

**GUIDELINES RESPECTING FINANCIAL RESPONSIBILITY REQUIREMENTS
FOR WORK OR ACTIVITY IN
THE NEWFOUNDLAND AND NOVA SCOTIA OFFSHORE AREAS**

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1. INTRODUCTION

Under the federal and provincial statutes (“the Acts”)¹ arising from the *Atlantic Accord*, and the *Canada-Nova Scotia Offshore Petroleum Resources Accord* signed between the respective provincial governments and the Government of Canada, any person wishing to conduct any work or activity in the Newfoundland or Nova Scotia offshore area, must first provide proof of financial responsibility in a form and an amount satisfactory to the Canada-Newfoundland Offshore Petroleum Board or the Canada-Nova Scotia Offshore Petroleum Board respectively (“the Board”).

Pursuant to the Acts, the Board may publish guidelines respecting the administration and application of certain provisions of the Acts, and the provisions of the regulations. Consistent with this, the purpose of these guidelines is to provide guidance to operators in providing proof of financial responsibility regarding any authorization being sought for any work or activity relating to drilling, development, decommissioning or other operations in the offshore areas. The guidance provided reflects how the Boards will apply and administer some of the provisions relating to financial responsibility and are not intended to have the status of a regulation or statutory provision. Should questions arise, the operator is encouraged to contact the appropriate Board for assistance.

For ease of reference, any legislative provision referred to in these guidelines has been taken from the federal version of the respective act or regulation, and has been reproduced and attached hereto as part of Attachment # 1. The provisions found in the provincial versions of the respective act or regulation, although numbered differently, are virtually identical.

2. THE APPROVAL PROCESS

2.1 Approval of Work Authorizations

In putting context to the process involving the approval of evidence of financial responsibility, it would be useful to comment first on the issuance of work authorizations in general. The following is a summary of relevant points respecting that process:

- (a) Any work or activity to be conducted in the offshore areas, must be first authorized by the Board;²
- (b) In seeking an authorization for a particular work or activity, a person must submit an application on a timely basis, in a manner and using a form as prescribed by the Board. Standardized forms are available and will be provided as needed by each Board;
- (c) There are a number of attendant elements besides financial responsibility requirements (e.g. safety, environment, resource conservation, industrial benefits, fitness certification and declarations, operating licences, cost recovery requirements etc.) which must be considered

with each application. Therefore, completed applications should be submitted sufficiently in

¹ the federal versions of the respective Accord statutes are cited as *Canada-Newfoundland Atlantic Accord Implementation Act* R.S. 1985, c. 3 (3rd Supp) (“C-NAAIA”) and *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, S.C. 1988, c. 28 (“C-NSOPRAIA”)

² C-NAAIA: s. 137; C-NSOPRAIA: s. 140.

advance of the anticipated commencement date in order to allow for sufficient review and processing;

- (d) Any authorization issued is subject to such approvals, requirements and deposits as the Board or the regulations may determine.³ Consequently, each authorization is likely to be subject to a number of conditions involving the attendant elements referred to above.

2.2 Approval of Evidence of Financial Responsibility

In dealing with the process of approving the evidence of financial responsibility, the following represents the sequence which would typically occur, once the person has applied for, or indicated a firm intention to obtain, an authorization. For reference purposes, the person applying for authorization for a work or activity will be referred to herein as the “operator”.

- (a) The following preliminary procedures should be undertaken by the operator before an application for authorization is formally submitted. The most effective way of achieving this would be to meet, if possible, with the appropriate Board representatives:
- (i) Notify the Board of the specific representative(s) who, on the operator’s behalf, will deal directly with matters respecting financial responsibility;
 - (ii) Where the operator is seeking approval for a program involving multiple authorizations, provide the Board with a proposed schedule of the specific work or activities for which authorizations are being sought;
 - (iii) Inform the Board of the operator’s preference respecting the form, substance and arrangements for the required proof of financial responsibility, having regard to the information and requirements provided herein. This presents an opportunity for the Board and the operator to discuss any potential deficiencies or irregularities and to address particular requirements before the documentation providing such proof of financial responsibility, is finalized;
- (b) Once preliminary matters have been dealt with, the operator must submit to the Board, **IN A TIMELY MANNER SUFFICIENTLY IN ADVANCE OF THE ANTICIPATED COMMENCEMENT OF THE WORK OR ACTIVITY**, the documentation which evidences the required proof of financial responsibility. This is done using the Proof of Financial Responsibility for Work Authorization form, attached hereto as Attachment # 2. The time by which such documentation should be submitted will vary, depending upon the authorization sought and the circumstances. Specific requirements are set out in para. 5.4 to para. 5.7 respecting timing for each case. **No Authorization will be issued until evidence of financial responsibility has been submitted which is satisfactory to the Board.**
- (c) Following submission of the required documentation, the Board will review and may approve same, subject to its satisfaction and the inclusion of conditions of approval.

3. OBJECTIVES OF FINANCIAL RESPONSIBILITY REQUIREMENTS

³ C-NAAIA: ss. 138(4); C-NSOPRAIA: ss. 142(4).

