HAVE YOUR SAY!

Updates to the NWT's Petroleum Legislation

Engagement Paper

Exprimez-vous!

Mise à jour des lois sur les produits pétrolieres des TNO

Papier d'engagement

Mars 2018

Le présent document contient la traduction française du résumé

March 2018

Government of Northwest Territories
Gouvernement des Territoires du Nord-Ouest

If you would like this information in another official language, call us.
English

Si vous voulez ces informations dans une autre langue officielle, contactez-nous.
French

Kīspin ki nitawihtīn ē nīhīyawihk ōma ācimōwin, tipwāsinān.
Cree

Tłı̨chǫ yatı k'ę̀ę̀. Dı wegodı newǫ dè, gots'o gonede.
Tłı̨chǫ

ʔerıhtł'ís Dëne Sųłıné yatı t'a huts'elkër xa beyáyatı theʔą ʔat'e, nuwe ts'ën yółtı.
Chipewyan

Edı gondı dehgáh got'ı̨e zhatıé k'ę́ę́ edatł'éh enahddhę nıde naxets'ę́ edahłí.
South Slavey

K'áhshó got'ı̨ne xədə k'é hederı ʔedı̨htl'é yerınıwę nídé dúle.
North Slavey

Jii gwandak izhii ginjìk vat'atr'ijąhch'uu zhit yinohthan jì', diits'àt ginohkhìi.
Gwich'in

Uvanittuaq ilitchurisukupku Inuvialuktun, ququaqluta.
Inuvialuktun

ᑖᒃᑯᐊ ᑎᑎᕐᒃᑲᐃᑦ ᐱᔪᒪᒍᕕᒋᑦ ᐃᓄᒃᑎᑐᓕᕐᒃᓯᒪᓗᑎᒃ, ᐅᕙᑦᑎᓐᓄᑦ ᐅᖄᓚᔪᓐᓇᖅᑐᑎᑦ.
Inuktitut

Hapkua titiqqat pijumagupkit Inuinnaqtun, uvaptinnut hivajarlutit.
Inuinnaqtun

Aboriginal Languages Secretariat: 867-767-9346 ext. 71037
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Government of Northwest Territories
Gouvernement des Territoires du Nord-Ouest

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EXECUTIVE SUMMARY

About the Review

Management, exploration and production of the Northwest Territories (NWT) petroleum resources are governed by two acts: the *Petroleum Resources Act* (PRA) and *Oil and Gas Operations Act* (OGOA). These two acts were mirrored from federal legislation as part of devolution.

As the first step towards a larger review, the Government of the Northwest Territories (GNWT) is currently undertaking amendments to both the PRA and OGOA, aimed at modernizing the legislation to improve transparency and ensure the NWT is ready to responsibly benefit from petroleum production in the future. This is not an overhaul — it is the work that needs to be done to address the NWT's immediate needs.

This Engagement Paper identifies issues and recommends potential actions to evolve the NWT's oil and gas legislative framework. Each recommended action outlined aims to achieve one or more of the following goals:

- Resolve existing administrative and technical issues in order to create a more consistent and predictable regulatory environment;
- Enhance transparency and public accountability throughout the PRA and the OGOA;
- Ensure the legislation reflects current risks, best practices and standards;
- Minimize operational challenges in the administration of oil and gas rights issuance and operations; and
- Increase our competitiveness comparative to other jurisdictions and promote increased investment in NWT oil and gas exploration and production.

The amendments suggested fall under three distinct categories:

- administrative and technical amendments;
- transparency and public accountability; and
- significant discovery licences.

This legislative initiative is not comprehensive. It is the first step in what will be a longer-term process of review designed to address the most immediate concerns identified since Devolution.

Have Your Say!

We want to know what Indigenous governments and organizations, NWT residents, industry, and all other stakeholders think about these proposed changes.

We want to hear your thoughts on this Engagement Paper, and welcome your comments on amending the PRA and OGOA.

We will be visiting the regions of the NWT for public engagement drop-in sessions in the coming months. We will also be accepting submissions until May 4, 2018 in the following ways:

- Online: Engage-ITI.ca/PetroLeg (English)

  participation-MITI.ca/loispétrolières (French)

- Email: EngagePetroleum@gov.nt.ca
- Phone: 1-867-777-7481
- Mail to:

  Petroleum Resources Division

  GNWT – Department of Industry, Tourism and Investment

  #64 Mackenzie Road,

  PO Box 3019 Inuvik, NT X0E 0T0

- In person:

  Department of ITI

  Petroleum Resources Division

  #64 Mackenzie Road, Ground Floor

  Inuvik, NT

  Office Hours: 8:30am–12pm or 1:00pm–5:00pm, Monday to Friday. (Closed Statutory Holidays)

RÉSUMÉ

À propos de l'examen

La gestion, l'exploration et la production des ressources pétrolières aux Territoires du Nord-Ouest (TNO) sont régies par deux lois : la *Loi sur les hydrocarbures* et la *Loi sur les opérations pétrolières*. Ces deux lois ont été calquées sur la réglementation fédérale lors du transfert des responsabilités.

Aujourd'hui, le gouvernement des Territoires du Nord-Ouest (GTNO) entreprend une série de modifications visant à moderniser cette législation pour mieux refléter les besoins des TNO et préparer le territoire à tirer profit de la future production pétrolière de façon responsable.

Cette initiative législative constitue une première étape vers un examen plus large, et elle se limite aux besoins immédiats qui peuvent être satisfaits rapidement dans le but d'améliorer sans tarder la gestion de nos ressources pétrolières.

Ce document de discussion définit les problèmes et recommande des mesures potentielles pour faire évoluer le cadre législatif ténois sur les opérations pétrolières. Chaque mesure recommandée vise l'un ou plusieurs des objectifs suivants :

- Résoudre les problèmes administratifs et techniques existants afin de créer un cadre réglementaire plus homogène et prévisible.
- Améliorer la transparence et la responsabilité publique dans la *Loi sur les hydrocarbures* et la *Loi sur les opérations pétrolières*.
- Veiller à ce que la législation tienne compte des risques, des pratiques exemplaires et des normes d'aujourd'hui.
- Réduire au maximum les obstacles opérationnels dans l'administration de l'attribution des droits sur les hydrocarbures et des opérations pétrolières.
- Améliorer notre compétitivité par rapport aux autres provinces et territoires et encourager les investissements dans l'exploration et la production pétrolières et gazières aux TNO.

Les modifications proposées pour ces lois peuvent être regroupées en trois catégories distinctes :

- modifications administratives et techniques;
- transparence et responsabilité publique;
- attestations de découverte importante.

Exprimez-vous!

Nous voulons avoir l'avis des gouvernements et des organismes autochtones, des Ténois et de toutes les autres parties prenantes sur ces propositions.

Nous souhaitons entendre votre voix sur ce document de discussion, et vos commentaires sont les bienvenus sur tout ce qui concerne la gestion des ressources pétrolières ténoises afin de guider tout examen futur.

Nous nous rendrons dans toutes les régions des TNO lors de séances de participation publique dans les mois à venir. Vous pouvez également nous faire parvenir vos commentaires jusqu'au 4 mai 2018 des façons suivantes :

- En ligne : Engage-ITI.ca/PetroLeg (en anglais)

  Participation-MITI.ca/loispétrolières (en français)

- Courriel : EngagePetroleum@gov.nt.ca
- Téléphone : 867-777-7481
- Par courrier :

  Division des ressources pétrolières

  Ministère de l'Industrie, du Tourisme et de l'Investissement (MITI) du GTNO

  64, chemin Mackenzie

  C. P. 3019, Inuvik NT X0E 0T0

- En personne :

  Ministère de l'Industrie, du Tourisme et de l'Investissement

  Division des ressources pétrolières

  64, chemin Mackenzie

  Inuvik NT

  Heures d'ouverture : de 8 h 30 à midi et de 13 h à 17 h, du lundi au vendredi. Fermeture les jours fériés.

