



Executive Branch Transition Recommendations for Federal Public Land and Natural Resource Issues Related to Alaska and the Arctic

November 25, 2008



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Introduction

This document provides our recommendations to President-elect Barack Obama's administrative agency transition process. It is intended to present the Obama Administration with our views on the top priority federal conservation issues related to Alaska and the Arctic in two categories: 1) urgent matters that deserve immediate attention from the Obama Administration; and 2) important issues that should be timely addressed by the Obama Administration.

We based our choice of these issues on contacts with various conservation NGOs and conservation leaders in Alaska, and our personal views based on our experience in these matters. While we believe that the prioritization of the issues presented here generally would receive agreement among our peers, we do not present them as consensus items. We provide these recommendations to you based on our educated judgment.

The memo generally is organized by the administrative agency that has jurisdiction over the issues raised. As appropriate, relevant sister agencies are identified. Because of their multi-agency implications, climate change and ocean policy are presented in separate sections, with relevant agencies identified for specific portions of the recommendations on that issue.

Finally, the presentation of each issue is not intended to include an exhaustive factual, legal or political analysis. Rather, we intend here to provide enough information so that the reader may understand the basic issues and proposed actions.



I. Climate Change

Climate change and ocean acidification, more than any other statewide issues, have the greatest current and future cumulative impacts on the people, ecosystems, communities, cultures, landscapes, infrastructure, sustainable economies, and biodiversity of Alaska. We fully support President-elect Obama's goals regarding cap and trade and renewable energy legislation, and also support the broadest use of EPA's authority to regulate greenhouse gases. For purposes of this memorandum, however, we will focus on Alaska specific actions.

A. Important Issues

1. Revise Policies, Regulations, and Actions to Address Global Warming Adaptation and Mitigation, with Appropriate Consideration for Alaska.

The dramatic, adverse impacts from global warming are being experienced throughout Alaska, especially on the lands, waters, and species managed by the Departments of Interior, Agriculture, and Commerce; as well as on Alaskan tribes and subsistence hunting and fishing opportunities. Federal infrastructure, both civilian and military, is also being damaged by melting permafrost and eroding shorelines.

Since Alaska has warmed four times more than the global average, and because over 50% of all DOI managed lands are in Alaska, as well as our nation's two largest National Forests and half of our nation's coastlines and marine waters, it is imperative that our country's trust resources in the Arctic and sub-arctic are afforded appropriate consideration and protection as this Administration develops its critical policies and regulations regarding climate change.

The following areas deserve particular attention and action:

- a) Through an Executive Order, the Obama Administration should develop and begin executing a **coordinated, inter-agency plan to assist tribes that need to be relocated due to global warming**, such as Newtok, Kivalina and Shishmaref.
- b) Through Secretarial Orders, all federal land and water management agencies in Alaska should be directed to **include global warming and ocean acidification considerations in all future planning documents, regulations, and agency operations; and the agencies also need to be directed to review all relevant existing plans and regulations to determine which should be modified in light of climate change and ocean acidification**. This includes, but is not limited to: comprehensive land management plans, endangered and threatened species management, subsistence regulations, fire management policy, commercial fishing management, transportation policies, and shipping management.
- c) Through Secretarial Orders, all federal agencies should be required to **evaluate transportation and other infrastructure needs in response to warming, and fund needed retrofit and restoration**.



- d) Through Secretarial Orders, all appropriate agencies should be required to **provide clear, accurate public interpretation regarding global warming in Alaska** on their websites, in their printed materials, and in their visitor centers. All Alaska-based national parks, refuges, forests, and public lands should also be required to reduce their carbon footprint by 25%, and demonstrate clearly to the public how they are doing this.
- e) **The Forest Service and the Department of Interior should analyze the value of old growth forests in Alaska as carbon sinks and for carbon sequestration.**

2. Stop Digging a Deeper Hole – Institute a Moratorium on Major, New Coal Development in Alaska.

Alaska has extensive coal resources that should, for the good of the planet, stay in the ground. The Administration should **use every appropriate authority to ensure that there is a moratorium on all major new coal developments in Alaska.**



II. Ocean Policy

A. Important Issues

1. Support a Comprehensive New Management Framework for the Oceans

Management of human interactions with the oceans in the United States is divided among several federal agencies, including the Departments of Commerce and Interior, as well as the Coast Guard and others. These agencies focus on issue-specific interactions, such as commercial fishing, oil and gas extraction, or shipping, and no one of these agencies has the clear authority or responsibility to ensure that such interactions are collectively sustainable. Problematic in its own right, in an age of climate change, this situation is untenable.