The basic objectives which the proof of financial responsibility documentation submitted by an operator are to achieve, include:

- (a) providing financial compensation to any party respecting claims attributable to the work or activity. These would include without limitation, claims by third parties, the Crown or its agents, the Board including the Chief Conservation Officer and Board delegates. Eligible claims would include those relating to loss of or damage to property, financial loss, or injury/death;
- (b) restoring and preserving of the natural environment, including the sea bed, while the work or activity is going on and after it is completed and abandoned; and
- (c) ensuring that the operator will properly terminate the authorized work or activity, having regard to environmental, safety, and other concerns.

4. OVERVIEW OF RELEVANT LEGISLATIVE PROVISIONS

The following are comments respecting the relevant legislative references which establish the framework from which the financial responsibility requirements emerge (refer to Attachment # 1). These comments are interpretive and are not intended to replace or provide a complete interpretation of each provision but to provide guidance in the context of financial responsibility requirements.

4.1 The Acts

- (a) The operator must provide proof of financial responsibility in a form and in an amount satisfactory to the Board, before an authorization is issued (**C-NAAIA**: s. 138.3, ss. 163(1); **C-NSOPRAIA**: s. 142.3, ss. 168(1));
- (b) Among other requirements such as indemnity, financial responsibility requirements will be included as part of the conditions of an authorization issued by the Board (**C-NAAIA**: ss. 138(4); **C-NSOPRAIA**: ss. 142(4));
- (c) Any proof of financial responsibility approved by the Board for the purpose of an authorization, must remain in force for the duration of the work or activity. This means that no revisions to the documentation submitted as evidence of financial responsibility should be effected without first notifying the Board and, where advised by the Board, obtaining the Board's approval. (**C-NAAIA**: ss. 163(1.1); **C-NSOPRAIA**: ss. 168(1.1));
- (d) For any drilling or producing activity, there is an absolute liability placed on each operator up to \$30 million (refer to para. 5.4 (a)), with respect to any occurrence involving a *spill* or *debris* (as defined under the Acts). The liability is absolute because it does not require a claimant to prove fault or negligence by the operator, but simply to establish that the *spill* or *debris* is attributable to that particular work or activity. Such liability would relate to claims respecting *actual loss or damage* (as defined under the Acts) or reasonable costs and expenses incurred by the Board or Her Majesty (**C-NAAIA**: s. 160, para. 162(1)(a)(i), para. 162(2)(a); **C-NSOPRAIA**: s. 165, para. 167(1)(a)(i), para. 167(2)(a));
- (e) There exists unlimited joint and several liability for all persons to whose fault or negligence the *spill* or *debris* is attributable, or who are by law responsible for others who are at fault or

negligent. Again the liability would relate to claims respecting *actual loss or damage* or the reasonable costs or expenses referred to above (**C-NAAIA**: para. 162(1)(b), para. 162(2)(b); **C-NSOPRAIA**: para. 167(1)(b), para. 167(2)(b));

- (f) In the event a *spill* or *debris* occurs, the Board may require direct access to or payments from funds provided by the documents submitted as evidence of financial responsibility . Consequently, to the extent that direct access is required in relation to the operator's absolute liability limits (i.e. up to \$30 million) all or a portion of the evidence of financial responsibility offered by the operator from which such access or payments may be required, must be such that the Board has an unfettered right of direct access or payment. It should be noted that the access to or payments from funds submitted, is not limited to the absolute liability limits referred to in para. 4.1 (d) above. For this reason, the Boards have established an additional limit of up to \$70 million (i.e. other than absolute liability requirements) for which the operator must provide further evidence which ensures that funds have been committed which may be accessed, should a *spill* or *debris* occur. Unlike the limit of up to \$30 million, this additional limit of up to \$70 million does not require direct unfettered access by the Board. Evidence of financial responsibility above these limits of up to \$100 million in total, will not be required to provide direct access to funds, and are primarily for the purpose of demonstrating financial capability. (**C-NAAIA**: ss. 163(2); **C-NSOPRAIA**: ss. 168(2));
- (g) In addition to being liable for reasonable costs and expenses incurred by the Board or Her Majesty in taking remedial clean-up action respecting a *spill* or *debris*, the operator would also be liable for costs and expenses arising from the Chief Conservation Officer taking over the management or control of operations, where a *spill* occurs (**C-NAAIA**: ss. 161(4), ss. 161(7), ss. 161(7.1); **C-NSOPRAIA**: ss. 166(4), ss. 166(7), ss. 166(7.1)).

4.2 The Regulations

As promulgated under the Acts, there are relevant provisions found in the respective Drilling Regulations and Production and Conservation Regulations for each offshore area.⁴ For the sake of simplicity, these regulations for the Nova Scotia offshore area, will be referenced as **NSDR** (Drilling Regulations) and **NSPCR** (Production and Conservation Regulations), and correspondingly for the Newfoundland offshore area, as **NFDR** and **NFPCR** respectively.

(a) Drilling Regulations

Before drilling or re-entering a well, an operator must provide the Board with evidence of financial responsibility which will ensure that the well is terminated, and that the drill site is left in a satisfactory condition as required by the regulations. This means that the evidence provided must be of a form, substance and in an amount which demonstrates not only the operator's *ability* to terminate the work or activity, but also effectively *guarantees* its termination. This evidence would provide the necessary assurance that proper termination will occur having regard to environmental, safety and any other relevant concerns. (**NFDR**: para. 72(a), s. 180; **NSDR**: para. 72(a), s. 180);

⁴ Newfoundland Offshore Petroleum Drilling Regulations, SOR/93-23
 Newfoundland Offshore Area Petroleum Production and Conservation Regulations, SOR/95-103
 Nova Scotia Offshore Petroleum Drilling Regulations, SOR/92-676
 Nova Scotia Offshore Area Petroleum Production and Conservation Regulations, SOR/95-190

In addition, the operator must provide the Board with evidence that demonstrates to the Board's satisfaction that the operator has the ability to meet any financial liability that could be incurred as a result of the well activity (**NFDR**: para. 72(b); **NSDR**: para. 72(b));

In summary then, before a well can be drilled or re-entered, the operator must provide evidence of financial responsibility which will:

- (i) *ensure* that the well is terminated and that the well site will be left in a satisfactory condition; and
- (ii) demonstrate that the operator is *able* to meet any financial liability which could arise from that well activity.

