitions

47. In this Part,

"call for bids"
« *appel d'offres* »

"call for bids" means a call for bids made in accordance with section 58;

"commercial discovery"
« *découverte exploitable* »

"commercial discovery" means a discovery of petroleum that has been demonstrated to contain petroleum reserves that justify the investment of capital and effort to bring the discovery to production;

"commercial discovery area"
« *périmètre de découverte exploitable* »

"commercial discovery area" means, in relation to a declaration of commercial discovery made pursuant to subsection 78(1) or (2), those portions of the offshore area described in the declaration;

"Crown reserve area"
« *réserves de l'État* »

"Crown reserve area" means portions of the offshore area in respect of which no interest is in force;

"former exploration agreement"
« *ancien accord d'exploration* »

"former exploration agreement" means an exploration agreement under the *Canada Oil and Gas Land Regulations*;

"former lease"
« *ancienne concession* »

"former lease" means an oil and gas lease under the *Canada Oil and Gas Land Regulations*;

"former permit"
« *ancien permis* »

"former permit" means an exploratory permit under the *Canada Oil and Gas Land Regulations*;

"former special renewal permit"
« *ancien permis spécial de renouvellement* »

"former special renewal permit" means a special renewal permit under the *Canada Oil and Gas Land Regulations*;

"holder" or "interest holder"
« *Version anglaise seulement* »

"holder" or "interest holder" means, in respect of an interest or a share therein, the person indicated, in the register maintained pursuant to Division VIII, as the holder of the interest or the share;

"interest"
« *titre* »

"interest" means any former exploration agreement, former lease, former permit, former special renewal permit, exploration licence, production licence or significant discovery licence;

"interest owner"
« *Version anglaise seulement* »

"interest owner" means the interest holder who holds an interest or the group of interest holders who hold all of the shares in an interest;

"prescribed"
« *Version anglaise seulement* »

"prescribed" means

- (a) in the case of a form or the information to be given on a form, prescribed by the Board, and
- (b) in any other case, prescribed by regulations made by the Governor in Council;

"share"
« *fraction* »

"share" means, with respect to an interest, an undivided share in the interest or a share in the interest held in accordance with section 66;

"significant discovery"
« *découverte importante* »

"significant discovery" means a discovery indicated by the first well on a geological feature that demonstrates by flow testing the existence of hydrocarbons in that feature and, having regard to geological and engineering factors, suggests the existence of an accumulation of hydrocarbons that has potential for sustained production;

"significant discovery area"
« *périmètre de découverte importante* »

"significant discovery area" means, in relation to a declaration of significant discovery made pursuant to subsection 71(1) or (2), those portions of the offshore area described in the declaration.

Aboriginal rights

48. Nothing in this Part shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

Division I

GENERAL

Manner of Giving Notices

Giving notice

49. Where a notice is required to be given under this Part or the regulations, it shall be given in such form and manner as may be prescribed and shall contain such information as may be prescribed.

1987, c. 3, s. 49; 1992, c. 1, s. 144(F).

Her Majesty

Binding on Her Majesty

50. This Part is binding on Her Majesty in right of Canada or a province.

Designations and Appointments

Delegation

51. The Board may designate any person to exercise the powers and perform the duties and functions under this Part that are specified in the designation and on such designation that person may exercise those powers and shall perform those duties and functions subject to such terms and conditions, if any, as are specified in the designation.

Advisory bodies

52. (1) The Board may from time to time appoint and fix the terms of reference of such advisory

bodies as the Board considers appropriate to advise the Board with respect to such matters relating to the administration or operation of this Part or Part III as are referred to them by the Board.

Remuneration

(2) The members of any advisory body appointed under subsection (1) may be paid for their services such remuneration and expenses as are fixed by the Board.

Appointment of representative

53. (1) Where an interest owner consists of two or more holders, such holders shall, in the manner prescribed, appoint one of their number to act as representative of the interest owner for the purposes of this Part, but such holders may, with the consent of the Board, appoint different representatives for different purposes.

Designation of representative

(2) In the event that an interest owner consisting of two or more holders fails to appoint a representative for any of the purposes of this Part, the Board may designate one of such holders as the representative of the interest owner for such purposes.

Acts or omissions of representative binding

(3) An interest owner is bound by the acts or omissions of the appointed or designated representative of such interest owner with respect to any matter to which the authority of the representative extends.

Duties of representative

(4) A representative of an interest owner appointed or designated under this section shall perform the duties in respect of the purposes for which that representative has been appointed or designated, and any operating agreement or other similar arrangement in force in respect of the relevant interest of that interest owner stands varied or amended to the extent necessary to give effect to this subsection.

General Rules Respecting Interests

No issuance of interests in respect of certain areas

54. (1) Subject to sections 31 to 40, the Board may, except in a case referred to in subsection (2), by order, for such purposes and under such conditions as may be set out in the order, prohibit the issuance of interests in respect of such portions of the offshore area as are specified in the order.

Exclusive decision of Federal Minister

(2) The Federal Minister may, by order, in the case of a disagreement with any government concerning the location of an international boundary and under such conditions as may be set out in the order, prohibit the issuance of interests in respect of such portions of the offshore area as are specified in the order.

Surrender of interests

55. (1) An interest owner may, in the manner prescribed and subject to any requirements that may be prescribed respecting the minimum geographical area to which an interest may relate, surrender an interest in respect of all or any portion of the offshore area subject to the interest.

Debts due to Her Majesty not affected

(2) Any liability of an interest owner or interest holder to Her Majesty in right of Canada, either direct or by way of indemnity, that exists at the time of any surrender under subsection (1) is not affected by the surrender.

Orders to prohibit activities in certain circumstances

56. (1) Subject to subsection (2), the Board may, in the case of

(a) an environmental or social problem of a serious nature, or

(b) dangerous or extreme weather conditions affecting the health or safety of people or the safety of equipment,

by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity on the portions of the offshore area or any part thereof that are subject to the interest of that interest owner.

Fundamental decisions

(2) An order of the Board made in a case referred to in paragraph (1)(a) is subject to sections 31 to 40.

Order of Federal Minister

(3) The Federal Minister may, in the case of a disagreement with any government concerning the location of an international boundary, by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity on the portions of the offshore area or any part thereof that are subject to the interest of that interest owner.

Suspension of requirements in relation to interest

(4) Where, by reason of an order made under subsection (1) or (3), any requirement in relation to an interest cannot be complied with while the order is in force, compliance with the requirement is suspended until the order is revoked.

Extension of term of interest

(5) Notwithstanding any other provision in this Act, the term of an interest that is subject to an order under subsection (1) or (3) and the period provided for compliance with any requirement in relation to the interest are extended for a period equal to the period that the order is in force.

Relieving authority not affected

(6) Nothing in this section affects the authority of the Board to relieve a person from any requirement in relation to an interest or under this Part or the regulations.

Division II

GENERAL RULES RELATING TO ISSUANCE OF INTERESTS

Authority to Issue Interests

Authority to issue interests

57. (1) The Board may issue interests in respect of any portion of the offshore area in accordance with this Part and the regulations.

Fundamental decision

(2) The issuance of an interest by the Board is subject to sections 31 to 40 unless the issuance of the interest is mandatory under another provision of this Part.

Application of interest may be limited

(3) Subject to subsection (4), the application of any interest may be restricted to such geological formations and to such substances as may be specified in the interest.

Non-retrospective effect of subsection (2)

(4) Subsection (3) does not apply to any interest

(a) that is in force or in respect of which negotiations were completed before or on the coming into force of this section in relation to any portion of the offshore area; or

(b) that immediately succeeds an interest referred to in paragraph (a) in relation to that portion of the offshore area where that portion was not a Crown reserve area on the expiration of the interest referred to in paragraph (a).

Issuance of Interests in Relation to Crown Reserve Areas

Calls for bids

58. (1) Subject to section 61, the Board shall not issue an interest in relation to Crown reserve areas unless

(a) prior thereto, the Board has made a call for bids in relation to those Crown reserve areas by publishing a notice in accordance with this section and section 63; and

(b) the interest is issued to the person who submitted, in response to the call, the bid selected by the Board in accordance with subsection 59(1).

Fundamental decision

(2) The making of a call for bids by the Board is subject to sections 31 to 40.

Requests for postings of portions of the offshore area

(3) Any request received by the Board to make a call for bids in relation to particular portions of the offshore area shall be considered by the Board in selecting the portions of the offshore area to be specified in a call for bids.

Contents of call

(4) A call for bids shall specify

(a) the interest to be issued and the portions of the offshore area to which the interest is to apply;

(b) where applicable, the geological formations and substances to which the interest is to apply;

(c) the other terms and conditions subject to which the interest is to be issued;

(d) any terms and conditions that a bid must satisfy to be considered by the Board;

- (e) the form and manner in which a bid is to be submitted;
- (f) subject to subsection (5), the closing date for the submission of bids; and
- (g) the sole criterion that the Board will apply in assessing bids submitted in response to the call.

Time of publishing call

(5) Unless otherwise prescribed, a call for bids shall be published at least one hundred and twenty days before the closing date for the submission of bids specified in the call.

1987, c. 3, s. 58; 1994, c. 26, s. 11(F).

Selection of bid

59. (1) A bid submitted in response to a call for bids shall not be selected unless

- (a) the bid satisfies the terms and conditions and is submitted in the form and manner specified in the call; and
- (b) the selection is made on the basis of the criterion specified in the call.

Publication of bid selected

(2) Where the Board selects a bid submitted in response to a call for bids, the Board shall publish a notice in accordance with section 63 setting out the terms and conditions of that bid.

Interest to be consistent with bid.

(3) Where an interest is to be issued as a result of a call for bids, the terms and conditions of the interest shall be substantially consistent with any terms and conditions in respect of the interest specified in the call.

Publication of terms and conditions of interest

(4) The Board shall publish a notice in accordance with section 63 setting out the terms and conditions of any interest issued as a result of a call for bids as soon as practicable after the issuance thereof.

Issuance of interest not required

60. (1) The Board is not required to issue an interest as a result of a call for bids.

New call required

(2) Subject to section 61, where the Board has not issued an interest with respect to a particular portion of the offshore area specified in a call for bids within six months after the closing date specified in the call for the submission of bids, the Board shall, before issuing an interest in relation to that portion of the offshore area, make a new call for bids.

Exception to call for bids

61. (1) Subject to sections 31 to 40, the Board may issue an interest, in relation to any Crown reserve area, without making a call for bids where

- (a) the portion of the offshore area to which the interest is to apply has, through error or inadvertence, become a Crown reserve area and the interest owner who last held an interest in

relation to such portion of the offshore area has, within one year after the time they so became a Crown reserve area, requested the Board to issue an interest; or

(b) the Board is issuing the interest to an interest owner in exchange for the surrender by the interest owner, at the request of the Board, of any other interest or a share in any other interest, in relation to all or any portion of the offshore area subject to that other interest.

Notice

(2) Where the Board proposes to issue an interest under subsection (1), the Board shall, not later than ninety days before issuing the interest, publish a notice in accordance with section 63 setting out the terms and conditions of the proposed interest.

Interest not vitiated by failure to comply with call procedures

62. Where an interest has been issued, it is not vitiated by reason only of a failure to comply with any of the requirements set out in sections 58 to 61 respecting the form and content of, and time and manner of publishing, any notice required by those sections in relation to that interest.

Manner of publication of notices

63. Any notice required to be published by the Board pursuant to subsection 58(1), 59(2) or (4), 61(2) or 68(2) shall be published in the *Canada Gazette* and in any other publication the Board deems appropriate and, notwithstanding those subsections, may contain only a summary of the information required to be published and a statement that the full text thereof is available for inspection by any person on request made to the Board.

Regulations

64. Subject to section 7, the Governor in Council may, for the purposes of section 58, make regulations of general application in relation to the offshore area or any portion thereof, or in respect of any particular call for bids, prescribing the terms, conditions and criterion to be specified in a call for bids, the manner in which bids are to be submitted and requiring those terms and conditions and that criterion and manner to be specified in the call.

Division III

EXPLORATION

Exploration Licences

Rights under exploration licences

65. An exploration licence confers, with respect to the portions of the offshore area to which the licence applies,

(a) the right to explore for, and the exclusive right to drill and test for, petroleum;

(b) the exclusive right to develop those portions of the offshore area in order to produce petroleum; and

(c) the exclusive right, subject to compliance with the other provisions of this Part to obtain a production licence.

Shares

66. A share in an exploration licence may, subject to any requirements that may be prescribed,

be held with respect to a portion only of the offshore area subject to the exploration licence.

Terms and conditions

67. (1) An exploration licence shall contain such terms and conditions as may be prescribed and may contain any other terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to sections 31 to 40, and the interest owner of the licence.

Regulations

(2) Subject to section 7, the Governor in Council may make regulations prescribing terms and conditions required to be included in exploration licences issued in relation to the offshore area or any portion thereof.

Amendment of exploration licence

68. (1) The Board, subject to sections 31 to 40, and the interest owner of an exploration licence may, by agreement, amend any provision of the exploration licence in any manner not inconsistent with this Part or the regulations and, without limiting the generality of the foregoing, may, subject to subsection (2), amend the licence to include any other portion of the offshore area.

Exception

(2) The Board shall not amend an exploration licence to include any portion of the offshore area that, immediately prior to the inclusion, was a Crown reserve area unless the Board would be able to issue an interest to that interest owner in relation to that area under subsection 61(1) and a notice has been published in accordance with section 63 not later than ninety days before making the amendment, setting out the terms and conditions of the amendment.

Consolidation of exploration licences

(3) Subject to sections 31 to 40, the Board may, on the application of the interest owners of two or more exploration licences, consolidate those exploration licences into a single exploration licence, subject to any terms and conditions that may be agreed on by the Board and those interest owners.

Effective date of exploration licence

69. (1) The effective date of an exploration licence is the date specified in the licence as the effective date thereof.

Non-renewable term of nine years

(2) Subject to subsection (3) and section 70, the term of an exploration licence shall not exceed nine years from the effective date of the licence and shall not be extended or renewed.

Exception

(3) Subject to section 70, the term of an exploration licence entered into or in respect of which negotiations have been completed before December 20, 1985 may be renegotiated once only for a further term not exceeding four years and thereafter the term thereof shall not be renegotiated, extended or renewed.

Crown reserve areas on expiration of licence

(4) On the expiration of an exploration licence, the portions of the offshore area to which the exploration licence related and that are not subject to a production licence or a significant discovery

licence become Crown reserve areas.

Continuation of exploration licence where drilling commenced

70. (1) Where, prior to the expiration of the term of an exploration licence, the drilling of any well has been commenced on any portion of the offshore area to which the exploration licence applies, the exploration licence continues in force while the drilling of that well is being pursued diligently and for so long thereafter as may be necessary to determine the existence of a significant discovery based on the results of that well.

Deemed pursued diligently

(2) Where the drilling of a well referred to in subsection (1) is suspended by reason of dangerous or extreme weather conditions or mechanical or other technical problems encountered in the drilling of the well, the drilling of that well shall, for the purposes of subsection (1), be deemed to be being pursued diligently during the period of suspension.

Drilling of second well deemed commenced

(3) Where the drilling of a well referred to in subsection (1) cannot be completed for mechanical or other technical problems and if, within ninety days after the cessation of drilling operations with respect to that well, or such longer period as the Board determines, the drilling of another well is commenced on any portion of the offshore area that was subject to the exploration licence, the drilling of that other well shall, for the purposes of subsection (1), be deemed to have commenced prior to the expiration of the term of the exploration licence.

Significant Discoveries

Application for declaration of significant discovery

71. (1) Subject to section 124, where a significant discovery has been made on any portion of the offshore area that is subject to an interest or a share therein held in accordance with section 66, the Board shall, on the application of the interest holder of the interest or the share thereof made in the form and manner and containing such information as may be prescribed, make a written declaration of significant discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the significant discovery may extend.

Declaration on initiative of Board

(2) Where a significant discovery has been made on any portion of the offshore area, the Board may, by order subject to section 124, make a declaration of significant discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe the significant discovery may extend.

Description of offshore area subject to declaration

(3) A declaration made pursuant to subsection (1) or (2) shall describe the portions of the offshore area to which the declaration applies.

Amendment or revocation of declaration

(4) Subject to subsection (5), where a declaration of significant discovery is made pursuant to subsection (1) or (2) and, based on the results of further drilling, there are reasonable grounds to believe that a discovery is not a significant discovery or that the portions of the offshore area to which the significant discovery extends differ from the significant discovery area, the Board may, subject to section 124 and as appropriate in the circumstances,

(a) amend the declaration of significant discovery by increasing or decreasing the significant discovery area; or

(b) revoke the declaration.

Idem

(5) A declaration of significant discovery shall not be amended to decrease the significant discovery area or revoked earlier than

(a) in the case of a significant discovery area that is subject to a significant discovery licence issued pursuant to subsection 73(1), the date on which the exploration licence referred to in that subsection expires; and

(b) in the case of a significant discovery area that is subject to a significant discovery licence issued pursuant to subsection 73(2), three years after the effective date of the significant discovery licence.

Notice

(6) A copy of a declaration of significant discovery and of any amendment or revocation thereof made under this section in relation to any portion of the offshore area subject to an interest shall be sent by registered mail to the interest owner of that interest.

Significant Discovery Licences

Rights under significant discovery licence

72. A significant discovery licence confers, with respect to the portions of the offshore area to which the licence applies,

(a) the right to explore for, and the exclusive right to drill and test for, petroleum;

(b) the exclusive right to develop those portions of the offshore area in order to produce petroleum; and

(c) the exclusive right, subject to compliance with the other provisions of this Part, to obtain a production licence.

Significant discovery licence in relation to areas subject to exploration licences

73. (1) Where a declaration of significant discovery is in force and all or a portion of the significant discovery area is subject to an exploration licence or a share therein held in accordance with section 66, the Board shall, on application of the interest holder of the exploration licence or the share made in the form and manner and containing such information as may be prescribed, issue to the interest holder a significant discovery licence in respect of all portions of the significant discovery area that are subject to the exploration licence or the share.

Significant discovery licence in relation to Crown reserve areas

(2) Where a declaration of significant discovery is in force and the significant discovery area extends to a Crown reserve area the Board may, after making a call for bids in relation to that Crown reserve area or any portion thereof and selecting a bid submitted in response to the call in accordance with subsection 59(1), issue a significant discovery licence to the person who submitted that bid in relation to the Crown reserve area specified in the call.

Fundamental decision

(3) The making of a call for bids and the issuance of a significant discovery licence by the Board pursuant to subsection (2) is subject to sections 31 to 40.

Terms and conditions of significant discovery licence

(4) A significant discovery licence shall be in the form prescribed and may contain any other terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to sections 31 to 40, and the interest owner of the significant discovery licence.

Reduction of area subject to significant discovery licence

74. (1) Where a significant discovery area in relation to a declaration of significant discovery is decreased pursuant to an amendment made under subsection 71(4), any significant discovery licence that was issued on the basis of that declaration shall be amended by decreasing accordingly the portions of the offshore area subject to that licence.

Increase in area subject to significant discovery licence

(2) Where a significant discovery area in relation to a declaration of significant discovery is increased pursuant to an amendment made under subsection 71(4), any significant discovery licence that was issued on the basis of that declaration shall be amended to include all portions of the amended significant discovery area that are subject to any exploration licence held by the interest owner of that significant discovery licence at the time the significant discovery area is so increased.

Exploration licence ceases to have effect

75. (1) On the issuance of a significant discovery licence pursuant to subsection 73(1) with respect to a significant discovery area, any exploration licence ceases to have effect in relation to that significant discovery area.

Effective date of significant discovery licence

(2) The effective date of a significant discovery licence is the date of application for the licence.

Term of significant discovery licence

(3) Subject to subsection 85(1), a significant discovery licence continues in force, in relation to each portion of the offshore area to which the licence applies, during such period as the declaration of significant discovery on the basis of which the licence was issued remains in force in relation to that portion.

Crown reserve area on expiration of licence

(4) On the expiration of a significant discovery licence, any portion of the offshore area to which the significant discovery licence related and that is not subject to a production licence becomes a Crown reserve area.

Drilling Orders

Drilling orders

76. (1) Subject to subsections (2) to (4) and sections 31 to 40, the Board may, at any time after

making a declaration of significant discovery, by order subject to section 124, require the interest owner of any interest in relation to any portion of the significant discovery area to drill a well on any portion of the significant discovery area that is subject to that interest, in accordance with such directions as may be set out in the order, and to commence the drilling within one year after the making of the order or within such longer period as the Board specifies in the order.

Exception

(2) No order may be made under subsection (1) with respect to any interest owner who has completed a well on the relevant portion of the offshore area within six months prior to the making of the order.

Condition

(3) No order may be made under subsection (1) within the three years immediately following the well termination date of the well indicating the relevant significant discovery.

Idem

(4) No order made under subsection (1) may require an interest owner to drill more than one well at a time on the relevant portion of the offshore area.

Definition of "well termination date"

(5) For the purposes of subsection (3), "well termination date" means the date on which a well has been abandoned, completed or suspended in accordance with any applicable drilling regulations.

Information may be disclosed

77. (1) The Board may, notwithstanding section 119, provide information or documentation relating to a significant discovery to any interest owner who requires such information or documentation to assist the interest owner in complying with an order made under subsection 76(1).

