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Re: Responses to Comments on the Draft Canada-Newfoundland and Labrador Offshore Occupational Health and Safety Regulations

Thank you for taking the time to review and submitting comments on the draft *Canada-Newfoundland and Labrador Offshore Occupational Health and Safety (OHS) Regulations*. This type of feedback from industry expertise is what will help to ensure that these new OHS regulations are effective in setting requirements that address the unique characteristics and hazards in remote marine workplace settings, providing optimal protection for the health and safety of offshore workers.

Please see attached responses which include some changes that were made to the draft and clarifications that pertain to the comments you submitted.

The formal public review and opportunity to provide written feedback on the draft regulations is expected to occur in summer 2021, when they are pre-published in [Canada Gazette Part I](#).

We will also be posting all comments received on the draft and updated information on this initiative on the Natural Resources Canada website for the Atlantic Occupational Health and Safety Initiative: <https://www.nrcan.gc.ca/energy/offshore-oil-gas/18883>

Thank you again for your feedback.

Sincerely,

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Attachment: [LR Comments and Responses]

Summary of LR Comments and Responses

Comments received from Lloyd's Register Canada Limited (LR) are provided below, each with a corresponding response from Natural Resources Canada (NRCan) that includes clarifications and outcomes from discussions with the Governments of Newfoundland and Labrador and Nova Scotia, as well as technical advisors at the C-NLOPB and CNSOPB. References below to particular sections in the regulations correspond to the consultation draft of the *Canada-Newfoundland and Labrador Offshore Occupational Health and Safety (OHS) Regulations* that was provided for review on March 8, 2021.

1. Incorporating CSA Standards by Reference in the Regulation and Conformance

LR: The goal of the regulatory renewal initiative is to make the regulations goal-setting and allow Owners/Operators to define the most appropriate requirement for a particular system/equipment to meet. As the industry advances/evolves, specific regulations, codes and standards will be revised and/or become obsolete. Remove reference to specific regulations, codes or standards from these sections and replace with reference to 5.7 of the Framework Regulations, i.e. the Certification Plan.

NRCan response

The OHS and FORRI Framework regulations are established under different parts of the Accord Acts, with different regulation-making authorities and have different policy objectives. Part III.1 is very detailed and sets a number of minimum requirements, including the obligation for operators and employers to take all reasonable measures to protect the health and safety of employees and other individuals at the workplace. Parliament and the provincial legislatures provided clear and specific direction in Part III.1 on what they expected the OHS regulations to address.

Two principles objectives of the OHS Initiative is to ensure the regulations set a minimum benchmark for the health and safety of employees and other persons at offshore workplaces, and to ensure that all workplace parties have the information they require to ensure their health and safety, included what is expected of them and how they work within a workplace. To achieve this, there must be a level of precision in the regulations to ensure they are unambiguous, which will allow for consistent interpretation by all workplace parties and health and safety officers. There should be no confusion at the workplace on what measures need to be in place to ensure the individual and collective health and safety of employees and other individuals at that workplace.

Incorporating standards by reference in regulation is an effective regulatory tool, and in accordance with modern regulatory practice for designing effective regulations. There are a number of benefits of incorporating standards in regulations, the most important being that it sets a clear expectation for minimum requirements. Additionally, technical standards published by recognized standard development organizations are developed by a wide breadth of knowledgeable subject matter experts and are typically reviewed and/or updated at least every five years, to reflect the most up-to-date information on the particular subject. Dynamic/ambulatory incorporation by reference of those standards in the regulations allows the regulations to remain current and evolve through successive updates of the standard.

The draft OHS regulations are a combination of performance and outcome-based requirements, tailored specifically to the Canada-Nova Scotia and Canada-Newfoundland and Labrador offshore workplaces, referencing only the appropriate codes and standards.

