

**Testimony before the U.S. House of Representatives
Subcommittee on Energy and Power**

The American Energy Initiative

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Submitted by:

Dan Sullivan, Commissioner
Department of Natural Resources
State of Alaska

I. Introduction

Chairman Whitfield, Ranking Member Rush, and members of the House Subcommittee on Energy and Power, on behalf of Governor Sean Parnell, the State of Alaska welcomes this opportunity to testify as part of this Committee's important work on the American Energy Initiative. More specifically, we want to emphasize to this Committee and to the rest of your colleagues in the U.S. Congress that the United States is on the cusp of an energy and responsible resource development renaissance which will have enormous benefits for our country and citizens. But in order to fully seize this strategic opportunity, we must modernize and reform our federal permitting system and increase access to energy production on federal lands.

Biographical Information

Before getting into substantive matters, I would like to briefly mention my professional background as it pertains to this testimony. I have been serving as commissioner of the Alaska Department of Natural Resources (DNR), a state agency of over 1,100 personnel, since December 2010. DNR is responsible for managing Alaska's vast land, energy, and natural resources with approximately 100 million acres of uplands, 60 million acres of tidelands, shore lands, and submerged lands, and 40,000 miles of coastline. DNR manages one of the largest portfolios of oil, gas, minerals, land, water, timber, and renewable energy in the world.

Prior to being appointed as the DNR Commissioner, I served as Alaska's Attorney General. One of my areas of focus was issues relating to natural resource management and development. From May 2006 to January 2009, I served as the U.S. Assistant Secretary of State for Economic, Energy, and Business Affairs, where much of my work focused on international energy issues, including serving as the U.S. Governing Board member of the International Energy Agency. Prior to my time as U.S. Assistant Secretary of State, I served as a Director in

the International Economics Directorate of the National Security Council and National Economic Council staffs at the White House. I am also a United States Marine, having served on active duty and in the reserves as an infantry and reconnaissance officer since 1993. I am currently a Lieutenant Colonel in the Marine Corps Reserve, serving as the Executive Officer of the 4th Marine Division's Anti-Terrorism Battalion.

Overview of Today's Testimony

The United States is on the cusp of an energy renaissance involving domestic production of natural resources ranging from clean renewables to hydrocarbons.

In particular, domestic hydrocarbon production – both conventional and unconventional oil and gas – is increasing dramatically. This growth presents a strategic opportunity for our nation and it is driven by two trends. First, new technology is unlocking unconventional resources such as shale-derived oil and gas. Second, there is growing recognition that the U.S. still has an enormous resource base of conventional oil and gas, particularly in Alaska.

However, our nation has a complex regulatory system that almost guarantees large-scale, domestic resource development projects will be tied up in years of permitting delays and costly litigation. Such a system significantly undermines our economic opportunities, foreign policy objectives, and national security interests. It also undermines, rather than promotes, global environmental protection and stewardship. Alaska stands ready to be a critical partner with the federal government to undertake a comprehensive modernization of our regulatory system, which will allow us to resume leadership in energy production and responsible resource development.

My testimony will focus on the following:

- The United States is uniquely positioned to regain its standing as the global leader in energy production and responsible resource development.
- An American energy renaissance will result in broad-based economic and foreign policy benefits.
- To fully seize this strategic opportunity, we must modernize and reform our regulatory and permitting system, which currently undermines U.S. interests.

The benefits and the challenges we will face in assuming leadership in these areas are discussed below, using examples from Alaska, one of our nation's greatest sources of natural wealth. As this testimony will demonstrate, the State of Alaska supports legislative measures that bring clarity, certainty, and timeliness to the permitting process and therefore is in favor of several bills that are currently being considered by the U.S. House of Representatives.

II. The United States: Uniquely Positioned for Strategic Opportunity in the 21st Century

The United States possesses three key strengths that will enable our country to regain its standing as the global leader in energy production and responsible resource development. We are the leading world power that combines these strengths, and we can use them to bolster our economy and promote our national security interests.

A. An Enormous Resource Base

A few years ago, many believed our nation was running out of the natural resources needed to power our economy. Indeed, since the oil shocks of the 1970s, a sense of chronic energy scarcity and vulnerability has dominated American thinking. But recent innovations in unconventional oil and gas extraction have upended the conventional wisdom. Hardly a day goes by without fresh evidence of the United States regaining its status as a hydrocarbon superpower. A few years ago, we were preparing for large-scale natural gas imports due to diminishing supplies.

Today, our nation has by some estimates a 100-year supply of gas and the federal government is now focused on the extent to which to allow gas exports. Oil production, at 6 million barrels a day, is back to levels not seen in almost 15 years, making the U.S. the world's third-largest producer. And U.S. natural gas production is approaching record levels. These trends are likely to continue. PFC Energy predicts that by 2020, the U.S. will be the largest hydrocarbon producer in the world – exceeding Saudi Arabia and Russia. This is a bold prediction, but federal agencies back that up, estimating that the United States has more than a trillion barrels of technically recoverable oil and more than 1,000 trillion cubic feet of natural gas, including both conventional and unconventional resources.