The Obama Administration should **develop and advocate for the passage of a new ecosystem-focused statutory scheme for management of human interactions with the oceans**, which would replace or be dominant over the issue-specific focus that now pervades ocean management in the U.S. This effort **should include Oceans 21-type legislation establishing a national policy to protect, maintain and restore marine ecosystem health and resilience**. The U.S. waters of the Arctic experience stresses from nearly all human uses of the oceans, and suffer disproportionately severe impacts from climate change. Consequently, **the U.S. waters of the Arctic would be a good place to initiate such an ecosystem approach**. (See Section III.B.2 for related item – Comprehensive Arctic Conservation and Energy Plan).

2. Issue an Executive Order on Marine Ecosystem Health

For similar reasons, the Obama Administration should **issue an Executive Order establishing a national policy to protect, maintain and restore marine ecosystem health**. Within two years of the issuance of the Executive Order, each federal agency shall issue new or revised regulations to insure to the fullest extent possible consistency with this policy for actions undertaken, authorized or funded by such agencies that may significantly affect marine waters of the U.S.



III. The Department of the Interior

A threshold transition issue for the Department of the Interior (DOI) is the selection of a Secretary who exhibits and expresses strong support for wilderness designation for the Coastal Plain of the Arctic National Wildlife Refuge. The Arctic Refuge was the biggest environmental win in the last eight years, and it has achieved iconic status in the environmental and energy conscience of Americans. Strong support for wilderness from the top down is thus an important barometer of change at DOI, and would also provide an important boost to the morale of the critical agency personnel who upheld the public interest through the challenging times of the Bush Administration.

A. Urgent Issues

1. Suspend oil and gas activities in the Arctic Ocean and conservation priority areas in the NPRA, and cancel leasing plans in the Bering Sea.

The Bush Administration imprudently pushed through a massive expansion of oil and gas activities in the Beaufort, Chukchi, and Bering Seas in the face of opposition from federal expert agencies, conservation groups, Alaska Native entities, and commercial fishing organizations. These experts and others correctly asserted that there is too little information known about the existing biological conditions in those Seas, especially in light of changes wrought by climate change, to be able reasonably to understand, evaluate and address the adverse impacts of oil and gas activities on those environments.

Action Recommendations:

- a) The new DOI has discretion under the Outer Continental Shelf Lands Act (OCSLA) to **suspend oil and gas leasing in the Beaufort and Chukchi Seas. This includes suspending planning for future lease sales such as an Arctic Ocean Multi Sale DEIS** that is expected to be released for public review and comment within days or weeks.
- b) DOI also has authority in the offshore and onshore context to **limit exploration activities pending completion of a comprehensive Arctic conservation and energy plan (see below), and should cease general and lease tract-specific exploration activities in the Arctic Ocean and in conservation priority areas in the NPRA.**
- c) The Interior Department also has full discretion not to hold, and **should not hold the North Aleutian Basin (Bristol Bay, Bering Sea) lease sale** in the current Leasing Program. The Exxon Valdez Oil Spill resulted in a moratorium on leasing in this area, and an expensive buyback of the only prior leases ever let in this area. It was then determined that the biologically diverse Bering Sea environment, and largely sustainable \$2 billion annual commercial fisheries in the area, were at stake from oil and gas activities. The risk to this environment, and its vibrant economy, is simply too great to permit leasing here.

Sub-agency: Minerals Management Service



2. Protect Threatened and Endangered Wildlife in Alaska

The Bush Administration failed to adequately protect threatened and endangered species in Alaska. While there are many listed and non-listed species that deserve prompt attention (including making listing decisions for walrus and yellow-billed loons; designating critical habitat for spectacled eiders; and properly managing and protecting predators in our national parks), there are three most critical and related actions in this area associated with polar bears, the bellwether species for global warming. (a) **DOI should immediately remove the special ESA 4(d) rule for polar bears**, thus providing the full protection of that law for polar bears. (b) DOI should also **expedite critical habitat designation for polar bears**. (c) FWS has issued deficient Marine Mammal Protection Act incidental take regulations for polar bears and walrus in the Beaufort Sea and adjacent onshore areas (except the Arctic Refuge), as well as for the Chukchi Sea. Interior should **revise these incidental take regulations to take a more precautionary stance toward these at risk marine mammals**.

Sub-agency: Fish and Wildlife Service

3. Oppose road in Wilderness of Izembek National Wildlife Refuge

Legislation is likely to be reintroduced which would allow a land exchange that facilitates construction of a road through designated Wilderness within the Izembek National Wildlife Refuge (Public Lands Omnibus Bill 2008 from current Congress). This road would damage the ecological integrity of one of the most important wetlands in the world, forever destroying this unique wilderness area, and set an unacceptable and dangerous precedent for allowing roads through Wilderness.

