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Don Reed
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Resource Policy and Programs Directorate
15 Eddy Street, Floor 10
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Dear Mr. Reed:

Re: Comments on Draft Policy Intent for FORRI Phase 1 and Phase 2

The Inuvialuit Regional Corporation (IRC) has reviewed Canada's Phase 1 and Phase 2 Policy Intention documents relating to the *Frontier and Offshore Regulatory Renewal Initiative* (FORRI). The Inuvialuit Final Agreement recognizes the historical and cultural importance of the Inuvialuit Settlement Region, including the ISR offshore region, to the Inuvialuit. The IRC is also a party to the NWT Devolution Agreement and has special rights and interests recognized in *the Agreement for Coordination and Cooperation in the Management and Administration of Petroleum Resources in the Inuvialuit Settlement Region* that forms part of the Devolution Agreement. The IRC, in its capacity as representative of Inuvialuit interests generally, wishes to be consulted about any changes to federal legislation or regulations that have the potential to affect Inuvialuit rights and interests, including FORRI.

The IFA has three underlying principles: to preserve Inuvialuit cultural identity and values within a changing northern society; to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and to protect and preserve the Arctic wildlife, environment and biological productivity. In light of those three principles, the IRC has the following comments on the two Policy Intention documents.

A. General observations on the FORRI

Relationship to Other Federal Consultations on Oil and Gas Legislation

As an initial general comment, the IRC notes that there are separate initiatives underway concurrently within the federal system to review core federal oil and gas legislation applicable in the ISR. The IRC has recently provided comments to Mr. Rowland Harrison, the Minister's Special Representative, on proposed changes to the *Canada Petroleum Resources Act*. That process addresses oil and gas matters that overlap with the FORRI, and yet it appears to IRC that they are being conducted in isolation.

It is essential that regulatory change initiatives affecting oil and gas management in the ISR be coordinated to ensure that no conflicts or gaps are created through separate processes. It is difficult and inefficient for the IRC to have to address federal regulatory changes in a piecemeal manner. The IRC's comments on the CPRA initiative are attached for your information.

- *The IRC believes that the CPRA review and the FORRI initiative should be better coordinated by Canada, so that the IRC and other stakeholders have a better understanding and appreciation for the changes contemplated to the overall federal oil and gas regime in the ISR offshore.*

Phase 1 and 2 Policy Intentions Documents and Engagement Format

In our view, the Policy Intentions documents do not adequately evidence Canada's policy intentions. Rather, the documents provide text of the relevant provisions of the regulations without identifying changes or providing Canada's intent as context.

- *The IRC recommends providing more information on the policy intentions behind (i.e. results intended from) the proposed changes.*

Further, the phased approach that Canada is using to consult on the FORRI — while apparently intended to facilitate consultation — makes it more difficult to understand and comment on the changes that Canada will make to the regulations that are being rolled into the Framework Regulation. Having to review the proposed policy intentions documents in three slices instead of one is much less efficient and potentially less effective than it would be to review a single document that identifies all proposed changes. The intent may have been to break the review into manageable pieces; but, the lack of proper explanation of the overall direction and content of changes more than offsets any advantages that the phased approach may have.

- *IRC believes that rights holders and other stakeholders cannot properly assess the overall impact of the changes through this phased approach and recommends that Canada distribute a document that explains that impact. Further, the IRC requests a table of*

concordance showing where provisions of the existing regulations will be found in the Framework Regulation.

Finally, we observed instances where the wording of specific provisions is different between the existing regulations and the wording in the policy intentions document. In some cases, different wording is used and in other cases wording has been added or removed. It is not clear how significant the differences in wording are.

