Bill C-49: The future of offshore renewable energy projects in Atlantic Canada

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On May 30, 2023, Canada's Minister of Natural Resources, the Honourable Jonathan Wilkinson, introduced Bill C-49, an Act to amend the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* and to make consequential amendments to other Acts (Bill C-49)[1] in the House of Commons. The main purpose of Bill C-49 is to advance and enable the development of offshore renewable energy in both Newfoundland and Labrador and Nova Scotia. This article covers the key amendments of Bill C-49 and highlights important takeaways for organizations that may be interested in pursuing offshore renewable projects in Atlantic Canada.

Background

The amendments set out in Bill C-49 build on previous government announcements to expand the mandate of the offshore energy regime in both Newfoundland and Labrador[2] and Nova Scotia[3] to aid in the transition to a clean economy while also creating sustainable jobs. This expanded mandate will allow the offshore energy regimes in both provinces to regulate offshore renewable energy projects, such as wind.

According to the International Energy Agency (IEA), in 2021, 93 per cent of installed wind capacity was attributed to onshore systems, compared to only 7 per cent being attributed to offshore wind farms. These statistics equate to onshore wind energy's presence in 115 countries compared to offshore wind's presence in only 19 countries. However, this is expected to significantly shift as more countries develop offshore wind projects.[4] Bill C-49 aids in this shift through being one of the first steps in moving towards developing offshore renewable energy projects in Atlantic Canada.

Although Bill C-49 still has to complete the rest of the legislative approval process, Marine Renewables Canada expects the amendments to be "enshrined in late 2024, allowing offshore wind leasing to commence in 2025."[5] This timeline is also supported by the Government of Nova Scotia's plan to put out a first call for bids in 2025 to meet a "target to offer leases for five gigawatts of offshore wind energy by 2030."[6]

Summary of the changes

Watt and Westin (2022) in their article, "The Regulation of Offshore Renewable Energy under the *Canadian Energy Regulator Act*: Towards Full and Rational Development of ORE in Atlantic Canada," identify four overarching and outstanding issues in the development of the offshore renewable energy sector in Atlantic Canada. These issues include, among others, land tenure and marine boundary issues, complexity caused by management, provincial benefits in federal areas, and the balancing of competing interests.[7] As such, this article will also discuss how the changes of Bill C-49 addresses, or fails to address, some of the previously identified issues in developing offshore renewable energy projects per Watt and Westin's article.

Changing the names of the *Accord Acts*

One of the primary amendments Bill C-49 brings is changing the names of the *Accord Acts* to better reflect the *Acts'* expanded scope. The *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* will be renamed the *Canada-Newfoundland and Labrador Atlantic Accord Implementation and Offshore Renewable Energy Management Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* to the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation and Offshore Renewable Energy Management Act*.[8]

Expanding the mandate of the offshore energy regime

Both province's offshore energy boards will also see name changes to reflect the expanded mandate set out in Bill C-49. The Canada-Newfoundland and Labrador Offshore Petroleum Board will be renamed the Canada-Newfoundland and Labrador Offshore Energy Regulator (C-NLOER) (the Regulator). Similarly, the Canada-Nova Scotia Offshore Petroleum Board will be renamed as the Canada-Nova Scotia Offshore Energy Regulator (CNSOER) (the Regulator); both of which will be jointly referred to as "the Regulators."[9]

Bill C-49 also grants the Regulators significant power over offshore renewable energy projects, including the capacity, amongst other responsibilities, to authorize work or activities proposed in relation to an offshore renewable energy project.[10] Additionally, these expanded responsibilities include that the Crown may rely on the Regulators for consulting with the Indigenous peoples of Canada regarding any potential adverse impacts of work or activity in the offshore area on existing Aboriginal and treaty rights.[11] To this point, the Regulators ability to directly consult with the Indigenous Peoples of Canada also helps to address issues with competing interests. Bill C-49 will also allow both the federal and provincial governments to directly fund certain expenses incurred by the Regulators.[12]

It is evident that this expanded mandate will go towards addressing issues that would normally arise due to issues of joint management. In summary, with the Regulators maintaining a close relationship with the government, it appears that joint management issues are less likely to arise in the development of offshore renewable energy projects in both Newfoundland and Labrador and Nova Scotia.

Aligning the Accord Acts and the Impact Assessment Act (IAA)

One of the larger amendments of Bill C-49 is to remove references to the former *Canadian Environmental Assessment Act, 2012*, and instead better align both *Accord Acts* with the *Impact Assessment Act* ("*IAA*").[13] These amendments help clarify the importance of the *IAA* and highlight other relevant requirements. To be specific, these requirements discuss topics such as access to information requirements in addition to clarifying the role of Ministers and Regulators regarding impact assessments as well as regional and strategic assessments.[14] Further, these amendments also aid in ensuring that there is clarity regarding any joint management issues that may arise when attempting to develop offshore renewable energy projects.

