

September 22, 2017

VIA EMAIL: Daniel.Morin@canada.ca

Offshore Petroleum Management Division
Natural Resources Canada
580 Booth Street
17th Floor, Room A2-1
Ottawa, Ontario K1A 0E4

Attention: Daniel Morin, FORRI Project Manager

Dear Mr. Morin:

**Re: Frontier and Offshore Regulatory Renewal Initiative
Proposed Policy Intentions for Phase 3 of the Framework Regulations
Comments of the Inuvialuit Regional Corporation**

The Inuvialuit Regional Corporation has reviewed Canada's Proposed Policy Intentions for Phase 3 – Installations and Operations – of the Framework Regulations relating to the Frontier and Offshore Regulatory Renewal Initiative dated June 28, 2017. We had previously provided comments to Canada regarding our issues of concern surrounding Phases 1 and 2 of the Frontier and Offshore Regulatory Renewal Initiative ("FORRI") on September 14, 2016.

We would note at the outset that despite our earlier participation in the FORRI process, and our written indications at that time to Canada that the IRC required continued engagement throughout the FORRI consultation process, we were provided with inadequate and unacceptably short notification of consultation regarding Phase 3 of FORRI. We note that the IRC was notified of the general Phase 3 consultation session scheduled to be held on July 25, 2017 in St. John's, Newfoundland, just days before the actual session was held, and well after the session deadline for responding to attend.

Given the geographic and legal interests of the Inuvialuit and the Inuvialuit Regional Corporation ("IRC"), this is rather disconcerting. As has been stated previously in the FORRI consultation process, as the representative of Inuvialuit interests generally, the IRC had requested to be consulted regarding any proposed changes to legislation or regulations that have the potential to affect Inuvialuit rights and interests, including FORRI.

While we recognise that at the request of the IRC, a one-hour remote teleconference session was held between the IRC and Canada on September 18, 2017, to present and discuss Phase 3 of FORRI, we remain nonetheless concerned about the consultation and engagement efforts regarding FORRI. We are also concerned that other Indigenous organisations and northern organisations, as well as other stakeholder parties may have been missed in the consultation efforts regarding Phase 3 of FORRI, as well as in consultation efforts regarding the FORRI process generally.

However, notwithstanding our concerns with respect to the above, we have set out below our comments at this time regarding Phase 3 of FORRI, and the proposed policy intention documents dated June 28, 2017. Despite our continued concerns about capacity and the need for capacity funding for parties in this process, we intend to participate in the FORRI process to the extent possible.

We note that our comments below should be reviewed in conjunction with our September 14, 2016 correspondence, which set out our general submissions regarding FORRI and the FORRI process, as well as our earlier comments regarding Phases 1 and 2 of FORRI more specifically.

The Inuvialuit and the IRC

As you know, the Inuvialuit Regional Corporation (“IRC”) is established under the *Inuvialuit Final Agreement* (“IFA”) as the group representing Inuvialuit, and collective Inuvialuit interests. The IFA was the first modern treaty, or comprehensive land claim, that was signed north of the 60th parallel. The IFA recognizes the historical, contemporary, and cultural importance of the Inuvialuit Settlement Region (“ISR”), including the ISR offshore region, to the Inuvialuit.

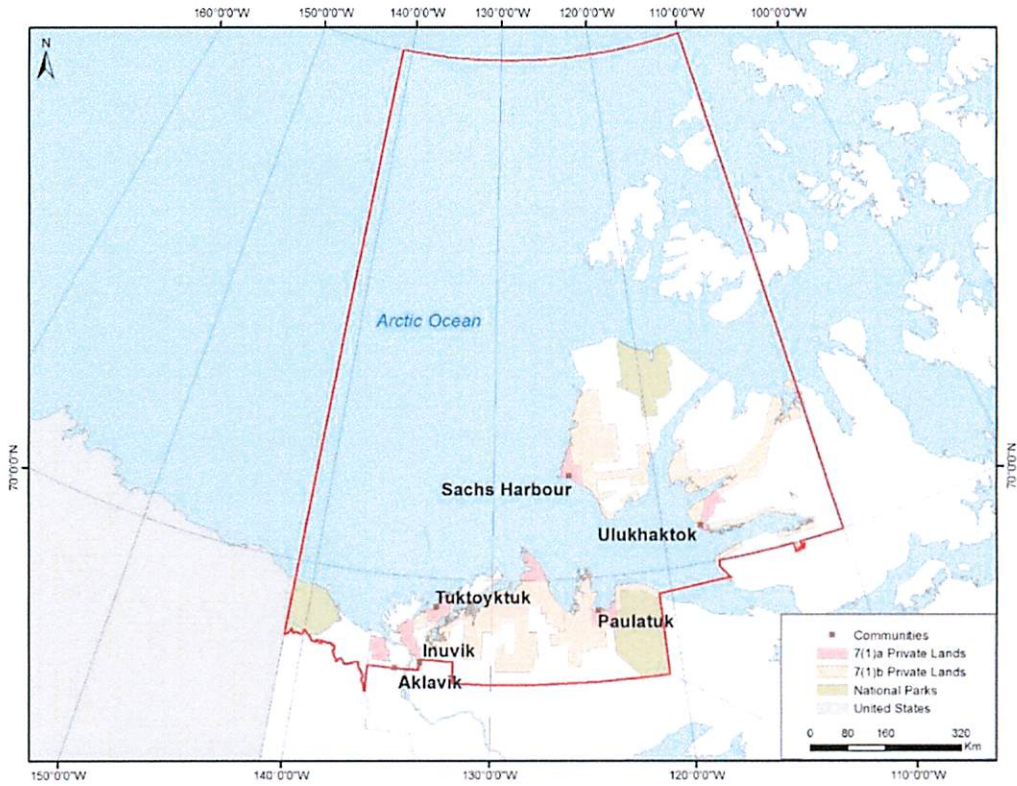
The IRC is also a party to the Northwest Territories Devolution Agreements, and has special rights and interests recognized in the *Agreement for Coordination and Cooperation in the Management and Administration of Petroleum Resources in the Inuvialuit Settlement Region*, that forms part of the Devolution Agreement.