INTRODUCTION

About The Review

How We Got Here

The Devolution Agreement of 2014 transitioned the responsibility for managing and administering most public land, water and resources in the NWT from the federal government to the GNWT. This provided the NWT with the ability to directly address resource development and management issues impacting our territory.

Prior to devolution, the Government of Canada, through the Oil and Management Directorate of the Department of Aboriginal Affairs and Northern Development Canada, was responsible for oil and gas rights issuance and operations in the NWT.

To ensure a smooth transition of responsibility from the Government of Canada to the GNWT, the GNWT mirrored the federal legislative framework for petroleum resource management in the NWT. This legislation was inherited the federal government as part of devolution. It had been in place — largely unchanged — for more than 30 years.

Why We're Doing This

The current downturn in oil and gas activity provides the GNWT with an opportunity to update the PRA and the OGOA to address the unique challenges, circumstances, and opportunities we face with made-in-the-North solutions that are effective and sustainable.

This was identified as a priority under the Mandate of the 18th Legislative Assembly.

The process of amending the PRA and OGOA is being led by the Department of Industry, Tourism and Investment (ITI).

This review will involve two stages. We are currently in the first stage, which is limited to policy, administrative and technical issues with this inherited legislation identified as immediate needs.

This will lead to a longer-term process of modernizing our petroleum regulatory framework to ensure the NWT is using best practices and standards to manage its petroleum resources and activities.

Have Your Say!

We want to know what Indigenous governments and organizations, NWT residents, industry, and all other stakeholders think about these proposed changes.

We want to hear your thoughts on this Engagement Paper, and welcome your comments on amending the PRA and OGOA.

We will be visiting regions of the NWT for public engagement drop-in sessions; following up with key stakeholders; and reaching out to Indigenous governments and organizations across the NWT in the coming months.

To ensure you can have your say wherever, whenever, and however you'd like, you will find ways to submit your thoughts in person, online, by email, phone, and mail at the end of this paper.

Oil and Gas in the NWT

Current State

While the NWT oil and gas sector has long been an industry on the verge of becoming a powerful economic driver, its potential has, to date, never been realized.

Long distances, a lack of transportation infrastructure and high costs of energy, capital and labour are commonly identified as contributors to our higher exploration, development and production costs.

Due to these constraints, companies have traditionally only explored for the NWT's petroleum resources when commodity prices were high, or when financial incentives were offered by the Government of Canada – as they were in the 1970s and 1980s.

While more than 1,300 onshore wells have been drilled in the NWT, the majority of these are exploration wells that have helped to build an understanding of NWT resources but are not producing wells.

There are currently eight regions that have produced oil or natural gas in the NWT: Norman Wells, Ikhil, Cameron Hills, Pointed Mountain and four deposits — known as "pools" in oil and gas terminology — in the Fort Liard area.

Between 2011 and 2013, five companies were awarded 13 exploration licences in the Canol shale in the Central Mackenzie Valley, resulting in commitments of $626 million in exploration spending.

As of January 2018, there are currently 13 active exploration licences held by five companies in the Beaufort Sea with exploration work commitments of approximately $1.9 billion and associated work bid deposit securities of approximately $474 million held by INAC.

Potential for the Future

The National Energy Board estimates that the NWT could hold as much as 37 percent of Canada's marketable light crude oil and 35 percent of its marketable natural gas. Discovered and recoverable potential for the NWT onshore and offshore is estimated at 1.2 billion barrels (bbl) of conventional oil and 16.4 trillion cubic feet (Tcf) of conventional natural gas.

In addition to conventional resources, there is also significant potential for unconventional resources — ones which may be more difficult to recover because they are deeper in the ground or do not flow naturally through the rock in which it is found.

For example, there is estimated to be more than 190 bbl of oil-in-place in the Sahtu region's Canol and Bluefish shale formations. Even if only one percent of this is ultimately recoverable, it establishes these formations as world-class.

In March 2016, significant levels of natural gas was discovered in the Liard Basin — a formation straddling the boundaries of the NWT, Alberta, and British Columbia. The ultimate potential for marketable natural gas was estimated at 219 Tcf — 77 Tcf of which lies within the NWT's boundaries.

These are significant resources by any standard — ones rivaling the oil sands and Bakken Formation shale reserves which have generated billions in economic activity in their jurisdictions.

With higher oil prices or improved infrastructure, the resources of the NWT could become a focus of the global petroleum industry once again.

Petroleum Legislation in the NWT

The PRA and the OGOA are the two pieces of legislation governing oil and gas exploration, production, and management in the NWT.

These Acts give some responsibilities to the GNWT — generally the Minister of ITI (the Minister) — and some to the Regulator. The Minister of Justice has been appointed as the Regulator, with the Office of the Regulator of Oil and Gas Operations (OROGO) providing expert analysis and advice to the Regulator in their duties. OROGO is also delegated responsibilities by the Regulator, including application reviews, regulation of seismic and drilling operations, and emergency response and investigation.

Petroleum Resources Act

The PRA governs how the GNWT will act as the owner of oil and gas resources that are under NWT land in order to ensure those resources benefit all the people of the NWT. The main purpose of the PRA is to set the rules on how a company can get the rights to explore for and produce oil and gas in those lands where the GNWT owns the resources. These rights are called "interests." An interest applies to a particular area of land. Each type of interest gives different rights to the company.

The PRA only applies to land where the GNWT owns the underground resources. These are called "petroleum lands." Petroleum lands that do not have an interest that applies to them are called "Territorial reserve lands."

The PRA does not apply to land where the GNWT does not own the underground resources. The Government of Canada owns the underground resources for land that it kept after devolution, including the offshore of the NWT. Indigenous governments own those underground resources set forth pursuant to land claims agreements with the GNWT. Therefore, the PRA does not apply to those areas of land.

Oil and Gas Operations Act

The OGOA regulates the activities that take place when companies explore for and produce oil and gas. It deals with safety, environmental protection, and resident benefits from exploration and production activities.

The OGOA applies both to petroleum lands where the PRA applies and to lands where an Indigenous government owns the resources, but it does not apply to land where the Government of Canada owns the resources. The *Canada Oil and Gas Operations Act* (COGOA), still applies to federally-owned land, including all offshore petroleum resources in the Beaufort Sea.

The GNWT is responsible for policy legislated in OGOA, while the Regulator is responsible for executing OGOA to ensure oil and gas activities are conducted in a safe and environmentally responsible manner. This separation is important because the Regulator must fulfill its regulatory mandate independent of political considerations.

The Minister of ITI's main role under the OGOA is to approve benefits plans for NWT residents. This role has economic and political implications and so it is best served by the Minister of ITI. The Regulator approves plans for safely and sustainably drilling wells and building production facilities; monitors operations to make sure that everything is going according to filed plans; and oversees the process of decommissioning and abandoning oil and gas wells.

What is Being Proposed?

This Engagement Paper identifies issues and recommends potential actions to evolve the NWT's oil and gas legislative framework. Each recommended action outlined in this document aims to achieve one or more of the following goals:

- Resolve existing administrative and technical issues in order to create a more consistent and predictable regulatory environment;
- Enhance transparency and public accountability throughout the PRA and the OGOA;
- Ensure the legislation reflects current risks, best practices and standards;
- Minimize operational challenges in the administration of oil and gas rights issuance and operations; and
- Increase our competitiveness comparative to other jurisdictions and promote increased investment in NWT oil and gas exploration and production.

This document summarizes each proposed amendment by identifying the issue as it relates to a current provision or provisions of the PRA and the OGOA, providing background information, recommending actions, and providing the reasoning for the recommendations that are being made.

The legislative amendments set out in this Engagement Paper are not absolute; rather they are intended to facilitate discussion. In order to help facilitate this discussion, the document has been organized into the following three priority areas.

Administrative and Technical Amendments

These are minor, housekeeping changes to help close loopholes, correct omissions, and generally make the legislation reflect the realities of today's NWT.

Transparency and Public Accountability

These are recommendations designed to help build trust between the people of the NWT, our government, and petroleum companies operating in the NWT.

