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May 16, 2019

Hon. MaryAnn Mihychuk
Chair, Standing Committee on Indigenous and Northern Affairs
Sixth floor, 131 Queen St.
House of Commons
Ottawa, ON K1A 0A6

Re: Bill C-88, An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts

Dear Ms. Mihychuk:

Thank-you for your invitation to appear before the Standing Committee on Indigenous and Northern Affairs to discuss Bill C-88. We are submitting the following comments on the proposed amendments to the Canada Petroleum Resources Act (*CPRA*), which have been referred to the Standing Committee for further study.

World Wildlife Fund (WWF) is one of the largest independent conservation organizations in the world, with projects in more than 100 countries. We have offices across Canada, including the Arctic, and we partner with local communities, Indigenous peoples and other groups to help find solutions to the environmental challenges that matter most for Canadians. We work in places that are unique and ecologically important, so that wildlife, nature and people thrive together.

Community supported economic development is vitally important throughout the Arctic. However, oil spills and seismic testing programs represent two of the biggest threats to the Arctic marine environment and to the communities in the region that rely on healthy oceans. Significant legislative, capacity, information and funding gaps exist in Canada's spill response framework across the Canadian Arctic, including in the Beaufort Sea region, that make offshore oil and gas activities particularly high risk. Moreover, there is currently no method that has been proven effective and reliable in dealing with major oil spills in sea ice. Maintaining healthy oceans means that any future development activities in the Arctic, should they occur, must avoid areas of heightened ecological significance, be safe for the sensitive Arctic environment, directly benefit and not threaten the livelihoods of local communities, and be consistent with national and global climate targets.

General Comments on Bill C-88

Bill C-88 is proposing an amendment to the *CPRA* that would permit the government to prohibit any licence holder from "commencing or continuing any work or activity authorized under the *Canada Oil and Gas Operations Act* on the frontier lands" if the Governor in Council considers that it is in the national interest to do so.



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WWF-Canada has some concerns with Bill C-88, which will give the Minister broader powers to prohibit oil and gas activities. The timing and precise purpose of the amendment has raised some questions for us, which we believe should also be of concern to members of the Committee.

- 1. The meaning of “national interest” is not defined in the proposed legislation and it is not clear to us why there is a need for this additional power. Several Exploration Licences in the Beaufort region are set to expire over the next few years, starting with one this summer. Is the government intending to use the expanded prohibition powers under Bill C-88 to preserve the rights and extend the Exploration Licence terms of oil and gas operators in the Beaufort Sea region who have failed to do the work required by the terms of their Exploration Licences?**
- 2. If this is the intention, why is the federal government seeking to preserve the rights of licence holders, rather than simply allowing existing Exploration Licences to expire and collecting the hundreds of millions of dollars in forfeited deposits?**
- 3. The government recently announced its intention in the Canada Gazette to issue new Exploration Licences in the Beaufort Sea, effective July 10, 2019, that will replace eleven existing permits. Will Bill C-88 be used to prohibit work on these new licences thereby suspending and extending the licence terms? Currently, the CPRA does not allow such a prohibition, except in the event of a serious environmental or social problem, an international boundary dispute, or dangerous weather conditions.**

Preserving Existing Rights through Bill C-88

In December of 2016, Prime Minister Trudeau and President Obama announced a Joint Arctic Leaders' Statement that included, among other initiatives, a moratorium on future Arctic offshore oil and gas licensing in Canada's Arctic, to be reviewed every five years through a climate and marine science-based life-cycle assessment.¹ The moratorium applied only to new licences, meaning that the dozens of existing Exploration and Significant Discovery Licences in the Canadian Arctic were not impacted. Given that there was no offshore oil and gas activity taking place at the time and there was nothing in the announcement that inhibited work from proceeding on existing licences, the move was largely dismissed by industry observers as a weak gesture that won't harm their interests.²

Nonetheless, the moratorium announcement was followed by a year of private, closed-door negotiations between government and industry licence holders, which concluded in December of 2017. Public interest groups and civil society organizations were not invited, nor were they permitted to participate in these meetings, and the results of the negotiations were not made public.

Several months following the conclusion of these private consultations, in October 2018, the government of Canada announced that it planned to freeze the terms of existing Exploration Licences in

¹ <https://pm.gc.ca/eng/news/2016/12/20/united-states-canada-joint-arctic-leaders-statement>

² <https://www.ctvnews.ca/canada/canada-u-s-to-ban-offshore-oil-and-gas-licences-in-arctic-waters-1.3211436>



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the Arctic offshore to “preserve existing rights, remit the balance of any financial deposit related to licences to affected licence holders and suspend any oil and gas activities for the duration of the moratorium.”³ However, there were no suitable provisions within the *CPRA* that would allow the government to lawfully undertake such action. Eleven Exploration Licences in the Beaufort region are set to expire over the next few years (the first in July 2019). The government could simply allow these licences to expire on their own, likely without any liability on the government’s part, and collect hundreds of millions, perhaps billions of dollars in forfeited financial deposits for work that was promised under the terms of the licence but not carried out.

Instead, the government is introducing a proposed amendment to the *CPRA* through Bill C-88 to prohibit oil and gas activities for reasons of national interest. Concurrently, in last week’s *Canada Gazette*, the government announced its intention to issue new Exploration Licences in the Beaufort Sea, effective July 10, 2019, to replace the existing licences. From our perspective, the proposed amendment in Bill C-88 *appears* to be a way of ensuring, after one year of private negotiations with industry, that licence holders do not lose their rights or their licence deposits despite having failed to do the work required by the terms of their Exploration Licences within the nine-year limit.

