
5 Energy: Canada-Nova Scotia Offshore Petroleum Board

Summary

In 2011, this Office, in cooperation with the Commissioner of the Environment and Sustainable Development of the Office of the Auditor General of Canada, began an audit of the operations of the Canada-Nova Scotia Offshore Petroleum Board (Board). The Board is responsible for important regulatory functions in offshore oil and gas, including protecting the environment, ensuring worker safety, and ensuring the province is receiving required employment and industrial benefits from offshore development.

In September 2011, we abandoned our attempt to conduct the audit after the Board, acting on the instructions of operators ExxonMobil Canada Ltd. and EnCana Corporation, denied us access to most of the information needed to conduct the audit. The denial was based on our refusal to grant the operators control over disclosure of information in our Report to the House. The Board's refusal to cooperate with the audit places it in direct contravention of the Nova Scotia Auditor General Act.

The Board, an agency of both the provincial and federal governments, regulates offshore oil and gas activities. We believe the exercise of these responsibilities should be open and transparent.

As a result of our inability to audit this agency, we are unable to provide assurance to the House of Assembly, or to the public, as to whether the Board is properly fulfilling its regulatory responsibilities; is ensuring offshore activities are being conducted safely and with due regard for the environment; and is ensuring the public interest is being protected.

We have recommended that Government take the actions needed to ensure the Canada-Nova Scotia Offshore Petroleum Board is accountable to the House of Assembly and complies with the Auditor General Act, including if necessary amending the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act.

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Background

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- 5.1 The Canada-Nova Scotia Offshore Petroleum Board is an independent joint agency of the governments of Canada and Nova Scotia responsible for the regulation of petroleum activities in the Nova Scotia offshore area. The Board was established in 1990 pursuant to the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Acts (Accord Acts). The Accord Acts were passed as mirror legislation by the Parliament of Canada (1988) and the Nova Scotia Legislature (1987). A similar Board exists in Newfoundland and Labrador to regulate offshore petroleum activities in that jurisdiction.
- 5.2 The Board consists of five members, appointed for fixed terms of office. The federal and provincial governments each appoint two board members. The fifth member is the Chair, who is jointly appointed by both governments. A Chief Executive Officer reporting to the Board is responsible for day-to-day operations. The Board reports to the provincial Minister of Energy and also has a reporting relationship to the federal Minister of Natural Resources.
- 5.3 The Board performs many important regulatory functions of interest to Nova Scotians. These include:
- protection of the environment;
 - health and safety for offshore workers;
 - management and conservation of petroleum resources;
 - Canada-Nova Scotia employment and industrial benefits;
 - issuance of offshore licences; and
 - resource evaluation, data management and distribution.
- 5.4 Two corporations, ExxonMobil Canada Ltd. and EnCana Corporation, currently have offshore production operations under the jurisdiction of the Board.

Audit Purpose

- 5.5 The intended purpose of the audit was to assess whether the Board was fulfilling its regulatory responsibilities including ensuring the safety of offshore workers and protection of the environment. The audit was to be completed jointly with the Commissioner of the Environment and Sustainable Development of the Office of the Auditor General of Canada. It was anticipated that the federal Auditor General would focus on the protection of the environment and governance. Our Office would examine other areas such as worker safety, issuance of offshore licences, and employment and industrial benefits.
- 5.6 At the time this Chapter was written, it is our understanding that the Commissioner of the Environment and Sustainable Development intends to proceed with an audit of the Board.

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Audit Process

- 5.7 In January 2011, my Office communicated to the Canada-Nova Scotia Offshore Petroleum Board our intention to conduct a performance audit of selected aspects of Board operations. At that time we indicated that the audit would be conducted jointly with the Auditor General of Canada, pursuant to sections 18 and 24 of the Nova Scotia Auditor General Act.
- 5.8 Over the period from February to July 2011, several meetings and other communications occurred between the federal and provincial audit teams and the Board in preparation for the audit. The Board accepted our Office's authority to audit and cooperated fully in the audit planning process during these months.
- 5.9 In August 2011, we asked for specific information needed to complete the audit plan for this engagement. Our letter required the information to be provided by September 23, 2011. On September 22, we received a letter informing us that the Board would not be providing the information requested as the companies currently operating offshore (operators) withheld their consent to the release of any information originally provided by them to the Board, which they refer to as privileged information. They claim the right to do so under the federal and provincial Accord Acts.
- 5.10 In its September 22, 2011 letter, the Board informed us it would be prepared to allow us access to operator-supplied information provided we agreed not to disclose any information they consider privileged in our reports to the House of Assembly, without the consent of the operators. These conditions

are unacceptable to this Office. We cannot allow audited organizations to determine what we may or may not report to the House beyond the provisions noted in the Auditor General Act.

- 5.11 On September 29, 2011, as required by section 25 (1) of the Auditor General Act, we informed the Board that information necessary for this Office to perform our duties under the Act was being unlawfully withheld.
- 5.12 The Board is acting in contravention of the Nova Scotia Auditor General Act by refusing the Auditor General access to information in its possession because they could not control the contents of the Report of the Auditor General of Nova Scotia to the House of Assembly. The Auditor General Act, which received Royal Assent on December 10, 2010, provides us the full authority to audit and report on any agency of government. This authority is not diminished by the Accord Acts.
- 5.13 Regardless of the level of autonomy the Board has to conduct its operations, as an agency of government, the Board should be accountable to the House of Assembly. Currently, oversight of the Board's operations by governments is negligible. Given the Board's environmental and public safety responsibilities, we question whether this is in the public interest.

Recommendation 5.1

The Department of Energy should evaluate the legislative framework under which the Canada-Nova Scotia Offshore Petroleum Board operates and take the actions necessary to ensure the Board complies with the Nova Scotia Auditor General Act, including full cooperation with the Office of the Auditor General in any audit of the Board's operations. This includes providing the Office with unrestricted access to all information in its possession and acknowledging the Auditor General's right to report to the House of Assembly without interference by the Board or its operators.

Response: Department of Energy

Thank you for forwarding a copy of your draft report and providing an opportunity to respond to Recommendation 5.1 – namely, that the Department of Energy should evaluate the legislative framework under which the Canada-Nova Scotia Offshore Petroleum Board (the “CNSOPB”) should provide information for audit purposes to the Auditor General.

We understand that your offices decided to carry out audits of the management and other practices of the CNSOPB. We agree that it is important that the CNSOPB’s operations should be audited by the Federal or Provincial Auditors General in addition to the oversight provided by the Nova Scotia Department of Energy and Natural Resources Canada.

Our understanding is that as part of your audit, you asked to examine information provided to the CNSOPB by the operators, ExxonMobil Canada and EnCana Corporation. Further, you have reached an impasse in your discussions with the CNSOPB with respect to the resolution of the interpretation of the legislation under which each of you respectively operate. We understand that neither party has decided to pursue a court ruling in accordance with the provisions of the *Auditor General Act*.

As we understand it, part of the uncertainty revolves around whether your offices are authorized to exercise discretion in maintaining the confidentiality of certain operator information once in your hands; in particular whether your offices can omit, in whole or in part, or in any form, the third party information from your ultimate audit report.

We have decided to review the pertinent legislation and make appropriate recommendations in order to provide clarity on the issue.

RESPONSE:
DEPARTMENT OF
ENERGY