Significant Discoveries

This area of the Engagement Paper looks at options to address concerns about the rights granted to companies under significant discovery licences, which are discussed in more detail below.

The Department of ITI is interested in engaging on all of the proposed amendments to identify the best approach to updating the PRA and the OGOA.

BACKGROUND

Oil and Gas Exploration and Development

There are three major phases to finding and developing the NWT's oil and gas resources.

The first phase is exploration, usually in areas where no oil or gas has been discovered before or in areas close to where oil or gas has been found previously. This involves running a regional seismic program that will indicate what areas in the earth's crust are likely to contain oil or natural gas.

This is followed with drilling exploration wells deep in to the earth's crust to try to reach the areas identified in the seismic program. If oil or natural gas is found, the second phase begins – drilling production wells and building the infrastructure needed to transport the oil or natural gas to a refinery or processing plant.

In the third phase, produced oil or natural gas will be shipped to refineries or processing facilities by pipeline if on land or by tanker if in the offshore.

How Are Interests Administered Under the PRA?

Two important concepts in the NWT's petroleum legislation are "interests" and "declarations." Both of these are governed by the PRA.

Declarations

In the NWT, a declaration is a decision made by the Regulator, with assistance from the OROGO, verifying whether there is sufficient evidence to support a company's claim about the petroleum resources on lands they have explored.

Declarations provide the basis for the Minister's decision to issue certain types of interests. For instance, a significant discovery declaration must be issued before a significant discovery licence can be issued. Similarly, a commercial discovery declaration can provide the basis for the Minister's decision to issue a production licence.

Significant Discovery Declarations

A significant discovery declaration occurs once the Regulator has completed a resource assessment, which may include a hearing with a company who has claimed to have made a significant discovery, and made a decision based on the analysis of a team of experts.

If these experts believe there is enough petroleum for "sustained production" — meaning continued production over many years — the Regulator will make a significant discovery declaration.

Commercial Discovery Declarations

A commercial discovery declaration is made when the Regulator assesses and agrees with a company's application stating the petroleum deposit for which they hold a significant discovery licence contains petroleum reserves that justify the investment of capital and effort to bring the discovery to production.

Interests

Holding an interest provides a company with the right to explore for and produce oil and gas in a particular tract of petroleum land as long as all regulatory authorizations remain in place. Interests are issued by the Minister of ITI.

There are three main types of interests set out in the PRA.

Exploration Licence

An exploration licence gives a company the right to explore for oil and gas in the area of the interest. The company with the exploration licence is the only one that can drill and test in the area of the interest. It is also the only one that can turn its interest into a production licence in order to develop the land to produce oil and gas.

An exploration licence can last up to nine years. A well must be drilled within the first five years for the licence to last the full length. If the company has not found oil or gas in that time, the company's interest disappears and the land reverts back to Territorial reserve land.

Significant Discovery Licence

If a company proves that there is a significant amount of petroleum resources in a part of its interest (called a significant discovery), it can turn that part of the interest from an exploration licence into a significant discovery licence.

A significant discovery licence gives the same rights as an exploration licence, but the company retains the right to explore and develop the resource for as long as the significant discovery declaration remains in force without any obligation to undertake any work to advance towards production.

Considering policy and legislative options in this area is one of the goals of this review. Details are discussed later on.

If a company proves that there is enough oil or gas in a part of its interest to make it worth the investment needed to produce, it can turn that part of the interest from an exploration or significant discovery licence into a production licence. This is known as a commercial discovery.

Production Licence

A production licence gives the company the right to produce petroleum on that land for 25 years. If the company is still producing at the end of 25 years, the production licence automatically continues. If not, the land reverts back to Territorial reserve land, but if the Minister thinks that the company will start producing on the land again, they can decide to allow the licence to continue.

Regulatory Framework in the NWT

When discussing amendments to the petroleum legislation in the NWT, it is important to recognize the GNWT is not the sole decision-maker in the NWT. The Government of Canada, regional Indigenous governments, community government and co-management boards all have a role to play in policy making and approvals.

Treaties, Land Claim Agreements, Self-Government Agreements and Non-Treaty Agreements

Treaties, including comprehensive and self-government agreements, and other sources of Aboriginal rights are a core and permanent element of any regulatory regime. Agreements in the NWT include:

- Inuvialuit Final Agreement;
- Gwich'in Comprehensive Land Claim Agreement;
- Sahtu Dene and Métis Comprehensive Land Claim Agreement; and
- Tłı̨cho Land Claims and Self-Government Agreement.

These Land Claim Agreements created Indigenous-owned and controlled lands, and in some cases, occasions where surface rights and sub-surface rights are owned separately by First Nations and the Crown (GNWT or Government of Canada).

They also set out the creation of regulatory bodies which oversee activities throughout the Mackenzie Valley. Many of these bodies were established through the Government of Canada's *Mackenzie Valley Resource Management Act* (MVRMA), discussed below.

Besides land claim agreements, the NWT includes Treaty 8 and Treaty 11 territories. For instance, the Salt River First Nation, signatories of Treaty 8, was granted certain rights under the Salt River First Nation Treaty Settlement Agreement impacting the use of lands in the southeast of the NWT and the Hay River Reserve Entitlement.

NWT lands are also subject to a number of non-Treaty agreements and memorandums of understanding which direct how the GNWT interacts with certain Indigenous governments.

These agreements also impact on the use of lands and approval processes for resource development. A number of land, resource and self-government negotiations are ongoing.

Mackenzie Valley Resource Management Act (MVRMA)

The MVRMA is federal legislation establishing the land use and environmental approval processes outlined in these land claim agreements with the exception of the Inuvialuit Settlement Region.

The MVRMA creates a number of boards and approval processes including: regional land use planning boards; the Mackenzie Valley Land and Water Board; and, the Mackenzie Valley Environmental Impact Review Board.

The MVRMA, along with its respective authorities and regulations, oversee many aspects of oil and gas activities, including:

- Land and water use;
- Consultation efforts with Indigenous peoples, partners, and stakeholders;
- Proposed socio-economic benefits;
- Reclamation and closure; and
- Environmental impacts.

The MVRMA is federal legislation, and so cannot be modified by the GNWT. To be effective, the PRA and OGOA must complement, and not duplicate, the MVRMA.

Other Relevant Legislation

Amending the PRA and the OGOA must also take into consideration a number of other current federal and territorial regulations that affect oil and gas activities in the NWT. These include the *Fisheries Act*, *Species at Risk Act*, *Waters Act* and the *Northwest Territories Lands Act* (NWTLA),

PROPOSED UPDATES TO THE NWT'S PETROLEUM LEGISLATION

This Engagement Paper identifies issues and recommends potential actions to improve upon our current legislative framework for petroleum in the NWT.

The proposed recommendations set out in this paper are not absolute. They are intended to facilitate discussion. The paper is organized into the following sections:

- **Administrative and Technical Amendments**:
  - Authority to Issue Guidelines and Interpretation Notes
  - Clarification of Responsible Minister
  - Delegation Authority of the Minister
  - Delegation Authority of the Regulator
  - Oil and Gas Committee
  - Proof of Financial Responsibility
  - Updating the Definition of "Pool" to Reflect Modern Technology
- **Transparency and Public Accountability**:
  - Confidentiality in the PRA and the OGOA
  - Environmental Studies Management Board Composition
  - Environmental Studies Research Fund
  - Exploration Licence Transparency
  - Modernizing Publication of Regulation and Notices
  - Production Licence Transparency
- **Significant Discoveries**:
  - Significant Discovery Declarations and Licences

Administrative and Technical Amendments

The Department of ITI is proposing technical and administrative amendments to the PRA and the OGOA to address operational issues which have become apparent since devolution.

The amendments discussed here will help remove ambiguity and express intended meaning in the legislation in order to create a more consistent and predictable regulatory environment. They would also provide decision makers with increased flexibility in order to ensure they can effectively administer the Acts.