To better understand the IRC’s concerns and comments, it is important to bear in mind the purpose and principles of the IFA. These are the express principles that guide our collective efforts regarding the implementation of the IFA. These principles are set out at section 1 of the IFA:

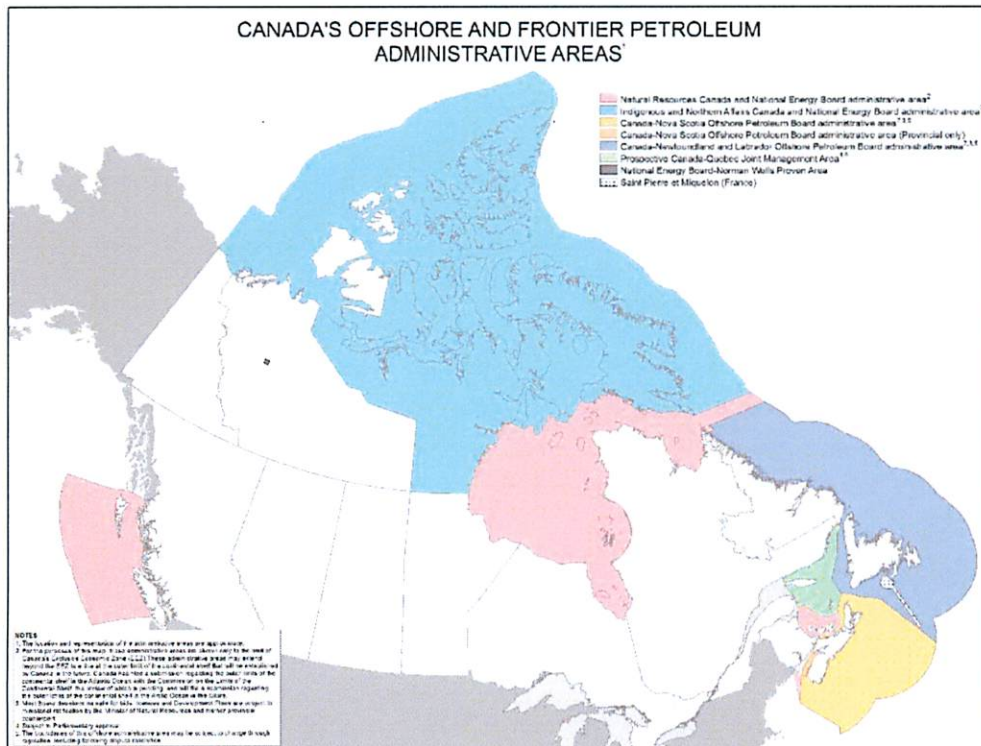
PRINCIPLES

1. The basic goals expressed by the Inuvialuit and recognized by Canada in concluding this Agreement are:
 - (a) to preserve Inuvialuit cultural identity and values within a changing northern society;
 - (b) to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and
 - (c) to protect and preserve the Arctic wildlife, environment and biological productivity.

We have set out a high-level map of the ISR for ease of reference below, with the boundary of the ISR shown marked in red:



The ISR forms a significant portion of the northern offshore and frontier petroleum administrative areas, as is shown below reproduced from Canada's FORRI documents:



General Comments - Phase 3 of FORRI

Phase 3 of FORRI deals primarily with certificates of fitness, installations, and operations. In reviewing the proposed policy intentions for Phase 3 of FORRI, the IRC has identified three broad themes of concern which in our view, warrant further attention and consideration in moving ahead with FORRI.

These concerns relate specifically to the need in the FORRI process and proposed regulatory framework for better incorporating engagement with indigenous groups, incorporating the protection of indigenous and treaty rights, and considering the interrelation between the proposed renewed FORRI framework and existing processes such as those set out in the IFA.

These issues are discussed in greater detail below.