(b) Production and Conservation Regulations

These regulations include references to evidence of financial responsibility requirements for development or production activities in a pool or field. The basic objectives are the same as those corresponding provisions found under the Drilling Regulations. That is, before a development or production activity can be started, the operator must provide evidence of financial responsibility which will:

- (i) *ensure* that the development or production activity will be properly terminated, and that the site will be left in a satisfactory condition (**NFPCR**: para. 10(a); **NSPCR**: para. 10(a)); and
- (ii) demonstrate that the operator is *able* to meet any financial liability which could arise from that development or production operation (**NFPCR**: para. 10(b); **NSPCR**: para. 10(b)).

In addition, it should be noted that any work or activity which relates to the abandonment of wells or decommissioning of a production installation i.e. the termination of the project, also requires Board authorization. (**NFPCR** s. 50; **NSPCR** s. 50)

The manner in which these legislative requirements are applied in the context of the actual required evidence, is dealt with in para. 5.

5. REQUIRED EVIDENCE OF FINANCIAL RESPONSIBILITY

5.1 General Comments

Before dealing specifically with the evidence required for each category of work or activity, the following matters, which are of general applicability, should be borne in mind in assessing the requirements dealt with below:

- (a) The type of evidence which may be used by an operator for financial responsibility purposes is intended to be flexible and non-prescriptive. In general, the Board has no particular preference as to the type of evidence used, as long as the objectives and

requirements are satisfied. To the extent that insurance or an audited financial statement is used as evidence, particular attention should be given to the requirements discussed in para. 5.2 and para. 5.3 respectively;

- (b) The amount of evidence provided (i.e. monetary limits) will generally be consistent for each work or activity which falls within the same category. However, particular sensitivities (e.g. environmental concerns) or changing circumstances could, on occasion, result in differences within the same category of work or activity, regarding such monetary limits. Each work or activity is considered to be unique;
- (c) Although evidence is required on a 'per work or activity' basis, the Board is prepared to consider any cooperative alliance or arrangement in which operators, on behalf of their interest owners, may wish to enter for the purpose of satisfying financial responsibility requirements on an occurrence basis. For example, assuming the objectives and basic requirements for each program were achieved, the provision of evidence of financial responsibility respecting two or more drilling programs by different operators, could be done on a cooperative basis. Similarly, in the event the same operator was conducting two different programs concurrently (e.g. one in the Nova Scotia offshore area and the other in the Newfoundland offshore area), it is possible to allow the same evidence of financial responsibility to apply to both programs;
- (d) In some cases, all or a part of the evidence of financial responsibility may be submitted by the operator on a proportionate share basis in relation to each of the participants, providing such evidence is in a consistent form and is otherwise satisfactory to the Board. The circumstances under which this could be done may vary, therefore the operator should consult with the Board well in advance to determine its feasibility;
- (e) If an interest holder wishes to transfer a share in an interest, in relation to which a work or activity is being conducted, and such transfer of a share could consequently require a revision to the evidence of financial responsibility submitted in relation to that work or activity, the operator, on behalf of the interest holder transferring such share, must submit such proposed revision for Board approval, at least 30 days prior to the date upon which the revision is to take effect;
- (f) In all cases where evidence of financial responsibility is submitted in a particular form, the text of the form must be satisfactory to the Board. Operators are encouraged to provide draft rather than executed documents in advance of the time requirements set out in para. 5.4 to para. 5.7.

5.2 Insurance

To the extent that an operator chooses or is required to provide insurance as evidence of financial responsibility, the following parameters will apply, subject to any variations specified under para. 5.7:

- (a) Depending upon the nature of the work or activity, the Board may require that the operator insure one or more of the following risks:
 - (i) removal of debris
 - (ii) liabilities to third parties