The Fish and Wildlife Service director recently stated that the Bush Administration supports the proposed land exchange that facilitates the first road through previously designated wilderness. This is a direct reversal of FWS's long standing opposition to the proposed road which was based on professional recommendations of every Izembek Refuge Manager that has addressed this issue.

The Obama Administration should **formally state its opposition to the proposed Izembek land exchange and resulting road through currently designated Wilderness, and use all authorities within its power to prevent it**.

Sub-agency: Fish and Wildlife Service. Also implicates White House executive office.

4. Abandon Yukon Flats National Wildlife Refuge Land Exchange

In 2004 the FWS tentatively agreed in principle to a land exchange with Doyon Ltd (a for-profit regional Native corporation), which would exchange a solid block of lands within the Yukon Flats National Wildlife Refuge for scattered parcels owned by Doyon. The proposed exchange would transfer to Doyon public lands that are thought to be of high potential for oil and gas. Development of these lands would introduce impacts to air, water, wildlife, wilderness and traditional subsistence uses within the Yukon Flats basin and the downstream environments of the Yukon River. In addition to oil



development within the Refuge, proposed roads and pipelines would further threaten Beaver Creek National Wild River, and the White Mountains National Recreation Area.

Opposition to the proposed land exchange by Native tribes of the Yukon River watershed (including Canada) is nearly unanimous. Previous to this agreement, the FWS was opposed to this exchange stating that it would be incompatible with the purposes of the Refuge. Currently a final environmental impact statement and land appraisals are in preparation.

Interior should immediately suspend completion of the Yukon Flats environmental impact statement and land appraisals, and withdraw from the tentative agreement in principle with Doyon.

Sub-agency: Fish and Wildlife Service

B. Important Issues

1. Support the Strongest Possible Protection for the Coastal Plain of the Arctic National Wildlife Refuge, Including its Designation as Wilderness

Given the exceptional ecological significance of the Arctic National Wildlife Refuge, together with its high profile in the environment and energy conscience of American citizens, stronger protections than exist today for the Arctic Refuge should be an integral part of the Obama Administration energy and environment plans. Swift, immediate action toward protecting the Arctic Refuge, both vocally, and in the context of a larger energy proposal, would send a decisive message that the new administration and Congress have the courage of their convictions, and will meet 21st century challenges with modern solutions, rather than taking actions that are insignificant in an energy context and that destroy the heart of our public lands legacy.

President-elect Obama should carefully examine using the Antiquities Act to **designate as a National Monument the Coastal Plain of the Arctic National Wildlife Refuge within an anticipated comprehensive energy proposal.** The Obama Administration should also support and help pass the Arctic National Wildlife Refuge Coastal Plain Wilderness Bill, either in a stand alone bill or as part of a larger energy and conservation legislative package.

Relevant executive entities: White House, Office of the Secretary of Interior

2. Prepare a Comprehensive Arctic Conservation and Energy Plan

The new Administration should **develop a Comprehensive Arctic Conservation and Energy Plan** based on a full scientific assessment of the health, biodiversity, and functioning of Arctic ecosystems to guide our choices about if, when, where, and how industrial activities are permitted in the Arctic. Based on existing analyses and before completion of the comprehensive plan, the new Administration should quickly support



the strongest possible protection for the coastal plain of the Arctic Refuge, including wilderness designation legislation, and permanent protections for other priority areas such as the Teshekpuk Lake Special Area, using the Antiquities Act and other authorities.

Relevant executive entities: White House, Department of Interior, Department of Energy

3. Adequately Assess the Impacts of Lifting Withdrawals under the Alaska Native Claims Settlement Act § 17(d)(1)

Under section 17(d)(1) of the Alaska Native Claims Settlement Act, all federal lands in Alaska were withdrawn from mineral entry until land selections could be completed,. 43 U.S.C. § 1616(d)(1). These lands are generally referred to as d-1 lands. In 2005, the Alaska Land Transfer Acceleration Act was enacted to accelerate the land selection and conveyance process, and the Department of the Interior issued a report that recommended lifting the d-1 withdrawals on 95% of those lands (152,181,400 acres). BLM's Resource Management Plan process continues to recommend lifting those withdrawals. The analysis for lifting these withdrawals does not include an adequate, site specific assessment.

