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WWF-Canada's Recommendations to the National Energy Board Regarding Arctic Offshore Drilling Requirements

Mr. Chairman, Panel Members, Roundtable attendees,

I would like to begin by acknowledging that we are gathered here in Inuvik, a community shared by the Gwich'in and Inuvialuit peoples. It is fitting and appropriate that we are meeting in the north because the people who live here, including those whose ancestors have occupied this place for thousands of years as well as those who will build their future here, have the greatest stake in the matters we are all here to discuss. We thank the National Energy Board for convening this important Roundtable, and we welcome the opportunity for mutual learning over the coming days.

As we all know, this is a timely opportunity for the NEB to review the safety and environmental impacts of offshore Arctic drilling. After a lull of several decades, and due to the decline of sea ice as a result of global warming, major companies are once again ready to make significant investments in offshore exploration and development in Arctic waters. People who live in this region need new opportunities for economic development, and the exploitation of offshore fossil fuels appears to hold considerable promise. However, public confidence in the environmental safety of the offshore drilling industry has been shaken by the recent Montara blowout off the northwest coast of Australia, followed months later by the BP Deepwater Horizon disaster, a loss-of-well-control incident that forced the evacuation of a Statoil project in the North Sea in May 2010 and most recently by Shell's underwater pipeline breach, also in the North Sea. These are just the latest in a long string of offshore well-control incidents and oil spills that span the globe from the Persian Gulf to California and from Brazil to Norway. And all of them occurred in far less challenging operating environments than the offshore Arctic.

No one imagines that anything as complex as offshore petroleum development could ever be entirely risk-free. It is appropriate, however, to consider what level of risk to the environment should be tolerated to gain the benefits of offshore oil development in the Arctic. In this regard, we acknowledge the work undertaken by the Inuit Circumpolar Council to develop an international perspective on this and other related questions, and we support their *Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat*, this Declaration provides an important contribution to the topics being discussed at this Roundtable and considered by the NEB, and we urge the NEB to embrace the Declaration as a set of guiding principles for its deliberations.

Offshore Development: Where and When?

Offshore oil and gas development in the Arctic should be allowed only where and when it can be established that the risks to the environment and the public are tolerable, and the consequences of unintended accidents are manageable. Let me elaborate on what we mean by where and when development could proceed.

Where:

There are areas in the offshore Arctic waters that are so essential to the preservation of biodiversity and ecosystem resilience or vital for cultural and traditional reasons that they merit exceptional protection, and industrial development should not proceed in these areas. Identifying and conserving these areas through a comprehensive spatial planning process is essential to conserve intact ecosystems and the benefits they bestow on those who use them. Some planning tools are currently in place, but their efficacy, comprehensiveness and acceptability have never been adequately confirmed through an independent and transparent process. WWF is working with other members of the Beaufort Sea Partnership to rectify that gap, and to support good planning in the Beaufort Sea. But that work has only just begun, and further efforts are needed throughout the Arctic before it will be possible to distinguish vulnerable and critical parts of the marine ecosystem from areas that can tolerate a risk of industrial disturbance.

When:

As all participants at this Roundtable will undoubtedly concur, we must ensure that a major disaster, such as the one that occurred in the Gulf of Mexico, never happens in the wild, fragile waters of Canada's north. It *is* possible to avoid such a fate, but it requires a deliberate choice to accept the risk of offshore drilling *only* if and when it can be demonstrated that the chance of a blowout spill is low enough to be considered tolerable, that a blowout can be quickly contained and that there are effective means to clean up an oil spill.

WWF-Canada, with our legal partners at Ecojustice, set out to examine the best available information concerning the hazards and risks associated with offshore drilling activities in the Canadian Arctic, and the efficacy of measures to prevent and respond to accidents and malfunctions. What we learned boils down to a handful of conclusions and recommendations to the NEB, which we will share with you today. Our previous formal submissions (at http://wwf.ca/conservation/arctic/oil_exploration/) provide considerably more technical detail and supporting documentation.

Conclusions and Recommendations

Drilling safely while protecting the environment:

- 1. Adopt an appropriate risk framework.** A risk framework must distinguish among acceptable, unacceptable and tolerable risks associated with the offshore petroleum industry.

Acceptable risks require no further mitigation measures; unacceptable risks are so serious that they cannot be allowed; and tolerable risks can be allowed but must be reduced to levels as low as reasonably practicable. This framework must encompass both the “ordinary” impacts of industrial activity, including in particularly sensitive areas, as well as the risks of very large oil spills, worst-case scenario blowouts and other unlikely but not inconceivable accidents. The framework must acknowledge that some risks are unacceptable and that continuous risk reduction is a requirement for projects and activities that are deemed tolerable. The framework must be incorporated not only into back-end drilling authorizations, but also into front-end environmental assessment approvals. Finally, the framework must be based upon the highest standards of transparent governance, so that all stakeholders might evaluate the information upon which the risks are to be evaluated.

Recommendation: Develop a Tolerable Risk Framework separating risks into acceptable, tolerable and unacceptable categories, to guide NEB offshore decision-making. Engage those with a stake in the outcomes to establish socially acceptable boundaries between tolerable and unacceptable risks.

