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LEGISLATIVE SUMMARY



Bill C-64: An Act to amend the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act

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**Norah Kielland
Mayra Perez-Leclerc
Caroline Quesnel**

Legal and Social Affairs Division
Parliamentary Information and Research Service

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-64: AN ACT TO AMEND THE CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT

1 BACKGROUND

Bill C-64, An Act to amend the Canada-Nova Scotia Petroleum Resources Accord Implementation Act¹ (short title: Georges Bank Protection Act) was introduced in the House of Commons on 5 June 2015. It was subsequently referred to the House of Commons Committee of the Whole, which reported the bill without amendment, and to the Standing Senate Committee on Energy, the Environment and Natural Resources, which also reported the bill without amendment. The bill passed third reading in the Senate on 23 June 2015 and received Royal Assent the same day.

Bill C-64 amends the 1988 *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*² to re-establish and enable the extension of a statutory moratorium on petroleum-related activity in the Canadian portion of Georges Bank.

1.1 GEOGRAPHICAL LOCATION AND SIGNIFICANCE OF GEORGES BANK

Georges Bank is a shoal that lies in the Western North Atlantic between Cape Cod, Massachusetts, and the southwestern portion of Nova Scotia. It straddles the maritime boundary between Canada and the United States and covers a total area of approximately 40,000 km², of which 7,000 km² are located in Canadian waters.³

Georges Bank is an exceptional offshore ecosystem. Its rich environment for phytoplankton is 2 to 2.5 times more productive of fish than comparable areas.⁴ The fishing industry supported by Georges Bank is a major source of employment and is of socio-economic significance for coastal communities in Nova Scotia and the United States. Further, Georges Bank is biologically diverse, provides a year-round spawning ground and nursery, is home to numerous species of fish and bottom dwellers (such as lobsters and scallops) and acts as a migratory corridor for many marine animals.⁵

1.2 THE MORATORIUM ON PETROLEUM-RELATED ACTIVITY IN GEORGES BANK

The following table provides a chronology of the moratorium, which is explained in further detail below.

Table 1 – Georges Bank Moratorium at a Glance

1986	The governments of Canada and Nova Scotia sign the <i>Canada-Nova Scotia Offshore Petroleum Resources Accord</i>
1988	The governments of Canada and Nova Scotia adopt legislation to place a moratorium on petroleum-related activity in Georges Bank until 1 January 2000
1999	The Georges Bank Panel recommends extending the moratorium
1999	The moratorium is extended to 31 December 2012
2010	The governments of Canada and Nova Scotia agree to extend the moratorium to 31 December 2015
2010	The government of Nova Scotia passes the <i>Offshore Licensing Policy Act</i> , extending the moratorium until 2022
2015	The government of Canada signalled its intention to re-establish the moratorium in <i>Budget 2015</i>

In 1986, the governments of Canada and Nova Scotia signed the *Canada-Nova Scotia Offshore Petroleum Resources Accord* (the Accord).⁶ The Accord facilitated the development of oil and gas reserves off the coast of Nova Scotia and regulated joint resource management and revenue sharing between the federal and provincial governments for the offshore area. Also at that time, local residents and fishing associations were raising concerns with respect to potential effects of petroleum exploration in Georges Bank.⁷

Implementing the Accord required both provincial and federal legislation (the Implementation Acts), which were adopted in 1987 and 1988, respectively.⁸ In addition to implementing the terms of the Accord, and in response to the concerns raised with respect to petroleum exploration in Georges Bank, the Implementation Acts provided a legislative basis for a moratorium on petroleum-related activity in the Canadian portion of Georges Bank until 1 January 2000.⁹

As required by the Implementation Acts, in 1996 the Georges Bank Panel was established to conduct a public review of the social, economic and environmental effects of potential petroleum-related activity in Georges Bank. The Panel's report and associated recommendations, released in 1999, served as a basis for determining whether the moratorium should be extended.¹⁰

Following an extensive four-stage review process – which included information sessions, workshops and public hearings across Nova Scotia – the Panel determined that potential risks were associated with oil and gas extraction activities and recommended that the moratorium remain in place.¹¹ In light of this recommendation, the federal and provincial governments extended the moratorium from 1 January 2000 to 31 December 2012.¹² An agreement between the governments of Canada and Nova Scotia in 2010 extended the moratorium by an additional three years to 31 December 2015.¹³

1.2.1 EXTENDING THE MORATORIUM BEYOND 2015

As noted, although a joint federal–provincial announcement made in 2010 confirmed that the moratorium would be further extended until 31 December 2015, no federal legislation had been enacted to that effect.¹⁴ However, in Budget 2015, the federal government signalled its intention to amend the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* and re-establish a moratorium on petroleum-related activity.¹⁵ Bill C-64 reflects that commitment.