The Obama Administration should prohibit the lifting of the d-1 withdrawals until a thorough and adequate analysis of lands is completed. Furthermore, the Secretary should repudiate the Norton-era memo preventing consideration of wilderness in BLM planning.

Sub-agency: Bureau of Land Management

4. Promulgate RS 2477 Rules

Current rules regarding the treatment of RS 2477 right-of-way assertions are not clear. This is a particularly important issue for federal lands in Alaska, given the vast extent of potential RS 2477 assertions on these lands.

Interior should promulgate a comprehensive and uniform nationwide process, through regulations, for resolving such assertions, similar to the ones proposed by the Clinton Administration; and work with Congress to lift any impediments to their adoption.



IV. Environmental Protection Agency

B. Urgent Issues

1. Revisit Elements of Grant of NPDES Primacy to Alaska

On October 31, 2008, EPA approved the delegation of the National Pollution Discharge Elimination System (NPDES program) to the State of Alaska. Under the CWA, a State that seeks to administer the NPDES program must continue to encourage public participation in the permitting process and allow an “opportunity for judicial review that is the same as that available to obtain judicial review in federal court of a federally-issued NPDES permit.” 40 C.F.R. § 123.30. Alaska is the only state that has a “loser pays” statute (AS 9.60.010) and court rules (Alaska Civil Rule 82 and Alaska Appellate Rule 508(e)) applicable to litigation in state courts. Thus, under the State’s NPDES program, the public may be substantially deterred from challenging illegal permit decisions that would otherwise be challenged if still under federal jurisdiction because they now face the risk of incurring significant financial liabilities should they lose in state court.

In addition, the State’s enforcement program does not meet Clean Water Act (“CWA”) standards. The seventh criterion of section 402(b) of the CWA requires that the state program must possess the ability to “abate violations of the permit or the permit program, including civil and criminal penalties” by providing similar safeguards to those in the CWA, as EPA currently implements it. 33 U.S.C. § 1342(b)(7); 40 C.F.R. § 123.27. Under the State’s program, the Department of Environmental Conservation (“DEC”) does not have the authority to assess civil penalties administratively. Instead, DEC will be forced to take permittees to state court, a costly and time-consuming process. Consequently, DEC lacks the enforcement tools, which EPA currently possesses, to quickly impose penalties and deter chronic permit violations.

In addition to these legal issues, the public is concerned that the State does not have the financial resources to implement the program since the budget is so reliant on the price of oil.

As a result, **EPA should revisit its decision to delegate the NPDES program to the State of Alaska, at least under current conditions.**¹

2. Eliminate or Significantly Curtail the Use of Mixing Zones to Meet Water Quality Standards

Mixing zones are permitted by regulation, but not explicitly authorized by the CWA statute. *See* 40 C.F.R. § 131.13. Mixing zones implement “dilution is the solution to pollution,” which is what the enactment of the CWA sought to avoid. A State of Alaska mixing zone proposal is now before EPA for approval.

¹ A legal challenge to EPA’s decision is soon to be filed by Tribes and conservation groups.



If EPA approves the new mixing zone water quality standard for Alaska in the final hours of the Bush Administration, the Obama Administration should immediately reverse that decision. Furthermore, the Obama Administration should consider implementing a prohibition on mixing zones in anadromous fish spawning areas on a national level.

B. Important Issues

1. Exert Stricter Industry Oversight in Alaska

Industry oversight in Alaska is lax, especially on the North Slope. EPA must **prioritize, fund and execute meaningful oversight of industry in Alaska.**

2. Revisit Effluent Limitation Guidelines for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category

In the 1990's EPA enacted Effluent Limitation Guidelines for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category ("ELG"). Those ELGs provide an exemption for Cook Inlet oil and gas facilities to attain zero-discharge, which is required for the other facilities in the subcategory. The ELG has also been applied to the NPDES general permit for oil and gas facilities on the Outer Continental Shelf in the Beaufort and Chukchi Seas and the Hope and Northern Norton Basins.

The Obama Administration should revise the ELGs to require Alaska oil and gas facilities to meet the nationwide standard of zero-discharge.

3. Implement Principles of Environmental Justice

Continued use of persistent organic pollutants, **together with** oil and gas development, global climate change, and aggressive plans for new development threaten the future of the Alaska Native cultures. Citizens of the Arctic and other at-risk ecosystems have a right to a safe, healthy, productive, and sustainable environment for all.