NRCan and its provincial partners acknowledge that many of the offshore workplaces work internationally and that other international standards may already be in use in these workplaces when they come to Canada. In recognition of this, conformance in several provisions is expressly permitted in the proposed Regulations. Where specified, conformance permits foreign-flagged ships and MODUs to use equipment certified to other standards as long as they meet or exceed the minimum performance requirements outlined in the specified section(s) of the standard that has been incorporated by reference into the proposed Regulations. Care has been taken to ensure only the relevant sections of a standard have been incorporated by reference, and in many cases, the elements related to ‘marking’ of equipment to the particular standard have been intentionally excluded from the reference to ensure that the provision remains flexible.

Substitutions (via an RQ) are not required where conformance is permitted within the regulation and the employer has determined that the equipment being used does indeed conform to the regulatory requirement. As with any regulatory requirement, a Board health and safety officer may ask the operator or employer, as the case may be, to demonstrate that what they are doing/using meets the regulatory requirements; however, governments do not expect this will be a formalized process for each instance.

Additionally, Part III.1 of the Act does not provide authority for the regulations to sub-delegate to the Boards/CSOs the authority to prescribe requirements in guidelines. Part III.1 does empower the CSO to require, in respect of OHS, codes of practice be developed or adopted by an Operator or Employer in respect of a workplace or any work or activity carried out in a workplace. Generally in OHS regimes, codes of practice are used to fill gaps where regulations do not adequately address a given topic or issue.

2. Other LR Comments and responses

Section	LR Feedback/recommendation	NRCan response
96(2)(c)	Section states that Elevators are to be inspected once every year, however, depending on the Elevator Drive, requirements could be every 6-months. Make a statement that to be inspected once every year unless stipulated by the Manufacturer to inspect more frequently.	No change. The draft regulations require that inspection be carried out in accordance with the most stringent of: <ul style="list-style-type: none"> a) manufacturer’s instructions, b) a standard, in the case where the regulations incorporate by reference a standard that also addresses inspection, or c) other interval as specified in the regulations.
126(1)	No reference to CAPP Safe Lifting Practices. Refer to these recently revamped guidelines as they represent latest industry best practices.	The <i>Atlantic Canada Offshore Petroleum Industry Safe Lifting Practice Respecting the Design, Operation and maintenance of Materials Handling Equipment</i> is a code of

		practice. This provision is not required in the regulations as the power to require a code of practice is addressed in the Accord Act (sec. 205.016).
14(2)	Investigation Reports are to be sent to CSO, no mention of Certifying Authority. Section should detail requirements to send investigation reports to the CA as well (where applicable).	CAs have no explicit role under Part III.1. If there is a reason for CAs to be notified, the Operator and/or Board can engage them, but there is no scope under Part III.1 to involve them as a regulatory requirement.
13	Section only states reporting to the CSO and not the Certifying Authority. Wondering should this section reference the CNLOPB Incident and investigation guidelines as now it only seems accidents/incidents are only reportable to the CSO, whereas in some instances incidents are reportable to the CA as well	CAs have no explicit role under Part III.1. If there is a reason for CAs to be notified, the Operator and/or Board can engage them, but there is no scope under Part III.1 to involve them as a regulatory requirement.
30(2)(d)(ii)	Why the different language for Nova Scotia? This will make it challenging for assets that move between jurisdictions. Maintain current language and remove Nova Scotia alternative.	A revision has been proposed to drafters to allow both the Can-NL and Can-NS version to be the same. Technical advice from our regulators indicated that the opportunities for weather windows for this activity to occur differs between the Can-NL and Can-NS offshore area. If it can be done safely within the prevailing environmental conditions, it should be. If it is not feasible, the employer must, with prior approval of the Chief Safety Officer, complete additional requirements.
Multiple	Absence of content of Sections 1, 2 and 10 of Consolidated Drafting Instructions, Feb 2019. Provisions outlined in these sections need to be incorporated in the draft regulations.	Sections 1 and 2 are addressed, although modified in the draft. 10 is not needed, as there was no authority for regulations to create a system of acceptance by the CSO.