Idem

(2) An interest owner shall not disclose any information or documentation provided to that interest owner under subsection (1) except to the extent necessary to enable the interest owner to comply with an order made under subsection 76(1).

Division IV

PRODUCTION

Commercial Discoveries

Application for declaration of commercial discovery

78. (1) Subject to section 124, where a commercial discovery has been made on any portion of the offshore area that is subject to an interest or a share therein held in accordance with section 66, the Board shall, on the application of the interest holder of the interest or the share made in the form and manner and containing such information as may be prescribed, make a written declaration of commercial discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the commercial discovery may extend.

Declaration on initiative of Board

(2) Subject to section 124, where a commercial discovery has been made on any portion of the offshore area, the Board may, by order, make a declaration of commercial discovery in relation to those portions of the offshore area in respect of which there are reasonable grounds to believe that the commercial discovery may extend.

Application of certain provisions

(3) Subsections 71(3), (4) and (6) apply, with such modifications as the circumstances require, with respect to a declaration made pursuant to subsection (1) or (2).

1987, c. 3, s. 78; 1988, c. 28, s. 256.

Development Orders

Notice of order to reduce term of interest

79. (1) Subject to sections 31 to 40, the Board may, at any time after making a declaration of commercial discovery, give notice to the interest owner of any interest in relation to any portion of the commercial discovery area where commercial production of petroleum has not commenced before that time stating that, after such period of not less than six months as may be specified in the notice, an order may be made reducing the term of that interest.

Opportunity for submissions

(2) During the period specified in a notice sent to an interest owner under subsection (1), the Board shall provide a reasonable opportunity for the interest owner to make such submissions as the interest owner considers relevant to determining whether the Board should make an order reducing the term of the relevant interest.

Order reducing term of interest

(3) Notwithstanding any other provision of this Act but subject to sections 31 to 40, where the Board is of the opinion that it is in the public interest, the Board may, at any time not later than six months after the expiration of the period specified in a notice in respect of an interest sent under subsection (1), by order subject to section 124, reduce the term of the interest to three years after the date the order is made or such longer period as may be specified in the order.

All interests cease

(4) Notwithstanding any other provision of this Act but subject to subsections (5) and (6), where an order is made under subsection (3), any interest in respect of a portion of the offshore area within the area to which the interest that is the subject of the order applied on the date the order was made ceases to have effect at the end of the period specified in the order.

Order ceases to have effect where production commences

(5) Where commercial production of petroleum on any portion of the offshore area referred to in subsection (4) commences before the expiration of the period specified in an order made under subsection (3) or the period extended pursuant to subsection (6), the order ceases to have effect and is deemed to have been vacated.

Extension of period

(6) Subject to sections 31 to 40, the Board may extend the period specified in an order made

under subsection (3) or may revoke the order.

Issuance of Production Licences

Rights under production licence

80. (1) A production licence confers, with respect to the portions of the offshore area to which the licence applies,

- (a) the right to explore for, and the exclusive right to drill and test for, petroleum;
- (b) the exclusive right to develop those portions of the offshore area in order to produce petroleum;
- (c) the exclusive right to produce petroleum from those portions of the offshore area; and
- (d) title to the petroleum so produced.

Exception

(2) Notwithstanding subsection (1), the Board may, subject to such terms and conditions as the Board deems appropriate, authorize any interest holder of an interest or a share therein to produce petroleum on the portions of the offshore area subject to the interest or share for use in the exploration or drilling for or development of petroleum on any portion of the offshore area.

Issuance of production licence

81. (1) Subject to section 87, the Board, on application made in the form and manner and containing such information as may be prescribed,

- (a) shall issue a production licence to one interest owner, in respect of any one commercial discovery area or portion thereof that is subject to an exploration licence or a significant discovery licence held by that interest owner; and
- (b) may, subject to such terms and conditions as may be agreed on by the Board and the relevant interest owners and to sections 31 to 40, issue a production licence to
 - (i) one interest owner, in respect of two or more commercial discovery areas or portions thereof that are subject to an exploration licence or a significant discovery licence held by that interest owner, or
 - (ii) two or more interest owners, in respect of one or more commercial discovery areas or portions thereof that are subject to an exploration licence or a significant discovery licence held by any of those interest owners.

Production licence in relation to Crown reserve areas

(2) Where a declaration of commercial discovery is in force and the commercial discovery area extends to a Crown reserve area, the Board may, after making a call for bids in relation to that Crown reserve area or any portion thereof and selecting a bid submitted in response to the call in accordance with subsection 59(1), issue a production licence to the person who submitted that bid in relation to the Crown reserve area specified in the call.

Fundamental decision

(3) The making of a call for bids and the issuance of a production licence by the Board pursuant to subsection (2) is subject to sections 31 to 40.

Terms and conditions of production licence

(4) A production licence shall be in the form prescribed and may contain any terms and conditions, not inconsistent with this Part or the regulations, as may be agreed on by the Board, subject to sections 31 to 40, and the interest owner of the production licence.

1987, c. 3, s. 81; 1993, c. 47, s. 6.

Consolidation of production licences

82. Subject to sections 31 to 40, the Board may, on the application of the interest owners of two or more production licences, consolidate those production licences into a single production licence, on such terms and conditions as may be agreed on by the Board and those interest owners.

Reduction of area subject to production licence

83. (1) Where a commercial discovery area in relation to a declaration of commercial discovery is decreased pursuant to an amendment made under subsections 71(4) and 78(3), any production licence that was issued on the basis of that declaration shall be amended by decreasing accordingly the portions of the offshore area subject to that licence.

Increase in areas subject to production licence

(2) Where a commercial discovery area in relation to a declaration of commercial discovery is increased pursuant to an amendment made under subsections 71(4) and 78(3), any production licence that was issued on the basis of that declaration shall be amended to include all portions of the amended commercial discovery area that are subject to an exploration licence or a significant discovery licence held by the interest owner of that production licence at the time the commercial discovery area is so increased.

Term of production licence

84. (1) Subject to subsections (2) to (4), a production licence is effective from the date it is issued and shall be issued for a term of twenty-five years.

Idem

(2) Where a declaration of commercial discovery on the basis of which a production licence was issued is, pursuant to subsections 71(4) and 78(3), revoked or amended to exclude all portions of the commercial discovery area in relation to which the production licence was issued, the production licence ceases to be in force.

Automatic extension of term

(3) Where, on the expiration of the term of a production licence, petroleum is being produced commercially, the term is extended for such period thereafter during which commercial production of petroleum continues.

Discretionary extension of term

(4) Subject to sections 31 to 40, the Board may, by order, on such terms and conditions as may be specified in the order, extend the term of a production licence where

- (a) commercial production of petroleum from the portions of the offshore area subject to the licence ceases before or on the expiration of the twenty-five year term of the production licence and the Board has reasonable grounds to believe that commercial production from such portions

of the offshore area will recommence; or

(b) the Board has reasonable grounds to believe that commercial production of petroleum from such portions of the offshore area will, at any time before or after the expiration of the term of the licence, cease during any period and thereafter recommence.

Lapsing of other interests

85. (1) On the issuance of a production licence, any interest in relation to the portions of the offshore area in respect of which the production licence is issued held immediately prior to the issuance of the production licence ceases to have effect in relation to such portions of the offshore area, but otherwise continues to have effect according to its terms and the provisions of this Act.

Areas become Crown reserve areas on expiration of term

(2) On the expiration of a production licence, the portions of the offshore area in relation to which the production licence was issued become Crown reserve areas.

Subsurface Storage Licences

Licence for subsurface storage

86. (1) The Board may, subject to any terms and conditions the Board considers appropriate, issue a licence for the purpose of subsurface storage of petroleum or any other substance approved by the Board in portions of the offshore area at depths greater than twenty metres.

Prohibition

(2) No portion of the offshore area shall be used for a purpose referred to in subsection (1) without a licence referred to therein.

Qualification for Production Licence

Qualification for production licence

87. No production licence or share in a production licence may be held by any person other than a corporation incorporated in Canada.

1987, c. 3, s. 87; 1993, c. 47, s. 7.

DIVISION V

[Repealed, 1993, c. 47, s. 8]

Division VI

ROYALTIES

Interpretation

Definition of "Petroleum and Natural Gas Act"

97. (1) In this Division, the "Petroleum and Natural Gas Act" means Part II of *The Petroleum and Natural Gas Act*, Chapter 294 of the Revised Statutes of Newfoundland, 1970, as amended from time to time.

Royalties

(2) There is hereby reserved to Her Majesty in right of Canada and each holder of a share in a production licence is liable for and shall pay to Her Majesty in right of Canada, in accordance with subsection (4), the royalties, interest and penalties that would be payable in respect of petroleum under the Petroleum and Natural Gas Act if the petroleum were produced from areas within the Province.

Exception

(3) Notwithstanding subsection (2), where petroleum is subject to a royalty under the Petroleum and Natural Gas Act, that petroleum is not subject to a royalty under subsection (2).

Application of Newfoundland legislation

(4) Subject to this Act and the regulations, the Petroleum and Natural Gas Act and any regulations made thereunder apply, with such modifications as the circumstances require, for the purposes of this section and, without limiting the generality of the foregoing,

(a) a reference in that Act to Her Majesty in right of the Province shall be deemed to be a reference to Her Majesty in right of Canada; and

(b) a reference in that Act to the Province of Newfoundland or the province shall be deemed to be a reference to the offshore area.

No Crown share

(5) No provision of the Petroleum and Natural Gas Act or any regulation made thereunder shall apply so as to reserve to Her Majesty a Crown share in any interest issued in respect of any portion of the offshore area.

1987, c. 3, s. 97; 1988, c. 28, s. 257(F).

Power to collect

98. (1) Subject to subsection (6), where an agreement is entered into pursuant to subsection (3), royalties, interest and penalties payable under section 97 may be collected and administered and refunds in respect thereof may be granted on behalf of the Government of Canada in accordance with the terms and conditions of the agreement, as amended from time to time pursuant to subsection (4).

Negotiation of agreement

(2) The Federal Minister shall, on the request of the Government of the Province or the Board, negotiate an agreement with the Provincial Minister and the Board with respect to the collection and administration of the royalties, interest and penalties payable under section 97.

Agreement

(3) On completion of the negotiation of an agreement pursuant to subsection (2), the Federal Minister, with the approval of the Governor in Council, shall, on behalf of the Government of Canada, enter into an agreement with the Government of the Province and the Board pursuant to which the Board shall, on behalf of the Government of Canada, collect and administer the royalties, interest and penalties payable under section 97 and, without limiting the generality of the foregoing, grant refunds or make other payments in respect of those royalties, interest and penalties in accordance with the terms and conditions set out in the agreement.

Amendments to the agreement

(4) The Federal Minister, with the approval of the Governor in Council, may, on behalf of the Government of Canada, enter into an agreement amending the terms and conditions of any agreement entered into pursuant to subsection (3).

Proof of provision of agreement

(5) A document purporting to be an agreement entered into pursuant to subsection (3) or (4) that is

(a) published in the *Canada Gazette*, or

(b) certified as such by, or on behalf of, the Minister of National Revenue, the Receiver General, the Deputy Receiver General or the Federal Minister

is, in the absence of evidence to the contrary, evidence of the contents thereof and is admissible in evidence without proof of the signature or official character of the person purporting to have certified it.

No further liability

(6) An administration agreement may provide that, where any payment is received by the Government of the Province on account of any royalties, interest, penalties or other sum payable by a person under

(a) section 97, or

(b) both

(i) section 97, and

(ii) the Petroleum and Natural Gas Act,

the payment so received may be applied by the Government of the Province towards the royalties, interest, penalties or other sums payable by the person under any such provision or Act in such manner as is specified in the agreement, notwithstanding that the person directed that the payment be applied in any other manner or made no direction as to its application.

Idem

(7) Any payment or part thereof applied by the Government of the Province in accordance with an administration agreement towards the royalties, interest, penalties or other sums payable by a person under section 97,

(a) relieves that person of liability to pay such royalties, interest, penalties or other sums to the extent of the payment or part thereof so applied; and

(b) shall be deemed to have been applied in accordance with a direction made by that person.

1987, c. 3, s. 98; 1988, c. 28, s. 258(F).

Remittance to Receiver General

99. (1) All royalties, interests and penalties payable under section 97, including the proceeds of any royalty payable in kind, shall be made payable and remitted to the Receiver General.

Consolidated Revenue Fund

(2) On the collection or receipt of any royalties, interest and penalties by the Board pursuant to this section, the royalties shall be deposited as soon as practicable to the credit of the Receiver General and paid into the Consolidated Revenue Fund in the manner prescribed by the Treasury Board under the *Financial Administration Act*.

Liability and Collection of Royalties

Debts due to Her Majesty

100. All royalties, interest and penalties payable under section 97 are debts due to Her Majesty in right of Canada and are recoverable as such from the person required to pay the royalties in accordance with this Division.

Division VII

ENVIRONMENTAL STUDIES REVOLVING FUNDS

Fund continued

101. (1) Part VII of the *Canada Petroleum Resources Act* applies, with such modifications as the circumstances require, within the offshore area.

Rates subject to Board's approval

(2) The rates fixed by the Federal Minister pursuant to section 80 of the *Canada Petroleum Resources Act*, as they apply to the offshore area, are subject to approval by the Board.

Appointment by Board of one of members of Environmental Studies Management Board

(3) Notwithstanding subsection 78(2) of the *Canada Petroleum Resources Act*, one of the members of the Environmental Studies Management Board established by subsection 78(1) of that Act is to be appointed by the Board on the recommendation of the Provincial Minister.

Reports and recommendations to Board

(4) The Environmental Studies Management Board referred to in subsection (3) shall submit to the Board a copy of every annual report and recommendation submitted to the Federal Minister pursuant to paragraph 79(1)(d) or (e) of the *Canada Petroleum Resources Act* at the same time the report or recommendation is submitted to the Federal Minister.

Division VIII

TRANSFERS, ASSIGNMENTS AND REGISTRATION

Interpretation

Definitions

102. (1) In this Division,

"assignment of security interest"
« *cession de sûreté* »

"assignment of security interest" means a notice of the assignment of a security interest or any part

thereof in respect of which a security notice has been registered under this Division;

"court"
« *tribunal* »

"court" means the Trial Division of the Supreme Court of Newfoundland and includes a judge thereof;

"Deputy Registrar"
« *directeur adjoint* »

"Deputy Registrar" means such person as the Board may designate as the Deputy Registrar for the purposes of this Division;

"discharge"
« *mainlevée* »

"discharge" means a notice of the discharge of a security notice or postponement and includes a partial discharge;

"instrument"
« *acte* »

"instrument" means a discharge, postponement, security notice, transfer or an assignment of a security interest;

"operator's lien"
« *privilège de l'exploitant* »

"operator's lien" means any charge on or right in relation to an interest or a share in an interest

(a) that arises under a contract

(i) to which the interest owner or holder of the interest or share is a party,

(ii) that provides for the operator appointed thereunder to carry out any work or activity related to the exploration for or the development or production of petroleum in the portions of the offshore area to which the interest or share applies, and

(iii) that requires the interest owner or holder to make payments to the operator to cover all or part of the advances made by the operator in respect of the costs and expenses of such work or activity, and

(b) that secures the payments referred to in subparagraph (a)(iii);

"postponement"
« *cession de priorité* »

"postponement" means a document evidencing the postponement of a security notice or operator's lien;

"Registrar"
« *directeur* »

"Registrar" means such person as the Board may designate as the Registrar for the purposes of this Division;

"secured party"

« *partie garantie* »

"secured party" means the person claiming a security interest under a security notice;

"security interest"

« *sûreté* »

"security interest" means any charge on or right in relation to an interest or a share in an interest that, pursuant to a written agreement, secures any payment or performance of an obligation, including

(a) the payment of an indebtedness arising from an existing or future loan or advance of money,

(b) a bond, debenture or other security of a corporation, or

(c) the performance of the obligations of a guarantor under a guarantee given in respect of all or any part of an indebtedness referred to in paragraph (a) or all or any part of a bond, debenture or other security of a corporation,

and includes a security given under section 426 of the *Bank Act*, but does not include an operator's lien;

"security notice"

« *Version anglaise seulement* »

"security notice" means a notice of a security interest;

"transfer"

« *transfert* »

"transfer" means a transfer of an interest or a share in an interest.

Assignees deemed secured parties

(2) Where an assignment of security interest is registered under this Division, a reference in this Division to a secured party shall, in respect of the security notice to which the assignment of security interest relates, be read as a reference to the assignee named in the assignment of security interest.

1987, c. 3, s. 102; 1988, c. 28, s. 259; 1990, c. 41, s. 12; 1991, c. 46, s. 585.

Transfer and Assignment

Notice of disposition of any interest

103. Where an interest holder of an interest or any share therein enters into an agreement or arrangement that is or may result in a transfer, assignment or other disposition of the interest or any share therein, the interest holder shall give notice of such agreement or arrangement to the Board, together with a summary of its terms and conditions or, on the request of the Board, a copy of the agreement or arrangement.

104. and 104.1 [Repealed, 1993, c. 47, s. 9]

Registration

Establishment of register

105. (1) A public register of all interests and instruments registered under this Division shall be established and maintained in accordance with this Division and the regulations.

Duties of Registrar and Deputy Registrar

(2) The Registrar and Deputy Registrar shall exercise such powers and perform such duties and functions in respect of the register and the system of registration established under this Division as may be prescribed.

Prohibition against registration of documents except instruments

106. (1) No document other than an interest or instrument may be registered under this Division.

Requirements of registration

(2) No instrument may be registered under this Division unless it has been submitted for registration in the form prescribed for that instrument, in such manner and containing such information as may be prescribed, and meets any other requirement for the registration thereof prescribed by this Division and the regulations.

107. [Repealed, 1993, c. 47, s. 10]

Requirements of registering security notice

108. (1) No security notice may be registered under this Division unless the security notice specifies

- (a) the nature of the security interest claimed;
- (b) the person from whom the security interest was acquired;
- (c) the documents giving rise to the security interest; and
- (d) such other particulars in respect thereof as may be prescribed.

Notice of official address

(2) No instrument may be registered under this Division unless a notice of official address for service in respect of that instrument is filed with the Registrar in prescribed form.

Revision of notice of official address

(3) The official address for service in respect of an instrument may be changed by filing with the Registrar another notice of official address for service, in prescribed form.

Security notice carries forward to new interests

109. Where a significant discovery licence or production licence is issued at any time in respect of any portion of the offshore area that was not a Crown reserve area immediately before that time, the registration under this Division of a security notice in respect of the interest in force immediately preceding the issuance of that licence and relating to that portion of the offshore area applies in respect of the licence as though the security notice referred to that licence and as though that licence had been issued prior to the registration of the security notice.

Registration

110. (1) Every document submitted for registration under this Division shall be examined by the Registrar and where the Registrar determines that the document is an instrument that meets all the requirements for the registration thereof prescribed by this Division and the regulations, the Registrar

shall register the instrument in accordance with this Division and the regulations.

Refusal to register

(2) Where the Registrar refuses to register any document under this Division, the Registrar shall return the document to the person submitting the document for registration and provide that person with the reasons for the refusal.

Memorandum of registration

(3) An instrument is registered under this Division by the endorsement of a memorandum of registration on the instrument specifying the registration number of the instrument and the time and date of registration.

Chronological order of receipt for registration

(4) Instruments accepted for registration under this Division shall be registered in the chronological order in which such instruments are received by the Registrar.

Deemed notice

111. The registration of an instrument under this Division shall be deemed to constitute actual notice of the instrument to all persons as of the time of registration of the instrument and, in the case of a security notice, shall be deemed to constitute actual notice to all persons who may serve a demand for information under section 113 in respect of the security notice of the contents of the documents specified in the security notice.

Priority of rights

112. (1) Subject to subsections (2) and (5), any particular right, in relation to an interest or a share therein, in respect of which an instrument has been registered under this Division at any time has priority over and is valid against any other right, in relation to that interest or share,

(a) in respect of which an instrument may be registered under this Division,

(i) where the instrument was not so registered, or

(ii) where the instrument was so registered after that time,

whether that other right was acquired before or after that particular right; or

(b) in respect of which an instrument may not be registered under this Division, acquired after that time.

Transitional

(2) Where any right in respect of which an instrument may be registered under this Division was acquired before the coming into force of this section and an instrument in respect of such right is registered under this Division not later than one hundred and eighty days after the coming into force of this section, the priority and validity of such right shall be determined as though the instrument was registered under this Division at the time the right was acquired and as though this section was in force at that time.

Idem

(3) Notwithstanding subsection (2), no right in respect of which that subsection applies shall have priority over and be valid against any other right in respect of which that subsection applies but in

respect of which an instrument is not registered within the period referred to in that subsection, where the person claiming the right in respect of which an instrument is registered within that period acquired such right with actual knowledge of the other right.

Idem

(4) No instrument in respect of any right to which subsection (2) applies shall be registered unless it is accompanied by the statutory declaration, in prescribed form, of the person claiming such right, attesting to the time at which such right was acquired.

Operator's lien

(5) An operator's lien, in relation to an interest or share therein, shall, without registration of any document evidencing the operator's lien, have priority over and be valid against any other right, in relation to that interest or share, in respect of which an instrument may be registered under this Division, whether an instrument in respect of that other right was registered before or after the acquisition of the operator's lien or the operator's lien was acquired before or after that other right, unless the operator's lien is postponed with respect to such other rights by the registration under this Division of a postponement in respect of the operator's lien and a discharge in respect of that postponement has not been registered under this Division.