2. Establish a Mix of Prescriptive and Goal-Based Regulatory Requirements. The Commission investigating the BP Deepwater Horizon disaster in the U.S. concluded that the incident was an inevitable consequence of systemic failures in the industry’s technological capabilities and approach to risk management and by failures in governance. Unless these gaps are rectified, it said, an incident like the Gulf disaster could well happen again. Their conclusion applies with equal force to offshore drilling in Canada’s north, where the risks and potential consequences are, if anything, greater due to harsh environmental conditions.

Recommendation: Establish a regulatory regime for Arctic offshore development that embraces a mix of prescriptive requirements and goal-based regulations to assure safety, while enabling innovation. Establish performance standards for prescriptive requirements and custom performance metrics for alternative approaches to facilitate performance audits.

3. “Polluter pays principle.” This principle of international and domestic law should fully apply to offshore developments in order to enhance incentives for industry to make prudent choices and to ensure funds are available for the full cost of an oil spill response, cleanup, restoration and compensation.

Recommendation: Abolish the regulatory cap on absolute financial liability and increase responsibility requirements significantly to match the entire potential costs of any spill, including the environmental damages associated with a worst case scenario spill.

Responding effectively when things go wrong:

4. Same Season Relief Wells. Improved well control methods, including better 'blowout preventers', are not equivalent to relief wells. Relief wells are sometimes needed to regain well control when other control measures are not available and when they fail. The Same Season Relief Well capability requirement is intended to prevent the unthinkably dire consequence of a blowout continuing unchecked through the Arctic winter.

Recommendation: Retain the Same Season Relief Well capability requirement. Where it cannot be assured, drilling should not be permitted. Establish end-of-season cut-off dates to allow sufficient time to drill and complete a relief well.

5. Spill response measures. An effective response to a marine oil spill is difficult in any ocean, but particularly difficult in the Arctic, where resources are likely to be limited, environmental conditions can prevent an attempt to respond and available countermeasures are frequently ineffective. Based on the evidence submitted to the NEB, including the information included in the response gap report commissioned by the NEB, we conclude that only a small fraction of oil released into the Arctic environment can be treated or recovered with currently available countermeasures.

Recommendation: Proposals for spill response in Arctic waters must include a proven demonstration of the industry's ability to retrieve spilled oil in frozen, broken and refreezing ice conditions. Contingency plan authorizations must account for actual response gaps in particular locations.

Learnings and information requirements

6. Marine planning to identify sensitive areas. The regulatory review process for offshore oil and gas activity would proceed more smoothly and with less expensive and time-consuming conflict if it occurred in the context of a previously completed planning process that considers all significant activities in an integrated way, uses comprehensive and up-to-date data sets, includes provision for the spatially explicit identification of sensitive areas, including areas where industrial activity is deemed inappropriate, is developed in an inclusive manner that involves all stakeholders and concludes with an open, transparent and accountable decision-making process that results in socially acceptable decisions. Those conditions don't currently exist in the Canadian Arctic, although there are noteworthy planning processes in Canadian waters, including the Beaufort Sea Partnership, that can be built upon and learned from.

Recommendation: Emphasize the need for appropriate planning processes to be undertaken as a priority, in order to provide guidance to both industry and regulators.

7. Oil spill modelling. The environmental consequences of an oil spill in Canada's north are poorly understood. We do not know where the oil from a release point would travel, how it would be distributed in the water column and ice, how it would weather and how long it would persist. These capabilities are needed to understand the likelihood that spilled oil will affect specific areas and species.

Recommendation: Commission the development of extended oil spill trajectory modeling capabilities suitable for northern conditions, in collaboration with other national regulators. Work with scientific experts in the Canadian government and other partners so the models can be applied in specific locations in Canada's north. Make them available to industry and the public.

Recommendation: Require applicants to submit worst case blowout scenarios, including trajectory modeling under a range of seasonal conditions to establish the potential vertical and geographic spread of an oil spill in relation to ice and marine species. Ensure that well data upon which such scenarios are modeled are made publicly available.

Conclusion

The NEB has a crucial role as regulator of the offshore industry to ensure that environmental damage, and particularly a major oil spill, does not occur in the Canadian Arctic offshore. The Board can ensure this outcome by establishing tolerable limits for environmental consequences and by withholding approval for projects that threaten greater consequences.

We do not pretend that finding ways to reduce consequences to tolerable levels can be easily done. Indeed, we recognize that our recommendations – if adopted by the NEB – are likely to slow the pace of development. We acknowledge that there is a cost to such a “go-slow” approach, by delaying the economic benefits that northern communities look forward to. However, the advantages of a cautious approach significantly outweigh the drawbacks, by allowing time for new methods to be developed and tested, search and rescue infrastructure to be strengthened and for adequate marine planning to be carried out. Moreover, communities still need time and resources to ensure that they are sufficiently engaged in the decision-making process and to invest in training so that they can maximize the benefits from new development. The NEB has the ability, the mandate and the responsibility to ensure that the necessary safeguards are in place, so that if offshore drilling occurs in the Arctic it results in significant net benefits to northerners and to Canadians.

Once again, we appreciate the opportunity to be a part of these discussions, and we will listen with great interest to the other perspectives on this important issue that are part of this Roundtable.