EPA should formalize stricter government-to-government consultation policies for federal actions that may impact Alaska Native communities. **EPA should work with the Council on Environmental Quality to draft and implement new policies or regulations requiring that the potential impacts of federal action on health be fully assessed as part of the NEPA analysis for such actions.** EPA should also protect environmental health by strictly regulating the discharge of contaminants from military and industrial sites to prevent contamination of plants, fish and wildlife that serve as traditional food sources for Alaska Native peoples.

Related executive entity: Council on Environmental Quality



4. Address CWA Antidegradation Requirements

The CWA requires that state water quality standards include an antidegradation policy and the methods for implementing the policy. 40 C.F.R. § 131.12(a). When EPA approved Alaska's antidegradation policy in 1997, it noted that the policy did not have implementation procedures and indicated that Alaska should rectify the problem in its next triennial review. Eleven years later, Alaska still has no implementation methods for its antidegradation policy. While DEC continues to issue certifications that NPDES permits comply with state water quality standards and continues to authorize mixing zones, there are no state requirements to ensure that water quality is not being degraded in accordance with Alaska's antidegradation policy because there are no implementation methods to apply.

The Obama Administration should either develop implementation methods for Alaska's antidegradation policy or order Alaska to develop implementation for its antidegradation policy.



V. National Oceanic and Atmospheric Administration

A. Urgent Issues

1. Reverse Rule Regarding NEPA and Fisheries

The Bush Administration is proposing a rule (currently at OMB) which effectively exempts marine fisheries from NEPA, and creates a deficient environmental review system. The proposed rule misrepresents congressional intent and undermines the informed decision-making and public participation goals of NEPA.

The Obama Administration should **reverse this rule, if it is finalized in these waning days of the Bush Administration**. Any changes to agency procedures must **ensure that NOAA conforms to the requirements of NEPA and implementing CEQ regulations, including provisions related to public participation and environmental review**.

Relevant executive entities: CEQ, NOAA

2. Protect At-Risk Wildlife

Similar to FWS management of wildlife, NMFS manages many at-risk species in Alaska and its adjacent marine waters. While there are many listed and non-listed species that deserve prompt attention, these three issues deserve immediate attention: a) **ensure that the new biological opinion for endangered Steller Sea Lions has scientific integrity**; b) **ensure immediate designation of critical habitat for the endangered Cook Inlet beluga whale** (at a minimum covering Type I habitat in the initial designation); and c) **institute more precautionary measures to protect the North Pacific right whale** – the world's most critically endangered marine mammal.

3. Approve Arctic Fishery Management Plan

The North Pacific Fishery Management Council is scheduled to vote on a new Arctic Fishery Management Plan at its February, 2009 meeting. If passed as currently envisioned, the Arctic FMP will prohibit new commercial fisheries unless and until there is an ecosystem-based plan in place to manage new fisheries appropriately and with adequate consideration of climate-related cumulative impacts.

If passed by the Council, **NOAA should approve the Arctic FMP**.

4. Ensure Integrity in Experimental Fishing Permit Rules

NOAA is engaged in the final stages of a rulemaking process for Experimental Fishing Permits (EFPs). Industry is increasingly using such permits to avoid regulations, even when listed species are involved.

NOAA should **ensure that any final EFP rule is narrow in scope and includes stringent conservation requirements**.



B. Important Issues

1. Perform a Status Review of North Pacific Fur Seals

The population of North Pacific fur seals remains low. NOAA should **perform a status review of the fur seals** to determine what is causing its low population levels and explore options for assisting this species' recovery to historical population levels.

2. Promulgate Limited Access Program Rules

There is strong pressure to privatize access to U.S. fishery resources as a panacea for conservation issues, yet there is significant disagreement about the efficacy of such limited access programs to meet conservation and other objectives. NOAA should **develop rules under Section 303(a) of the Magnuson Fishery Conservation and Management Act that ensure the conservation objectives are met, and that protect current and future generations of fishermen from monopolization by large commercial fishing corporations.**

3. Map Underwater Habitat

Successful ecosystem management – including ensuring sustainable commercial fisheries -- depends on accurate information about ocean resources, particularly including information on important marine habitat. There is tremendous lack of information on the distribution of habitat types, especially in waters off of Alaska.

NOAA should perform **focused research on underwater habitat mapping.**



VI. United States Forest Service, Department of Agriculture

A. Urgent Issues

1. Take Administrative Action to Protect Roadless Areas in the Tongass National Forest

During the Clinton Administration, the Forest Service adopted a rule protecting all 59.5 million acres of roadless areas in our country's national forests. In 2003, the Bush Administration adopted a "temporary" rule—still in place—that exempts the 9.3 million acres of roadless areas in the Tongass National Forest, the nation's largest.