1987, c. 3, s. 112; 1994, c. 26, s. 12(F).

Demand for information

113. (1) A person may, in accordance with this section, serve a demand for information in respect of a security notice that has been registered under this Division in relation to an interest or a share therein where that person

- (a) is the holder of that interest or share;
- (b) is specified in the security notice as the person from whom the security interest was acquired;
- (c) is the secured party under another security notice registered under this Division in relation to that interest or share;
- (d) is a member of a class of persons prescribed by the regulations for the purposes of this subsection; or
- (e) obtains leave to do so from the court.

Contents of demand notice

(2) A demand for information, in respect of a security notice, may be served pursuant to subsection (1) by serving on the secured party under the security notice a demand notice, in prescribed form, requiring the secured party

- (a) to inform the person serving the demand notice, within fifteen days after service of the notice, of the place where the documents specified in the security notice or copies thereof are located and available for examination, and of the normal business hours during which the examination may be made; and
- (b) to make such documents or copies thereof available for examination at that place during normal business hours by or on behalf of the person serving the notice, within a reasonable period after the demand notice is served.

Service

(3) A demand for information is served for the purposes of this section if it is sent by registered mail or delivered to the official address for service in respect of the security notice according to the records of the Registrar.

Compliance with demand

(4) A demand for information served pursuant to subsection (1) may be complied with by mailing or delivering to the person serving the demand notice a true copy of the documents referred to in the demand notice.

Court order where failure to comply

(5) Where a secured party fails without reasonable excuse to comply with a demand for information in respect of a security notice in relation to an interest or share therein served on the secured party in accordance with this section, the court may, on application by the person who served the demand notice, make an order requiring the secured party to comply with the demand for information within the time and in the manner specified in the order.

Where failure to comply with court order

(6) Where a secured party fails to comply with an order of a court made under subsection (5), the court may, on the application of the person who applied for the order,

(a) make any other order the court considers necessary to ensure compliance with the order made under subsection (5); or

(b) make an order directing the Registrar to cancel the registration of the security notice.

Definition of "document"

(7) In this section, "document" includes any amendment to the document.

Notice to take proceedings

114. (1) A person who may serve a demand for information in respect of a security notice in relation to an interest or a share therein pursuant to subsection 113(1) may

(a) serve on the secured party under the security notice a notice to take proceedings, in prescribed form, directing that secured party to apply to the court within sixty days after the day on which the notice to take proceedings is served, for an order substantiating the security interest claimed in the security notice; or

(b) commence proceedings in the court, requiring the secured party to show cause why the registration of the security notice should not be cancelled.

Order to shorten notice to take proceedings

(2) The court may, by order, on the *ex parte* application of a person who proposes to serve a notice to take proceedings under subsection (1), shorten the sixty day period referred to in paragraph (1)(a) and, if the order is made,

(a) paragraph (1)(a) shall, in relation to that notice to take proceedings, be deemed to refer to the shorter period; and

(b) a certified copy of the order shall be served with that notice to take proceedings.

Order to extend notice to take proceedings

(3) The court may, on the application of a secured party served with a notice to take proceedings, extend the period for applying to the court referred to in paragraph (1)(a), whether or not that period has been shortened under subsection (2).

Service

(4) A notice to take proceedings is served for the purposes of this section if it is sent by registered mail or delivered to the secured party at the official address for service in respect of the security notice according to the records of the Registrar.

Cancellation of registration of security notice

(5) The registration of a security notice shall be cancelled on submission to the Registrar of a statutory declaration showing that

- (a) a notice to take proceedings was served in accordance with this section; and
- (b) no application was commenced in accordance with the notice to take proceedings or within the period extended pursuant to subsection (3) or an application so made was dismissed by the court or discontinued.

No further registration after cancellation

(6) Where the registration of a security notice in respect of a security interest is cancelled pursuant to subsection (5) or (7), the secured party under the security notice may not submit for registration under this Division another security notice in respect of that security interest without leave of the court to do so.

Cancellation of registration on order of court

(7) The registration of a security notice shall be cancelled where there is submitted to the Registrar a certified copy of an order or judgment of a court directing the Registrar to do so, whether as a result of proceedings taken under this Division or otherwise.

Transfer effective on registration

115. A transfer of an interest or a share therein is not effective against the Crown prior to the registration of the transfer.

No restriction on rights of Board or Her Majesty

116. For greater certainty, the registration of an instrument

- (a) does not restrict or in any manner affect any right or power of the Board or of the Ministers under this Part, the regulations or the terms of any interest; and
- (b) does not derogate from any proprietary right or any right to dispose of or exploit natural resources that Her Majesty in right of Canada has under this Act in respect of any portion of the offshore area.

No action for acts done in performance of official functions

117. No action or other proceedings for damages shall be commenced against the Registrar or Deputy Registrar or anyone acting under the authority of the Registrar or Deputy Registrar for an act

done or omission in good faith in the exercise of a power or the performance of a duty under this Division.

Regulations

118. Subject to section 7, the Governor in Council may make regulations for carrying out the purposes and provisions of this Division and, without restricting the generality of the foregoing, may make regulations

- (a) prescribing the powers, duties and functions of the Registrar and Deputy Registrar for the purposes of this Division and the time when, and manner and circumstances in which, they are to be exercised, and providing for the designation by the Board of any person or class of persons to exercise such powers and perform such duties and functions as may be specified in the regulations;
- (b) governing the books, abstracts and indexes to be maintained as the register for the purposes of this Division and the particulars of interests, instruments and portions of the offshore area and the orders and declarations made in relation to interests to be recorded therein;
- (c) governing the filing of copies of interests, registered instruments and other documents in the register established under this Division;
- (d) governing public access to and searches of the register;
- (e) prescribing fees for the registration of instruments, making copies and certified copies of documents, searches and any other services specified in the regulations for the purposes of this Division, and requiring such fees to be paid for such services; and
- (f) prescribing any other matter or thing that is by this Division to be prescribed.

Division IX

ADMINISTRATION AND ENFORCEMENT

Disclosure of Information

Definitions

119. (1) In this section,

"delineation well"
« *puits de délimitation* »

"delineation well" means a well that is so located in relation to another well penetrating an accumulation of petroleum that there is a reasonable expectation that another portion of that accumulation will be penetrated by the first-mentioned well and that the drilling is necessary in order to determine the commercial value of the accumulation;

"development well"
« *puits d'exploitation* »

"development well" means a well that is so located in relation to another well penetrating an accumulation of petroleum that it is considered to be a well or part of a well drilled for the purpose of production or observation or for the injection or disposal of fluid into or from the accumulation:

"engineering research or feasibility study"
« *recherches ou études techniques* »

"engineering research or feasibility study" includes work undertaken to facilitate the design or to analyse the viability of engineering technology, systems or schemes to be used in the exploration for or the development, production or transportation of petroleum in the offshore area;

"environmental study"
« *études de l'environnement* »

"environmental study" means work pertaining to the measurement or statistical evaluation of the physical, chemical and biological elements of the lands, oceans or coastal zones, including winds, waves, tides, currents, precipitation, ice cover and movement, icebergs, pollution effects, flora and fauna both onshore and offshore, human activity and habitation and any related matters;

"experimental project"
« *opération expérimentale* »

"experimental project" means work or activity involving the utilization of methods or equipment that are untried or unproven;

"exploratory well"
« *puits d'exploration* »

"exploratory well" means a well drilled on a geological feature on which a significant discovery has not been made;

"geological work"
« *travaux de géologie* »

"geological work" means work, in the field or laboratory, involving the collection, examination, processing or other analysis of lithological, paleontological or geochemical materials recovered from the seabed or subsoil of any portion of the offshore area and includes the analysis and interpretation of mechanical well logs;

"geophysical work"
« *travaux de géophysique* »

"geophysical work" means work involving the indirect measurement of the physical properties of rocks in order to determine the depth, thickness, structural configuration or history of deposition thereof and includes the processing, analysis and interpretation of material or data obtained from such work;

"geotechnical work"
« *travaux de géotechnique* »

"geotechnical work" means work, in the field or laboratory, undertaken to determine the physical properties of materials recovered from the seabed or subsoil of any portion of the offshore area;

"well site seabed survey"
« *levé marin* »

"well site seabed survey" means a survey pertaining to the nature of the seabed or subsoil of any portion of the offshore area in the area of the proposed drilling site in respect of a well and to the conditions of those portions of the offshore area that may affect the safety or efficiency of drilling operations;

"well termination date"
« *date d'abandon du forage* »

"well termination date" means the date on which a well or test hole has been abandoned, completed or suspended in accordance with any applicable regulations respecting the drilling for petroleum made under Part III.

Privilege

(2) Subject to section 18 and this section, information or documentation provided for the purposes of this Part or Part III or any regulation made under either Part, whether or not such information or documentation is required to be provided under either Part or any regulation made thereunder, is privileged and shall not knowingly be disclosed without the consent in writing of the person who provided it except for the purposes of the administration or enforcement of either Part or for the purposes of legal proceedings relating to such administration or enforcement.

Idem

(3) No person shall be required to produce or give evidence relating to any information or documentation that is privileged under subsection (2) in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Part or Part III.

Registration of documents

(4) For greater certainty, this section does not apply to a document that has been registered under Division VIII.

Information that may be disclosed

(5) Subsection (2) does not apply to the following classes of information or documentation obtained as a result of carrying on a work or activity that is authorized under Part III, namely, information or documentation in respect of

(a) an exploratory well, where the information or documentation is obtained as a direct result of drilling the well and if two years have passed since the well termination date of that well;

(b) a delineation well, where the information or documentation is obtained as a direct result of drilling the well and if the later of

(i) two years since the well termination date of the relevant exploratory well, and

(ii) ninety days since the well termination date of the delineation well,

have passed;

(c) a development well, where the information or documentation is obtained as a direct result of drilling the well and if the later of

(i) two years since the well termination date of the relevant exploratory well, and

(ii) sixty days since the well termination date of the development well,

have passed;

(d) geological work or geophysical work performed on or in relation to any portion of the offshore area,

(i) in the case of a well site seabed survey where the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (b)(i) or (ii) or (c)(i) or (ii), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the work;

(e) any engineering research or feasibility study or experimental project, including geotechnical work, carried out on or in relation to any portion of the offshore area,

(i) where it relates to a well and the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (b)(i) or (ii) or (c)(i) or (ii), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the research, study or project or after the reversion of that portion of the offshore area to Crown reserve areas, whichever occurs first;

(f) any contingency plan formulated in respect of emergencies arising as a result of any work or activity authorized under Part III;

(g) diving work, weather observation or the status of operational activities or of the development of or production from a pool or field;

(g.1) accidents, incidents or petroleum spills, to the extent necessary to permit a person or body to produce and to distribute or publish a report for the administration of this Act in respect of the accident, incident or spill;

(h) any study funded from an account established under subsection 76(1) of the *Canada Petroleum Resources Act*, if the study has been completed; and

(i) an environmental study, other than a study referred to in paragraph (h),

(i) where it relates to a well and the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (b)(i) or (ii) or (c)(i) or (ii), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, if five years have passed since the completion of the study.

(6) [Repealed, 1988, c. 28, s. 260]

1987, c. 3, s. 119; 1988, c. 28, s. 260; 1992, c. 35, s. 48; 1994, c. 26, s. 13(F).

Arbitration

120. [Repealed, 1992, c. 35, s. 49]

Operating agreements

121. (1) Where a dispute of a prescribed class arises between two or more interest holders of an interest in respect of any operations conducted in carrying out a work or activity in the offshore area authorized under Part III and an operating agreement or other similar arrangement that extends to such work or activity is not in force or was made prior to March 5, 1982, the matters in dispute may, by order of the Board, be submitted to arbitration conducted in accordance with the regulations.

Application

(2) Subsection (1) applies only in respect of

(a) interests in force on March 5, 1982 in relation to any portion of the offshore area; and

(b) interests immediately succeeding the interests referred to in paragraph (a) in relation to that portion of the offshore area where that portion of the offshore area was not a Crown reserve area on the expiration of the interests referred to in paragraph (a).

Arbitration order

(3) An order of an arbitrator made pursuant to arbitration under subsection (1) is binding on all interest holders specified in the order from the date specified in the order, and the terms and conditions of the order are deemed to be terms and conditions of the interest to which the matters relate.

Regulations

122. (1) Subject to section 7, the Governor in Council may make regulations for carrying out the purposes and provisions of section 121 and, without restricting the generality of the foregoing, may make regulations

- (a) governing arbitration and the making of arbitration orders;
- (b) prescribing the classes of disputes that may be submitted to arbitration; and
- (c) governing appeals from and enforcement of arbitration orders.

Application of regulations

(2) Regulations made under subsection (1) may apply generally to the offshore area or any portion thereof.

1987, c. 3, s. 122; 1992, c. 35, s. 50.

Cancellation of Rights

Notice to comply

123. (1) Where the Board has reason to believe that an interest owner or holder is failing or has failed to meet any requirement of or under this Part or Part III or any regulation made under either Part, the Board may give notice to that interest owner or holder requiring compliance with the requirement within ninety days after the date of the notice or within such longer period as the Board considers appropriate.

Default

(2) Notwithstanding anything in this Part but subject to sections 31 to 40, where an interest owner or holder fails to comply with a notice under subsection (1) within the period specified in the notice and the Board considers that the failure to comply warrants cancellation of the interest of the interest owner or holder or any share in the interest held by the holder with respect to a portion only of the offshore area subject to the interest, the Board may, by order subject to section 124, cancel that interest or share, and where the interest or share is so cancelled, the portions of the offshore area thereunder become Crown reserve areas.

Hearings and Judicial Review

Definition of "Committee"

124. (1) In this section, "Committee" means the Oil and Gas Committee established by Part III.

Notice

(2) The Board shall, not less than thirty days before making any order or decision or taking any action in respect of which it is expressly stated in this Part to be subject to this section, give notice in writing to the persons the Board considers to be directly affected by the proposed order, decision or

action.

Request for hearing

(3) Any person receiving a notice under subsection (2) may, in writing, request a hearing within the thirty day period referred to in that subsection and, on receipt of such a request, the Board shall direct the Committee to appoint a time and place for a hearing and give notice thereof to the person who requested the hearing.

Hearing

(4) Any person requesting a hearing under subsection (3) may make representations and introduce witnesses and documents at the hearing.

Powers of Committee

(5) For the purposes of a hearing requested under subsection (3), the Committee has, regarding the attendance, swearing and examination of witnesses and the production and inspection of documents, all such powers, rights and privileges as are vested in a superior court of record.

Recommendations of Committee

(6) On the conclusion of the hearing, the Committee shall submit to the Board its recommendations concerning the proposed order, decision or action of the Board, together with the evidence and other material that was before the Committee.

Order of Board

(7) Before making any order or decision or taking any action in respect of which a hearing has been held, the Board shall consider the recommendations of the Committee.

Notification of order and reasons

(8) Where an order, decision or action referred to in subsection (2) is made or taken, the Board shall notify the person who requested a hearing in respect of the order, decision or action under subsection (3) and, on request by that person, publish or make available to that person the reasons for the order, decision or action.

Effective date of order

(9) An order, decision or action referred to in subsection (2) takes effect as of

(a) the day that immediately follows the last day of the thirty day period referred to in that subsection, where no hearing is requested under subsection (3); or

(b) the day that the order or decision is made or the action is taken by the Board, where a hearing is requested under subsection (3).

Judicial review

(10) Any order, decision or action in respect of which a hearing is held under this section is subject to review and to be set aside by the Trial Division of the Supreme Court of Newfoundland.

Regulations

Regulations

125. (1) Subject to section 7, the Governor in Council may make regulations for carrying out the purposes and provisions of this Part and, without restricting the generality of the foregoing, may make regulations

(a) not inconsistent with the *Canada Lands Surveys Act* authorizing or requiring the survey, division and subdivision of the offshore area and defining and describing those divisions and subdivisions;

(b) prescribing the information and documentation to be provided by interest owners and interest holders for the purposes of this Part, the time when and manner in which such information and documentation is to be provided, authorizing the Board to prescribe the form in which it is to be provided and requiring such information and documentation to be provided in accordance with the regulations;

(c) requiring fees and deposits to be paid in respect of interests, prescribing the amounts of such fees and deposits, the time and manner of their payment and providing for the administration of such fees and deposits and the disposition and return of deposits; and

(d) prescribing any other matter or thing that by this Part is to be prescribed or that is to be done by regulations.

Publication of proposed regulations

(2) Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under this Part shall be published in the *Canada Gazette* and a reasonable opportunity shall be afforded to interested persons to make representations to the Board with respect thereto.

Single publication required

(3) No proposed regulation need be published more than once under subsection (2) whether or not it is altered or amended after such publication as a result of representations made by interested persons as provided in that subsection.

Forms

126. (1) The Board may prescribe any form or any information to be given on a form that is by this Part or the regulations to be prescribed and may include on any form so prescribed a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is, to the best of the knowledge of that person, true, accurate and complete.

Forms prescribed or authorized

(2) Every form purporting to be a form prescribed or authorized by the Board shall be deemed to be a form prescribed by the Board under this Part unless called in question by the Board or some person acting for the Board or Her Majesty in right of Canada or the Province.

Forms not regulations

(3) Where a form or information to be given on a form is prescribed by the Board pursuant to this Act, it shall be deemed not to be a regulation within the meaning of the *Statutory Instruments Act*.

Division X

TRANSITIONAL, CONSEQUENTIAL AND COMMENCEMENT

Transitional

Exploration agreements extant are continued

127. (1) Where an exploration agreement in relation to any portion of the offshore area was entered into or negotiations in respect thereof were completed under the *Canada Oil and Gas Act* before the coming into force of this section, that exploration agreement shall, for the purposes of this Part, be referred to as an exploration licence and shall, subject to this Part, have effect in accordance with its terms and conditions.

Declarations of significant discovery are continued

(2) Where a declaration of significant discovery was made under section 44 of the *Canada Oil and Gas Act* and is in force on the coming into force of this section, it continues in force as if it were made pursuant to section 71 of this Part.

Deemed significant discovery licence

(3) Where, on the coming into force of this section, an exploration agreement is continuing in force pursuant to subsection 16(4) of the *Canada Oil and Gas Act*, it shall be deemed to be a significant discovery licence issued under this Part on the coming into force of this section and is subject to this Part.

Replacement of rights

128. (1) Subject to section 127 and subsection 129(2), the interests provided for under this Part replace all petroleum rights or prospects thereof acquired or vested in relation to any portion of the offshore area prior to the coming into force of this section.

No compensation

(2) No party shall have any right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent thereof for any acquired, vested or future right or entitlement or any prospect thereof that is replaced or otherwise affected by this Part, or for any duty or liability imposed on that party by this Part.

Regulations continue in force

129. (1) The *Canada Oil and Gas Land Regulations* remain in force to the extent that they are consistent with this Part until they are revoked or replaced by regulations made under this Part.

Former interests

(2) All interests provided by the *Canada Oil and Gas Land Regulations* that are in force on the coming into force of this section continue in force subject to sections 130 to 133.

Petro-Canada rights abrogated

(3) All rights of Petro-Canada to acquire further interests or shares in interests as a result of the operation of section 33, 120 or 121 of the *Canada Oil and Gas Land Regulations* are abrogated as of March 5, 1982.

Idem

(4) Where any portion of the offshore area becomes a Crown reserve area on or after April 30,

1980, Petro-Canada shall not be entitled to exercise any rights under section 33 of the *Canada Oil and Gas Land Regulations* with respect to that Crown reserve area.

Dealings not vitiated for failure to comply with regulations

(5) Where a person acquires, disposes of or otherwise deals in an interest or a share in an interest in respect of which Petro-Canada would, but for the circumstances described in paragraph (a) or (b), have had any right under section 33, 120 or 121 of the *Canada Oil and Gas Land Regulations*, no such acquisition, disposition or dealing is vitiated by reason only of

- (a) the failure to give Petro-Canada a notice required under any of those sections; or
- (b) the erroneous determination of a Canadian participation rate under those regulations.

Retrospective application

(6) Subsection (5) has retrospective application to any acquisition, disposition or dealing that occurred prior to March 5, 1982.

Definition of "Petro Canada"

(7) In this section, "Petro-Canada" means the corporation established by the *Petro-Canada Act*.

Former permits, former special renewal permits and former exploration agreements

130. (1) Subject to sections 132 and 133, the interest owner of a former permit, former special renewal permit or former exploration agreement shall, on or before the first anniversary date of any such interest following March 5, 1982 or on or before six months following such date, whichever is the later, negotiate an exploration licence with the Board subject to sections 31 to 40.

Surrender

(2) Where an interest owner referred to in subsection (1) does not comply with that subsection, the portion of the offshore area under the relevant interest is deemed to be surrendered and becomes a Crown reserve area.

Extension

(3) Notwithstanding anything in this Part, an exploration licence under subsection (1) may be extended to include all or any portion of the offshore area under the preceding interest and any related portions of the offshore area that, immediately prior to such extension, were Crown reserve areas.

Where drilling commitment exists

(4) Where a former special renewal permit or former exploration agreement contains provisions for the drilling of one or more wells, the Board shall offer to issue an exploration licence to the interest owner for a term equal to the balance of the term of the former special renewal permit or former exploration agreement remaining on March 5, 1982 and having the same drilling provisions.