Authority to Issue Guidelines and Interpretation Notes

ISSUE

The OGOA unnecessarily constrains the ability of the Regulator to issue guidelines and interpretation notes to specified areas. Such guidelines and interpretation notes assist in the proper execution of the OGOA.

BACKGROUND

Section 18 of the OGOA provides the Regulator with the authority to issue guidelines and interpretation notes in any manner that it considers appropriate. However, this authority is limited to the application and administration of:

- section 10, which relates to operating licenses and authorizations for work;
- section 14, which relates to development plan approval;
- section 36, which relates to the powers of the Regulator; or
- any regulations made under sections 51 or 52.

RECOMMENDED ACTIONS:

- Amend section 18 of the OGOA to provide the Regulator with the authority to issue and publish guidelines and interpretation notes related to the application and administration of any section of the OGOA, or any regulations made under sections 51 or 52 of the OGOA over which the Regulator has authority.
    - **What it would mean**: The Regulator would be able to give direction and provide interpretations to better communicate expectations on rules and regulations under the OGOA with communities, industry, and other stakeholders.

RATIONALE

The Regulator should have the flexibility to issue guidelines and interpretation notes regarding all their responsibilities under the OGOA. Informing stakeholders of expectations is important, and restricting that ability doesn't serve anyone well.

Clarification of Responsible Minister

ISSUE

Neither the PRA nor the OGOA clarify which "Minister" is responsible for duties and functions assigned under each Act.

BACKGROUND

In practice, the Minister of ITI is responsible for for the powers and tasks assigned to the "Minister" under the PRA and the OGOA. But, this is only done by convention.

Neither Act actually sets out which Minister is responsible.

To make sure the responsible Minister can be changed in the future based on the needs of the government, other pieces of legislation give a flexible definition of the responsible Minister, while still ensuring it is clear which one is responsible at any given time.

For example, section 1 of the NWTLA defines "Minister" as "the Minister designated by the Executive Council for the purpose of this Act or the regulations."

RECOMMENDED ACTIONS

- Amend the PRA and the OGOA to provide clarity as to which "Minister" is responsible for exercising the powers and performing the duties and functions assigned under each respective Act. This can be done by using a flexible definition similar to the one used in section 1 of the NWTLA.
    - **What it would mean**: The role of responsible Minister would be clear and the Executive Council would be able to change the role based on the changing needs of the territory.

RATIONALE

Our legislation should make clear who is responsible for what. It makes administration more efficient, and provides NWT residents with clarity on who should be held accountable for the important functions these laws assign to the Minister. It should also be sufficiently flexible to allow the Executive Council to assign these to a new Minister because the government should be able to react to new information and priorities.

Delegation Authority of the Minister

ISSUE

The OGOA does not provide the Minister responsible for the Act with the authority to delegate the responsibilities to others under the OGOA.

This hampers the effective fulfillment of the OGOA as the Minister cannot personally attend to all of the assigned duties.

BACKGROUND

It is common in Canadian legislation for the Minister responsible for exercising powers and performing duties and functions under the legislation to be able to give others the authority to exercise those powers and perform those duties and functions.

For example, subsection 6(1) of the PRA allows the Minister to designate any person to exercise the powers and perform the duties and functions under the PRA.

Despite this common practice, the OGOA does not allow the Minister to give these responsibilities to others.

RECOMMENDED ACTIONS

- Provide the Minister with the authority to delegate the Minister's powers or responsibility for the Minister's duties and functions under the OGOA.
    - **What it would mean:** Whomever the Minister of ITI allows to take on these powers — likely staff from the Department of ITI— could respond to issues immediately without the time-consuming process of getting the Minister's approval on every action. The Minister would still be accountable for the actions of those they delegate these authorities to.

RATIONALE

The Minister should have authority to delegate their powers in a way that maintains the appropriate level of accountability for the sake of effective administration. It would be unreasonable to expect the Minister's timely attention to each item which came about.

Providing the Minister with broad authority to delegate will allow for the OGOA to be effectively administered with all the resources necessary to make it work.

Delegation Authority of the Regulator

ISSUE

The scope of powers that the Regulator can delegate under the OGOA is unnecessarily restrictive. The Regulator should have more ability to delegate its various functions in in order to respond to changing circumstances.

BACKGROUND

Section 8 of the OGOA provides the Regulator with the authority to delegate its powers. However, this authority is limited to the powers provided under:

- section 10, which relates to operating licenses and authorizations for work;
- section 12, which relates to the safety of works and activities;
- section 13, which relates to financial responsibility;
- section 15, which relates to declarations;
- section 16, which relates to certificates; and
- section 64, which relates to authorizations for work.

In the post-devolution NWT regulatory environment, it is necessary for the Regulator to have the power to delegate its powers as necessary in order to ease its administrative burden and to ensure it has the capacity to perform any non-delegated powers.

RECOMMENDED ACTIONS

- Provide the Regulator with the authority to delegate more of its powers under the OGOA, including but not limited to the following sections:

    - **Section 19**, which provides the power to inquire into, hear and determine any matter if it appears that any person has failed to do something required by the OGOA or its regulations.

        - **What it would mean:** OROGO could be given more authority to act more quickly to prevent a company from breaking rules or not fulfilling requirements set out when they began operating in the NWT — better protecting the public interest in the process.

    - **Section 20**, which provides the power to make orders and issue prohibitions.

        - **What it would mean:** OROGO could be able to more quickly and easily order companies and individuals to stop work if they aren't following the rules set up under the OGOA.

    - **Section 59**, which provides the powers related to appeals of production orders or orders to prevent waste.

        - **What it would mean:** A panel of experts could be given the ability to take on appeals from companies or individuals who believe they have been treated unfairly.

    - **Section 60,** which provides powers related to hearings and orders related to waste of petroleum resources.

        - **What it would mean:** A panel of experts could be given authority to determine and act on concerns related to companies wasting petroleum resources.

    - **Section 62**, which provides powers related to appeals of orders, actions or measures taken or authorized or directed to be taken following a spill.

        - **What it would mean:** A panel of experts could be given authority to respond immediately on behalf of the Regulator in the instance of a spill, including all administrative, environmental response, and enforcement actions deemed necessary to best serve the public interest.

    - **Section 87**, which provides powers related to the determination of straddling resources.

- **What it would mean:** OROGO could be given greater authority to determine whether a resource reported by a company fall on both territorial and federal resource lands, collaborate with the Government of Canada to come to an agreement on how to manage the resources, and work with the company to complete the process.

- **Section 110,** which provides the powers to review the need for an order made by a safety officer when dangerous operations are detected.

    - **What it would mean:** A panel of experts could be given more authority to directly act on safety issues which occur on petroleum projects, including executing a review of practices by a company, ordering a stop to operations, and administering the appeals process on behalf of the Regulator.

RATIONALE

Providing the Regulator with the flexibility to delegate more of its powers under the OGOA will ease the administrative burden on the Regulator and assure the capacity to perform additional responsibilities that may result from these proposed amendments.

Oil and Gas Committee

ISSUE

Functions performed by the Oil and Gas Committee (the Committee) can be fulfilled by the Regulator or, in special cases, by an expert or advisory group selected by the Regulator on an ad hoc basis.

BACKGROUND

Sections 27 to 34 of the OGOA establish the Committee and outline its jurisdiction and powers. Although the Committee has never been established, the continued presence of these sections provides the GNWT with the ability to establish the Committee when the need for input arises.

At the same time, the functions performed by the Committee could be fulfilled by the Regulator or, in special cases, by an expert or advisory group selected by the Regulator on an ad hoc basis.

Having redundant authorities in the legislation can lead to conflicts of jurisdiction, wasted resources and confusion for all involved. The removal of the sections related to the Committee would address this, and eliminate unnecessary administrative and financial burdens for the GNWT.

RECOMMENDED ACTIONS

- Remove the sections of the OGOA related to the Committee and reassigning the Committee's roles and responsibilities to the Regulator.

- Provide the Regulator with the authority to designate responsibility for its roles and responsibilities to an advisory group consisting of experts it selects when necessary.