- *IRC seeks clarification on whether the wording in the Policy Intent documents are reflective of proposed new text for any ensuing regulations. Further, IRC seeks guidance on when we should be commenting on those changes (i.e. now or when the draft regulation is released), Further, IRC seeks clarification on whether any provisions in the existing regulations are not going to be included in the Framework Regulation and, if so, the reasons why. Finally, where new provisions are proposed for the Framework Regulation, the IRC wants to know the rationale for those new provisions.*

IRC Capacity

While the IRC appreciates the opportunity to provide input, the CPRA and FORRI consultation processes, along with other consultations underway with Canada, place a burden on the IRC's limited resources. The changes proposed to the CPRA and through the FORRI require extensive internal and external resources in order for the IRC to identify potential impacts on Inuvialuit rights and interests and to participate in consultation sessions. The IRC does not receive funding from Canada to offset the costs required to review and respond to these initiatives.

- *The IRC believes that Canada should provide capacity funding to the IRC, as the indigenous group with recognized rights in the Beaufort Sea region under the IFA and the Devolution Agreement, to ensure that the IRC can participate effectively in consultations on changes proposed by Canada to the oil and gas regime in the ISR offshore.*

B. Comments on the Policy Intentions for Phase 1

Management Systems

The policy intent states that it will implement enhanced requirements for the management systems that operators are required to have in place as a condition of receiving approvals. Key changes to the management system requirements include requiring operators to track and manage safety critical elements and tasks, to have an organizational structure with "sufficient" human and financial resources to implement the management system, to "foster" a "strong safety culture" and to submit an annual report to the NEB. The policy intentions document suggests that there will not be a requirement for NEB or federal approval of the management system document. Section 3.2 states that operators will have to have a management system in place at the time of applying for approvals under COGOA. However, section 3.1, which outlines

the information that will have to be submitted as part of *COGOA* applications, does not mention management systems documents. The policy intentions document does not indicate that there will be any oversight of implementation of management systems by the National Energy Board or other federal departments or agencies; in fact, section 2.6 states that it is up to the operator to ensure compliance by employees, contractors and service providers.

- *The proposed changes to enhance the contents of management systems are positive in intent. However, the absence of review or approval of management systems by the NEB means there would be no mechanism for ensuring that management systems are adequate to achieve the policy intent. The IRC recommends that operators be required to file their management systems with the NEB for approval and that the NEB review and inspect for compliance those management systems on a periodic basis.*

The Phase 1 - Policy Intent document indicates that one objective of FORRI is to move towards performance-based requirements instead of prescribing specific technologies and approaches in the regulations. The IRC is concerned about how this change will affect regulatory oversight of operations in the offshore. How will the NEB know that performance standards are being met? Will the NEB (or other federal departments or agencies) have the resources needed to conduct audits/inspections/reviews of whether performance requirements are being achieved? In the absence of sufficient regulatory oversight, meeting environmental and safety expectations will be much more in the hands of operators.

- *The IRC requests that Canada explain how Canada will ensure that operators are meeting NEB approved performance standards and that the performance standards are meeting federal policy intent.*

Safety, Environmental and Contingency Plans

The policy intent proposes to continue to require all projects to have safety, environmental and contingency plans in place, with some requirements added. Operators applying for approvals under *COGOA* will have to submit those plans as part of their applications. The policy intentions document provides detail as to what the plans will have to include. There is no requirement that contingency plans for the Beaufort offshore provide for same-season relief wells or other contingencies specific to operations in that region. It is not clear whether the safety, environmental and contingency plans would be subject to review and approval by the NEB or Canada. *COGOA* provides for approval of development plans and benefits plans, but does not reference safety, environmental or contingency plans.

The requirements for safety, environmental and contingency plans to be developed and submitted along with *COGOA* applications is positive. However, there is no indication as to how or whether those plans will be reviewed, approved or validated by the NEB or Canada, or whether compliance with those plans would be considered a condition of the resulting *COGOA* approval. The absence of regulatory review and approval could leave the contents of the plans to individual operators' discretion.

- *The IRC recommends that the FORRI should ensure appropriate review, approval and validation of safety, environmental and contingency plans for offshore operations in the Beaufort Sea.*

C. Comments on the Policy Intentions for Phase 2

The following questions and concerns were identified through the review of the Phase 2 policy intentions document. The section numbers refer to the sections in the policy intentions document.