Former leases

131. (1) Subject to sections 132 and 133, the interest owner of a former lease shall, on or before the first anniversary date of the former lease following March 5, 1982 or on or before six months following such date, whichever is the later, negotiate an exploration licence with the Board subject to sections 31 to 40.

Surrender

(2) Where an interest owner referred to in subsection (1) does not comply with that subsection, the portion of the offshore area under the former lease is deemed to be surrendered and becomes a Crown reserve area.

Application

(3) Subsection 130(3) applies, with such modifications as the circumstances require, to lands that may be included in an exploration licence under subsection (1).

Extension of time

132. Where an exploration licence required to be negotiated under section 130 or 131 cannot be negotiated within the period provided in those sections for any reason not attributable to the interest owner, the Board shall extend that period to allow for such negotiation within a reasonable time.

Consolidated exploration licence

133. (1) One or more interest owners of former permits, former special renewal permits, former exploration agreements or former leases may, for the purposes of complying with subsection 130(1) or 131(1), negotiate together a single exploration licence that would consolidate any number or combination of such interests held by those interest owners.

Terms and conditions of exploration licence

(2) Subject to sections 31 to 40, an exploration licence negotiated pursuant to subsection (1) shall contain any terms and conditions that may be agreed on by the Board and the interest owners thereof.

Crown share abrogated

134. For greater certainty, the reservation to Her Majesty in right of Canada of a Crown share in any interest granted or entered into under the *Canada Oil and Gas Act* prior to the coming into force of this section is abrogated as of the day this section comes into force.

PART III

PETROLEUM OPERATIONS

INTERPRETATION

Definitions

135. In this Part,

"Chief Conservation Officer"
« *délégué à l'exploitation* »

"Chief Conservation Officer" means the person designated as the Chief Conservation Officer pursuant to section 140;

"Chief Safety Officer"
« *délégué à la sécurité* »

"Chief Safety Officer" means the person designated as the Chief Safety Officer pursuant to section 140;

"Committee"
« *Comité* »

"Committee" means the Oil and Gas Committee established by section 141;

"lease"
« *concession* »

"lease" means an oil and gas lease issued pursuant to regulations made in accordance with the *Territorial Lands Act* and the *Public Lands Grants Act* and includes a production licence issued under Part II;

"permit"
« *permis* »

"permit" means an exploratory oil and gas permit issued pursuant to regulations made in accordance with the *Territorial Lands Act* and the *Public Lands Grants Act* and includes an exploration agreement entered into under the *Canada Oil and Gas Land Regulations* and any exploration agreement or licence that is subject to Part II;

"pipeline"
« *pipe-line* »

"pipeline" means any pipe or any system or arrangement of pipes by which petroleum or water incidental to the drilling for or production of petroleum is conveyed from any wellhead or other place at which it is produced to any other place, or from any place where it is stored, processed or treated to any other place, and includes all property of any kind used for the purpose of, or in connection with or incidental to, the operation of a pipeline in the gathering, transporting, handling and delivery of petroleum and, without restricting the generality of the foregoing, includes offshore installations or vessels, tanks, surface reservoirs, pumps, racks, storage and loading facilities, compressors, compressor stations, pressure measuring and controlling equipment and fixtures, flow controlling and measuring equipment and fixtures, metering equipment and fixtures, and heating, cooling and dehydrating equipment and fixtures, but does not include any pipe or any system or arrangement of pipes that constitutes a distribution system for the distribution of gas to ultimate consumers;

"well"
« *puits* »

"well" means any opening in the ground (not being a seismic shot hole) that is made, is to be made or is in the process of being made, by drilling, boring or other method,

- (a) for the production of petroleum,
- (b) for the purpose of searching for or obtaining petroleum,
- (c) for the purpose of obtaining water to inject into an underground formation,
- (d) for the purpose of injecting gas, air, water or other substance into an under ground formation,
or
- (e) for any purpose, if made through sedimentary rocks to a depth of at least one hundred and fifty metres.

PURPOSE

Purpose

135.1 The purpose of this Part is to promote, in respect of the exploration for and exploitation of petroleum,

- (a) safety, particularly by encouraging persons exploring for and exploiting petroleum to maintain a prudent regime for achieving safety;
- (b) the protection of the environment;
- (c) the conservation of petroleum resources; and
- (d) joint production arrangements.

1992, c. 35, s. 53.

APPLICATION

Application

136. This Part applies in respect of the exploration and drilling for and the production, conservation, processing and transportation of petroleum in the offshore area.

1987, c. 3, s. 136; 1992, c. 35, s. 54(F).

OIL AND GAS ADMINISTRATION ADVISORY COUNCIL

Designation

136.1 The Provincial Minister may designate one of the members of the Oil and Gas Administration Advisory Council established by the *Canada Oil and Gas Operations Act*.

1992, c. 35, s. 55.

OFFSHORE OIL AND GAS TRAINING STANDARDS ADVISORY BOARD

Approval

136.2 The Provincial Minister may approve the establishment of the Offshore Oil and Gas Training Standards Advisory Board by the federal Ministers pursuant to subsection 5.5(1) of the *Canada Oil and Gas Operations Act*.

1992, c. 35, s. 55.

PROHIBITION

Prohibition

137. No person shall carry on any work or activity related to the exploration or drilling for or the production, conservation, processing or transportation of petroleum in the offshore area unless

- (a) that person is the holder of an operating licence issued under paragraph 138(1)(a);
- (b) that person is the holder of an authorization issued, before the commencement of operations, under paragraph 138(1)(b) for each such work or activity; and
- (c) where it is required, that person is authorized or entitled to carry on business in the place where that person proposes to carry on the work or activity.

DELEGATION

Delegation

137.1 The Board may delegate any of the Board's powers under section 138, 138.2, 138.3, 139.1, 139.2 or 163 to any person, and the person shall exercise those powers in accordance with the terms of the delegation.

1992, c. 35, s. 57.

LICENCES AND AUTHORIZATIONS

Operating Licences and Authorization for Work

Licences and authorizations

138. (1) The Board may, on application made in the form and containing the information fixed by it, and made in the prescribed manner, issue

- (a) an operating licence; and
- (b) subject to section 45, an authorization with respect to each work or activity proposed to be carried on.

Term and renewals

(2) An operating licence expires on the thirty-first day of March immediately after the day on which it is issued and may be renewed for successive periods not exceeding one year each.

Requirements for operating licence

(3) An operating licence is subject to such requirements as the Board determines or as may be prescribed and to such fees and deposits as are prescribed.

Requirements for authorization

(4) An authorization is subject to such approvals as the Board determines or as may be granted in accordance with the regulations and such requirements and deposits as the Board determines or as may be prescribed, including

- (a) requirements relating to liability for loss, damage, costs or expenses;
- (b) requirements for the carrying out of environmental programs or studies; and
- (c) requirements for the payment of expenses incurred by the Board in approving the design, construction and operation of production facilities and production platforms, as those terms are defined in the regulations.

Suspension or revocation

(5) The Board may suspend or revoke an operating licence or an authorization for failure to comply with, contravention of or default in respect of

- (a) a requirement, approval, fee or deposit subject to which the licence or authorization was issued;
- (b) a requirement undertaken in a declaration referred to in subsection 139.1(1) or (2);

(c) subsection 139.1(3), 139.2(2) or 163(1.1); or

(d) any applicable regulation.

1987, c. 3, s. 138; 1992, c. 35, s. 58.

Right of entry

138.1 (1) Subject to subsection (2), any person may, for the purpose of exploring for or exploiting petroleum, enter on and use any portion of the offshore area in order to carry on a work or activity authorized under paragraph 138(1)(b).

Restriction

(2) Where a person occupies a portion of the offshore area under a lawful right or title, other than an authorization under paragraph 138(1)(b) or an interest as defined in Part II, no person may enter on or use that portion for a purpose referred to in subsection (1) without the consent of the occupier or, where consent has been refused, except in accordance with the terms and conditions imposed by a decision of an arbitrator made in accordance with the regulations.

1992, c. 35, s. 58.

Safety of Works and Activities

Safety

138.2 The Board shall, before issuing an authorization for a work or activity referred to in paragraph 138(1)(b), consider the safety of the work or activity by reviewing, in consultation with the Chief Safety Officer, the system as a whole and its components, including its structures, facilities, equipment, operating procedures and personnel.

1992, c. 35, s. 58.

Financial Responsibility

Compliance with subsection 163(1)

138.3 The Board shall, before issuing an authorization for a work or activity referred to in paragraph 138(1)(b), ensure that the applicant has complied with the requirements of subsection 163(1) in respect of that work or activity.

1992, c. 35, s. 58.

Development Plan Approval

Approval of general approach of development

139. (1) No approval that is

(a) applicable to an authorization under paragraph 138(1)(b) to carry on work or activity in relation to developing a pool or field, and

(b) prescribed by the regulations for the purposes of this subsection

shall be granted, except with the approval of both Ministers, unless the Board, on application submitted in accordance with subsection (2), has approved a development plan relating to the pool or field pursuant to paragraphs (4)(a) and (b).

Application and submission of development plan

(2) For the purposes of subsection (1), an application for the approval of a development plan shall be submitted to the Board in the form and containing the information fixed by the Board, at such time and in such manner as may be prescribed, together with the proposed development plan in the form and containing the information described in subsection (3).

Development plan in two parts

(3) A development plan relating to the proposed development of a pool or field submitted pursuant to this section shall be set out in two parts, containing

(a) in Part I, a description of the general approach of developing the pool or field, and in particular, information, in such detail as may be prescribed, with respect to

(i) the scope, purpose, location, timing and nature of the proposed development,

(ii) the production rate, evaluations of the pool or field, estimated amounts of petroleum proposed to be recovered, reserves, recovery methods, production monitoring procedures, costs and environmental factors in connection with the proposed development, and

(iii) the production system and any alternative production systems that could be used for the development of the pool or field; and

(b) in Part II, all technical or other information and proposals, as may be prescribed, necessary for a comprehensive review and evaluation of the proposed development.

Approval of development plan

(4) After reviewing an application and development plan submitted by any person pursuant to this section the Board may, subject to such requirements as the Board deems appropriate or as may be prescribed, approve

(a) subject to sections 31 to 40, Part I of the development plan; and

(b) Part II of the development plan.

Approval of amendments to plan

(5) Where a development plan has been approved pursuant to subsection (4), no amendment of Part I or II of the development plan shall be made unless it is approved by the Board in accordance with paragraph (4)(a) or (b), as the case may be.

Application of certain provisions

(6) Subsections (2) to (5) apply, with such modifications as the circumstances require, with respect to a proposed amendment to a development plan.

1987, c. 3, s. 139; 1992, c. 35, s. 59.

Declarations

Declaration by applicant

139.1 (1) Subject to subsection (2), no authorization under paragraph 138(1)(b) shall be issued unless the Board has received, from the applicant for the authorization, a declaration in the form fixed by the Board that states that

(a) the equipment and installations that are to be used in the work or activity to be authorized are fit for the purposes for which they are to be used, the operating procedures relating to them are appropriate for those uses, and the personnel who are to be employed in connection with them

are qualified and competent for their employment; and

(b) the applicant shall ensure, so long as the work or activity that is authorized continues, that the equipment and installations continue to be fit for the purposes for which they are used, the operating procedures continue to be appropriate for those uses, and the personnel continue to be so qualified and competent.

Declaration by owner

(2) The Board may accept, in respect of equipment that is to be used in a work or activity to be authorized, a declaration from the owner of the equipment in lieu of a declaration from the applicant for the authorization, and such a declaration shall be in a form fixed by the Board and shall state that

(a) the equipment is fit for the purpose for which it is to be used, the operating procedures relating to it are appropriate for that use, and the personnel who are to be employed by the owner in connection with it are qualified and competent for their employment; and

(b) the owner shall ensure, so long as the equipment is used in the work or activity that is authorized, that the equipment continues to be fit for the purpose for which it is used, the operating procedures continue to be appropriate for that use, and the personnel continue to be so qualified and competent.

Changes

(3) Where the equipment, an installation, the operating procedures or any of the personnel specified in the declaration changes and no longer conforms to the declaration, the holder of the authorization shall provide the Board with a new declaration as soon as possible after the change occurs.

Immunity

(4) The Board or any delegate of the Board is not liable to any person by reason only of having issued an authorization in reliance on a declaration made under this section.

1992, c. 35, s. 60.

Certificates

Certificate

139.2 (1) No authorization under paragraph 138(1)(b) shall be issued with respect to any prescribed equipment or installation, or any equipment or installation of a prescribed class, unless the Board has received, from the applicant for the authorization, a certificate issued by a certifying authority in the form fixed by the Board.

Continuing obligation

(2) The holder of an authorization shall ensure that the certificate referred to in subsection (1) remains in force for so long as the equipment or installation to which the certificate relates is used in the work or activity in respect of which the authorization is issued.

Contents of certificate

(3) A certificate referred to in subsection (1) shall state that the equipment or installation in question

(a) is fit for the purposes for which it is to be used and may be operated safely without posing a threat to persons or to the environment in the location and for the time set out in the certificate;

and

(b) is in conformity with all of the requirements and conditions that are imposed for the purposes of this section by subsection 138(4), whether they are imposed by regulation or by the Board.

Validity of certificate

(4) A certificate referred to in subsection (1) is not valid if the certifying authority

(a) has not complied with any prescribed procedure or any procedure that the Board may establish; or

(b) is a person or an organization that has participated in the design, construction or installation of the equipment or installation in respect of which the certificate is issued, to any extent greater than that prescribed.

Access

(5) An applicant shall permit the certifying authority to have access to the equipment and installations in respect of which the certificate is required and to any information that relates to them.

Definition of "certifying authority"

(6) For the purposes of this section, "certifying authority" has the meaning assigned by the regulations.

Immunity

(7) The Board or any delegate of the Board is not liable to any person by reason only of having issued an authorization in reliance on a certificate issued under this section.

1992, c. 35, s. 60.

CHIEF SAFETY OFFICER AND CHIEF CONSERVATION OFFICER

Designation

140. The Board may, for the purposes of this Act, designate the Chief Executive Officer or any other person as the Chief Safety Officer and the same or another person as the Chief Conservation Officer.

1987, c. 3, s. 140; 1992, c. 35, s. 61.

STATUTORY INSTRUMENTS ACT

Orders

140.1 For the purposes of this Act, an order made by a safety officer, the Chief Safety Officer, a conservation officer, the Chief Conservation Officer or the Committee is not a statutory instrument as defined in the *Statutory Instruments Act*.

1992, c. 35, s. 61.

EXTENDED FORMATION FLOW TESTS

Title

140.2 (1) Subject to subsection (2), title to petroleum produced during an extended formation flow test vests in the person who conducts the test in accordance with an authorization under section

138, with every approval and requirement subject to which such an authorization is issued and with any applicable regulation, whether or not the person has a production licence issued under Part II.

Conditions

(2) Title to petroleum referred to in subsection (1) is conditional on compliance with the terms of the authorization, approval or regulation, including the payment of royalties or other payment in lieu of royalties.

Limitation

(3) This section applies only in respect of an extended formation flow test that provides significant information for determining the best recovery system for a reservoir or for determining the limits of a reservoir or the productivity of a well producing petroleum from a reservoir and that does not adversely affect the ultimate recovery from a reservoir.

1992, c. 35, s. 61.

OIL AND GAS COMMITTEE

Constitution

Oil and Gas Committee

141. (1) The Board may, for the purposes of this Part and Part III of the Provincial Act, establish a committee to be known as the Oil and Gas Committee, consisting of not more than five members, not more than three of whom may be employees in the federal public administration or the public service of the Province.

Appointment of members and chairman

(2) The members of the Committee shall be appointed by the Board to hold office for a term of three years, and one member shall be designated as chairman for such term as may be fixed by the Board.

Re-appointment permitted

(3) A retiring chairman or retiring member may be re-appointed to the Committee in the same or another capacity.

1987, c. 3, s. 141; 2003, c. 22, s. 119(E).

Qualification of members

142. (1) The Board shall appoint as members of the Committee at least two persons who appear to the Board to have specialized, expert or technical knowledge of petroleum.

Idem

(2) The members and employees of the Board and the Chief Conservation Officer are not eligible to be members of the Committee.

Staff

(3) The Board shall provide the Committee with such officers, clerks and employees as may be necessary for the proper conduct of the affairs of the Committee, and may provide the Committee with such professional or technical assistance for temporary periods or for specific work as the Committee may request, but no such assistance shall be provided otherwise than from the staff of

the Board except with the approval of the two Ministers.

Remuneration

(4) The members of the Committee who are not employees in the federal public administration or the public service of the Province shall be paid such remuneration as may be authorized by the Board.

Expenses

(5) The members of the Committee are entitled to be paid reasonable travel and living expenses while absent from their ordinary place of residence in the course of their duties.

1987, c. 3, s. 142; 2003, c. 22, s. 120.

Interest in petroleum properties

143. No member of the Committee shall have a pecuniary interest of any description, directly or indirectly, in any property in petroleum to which this Part applies or own shares in any company engaged in any phase of the petroleum industry in Canada in an amount in excess of five per cent of the issued shares thereof and no member who owns any shares of any company engaged in any phase of the petroleum industry in Canada shall vote when a question affecting such a company is before the Committee.

Quorum

144. (1) A majority of the members, including one member who is not an employee in the federal public administration or the public service of the Province, constitutes a quorum of the Committee.

Powers of Committee

(2) The Committee may make general rules not inconsistent with this Part regulating its practice and procedure and the places and times of its sittings.

1987, c. 3, s. 144; 2003, c. 22, s. 121.

Jurisdiction and Powers

Jurisdiction

145. (1) Where, under this Part, the Committee is charged with a duty to hold an inquiry or to hear an appeal, the Committee has full jurisdiction to inquire into, hear and determine the matter of any such inquiry or appeal and to make any order, or give any direction that pursuant to this Part the Committee is authorized to make or give or with respect to any matter, act or thing that by this Part may be prohibited or approved by the Committee or required by the Committee to be done.

Powers of Committee

(2) For the purpose of any inquiry, hearing or appeal, or the making of any order pursuant to this Part, the Committee has, regarding the attendance, swearing and examination of witnesses, the production and inspection of documents, the entry on and inspection of property, the enforcement of its orders and regarding other matters necessary or proper for the due exercise of its jurisdiction pursuant to this Part, all such powers, rights and privileges as are vested in a superior court of record.

Finding of fact conclusive

(3) The finding or determination of the Committee on any question of fact within its jurisdiction is binding and conclusive.

Deputing member to hold inquiry

146. (1) The Committee may authorize and depute any member thereof to inquire into such matter before the Committee as may be directed by the Committee and to report the evidence and findings, if any, thereon to the Committee, and when such report is made to the Committee, it may be adopted as a finding of the Committee or otherwise dealt with as the Committee considers advisable.

Powers of deputed member

(2) Where an inquiry is held by a member under subsection (1), the member has all the powers of the Committee for the purpose of taking evidence or acquiring information for the purposes of the report to the Committee.

Advisory functions

147. The Board may at any time refer to the Committee for a report or recommendation any question, matter or thing arising under this Part or relating to the conservation, production, storage, processing or transportation of petroleum.

Enforcement

Enforcement of Committee orders

148. (1) Any order made by the Committee may, for the purpose of enforcement thereof, be made an order of the Supreme Court of Newfoundland and shall be enforced in like manner as any order of that Court.

Procedure for enforcement

(2) To make an order of the Committee an order of the Supreme Court of Newfoundland, the practice and procedure established by the Provincial Act for making any order an order of that Court may be followed.

When order rescinded or replaced

(3) When an order of the Committee has been made an order of the Supreme Court of Newfoundland, any order of the Committee, or of the Board under section 186, rescinding or replacing the first mentioned order of the Committee, shall be deemed to cancel the order of the Court and may in like manner be made an order of the Court.

Division I

REGULATION OF OPERATIONS

Regulations

Regulatory power of Governor in council

149. (1) Subject to section 7, the Governor in Council may, for the purposes of safety and the protection of the environment as well as for the production and conservation of petroleum resources, make regulations

(a) defining "oil" and "gas" for the purposes of Divisions I and II, "installation" and "equipment" for

the purposes of sections 139.1 and 139.2 and “serious” for the purposes of section 165;

(b) concerning the exploration and drilling for, and the production, processing and transportation of, petroleum and works and activities related to such exploration, drilling, production, processing and transportation;

(c) authorizing the Board, or any person, to make such orders as may be specified in the regulations, and to exercise such powers and perform such duties as may be necessary for

(i) the management and control of petroleum production,

(ii) the removal of petroleum from the offshore area, and

(iii) the design, construction, operation or abandonment of pipeline within the offshore area;

(d) concerning arbitration for the purposes of subsection 138.1(2), including the costs of or incurred in relation to such arbitrations;

(e) concerning the approvals to be granted as conditions of authorizations issued under paragraph 138(1)(b);

(f) concerning certificates for the purposes of section 139.2;

(g) prohibiting the introduction into the environment of substances, classes of substances and forms of energy, in prescribed circumstances;

(h) authorizing the discharge, emission or escape of petroleum for the purposes of subsection 160(1) in such quantities, at such locations, under such conditions and by such persons as may be specified in the regulations; and

(i) prescribing anything that is required to be prescribed for the purposes of this Part.

Incorporation of standards or specifications

(2) Unless otherwise provided in this Part, regulations made under subsection (1) may incorporate by reference the standards or specifications of any government, person or organization, either as of a fixed time or as amended from time to time.