    - **What it would mean:** The inactive Committee would no longer be part of legislation, and in its place, the Regulator would be given the ability to put together advisory groups when necessary.

RATIONALE

The Committee has never been formed. It serves as a potential administrative and financial burden for the NWT. Giving the Regulator the flexibility on ways to get opinions of experts, external organizations, and communities when necessary streamlines the process and serves the same function. There is no need for this redundancy.

Proof of Financial Responsibility

ISSUE

Section 64 of the OGOA creates the potential for operators to be inadvertently released of financial liability if they stop working on their interest and, therefore, lose their authorization under subsection 10(1)(b) of the OGOA.

This means the public could be left to cover the cost of cleaning up and decommissioning abandoned wells.

BACKGROUND

Subsection 64(1) of the OGOA requires an applicant for an authorization under subsection 10(1)(b) to provide the Regulator with proof of financial responsibility. Furthermore, subsection 64(3) requires the Regulator to be able to pay claims "out of the funds available" as proof of financial responsibility. This implies that funds are immediately accessible by the Regulator to pay claims related to any incident related to a well.

However, subsection 64(2) of the OGOA only requires that the holder of the authorization (i.e., the operator) 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."

This language creates the potential for operators to be inadvertently released of financial liability if they cease work and other activities.

Today, this means there are suspended wells in the NWT where the operator does not hold an authorization — meaning there is no work underway in the area they were exploring or producing — but the Regulator cannot prove the company is financially responsible.

RECOMMENDED ACTIONS

- Specify in section 64 of the OGOA that proof of financial responsibility is a continuing obligation for all wells regardless of whether or not an authorization is still held under subsection 10(1)(b) of the OGOA.

- Add a definition of "well owner" to the OGOA so that the continuing obligation for proof of financial responsibility required by section 64 can be assigned to well owners rather than well operators.

    - **What it would mean:** Well owners would be able to be held financially responsible whether work is currently happening or not.

RATIONALE

The recommended actions will provide the Regulator with the ability to immediately access funds necessary to pay claims related to any incident, including those related to wells that have no current authorizations associated with them. It also clarifies that it is the well owner, rather than the well operator, who is responsible for the continuing obligation to provide proof of financial responsibility.

Updating the "Pool" Definition to Reflect Modern Technology

ISSUE

The definition of "pool" in section 1 of the OGOA needs to be updated to reflect the expanded meaning of the word in today's petroleum industry.

BACKGROUND

Section 1 of the OGOA defines "pool" as a "natural underground reservoir containing or appearing to contain an accumulation of oil or gas or both oil and gas and being separated or appearing to be separated from any other accumulation."

This definition refers only to the conventional petroleum accumulations as defined using traditional extraction methods, but not unconventional shale formation source rocks that can be produced using modern techniques like horizontal drilling.

The size of reservoirs found in unconventional shale formations are more difficult to determine than in conventional reservoirs.

The current definition does not reflect these differences. This means that companies seeking an interest in unconventional formations could be provided larger tracts of land than the definition intends.

One option to limit the size of unconventional plays is to separate the word "pool" into two categories: conventional pools and unconventional pools.

Under this option, a "conventional pool" would be determined by its natural concentration limits, whereas an "unconventional pool" would be determined by combinations of natural and artificial standards, such as a license or a policy guideline.

Alternatively, if the extent of a pool is limited to the area authorized by an exploration licence, another option to limit the size of unconventional plays is to develop a definition of "pool" that is tailored specifically to modern applications.

For example, the definition of "pool" could be amended so that it is limited to the same rock formation within the area covered by an exploration licence.

RECOMMENDED ACTIONS

- Develop a separate definition of "pool" applicable to shale or other source rock formations that is based on consultation with a petroleum geology expert. One "pool" definition will be applied to conventional reservoirs, and another "pool" definition will be applied to unconventional reservoirs.

    - **What it would mean:** The unique traits of unconventional reservoirs will be recognized in legislation and as a result, the size of petroleum lands which companies are able to gain tenure for would not be excessive.

RATIONALE

The GNWT needs to make sure legislation reflects changes in natural resource exploration. We know there are many instances of unconventional formations in the NWT and the legislation needs to account for the fact that these formations have been and will be explored and developed in the future.

Transparency and Public Accountability

The Department of ITI is proposing amendments to enhance transparency and public accountability throughout the PRA and the OGOA. Increased transparency and public accountability is a crucial component of the GNWT's goal of building public trust, and transforming natural resource wealth into sustainable social and economic development.

These changes will help the PRA and the OGOA better reflect global best practices in petroleum resource governance — including those established by the Extractive Industries Transparency Initiative. They are intended to balance the need for increased transparency to serve the interests of NWT residents and improve the benefits accruing to the GNWT from oil and gas activities; while also recognizing a limited amount of information should be commercially confidential to ensure companies have the confidence to do business here.

Confidentiality in the PRA and OGOA

ISSUE

The broadly drafted confidentiality provisions in the PRA and the OGOA could be amended to better balance the need to protect confidential information with the need for increased transparency to better serve the interests of NWT residents, build public trust in oil and gas companies, and improve the benefits accruing to the GNWT from oil and gas activities.

BACKGROUND

Confidentiality provisions generally suppose two corporate entities doing business and answerable to shareholders. When one of the parties is the government answerable to citizens, the secrecy afforded in licences or other agreements is no longer justifiable. The public has a right to know how their resources and finances are being managed.

Confidentiality of oil and gas sector information can be important for protecting the privacy of employees, protecting trade secrets and ensuring that investors receive full value given the terms and conditions of oil and gas licences.

However, excessive secrecy can sometimes harm the public interest and prevent oversight bodies from effectively monitoring company activities. For example, NWT residents expressed concern that the right to know the content of fluids used in hydraulic fracturing operations are not included in the current legislation.

Many parts of section 91 of the PRA undermine the GNWT's commitment to transparency and openness. It grants privileged status to all information while exempting certain information from secrecy, rather than requiring all information be publicly available while exempting certain information from public disclosure.

At a minimum, section 91 of the PRA can be interpreted to cover licenses and payment information. This is information generally considered public in other jurisdictions. Subsection 91(11) is particularly problematic in that it states the confidentiality provisions of the PRA take precedence over the *Access to Information and Protection of Privacy Act* — a law already containing many exemptions from public disclosure.

Most of the information that section 91 of the PRA currently allows to remain secret is not commercially sensitive. Full disclosure of financial information, payments and licences does not pose a threat to a company following the rules. Some of the only information that could cause compliant companies harm would be geological data during the exploration phase as well as references to future financial transactions.

Sections 22 and 23 of the OGOA grant broad powers to the Regulator to make any information before it confidential. When applying those sections, the Regulator must make a judgement call on whether disclosure of information "could reasonably be expected to result in a material loss or gain to a person directly affected by the proceedings" or whether disclosure "outweighs the public interest in disclosure." These provisions place the Regulator in a position where it must determine materiality of losses or gains and reasonableness of a request for confidentiality.

Given the fact companies hold far more information than the Regulator in most cases; this is a near impossible task for the Regulator.

Furthermore, the phrasing of "material loss or gain" and "outweighs" are so broad they cover nearly all activities, even if it is in the public interest to disclose information.

RECOMMENDED ACTIONS

- Amend section 91 of the PRA (specifically subsections 91(2), 91(3), 91(7), 91(8) and 91(9)) and sections 22 and 23 of the OGOA to conform with freedom of information principles, namely that:
    - Information should be disclosed unless it has been exempted by a public body (e.g., the Regulator) or legal provision;
    - Non-disclosure should be limited to circumstances where disclosure would cause material harm or is not in the public interest; and

- When considering whether a document should be made public, potential embarrassment, loss of confidence or misunderstanding may not be deemed justifications for non-disclosure.

    - **What it would mean:** Far more information on petroleum activities will be subject to public release. Some examples of this information would include spills, fluids used in hydraulic fracturing operations, and other environmental impacts

- Amend section 91 of the PRA and sections 22 and 23 of the OGOA to tightly define exemptions to full disclosure, for instance trade secrets and commercially sensitive information.