Meanwhile, the Nova Scotia legislature had passed the *Offshore Licensing Policy Act*¹⁶ in 2010, effectively extending the moratorium until 2022. Sections 7 and 9 of this Act create the potential for an indefinite moratorium, with the possibility of a public review after – but not before – 2022 and every ten years following. A public review that resulted in a recommendation to lift the moratorium would have to be presented to the legislature for a vote before the moratorium could be lifted. The Government of Nova Scotia has stated that it would require “solid science and a full public review before making any decision to lift the moratorium.”¹⁷

As quoted in the media, a representative of Natural Resources Canada indicated that this state of affairs results in a “federal *policy* moratorium on all oil and gas activity on Georges Bank,” which complements Nova Scotia’s “provincial *statutory* moratorium.”¹⁸ Former Nova Scotia Premier Darrell Dexter indicated that federal action was needed to implement the extension of the moratorium.¹⁹ In other words, there was a need to codify the federal policy.

1.3 POTENTIAL EFFECTS OF PETROLEUM EXPLORATION AND PRODUCTION IN GEORGES BANK

The potential socio-economic and environmental effects of allowing petroleum exploration and development were highlighted in the 1999 report produced by the Georges Bank Panel. On the basis of scientific research, the Panel concluded that, among other things, the seismic surveys and drilling activities necessary to determine the level of hydrocarbon present in Georges Bank could pose potential threats to marine life as well as to fishing operations. Further, it suggested that drilling activities could produce discharge that could interfere with some marine life, but that the effects on broader ecosystems were not well known at that time.²⁰

In 2010, Canada and Nova Scotia agreed to gather more information on petroleum-related activity in Georges Bank to inform future decisions on the moratorium and to update scientific information in this area. Reports on research commissioned by the Nova Scotia Department of Energy suggest that technological and regulatory changes could potentially mitigate some of the concerns raised by the Georges Bank Panel, but that additional targeted research would be required.²¹

As Georges Bank also falls within United States territory, a moratorium on petroleum-related activity has also been in place in the United States portion of the Georges Bank area. The United States moratorium in Georges Bank has been enlarged and extended several times.²² Most recently, the President of the United States announced that the moratorium would be extended to 2022.²³

2 DESCRIPTION AND ANALYSIS

2.1 RE-ESTABLISHMENT AND EXTENSION OF THE STATUTORY MORATORIUM

Clause 3 of Bill C-64 replaces section 141 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (the Act) and provides for the re-establishment and extension of the statutory moratorium on petroleum exploration and drilling activities in the Canadian portion of Georges Bank. In particular, new section 141(1) provides that the federal Minister of Natural Resources and the provincial minister responsible for the management of offshore petroleum resources may jointly issue a written notice prohibiting these activities from the day specified in the written notice until 31 December 2022.

In addition, new section 141(2) allows for the extension of the moratorium established under section 141(1) by way of jointly issued written notice, or successive notices, following a review of the environmental and socio-economic impact of exploration and drilling activities in the Canadian portion of Georges Bank, and any other relevant factors. Each notice can extend the moratorium for a specified period of a maximum of 10 years.

New section 141(3) prohibits the exploration and drilling for and the production, conservation, and processing of petroleum in Georges Bank for the periods specified in written notices under new sections 141(1) and (2).

Although new section 141 mirrors the section it replaces in a number of ways, it differs from the original text in section 141 in that it provides fewer details regarding the review process to be undertaken in assessing the extension of the moratorium. In particular, new section 141(2) does not call for the creation of a panel or specify a date by which the review must be completed. New section 141(2), however, does provide guidance regarding the maximum number of years the moratorium can be extended following a review.

Clause 2 of Bill C-64 makes a consequential amendment to section 104 of the Act, which concerns payment exemptions for interest owners during the statutory moratorium. Section 104 is amended to reflect the changes brought by clause 3 to section 141 of the Act.

3 COMMENTARY

The Norigs 3 Coalition, which represents stakeholder groups of fishermen, processors and exporters of seafood, Aboriginal communities and environmental groups, called upon the federal government to follow suit with the Nova Scotia and United States governments in extending the moratorium.²⁴ The news that Bill C-64 passed was therefore well received by the Norigs 3 group, although it criticized the absence in the federal legislation of an automatic rollover for the moratorium, unlike Nova Scotia's 2010 *Offshore Licensing Policy Act*.²⁵

In 2012, Norigs 3 expressed concern as to what would happen if the moratorium were allowed to expire, particularly since BP Canada Energy Company and Chevron Canada Ltd. hold exploration permits in Georges Bank,²⁶ permits that have been dormant since the first moratorium was put in place. Media reports relaying the comments of former Nova Scotia Premier Darrell Dexter indicated that it is unclear what status these exploration permits would have if the moratorium were allowed to expire.²⁷