1987, c. 3, s. 149; 1992, c. 35, s. 63.

Publication of proposed regulations

150. (1) Subject to subsection (2), a copy of each regulation that the Governor in Council proposes to make under this Division shall be published in the *Canada Gazette* and a reasonable opportunity shall be afforded to interested persons to make representations to the Federal Minister with respect thereto.

Single publication required

(2) No proposed regulation need be published more than once under subsection (1) whether or not it is altered or amended after such publication as a result of representations made by interested persons as provided in that subsection.

1987, c. 3, s. 150; 1994, c. 26, s. 14(F).

Equivalent standards and exemptions

151. (1) Subject to subsection (2), the Chief Safety Officer and Chief Conservation Officer may

(a) authorize the use of equipment, methods, measures or standards in lieu of any required by

regulation, where those Officers are satisfied that the use of that other equipment and those other methods, measures or standards would provide a level of safety, protection of the environment and conservation equivalent to that provided by compliance with the regulations; or

(b) grant an exemption from any regulatory requirement in respect of equipment, methods, measures or standards, where those Officers are satisfied with the level of safety, protection of the environment and conservation that will be achieved without compliance with that requirement.

One officer authorizations

(2) The Chief Safety Officer alone may exercise the powers referred to in paragraph (1)(a) or (b) if the regulatory requirement referred to in that paragraph does not relate to protection of the environment or conservation, and the Chief Conservation Officer alone may exercise those powers if the regulatory requirement does not relate to safety.

No contravention

(3) No person contravenes the regulations if that person acts in compliance with an authorization or exemption under subsection (1) or (2).

1987, c. 3, s. 151; 1992, c. 35, s. 64.

Guidelines and interpretation notes

151.1 (1) The Board may issue and publish, in such manner as the Board deems appropriate, guidelines and interpretation notes with respect to the application and administration of sections 45, 138 and 139 or any regulations made under section 149.

Deemed not to be statutory instruments

(2) Guidelines and interpretation notes issued pursuant to subsection (1) shall be deemed not to be statutory instruments for the purposes of the *Statutory Instruments Act*.

1987, c. 3, s. 151.1; 1992, c. 35, s. 65.

Definitions

152. (1) In this section,

"marine installation or structure"
« *ouvrage en mer* »

"marine installation or structure" includes

(a) any ship, offshore drilling unit, production platform, subsea installation, pumping station, living accommodation, storage structure, loading or landing platform, and

(b) any other work or work within a class of works prescribed pursuant to paragraph (5)(a),

but does not include any vessel that provides any supply or support services to a ship, installation, structure or work described in paragraph (a) or (b);

"Newfoundland social legislation"
« *lois sociales* »

"Newfoundland social legislation" means *The Boiler, Pressure Vessel and Compressed Gas Act*, Chapter 12 of the Statutes of Newfoundland, 1981, as amended from time to time, *The Elevators Act*, Chapter 107 of the Revised Statutes of Newfoundland, 1970, as amended from time to time,

The Labour Standards Act, Chapter 52 of the Statutes of Newfoundland, 1977, as amended from time to time, *The Occupational Health and Safety Act*, Chapter 23 of the Statutes of Newfoundland, 1978, as amended from time to time, *The Radiation Health and Safety Act*, Chapter 90 of the Statutes of Newfoundland, 1977, as amended from time to time, *The Workers' Compensation Act*, 1983, Chapter 48 of the Statutes of Newfoundland, 1983, as amended from time to time and any other Act of the Legislature of the Province, as amended from time to time, as may be prescribed.

Application of Newfoundland social legislation

(2) The Newfoundland social legislation and any regulations made thereunder apply on any marine installation or structure that is within the offshore area in connection with the exploration or drilling for or the production, conservation or processing of petroleum within the offshore area.

Exemption

(3) Notwithstanding subsection (2), any provision of any Act or regulation referred to in that subsection that is made in relation to a matter in respect of which a regulation may be made under paragraph 149(1)(d), (m), (o) or (p) of this Act as it read before the coming into force of section 66 of *An Act to amend the Oil and Gas Production and Conservation Act and other Acts in consequence thereof*, or under any provision of this Act respecting occupational health or safety does not apply on marine installations or structures referred to in subsection (2) during such time as those installations or structures are within the offshore area in connection with a purpose referred to in that subsection.

Non-application of certain provisions of the *Canada Labour Code*

(4) Notwithstanding subsection 123(1) of the *Canada Labour Code* or any other Act of Parliament

(a) Parts II and III of the *Canada Labour Code* do not apply on any marine installation or structure referred to in subsection (2), and

(b) in respect of any marine installation or structure referred to in subsection (2) that is within the offshore area for the purpose of becoming, or that is, permanently attached to, permanently anchored to or permanently resting on the seabed or subsoil of the submarine areas of the offshore area,

(i) Part I of the *Canada Labour Code* does not apply, and

(ii) *The Labour Relations Act*, 1977, Chapter 64 of the Statutes of Newfoundland, 1977, as amended from time to time, applies

during such time as the marine installation or structure is within the offshore area in connection with a purpose referred to in that subsection.

Regulations

(5) Subject to section 7, the Governor in Council may make regulations

(a) prescribing a work or a class of works for the purpose of the definition "marine installation or structure" in subsection (1); and

(b) prescribing, for the purpose of subsection (2), any Act of the legislature of the Province or excluding any such Act from the application of that subsection.

1987, c. 3, s. 152; 1988, c. 28, s. 261; 1992, c. 35, s. 66; 1999, c. 31, s. 29.

Production Orders

Production orders

153. (1) Where the Chief Conservation Officer, on reasonable grounds, is of the opinion that, with respect to an interest in any portion of the offshore area, the capability exists to commence, continue or increase production of petroleum and that a production order would stop waste, the Chief Conservation Officer may order the commencement, continuation or increase of production of petroleum at such rates and in such quantities as are specified in the order.

Ceasing production

(2) Where the Chief Conservation Officer, on reasonable grounds, is of the opinion that an order under this section would stop waste, the Chief Conservation Officer may order a decrease or the cessation or suspension of production of petroleum for any period specified in the order.

Investigation and appeal

(3) Subsections 155(2) to (4) and section 157 apply, with such modifications as the circumstances require, to an order under subsection (1) or (2) as if it were an order under subsection 155(1).

Access to files and records

(4) A person subject to an order under subsection (1) or (2) shall, on request, afford the Chief Conservation Officer or a person designated by the Chief Conservation Officer access to premises, files and records for all reasonable purposes related to the order.

1987, c. 3, s. 153; 1992, c. 35, s. 67.

Waste

Waste prohibited

154. (1) Subject to subsection 194(5), any person who commits waste is guilty of an offence under this Division, but a prosecution may be instituted for such an offence only with the consent of the Board.

Definition of "waste"

(2) In this Part, "waste", in addition to its ordinary meaning, means waste as understood in the petroleum industry and in particular, but without limiting the generality of the foregoing, includes

- (a) the inefficient or excessive use or dissipation of reservoir energy;
- (b) the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well that, having regard to sound engineering and economic principles, results or tends to result in a reduction in the quantity of petroleum ultimately recoverable from a pool;
- (c) the drilling, equipping, completing, operating or producing of any well in a manner that causes or is likely to cause the unnecessary or excessive loss or destruction of petroleum after removal from the reservoir;
- (d) the inefficient storage of petroleum above ground or underground;
- (e) the production of petroleum in excess of available storage, transportation or marketing facilities;

(f) the escape or flaring of gas that could be economically recovered and processed or economically injected into an underground reservoir; or

(g) the failure to use suitable artificial, secondary or supplementary recovery methods in a pool when it appears that such methods would result in increasing the quantity of petroleum ultimately recoverable under sound engineering and economic principles.

Prevention of waste

155. (1) Where the Chief Conservation Officer on reasonable grounds is of the opinion that waste, other than waste as defined in paragraph 154(2)(f) or (g), is being committed, the Chief Conservation Officer may, subject to subsection (2), order that all operations giving rise to such waste cease until the Chief Conservation Officer is satisfied that the waste has stopped.

Investigation

(2) Before making any order under subsection (1), the Chief Conservation Officer shall hold an investigation at which interested persons shall be given an opportunity to be heard.

Peremptory

(3) Notwithstanding subsection (2), the Chief Conservation Officer may, without an investigation, make an order under this section requiring all operations to be shut down if in the opinion of the Chief Conservation Officer it is necessary to do so to prevent damage to persons or property or to protect the environment, but as soon as possible after making any such order and in any event within fifteen days thereafter, the Chief Conservation Officer shall hold an investigation at which interested persons shall be given an opportunity to be heard.

Order after inquiry

(4) At the conclusion of an investigation under subsection (3), the Chief Conservation Officer may set aside, vary or confirm the order made or make a new order.

1987, c. 3, s. 155; 1992, c. 35, s. 68.

Taking over management

156. (1) For the purpose of giving effect to an order made under section 155, the Chief Conservation Officer may authorize such persons as may be necessary to enter the place where the operations giving rise to the waste are being carried out and take over the management and control of those operations and any works connected therewith.

Controlling operations and costs thereof

(2) A person authorized under subsection (1) to take over the management and control of operations shall manage and control those operations and do all things necessary to stop the waste, and the cost thereof shall be borne by the person who holds the permit or the lease and, until paid, constitutes a debt recoverable by action in any court of competent jurisdiction as a debt due to the Board.

1987, c. 3, s. 156; 1992, c. 35, s. 69(F).

Appeal to Committee

157. (1) A person aggrieved by an order of the Chief Conservation Officer after an investigation under section 155 may appeal to the Committee to have the order reviewed.

Powers on appeal

(2) After hearing the appeal, the Committee may

(a) set aside, confirm or vary the order made by the Chief Conservation Officer;

(b) order such works to be undertaken as may be considered necessary to prevent waste, the escape of petroleum or any other contravention of this Division or the regulations; or

(c) make such other or further order as the Committee considers appropriate.

1987, c. 3, s. 157; 1992, c. 35, s. 70(F).

Waste by failure to utilize gas or to use appropriate recovery methods

158. (1) When the Chief Conservation Officer on reasonable grounds is of the opinion that waste as defined in paragraph 154(2)(f) or (g) is occurring in the recovery of petroleum from a pool, the Chief Conservation Officer may apply to the Committee for an order requiring the operators within the pool to show cause at a hearing to be held on a day specified in the order why the Committee should not make a direction in respect thereof.

Hearing

(2) On the day specified in the order under subsection (1), the Committee shall hold a hearing at which the Chief Conservation Officer, the operators and other interested persons shall be given an opportunity to be heard.

1987, c. 3, s. 158; 1992, c. 35, s. 71(F).

Order

159. (1) If, after the hearing mentioned in section 158, the Committee is of the opinion that waste as defined in paragraph 154(2)(f) or (g) is occurring in the recovery of petroleum from a pool, the Committee may, by order,

(a) direct the introduction of a scheme for the collection, processing, disposition or reinjection of any gas produced from such pool, or

(b) direct repressurizing, recycling or pressure maintenance for the pool or any part of the pool and for, or incidental to such purpose, direct the introduction or injection into that pool, or part thereof, of gas, water or other substance,

and the order may further direct that the pool or part thereof specified in the order be shut in if the requirements of the order are not met or unless a scheme is approved by the Committee and in operation by a date fixed by the order.

Continuation pending approval of scheme

(2) Notwithstanding subsection (1), the Committee may permit the continued operation of a pool or any part of a pool after the date fixed by an order under subsection (1) if in the opinion of the Committee a scheme for the repressurizing, recycling or pressure maintenance or the processing, storage or disposal of gas is in course of preparation, but any such continuation of operations is subject to any conditions imposed by the Committee.

Spills and Debris

Definition of "spill"

160. (1) In sections 161 to 165, "spill" means a discharge, emission or escape of petroleum, other than one that is authorized under the regulations or any other federal law or that constitutes a discharge from a vessel to which Part 8 or 9 of the *Canada Shipping Act, 2001* applies or a ship to which Part 6 of the *Marine Liability Act* applies.

Definition of "debris"

(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.

Definition of "actual loss or damage"

(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.

Immunity

(4) Her Majesty in right of Canada incurs no liability whatever to any person arising out of the authorization by regulations made by the Governor in Council of any discharge, emission or escape of petroleum.

1987, c. 3, s. 160; 1992, c. 35, s. 73; 2001, c. 6, s. 110, c. 26, ss. 280, 324.

Spills prohibited

161. (1) No person shall cause or permit a spill on or from any portion of the offshore area.

Duty to report spills

(2) Where a spill occurs in any portion of the offshore area, any person who at the time of the spill is carrying on any work or activity related to the exploration for or development or production of petroleum in the area of the spill shall, in the manner prescribed by the regulations, report the spill to the Chief Conservation Officer.

Duty to take reasonable measures

(3) Every person required to report a spill under subsection (2) shall, as soon as possible, take all reasonable measures consistent with safety and the protection of the environment to prevent any further spill, to repair or remedy any condition resulting from the spill and to reduce or mitigate any danger to life, health, property or the environment that results or may reasonably be expected to result from the spill.

Taking emergency action

(4) Where the Chief Conservation Officer is satisfied on reasonable grounds that

(a) a spill has occurred in any portion of the offshore area and immediate action is necessary in order to effect any reasonable measures referred to in subsection (3), and

(b) such action is not being taken or will not be taken under subsection (3),

the Chief Conservation Officer may take such action or direct that it be taken by such persons as may be necessary.

Taking over management

(5) For the purposes of subsection (4), the Chief Conservation Officer may authorize and direct such persons as may be necessary to enter the place where the spill has occurred and take over the management and control of any work or activity being carried on in the area of the spill.

Managing work or activity

(6) A person authorized and directed to take over the management and control of any work or activity under subsection (5) shall manage and control that work or activity and take all reasonable measures in relation to the spill that are referred to in subsection (3).

Costs

(7) Any costs incurred under subsection (6) shall be borne by the person who obtained an authorization under paragraph 138(1)(b) in respect of the work or activity from which the spill emanated and, until paid, constitute a debt recoverable by action in any court of competent jurisdiction as a debt due to the Board.

Recovery of costs

(7.1) Where a person, other than a person referred to in subsection (7), takes action pursuant to subsection (3) or (4), the person may recover from Her Majesty in right of Canada the costs and expenses reasonably incurred by that person in taking the action.

Appeal

(8) Section 157 applies, with such modifications as the circumstances require, to any action or measure taken or authorized or directed to be taken under subsections (4) to (6) as if it were taken or authorized or directed to be taken by order under subsection 155(1) and as if such order were not subject to an investigation.

Personal liability

(9) No person required, directed or authorized to act under this section is personally liable either civilly or criminally in respect of any act or omission in the course of complying with this section unless it is shown that that person did not act reasonably in the circumstances.

1987, c. 3, s. 161; 1992, c. 35, s. 74.

Recovery of loss, damage, costs or expenses

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

Recovery of loss, damage, costs or expenses caused by debris

(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 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.

No double liability

(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.

Claims

(3) All claims under this section may be sued for and recovered in any court of competent jurisdiction in Canada and shall rank firstly in favour of persons incurring actual loss or damage, without preference, and secondly, without preference, to meet any costs and expenses described in subsection (1) or (2).

Saving

(4) Nothing in this section suspends or limits

(a) any legal liability or remedy for an act or omission by reason only that the act or omission is an offence under this Division or gives rise to liability under this section;

(b) any recourse, indemnity or relief available at law to a person who is liable under this section against any other person; or

(c) the operation of any applicable law or rule of law that is not inconsistent with this section.

Limitation period

(5) Proceedings in respect of claims under this section may be instituted within three years after the day when the loss, damage costs or expenses occurred but in no case after six years after the day the spill or the discharge, emission or escape of petroleum occurred or, in the case of debris, after the day the installation or structure in question was abandoned or the material in question broke away or was jettisoned or displaced.

Financial responsibility

163. (1) An applicant for an authorization under paragraph 138(1)(b) in respect of any work or activity in any portion of the offshore area shall provide proof of financial responsibility in the form of a letter of credit, a guarantee or indemnity bond or in any other form satisfactory to the Board, in an amount satisfactory to the Board.

Continuing obligation

(1.1) The person who has obtained an authorization under paragraph 138(1)(b) shall ensure that the proof of financial responsibility remains in force for the duration of the work or activity in respect of which the authorization is issued.

Payment of claims

(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.

Manner of payment

(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.

Deduction

(4) Where a claim is sued for under section 162, there shall be deducted from any award made pursuant to the action on that claim any amount received by the claimant under this section in respect of the loss, damage, costs or expenses claimed.

1987, c. 3, s. 163; 1992, c. 35, s. 76.

Review committee

164. (1) A committee, consisting of members appointed by each government and by representatives of the petroleum industry and of the fisheries industry, is established by the joint operation of this Act and the Provincial Act to review and monitor the application of sections 162 and 163 and any claims and the payment thereof made under those sections.

Dissolution of committee

(2) The committee referred to in subsection (1) may be dissolved only by the joint operation of an Act of Parliament and an Act of the Legislature of the Province.

Promotion of compensation policies

(3) The Board shall promote and monitor compensation policies for fishermen sponsored by the fishing industry respecting damages of a non-attributable nature.

Inquiries

165. (1) Where a spill or debris or an accident or incident related to any activity to which this Division applies occurs or is found in any portion of the offshore area and results in death or injury or danger to public safety or the environment, the Board may direct an inquiry to be made and may authorize any person it deems qualified to conduct the inquiry.

Mandatory inquiry

(1.1) Where a spill or debris or an accident or incident related to any activity to which this Division applies occurs or is found in any portion of the offshore area and is serious, as defined by regulation, the Board shall direct that an inquiry referred to in subsection (1) be made and shall ensure that the person who conducts the inquiry is not employed by the Board.

Power of person conducting inquiry

(2) For the purposes of an inquiry under subsection (1), a person authorized by the Board under that subsection has and may exercise all the powers of a person appointed as a commissioner under Part I of the *Inquiries Act*.

Report

(3) As soon as possible after the conclusion of an inquiry under subsection (1), the person or persons authorized to conduct the inquiry shall submit a report to the Board, together with the evidence and other material that was before the inquiry.

Publication

(4) A report made pursuant to subsection (3) shall be published by the Board within thirty days after the Board has received it.

Copies of report

(5) The Board may supply copies of a report published pursuant to subsection (4) in such manner and on such terms as the Board considers proper.

1987, c. 3, s. 165; 1992, c. 35, s. 77.

Division II

PRODUCTION ARRANGEMENTS

Definitions

166. In this Division,

"pooled spacing unit"

« *unité d'espacement mise en commun* »

"pooled spacing unit" means the area that is subject to a pooling agreement or a pooling order;

"pooled tract"

« *parcelle mise en commun* »

"pooled tract" means the portion of a pooled spacing unit defined as a tract in a pooling agreement or a pooling order;

"pooling agreement"
« *accord de mise en commun* »

"pooling agreement" means an agreement to pool the interests of owners in a spacing unit and to provide for the operation or the drilling and operation of a well thereon;

"pooling order"
« *arrêté de mise en commun* »

"pooling order" means an order made under section 168 or as altered pursuant to section 170;

"royalty interest"
« *droit à redevance* »

"royalty interest" means any interest in, or the right to receive a portion of, any petroleum produced and saved from a field or pool or part of a field or pool or the proceeds from the sale thereof, but does not include a working interest or the interest of any person whose sole interest is as a purchaser of petroleum from the pool or part thereof;

"royalty owner"
« *titulaire de redevance* »

"royalty owner" means a person, including Her Majesty, who owns a royalty interest;

"spacing unit"
« *unité d'espacement* »

"spacing unit" means the area allocated to a well for the purpose of drilling for or producing petroleum;

"tract participation"
« *fraction parcellaire* »

"tract participation" means the share of production from a unitized zone that is allocated to a unit tract under a unit agreement or unitization order or the share of production from a pooled spacing unit that is allocated to a pooled tract under a pooling agreement or pooling order;

"unit agreement"
« *accord d'union* »

"unit agreement" means an agreement to unitize the interests of owners in a pool or part thereof exceeding in area a spacing unit, or such an agreement as varied by a unitization order;

"unit area"
« *secteur unitaire* »

"unit area" means the area that is subject to a unit agreement;

"unit operating agreement"
« *accord d'exploitation unitaire* »

"unit operating agreement" means an agreement, providing for the management and operation of a unit area and a unitized zone, that is entered into by working interest owners who are parties to a unit agreement with respect to that unit area and unitized zone, and includes a unit operating agreement as varied by a unitization order;

"unit operation"
« *exploitation unitaire* »

"unit operation" means those operations conducted pursuant to a unit agreement or a unitization order;

"unit operator"
« *exploitant unitaire* »

"unit operator" means a person designated as a unit operator under a unit operating agreement;

"unit tract"
« *parcelle unitaire* »

"unit tract" means the portion of a unit area that is defined as a tract in a unit agreement;

"unitization order"
« *arrêté d'union* »

"unitization order" means an order of the Committee made under section 176;

"unitized zone"
« *terrain* »

"unitized zone" means a geological formation that is within a unit area and subject to a unit agreement;

"working interest"
« *intérêt économique direct* »

"working interest" means a right, in whole or in part, to produce and dispose of petroleum from a pool or part of a pool, whether such right is held as an incident of ownership of an estate in fee simple in the petroleum or under a lease, agreement or other instrument, if the right is chargeable with and the holder thereof is obligated to pay or bear, either in cash or out of production, all or a portion of the costs in connection with the drilling for, recovery and disposal of petroleum from the pool or part thereof;

"working interest owner"
« *détenteur* »

"working interest owner" means a person who owns a working interest.