    - Commercially sensitive information would include: employee information; assumptions used for assessing commercial terms; and references to future transactions.

    - During the exploration phase only, commercially sensitive information would also include the quality and quantity of reserves and operational data. Based on this information, a company would need to apply to the Regulator for an exemption from public disclosure.

        - **What it would mean:** It would be far more difficult for companies and the government to justify keeping information about petroleum exploration and production out of the public eye.

- Delete subsection 91(11) of the PRA.

    - **What it would mean:** The rules for government transparency under the PRA would no longer take precedence over those required under the *Access to Information and Privacy Protection Act*.

- Amend the OGOA to require companies to publicly disclose a benefits plan implementation summary after every year in which the company has done work on any of its petroleum land tenure interests in onshore NWT.

    - **What it would mean:** Companies would need to let the public know what they have done to fulfill the socioeconomic commitments they made to the NWT every year.

RATIONALE

The recommended actions will better align section 91 of the PRA and sections 22 and 23 of the OGOA with the Extractive Industries Transparency Initiative standard and provide increased transparency which is critical to improving oil and gas sector management.

Over the short term, transparency helps government agencies responsible for enforcing licence terms and conditions do their jobs. It also counteracts a perception that companies are hiding poor behaviour behind a mask of secrecy.

Over the long term, the government will be able to better manage and monitor the sector as the information asymmetry between the government and companies closes.[1]

As such, confidentiality provisions in the PRA and the OGOA should be carefully tailored to favour public access to information.

Environmental Studies Management Board Composition

ISSUE

The membership of the Environmental Studies Management Board (the Board) consists of two government members, two industry members, and one public member. The addition of a second public member is necessary to balance industry, government, and public representation in the Board's decision-making process.

BACKGROUND

Subsection 70(5) of the PRA currently allows the Minister to appoint one member of the public to the Board. The membership of the Board, which has been fixed at five members, consists of two government members, two industry members, and one public member. The board is independent from the GNWT.

Section 71 of the PRA outlines the duties and functions of the Board. Those duties and functions include establishing guidelines and procedures for determining the environmental and social studies that the Environmental Studies Research Fund (the Fund) will be used towards and selecting persons to carry out such studies.

Members of the Legislative Assembly have raised concerns about the unbalanced composition of the Board and have suggested increasing public involvement in all aspects of the Board's activities. In particular, Members have suggested increasing public input regarding the process for choosing environmental and social studies that the Fund will be used towards and selecting persons to carry out such studies.

[1] Peter Rosenblum and Susan Maples (2009) *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. Revenue Watch Institute. Online: https://resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf.

RECOMMENDED ACTIONS

- Amend subsection 70(5) of the PRA to allow the Minister to appoint two members of the public to the Board.

    - **What it would mean:** The Minister would have the freedom to add one additional public member to the Board.

RATIONALE

The public deserves more tangible input into what the Board does. This move will help ensure the public has a strong voice on what research the Fund this board is responsible for is spent on.

Environmental Studies Research Fund

ISSUE

The PRA does not require much information to be published on the activities and finances of the Environmental Studies Research Fund (the Fund), though the GNWT has voluntarily published reports over the last two years.

Furthermore, the PRA lacks measures to ensure the integrity of the Fund by explicitly prohibiting conflict of interest and aligning Environmental Studies Management Board (the Board) remunerations with GNWT standards.

BACKGROUND

The Fund is established under the PRA in order to "finance environmental and social studies pertaining to […] exploration, development and production activities on petroleum lands."

The Fund is defined as a special purpose fund, meaning disbursements from the Fund do not need budgetary approval and the Fund's activities are not subject to the same disclosure requirements as ministry spending.

Subsection 70(3) of the PRA states that the information in the Fund's annual report is to be prescribed by the Minister, rather than providing a list of information that must be disclosed. In practice, the Fund has published two annual reports on its website which include a summary of activities and projects, Board members, recipients, a summary financial statement and a summary budget. Studies financed from the Fund have also been published.

Subsection 70(7) of the PRA states that each member of the Board shall be paid reasonable travel and living expenses. Measures to prevent conflict of interest by Board members or staff or to align expenses with GNWT standards are absent.

RECOMMENDED ACTIONS

- Amend subsection 70(3) of the PRA to specify the mandatory disclosure of information on Fund activities and finances.
    - For example, the subsection could include reference to a specific list of information to be included in the report, such as projects funded, recipients, Board members, impact, balance, deposits and withdrawals, and audit results.
    - The legislation could also require that the report and Board minutes be made available on a GNWT website.
    - **What it would mean:** Information on the Board's finances and activities would be made public, opening them to more public oversight.
- Amend subsection 70(7) of the PRA to state that the Board members are entitled to be paid remuneration at the rates determined by the Financial Management Board.
    - **What it would mean:** Board member payments would be made to meet the standards of the GNWT.
- Amend subsection 70(7) of the PRA to require that Board members abide by GNWT conflict of interest standards as stated in the Code of Conduct for employees of the GNWT.
    - **What it would mean:** Members of the Board would be held to strict conflict of interest standards to ensure the integrity of the Board's activities.

RATIONALE

The recommended actions will improve the integrity of the Fund by explicitly prohibiting conflict of interest and aligning Board remunerations with GNWT standards.

Extra-budgetary funds, such as the Fund, are particularly susceptible to misallocation of resources. As such, there is a strong rationale for subjecting them to a high degree of transparency and oversight. While the small disbursements of the Fund ($300,000 in budgeted expenses for fiscal year 2017/18) may not justify significant reporting and audit expenses today, there would be greater justification should the Fund grow to its maximum allowable size of $15 million.

Many oil or mineral-financed extra-budgetary funds around the world—including the Alaska Permanent Fund, Timor-Leste's Infrastructure Fund, and Montana's Forever Wild Land Trust Fund—publish reports on their activities and finances to address this risk and foster public trust around use of such funds. Requiring publication of a detailed annual report would strengthen existing disclosures, building on good practices with the GNWT.

These funds generally require that board members and staff are subject to codes of conduct and conflict of interest standards. While GNWT employees are subject to the government's code of conduct, it is unclear whether non-GNWT Board members would be. (Currently, only two of the five Board members are GNWT employees.) Therefore, a reference to these standards is appropriate in section 70 of the PRA.

With respect to travel and living expenses, subsection 70(3) of the PRA is not aligned with subsection 28(4) of the OGOA which states members of the Oil and Gas Committee who are not employees of the public service are entitled to be paid remuneration at the rates determined by the Financial Management Board. The proposed amendment would simply make the PRA and OGOA consistent in spirit and language.

Exploration Licence Transparency

ISSUE

Petroleum exploration activities often raise concerns about the impact of geological tests on communities and the natural environment. The results of tests during the exploration phase are also valuable information for companies, investors and the GNWT. As such, the transparency of activities and results is of great interest to NWT residents and other stakeholders. The PRA could be amended to make exploration activities in the NWT more transparent while maintaining legitimate company confidentiality of drilling and seismic results.

BACKGROUND

There are few requirements in the PRA to make key information around exploration activities and changes public. Specifically, there is no requirement to publish the terms and conditions of exploration licences or the licences themselves. There are also no requirements to disclose the exploration activities of petroleum companies or the results of geological tests to the government to build the territory's geological information base. Finally, section 24 of the PRA states that the Minister has discretion to revise exploration licences without making them public or consulting affected stakeholders.

RECOMMENDED ACTIONS

- Amend the PRA to require the GNWT to publish a standard model exploration licence online as well as all active signed exploration licences.

    - **What would it mean:** The public would be made aware of information included in standard exploration licences and which companies are exploring for petroleum across the NWT.

- Amend the PRA to require that all seismic and drilling results must be provided to the GNWT and become GNWT property when the exploration licence expires.

    - **What would it mean:** The GNWT would get more information on the NWT's geology from companies looking for petroleum. It could then make this information public for research and to attract investment.

