

July 11, 2018

VIA EMAIL: nrcan.forri-irrzpe.nrcan@canada.ca

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

Attention: Daniel Morin

Dear Mr. Morin:

**Re: Frontier and Offshore Regulatory Renewal Initiative
Revised Policy Intention for the Framework Regulations**

The Inuvialuit Regional Corporation has reviewed Canada's Revised Policy Intention for the Framework Regulations relating to the Frontier and Offshore Regulatory Renewal Initiative (FORRI) dated May 2018 (Revised Policy Intention).

We had previously provided comments to Canada regarding our issues of concern surrounding Phases 1 and 2 of FORRI on September 14, 2016, and Phase 3 of FORRI on September 22, 2017. An outline of the mandate of the Inuvialuit Regional Corporation as well as information regarding the Inuvialuit Settlement Region and the Inuvialuit Final Agreement are set out in our earlier correspondences. Our comments today supplement our earlier submissions and the standing concerns in those correspondences.

At this stage, we also have concerns regarding the current status of the review process established for FORRI, the need for enhanced Indigenous and Northern engagement in the FORRI development process, the need for enhanced Indigenous engagement and protection of Indigenous and treaty rights within the Revised Policy Intention, and concerns with how the FORRI process is intended to or anticipated to interact with other federal review processes that impact FORRI and related areas. These are set out in further detail below.

Indigenous and Northern Engagement in the FORRI Process

The Inuvialuit Settlement Region forms a significant portion of the northern offshore and frontier petroleum administrative areas, and which areas and Inuvialuit interests and treaty rights could be impacted by any changes or processes envisioned under FORRI. This is very much the same for other Inuit lands and interests and offshore areas in the Arctic and the North.

We echo our earlier comments that there needs to be greater engagement with Indigenous and Northern communities in this renewal initiative. As has also been noted by other parties in this process, the FORRI process needs to commit to real and meaningful engagement and consultation with Indigenous peoples and treaty rights holders, as well as Northern communities, that will be impacted by FORRI.

This is explicitly aligned with the Government of Canada's commitment to renewing the relationship with Indigenous peoples and to achieving nation-to-nation reconciliation.

Building in Indigenous Engagement and Consultation in the Revised Policy Intention

In addition to the FORRI process itself, we believe that FORRI and the Revised Policy Intention needs to better consider and incorporate engagement with Indigenous groups, particularly with treaty rights holders such as Inuvialuit, throughout all the processes contemplated in the Revised Policy Intention.

Greater transparency and engagement builds stronger frameworks and processes. Given the substantial size of the Inuvialuit Settlement Region, and the extensive nature of Inuvialuit interests and rights, Inuvialuit need to be engaged throughout the life cycle of any given project or activity in the Inuvialuit Settlement Region to the extent that such engagement is requested or required by Inuvialuit.

This is particularly so given the existing frameworks and processes already established under the Inuvialuit Final Agreement, as well as under Canadian jurisprudence relating to the requirements for the duty to consult and accommodate where treaty rights may be negatively impacted – see for example the recent decisions of the Supreme Court of Canada in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, and *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, among others.

Building in the Protection of Indigenous and Treaty Rights

At a conceptual and fundamental level, FORRI needs to better consider and incorporate Indigenous and treaty rights and ensuring the protection of these rights by design.

We echo our earlier submissions that where there are references in the Revised Policy Intention to adverse impacts, including but not limited to those regarding the protection of the environment, these should also explicitly include protecting and minimizing impacts on Indigenous and treaty rights.

We strongly believe that the Revised Policy Intention needs to better incorporate and consider potential adverse impacts on Indigenous and particularly treaty rights, and how to minimize such impacts in every

instance. This needs to be built into the regulation framework at a conceptual and systemic level so that this protection is built in by design.

Further, the Revised Policy Intention needs to more fully incorporate specific requirements to allow for greater transparency, reporting, and access to reports and information for treaty rights holders throughout all of the processes envisioned in FORRI, but particularly with respect to potential non-compliances.

By way of example, we would expect that access to information and reports envisioned to be produced under FORRI relating to the Inuvialuit Settlement Region would be readily, meaningfully, and easily available to the IRC. Reporting mechanisms to rights holders should also be built in throughout the regulatory framework.

Interactions with Other Federal Review and Modernization Processes

As we have previously noted, there are also a number of separate regulatory change initiatives and review processes also taking place in the federal system with respect to related areas to FORRI and the offshore regulatory framework. A number of these are in regulatory areas that overlap with FORRI and FORRI-related areas.

These initiatives and processes have included reviews and proposed changes to the *Canada Petroleum Resources Act*, the review of the *Canadian Environmental Assessment Act* and the new impact assessment system under the proposed *Impact Assessment Act*, the National Energy Board Modernization review and the newly proposed Canadian Energy Regulator.

We would note that these federal reviews and modernization processes were generally characterized by diverse recommendations to renew Canada's relationship with Indigenous peoples, and to better incorporate Indigenous perspectives and engagement.

At present, it is unclear how well FORRI has been connected to these other review processes, and how well the Revised Policy Intention would interact with the legal and regulatory frameworks of these other modernization processes once those are fully completed, in comparison to the old frameworks that the current Revised Policy Intention had been envisioned under.

We believe that further information and analysis should be provided by FORRI to better assess how FORRI will impact or be impacted by these processes, and how all of these separate but concurrent processes are intended to interact and align.

Further process should be established in moving ahead with the current FORRI process and timelines as well as the current Revised Policy Intention, so further analysis and background can be prepared by Canada and its provincial partners, and reviewed by impacted parties and stakeholders in this regard as a starting point.

Further Engagement

At this stage, we echo our earlier call for capacity funding for Indigenous communities in this process in order to allow for meaningful participation by these communities, and to fully and adequately assess the impacts of FORRI upon Indigenous communities, particularly those in northern Arctic regions such as the Inuvialuit Settlement Region, including its offshore areas.

We also believe that further process should be established before the draft Revised Policy Intention document is further revised and prior to further steps towards pre-publication, in order for FORRI to provide further analysis and background information on issues of concern, to consider our concerns outlined previously and as above, and to allow for Indigenous and Northern engagement to occur on FORRI and the current Revised Policy Intention.

Sincerely,



Duane Ningaqsiq Smith
Chair and CEO
Inuvialuit Regional Corporation

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

cc: Government of Newfoundland and Labrador
Attn: Chris Carter (chriscarter@gov.nl.ca)

cc: Government of Nova Scotia
Attn: Kim Himmelman (Kim.Himmelman@novascotia.ca)