The new Administration should end the temporary exemption of the Tongass National Forest from the Roadless Rule and, in the interim, suspend the issuance of any new contracts for timber sales or roads in roadless areas of the Tongass.

B. Important Issues

1. Support Legislation to Protect Key Areas of the Tongass

Although more than half of the highest value, old-growth forest within the Tongass has been clear-cut, the old growth portions of the forest continue to boast significant reservoirs of abundant, healthy and intact landscapes unlike most of our public forests in the lower-48 states. New peer-reviewed science and decades of on-the-ground expertise in Southeast Alaska provides tools necessary to balance good jobs that rely on responsible use of the region's abundant natural resources with the conservation measures necessary to protect one of the world's last strongholds of healthy and abundant fish and wildlife. A coalition of conservation organizations in Southeast Alaska is working in collaboration with other stakeholders, including past adversaries, to resolve long-standing differences and advance a shared and balanced vision for the Tongass.

The Administration should participate in drafting and support legislation protecting large, key areas of the Tongass National Forest.

2. Review the Tongass Land Management Plan

In 2008, the Bush Administration hurriedly finished a new, court-ordered forest plan for the Tongass. It perpetuates the problems of the pre-existing, inadequate plan, keeping the allowable logging volume at the same level, putting at risk key areas of the forest, and doing nothing to end the massive, wasteful subsidies required for the Tongass timber sale program. Following the completion of all the administrative appeals, which were rejected, Under-Secretary Mark Rey directed the Forest Service to make changes that would worsen the problems, opening even more areas to logging, weakening standards to protect wildlife, and offering long-term timber sales.

The Administration should review the 2008 Tongass Land Management Plan and direct revisions to protect wildlife and key areas of the forest, to bring logging levels in line with market conditions and the needs of other resources and uses on the Tongass, and to end wasteful subsidies.



VII. Coast Guard

A. Urgent Issues

1. Initiate Critical Vessel Traffic Risk Assessments and Take Interim Measures

As the *Selandang Ayu* shipping disaster tragically illustrated, there are inadequate safeguards for vessel traffic along the Great Circle Route adjacent to Alaska. The lands and waters affected by this route are rich in fishery resources, marine mammals, and coastal communities. Also, this problem extends to the Arctic Ocean, and is compounded by increased shipping due to climate change.

The Obama Administration should take several immediate and related actions to address the inadequate shipping oversight and resources that threaten Alaskan lands, waters and communities:

- a) The Administration should **ensure the initiation of the Aleutian Islands Vessel Traffic Risk Assessment**. The NRC has completed a Scoping Study for the Risk Assessment (funded by a State of Alaska appropriation of \$250,000), but the Coast Guard has yet to initiate the actual Assessment.
- b) The Coast Guard should also **fast track a Risk Assessment for Arctic Shipping**.
- c) In the interim, the Coast Guard should **implement reasonable risk reduction measures for the Aleutians and the Arctic until the Risk Assessments are complete**. These measures should include: real-time continuous ship tracking, since it is affordable and will significantly improve response capacity; and rescue tug assets on standby during open water season. Tesoro's hiring of a tug in Cook Inlet provides a solid precedent for other regions of Alaska. .

B. Important Issues

1. Fully Implement OPA 90

Following the *Exxon Valdez* accident, the worst oil spill in American history, Congress passed the Oil Pollution Act of 1990. OPA 90 has played a central role in improving oil spill response, particularly through the regulation of oil tankers and requirements for double-hulled construction. However, Congress's mandates under OPA 90 have not been fulfilled, because many necessary regulations have never been promulgated. The following related actions should be completed: (a) **initiate rulemaking for firefighting and salvage regulations**; (b) **develop Geographic Specific Indices and Vessel Response Plans on non-tank vessels**; (c) **define sensitive areas where escort tugs shall be required** (the so-called "Other Waters" requirement, under Section 4116(c) of OPA 90); and (d) **revise stipulations with which the federal government can use funds from the *Oil Spill Liability Trust Fund* (OSLTF), such that these funds can be accessed easily by the Coast Guard (and other agencies) for prevention**, not just response and damage assessment.



VIII. U.S. Army Corps of Engineers

A. Urgent Issue

1. Prevent CWA permits from permitting the dumping of mine tailings in water

Since 1975, EPA regulations have prohibited ore processing mills from dumping their untreated process wastewater—commonly called tailings—into lakes, rivers, streams, and wetlands. Although the mining industry had thrived for three decades under these regulations, the Bush Administration upended longstanding practice by redefining the wastewater as “fill material” and allowing the Army Corps of Engineers to grant permits for untreated discharges directly into lakes and other waters. The national test case was the Kensington Mine near Juneau, where the discharge will kill all the fish and most other aquatic life in Lower Slate Lake. The litigation over this permit is now before the U.S. Supreme Court, and the outcome will set a critical precedent for the proposed Pebble Mine near salmon-rich Bristol Bay, for all other mines nationwide, and for any other industrial wastewater discharges that contain significant levels of suspended solids and may therefore be considered “fill material” under this approach.

