
Honourable Jim Carr
Minister of Natural Resources
580 Booth St., 21st Floor
Ottawa, ON
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September 8th 2017

Dear Minister Carr,

We are writing in response to the public comment period for the Frontier and Offshore Regulatory Review (FORRI) process and proposed changes to regulations under the Canadian Oil and Gas Operations Act (COGOA). We understand that this review is under a federal-provincial partnership, led by Natural Resources Canada with participants from Newfoundland and Nova Scotia, aims to modernize the regulatory framework governing oil and gas activities in Canada's Eastern seaboard and the Arctic.

We regret that we were unable to attend the consultation in June 2016, however we feel that there are several short-comings in the regulatory review process as well a lack of integration into the larger review of Canadian environmental legislation most of which directly impacts offshore oil and gas activity. The Ecology Action Centre is one of the oldest and largest environmental organizations in Atlantic Canada and works across a variety of program areas, most relevant to this process our marine conservation work and our energy program.

We submit several points below, with three closing recommendations based on our comments and the importance of the FORRI process and potential outcome:

1. Stakeholder and Rights Holder Participation

While we regret not being able to participate in initial consultations, it is not at all clear that all relevant stakeholders or rights holders were invited to the consultations. We did not receive any further invitations to consultations. Given the government of Canada's commitment to reconciliation with Indigenous Peoples as well as its proactive and collaborative approach with non-government organizations, the process for this review seems a departure from other environmental legal and regulatory reviews taking place in Canada. The importance of the marine environment to several renewable industries and the current government mandate for increased protection of our marine environment is an unprecedented opportunity to meaningfully engage key stakeholders and rights holders. Additionally, the widespread concerns raised regarding known inadequacies in spill response readiness in Canada's offshore in light of the well understood dangers to ecosystems of well blow-outs as seen in from the Deep Water Horizon incident in the Gulf of Mexico (2010), and the recent experience of the loss of drilling equipment during Shell's exploratory drilling off Nova Scotia due to the extreme weather conditions (clearly demonstrating that the industry is at the edge of its

technological capacity) have heightened public awareness of the issues which the FORRI process is addressing. The review of these regulations is of great interest and importance to a wide variety of Canadians and Indigenous Peoples, hence enabling a more thorough wide-ranging deliberative process than appears to be envisaged by FORRI thus far.

2. Integration and comprehensiveness of environmental reviews

In the context of the regulatory review of offshore oil and gas regulations, particularly in the context of the ongoing environmental reviews by the Canadian government, including the National Energy Board (NEB) and the *Canadian Environmental Assessment Act* (CEAA) - which implicates the offshore petroleum boards in Nova Scotia and Newfoundland (CNSOPB and CNLOPB respectively), as well as Bill C-55 which is currently in first reading and addresses changes to the *Canada Petroleum Resources Act* (CPRA), the FORRI process seems disjointed from the comprehensive environmental reviews. As was clearly evident in the Government of Canada's efforts to elicit responses to these reviews through its recent discussion paper (www.discussionpaper.ca), there is considerable concern expressed across a broad section of the Canadian scientific community, ENGOs and general public with respect to the current responsibilities of the NEB and offshore boards for regulating the environmental performance of oil and gas development and transport industries. These concerns provide a context that is extremely pertinent to the impacts of the performance-based direction of the proposed changes in FORRI, with respect to the relationship between the regulatory agencies/boards and the industries they regulate. Given the specificity of the regulatory changes proposed through FORRI and their potential impact on how the point source as well as larger environmental impacts of oil and gas might be assessed / mitigated and in the event of a spill or blow out, cleaned up – it seems a grave oversight to not have integrated this review into the larger process, and to not have waited for the broader legislative review to be complete before the FORRI process commenced.

3. Consideration of FORRI review within the Pan Canadian Climate Change Framework and broader international commitments

While we fully understand that the proposed changes are under the COGOA, it seems that undertaking such a review should be integrated into the Pan Canadian Framework on Clean Growth and Climate Change so that operations in the offshore can include an assessment of the need for further exploration and development, and not just the specifics of active oil and gas operations. Even with respect to operational specifics, some obvious integrations with that framework are glaringly absent, such as the framework's objective of reducing by 40-45% by 2025 the methane emissions from oil and gas operations, including offshore. Nor do we see any reference to Canada's broader obligations under the Paris Agreement, the United Nations Sustainable Development Goals or the Convention on Biological Diversity.