- Amend section 24 of the PRA to make any changes public and allow for public comment prior to changes being made.

    - **What it would mean:** The public would have meaningful input into changes made by the Minister of ITI to exploration licences.

RATIONALE

The recommended actions will make exploration activities in the NWT more transparent while maintaining legitimate company confidentiality of drilling and seismic results.

Transparency of contracts and licences is becoming more common. Many governments have a legal requirement to publish all oil and gas contracts.[2] Publishing exploration licences not only allows governments to more effectively monitor companies for compliance, but also helps build trust with communities in the region where activity is happening.

While the GNWT currently reports on issuances of new exploration licences (as well as significant discovery and production licences), it does not publish the signed terms of those licences. Companies are also not obliged to publish information on activities, though some already do so voluntarily or through securities disclosures.

[2] Don Hubert and Rob Pitman (2017) *Past the Tipping Point? Contract Disclosure Within EITI*. NRGI. Online: https://resourcegovernance.org/analysis-tools/publications/past-tipping-point; Peter Rosenblum and Susan Maples (2009) *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. Revenue Watch Institute. Online: https://resourcegovernance.org/sites/default/files/RWI-Contracts-Confidential.pdf.

Modernizing Publication of Regulations and Notices

ISSUE

Given the GNWT's commitment to transparency and that the *Northwest Territories Gazette* (the Gazette) may not be the most suitable platform for sharing information on oil and gas regulations and policies, certain sections of the PRA and the OGOA related to the publication of regulations and notices could be modernized to increase transparency.

BACKGROUND

The PRA and the OGOA require some versions of certain regulations and notices developed by the GNWT to be published in the Gazette.

There are two sections of the PRA that refer specifically to the Gazette and publication of regulations and notices. Section 18 states that notices must be published in the Gazette and other publications as deemed appropriate, and may contain a summary of information. Subsections 96(2) and 96(3) state that regulations shall be published in the Gazette but that amendments need not be published.

Section 53 of the OGOA also states that the oil and gas regulator must publish regulations in the Gazette. There is no requirement for public comment or consultation on regulation drafts.

RECOMMENDED ACTIONS

- Amend section 18 of the PRA by removing the reference to specific subsections and instead requiring that <u>all</u> notices required to be published by the Minister be published in the Gazette as well as online on a specific GNWT website and that the website must be functional at all times and updated on a regular basis.
    - **What it would mean:** All notices related to petroleum would be more readily-available than before.

- Amend section 96 of the PRA to require that all regulations be published online on a specific GNWT website, in addition to the Gazette, and that the website must be functional at all times and updated on a regular basis.

- Amend section 53 of the OGOA to require that all regulations be published online on a specific GNWT website, in addition to the Gazette, and that the website must be functional at all times and updated on a regular basis.
    - **What it would mean:** NWT residents and all other stakeholders would have easy access to all regulations and their ongoing amendments.

- Amend section 53 of the OGOA to specify a period of consultation and review of regulations by the Regulator.

    - **What it would mean:** A process would be in place allowing changes to regulations to be open for public review and comment for a set period of time.

RATIONALE

The recommended actions will increase transparency by modernizing the sections of the PRA and the OGOA related to the publication of regulations and notices.

These amendments would make common practice standard and mandatory with few additional costs for the GNWT as companies, individuals, and other stakeholders increasingly move online to get information on laws, policies and regulations.

Exemptions on full publication raise unnecessary questions and undermine the commitment to full transparency. As such, any disclosure exemptions could be removed.

The lack of public consultations in section 53 of the OGOA is not consistent with what the GNWT knows about the importance of adequate consultation around petroleum operations. Fixing this is in-line with the GNWT's commitment to providing meaningful opportunities to engage with government decisions.

Production Licence Transparency

ISSUE

Petroleum production is the most important phase of the production cycle. It has the greatest social and environmental impacts and the greatest implications for territorial costs and benefits. As such, NWT residents and the GNWT have a right to information on production activities and a duty to review and enforce licence terms and conditions.

BACKGROUND

At present, there are few requirements in the PRA to make key production information public. Specifically, there is no requirement in the PRA to publish the terms and conditions of production licences or the licences themselves, only a requirement in subsection 39(3) that the production licence must be in the "prescribed form" without saying what that form should contain.

While the GNWT currently reports on issuances of new licences, it does not publish the signed terms. Companies are also not obliged to publish information on activities, though some already do so voluntarily or through securities disclosures.

RECOMMENDED ACTIONS

- Amend section 39 of the PRA to require companies to publicly disclose specific information related to production.

    - **What it would mean:** Companies could be made to disclose information on items like: current work programs; dealings, transfers or licence changes; budgets and investments; number of employees; statement of reserves; how much oil and gas there is, how much is left, and its quality by well; size of production area; plans or use of pipelines and transport infrastructure; securities and insurance held; and environmental and socioeconomic impacts and benefits.

RATIONALE

Transparency of licences is becoming more common internationally. Many governments have a legal requirement to publish all oil and gas contracts. Publishing exploration licenses allows for monitoring of compliance and improves trust amongst communities, companies and governments.

Activities listed above are based on a survey of publicly disclosed data on petroleum production from Alberta, British Columbia, Colombia, New Zealand and Norway, as well as the Extractive Industries Transparency Initiative standard.

Significant Discoveries

The Department of ITI's approach to addressing the Significant Discovery priority area is slightly different than the approach taken for the Administrative and Technical Amendments and Transparency and Public Accountability priority areas.

For the Administrative and Technical Amendments and Transparency and Public Accountability priority areas, this Engagement Paper discusses several issues within each priority area, provides background information for each issue, and then provides a recommended action and rationale for each recommendation.

For the Significant Discovery priority area, the issue is discussed more generally, provides background information and then identifies several different options that could be chosen to address the issues related to significant discoveries under the PRA.

The options identified are not mutually exclusive. A combination of options could ultimately be chosen to address the issues discussed below.

Significant Discovery Declarations and Licences

ISSUE

The PRA allows interest holders to obtain significant discovery licences (SDLs) providing exclusive rights to very large areas of petroleum lands for an indefinite period of time without any obligation to undertake any work to advance towards production.

Furthermore, the PRA allows an interest holder to obtain a SDL without having explored or drilled for petroleum on the lands covered by that SDL.

BACKGROUND

The Significant Discovery Process

If an interest holder believes that it has made a "significant discovery" — meaning a discovery of enough petroleum in its interest to justify sustained production – that interest holder can apply to the Regulator for a significant discovery declaration (SDD) under section 27 of the PRA.

The Regulator will rely on its team of experts to consider an application for a SDD. If satisfied that a significant discovery has been made, the Regulator will make a SDD describing the land to which the declaration applies.

SDDs remain in force until the results of future drilling demonstrate that the discovery no longer meets the definition of a "significant discovery" under the PRA.

The area of land covered by the SDD is called the "significant discovery area" (SDA). Over the years, the potential size of an SDA has increased due to advances in technology, particularly the use of modern techniques such as horizontal drilling.

Before the Regulator makes a decision on whether to issue the SDD, section 28 of the PRA requires the Regulator to notify all directly affected persons (DAPs) who may be affected by that decision. The DAPs, who are generally neighboring interest holders, can then apply to have the SDD apply to their interest as well.

The DAP process can lead to an already large SDA extending onto DAP land and Territorial reserve lands. Furthermore, it can allow a DAP interest holder to obtain a SDL without having explored or drilled for petroleum on the lands covered by that SDL.

Once the SDD is made and the SDA is established, interest holders that have a portion, or all, of their interest included in the SDA have the right to apply for a SDL pursuant to section 30 of the PRA.

A SDL gives the same rights as an exploration licence, but the SDL holder retains the right to explore and develop the resource for as long as the SDD remains in force without any obligation to undertake any work to advance towards production.

The SDL term is effectively indefinite. In principle, the term of a SDL may be limited if the SDD is amended or revoked, the SDL is converted to a production licence, or by way of a "drilling order." A drilling order is an extraordinary measure in which the Minister may step in and force a company to drill.