Definitions

The term “Good Oil Field Practices” is used in sections of the policy intentions document dealing with implementation of data acquisition programs (e.g., seismic surveys), formation flow testing and maximization of resource recovery from pools or zones. The term is defined only by reference to practices that are generally accepted by prudent, diligent and skilled operators. This raises the question of whether generally accepted industry practices are sufficient to meet public (and IRC) expectations (for example associated with avoidance and mitigation of environmental impacts).

- *The IRC seeks to know how Canada intends to ensure that good oil field practices are in line with Inuvialuit, public and government expectations as to standards that should govern those activities. Government expectations must be clearly communicated. Additionally, IRC seeks to know how compliance with those standards will be ensured. Further, as good oil field practices on dry land in southern Canada may not be sufficient in the northern offshore IRC submits that the definition of good oil field practices must take into account the geographic area and environmental conditions in which the exploration, development and production activities are occurring.*

Reporting Requirements

Some significant reporting-related sections of the existing regulations do not appear to have been included in the Phase 2 Policy Intentions document. This includes Section 40 of the Geophysical Regulations, which requires reporting of significant accidents; Section 71 of the Installations Regulations, which requires reporting of losses, emergencies and accidents; and, Section 6 of the Operations Regulations, which requires reporting of spills. Because we do not have the whole picture in front of us, we do not know whether these matters will be addressed elsewhere in the

Framework Regulation or whether Canada is proposing not to include those in the Framework Regulation.

- *The IRC seeks clarification of whether these reporting requirements will be included in a framework regulation and what form those will take.*

Under section 75(2) of the Drilling Regulations, an operator must file a report if a specified incident occurs. Section 14.8 of the policy intentions document now makes this obligation applicable only upon request of a safety officer or conservation officer. There is no explanation for this change.

- *The IRC wants to know why the policy intentions document proposes to change this from an obligation to report incidents to a discretionary requirement.*

Onshore and Offshore Abandonment of Wells

Subsections 13(5) and (6) address the obligations of operators upon abandonment of a well. Subsection (6) requires an operator of an onshore well to ensure that, upon abandonment, the well is left in a condition that protects groundwater and prevents any adverse effect on the environment. Subsection (5) requires an operator of an offshore well to ensure that, upon abandonment, the seafloor is cleared of things that might interfere with navigation or that may have any effect on the marine environment. As many offshore wells may be located in the near-offshore, it is not clear why subsection (5) is limited to the marine environment.

- *The IRC seeks an explanation for the intent behind the different wording in sections (5) and (6).*

Data Sharing

The IRC is participating in the ISR Oil and Gas Coordination Committee established under the IRC/Canada/GNWT Agreement for Coordination and Cooperation in the Management and Administration of Petroleum Resources in the Inuvialuit Settlement Region. The functions of that Committee include sharing of information about management of petroleum resources in the region. The NEB has recently been involved in litigation involving its ability to disclose seismic information that companies provide to the NEB.

- *As seismic and other exploration and production data will be important to the work of the Committee, the IRC seeks to know whether Canada will address its ability to disclose*

information related to exploration and production for the purposes contemplated in the Coordination Agreement.

D. Future Phases of FORRI

The FORRI has the strong potential to affect the rights and interests of the Inuvialuit, as recognized in the IFA and the Devolution Agreement. The IRC therefore wants to be consulted about future phases of FORRI, in particular consultations on the draft framework regulation which will translate the policy intent into legal obligations. The IRC also requests that Canada provide funding to the IRC to assist the IRC in participating effectively in all phases of the FORRI.

The IRC trusts that these comments will be given full consideration by Canada. If you would like to discuss these comments, please do not hesitate to contact me.

Yours truly,



Duane Ningaqsuq Smith,
Chair and CEO

Enc. *[Letter from IRC to Rowland Harrison re CPRA]*

cc: Patrick Gruben, Chair Inuvialuit Game Council