

Memorandum of Understanding

Respecting the Coordination of
Activities with Regard to Transportation Occurrences
in the Canada-Newfoundland and Labrador Offshore Area

Between

Transportation Safety Board of Canada
(TSB)
as represented by its Chair

and

Canada-Newfoundland and Labrador Offshore Petroleum Board,
(C-NLOPB)

as represented by its Chair and Chief Executive Officer

(collectively the "Parties")

1.0 Authorities and Responsibilities

- 1.1 The Transportation Safety Board (TSB) is responsible for the administration of the *Canadian Transportation Accident Investigation and Safety Board Act (CTAISB Act)*. The TSB is an independent agency, separate from other government agencies and departments that reports to Parliament through the Government Leader in the House of Commons.
- 1.2 The TSB's mandate is to advance safety in the marine, pipeline, rail and aviation modes of transportation by conducting independent investigations, including public inquiries when necessary, into selected Transportation Occurrences in order to make findings as to their causes and contributing factors; identify safety deficiencies, as evidenced by Transportation Occurrences; make recommendations designed to eliminate or reduce any such safety deficiencies; and report publicly on its investigations and on its findings in relation thereto.
- 1.3 There is a TSB Director of Investigation for each mode of transportation. These Directors of Investigations (Aviation, Marine and Rail/Pipeline) have exclusive authority to direct the conduct of investigations on behalf of the TSB under the *CTAISB Act*. The TSB also appoints an Investigator-In-Charge for every investigation.
- 1.4 The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) is solely and primarily responsible for the administration of the *Accord Acts* in respect of petroleum-related work or activities which may include the exploration, development, production, and transportation of petroleum in the Canada-Newfoundland and Labrador Offshore Area.
- 1.5 The C-NLOPB's objective with respect to safety is two fold: regulatory oversight of operational safety in relation to petroleum-related work or activities as well as oversight of occupational health and safety with a view to preventing accidents and injury to workers at workplaces and workers or others who travel on passenger craft. Operational Safety Officers and Occupational Health and Safety Officers are designated by the respective Part III and Part III.1 *Accord Acts* Ministers for the purpose of verifying compliance with the *Accord Acts* and determining whether violations have occurred. Where violations have taken place, enforcement action may follow.

2.0 Purpose

- 2.1 The purpose of this MOU is to provide for the coordination of the activities of the TSB and C-NLOPB with respect to Transportation Occurrences in the Canada-Newfoundland and Labrador Offshore Area.

3.0 Principles

- 3.1 With respect to Transportation Occurrences, TSB and C-NLOPB recognize that in some circumstances, certain powers exercised by TSB Investigators and C-NLOPB Officers pursuant to their legislative authorities may overlap.

- 3.2 For greater clarity, the implementation of this MOU must reflect, in fact and in spirit, the collaboration between the Parties in the course of parallel compliance verification/investigations occurring within their respective mandates. No Party to this MOU shall unduly limit the lawful and necessary exercise of the other Party's responsibilities.
- 3.3 In accordance with subsection 15(2) of the *CTAISB Act*, and because of the need for the safety investigation by the TSB to obtain timely and uncontaminated information in order to effectively identify safety deficiencies, the requirements and interest of the TSB shall take precedence where conflicting interest arise between the Parties in coordinating their activities pursuant to this MOU.

4.0 Definitions

In this MOU, unless otherwise stated, the following words mean:

- **Accord Acts** means the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and section 9 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* and their respective regulations.
- **Canada-Newfoundland and Labrador Offshore Area** means the Canada-Newfoundland and Labrador Offshore Area as defined under the *Accord Acts*.
- **C-NLOPB Officer** means the Chief Conservation Officer, a Conservation Officer, the Chief Safety Officer, any Operational Safety Officer or Occupational Health and Safety Officer designated under the *Accord Acts*.
- **CTAISB Act** means the *Canadian Transportation Accident Investigation and Safety Board Act* and the *TSB Regulations*.
- **Investigator-in-Charge** means a person appointed by, and accountable to, a TSB Director of Investigation for the management, conduct and control of a TSB investigation.
- **Lead C-NLOPB Officer** means the C-NLOPB Officer assigned responsibility by the C-NLOPB to verify compliance or to conduct an investigation under the *Accord Acts*.
- **Observer** is a C-NLOPB official appointed to attend a Transportation Occurrence investigation carried out by the TSB and is designated as the contact person on behalf of the C-NLOPB for the purpose of exchanging factual information or coordinating activities with the Investigator-in-Charge.
- **Occurrence Site** means a place where an occurrence happens and includes the location of any wreckage or victims.
- **Passenger Craft** means any aircraft or vessel used to transport employees to or from a workplace while—and immediately before—it is transporting them.
- **Transportation Occurrence** means an aviation, marine or pipeline occurrence as defined in the *CTAISB Act* and *TSB Regulations*.

Any terms not otherwise defined have their meaning as set out in the *Accord Acts* and the *CTAISB Act*.