Extensions to Exploration Licence terms are expressly prohibited by the *CPRA*. If the government is using Bill C-88 as a way to preserve rights and extend licence terms, we believe this is an abuse of the expanded prohibition authority. It sets a dangerous precedent and could potentially be used again by future governments whenever oil and gas industry operators bid on a license, do no work on it within the required time frame, then wish to extend their license terms and preserve their rights to what is a public resource.

Term extensions would also mean that licence holders do not lose their deposits even though they were unable to complete the work they had committed to under the terms of the licence agreements. As companies will avoid substantial financial losses, one could argue that, in effect, this is a form of indirect subsidy to the industry, from a government that has committed itself to eliminating all “inefficient” oil and gas subsidies.⁴

Exploration Licence holders may argue that they are entitled to licence extensions and a refund of financial deposits because the 2016 Arctic oil and gas moratorium and the 2015 Ministerial Review of the *Canada Petroleum Resources Act* created regulatory uncertainty. However, neither of these had any effect on existing licences in any practical way. The *CPRA* review lasted only 10 months and the moratorium did not apply to existing licenses. The government’s announcement at the time even stated that “Exploratory licences may accede to Significant Discovery within their existing permit timelines.”⁵

For example, Imperial Oil holds two of the largest Exploration Licences in the Beaufort Sea, both of

³ <https://www.canada.ca/en/intergovernmental-affairs/news/2018/10/canada-announces-next-steps-on-future-arctic-oil-and-gas-development.html>

⁴ <https://www.newswire.ca/news-releases/minister-mckenna-announces-consultations-on-eliminating-inefficient-non-tax-fossil-fuel-subsidies-881821557.html>

⁵ <https://www.aadnc-aandc.gc.ca/eng/1482262705012/1482262722874>



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which are due to expire in the next year and a half. Despite holding these licences since September 2010, Imperial has done no exploration work to our knowledge and, in 2015, the company applied for an eight year extension on these licences citing insufficient time to study the Arctic's harsh conditions, conduct technical work and complete regulatory processes, this despite knowing full well when they bid on these licences that they were committing to do the promised work within the nine-year term limit of the licence. Chevron, another licence holder in the Beaufort, put its plans on hold in 2014 citing a drop in oil prices. These and other licence holders appear to have been speculating when they bid on these permits years ago and, now that the time limit on their interests is expiring, they seem to want the government to extend their terms and preserve their rights, which the government appears willing to do. This is not acceptable in our view.

Risks of Devastating Oil Spill in Environmentally Fragile Region

Preserving rights and extending licence terms represent a threat to the sensitive Arctic environment. An oil spill from shipping or a well blowout would devastate the surrounding marine environment, potentially destroying habitat for polar bears, seals, walrus, sea birds, as well as beluga, narwhal and bowhead whales. In addition, research indicates that seismic testing can harm marine wildlife, which many Inuit depend upon for their livelihoods, culture and survival. To date 130 species have been documented to be impacted by human-caused underwater noise pollution, including plankton, benthic organisms, whales, invertebrates, some fish species, narwhals, harbour porpoises, squid and shrimp. Arctic communities depend on healthy and clean waters for much of their food, and their cultural and spiritual well-being is tied to their environment. Yet in the Canadian Arctic, there are no legal requirements to ensure that sufficient personnel and equipment could respond to a spill from a drilling rig or a ship, nor any requirements that such a response would occur within a certain amount of time. Furthermore, limited emergency response equipment currently exists in coastal communities in the North on a scale required to deal adequately with a major oil spill or well blowout. Many coastal communities have access to only the most basic oil spill response equipment from the Canadian Coast Guard.

We believe there is no justification for the government to extend licence terms and refund financial deposits to licence holders and we are deeply concerned by the government's stated intention to re-issue identical Exploration Licences with extended terms before Canada is sufficiently prepared for the risks of offshore oil and gas activities.

Until oil recovery and cleanup technologies in icy waters have improved, the interaction of oil and ice is better understood, and Canada is better prepared for these activities, drilling in the Canadian Arctic should not proceed. Immediate steps, including substantial investment and research, must be taken to provide adequate response capacity and infrastructure support if offshore oil and gas activities are ever to take place in the Arctic.



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General comments on the Canada Petroleum Resources Act

The *CPRA* is now over thirty years old and WWF-Canada feels that additional amendments to the *CPRA* are needed in order to further update and modernize the legislation. The policy purposes of the *CPRA* are set out in a 1985 companion Framework document that focuses almost exclusively on expediting the development of petroleum resources in the North at the expense of other possible alternatives such as marine conservation. Contemporary priorities such as Indigenous rights, climate change, marine safety, and other economic and social issues are not mentioned in the Framework.

WWF-Canada believes a comprehensive and public review of the entire regulatory regime governing oil and gas development in Canada's offshore areas is required. In the Arctic offshore, where *CPRA* rules apply, Canada's oil and gas regime also consists of the *Canada Oil and Gas Operations Act (COGOA)*, environmental rules (including liability), relevant provisions of the *National Energy Board (NEB) Act*, the *Arctic Waters Pollution Prevention Act* and laws of general application such as the *Canadian Environmental Assessment Act (CEAA)*. The review should consider how these various pieces of legislation work together and which elements should be improved/modernized, not only to ensure that oil and gas rules are updated, but also to reflect contemporary public concerns and government policy objectives.

Oil and gas development, particularly in the Arctic, is only one outcome amongst a number of possible alternatives and should not be seen in isolation from other priorities. Fully modernizing the *CPRA*, in addition to other relevant legislation, will help ensure that the priorities and concerns of Canadians are adequately considered if new licences for oil and gas activity in Canada's offshore Arctic waters are issued by any government in the future.

Sincerely,

Mark Brooks
Senior Specialist, Arctic Oil and Gas
WWF-Canada