The Obama Administration can easily correct this problem, because the EPA regulations prohibiting direct discharges remain in effect and were disregarded only through an informal agency memorandum (the Regas memo). The Administration should **rescind the Regas memo and the Kensington permit**, restoring the effect of the longstanding EPA regulations and ending the Supreme Court case. There is an alternative disposal site available at the Kensington Mine that can be permitted quickly. The Administration should also **revise the regulatory definition of “fill material”**—which was changed by the Bush Administration in 2002—**to provide sensible safeguards against destructive mining practices.**

B. Important Issue

1. Revamp CWA Section 404 Permitting

As an agency committed to the important work of building infrastructure throughout our country, the Corps of Engineers should not also be provided the authority to implement the critical environmental protections of CWA section 404. This presents an inherent conflict of interest that can have consequences for wetlands and waterways throughout the country, including in Alaska which has a huge percentage of the remaining wetlands in the U.S.

Either the **section 404 responsibility should be placed within EPA, or EPA should be empowered to exercise a veto power in a meaningful way.** The former may require legislative changes; the latter could be accomplished by changes to the Corps – EPA Memorandum of Understanding.



2. Cleanup Formerly Used Defense Sites

There are approximately 600 formerly used defense sites in the state of Alaska, many in close proximity to Alaska Native communities and their traditional fishing and hunting grounds. Most formerly used defense sites (FUDs) in Alaska lack comprehensive assessments of the nature and extent of contamination. Department of Defense (DoD) policy on remediation of FUDs has relied heavily on institutional controls (ICs) including fences and signs to minimize or prevent humans and animals from coming in contact with contaminants or explosive materials. Large quantities of hazardous materials are being left in unlined landfills, contaminating soils, sediments, surface water, and groundwater. Rapid climate change is exacerbating the mobilization of contaminants, particularly along coastlines, with increasing erosion resulting from permafrost degradation and rising storm surges. Contaminants originating from military hazardous waste sites threaten ecologically sensitive coastal habitats and species, commercial fisheries, and human health.

The Obama Administration should work to **ensure that the Corps of Engineers has adequate resources and direction for the cleanup of formerly used defense sites** including provisions for regulatory enforcement, government-to-government consultation with tribes, and citizen participation/oversight. The new Administration should **empower the EPA to analyze the environmental and health threats posed by formerly used defense sites.**

Related Agencies: EPA for regulatory oversight of military cleanup and authority under CERCLA



IX. Department of Transportation

A. Urgent Issue

1. Initiate Planning Process

The Department of Transportation should initiate a state/federal transportation planning process for Alaska. The goal of this process is to provide sustainable, low carbon transport into the future, including light rail for commuters. **Any and all road projects should satisfy a federal cost/benefit analysis similar to anywhere else in the nation** (e.g. cost per passenger mile traveled).

B. Important Issue

1. Ensure the Integrity of the Trans-Alaska Pipeline (TAPS)

The Trans-Alaska Pipeline is vulnerable. Risk factors have increased dramatically in the last 8 years, including corrosion, corporate cost-cutting, agency staff shortage, no cold restart ability, decreased leak detection due to reduced throughput, and problematic Strategic Reconfiguration. The two key federal agencies are DOT-PHMSA and the Joint Pipeline Office. There is a critical need to **adequately staff DOT-PHMSA and the Joint Pipeline Office and give priority to TAPS oversight**. Numerous issues need to be addressed quickly including the long delays in corrosion monitoring and control, no BLM corrosion technician, and the large number of regulatory violations issued by PHMSA that need enforcement. There also should be a Citizens Advisory Council for TAPS (and another for the North Slope), which could be done by Executive Order.