Clarifying decision-making and other processes

There are a significant number of amendments concerning submerged land licences, including an amendment granting the Regulators the power to issue submerged land licenses for offshore renewable energy projects in accordance with the regulations. Other, but related amendments, cover topics such as the bidding process and the role of Ministers regarding submerged land licences.[15] These amendments around submerged land licenses also address issues with land tenure through a similar approach to what has already been taken regarding oil and gas activities in both Newfoundland and Labrador and Nova Scotia.[16] However, further clarification will be required in order to fully address issues and to provide certainty around marine boundaries.[17]

Bill C-49 also includes numerous amendments granting further decision-making authority to the Governor in Council. These amendments, among others, include allowing the Governor in Council to make regulations for the purpose of safety and to protect the environment[18] as well as to make regulations to amend the definition of offshore renewable energy projects.[19] These amendments are anticipated to help alleviate any problems that may be caused by competing interests, such as those regarding safety and the protection of the environment. However, it does not appear that Bill C-49 resolves all of the possible competing interests when it comes to developing offshore renewable energy.

The surrender of interests is also contemplated in Bill C-49, with amendments covering the Federal Minister's ability to enter negotiations for the surrender of an interest, subsequent compensation, and the cancellation of interests in certain instances.[20]

Bill C-49 also contains multiple amendments that concern hydrocarbons. For example, the amendments allow an expansion of the methods used to demonstrate the existence of an accumulation of hydrocarbons[21] but also limits the duration of significant discovery licences to 25 years.[22] One should also note that Bill C-49 lays out amendments concerning transboundary pools.[23]

Addressing provincial benefits in federal areas

In the context of oil and gas projects, "the federal government has conceded that NS and NL should receive fiscal revenues from offshore production and be the primary beneficiaries of offshore employment and industrial activity."[24] Bill C-49 does appear to be taking this same approach by treating offshore energy projects as if they were completed within the province.[25]

However, it is also important to mention the *Atlantic Accord* in Newfoundland and Labrador and the *Accord* in Nova Scotia, which are defined in a similar, but not identical way. The *Atlantic Accord* "means the Memorandum of Agreement between the Government of Canada and the Government of the Province on offshore petroleum resource management and revenue sharing dated February 11, 1985 and includes any amendments thereto."[26] This definition is similar to the definition for the *Accord* which "means the Canada-Nova Scotia Offshore Petroleum Resources Accord dated August 26, 1986 and entered into by the Government of Canada, as represented by the Prime Minister of Canada and the Federal Minister, and by the Government of Nova Scotia, as represented by the Premier of Nova Scotia and the Provincial Minister, and includes any amendments thereto."[27]

The *Atlantic Accord* and the *Accord* is worth noting because there are amendments of Bill C-49 clarifying that neither the *Atlantic Accord* nor the *Accord* apply to offshore renewable energy resources.[28]

Additionally, benefit plans are also once again considered and applied to offshore energy projects. For example, benefit plans for work or activities to be carried out in transboundary pools (that are subject to a joint exploration agreement) cannot be approved unless the Regulator and the appropriate authority have agreed on its content.[29]

Assigning liability for abandoned works, activities or projects

Bill C-49 also proposes amendments regarding liability and recovery for any losses, damage, costs, or expenses, such as those caused by abandoned debris and associated activities. For example, expanding the parameters of who is liable in situations concerning abandoned facilities where debris originated.[30]

Ensuring consistent regulations

Numerous amendments from Bill C-49 are simply designed to ensure that the legislation that applied to petroleum projects now also apply to offshore renewable energy projects. This level of consistency applies to topics such as occupational health and safety (e.g., Part I of the *Canada Labour Code*)[31] as well as the safety and environmental protection regime.[32]

It has yet to be determined whether other Atlantic Provinces will develop inconsistent legislation regarding offshore renewable energy projects in comparison to the legislation being developed in Newfoundland and Labrador and Nova Scotia. If inconsistent legislation is developed, it could cause further issues or even compound existing issues, such as those around the joint management of offshore renewable energy projects or around clarifying marine boundaries.[33]

Key takeaways

Bill C-49 represents a welcomed update for the offshore renewable industry of both Newfoundland and Labrador and Nova Scotia; Bill C-49 highlights Canada's willingness to further invest into offshore renewable energy projects. These changes are also significant as Canada hopes to leverage future renewable energy projects with its

allies.[34] Further, the Regulators are not just getting a new name, instead, they are being further empowered by the government with a larger mandate and a higher level of responsibility within the industry. It also appears that the Regulators and members of government will need to work more closely with stakeholders than ever before. In conclusion, Bill C-49 addresses, but does not completely resolve, numerous issues that have been identified regarding developing offshore renewable energy.[35] Further, Bill C-49 provides empowerment to industry stakeholders, clarification around several decision-making processes, and ensures consistent legislation for both petroleum projects and offshore renewable energy projects in Atlantic Canada.