1987, c. 3, s. 166; 1992, c. 35, s. 78(F).

Pooling

Voluntary pooling

167. (1) Where one or more working interest owners have leases or separately owned working interests within a spacing unit, the working interest owners and the royalty owners who own all of the interests in the spacing unit may pool their working interests and royalty interests in the spacing unit for the purpose of drilling for or producing, or both drilling for and producing, petroleum if a copy of the pooling agreement and any amendment thereto has been filed with the Chief Conservation Officer.

Pooling agreement by Her Majesty

(2) The Board may, on behalf of Her Majesty, enter into a pooling agreement on any terms and

conditions that it deems advisable and, despite anything in Part II or this Part, the *Federal Real Property and Federal Immovables Act* or any regulations made under those Parts or that Act, the pooling agreement is binding on Her Majesty.

1987, c. 3, s. 167; 1991, c. 50, s. 23; 2001, c. 4, s. 151.

Application for pooling order

168. (1) In the absence of a pooling agreement, a working interest owner in a spacing unit may apply for a pooling order directing the working interest owners and royalty owners within the spacing unit to pool their interests in the spacing unit for the purpose of drilling for and producing, or producing, petroleum from the spacing unit.

Hearing by Committee

(2) An application under subsection (1) shall be made to the Board which shall refer the application to the Committee for the purpose of holding a hearing to determine whether a pooling order should be made and at such hearing the Committee shall afford all interested parties an opportunity to be heard.

Matter to be supplied Committee on hearing

(3) Prior to a hearing held pursuant to subsection (2), the working interest owner making application shall provide the Committee, and such other interested parties as the Committee may direct, with a proposed form of pooling agreement and the working interest owners who have interests in the spacing unit to which the proposed pooling agreement relates shall provide the Committee with such information as the Committee deems necessary.

Order of Committee

(4) After a hearing pursuant to subsection (2), the Committee may order that all working interest owners and royalty owners who have an interest in the spacing unit shall be deemed to have entered into a pooling agreement as set out in the pooling order.

Contents of pooling order

(5) Every pooling order shall provide

(a) for the drilling and operation of a well on the spacing unit or, where a well that is capable of or that can be made capable of production has been drilled on the spacing unit before the making of the pooling order, for the future production and operation of that well;

(b) for the appointment of a working interest owner as operator to be responsible for the drilling, operation or abandoning of the well whether drilled before or after the making of the pooling order;

(c) for the allocation to each pooled tract of its share of the production of the petroleum from the pooled spacing unit that is not required, consumed or lost in the operation of the well, which allocation shall be on a prorated area basis unless it can be shown to the satisfaction of the Committee that such basis is unfair, whereupon the Committee may make an allocation on some other more equitable basis;

(d) in the event that no production of petroleum is obtained for the payment by the applicant of all costs incurred in the drilling and abandoning of the well;

(e) where production has been obtained, for the payment of the actual costs of drilling the well, whether drilled before or after the making of the pooling order, and for the payment of the actual costs of the completion, operation and abandoning of the well; and

(f) for the sale by the operator of petroleum allocated pursuant to paragraph (c) to a working interest owner where the working interest owner thereof fails to take in kind and dispose of such production, and for the deduction out of the proceeds by the operator of the expenses reasonably incurred in connection with such sale.

Provision of penalty

(6) A pooling order may provide for a penalty for a working interest owner who does not, within the time specified in the order, pay the portion of the costs attributable to the working interest owner as the share of the cost of drilling and completion of the well, but such penalty shall not exceed an amount equal to one-half of that working interest owner's share of such costs.

Recovery of costs and penalty

(7) If a working interest owner does not, within the time specified therefor in the pooling order, pay the share of the costs of the drilling, completing, operating and abandoning of the well, that portion of the costs and the penalty, if any, are recoverable only out of the share of production from the spacing unit and not in any other manner.

Effect of pooling order

169. Where a pooling order is made, all working interest owners and royalty owners having interests in the pooled spacing unit shall, on the making of the pooling order, be deemed to have entered into a pooling agreement as set out in the pooling order and that order shall be deemed to be a valid contract between the parties having interests in the pooled spacing unit, and all its terms and provisions, as set out therein or as altered pursuant to section 170, are binding on and enforceable against the parties thereto, including Her Majesty.

Application to alter pooling order

170. (1) The Committee shall hear any application to vary, amend or terminate a pooling order where such application is made by the owners of over twenty-five per cent of the working interests in the pooled spacing unit, calculated on a prorated area basis, and may, in its discretion, order a hearing on the application of any working interest owner or royalty owner.

Alteration of pooling order

(2) After a hearing held pursuant to subsection (1), the Committee may vary or amend the pooling order to supply any deficiency therein or to meet changing conditions and may vary or revoke any provision that the Committee deems to be unfair or inequitable or it may terminate the pooling order.

Tract participation ratios protected

(3) Where a pooling order is varied or amended, no change shall be made that will alter the ratios of tract participations between the pooled tracts as originally set out in the pooling order.

Prohibition

171. (1) No person shall produce any petroleum within a spacing unit in which there are two or more leases or two or more separately owned working interests unless a pooling agreement has been entered into in accordance with section 167 or in accordance with a pooling order made under section 168.

Saving

(2) Subsection (1) does not prohibit the production of petroleum for testing in any quantities approved by the Chief Conservation Officer.

Unitization

Unit operation

172. (1) Any one or more working interest owners in a pool or part thereof exceeding in area a spacing unit, together with the royalty owners, may enter into a unit agreement and operate their interests pursuant to the terms of the unit agreement or any amendment thereto if a copy of the agreement and any amendment has been filed with the Chief Conservation Officer.

Board may enter into unit agreement

(2) The Board may enter into a unit agreement binding on Her Majesty, on any terms and conditions that it may deem advisable, and any of the regulations under Part II or this Part or the *Federal Real Property and Federal Immovables Act* that may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement.

Unit operator's relationship to parties

(3) Where a unit agreement filed under this section provides that a unit operator shall be the agent of the parties thereto with respect to their powers and responsibilities under this Part, the performance or non-performance thereof by the unit operator shall be deemed to be the performance or non-performance by the parties otherwise having those powers and responsibilities under this Part.

1987, c. 3, s. 172; 1991, c. 50, s. 24; 2001, c. 4, s. 152.

Requiring unitization to prevent waste

173. (1) Notwithstanding anything in this Part, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, the Chief Conservation Officer may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.

Hearing

(2) Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.

Order

(3) If, after the hearing mentioned in subsection (2), the Committee is of the opinion that unit operation of a pool or part thereof would prevent waste, the Committee may by order require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.

Cessation of operations

(4) If, in the time specified in the order referred to in subsection (3), being not less than six

months after the date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing operations within the pool or part thereof in respect of which the order was made shall cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.

Permit to continue operations

(5) Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of the opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations shall be subject to any conditions prescribed by the Committee.

Compulsory Unitization

Who may apply for unitization order

174. (1) One or more working interest owners who are parties to a unit agreement and a unit operating agreement and own in the aggregate sixty-five per cent or more of the working interests in a unit area may apply for a unitization order with respect to the agreements.

Application for unitization order

(2) An application under subsection (1) shall be made to the Board which shall refer the application to the Committee for the purpose of holding a hearing thereon in accordance with section 176.

Application by proposed unit operator

(3) An application under subsection (1) may be made by the unit operator or proposed unit operator on behalf of the working interest owners referred to in subsection (1).

Contents of unitization application

175. (1) An application for a unitization order shall contain

- (a) a plan showing the unit area that the applicant desires to be made subject to the order;
- (b) one copy each of the unit agreement and the unit operating agreement;
- (c) a statement of the nature of the operations to be carried out; and
- (d) a statement showing
 - (i) with respect to each proposed unit tract, the names and addresses of the working interest owners and royalty owners in that tract, and
 - (ii) the tracts that are entitled to be qualified as unit tracts under the provisions of the unit agreement.

Details required of unit agreement

(2) The unit agreement referred to in subsection (1) shall include

- (a) a description of the unit area and the unit tracts included in the agreement;
- (b) an allocation to each unit tract of a share of the production from the unitized zone not

required, consumed or lost in the unit operation;

(c) a provision specifying the manner in which and the circumstances under which the unit operation shall terminate; and

(d) a provision specifying that the share of the production from a unit area that has been allocated to a unit tract shall be deemed to have been produced from that unit tract.

Details required of unit operating agreement

(3) The unit operating agreement referred to in subsection (1) shall make provision

(a) for the contribution or transfer to the unit, and any adjustment among the working interest owners, of the investment in wells and equipment within the unit area;

(b) for the charging of the costs and expenses of the unit operation to the working interest owners;

(c) for the supervision of the unit operation by the working interest owners through an operating committee composed of their duly authorized representatives and for the appointment of a unit operator to be responsible, under the direction and supervision of the operating committee, for the carrying out of the unit operation;

(d) for the determination of the percentage value of the vote of each working interest owner; and

(e) for the determination of the method of voting on any motion before the operating committee and the percentage value of the vote required to carry the motion.

Hearing on application

176. (1) Where an application made under section 174 is referred by the Board to the Committee, the Committee shall hold a hearing thereon at which all interested persons shall be afforded an opportunity to be heard.

Unitization order

(2) If the Committee finds that

(a) at the date of the commencement of a hearing referred to in subsection (1)

(i) the unit agreement and the unit operating agreement have been executed by one or more working interest owners who own in the aggregate sixty-five per cent or more of the total working interests in the unit area, and

(ii) the unit agreement has been executed by one or more royalty owners who own in the aggregate sixty-five per cent or more of the total royalty interests in the unit area, and

(b) the unitization order applied for would accomplish the more efficient or more economical production of petroleum from the unitized zone,

the Committee may order

(c) that the unit agreement be a valid contract enuring to the benefit of all the royalty owners and working interest owners in the unit area and binding on and enforceable against all such owners, and

(d) that the unit operating agreement be a valid contract enuring to the benefit of all the working interest owners in the unit area and binding on and enforceable against all such owners,

and, subject to section 177, the unit agreement and the unit operating agreement have the effect

given them by the order of the Committee.

Variation by unitization order

(3) In a unitization order, the Committee may vary the unit agreement or the unit operating agreement by adding provisions or by deleting or amending any provision thereof.

Effective date of unitization order

177. (1) Subject to subsection (2), a unitization order becomes effective on the day that the Committee determines in the order, but that day shall be not less than thirty days after the day on which the order is made.

Effective date when unit agreement or unit operating agreement varied

(2) Where a unit agreement or unit operating agreement is varied by the Committee in a unitization order, the effective date prescribed in the order shall be a date not less than thirty days following the day the order is made, but the order becomes ineffective if, before the effective date, the applicant files with the Committee a notice withdrawing the application on behalf of the working interest owners or there are filed with the Committee statements in writing objecting to the order and signed

(a) in the case of the unit agreement by

(i) one or more working interest owners who own in the aggregate more than twenty-five per cent of the total working interests in the area and were included within the group owning sixty-five per cent or more of the total working interests as described in subparagraph 176(2)(a)(i), and

(ii) one or more royalty owners who own in the aggregate more than twenty-five per cent of the total royalty interests in the unit area and were included within the group owning sixty-five per cent or more of the total royalty interests as described in subparagraph 176(2)(a)(ii); or

(b) in the case of the unit operating agreement, by one or more working interest owners who own in the aggregate more than twenty-five per cent of the total working interests in the unit area and were included within the group owning sixty-five per cent or more of the total working interests as described in subparagraph 176(2)(a)(i).

Revocation of order

(3) Where a unitization order becomes ineffective under subsection (2), the Committee shall forthwith revoke the order.

1987, c. 3, s. 177; 1992, c. 35, s. 79(E).

Technical defects in unitization order

178. A unitization order is not invalid by reason only of the absence of notice or of any irregularities in giving notice to any owner in respect of the application for the order or any proceedings leading to the making of the order.

Amending unitization order

179. (1) A unitization order may be amended upon the application of a working interest owner, but before amending a unitization order the Committee shall hold a hearing at which all interested parties shall have an opportunity to be heard.

Voluntary proposal for amendment by owners

(2) If the Committee finds that, at the date of the commencement of a hearing of an application for the amendment of a unitization order, one or more working interest owners who own in the aggregate sixty-five per cent or more of the total working interests and one or more royalty interest owners who own in the aggregate sixty-five per cent or more of the total royalty interests in the unit area have consented to the proposed amendment, the Committee may amend the unitization order in accordance with the amendment proposed.

1987, c. 3, s. 179; 1994, c. 26, s. 15(F).

Protection of tract participation ratios

180. No amendment shall be made under section 179 that will alter the ratios between the tract participations of those tracts that were qualified for inclusion in the unit area before the commencement of the hearing, and, for the purposes of this section, the tract participations shall be those indicated in the unit agreement when it became subject to a unitization order.

Production prohibited except in accord with unitization order

181. After the date on which a unitization order comes into effect and while the order remains in force, no person shall carry on any operations within the unit area for the purpose of drilling for or producing petroleum from the unitized zone, except in accordance with the provisions of the unit agreement and the unit operating agreement.

How percentages of interests to be determined

182. The percentages of interests referred to in subsections 174(1), 176(2), 177(2) and 179(2) shall be determined

- (a) as to royalty interests, on a prorated area basis; and
- (b) as to working interests, on the basis of tract participation shown in the unit agreement.

General

Pooled spacing unit included in unit area

183. (1) A pooled spacing unit that has been pooled pursuant to a pooling order and on which a well has been drilled may be included in a unit area as a single unit tract and the Committee may make such amendments to the pooling order as it deems necessary to remove any conflict between the provisions of the pooling order and the provisions of the unit agreement, or the unit operating agreement or the unitization order, if any.

Effect of including pooled spacing unit in unit area

(2) Where a pooled spacing unit is included in a unit area pursuant to subsection (1), the provisions of the unit agreement, the unit operating agreement and the unitization order, if any, prevail over the provisions of the pooling order in the event of a conflict.

Exceptions

- (3) Notwithstanding subsection (2),
 - (a) the share of the unit production that is allocated to the pooled spacing unit shall in turn be allocated to the separately owned tracts in the pooled spacing unit on the same basis and in the

same proportion as production actually obtained from the pooled spacing unit would have been shared under the pooling order;

(b) the costs and expenses of the unit operation that are allocated to the pooled spacing unit shall be shared and borne by the owners of the working interests therein on the same basis and in the same proportion as would apply under the pooling order; and

(c) the credits allocated under a unit operating agreement to a pooled spacing unit for adjustment of investment for wells and equipment thereon shall be shared by the owners of the working interests therein in the same proportion as would apply to the sharing of production under the pooling order.

Division III

APPEALS AND ADMINISTRATION

Appeals

Orders and decisions final

184. (1) Except as provided in this Division, every decision or order of the Committee is final and conclusive.

Decision or order defined

(2) Any minute or other record of the Committee or any document issued by the Committee, in the form of a decision or order, shall for the purposes of this section be deemed to be a decision or an order of the Committee.

Stated case for Supreme Court of Newfoundland

185. (1) The Committee may of its own motion or at the request of the Board state a case, in writing, for the opinion of the Trial Division of the Supreme Court of Newfoundland on any question that in the opinion of the Committee is a question of law or of the jurisdiction of the Committee.

Proceedings thereon

(2) The Trial Division of the Supreme Court of Newfoundland shall hear and determine the case stated, and remit the matter to the Committee with the opinion of the Court thereon.

Board may review orders of Committee

186. The Board may, at any time, in its discretion, either on petition of any interested person or of its own motion, vary or rescind any decision or order of the Committee made under this Part, whether such order is made between parties or otherwise and any order that the Board makes with respect thereto becomes a decision or order of the Committee and, subject to section 187, is binding on the Committee and on all parties.

Appeal to Supreme Court of Newfoundland

187. (1) An appeal lies from a decision or order of the Committee to the Trial Division of the Supreme Court of Newfoundland on a question of law, on leave therefor being obtained from that Court, in accordance with the practice of that Court, on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court may allow.

Staying order

(2) Where leave to appeal is granted pursuant to subsection (1), any order of the Committee in respect of which the appeal is made shall be stayed until the matter of the appeal is determined.

Powers of the Court

(3) After the hearing of the appeal, the Trial Division of the Supreme Court of Newfoundland shall certify its opinion to the Committee and the Committee shall make any order necessary to comply with that opinion.

Order subject to section 186

(4) Any order made by the Committee pursuant to subsection (3), unless that order has already been dealt with by the Board pursuant to section 186, shall be subject to that section.

Safety and Conservation Officers

Officers

188. The safety officers and conservation officers necessary for the administration and enforcement of this Part and the regulations shall be appointed by the Board.

1987, c. 3, s. 188; 1992, c. 35, s. 80.

Powers of officers

189. A safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer may at any reasonable time

- (a) enter any place, including lands, buildings, installations, vessels, vehicles and aircraft, used for any work or activity in respect of which this Part applies, for the purpose of carrying out inspections, examinations, tests or inquiries or of directing that the person in charge of the place carry them out, and the officer may be accompanied by any other person that the officer believes is necessary to help carry out the inspection, examination, test or inquiry;
- (b) take photographs or make drawings of any place or thing referred to in this section;
- (c) order that any place or thing referred to in this section not be interfered with for a specified period;
- (d) require the production, for inspection or copying, of any books, records, documents, licences or permits required by this Part or the regulations;
- (e) take samples or particulars and carry out, or have carried out, any reasonable tests or examinations; and
- (f) require the person in charge of the place, or any other person in the place who has knowledge relevant to an inspection, examination, test or inquiry, to furnish information, either orally or in writing, in the form requested.

1987, c. 3, s. 189; 1992, c. 35, s. 80.

Certificate to be produced

190. The Board shall provide every safety officer and conservation officer and the Chief Safety Officer and the Chief Conservation Officer with a certificate of appointment or designation and, on entering any place pursuant to the authority of this Part, the officer shall, if so required, produce the

certificate to the person in charge of the place.

1987, c. 3, s. 190; 1992, c. 35, s. 80.

Assistance to officers

191. The owner, the person in charge of any place referred to in section 189 and every person found therein shall give a safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer, as the case may be, all reasonable assistance to enable the officer to carry out duties and functions under this Part or the regulations.

1987, c. 3, s. 191; 1992, c. 35, s. 80.

Obstruction of officers and making of false statements

192. No person shall obstruct or hinder or make a false or misleading statement, either orally or in writing, to a safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer who is engaged in carrying out duties and functions under this Part or the regulations.

1987, c. 3, s. 192; 1992, c. 35, s. 80.

Power of safety officer when dangerous operation detected

193. (1) Where a safety officer or the Chief Safety Officer, on reasonable grounds, is of the opinion that continuation of an operation in relation to the exploration or drilling for or the production, conservation, processing or transportation of petroleum in any portion of the offshore area is likely to result in serious bodily injury, the safety officer or Chief Safety Officer, as the case may be, may order that the operation cease or be continued only in accordance with the terms of the order.

Notice

(2) The safety officer or Chief Safety Officer who makes an order under subsection (1) shall affix at or near the scene of the operation a notice of the order in prescribed form.

Expiration of order

(3) An order made by a safety officer under subsection (1) expires seventy-two hours after it is made unless it is confirmed before that time by order of the Chief Safety Officer.

Modification or revocation

(4) A safety officer who makes an order under subsection (1) shall immediately so advise the Chief Safety Officer, and the Chief Safety Officer may modify or revoke the order.

Reference to provincial court judge

(5) The person carrying out the operation to which an order under subsection (1) makes reference or any person having a pecuniary interest in that operation may by notice in writing request the Chief Safety Officer to refer it to a provincial court judge for review, and thereupon the Chief Safety Officer shall refer the order to a provincial court judge having jurisdiction in the area closest to that in which the operation is being carried on.

Inquiry by a provincial court judge

(6) A provincial court judge to whom an order is referred pursuant to this section shall inquire into the need for the order and for that purpose has all the powers of a commissioner under Part I of the *Inquiries Act*.

Burden of proof

(7) Where an order has been referred to a provincial court judge pursuant to this section, the burden of establishing that the order is not needed is on the person who requested that the order be so referred.

Provincial court judge's decision conclusive

(8) A provincial court judge to whom an order is referred pursuant to this section may confirm or set aside the order and the decision of the provincial court judge is final and conclusive.

Operations in respect of which order made

(9) No person shall continue an operation in respect of which an order has been made pursuant to this section, except in accordance with the terms of the order or until the order has been set aside by a provincial court judge pursuant to this section.

1987, c. 3, s. 193; 1992, c. 35, s. 80.

Priority

193.1 An order made by a safety officer or the Chief Safety Officer prevails over an order made by a conservation officer or the Chief Conservation Officer to the extent of any inconsistency between the orders.

1992, c. 35, s. 80.

Installation Manager

Installation manager

193.2 (1) Every holder of an authorization under paragraph 138(1)(b) in respect of a work or activity for which a prescribed installation is to be used shall put in command of the installation a manager who meets any prescribed qualifications, and the installation manager is responsible for the safety of the installation and the persons at it.