Review of the Significant Discovery Process

The PRA was mirrored from the *Canada Petroleum Resources Act* (CPRA) as part of devolution. This means the PRA and the CPRA contain similar provisions regarding significant discoveries and prior reviews have contributed to the conversation on these topics.

In July 2015, the federal Minister of Aboriginal Affairs and Northern Development appointed Rowland J. Harrison, Q.C., to review the CPRA. That review resulted in a report which, among other things, discussed imposing a fixed term limit on SDLs to address concerns about granting indefinite interests to the large SDAs associated with new petroleum resource play types.

The report concluded that the CPRA contained adequate mechanisms to force development, including drilling orders and development orders, to ensure that petroleum discoveries with commercial potential would be developed. Therefore, the report recommended *not* imposing a fixed term limit on SDLs granted under the CPRA.

The report also recommended discussing amendments to the definition of a "significant discovery" to ensure that it was consistent with current technology.

A revised definition could be done by requiring interest holders to meet specific engineering and petroleum resource flow requirements before deeming their discovery as significant.

However, through its own review, the GNWT determined that amending the definition does not solve the problems the NWT is looking to solve — namely, ensuring excessive land is not tied up for too long without any work being done to further the interests of the NWT – nor is it within the scope of this legislative initiative.

It is important to note that the federal legislation mostly covers offshore operations. These projects are longer-term and cost a lot of money. If the Government of Canada wants these areas to be explored, they need to take into account the fact companies look for secure, long-term investments — something the recommendation from the report reflects.

The GNWT's resources are largely onshore, which has different challenges and limitations to consider.

The GNWT conducted its own review and identified several potential options to address the issues related to significant discoveries under the PRA. Some would require legislative amendment, others would not.

OPTIONS

Status Quo

One option is to maintain the status quo. Those in favour of maintaining the status quo are likely to argue that the assurance of continuing tenure for interest holders is more likely to support the formulation of development plans, particularly where the commercial viability of projects may depend on the coordinated development of significant discoveries.

Other options are listed below. Note that the options that follow are not mutually exclusive. A combination of options could ultimately be chosen to address the issues related to significant discoveries under the PRA.

No Legislative Amendments Required

Limiting the size of the petroleum lands subject to an exploration licence during Call for Bids

The smaller the exploration licence, the smaller the maximum size of the significant discovery that can be applied for. Therefore, this option, especially if combined with some of the other options discussed below, could help prevent large swaths of land being left undeveloped for long periods of time.

To implement this option, the GNWT would need to determine what constitutes a reasonable maximum size for an exploration licence. The maximum size could be based on maximum distance in all directions for horizontal drilling from a single pad, but could also include a buffer to allow for future, longer horizontal drill distances not yet achieved.

Issuing drilling orders

The issuance of drilling orders could solve the issue by requiring interest holders to drill a well in order to demonstrate the SDL actually sits within a SDA.

This option is not without its challenges.

The GNWT has never exercised its power to make a drilling order. There is risk of the GNWT appearing to force companies to drill even when conditions are uneconomic, which in turn could deter investors.

A drilling order could also open the GNWT to legal challenges from companies. However, these risks could be minimized by publishing a policy document clearly outlining how the Minister will decide whether to issue a drilling order. Such a policy document could reflect the reality of doing business, while also considering the needs of NWT residents.

Legislative Amendments Required

Limiting the size of significant discovery areas

The GNWT could amend subsection 27(3) of the PRA so that the size of the SDA would be limited to an area equal to or less than the size of the existing interest that the significant discovery is located on.

This would mean no interest holder could acquire the right to explore and the exclusive right to drill and test for petroleum without drilling in their own interest.

This would also eliminate the DAP process outlined in section 28 of the PRA.

Limiting the term of SDLs

The GNWT could amend section 30(3) and 32(3) of the PRA to limit the term of SDDs and SDLs.

This could be implemented a number of ways, including fixing the term of an SDL by having it expire after a number of years or making the SDD remain in force until the earlier of the expiry of the SDL or the revocation of the SDD by the Minister.

Implementing renewal requirements for SDLs

The GNWT could require companies to meet requirements to keep their SDL to make sure these resources are being well-managed.

For example, the SDL holder could be required to contribute to geological knowledge of the area by taking part in drilling or seismic testing on their interest, and submitting this data to the GNWT. This would help NWT residents by getting more information on-file to inform decisions and potentially contribute to future investments.

The data would be subject to confidentiality provisions in the PRA.

Limiting exploration rights for SDL holders

The GNWT could limit the exploration rights of companies to a specific geological formation.

This would mean requiring the specific geographic formation the SDD is being made for under subsection 27 (1) of the PRA, and restricting the exploration rights to the specific geological formation the SDD was declared for under subsection 29(a).

Under this scenario, SDLs would cover far less area, leaving less land tied up without work being done and leaving it available to contribute to the NWT.

Eliminating SDDs and SDLs from the PRA.

Under this option, an exploration licence would be converted directly into a production licence assuming the applicant meets all the required criteria for a production licence. The exploration licence would cover the full exploration period, of nine years, after which companies would either apply for a production licence or relinquish land for future exploration by another company.

While this would solve the issue of land being tied up, it would require significant overhaul of the petroleum regime, and may discourage investment because there is less flexibility for companies to hold interests for longer than nine years — a fairly short time in petroleum markets.

Get Involved — And Get In Touch!

We are carrying out comprehensive engagement to make sure NWT residents, Indigenous governments and organizations, and other stakeholders have their say on these amendments.

ITI will hold regional public engagement drop-in sessions to gather feedback on proposed amendments. Comments and feedback will be accepted throughout the engagement period from March 5 through May 4, 2018.

Can't make it to a community session? No problem — ITI will accept input and answer questions in the following ways:

- **Visit:** Engage-ITI.ca/PetroLeg (English)
  participation-MITI.ca/loispétroliers (French)
- **Email us at:** EngagePetroleum@gov.nt.ca
- **Phone us:** 1-867-777-7481
- **Send us mail:**

  Petroleum Resources Division

  GNWT – Department of Industry, Tourism and Investment

  #64 Mackenzie Road,

  PO Box 3019 Inuvik, NT X0E 0T0
- **Visit us in person:**

  Department of ITI

  Petroleum Resources Division

  #64 Mackenzie Road

  Inuvik, NT

  Office Hours: 8:30am–12pm or 1:00pm–5:00pm, Monday to Friday. (Closed Statutory Holidays)

All comments should be clearly attributed to a person or organization. The same standard applies whether submissions are made in person, online, by email, by phone, or by mail.

What's Next?

Input received from the engagement process will be analyzed and compiled into key themes presented for the public in a *What We Heard Report*.

As the legislative process continues, ITI will continue to reach out to partners like the Intergovernmental Council, and key stakeholders and subject matter experts as necessary, to finalize policy intentions. Before the amendments are introduced, they will be subject to consultation with all Indigenous governments to address any impacts on Aboriginal and Treaty rights.

Feedback and input received during this public engagement exercise outside the scope of the amendments currently being proposed will be kept for consideration in the future.

Useful Participant Resources

Reference the full text of the legislation we're making changes to:

- *Petroleum Resources Act*
- *Oil and Gas Operations Act*

Download these backgrounders from the website's document library on the right-hand side:

- *Petroleum Resources Act*: What is it?
- *Oil and Gas Operations Act*: What is it?
- *Petroleum Resources Act*: Interests and Declarations, Explained
- The Process: Six Steps to Better Petroleum Legislation

Do our survey, leave your comments, or ask us a question at Engage-ITI.ca/PetroLeg (English) or Participation-MITI.ca/loispétrolières (French).

Thank you for your submissions and your interest in this legislative initiative!

HAVE YOUR SAY!

Updates to the NWT's Petroleum Legislation

Submit your feedback or ask us a question at:

Engage-ITI.ca/PetroLeg

Participation-MITI.ca/loispétrolières (French)