BLG's energy professionals will continue to monitor the progress under Bill C-49 and any further regulatory changes. If you are interested in learning about how Bill C-49 may affect your organization, please contact the authors or any of the key contacts listed below.

Footnotes

[1] Bill C-49, *An Act to amend the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and to make consequential amendments to other Acts*, 1st Sess, 44th Parl, 2023 (first reading 30 May 2023) [*Bill C-49*].

[2] Natural Resources Canada, "Canada and Newfoundland and Labrador Announce Intent to Expand the Mandate of Offshore Energy Regime to Support the Transition to a Clean Economy and Create Sustainable Jobs" (5 April 2022), online: *Government of Canada* [perma.cc/4J5A-6F5Y].

[3] Natural Resources Canada, "Canada and Nova Scotia Announce Intent to Expand the Mandate of Offshore Energy Regime to Support the Transition to a Clean Economy and Create Sustainable Jobs" (11 April 2022), online: *Government of Canada* [perma.cc/B3U6-2T2U].

[4] Piotr Bojek, "Wind Electricity" (September 2022), online: *International Energy Agency* [perma.cc/E5FT-635F].

[5] Marine Renewables Canada, "Marine Renewables Canada Celebrates the Introduction of Accord Act Amendments" (31 May 2023), online: *Marine Renewables Canada* [perma.cc/8592-4SV3].

[6] Government of Nova Scotia, "Province Sets Offshore Wind Target" (20 September 2022), online: *Government of Nova Scotia* [perma.cc/V6CC-WP56].

[7] Daniel Watt & Lucia Westin, "The Regulation of Offshore Renewable Energy under the *Canadian Energy Regulator Act*: Towards Full and Rational Development of ORE in Atlantic Canada" (May 2022), online: *Energy Regulation Quarterly* [perma.cc/FZ85-8W63].

[8] *Bill C-49*, *supra* note 1.

[9] Natural Resources Canada, "Building Offshore Renewables in Newfoundland and Labrador and Nova Scotia" (30 May 2023), online: *Government of Canada* [perma.cc/28MW-7TT4].

[10] *Bill C-49*, *supra* note 1, cls 62 and 170.

[11] *Bill C-49*, *supra* note 1, cls 12 and 117.

[12] *Bill C-49*, *supra* note 1.

[13] Natural Resources Canada, *supra* note 9.

[14] *Bill C-49*, *supra* note 1, cls 62 and 170.

[15] *Bill C-49*, *supra* note 1, cls 38 and 147.

[16] Watt & Westin, *supra* note 7.

[17] Watt & Westin, *supra* note 7.

[18] *Bill C-49*, *supra* note 1, cls 76 and 185.

[19] *Bill C-49*, *supra* note 1, cls 4 and 110.

[20] *Bill C-49*, *supra* note 1, cls 28 and 137.

[21] *Bill C-49*, *supra* note 1, cls 25 and 134.

[22] *Bill C-49*, *supra* note 1, cls 36 and 145.

[23] *Bill C-49*, *supra* note 1, cls 76 and 185.

[24] Watt & Westin, *supra* note 7.

[25] *Bill C-49*, *supra* note 1, cls 41 and 150.

[26] *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, SC 1987, c 3, s 2.

[27] *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, SC 1988, c 28, s 2.

[28] *Bill C-49*, *supra* note 1, cls 8 and 112.

[29] *Bill C-49*, *supra* note 1, cls 23 and 130.

[30] *Bill C-49*, *supra* note 1, cls 76 and 185.

[31] *Bill C-49*, *supra* note 1, cls 91(2) and 196(2).

[32] *Bill C-49*, *supra* note 1, cls 55 and 163.

[33] Watt & Westin, *supra* note 7.

[34] Prime Minister's Office, "Prime Minister concludes a successful visit by German Chancellor Olaf Scholz" (23 August 2022), online: *Cision Canada* [https://perma.cc/Z9ZS-FHMW].

[35] Watt & Westin, *supra* note 7.

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