Powers

(2) Subject to this Act and any other Act of Parliament, an installation manager has the power to do such things as are required to ensure the safety of the installation and the persons at it, and, more particularly, may

- (a) give orders to any person who is at the installation;
- (b) order that any person who is at the installation be restrained or removed; and
- (c) obtain any information or documents.

Emergency

(3) In a prescribed emergency situation, an installation manager's powers are extended so that they also apply to each operator of a vessel, vehicle or aircraft that is at the installation or that is leaving or approaching it.

1992, c. 35, s. 80.

Offences and Penalties

Offences

194. (1) Every person is guilty of an offence who

(a) contravenes this Part or the regulations;

(b) knowingly makes any false entry or statement in any report, record or document required by this Part or the regulations or by any order made pursuant to this Part or the regulations;

(c) knowingly destroys, mutilates or falsifies any report or other document required by this Part or the regulations or by any order made pursuant to this Part or the regulations;

(d) produces any petroleum from a pool or field under the terms of a unit agreement within the meaning of Division II, or any amended unit agreement, before the unit agreement or amended unit agreement is filed with the Chief Conservation Officer;

(e) undertakes or carries on a work or activity without an authorization under paragraph 138(1)(b) or without complying with the approvals or requirements of such an authorization; or

(f) fails to comply with a direction, requirement or order of a safety officer, the Chief Safety Officer, a conservation officer, the Chief Conservation Officer or an installation manager or with an order of the Committee.

Punishment

(2) Every person who is guilty of an offence under subsection (1) is liable

(a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years, or to both.

(3) and (4) [Repealed, 1992, c. 35, s. 81]

Presumption against waste

(5) No person commits an offence under subsection 154(1) by reason of committing waste as defined in paragraph 154(2)(f) or (g) unless that person has been ordered by the Committee to take measures to prevent the waste and has failed to comply.

1987, c. 3, s. 194; 1992, c. 35, s. 81.

195. [Repealed, 1992, c. 35, s. 82]

Order to comply

196. Where a person is guilty of an offence under this Part, a court may, in addition to any other penalty it may impose, order that person to comply with the provisions of the Part, regulation or order for the contravention of which that person has been convicted.

Continuing offences

197. Where an offence under this Part is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

198. [Repealed, 1992, c. 35, s. 83]

Time limited for proceedings

199. A prosecution for an offence under this Part may be instituted at any time within two years after the time when the subject-matter of the complaint arose.

Evidence

200. In any prosecution for an offence under this Part, a copy of any order or other document purporting to have been made pursuant to this Part or the regulations and purporting to have been signed by the person authorized by this Part or the regulations to make that order or document is, in the absence of any evidence to the contrary, proof of the matters set out therein.

Jurisdiction of judge or justice

201. Any complaint or information in respect of an offence under this Part may be heard, tried or determined by a justice or judge if the accused is resident or carrying on business within the territorial jurisdiction of that justice or judge although the matter of the complaint or information did not arise in that territorial jurisdiction.

Action to enjoin not prejudiced by prosecution

202. (1) Notwithstanding that a prosecution has been instituted in respect of an offence under this Part, the regulations or any order made pursuant to this Part or the regulations, the Board may commence and maintain an action to enjoin the committing of any contravention of this Part, the regulations or any order made pursuant to this Part or the regulations.

Civil remedy not affected

(2) No civil remedy for any act or omission is suspended or affected by reason that the act or omission is an offence under this Part.

REGULATIONS

Regulations

203. Subject to section 7, the Governor in Council may make such regulations not inconsistent with this Part as may be deemed necessary for carrying out the purposes of this Part, and, without limiting the generality of the foregoing, may make regulations defining and distinguishing more particularly for the purposes of Divisions I and II the expressions "oil" and "gas".

APPLICATION

Application

204. This Part applies to every interest or right in petroleum acquired or vested before the coming into force of this section and is binding on Her Majesty in right of Canada or a province.

TRANSITIONAL

Operating licences

205. (1) Where an operating licence was issued under subsection 3.2(1) of the *Oil and Gas Production and Conservation Act* and is in force on the coming into force of this section, it shall be deemed to be an operating licence issued by the Board under this Part.

Authorizations and development plan approval

(2) Where, prior to the coming into force of this section, authorization for any work or activity or approval of a development plan was given under subsection 3.2(1) of the *Oil and Gas Production and Conservation Act* or any regulation made under that Act, the authorization or approval shall be deemed to have been given by the Board under this Part.

PART IV REVENUE SHARING INTERPRETATION

Definitions

206. In this Part,

"Newfoundland Consumption Tax Acts"
« *lois sur l'impôt indirect* »

"Newfoundland Consumption Tax Acts" means *The Retail Sales Tax Act, 1978*, Chapter 36 of the Statutes of Newfoundland, 1978, as amended from time to time, *The Gasoline Tax Act, 1978*, Chapter 39 of the Statutes of Newfoundland, 1978, as amended from time to time, *The Tobacco Tax Act, 1978*, Chapter 38 of the Statutes of Newfoundland, 1978, as amended from time to time and *The Insurance Premiums Tax Act, 1978*, Chapter 40 of the Statutes of Newfoundland, 1978, as amended from time to time and any other Act of the Legislature of the Province, as amended from time to time, as may be prescribed;

"Newfoundland Income Tax Act"
« *loi sur l'impôt direct* »

"Newfoundland Income Tax Act" means *The Income Tax Act*, Chapter 163 of the Revised Statutes of Newfoundland, 1970, as amended from time to time;

"Newfoundland Insurance Companies Tax Act"
« *loi sur l'imposition des compagnies d'assurances* »

"Newfoundland Insurance Companies Tax Act" means *The Insurance Companies Tax Act*, Chapter 177 of the Revised Statutes of Newfoundland, 1970, as amended from time to time;

"Petroleum and Natural Gas Act"
« *Version anglaise seulement* »

"Petroleum and Natural Gas Act" means *The Petroleum and Natural Gas Act*, Chapter 294 of the Revised Statutes of Newfoundland, 1970, as amended from time to time;

"Revenue Fund"
« *Fonds de recettes* »

"Revenue Fund" means the account established under section 214.

IMPOSITION OF CONSUMPTION TAXES

Imposition of consumption taxes in offshore area

207. (1) There shall be imposed, levied and collected under this Part in respect of the offshore

area, in accordance with subsection (3), the taxes, interest and penalties that would be imposed, levied and collected under the Newfoundland Consumption Tax Acts if the offshore area were in the Province.

Exception

(2) Notwithstanding subsection (1), where taxes are imposed in respect of any matter under any of the Newfoundland Consumption Tax Acts and taxes would, but for this subsection, be imposed under subsection (1) in respect of that matter, no taxes shall be imposed under subsection (1) in respect of that matter.

Application of Newfoundland legislation

(3) Subject to this Act and the regulations, the Newfoundland Consumption Tax Acts and any regulations made thereunder apply, with such modifications as the circumstances require, for the purposes of this Part and, without limiting the generality of the foregoing,

- (a) a reference in those Acts to Her Majesty in right of the Province shall be deemed to be a reference to Her Majesty in right of Canada;
- (b) a reference in those Acts to the Province of Newfoundland or the province shall be deemed to be a reference to the offshore area; and
- (c) a reference in those Acts to the Minister responsible for the administration of any of those Acts shall be deemed to be a reference to the Minister of Finance.

Binding on certain Crown corporations

(4) This section is binding on

- (a) the corporations mentioned in Schedule A to the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contribution Act, 1977*, where the Province is a participating province within the meaning of subsection 34(1) of that Act; and
- (b) the corporations mentioned in Schedule B to that Act.

IMPOSITION OF INSURANCE COMPANIES TAX

Insurance companies tax in offshore area

208. (1) There shall be imposed, levied and collected under this Part in respect of the insurance premiums received by any company with respect to property situated in the offshore area at the time the insurance premiums become payable, in accordance with subsection (3), the taxes, interest and penalties that would be imposed, levied and collected under the Newfoundland Insurance Companies Tax Act if the property were situated in the Province.

Exception

(2) Notwithstanding subsection (1), where taxes are imposed in respect of any matter under the Newfoundland Insurance Companies Tax Act and taxes would, but for this subsection, be imposed under subsection (1) in respect of that matter, no taxes shall be imposed under subsection (1) in respect of that matter.

Application of Newfoundland legislation

(3) Subject to this Act and the regulations, the Newfoundland Insurance Companies Tax Act and any regulations made thereunder apply, with such modifications as the circumstances require, for

the purposes of this Part and, without limiting the generality of the foregoing,

- (a) a reference in that Act to Her Majesty in right of the Province shall be deemed to be a reference to Her Majesty in right of Canada;
- (b) a reference in that Act to the Province of Newfoundland or the province shall be deemed to be a reference to the offshore area; and
- (c) a reference in that Act to the Minister responsible for the administration of that Act shall be deemed to be a reference to the Minister of Finance.

Definition of "company"

(4) In this section, "company" has the same meaning as in the Newfoundland Insurance Companies Tax Act.

TAX ADMINISTRATION AGREEMENT

Power to collect

209. (1) Subject to subsection 212(1), where a tax administration agreement is entered into pursuant to subsection (3), taxes, interest, penalties and other sums payable under section 207 or 208 may be collected and administered and refunds in respect thereof may be granted by the Government of the Province on behalf of the Government of Canada in accordance with the terms and conditions of the agreement, as amended from time to time pursuant to subsection (4).

Negotiation of tax administration agreement

(2) The Minister of Finance shall, on the request of the Government of the Province, negotiate with the Provincial Minister of Finance a tax administration agreement with respect to the taxes, interest and penalties imposed under sections 207 and 208.

Tax administration agreement

(3) On completion of the negotiation of a tax administration agreement pursuant to subsection (2), the Minister of Finance, with the approval of the Governor in Council, shall, on behalf of the Government of Canada, enter into a tax administration agreement with the Government of the Province pursuant to which the Government of the Province shall, on behalf of the Government of Canada, collect and administer the taxes, interest, penalties and other sums payable under sections 207 and 208 and, without limiting the generality of the foregoing, grant refunds or make other payments in respect of those taxes, interest and penalties in accordance with the terms and conditions set out in the agreement.

Amendments to the agreement

(4) The Minister of Finance, with the approval of the Governor in Council, may, on behalf of the Government of Canada, enter into an agreement amending the terms and conditions of any tax administration agreement entered into pursuant to subsection (3).

No further liability

(5) A tax administration agreement may provide that, where any payment is received by the Government of the Province on account of any taxes, interest, penalties or other sums payable by a person under

- (a) section 207 or 208, or

(b) both

(i) section 207 or 208, and

(ii) the Newfoundland Consumption Tax Acts or the Newfoundland Insurance Companies Tax Act,

the payment so received may be applied by the Government of the Province towards the taxes, interest, penalties or other sums payable by the person under any such provision or Act in such manner as is specified in the agreement, notwithstanding that the person directed that the payment be applied in any other manner or made no direction as to its application.

Idem

(6) Any payment or part thereof applied by the Government of the Province in accordance with a tax administration agreement towards the taxes, interest, penalties or other sums payable by a person under section 207 or 208

(a) relieves that person of liability to pay such taxes, interest, penalties or other sums to the extent of the payment or part thereof so applied; and

(b) shall be deemed to have been applied in accordance with a direction made by that person.

Proof of provision of tax administration agreement

(7) A document purporting to be an agreement entered into pursuant to subsection (3) or (4) that is

(a) published in the *Canada Gazette*, or

(b) certified as such by, or on behalf of, the Receiver General, the Deputy Receiver General or the Minister of Finance

is, in the absence of evidence to the contrary, evidence of the contents thereof and is admissible in evidence without proof of the signature or official character of the person purporting to have certified it.

Transfer of powers and duties

210. (1) Where a tax administration agreement is entered into, the Provincial Minister, on behalf of, or as agent for, the Minister of Finance, is hereby authorized to perform all the duties and to exercise all the powers and any discretion that the Minister of Finance or the Deputy Minister of Finance has under this Part.

Idem

(2) Where a tax administration agreement is entered into, the Comptroller General of Finance of the Province may

(a) perform the duties and exercise any power or discretion that the Provincial Minister has under subsection (1) or otherwise under this Part; and

(b) designate officers of the Department of Finance of the Province to carry out such functions, perform such duties and exercise such powers as are similar to those that are carried out, exercised or performed by them on behalf of that Minister under the Newfoundland Consumption Tax Acts and the Newfoundland Insurance Companies Tax Act.

IMPOSITION OF CORPORATE INCOME TAXES

Imposition of corporate income tax in offshore area

211. (1) There shall be imposed, levied and collected under this Part in respect of the taxable income of a corporation earned in a taxation year in the offshore area, in accordance with subsection (3), the taxes, interest and penalties that would be imposed, levied and collected under the Newfoundland Income Tax Act in respect of that taxable income if the offshore area were in the Province.

Exception

(2) Notwithstanding subsection (1), where taxes are imposed under the Newfoundland Income Tax Act in respect of taxable income of a corporation earned in a taxation year in the Province and taxes would, but for this subsection, be imposed under subsection (1) in respect of that taxable income, no taxes shall be imposed under subsection (1) in respect of that taxable income.

Application of Newfoundland Income Tax Act

(3) Subject to this Act and the regulations made thereunder, the Newfoundland Income Tax Act and any regulations made thereunder apply, with such modifications as the circumstances require, for the purposes of this Part and, without limiting the generality of the foregoing,

- (a) a reference in that Act to Her Majesty in right of the Province shall be deemed to be a reference to Her Majesty in right of Canada;
- (b) a reference in that Act to the Province of Newfoundland or the province shall be deemed to be a reference to the offshore area;
- (c) a reference in that Act to the “Minister of Finance” shall be deemed to be a reference to
 - (i) in relation to the remittance of any amount as or on account of tax payable under that Act, the Receiver General of Canada, and
 - (ii) in relation to any other matter, the Minister of National Revenue for Canada; and
- (d) a reference in that Act to the “Minister of National Revenue” shall be deemed to be a reference to the Minister of National Revenue for Canada.

Determination of taxable income earned in the offshore area

(4) For the purposes of this section, the taxable income of a corporation earned in a taxation year in the offshore area or in the Province shall be determined in accordance with regulations made under paragraph 124(4)(a) of the *Income Tax Act*.

Remittance to Receiver General

212. (1) All taxes, interest, penalties or other sums payable under section 207, 208 or 211 are payable and shall be remitted to the Receiver General.

Consolidated Revenue Fund

(2) On the collection or receipt of any taxes, interest, penalties or other sums by the Government of the Province pursuant to this Part, the taxes, interest, penalties or other sums shall be deposited as soon as practicable to the credit of the Receiver General and paid into the Consolidated Revenue Fund in the manner prescribed by the Treasury Board under the *Financial Administration Act*.

Collection of excess sums

(3) Every person who knowingly collects or receives any sum of money as taxes under this Part in circumstances where the sum is not payable shall forthwith

(a) refund the sum to the person from whom he collected it; or

(b) if the person referred to in paragraph (a) is not known or readily ascertainable, pay the sum to the Receiver General.

LIABILITY AND COLLECTION OF TAX

Debts due to Her Majesty

213. All taxes, interest, penalties or other sums payable under section 207, 208 or 211 are debts due to Her Majesty in right of Canada and are recoverable as such from the person required to pay the taxes, interest, penalties or other sums in accordance with this Part.

REVENUE FUND

Revenue Fund

214. (1) There shall be established in the accounts of Canada an account to be known as the Newfoundland Offshore Petroleum Resource Revenue Fund.

Payment

(2) The Federal Minister shall, at the times and in the manner prescribed,

(a) credit the Revenue Fund with

(i) where the Government of the Province has agreed to collect and is collecting in accordance with a tax administration agreement entered into pursuant to section 209, on behalf of the Government of Canada, taxes, interest, penalties and other sums payable under sections 207 and 208, an amount equal to the aggregate of the amounts on account of taxes, interest, penalties and other sums collected pursuant to those sections during any fiscal year, after taking into account any refunds, remissions or other payments that are applicable in respect of such taxes, interest, penalties and other sums,

(ii) an amount equal to the aggregate of the amounts assessed or reassessed in respect of any fiscal year on account of taxes imposed pursuant to section 211, after taking into account any credits, reductions, deductions, rebates, surtaxes and remissions that are applicable in respect of such taxes,

(iii) where the Government of the Province and the Board have entered into an agreement pursuant to section 98 and the Board is collecting, in accordance with the agreement, on behalf of the Government of Canada, royalties payable under section 97, an amount equal to the aggregate of such royalties that have been collected during any fiscal year, and

(iv) an amount equal to the aggregate of any amounts, other than those referred to in subparagraph (iii), received and not required to be returned during any fiscal year under Part II or any regulations made thereunder; and

(b) pay to Her Majesty in right of the Province, at the time and in the manner prescribed, any amount credited to the Revenue Fund pursuant to paragraph (a).

Excess recoverable

(3) Where, pursuant to subsection (2), Her Majesty in right of the Province has received any amount in excess of the amount to which it is entitled, the Federal Minister may recover as a debt due to Her Majesty in right of Canada an amount equal to such excess from any moneys that may be or may become payable to Her Majesty in right of the Province pursuant to subsection (2) or under any other Act of Parliament.

JURISDICTION OF COURTS

Jurisdiction of courts

215. (1) Every court in the Province has jurisdiction in respect of matters arising in the offshore area under this Part or Division VI of Part II or under any laws made applicable by this Part or that Division to the offshore area, to the same extent as the court has jurisdiction in respect of matters arising within its ordinary territorial division.

Presumption

(2) For the purposes of subsection (1), the offshore area shall be deemed to be within the territorial limits of the judicial centre of St. John's.

Saving

(3) Nothing in this section limits the jurisdiction that a court may exercise apart from this section.

Definition of "court"

(4) In this section, "court" includes a judge thereof and any provincial court judge or justice.

REGULATIONS

Regulations

216. The Governor in Council may, on the recommendation of the Minister of Finance, make regulations

(a) excluding, for the purposes of this Act, any provision or any part thereof of the Newfoundland Consumption Tax Acts, the Newfoundland Income Tax Act, the Newfoundland Insurance Companies Tax Act or the Petroleum and Natural Gas Act or of any regulation made thereunder that is inconsistent with this Act, the Atlantic Accord or any bilateral or international treaty, convention or agreement respecting taxation, tariffs or trade to which the Government of Canada is a signatory; and

(b) prescribing anything that is by this Part to be prescribed.

APPROPRIATION

Appropriation

217. In respect of any fiscal year, the Federal Minister may pay out of the Consolidated Revenue Fund, at such times and in such manner as may be prescribed,

(a) an amount to Her Majesty in right of the Province on account of amounts that have been refunded or reimbursed during that fiscal year by the Government of the Province to taxpayers in respect of taxes paid under this Part; and

(b) amounts payable during that fiscal year to Her Majesty in right of the Province pursuant to paragraph 214(2)(b).

PART V

FISCAL EQUALIZATION OFFSET PAYMENTS AND DETERMINATION OF PER CAPITA FISCAL CAPACITY

INTERPRETATION

Definitions

218. (1) In this Part,

"Federal Minister"
« *ministre* »

"Federal Minister" means the Minister of Finance;

"first fiscal year of offshore production"
« *premier exercice de production extracôtière* »

"first fiscal year of offshore production" means the fiscal year beginning on the first day of April immediately following the day on which the cumulative volume of production in the offshore area, measured as having flowed through the first sales meter, has reached an amount equal to 2,400,000 cubic metres of oil or a volume of gas or of a combination of oil and gas that is the energy equivalent thereto, as determined by the Minister of Natural Resources, in accordance with the regulations;

"Fiscal Arrangements Act"
« *loi de 1977* »

"Fiscal Arrangements Act" means the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977*;

"national average per capita fiscal capacity"
« *moyenne nationale* »

"national average per capita fiscal capacity" means the per capita fiscal capacity of all of the provinces;

"phase-out portion"
« *fraction dégressive* »

"phase-out portion" means

(a) in respect of the first fiscal year of offshore production and each of the first three fiscal years following the first fiscal year of offshore production, ninety per cent,

(b) in respect of the fourth fiscal year following the first fiscal year of offshore production, eighty per cent,

(c) in respect of the fifth fiscal year following the first fiscal year of offshore production, seventy per cent,

(d) in respect of the sixth fiscal year following the first fiscal year of offshore production, sixty per cent,

(e) in respect of the seventh fiscal year following the first fiscal year of offshore production, fifty per cent,

(f) in respect of the eighth fiscal year following the first fiscal year of offshore production, forty per cent,

(g) in respect of the ninth fiscal year following the first fiscal year of offshore production, thirty per cent,

(h) in respect of the tenth fiscal year following the first fiscal year of offshore production, twenty per cent, and

(i) in respect of the eleventh fiscal year following the first fiscal year of offshore production, ten per cent;

"province"

« *province* »

"province" does not include the Northwest Territories, Yukon or Nunavut.

Determination of population

(2) For the purposes of this Part, the population of a province for a fiscal year is the population of that province for that fiscal year, as determined for the purposes of Part I of the Fiscal Arrangements Act.

1987, c. 3, s. 218; 1993, c. 28, s. 78; 1994, c. 41, s. 37; 1998, c. 15, s. 18; 2002, c. 7, s. 109(E).

FISCAL EQUALIZATION OFFSET PAYMENTS

Fiscal equalization offset payments

219. The Minister of Natural Resources shall pay to Her Majesty in right of the Province, at the time and in the manner prescribed, in respect of the first fiscal year of offshore production and each of the eleven fiscal years following the first fiscal year of offshore production, a fiscal equalization offset payment equal to the amount, if any, computed in accordance with section 220.