On the other hand, the Offshore/Onshore Technologies Association of Nova Scotia has expressed disappointment at the renewal of the moratorium, indicating that “environmentally sound work” could be carried out in Georges Bank, that fishery and petroleum industries have coexisted in the past, and that the available seismic data on the region is outdated.²⁸

NOTES

1. [Bill C-64: An Act to amend the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act](#), 2nd Session, 41st Parliament (first reading version, 5 June 2015).
2. [Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act](#), S.C. 1988, c. 28.
3. Natural Resources Canada and Nova Scotia Petroleum Directorate, [Georges Bank Review Panel Report](#), June 1999, p. 15. For a map of Georges Bank, see E. Kennedy et al., [The Marine Ecosystem of Georges Bank](#), Research Document 2011/059, Canadian Science Advisory Secretariat, Fisheries and Oceans Canada, 2011, p. 3.
4. Natural Resources Canada and Nova Scotia Petroleum Directorate (1999), pp. 20 and 28.
5. *Ibid.*, p. 8.
6. Government of Canada and Province of Nova Scotia, [Canada–Nova Scotia Offshore Petroleum Resources Accord](#), 26 August 1986.
7. Natural Resources Canada and Nova Scotia Petroleum Directorate (1999), p. 7.
8. *Canada-Nova Scotia Offshore Petroleum Resource Accord*, s. 39.01; [Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation \(Nova Scotia\) Act](#), S.N.S. 1987, c. 3; and [Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act](#), S.C. 1988, c. 28.
9. *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*, s. 134AA(1); *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, s. 141(1).
10. Natural Resources Canada and Nova Scotia Petroleum Directorate (1999).
11. *Ibid.*, p. 59.
12. *Canada Gazette*, Part I, 29 January 2000, p. 275. Sections 141(7) of the federal Act and 134AA(2) of the Nova Scotia Act allowed the federal and provincial Ministers to jointly extend the moratorium beyond its initial 1 January 2000 expiration date by giving notice in the *Royal Gazette* (Nova Scotia Act) and in the *Canada Gazette* (federal Act, s. 141(8)).
13. Government of Nova Scotia, Premier’s Office, [“Georges Bank Moratorium Extended,”](#) News release, 13 May 2010.
14. Government of Nova Scotia, Premier’s Office (2010); Tina Comeau, [“Norigs 3 wants action on Georges Bank moratorium,”](#) *The Vanguard* [Yarmouth], 27 June 2013.

15. [Economic Action Plan 2015](#), 21 April 2015, p. 310.
16. [Offshore Licensing Policy Act](#), S.N.S. 2010, c. 40.
17. Government of Nova Scotia (2010).
18. Comeau (2013) [authors' emphasis].
19. Timothy Gillespie, "[Extending Georges Bank moratorium an easy decision](#)," *The Chronicle Herald* [Halifax], 7 December 2012.
20. Natural Resources Canada and Nova Scotia Petroleum Directorate (1999), p. 57.
21. Stantec Consulting, [Preliminary Review of Environmental and Socio-Economic Issues on Georges Bank](#), Report prepared for Offshore Energy Environmental Research Association, June 2010; Stantec Consulting, [A Preliminary Review of Existing Technologies and Their Mitigative Potential in Offshore Petroleum Developments](#), Report prepared for Offshore Energy Environmental Research Association, June 2010.
22. Natural Resources Canada and Nova Scotia Petroleum Directorate (1991), p. 11.
23. Paul McLeod, "[Budget includes OK on Georges Bank moratorium](#)," *The Chronicle Herald* [Halifax], 21 April 2015.
24. See Aaron Beswick, "[Anti-drilling group urges protection for Georges Bank](#)," *The Chronicle Herald* [Halifax], 11 February 2015; Denny Morrow, "[Why is Ottawa drawing a blank on Georges Bank?](#)," *The Chronicle Herald* [Halifax], 27 February 2015; Paul Withers, "[NoRigs 3 calls on Harper government to extend Georges Bank moratorium](#)," *CBC News*, 11 February 2015.
25. Michael Gordon, "[Province's Georges Bank moratorium to continue](#)," *The Chronicle Herald* [Halifax], 3 July 2015.
26. Canada-Nova Scotia Offshore Petroleum Board, [Permits within Georges Bank Prohibited Zone](#), 2015.
27. Timothy Gillespie, "[Extending Georges Bank moratorium an easy decision](#)," *The Chronicle Herald* [Halifax], 7 December 2012.
28. Judy Myrden, "[Georges Bank Drilling Ban Vexes OTANS](#)," *Energy for Students*, November 2010.