4. Impact on Canada's mandate to protect at least 10% of its marine and coastal environment by 2020

The FORRI process is not linked to the current government mandate and commitment to protect at least 10% of Canada's marine and coastal environment by 2020. While the current FORRI review may not be able to establish minimum standards to prohibit oil and gas exploration and drilling within areas that are set aside to meet the international targets, changes to the COGOA could be introduced at this time to restrict all oil and gas activity in protected areas, thus fulfilling the mandate of biodiversity protection.

5. Lowering the bar and transferring responsibility through performance based standards

Perhaps most pertinent to the specifics of this review, we are gravely concerned with the move to increase reliance on performance based standards rather than specifying technologies and mitigation measures. Such a move towards enhancing performance-based regulations already in use in COGOA could have a direct impact on protected areas in the event of a spill. What is perhaps most concerning is that the direction of FORRI towards increasing performance based regulations is in the opposite direction of what happened in the US post Deep Water Horizon. In that case, the US government was much more explicit and restrictive, for example, with respect to what is required for blowout preventers and the design of undersea wells. FORRI seems to be bending to industry pressure towards performance based rules. Moreover, as is clearly indicated by industry stakeholders in this process, performance based standards are favoured by proponents because it effectively transfers to proponents a greater freedom to determine the technologies and specific measures employed to meet performance standards, however defined. While this may make sense from the standpoint of encouraging innovation and drawing on industry expertise, it is widely understood in the regulatory policy literature that the necessarily general and sometime vague language of performance-based regulations allows for considerable room for interpretation. Such ambiguity puts pressure on the interpretative powers of the regulatory agencies and boards (already facing criticism-see (2) above). Furthermore, under the dominant economic pressure faced by industry of reducing operational costs, particularly for dealing with events such as well blowouts that are deemed to be of extremely low probability, this is a matter of great concern. Shell Canada's refusal, (with the blessing of CNSOPB, but against considerable public pressure) to invest in capping stack technology to be readily on site for its exploratory program on the Scotian Shelf is a notable case in point. In general, placing the onus on the industry to interpret such regulations can and very likely will lead, in the case of a post-Deepwater Horizon context in Canada, to further degrees of public distrust in such projects and in the Government of Canada's oversight of them. At very least, the FORRI process needs to spell out in greater conceptual and operational detail where and when performance-based regulations are to be preferred over more prescriptive regulations, and for what reasons this preference is given.

Recommendations

Following our concerns outlined above, we respectfully submit three recommendations, which admittedly are more broad than specific concerns regarding the FORRI process and proposed regulatory changes – but as our points above note, this process cannot be seen as separate from other important government of Canada initiatives relating to climate change, environmental legislation and marine conservation.

- A. We recommend that the current consultation process and regulatory changes be suspended until such time as a more comprehensive and fulsome approach can be taken and until Canada has completed its review and legislative changes to *Canadian Environmental Assessment Act*, the *Oceans Act*, the *Canada Resources Petroleum Act*, the *Fisheries Act* and the *Navigation Protection Act*.
- B. The committee struck to conduct the FORRI process be repurposed to consider mechanisms through which to restrict oil and gas activity in all areas to be protected either under

Canada's *Oceans Act*, through National Marine Wildlife Areas or under Canada's *Fisheries Act* as part of ensuring minimum standards for protection in closed areas.

- C. Given the recent and unfortunate deaths of a significant number of North Atlantic right whales, in the Gulf of St. Lawrence, a next step to the current FORRI process be undertaken to fully mitigate and avoid any impacts of seismic activity and oil and gas exploration and drilling in the Gulf of St. Lawrence, including the consideration of a moratorium on oil and gas development in the Gulf.

We welcome the opportunity to discuss any of these recommendations and our concerns with you or your staff.

Sincerely



Susanna D. Fuller

cc Minister Dominic Leblanc, Fisheries and Oceans Canada

Minister Catherine McKenna, Environment Canada and Climate Change

Daniel Morin, Natural Resources Canada