1987, c. 3, s. 219; 1994, c. 41, s. 37.

Calculation

220. The fiscal equalization offset payment that is to be paid to Her Majesty in right of the Province for a fiscal year pursuant to section 219 is the amount, as determined by the Federal Minister, equal to the aggregate of

(a) the amount, if any, by which

(i) the fiscal equalization payment that may be paid to Her Majesty in right of the Province for the fiscal year under Part I of the Fiscal Arrangements Act

is less than

(ii) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is less than or equal to 70 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 95 per cent,

(iii) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is

less than or equal to 75 per cent but greater than 70 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 90 per cent, or

(iv) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is greater than 75 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 85 per cent

of the aggregate of the fiscal equalization payment that may be paid to Her Majesty in right of the Province under Part I of the Fiscal Arrangements Act for the fiscal year immediately preceding the fiscal year and the amount computed in accordance with this paragraph for the fiscal year immediately preceding the fiscal year, and

(b) the phase-out portion, in respect of the fiscal year, of the amount, as determined by the Federal Minister, by which

(i) the aggregate of the fiscal equalization payment that may be paid to Her Majesty in right of the Province under Part I of the Fiscal Arrangements Act for the fiscal year immediately preceding the fiscal year and the amount computed in accordance with paragraph (a) for the fiscal year immediately preceding the fiscal year

is greater than

(ii) the aggregate of the fiscal equalization payment that may be paid to Her Majesty in right of the Province under Part I of the Fiscal Arrangements Act for the fiscal year and the amount computed in accordance with paragraph (a) for the fiscal year.

1987, c. 3, s. 220; 2004, c. 22, s. 6.

DETERMINATION OF PER CAPITA FISCAL CAPACITY

Determination of fiscal capacity

221. (1) For the purposes of paragraph 220(a), the per capita fiscal capacity of the Province and the national average per capita fiscal capacity in respect of any fiscal year shall be determined by the Federal Minister by dividing the aggregate of the estimated revenues of the Province or of all provinces, as the case may be, in respect of the fiscal year, as determined in accordance with subsection (2), by the population of the Province or of all provinces, as the case may be, in respect of the fiscal year.

Estimated revenues determined in accordance with a representative tax system

(2) The aggregate of the estimated revenues of the Province or of all provinces, as the case may be, in respect of any fiscal year shall be determined by

(a) describing the sources from which are or may be derived the aggregate of the following revenues, namely,

(i) the aggregate of the revenues derived by all provinces in respect of the fiscal year from all sources described in the definition "revenue source" in subsection 4(2) of the Fiscal Arrangements Act as it read on April 1st, 1984,

(ii) the aggregate of the revenues that are

(A) derived by all municipalities, boards, commissions and other local authorities from the sources described in paragraphs (z) and (bb) of the definition "revenue source" in subsection 4(2) of the Fiscal Arrangements Act as it read on April 1st, 1984, and

(B) deemed by virtue of subsection 4(5) of the Fiscal Arrangements Act as it read on

April 1st, 1984 to be derived by a province in respect of the fiscal year, and

(iii) the aggregate of the revenues derived by all provinces in respect of the fiscal year and by all municipalities, boards, commissions and other local authorities in respect of their financial years ending in the fiscal year that

(A) are not included in subparagraph (i) or (ii), and

(B) are included in the computation of fiscal equalization payments for the fiscal year under the Fiscal Arrangements Act,

as those sources are described in the definition "revenue source" in subsection 4(2) of the Fiscal Arrangements Act, varying the description of such sources to take into account the changes and factors referred to in subsection (3);

(b) defining the expression "revenue base", in respect of each distinct source described pursuant to paragraph (a), for a province in respect of the fiscal year, that relates to the measure of the relative capacity of the province to derive revenue from such source for that fiscal year,

(i) as that expression is defined in respect of such source, in section 6 of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations, 1982*, as it read on April 1, 1984, and

(ii) varying that definition to take into account the changes and factors referred to in subsection (3);

(c) estimating the amount of each revenue base defined in paragraph (b), in respect of each source described pursuant to paragraph (a), for the Province or all provinces, as the case may be, for the fiscal year;

(d) estimating the amount of the revenues of the Province or all provinces, as the case may be, in respect of each source described pursuant to paragraph (a) for the fiscal year by multiplying

(i) the national average rate of tax for the fiscal year in respect of that source, and

(ii) the amount of the revenue base estimated pursuant to paragraph (c) in respect of that source for the Province or all provinces, as the case may be, for the fiscal year; and

(e) adding the amounts of the revenues of the Province or of all provinces, as the case may be, estimated pursuant to paragraph (d) in respect of all sources described pursuant to paragraph (a).

Changes and factors to be taken into account in representative tax system

(3) For the purposes of paragraph (2)(a) and subparagraph (2)(b)(ii), the following changes and factors should be taken into account, namely,

(a) changes in any laws of a province relating to taxation that apply in respect of fiscal years subsequent to the fiscal year beginning on April 1, 1984,

(b) changes to improve the accuracy of comparisons among provinces of relative capacity to derive revenue from any source; and

(c) changes made by statistical agencies to statistical data or methods used to measure the relative capacities of provinces to derive revenue from any source.

Average rate of tax

(4) For the purposes of paragraph (2)(d) the national average rate of tax for a fiscal year in respect of a source is the quotient obtained by dividing

(a) the aggregate of the total revenues, as determined by the Federal Minister, derived by all provinces for the fiscal year from that source, whether or not the total revenues or any portion thereof are included in the computation of the fiscal equalization payments to provinces for the fiscal year under Part I of the Fiscal Arrangements Act

by

(b) the revenue base estimated pursuant to paragraph (2)(c) in respect of that source for all provinces for that fiscal year.

DETERMINATIONS

Final determination

222. (1) The final determination, for any fiscal year, of the fiscal equalization offset payment for the Province, the per capita fiscal capacity for the Province and the national average per capita fiscal capacity shall be determined by the Federal Minister at the same time that the final computation of the amount, if any, of the fiscal equalization payment that is payable to a province is made for the fiscal year under Part I of the *Federal-Provincial Fiscal Arrangements Act*.

Interim determinations

(2) The Federal Minister may make an interim determination of a fiscal equalization offset payment for the Province for a fiscal year and of the per capita fiscal capacity of the Province and the national average per capita fiscal capacity for a fiscal year, at the time and in the manner prescribed, prior to any final determination made under subsection (1).

1987, c. 3, s. 222; 2007, c. 29, s. 80.

ADVANCE PAYMENTS

Advance payments

223. The Federal Minister of Natural Resources may, at the times and in the manner prescribed, pay to Her Majesty in right of the Province an amount on account of a fiscal equalization offset payment that may be payable or may become payable to Her Majesty in right of the Province under this Part in respect of any fiscal year.

1987, c. 3, s. 223; 1994, c. 41, s. 37.

Accounting of advance on account

224. Where an amount has been paid to Her Majesty in right of the Province pursuant to section 223 on account of a fiscal equalization offset payment for a fiscal year, the amount shall be accounted for and shall be deemed to be a portion of the fiscal equalization offset payment in respect of the fiscal year as determined by the Federal Minister in the manner prescribed, notwithstanding that the fiscal equalization offset payment was not determined by the Federal Minister in accordance with section 220.

APPROPRIATION

Appropriation

225. The amounts authorized to be paid by sections 219 and 223 shall be paid out of the Consolidated Revenue Fund at such times and in such manner as may be prescribed.

REPORT TO PARLIAMENT

Report to Parliament

226. On or before the 31st day of December next following the end of each fiscal year during the term of the Agreement, the Minister of Natural Resources shall cause to be prepared a report in respect of that fiscal year, relating to

- (a) every fiscal equalization offset payment, and
- (b) every determination of the per capita fiscal capacity for the Province or the national average per capita fiscal capacity

that has been made under this Part, and shall cause the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the report is prepared.

1987, c. 3, s. 226; 1994, c. 41, s. 37.

REGULATIONS

Regulations

227. The Governor in Council may, on the recommendation of the Federal Minister, make regulations

- (a) prescribing the time and manner of making any payment under this Part;
- (b) respecting the determination of any matter that under this Part is to be determined by the Minister of Natural Resources or the Federal Minister;
- (c) prescribing the time and manner of making any interim determination of a fiscal equalization offset payment or of the per capita fiscal capacity of the Province and the national average per capita fiscal capacity under this Part;
- (d) providing for the payment to Her Majesty in right of the Province of advances on account of a fiscal equalization offset payment for a fiscal year that may be payable or may become payable to Her Majesty in right of the Province pursuant to this Part, the adjustment of other payments by reason of such advances and the recovery of over-payments;
- (e) prescribing anything that, by virtue of any other provision of this Part, is to be prescribed; and
- (f) generally for carrying into effect the purposes and provisions of this Part.

1987, c. 3, s. 227; 1994, c. 41, s. 37.

PART VI

OFFSHORE DEVELOPMENT FUND

INTERPRETATION

Definitions

228. In this Part,

"Development Fund"

« *Fonds de développement* »

"Development Fund" means the account established under section 229;

"project"

« projet »

"project" means any work or activity in respect of which costs may be incurred.

DEVELOPMENT FUND

Development Fund

229. There shall be established in the accounts of Canada an account to be known as the Offshore Development Fund, to which shall be charged all amounts paid by the Federal Minister pursuant to this Part.

AGREEMENT WITH PROVINCIAL GOVERNMENT

Agreement with the Provincial Government

230. The Federal Minister may, with the approval of the Federal Government, enter into an agreement with the Provincial Minister, who has the approval of the Provincial Government,

- (a) providing for the criteria for the selection of projects and the procedure to be followed in proposing and approving projects;
- (b) providing for the procedure to be followed in making a payment of amounts pursuant to subsection 231(1) and the terms and conditions of the payment of those amounts or any part thereof;
- (c) restricting the costs in respect of which payment of amounts may be made pursuant to subsection 231(1); and
- (d) providing for any other matter or thing necessary for or incidental to carrying out the purposes and provisions of this Part.

PAYMENTS

Power to make payment

231. (1) On a request made in accordance with the terms of an agreement entered into pursuant to section 230 for the payment of an amount of money for costs incurred in respect of a project that has been approved by both Ministers, the Federal Minister shall, subject to subsections (2) to (4) and the terms of the agreement, pay the amount.

Maximum amount of payments

(2) The aggregate amount of all payments made pursuant to subsection (1) shall not exceed the sum of two hundred and twenty-five million dollars.

Conditional on Provincial contributions

(3) No payment shall be made by the Federal Minister pursuant to subsection (1) in relation to a project unless the Provincial Minister has agreed to pay one-quarter of the total costs incurred by both governments in respect of the project.

Limitation

(4) The Federal Minister shall not pay an amount of money pursuant to subsection (1) unless the payment is for costs incurred in respect of a project approved and in progress prior to the day that is the later of

(a) April 1, 1993, and

(b) the day on which the cumulative volume of production in the offshore area, measured as having flowed through the first sales meter, has reached an amount equal to 2,400,000 cubic metres of oil or a volume of gas or of a combination of oil and gas that is the energy equivalent thereto, as determined by the Federal Minister in accordance with the regulations.

DEVELOPMENT FUND COMMITTEE

Development Fund Committee

232. (1) There is established by the joint operation of this Act and the Provincial Act a committee to be known as the Development Fund Committee, consisting of four members.

Appointment of members

(2) Two members of the Development Fund Committee are to be appointed by each government.

Functions of the Committee

(3) The Development Fund Committee shall monitor and review the implementation of the Development Fund pursuant to this Part.

Dissolution of the Committee

(4) The Development Fund Committee is, by the joint operation of this subsection and subsection 204(4) of the Provincial Act, dissolved three years after the date, as determined by both Ministers, on which the last payment is made pursuant to subsection 231(1).

APPROPRIATION

Appropriation

233. (1) There may be paid out of the Consolidated Revenue Fund, for the purpose of making payments pursuant to this Part, amounts not exceeding, in the aggregate, the sum of two hundred and twenty-five million dollars.

Idem

(2) Notwithstanding section 30 of the *Financial Administration Act*, any portion of the amount appropriated under this section may be expended in subsequent fiscal years.

PART VII

CORPORATE INCOME TAX

234. and 235. [Amendments]

PART VIII

TRANSITIONAL, CONSEQUENTIAL AND COMMENCEMENT

TRANSITIONAL

Initial payment to environmental studies fund during transitional period

236. Notwithstanding section 49 of the *Canada Oil and Gas Act* as it read immediately before the coming into force of this section, where an exploration agreement in relation to any portion of the offshore area was entered into or negotiations in respect thereof were completed under the *Canada Oil and Gas Act* on or after February 11, 1985 and before the coming into force of Part VII of the *Canada Petroleum Resources Act*,

(a) the interest owner shall deposit for payment into the relevant fund an amount determined in accordance with subsection 81(2) of the *Canada Petroleum Resources Act*; and

(b) where, prior to the coming into force of this section, there has been deposited for payment into the relevant fund in relation to that exploration agreement an amount determined in accordance with section 49 of the *Canada Oil and Gas Act* as it read immediately before the coming into force of this section, the Minister may refund to the interest owner an amount equal to the difference between that amount and the amount required to be deposited under paragraph (a).

CONSEQUENTIAL AMENDMENTS

237. and 238. [Amendments to other Acts]

COMING INTO FORCE

Coming into force

***239.** (1) Subject to subsection (2), this Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

Idem

(2) Sections 211, 234 and 235 are applicable to taxation years commencing after April 4, 1987. 1987, c. 3, s. 239; 1991, c. 49, s. 237.

^{*}[Note: Act, except Division VIII of Part II and sections 207 and 208, in force April 4, 1987, see SI/87-88; Division VIII of Part II, in force May 20, 1988, see SI/88-102; sections 207 and 208, in force January 23, 1996, see SI/96-20.]

AMENDMENTS NOT IN FORCE

—2007, c. 29, s. 79:

79. The Act is amended by adding the following after section 220:

Definition of "average"

220.1 For the purposes of section 220, "average", except within the expression "national average per capita fiscal capacity", means a weighted average where the most recent fiscal year that is taken into account in the calculation of the fiscal equalization payment shall be weighted at 50% and each of the other two fiscal years that are taken into account in the calculation of the fiscal equalization payment shall be weighted at 25%.

—2007, c. 35, s. 172:

2004, c. 22, s. 6

172. Section 220 of the *Canada-Newfoundland Atlantic Accord Implementation Act* is replaced by the following:

Calculation

220. The fiscal equalization offset payment that is to be paid to Her Majesty in right of the Province for a

fiscal year pursuant to section 219 is the amount, as determined by the Federal Minister, equal to the aggregate of

(a) the amount, if any, by which

(i) the fiscal equalization payment that would be received by Her Majesty in right of the Province for the fiscal year if the amount of that payment were determined in accordance with section 3.2 of the *Federal-Provincial Fiscal Arrangements Act*, without regard to section 3.4 of that Act,

is less than

(ii) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is less than or equal to 70 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 95 per cent,

(iii) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is less than or equal to 75 per cent but greater than 70 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 90 per cent, or

(iv) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is greater than 75 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 85 per cent

of the aggregate of

(v) the fiscal equalization payment that would be received by Her Majesty in right of the Province for the fiscal year immediately preceding the fiscal year if the amount of that payment were determined in accordance with section 3.2 of the *Federal-Provincial Fiscal Arrangements Act*, without regard to section 3.4 of that Act, as if

(A) in the case where the province makes the election under subsection 3.2(2) of that Act for the fiscal year, the province made the election under subsection 3.2(2) of that Act for the fiscal year immediately preceding the fiscal year, or

(B) in the case where the province does not make the election under subsection 3.2(2) of that Act for the fiscal year, the province did not make the election under subsection 3.2(2) of that Act for the fiscal year immediately preceding the fiscal year, and

(vi) the amount computed in accordance with this paragraph for the fiscal year immediately preceding the fiscal year as this paragraph read for that fiscal year, and

(b) the phase-out portion, in respect of the fiscal year, of the amount, as determined by the Federal Minister, by which

(i) the aggregate of the fiscal equalization payment that would be received by Her Majesty in right of the Province for the fiscal year immediately preceding the fiscal year if the amount of that payment were determined in accordance with section 3.2 of the *Federal-Provincial Fiscal Arrangements Act*, without regard to section 3.4 of that Act, and the amount computed in accordance with paragraph (a) for the fiscal year immediately preceding the fiscal year, as that paragraph read for that fiscal year,

is greater than

(ii) the aggregate of

(A) the fiscal equalization payment that would be received by Her Majesty in right of the Province for the fiscal year if the amount of that payment were determined in accordance with section 3.2 of the *Federal-Provincial Fiscal Arrangements Act*, without regard to section 3.4 of that Act, as if

(I) in the case where the province makes the election under subsection 3.2(2) of that Act for the fiscal year, the province made the election under subsection 3.2(2) of that Act for the fiscal year immediately preceding the fiscal year, or

(II) in the case where the province does not make the election under subsection 3.2(2) of that

Act for the fiscal year, the province did not make the election under subsection 3.2(2) of that Act for the fiscal year immediately preceding the fiscal year, and

(B) the amount computed in accordance with paragraph (a) for the fiscal year.

RELATED PROVISIONS

— 2007, c. 35, par. 174(1)(a), (b):

Effect of election by Newfoundland and Labrador — fiscal year 2007-2008

174. (1) For the fiscal year that begins on April 1, 2007, if Newfoundland and Labrador makes the election under subsection 3.7(1) of the *Federal-Provincial Fiscal Arrangements Act*,

(a) section 220 of the *Canada-Newfoundland Atlantic Accord Implementation Act* shall be read as follows:

220. The fiscal equalization offset payment that is to be paid to Her Majesty in right of the Province for a fiscal year pursuant to section 219 is the amount, as determined by the Federal Minister, equal to the aggregate of

(a) the amount, if any, by which

(i) the fiscal equalization payment that would be received by Her Majesty in right of the Province for the fiscal year if the amount of that payment were determined in accordance with section 3.2 of the *Federal-Provincial Fiscal Arrangements Act*, without regard to section 3.4 of that Act,

is less than

(ii) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is less than or equal to 70 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 95 per cent,

(iii) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is less than or equal to 75 per cent but greater than 70 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 90 per cent, or

(iv) where the average of the per capita fiscal capacity of the Province for the fiscal years taken into account in the calculation of the fiscal equalization payment for that fiscal year is greater than 75 per cent of the average, for those fiscal years, of the national average per capita fiscal capacity, 85 per cent

of the aggregate of the fiscal equalization payment that would be received by Her Majesty in right of the Province under Part I of the *Federal-Provincial Fiscal Arrangements Act* for the fiscal year immediately preceding the fiscal year and the amount computed in accordance with this paragraph for the fiscal year immediately preceding the fiscal year as this paragraph read for that fiscal year, and

(b) the phase-out portion, in respect of the fiscal year, of the amount, as determined by the Federal Minister, by which

(i) the aggregate of the fiscal equalization payment that would be received by Her Majesty in right of the Province under Part I of the *Federal-Provincial Fiscal Arrangements Act* for the fiscal year immediately preceding the fiscal year and the amount computed in accordance with paragraph (a) for the fiscal year immediately preceding the fiscal year as that paragraph read for that fiscal year

is greater than

(ii) the aggregate of the fiscal equalization payment that would be received by Her Majesty in right of the Province if the amount of that payment were determined in accordance with section 3.2 of the *Federal-Provincial Fiscal Arrangements Act*, without regard to section 3.4 of that Act, for the fiscal year and the amount computed in accordance with paragraph (a) for the fiscal year.

(b) a reference to "average" in section 220 of the *Canada-Newfoundland Atlantic Accord Implementation Act*, except within the expression "national average per capita fiscal capacity", shall be considered to mean

a weighted average where the most recent fiscal year that is taken into account in the calculation of the fiscal equalization payment shall be weighted at 50% and each of the other two fiscal years that are taken into account in the calculation of the fiscal equalization payment shall be weighted at 25%; and
— **2007, c. 35, s. 174(3):**

Effect of election by Newfoundland and Labrador — fiscal year 2008-2009

174. (3) For the fiscal year that begins on April 1, 2008, if Newfoundland and Labrador does not make the election under subsection 3.7(3) of the *Federal-Provincial Fiscal Arrangements Act* and made, in respect of the preceding fiscal year, the election under subsection 3.7(1) of that Act,

(a) the portion of paragraph 220(a) of the *Canada-Newfoundland Atlantic Accord Implementation Act* after subparagraph (iv) shall be read as follows:

of the aggregate of the fiscal equalization payment that would be received by Her Majesty in right of the Province under section 3.1 of the *Federal-Provincial Fiscal Arrangements Act* for the fiscal year immediately preceding the fiscal year and the amount computed in accordance with this paragraph for the fiscal year immediately preceding the fiscal year as this paragraph read for that fiscal year, and

(b) subparagraph 220(b)(i) of that Act shall be read as follows:

(i) the aggregate of the fiscal equalization payment that would be received by Her Majesty in right of the Province under section 3.1 of the *Federal-Provincial Fiscal Arrangements Act* for the fiscal year immediately preceding the fiscal year and the amount computed in accordance with paragraph (a) for the fiscal year immediately preceding the fiscal year as that paragraph read for that fiscal year

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