- (iii) well control/making wells safe
 - (iv) pollution clean-up
- (b) Insurance will generally be accepted by the Board as evidence of financial responsibility, subject to the insurance meeting the following criteria:
- (i) The policies evidencing the insurance must be insured with carriers acceptable to the Boards. In assessing the acceptability of carriers, the Boards will use the same criteria as the international insurance and re-insurance markets;
 - (ii) To the extent the Board requires access to funds, for up to \$70 million as contemplated in para. 4.1(f) above, each policy must name the Board as an insured party. In so doing, any such policy must facilitate the Board's access to or payments from the proceeds of insurance, where required. Note that to the extent insurance is also used for the purposes of demonstrating the operator's ability to meet any financial liability for the purposes of para. 5.4(b) or para. 5.9(b), the Board need not be a named assured for such coverage beyond \$70 million;
 - (iii) Each policy must waive subrogation rights in favour of the Board;
 - (iv) The monetary limits of the insurance must be adequate, in the opinion of the Board, to meet the costs and expenses for which the operator may be liable under the legislation referred to above. In determining these limits, the operator may be required to carry out at its own expense such studies as the Board may require to substantiate the adequacy of the insurances proposed;
 - (v) The amount of any self-assumed risk, including deductibles and retention, is satisfactory to the Board;
 - (vi) Each policy must provide for Canadian jurisdiction;
 - (vii) The scope of the insurance and its conditions must be in a form satisfactory to the Board. Generally speaking, the Boards will accept original insurance certificates as an adequate form. However the Boards wish to emphasize the need for operators to keep the appropriate Board apprised of proposed coverage with respect to major development or production work or activities, particularly where the Board may consider such coverage as being important or sensitive. In any event, evidence should in all circumstances be provided far enough in advance for any required changes to the evidence to be achieved;
 - (viii) Such insurance to include all contractor activity, unless evidence of insurance has been separately provided by the contractor. Subject to the operator undertaking to obligate the contractor to insure such risks as are appropriate for the work or activity, the Board may waive the requirement for separate evidence of insurance to be submitted from contractors;
 - (ix) A policy shall not include provisions which:
 - exclude the assumption of operatorship by the Board or its appointees;

- restrict blowout to being “above the surface of ground or seabed”;
 - exclude terrorist or politically motivated acts or sabotage;
 - exclude removal of wreck/debris ;
 - restrict territorial limits to less than the statutory offshore areas referred to under the legislation; or
 - terminate insurance prior to the termination of the work or activity, or in any way restrict coverage during periods that the work or activity is suspended other than at the natural expiry of the insurance;
- (x) The Board will not require the operator to carry insurance relating to time element coverage such as business interruption, delay in start-up or other similar time element coverage, nor will insurance be required for those risks that are not customarily available for operations of the type to which the work or activity relates;
- (xi) All insurances, including contractors’, are subject to audit by the Board;
- (xii) Letters of Undertaking from the insurer or from the broker placing the insurance will be required in a form which is satisfactory to the Board, for each layer of insurance coverage. Such letters to confirm that in the event the insurance is canceled, not renewed for any reason, or that the limits, deductibles or other material conditions are changed, the Board will be given immediate notice.

Even though the operator may choose insurance or be required to provide as evidence of financial responsibility, the Board nevertheless retains the right to require other evidence of financial responsibility to supplement such coverage for such risks that, in the Board’s opinion, are either uninsured or under-insured, or where insurance would not otherwise be appropriate.

5.3 Audited Financial Statements

The operator may, as evidence to demonstrate its capability to meet any financial liability respecting a work or activity, submit audited financial statements as referred to under these guidelines. In assisting the Board in assessing the operator’s capability, on the basis of financial statements, and consequently in making the approval process more efficient and effective, the operator should provide this information having regard to the requirements set out below.

In the event an operator submits an audited financial statement as evidence of financial responsibility, the following requirements would apply respecting its acceptability to the Board:

- (a) The financial statement is independently audited and is the most recent available;
- (b) An audited financial statement shall include a balance sheet, income statement, statement of cash flows and be in a format consistent with generally accepted accounting principles. An audited financial statement may be provided as part of an annual report;
- (c) In addition to the audited financial statement, and to the extent the operator is using the audited financial statement to demonstrate its financial capability, the operator must include a summary and overview of the manner in which it intends to satisfy any financial liability which could arise from the work or activity. This should be brief with sufficient

detail to identify the means or options which the operator will exercise in obtaining sufficient funds to satisfy these liabilities;

- (d) During the period the work or activity is being conducted, the operator shall ensure that updates to the audited financial statement are submitted annually to the Board in a timely manner, unless the Board requires such statements more frequently, and that the Board is immediately notified of the extent and details of any substantial change in the operator's corporate or financial structure.

5.4 Requirements for a Drilling Work or Activity

All documentation submitted as evidence of financial responsibility for the purpose of para. 5.4 must be submitted to the Board **AT LEAST 30 DAYS PRIOR TO THE ANTICIPATED SPUD DATE.**

For a drilling work or activity, there are two categories of evidence of financial responsibility which the operator must provide.

- (a) The first category of evidence submitted would have the following characteristics:
- (i) The purpose of the evidence would be to provide assurance to the Board that monies would be available to and accessible by the Board for the purpose of settling claims relating to:
- *spills and debris*;
 - any cost and expenses incurred by or on behalf of the Board or Her Majesty, in properly terminating the well and leaving the wellsite in a condition satisfactory to the Board;
- (ii) The aggregate amount required for the purposes of subpara. 5.4(a)(i) would be up to \$100 million as follows:
- up to \$30 million must be provided in a form which would provide unfettered access by the Board. Such forms may include:
 - a letter of credit substantially in the form as provided in Attachment # 3
 - a guarantee by a financial institution
 - an indemnity bond
 - any combination of the above
 - any other arrangement acceptable to the Board. (It is the view of the Boards that insurance is not an acceptable form for these purposes.)
 - The remaining amount (up to \$70 million) may be provided in a form which demonstrates an enforceable commitment or mechanism which ensures that funds will be available to the Board. Such forms may include:

- a promissory note, supported by an audited financial statement (refer to para. 5.3 above), from the operator or corporate affiliate or parent company;
 - an insurance policy (refer to para. 5.2 above);
 - any of the forms referred to in subpara. 5.4(a)(ii) above;
- (b) The second category of evidence submitted would have the following characteristics:
- (i) The purpose of the evidence is not to demonstrate accessibility by the Board as referred to in para. 5.4(a) above, but to demonstrate that the operator is able to meet *any financial liability* that may occur in conducting the drilling program, including provision for:
- an uncontrolled flow of fluids including an underground blowout and deliberate well firing;
 - making wells safe;
 - removal of wreck and/or debris;
 - seepage and pollution cleanup;
 - third party liability;
- (ii) The limits provided as evidence of financial responsibility are subject to the following amounts:
- in respect of removal of debris: up to 25% of the reinstatement cost of the property;
 - in respect of liabilities to third parties: up to C\$200 million;
 - in respect of well control, making wells safe, pollution clean-up: up to C\$250 million;
- The above limits are separate from the amount of the required limit specified in para. 5.4 (a) and where insurance is used, are subject to deductibles as approved by the Board.
- (iii) The evidence required for the above minimum amounts may be provided in the form of:
- insurance (refer to para. 5.2);
 - an audited financial statement (refer to para. 5.3);
 - corporate guarantee from a third party, including an affiliate;
 - letter of credit or indemnity bond;
 - any other acceptable form; or
 - a combination of the above;

5.5 Requirements for a Development or Production Work or Activity

Typically, a development or production work or activity could include a number of work authorizations such as a drilling program authorization, production operations authorization, well operation authorization, and installation program authorization. There could also be included a

number of incidental authorizations such as a diving program or geophysical program authorization which, although not considered as inherently or exclusively relating to development or production, are nonetheless included as part of the scope of anticipated work or activities for development or production purposes. These non-exclusive types of work or activity could be dealt with separately in accordance with the requirements under para. 5.7. In addition, the Board will require evidence of financial responsibility to be approved respecting the authorization of any work or activity relating to the abandonment of wells or the decommissioning of a production installation which is dealt with separately under para. 5.6. To the extent that a development or production work or activity involves drilling, the requirements respecting the evidence of financial responsibility will be the same as those requirements referred to under para. 5.4;

In preparing the evidence of financial responsibility, the operator may therefore wish to consider a single package of documentation which is intended to apply to all authorizations which are contemplated for the entire development. This may however, be done for each phase of the development. For example, the initial evidence provided may include any preliminary seabed survey work as well as any construction and installation work which would need to occur prior to production. This could be followed in sequence by the submission of evidence respecting the drilling/production and decommissioning phases. On the other hand, the operator may wish to proceed on a 'per work or activity' basis, dealing with the requirements for financial responsibility one application at a time.

The content and sequence of submissions therefore, are largely dependent upon the nature and timing of the development, production or decommissioning activities. Consequently, close consultation with the Board, as dealt with in para. 2.2, is very important.

In preparing evidence of financial responsibility for project development purposes, the operator should advise the Board of its proposals **AT LEAST 9 MONTHS PRIOR TO THE ANTICIPATED COMMENCEMENT OF THE FIRST WORK OR ACTIVITY**. In any case, following the Board's approval of the operator's proposals, the actual evidence of financial responsibility for each work or activity must be submitted to the Board **AT LEAST 30 DAYS PRIOR TO THE ANTICIPATED COMMENCEMENT OF SUCH A WORK OR ACTIVITY**.

For a work or activity that would be considered as inherently or exclusively relating to development or production, there are two categories of evidence of financial responsibility, almost identical to those referred to in para. 5.4 above respecting drilling, which the operator must provide:

- (a) The first category of evidence submitted would have the following characteristics:
 - (i) The purpose of the evidence would be to provide assurance to the Board that monies would be available to and accessible by the Board for the purpose of settling claims relating to:
 - *spills and debris* (where such activity involved drilling or producing operations);

- any cost or expenses incurred by or on behalf of the Board or Her Majesty, in properly terminating the work or activity and leaving the site in a condition satisfactory to the Board;
- (ii) The aggregate amount and form of evidence required for the purposes of subpara. 5.5(a)(i) would be up to \$100 million as follows:
- in the event the work or activity involves drilling or producing operations, the requirements shall be the same as those set out in subpara. 5.4(a)(ii) above; or
 - in the event no drilling or producing operation is involved, the form of the evidence will depend upon the nature of the circumstances and the details respecting the work or activity. In that event, the form(s) shall be as approved by the Board on a case by case basis.
- (b) The second category of evidence submitted would have the following characteristics:
- (i) The purpose of the evidence is not to demonstrate accessibility by the Board as referred to in para. 5.5(a) above, but to demonstrate that the operator is able to meet *any financial liability* that may occur in conducting the work or activity;
- (ii) The types and limits of financial liabilities for which the operator needs to provide evidence would include:
- in respect of removal of debris: up to 25% of the reinstatement cost of the property;
 - in respect of liabilities to third parties: up to C\$200 million;
 - in respect of pollution clean-up: up to C\$250 million;
- The above limits are separate from the amount required as referred to in para. 5.5(a) and where insurance is used, are subject to any deductibles as approved by the Board.
- (iii) The evidence required for the above amounts may be provided in the form of:
- insurance (refer to para. 5.2);
 - an audited financial statement (refer to para. 5.3);
 - corporate guarantee from a third party, including an affiliate;
 - letter of credit or indemnity bond;
 - any other form acceptable to the Board; or
 - a combination of the above;