5.0 Application

- 5.1 This MOU applies to all Transportation Occurrences in the Canada-Newfoundland and Labrador Offshore Area.
- 5.2 Where a Transportation Occurrence involves the transportation of produced hydrocarbons, the jurisdiction of the TSB will commence at the point where the petroleum leaves the marine installation or structure and enters either a ship or a pipeline for the purpose of transportation to shore.
- 5.3 Where a Transportation Occurrence involves a marine installation or structure that can be defined as a ship under the *CTAISB Act* (e.g. drilling platform), the TSB's jurisdiction takes effect when the marine installation or structure is detached from its moorings.
- 5.4 Where a Transportation Occurrence involves an aircraft the TSB's jurisdiction takes effect from the time any person boards the aircraft with the intention of flight until they disembark.
- 5.5 With respect to petroleum-related work or activities in the Canada-Newfoundland and Labrador Offshore Area, the C-NLOPB's jurisdiction commences once an authorization is issued.
- 5.6 With respect to workers and other passengers who travel to and from a workplace in the Canada-Newfoundland and Labrador Offshore Area on a passenger craft, the C-NLOPB's jurisdiction respecting the health and safety of such workers takes effect while and immediately before being transported on a passenger craft between the last point of embarkation onshore and the workplace, between the workplace and the first point of disembarkation onshore, or between workplaces.
- 5.7 It is understood that Occupational Health and Safety Officers are authorized by Part III.1 of the *Accord Acts* to investigate any accident, incident or dangerous operation at or near a workplace or in relation to a passenger craft. Furthermore, Occupational Health and Safety Officers may conduct any inspection required or issue any order related to any unsafe or dangerous work activity observed at an Occurrence Site to ensure the health and safety of Employees at an Occurrence Site, or to respond to a work refusal pursuant to Part III.1 of the *Accord Acts*.
- 5.8 With respect to protections for C-NLOPB Officers, the *Accord Acts* have been amended to say the respective provincial social legislation applies, namely the *Occupational Health and Safety Act*, R.S.N.L. 1990 c. O-3, as amended.
- 5.9 TSB investigation activities are a federal work, undertaking or business as per section 2 of the Canada Labour Code, RSC 1985, c L-2. Therefore any worker safety issues pertaining to TSB investigators, or any persons under the authority and supervision of the TSB, will fall under the Canada Labour Code, RSC 1985, cL-2, Part II and the authority of persons delegated by the Minister of Labour under this Act.

6.0 Notification of Occurrences

- 6.1 Upon learning of a Transportation Occurrence, the C-NLOPB in accordance with Subsection 22(1) of the *CTA/ISB Act* and Part I of the *TSB Regulations* will:
- (a) without delay provide the appropriate TSB office, by telephone with particulars of the Transportation Occurrence; and
 - (b) after complying with subparagraph (a), without delay advise, the appropriate TSB office of any inspection or investigation that C-NLOPB plans to conduct and of any remedial measures or actions, and the scope thereof.
- 6.2 Upon learning of a Transportation Occurrence that occurs with respect to an activity regulated by the C-NLOPB, in which the C-NLOPB has a direct interest for the purposes of verifying compliance or conducting an investigation under the *Accord Acts* and in accordance with Subsection 23(1) of the *CTA/ISB Act*, the TSB will:
- (a) without delay provide the C-NLOPB with particulars of the Transportation Occurrence; and
 - (b) after complying with subparagraph (a), without delay advise the C-NLOPB of any investigation it plans to conduct, the scope of the investigation, and the name and contact information of the Investigator-in-Charge.
- 6.3 Each Party shall, at the earliest possible time and prior to any decision being made, discuss with the other Party any public inquiry it contemplates holding, including the nature, scope and proposed terms of reference of such inquiry.

7.0 Coordination of Activities

- 7.1 Each Party shall keep the other informed of any significant progress in its own compliance verification or investigation where the other Party is also verifying compliance or investigating into the same Transportation Occurrence or, upon request, if one Party has expressed a direct interest in the subject matter of the compliance verification or investigation of the other. Normal points of contact are the Investigator-in-Charge, the Lead C-NLOPB Officer, or the Observer, as the case may be.
- 7.2 The TSB and C-NLOPB will inform each other of any plans to disassemble products or equipment or to conduct tests or laboratory analysis, and provide an opportunity for appropriate technical specialists to attend.
- 7.3 In the event that C-NLOPB and the TSB are inspecting or investigating the same occurrence for their respective purposes, the TSB shall be the lead agency and shall allow C-NLOPB concurrent access to the Occurrence Site for the purpose of conducting compliance verification or an investigation.
- 7.4 In the event that both Parties are verifying compliance or investigating the same occurrence for their respective purposes, each Party shall protect for the other Party the Occurrence Site and the evidence therein and, more specifically, before disturbing anything on the Occurrence Site, inform the other Party, ensure that the conditions of

- the Occurrence Site and the evidence contained therein are recorded properly, and inform the other Party of all actions taken with respect to the management of the Occurrence Site.
- 7.5 Each Party shall inform the other Party of any decision that may impact on the other Party's compliance verification or investigation, including the prohibition to interfere with an Occurrence Site.
- 7.6 In the event that both Parties are verifying compliance or investigating the same occurrence for their respective purposes, each Party shall consult with the other before releasing the Occurrence Site.