1. FORRI Needs to Increase and Enhance Engagement with Indigenous Groups and Treaty Holders

The IRC submits that there is a need to better and explicitly incorporate engagement with indigenous groups, particularly treaty holders such as the Inuvialuit, throughout a project's lifecycle and throughout the processes contemplated by FORRI. Indigenous groups, such as the Inuvialuit, should be engaged throughout the entire lifecycle of any given project in the ISR to the extent that such engagement is requested. This is particularly so given the extensive nature of Inuvialuit interests and the size of the ISR.

The level of engagement will necessarily and reasonably depend on the nature of the activity and its possible impact on Inuvialuit treaty rights. On one end of the spectrum, this engagement may include notification of activities to Inuvialuit. On the other end of the spectrum, engagement with local indigenous groups and participation, where appropriate, in activities such as monitoring, among others may be required. This may also include required engagement and participation this has been designated as appropriate by the indigenous group, or where this has been requested by the indigenous group.

We note the Supreme Court of Canada's reaffirmation of the duty to consult and accommodate where treaty rights may be negatively impacted in recent decisions such as *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, and *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, among others.

In our review of Phase 3, we note a number of instances where reporting is already contemplated to a Certifying Body with respect to a project, whether this be for a certificate of fitness or with respect to the status of the repair of installations.

We would recommend that in such instances, such reporting also be made to holders of treaty rights where the activities are taking place. By way of process, we would suggest that the holders of treaty rights would be notified and made aware of this requirement for a reporting mechanism. The rights holders would have an ongoing opportunity to request that they also receive the reporting.

This would allow for and enhance greater transparency in the overall regulatory process, as well as allow for greater sharing of information, particularly in circumstances where Inuvialuit may have particular geographic or industrial sector areas of concern where enhanced engagement and greater information is appropriate and requested.

2. FORRI Needs to Better Consider and Protect Indigenous and Treaty Rights

The Phase 3 Discussion Paper references a number of areas relating to environmental protection and minimizing adverse effects.

For example, at Part 6.22 regarding designs for removal of fixed offshore installations, reference is made to such designs including “measures that are necessary to facilitate the installation’s removal from the site in a way that minimizes safety hazards, as well as adverse effects on navigation and other uses of the sea, as well as on the marine environment during and after the removal.” In considering adverse effects on uses of the sea and the marine environment, the IRC submits that it is also appropriate to consider and minimize potential adverse impacts on Indigenous and treaty rights. This should be done in consultation with the indigenous treaty rights holders in question.

The IRC submits that throughout the FORRI documents, such references to the protection of the environment, and in particular the minimizing of adverse impacts, should also explicitly include protecting, and minimizing impacts on, Indigenous rights, particularly treaty rights.

FORRI, broadly speaking, needs to better and explicitly consider potential impacts on Indigenous and treaty rights, and incorporate how to minimize impacts on such rights. In particular, there is a need for the incorporation of specific requirements to inform treaty rights holders of non-compliances and AMPs that are issued in the settlement region.

3. Further Discussion and Engagement Needs to Occur with Respect to Considering the Interactions between FORRI and Existing Processes such as those under the IFA

The IRC continues to have concerns regarding the interrelation and interaction of the proposed renewed FORRI framework with existing legislation and treaties – in particular the IFA for the Inuvialuit, and how this might impact processes such as environmental screening and review if required over the lifecycle of a project in the ISR and under the IFA. This relates directly to potential activities and processes in the ISR, and ensuing impacts on the Inuvialuit, and Inuvialuit interests.

There needs to be greater consideration and discussion of the policy and the processes that are anticipated to come out of the proposed renewed FORRI framework, and how this will tie into the processes in place in the ISR with bodies such as the National Energy Board (“NEB”) and under the IFA.

As has been expressed to Canada, this is a key consideration for the IRC in analysing the process ahead with respect to FORRI, and how the renewed regulations may impact existing processes and Inuvialuit interests, particularly those under the IFA and in the ISR.

We submit that there is a need to legislate the obligation of the NEB to understand and respect the IFA.

We would also request further clarification on how this Initiative will interact with NEB Modernization.

Further Consultation

We understand that the FORRI process will continue with further opportunities for engagement and feedback regarding FORRI. We look forward to continued engagement in this process. We note that further northern consultation and engagement with northern organisations would be appropriate in this process. In particular, there is a need to consult on the draft Framework Regulations once they have been prepared, and prior to their publication.

We trust that further consideration and review will be given to the comments of the IRC as set out above regarding Phase 3 of FORRI and our concerns as have also been previously communicated regarding the FORRI process generally, as well as Phases 1 and 2 of FORRI more specifically.

We continue to look forward to hearing from Canada with respect to our submissions regarding FORRI to date, and how our concerns will be addressed going forward with respect to further work on this process.

Sincerely,



Duane Ningaqsiq Smith
Chair and CEO
Inuvialuit Regional Corporation

cc: Inuvialuit Game Council
Attn: John Lucas, Jr., Chair