5.6 Requirements for Decommissioning a Production Installation

To the extent that a work or activity relates to the abandonment of wells and the decommissioning of a production installation, or any portion thereof, the operator, on behalf of the interest owner, will be required to provide evidence of financial responsibility having regard to the following:

- (a) The Board, subject to statutory law, will require as part of either a development plan approval, or work or activity authorizations, that a decommissioning program regarding the abandonment of wells and decommissioning of a production installation be submitted for Board approval. Pursuant to the legislation, such a decommissioning program must be prepared on the basis that all production installations shall be designed and installed in such a manner to facilitate their entire removal, whether such removal is required or not ;
- (b) The operator, on behalf of the participating interest holders and parties, must submit a decommissioning program for Board approval, including its proposed evidence of financial responsibility for such decommissioning, **AT LEAST 6 MONTHS PRIOR TO THE COMMENCEMENT OF PRODUCTION**. Subject to the Board's approval, any such decommissioning program may be revised as circumstances may require from time to time;
- (c) Since each project and production installation is unique, requirements respecting evidence of financial responsibility will be dealt with on a case by case basis. Therefore in the preparation and submission of the required evidence, the operator should establish and maintain close consultations with the Board regarding the particular requirements;
- (d) In providing evidence of financial responsibility, the operator, on behalf of the participating interest holders and parties, must include the following:
- the projected cost associated with the abandonment of the wells and the decommissioning of the production installation;
 - the manner and form in which the operator will ensure, on behalf of the interest owner, that the abandonment/decommissioning costs will be paid;
 - the manner, form and associated costs in which the decommissioned production installation will be maintained (in the event that entire removal is not required);
 - the manner and form in which any residual liability will be dealt with by the operator and interest owner, in the event any subsequent claims arise after such abandonment/decommissioning occurs, with respect to damages attributable to the operator's work or activity;
 - such other information as the Board may consider necessary;
- (e) For greater certainty, the operator must have received the Board's approval respecting the decommissioning program, including those aspects dealt with in (d) above, at a time well in advance of any decommissioning authorization, as may be determined to the satisfaction of the Board.

5.7 Requirements for any Other Work or Activity

- (a) The other work or activity contemplated under this portion of the guidelines, would include any work or activity which is neither a drilling activity, nor does it inherently or exclusively relate to a development, production or decommissioning work or activity. Typically such other work or activity could include geological/geophysical/geotechnical programs, environmental programs, and diving programs. To the extent that evidence of financial responsibility respecting such other work or activity is already adequately addressed as an integral part of an authorized program referred to elsewhere in these guidelines, the following requirements need not be duplicated.

In summarizing the requirements for these other works or activities, the Board will require the operator on behalf of the participating interest holders and parties, to furnish evidence of financial responsibility which is required to demonstrate the operator's ability to satisfy the following financial liabilities:

- (a) claims by any person relating to loss or damage to property, financial loss, or injury/death;
- (b) claims by any person relating to the restoration and preservation of the natural environment, including the seabed .

The form in which such evidence may be submitted could include:

- insurance (refer to para. below);
- an audited financial statement (refer to para. 5.3);
- corporate guarantee from a third party, including an affiliate;
- letter of credit or indemnity bond;
- any other acceptable form; or
- any combination of the above.

In the event insurance is chosen or required as evidence of financial responsibility for the purposes of para. 5.7, the operator must comply with the requirements of para. 5.2 subject to the Board's agreement to exempt those requirements set out in:

- subpara. 5.2(a)(iii)
- subpara. 5.2(b)(ii) [Note: notwithstanding any exemption by the Board of subpara. 5.2(b)(ii), the Board must be an Additional Assured under such policy.]
- subpara. 5.2(b)(vi)
- subpara. 5.2(b)(ix) – first 2 items (assumption of operatorship and reference to blowout)
- subpara. 5.2(b)(xii)

In addressing the monetary limits of the insurance (as referred to under para. 5.2(b)(iv)), the operator must provide evidence for the following risks in the amounts indicated below:

- Comprehensive General Liability - at least \$5 million (U.S.) combined single limit per occurrence. [Note: This coverage would not be required to the extent Protection & Indemnity coverage as referred to below would include same.]

In the event vessels are involved in the work or activity, the operator must provide evidence which verifies the following insurance coverage:

- Hull & Machinery - in an amount not less than the value of the vessel;
- Protection & Indemnity - in an amount which is the greater of \$5 million (U.S.)

- and the value of the vessel;
- includes Removal of Wreckage and Debris;
- includes an extension to insurance in respect of Specialist Operations or ROV Operations, as appropriate, for a separate limit of not less than \$5 million (U.S.);

Where a diving program authorization is being sought, any diving contractor who is not the operator must submit evidence pursuant to para. 4(3)(f) of the *Newfoundland Offshore Area Petroleum Diving Regulations*, that the diving contractor is able to meet any liability for loss, damage, costs or expenses incurred by the diving contractor. For the purposes of satisfying this requirement, the operator may provide evidence which demonstrates to the Board's satisfaction, the operator's agreement and ability to assume such liability on behalf of the diving contractor.

RELEVANT LEGISLATIVE PROVISIONS

[Note: The text of the provisions provided in this Attachment is taken from the federal version of the C-NAAIA or its corresponding identified regulations. The corresponding provisions found in the C-NSOPRAIA or its corresponding regulations are the same in substance, and have therefore not been repeated. The references to these corresponding provisions under the C-NSOPRAIA are stated at the conclusion of the text of each provision as provided below.]