8.0 Information Gathering and Exchange

- 8.1 Upon being notified that the TSB is investigating or will investigate a Transportation Occurrence, the C-NLOPB will advise the TSB whether it intends to appoint an Observer and, if so, of the name and contact information of the Observer.
- 8.2 The C-NLOPB will also advise the TSB of the name and contact information of the Lead C-NLOPB Officer. Given the restrictions specified in sections 8.7 and 8.8, the C-NLOPB will ensure that different persons are assigned the roles of Observer and Lead C-NLOPB Officer.
- 8.3 In cases where the C-NLOPB does not appoint an Observer, the Lead C-NLOPB Officer will act as the contact person on behalf of the C-NLOPB for the purpose of exchanging factual information or coordinating activities with the Investigator-in-charge. However, this person will not have any rights normally given by the TSB to an Observer.
- 8.4 With respect to occurrences that the TSB is investigating, the C-NLOPB will make available on request as soon as practicable and to extent permitted by the *Accord Acts*, any information in its files, libraries, reporting systems and databases that the TSB deems relevant to the investigation.
- 8.5 With respect to any Transportation Occurrence for which the C-NLOPB is verifying compliance or investigating, the TSB will make available on request as soon as practicable information in its files, libraries, reporting systems and databases to the extent permitted under the *CTA/ISB Act*.
- 8.6 Neither an Observer nor a Lead C-NLOPB Officer shall participate in the interviewing of witnesses carried out by the TSB nor shall he/she be entitled to examine statements taken by the TSB. This does not, however, preclude the C-NLOPB from conducting its own interviews with witnesses for its own purposes.
- 8.7 Where appropriate, the Observer may participate in the activities authorized by the TSB as outlined in Section 11 of the *TSB Regulations*. The Observer must comply with all conditions imposed by the TSB and shall not communicate or permit to be communicated any information obtained from the TSB without the express consent of the TSB.

- 8.8 Other C-NLOPB officials, including the Lead C-NLOPB Officer, will be entitled only to receive factual information related to the Transportation Occurrence.
- 8.9 The information provided by the TSB to the C-NLOPB shall not be used to verify compliance, to take disciplinary or enforcement action, or for the purpose of apportioning blame or determining civil or criminal liability.

9.0 Media Relations and Release of Information

- 9.1 Only the TSB may release information pertaining to the causes and contributing factors of a Transportation Occurrence that the TSB is investigating or proposes to investigate. This however does not preclude the C-NLOPB from sharing factual information with operators in order to address issues within its jurisdiction or releasing information relating to its own root cause findings with respect to operational safety or occupational health and safety.
- 9.2 Each Party may respond to requests for information from the media concerning its mandate and activities.
- 9.3 Each Party will notify the other Party in advance of the release for formal communiqués or press releases which may impact on the mandate or activities of the other Party.
- 9.4 In the event that a Party receives a request under the *Access to Information Act* for information supplied by the other Party, it will promptly notify the other Party of the request. The originating Party who provided the information shall be considered as the government institution with the "greater interest" in any such information.

10.0 Dissemination

- 10.1 Both Parties agree to disseminate the working arrangements made under this MOU, and any subsequent modifications, to their respective personnel and to any other affected Party involved with occurrences.

11.0 Means of Conflict Resolution

- 11.1 In the event of a dispute arising from the interpretation or implementation of this MOU which cannot be resolved at the staff level, it will be referred to the modal Director of Investigations of the TSB and the Chief Safety Officer of the C-NLOPB who will use their best efforts to resolve the matter amicably.
- 11.2 If such negotiation fails, the matter will be referred to the Chief Operating Officer of the TSB and the Chair and Chief Executive Officer of the C-NLOPB.
- 11.3 If the Chief Operating Officer of the TSB and the Chair and Chief Executive Officer of the C-NLOPB are unable to reach an agreement, the matter will be referred to the Chair of the TSB and the Chair and Chief Executive Officer of the C-NLOPB for final resolution.

12.0 Consultation

12.1 Both Parties may meet as frequently as necessary to discuss issues of concern and to review or amend this MOU as required. Such meetings may be convened at the request of either Party. The desired frequency of meeting is once per year.

13.0 Amendments and Termination

13.1 This MOU may be terminated with three months written notice to the other Party.

13.2 This MOU may be amended from time to time, separately or jointly, on the written agreement of both Parties.

14.0 Other

14.1 This MOU will commence and take effect upon the date of the last Party's signature.

14.2 The Parties will notify each other, upon discovery, of any changes to their legislation or policies that may impact this MOU.

15.0 Approval

Signed by the authorized officers of the two Parties:

	
Chair Transportation Safety Board of Canada	Chair and Chief Executive Officer Canada-Newfoundland and Labrador Offshore Petroleum Board
Date March 18, 2016	Date March 4, 2016