2. Support Increased Match for Public Transportation, Including Ferries

Currently the federal:state match funding for public transportation projects is 50:50 whereas that for roads it is 80:20 or higher. This creates a disincentive for states to invest in public transportation projects. Public transportation, including ferries, should have comparable or better federal match funding compared to road and bridge federal match funding. **The Obama Administration should actively support making the match for public transportation the same as the match for roads.**

3. Oppose the Knik Bridge to Nowhere; Re-Examine Positions on the Juneau Road to Nowhere; and Carefully Examine the Port of Anchorage Substantial Expansion

Because there are significantly cheaper alternatives to address congestion and promote improved land use, the proposed Knik Arm “bridge to nowhere” is an unnecessary toll bridge project that will cost over \$1 billion, with \$231 million in earmarks from Senator Ted Stevens and Congressman Don Young that were removed by Congress in 2005 (the money still went to Alaska). Alaska continues to pursue this project and awaits a Record of Decision by the Federal Highway Administration, which is held up currently by historic preservation concerns and an independent cost estimate



contracted by the state. Additionally, the Cook Inlet beluga whale, which will be significantly affected by this project, was listed as an endangered species in October 2008 and consultation requirements have not yet been finalized. **FHWA should approve the “no action” alternative for the Knik Arm Bridge in its Record of Decision, following issuance of an independent cost estimate (new information) at the end of January 2009.**

The proposed Juneau Road and Ferry Project received its final federal permit from the U.S. Corps of Engineers in June 2008, over significant objections from U.S. EPA. The Juneau Road and Ferry project would consist of 50 miles of new road from Echo Cove (approx. 40 miles north of Juneau) to the Katzehin River via the east side of Lynn Canal, a new ferry terminal at the river 90 miles from Juneau, and new shuttle ferries to Haines and Skagway. This will be one of the toughest and costliest per mile road construction projects in the country due to its numerous rockfall, avalanche, and debris-flow hazards, as well as its location at the base of steep mountains along pristine Lynn Canal for its length. Additionally, only approximately 700 vehicles per day are expected to use the new road in 2030. The project currently has an “official” estimate of \$374 million that will be revised by an independent cost team, and project litigation is ongoing. **The U.S. Forest Service, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers need to reevaluate their previous decisions on this road project because it is in one of the Tongass National Forest’s prime roadless areas; issuance of an independent cost estimate during 2009 will provide new information and a good opportunity to reevaluate.**

The Port of Anchorage currently receives shipments just two days each week. The proposed Port of Anchorage expansion, with no demonstrated need for many aspects, likely will cost approximately \$1 billion. The Bush Administration tasked U.S. DOT’s Maritime Administration (MARAD) with managing over \$200 million dollars in federal earmarks obtained by Senator Ted Stevens for the project, and MARAD issued the project’s very limited Environmental Assessment. The State of Alaska has only contributed about \$15 million, to the project. The project will cause many environmentally-significant impacts including affecting the endangered Cook Inlet beluga whale and its habitat and federally-designated Essential Fish Habitat in upper Cook Inlet. MARAD and U.S. Army Corps of Engineers repeatedly have refused to analyze adverse environmental impacts in an Environmental Impact Statement. **No additional federal monies should be devoted to the Port of Anchorage Expansion without, at a minimum, the preparation of a full Environmental Impact Statement.**



X. Department of Justice

A. Urgent Issue

1. Review Agency Positions in Pending Cases

The integrity of executive branch agencies in properly implementing the laws of the United States has been called into serious question in the last eight years, as has the integrity of the Department of Justice in upholding the rule of law in the United States. The critical role of the judiciary in ensuring faithful compliance with the laws of the United States has thus frequently been sought after, including for natural resource and public land issues in and off the coasts of Alaska.

The new Department of Justice should review, and where appropriate adjust or abandon, the litigation positions of administrative agencies in all lawsuits related to natural resources and public lands in and off the coasts of Alaska.

B. Important Issue

1. Pursue Exxon Valdez Oil Spill “Unknown Injury” Monies

As authorized by the settlement of the Exxon Valdez Oil Spill, the federal government and the State of Alaska asserted in 2006 a \$92 million “unknown injury” claim against Exxon. The Department of Justice should take the lead in aggressively pursuing resolution of this claim in a manner that meaningfully enhances the recovery of Prince William Sound from the devastating effects of the spill.

Related Agencies: Agriculture, Commerce, Interior



XI. Department of the Army

B. Important Issues

1. Review Coal-To-Liquid Subsidies

Given the large contribution of coal to greenhouse gas emissions, the Army should review the appropriateness of using federal subsidies for Coal-To-Liquid energy projects to meet its energy needs. This includes **a reevaluation of Army involvement in a proposed CTL project in Fairbanks, Alaska.**



XII. Department of State

A. Important Issue

1. Pursue International Treaty for the Arctic

The new Administration should initiate international negotiations to develop a framework environmental convention that implements an integrated, ecosystem-based management approach to managing new and expanded industrial activity in the Arctic circumpolar region.