A. THE ACTS

Requirements for Authorizations

138. (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;
 - (c) requirements for the carrying out of environmental programs or studies; and
 - (d) 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. **(C-NSOPRAIA ss. 142(4))**

Financial Responsibility

Compliance with sub-section 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. **(C-NSOPRAIA ss. 142.3)**

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 pursuant to the regulations or any other federal law or that constitutes a discharge from a ship to which Part XV or XVI of the *Canada Shipping Act* applies. **(C-NSOPRAIA ss. 165(1))**

Definition of "debris"

160. (2) In sections 162 to 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. **(C-NSOPRAIA ss. 165(2))**

Definition of "actual loss or damage"

160. (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. **(C-NSOPRAIA ss. 165(3))**

Immunity

160. (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. **(C-NSOPRAIA ss. 165(4))**

Duty to take reasonable measures

161. (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

161. (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. **(C-NSOPRAIA ss. 166(4))**

Costs

161. (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. **(C-NSOPRAIA ss. 166(7))**

Recovery of costs

161. (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. **(C-NSOPRAIA ss. 166(7.1))**

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. **(C-NSOPRAIA ss._167(1))**

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

162. (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. **(C-NSOPRAIA ss._167(2))**

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. **(C-NSOPRAIA ss. 168(1))**

Continuing obligation

163. (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. **(C-NSOPRAIA ss. 168(1.1))**

Payment of claims

163. (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. **(C-NSOPRAIA ss. 168(2))**

B. THE PETROLEUM DRILLING REGULATIONSEvidence of Financial Responsibility

72. Every operator shall, prior to drilling or re-entering a well,
- (a) furnish the Board with evidence of financial responsibility in a form and in an amount satisfactory to the Board or any person designated by the Board, for the purpose of ensuring that the operator terminates the well and leaves the drill site in a satisfactory condition in accordance with section 180; and
 - (b) furnish the Board with evidence, in a form satisfactory to the Board or any person designated by the Board, that the operator is financially able to meet any financial liability that may be incurred as a result of the drilling of a well or of any operation in the well. (NSDR s. 72)
180. Every operator shall ensure that on the termination of any well the seafloor is cleared of any material or equipment that could interfere with other commercial uses of the sea, unless the Board or any person designated by the Board, having been satisfied that no interference with the commercial use of the sea is reasonably likely to result, otherwise approves. (NSDR s. 180)

C. THE PETROLEUM PRODUCTION AND CONSERVATION REGULATIONS

Evidence of Financial Responsibility

10. For the purposes of subsection 138(4) of the Act and in respect of an authorization issued pursuant to paragraph 138(1)(b) of the Act to carry on a work or activity in relation to the development of a pool or field or the production of petroleum, the operator shall, before the work or activity is started, submit to the Board
- (a) evidence of financial responsibility, of a type and in an amount that is sufficient to ensure that the operator
 - (i) completes the work or activity, and
 - (ii) leaves the site where the work or activity was carried on in the state required by Part VII or by the Board pursuant to subsection 138(4) of the Act; and
 - (b) evidence that the operator is able to meet any financial liability that might be incurred in connection with the work or activity. (NSPCR s. 10)

50. Decommissioning

No person shall decommission a production installation at a pool or field other than in accordance with the approved development plan or a requirement of an authorization issued pursuant to para. 138(1)(b) of the Act. (NSPCR s. 50)

D. THE CANADA-NEWFOUNDLAND OIL AND GAS SPILLS AND DEBRIS REGULATIONS

Limit of Liability

For the purpose of section 162 of the Act, the limits of liability are

- (a) in respect of any area of land or submarine area referred to in paragraph 6(1) of the *Arctic Waters Pollution Prevention Act*, the amount by which forty million dollars exceeds the amount prescribed pursuant to section 9 of that Act in respect of any activity or undertaking engaged in or carried on by any person or persons described in paragraph 6(1)(a) of that Act:
- (b) in respect of any submarine area lying north of the sixtieth parallel of north latitude and to which paragraph (a) does not apply, the amount of forty million dollars; and
- (c) in respect of any area to which the Act applies and for which no other limit is prescribed by these Regulations, the amount of thirty million dollars.

E. THE CANADA-NOVA SCOTIA OIL AND GAS SPILLS AND DEBRIS LIABILITY REGULATIONS

Limit of Liability

2. For the purposes of section 167 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the limit of liability is thirty million dollars.

F. THE NEWFOUNDLAND OFFSHORE AREA PETROLEUM DIVING REGULATIONS

Authorization

- 4(3) No authorization may be given under paragraph 138(1)(b) of the Act in respect of a proposed diving program unless the applicant provides the Chief Safety Officer or a safety officer with evidence
 - (f) where a diving program is to be conducted by a diving contractor who is not also the operator of the diving program, that the diving contractor is able to meet any liability for loss, damage, costs or expenses that may be incurred by the diving contractor as a result of the diving program. (NSPDR para. 4(3)(f))

**PROOF OF FINANCIAL RESPONSIBILITY
FOR
WORK AUTHORIZATION (Sample)**

[Refer to the Instructions on the reverse side.]

1. _____ (the "Operator") hereby provides the documentation described below and attached or incorporated hereto (the "Documentation") as proof of financial responsibility in compliance with section (as appropriate for the federal act respecting each Board) and section (as appropriate for the provincial act respecting each Board) for the purpose of obtaining a _____ (the "Authorization");
2. The following is a list and description of the Documentation which in no way limits or supercedes any term or condition or other detail provided therein:

Signed: _____
Operator's Representative

Date:

Name:

Title:

Address:

Telephone:

3. The Board hereby accepts the Documentation as proof of financial responsibility for the purpose of the Authorization subject to the condition(s) listed below:

Signed: _____
Chairman

Date:

Program No.:

4. Conditions of Acceptance:

**PROOF OF FINANCIAL RESPONSIBILITY
FOR
WORK AUTHORIZATION**

[Instructions for Completion of Form]

1. In completing the introductory portion of para. 1, the full legal name must be used in identifying the Operator. The appropriate sections for the federal and provincial acts are s. 163 of the *Canada-Newfoundland Atlantic Accord Implementation Act*, s. 158 of the *Canada-Newfoundland Atlantic Accord Implementation Newfoundland Act*; and s. 168 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, s. 160 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*.

In completing the name of the work authorization, use the name appearing on the specific work authorization form, eg. Drilling Program Authorization, Diving Program Authorization etc.

2. Para. 2 should be completed by listing the specific documents submitted, including where appropriate, the amount, identification number, and scope of coverage respecting each document.
3. With regard to conditions of acceptance which the Board may include in para. 4, the Operator should make every effort to ensure that the documentation and Board requirements are as complete as possible before acceptance is given by the Board. In the event that subsequent documentation or special conditions are required, the Board will include these requirements as a condition of the Authorization.
4. Any questions regarding the compliance of the legislation regarding evidence of financial responsibility or the completion of this form should be addressed to:

Canada-Newfoundland Offshore
Petroleum Board
Legal Counsel
Fifth Floor, TD Place
140 Water Street
St. John's, Newfoundland
A1C 6H6

or

Canada-Nova Scotia Offshore
Petroleum Board
Legal Counsel
Sixth Floor, TD Centre
1791 Barrington Street
Halifax, Nova Scotia
B3J 3K9

Telephone: (709) 778-1400
Fax: (709) 778-1473

Telephone: (902) 422-5588
Fax: (902) 422-1799

Attachment # 3 rev. August 09, 2001

[Note: The following is a proforma sample of a letter of credit which should be used as a guide. Please consult the Board regarding any variation of the wording which the Board may desire in order to satisfy the circumstances relevant to the operator's work or activity.]

IRREVOCABLE LETTER OF CREDIT(Sample)

CREDIT NO. _____

Issuing Bank: (name & address) ("the Bank")

Amount: (amount and currency)

Beneficiary: (name of appropriate Board)
("the Board")

Whereas the Board intends to grant (name and address of operator) ("the Company") a (name of authorization) ("Authorization");

And whereas the Company desires to satisfy certain liability requirements specified in the [*Canada-Newfoundland Atlantic Accord Implementation Act* ("C-NAAIA") and the *Canada-Newfoundland Atlantic Accord Implementation Newfoundland Act* ("C-NAAINA")/the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* ("C-NSOPRAIA") and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act* ("C-NSOPRAI(NS)A")] with respect to the conduct of the work or activity associated with the Authorization;

And whereas the Board requires the Company to furnish evidence of financial responsibility in the amount of Thirty Million Dollars Canadian (\$30,000,000.00) in a form acceptable to the Board in compliance with the aforementioned legislation.

Now therefore the Bank hereby agrees to the following:

1. The Bank hereby establishes, effective _____ at the request and for the account of the Company, an irrevocable letter of credit in favour of the Board in the amount of Thirty Million Dollars Canadian (\$30,000,000.00) drawn at sight on the Bank.
2. No documents shall be required to be presented by the Board in order to receive payment other than demand drafts drawn at sight on the Bank, stating on the face of each, "Drawn under Letter of Credit No. _____ on the Bank dated _____ and not exceeding the total amount as indicated above, together with a certificate stating that the amount requested by the Board is in respect of:
 - a) a claim for which the Board believes proceedings may be, or have been instituted under [section 162 of the C-NAAIA or section 157 of the C-NAAINA/section 167 of the C-NSOPRAIA or section 159 of the C-NSOPRAI(NS)A];

- b) costs and expenses which the Board has incurred or may incur in order to ensure that the site where the work or activity was conducted is left in a satisfactory condition.
3. The Bank hereby undertakes that such drafts will be duly honored on presentation without enquiring whether the Board has a right between itself and the Company to make such presentation and without recognizing any claim of the Company, provided that the terms and conditions of this letter of credit are complied with.
 4. It is understood that the Bank is obliged under this letter of credit for payment of monies only.
 5. The expiry date of this letter of credit shall be the earlier of _____ 20__ [Note: This date shall be at least one year from the anticipated spud date], or such date upon which such work or activity has been completed to the written satisfaction of the Board, and any liability for payment by the Bank under this letter of credit will be extinguished with respect to any claims thereafter.
 6. Except as otherwise stated herein, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication 500.
 7. The rights of all parties and any disputes with respect to this letter of credit, shall be governed by the laws of the Province of [Newfoundland/Nova Scotia] and shall be dealt with by the courts within that jurisdiction.

If presented for payment, the cheque or draft will be payable in such manner as required by the Board.

(Name of Bank)