Furthermore, a significant amount of our nation's conventional oil and gas resources remain on Alaska's North Slope and in offshore waters. This region contains more oil than any comparable region in the Arctic, including Russia, with approximately 40 billion barrels of technically recoverable oil and more than 200 trillion cubic feet of conventional gas, according to federal estimates. These numbers are likely dwarfed by Alaska's unconventional resources, such as shale oil and gas, heavy and viscous oil, and gas hydrates.

The United States is also a storehouse for strategic minerals. The U.S. Geological Survey's *National Mineral Resource Assessment* shows that the United States likely contains at least as much undiscovered gold, silver, copper, lead, and zinc as has already been found. This includes estimates of 36,000 tons of gold, 830,000 tons of silver, 600,000 kilotons of copper, 130,000 kilotons of lead, and 290,000 kilotons of zinc. At today's prices, the gross value of gold, silver, copper, lead, and zinc in undiscovered deposits is estimated to be \$1.2 trillion. There are also growing indications that the United States and Alaska in particular, possess substantial,

untapped deposits of rare earth elements, which are critical to our high tech, defense and renewable energy industries. Currently, China produces more than 95 percent of the world's rare earth elements, and according to the United States, is using this monopoly position in a way that violates World Trade Organization rules.

B. Leadership on Policies that Protect the Environment

Resource development cannot happen in a vacuum. In order to be sustainable, it is imperative that this sector of the U.S. economy be supported by strong laws and regulations to ensure environmental protection, promote transparency and prevent corruption. This is another area in which the United States plays a leading global role. And while many other countries may pay lip service to these policies, the United States has for decades put them into action by enacting strict laws and high standards, and by spending billions of dollars on enforcement.

Laws passed more than forty years ago such as the National Environmental Policy Act, the Clean Water Act, and the Clean Air Act are comprehensive measures designed to protect our environment. These laws have had significant positive impacts on American citizens and their communities in the form of cleaner air and water, while enhancing the health, well-being, and life spans of countless Americans.

Most states have enacted strong environmental standards as well. Alaska, with its abundant wildlife and vast wilderness, maintains some of the world's highest standards of environmental protection. Alaska's constitutional mandate is to pursue responsible resource development, sustainability of its abundant wildlife, and stewardship of the environment.

C. A Stable Legal and Financial System that Spurs Investment and Innovation

Driven in part by our abundant resources, Americans have led resource development innovations for more than a century, creating entire industries where none previously existed. Our leadership in developing new technologies and best practices for resource development is possible because we have a stable legal, political, and capital finance system that spurs innovation and investment, protects property rights, and provides access to capital for companies and individuals with innovative ideas. These economic strengths have contributed to the success of various American industries and have also been instrumental to the development of our natural resources.

It is not just large companies that drive our country's economic growth. Some of the most important technological innovations in resource development in recent years have been led by smaller, more nimble companies whose ideas have transformed the energy sector. The shale revolution is the latest example of this phenomenon.

III. The Benefits of An American Energy Renaissance

The benefits of using our unique combination of strengths to pursue increased domestic resource development are numerous, tangible, and already being felt across the country.

Energy security. Increasing production of all types of American energy sources – hydrocarbons, minerals, and renewables – will increase our domestic supplies, lower the price we pay for them, and lessen our dependence on other countries that supply such resources.

Economic growth and jobs. Responsible development of our own resources means tangible growth in economic activity and jobs. The large volumes of gas being produced in places like Texas, Ohio and Pennsylvania due to the shale gas boom are re-industrializing these regions. A Pricewaterhouse Coopers study from last year predicted that the shale gas boom would result in a million new U.S. manufacturing jobs by 2025. Citigroup is more bullish, estimating that as many as 3.6 million new jobs could be created by 2020. Our country clearly needs job growth of this magnitude. Resource development jobs are typically high paying and give workers pride in supplying a vital product for their country. In Alaska, for example, the average wage in the mining industry is close to \$100,000 per year. Further, one need only look at states like North Dakota and Texas, or countries such as Canada and Australia, where unemployment rates are low or virtually nonexistent, to recognize the job and wealth-creating power of a strong resource development economy.

U.S. trade deficit. Over half of the U.S. trade deficit results from oil imports. Citigroup estimates our trade deficit could decrease by as much as 60 percent by the end of this decade if domestic oil production continues to grow. The trade deficit could fall even further if we increase the export of our energy products. The U.S. recently has become a net exporter of highly-refined petroleum products. Increased liquefied natural gas (LNG) exports might be next. Alaska is the only state currently exporting LNG to Asia, reliably supplying Japan with gas for more than forty years. A dramatic increase in the amount of LNG exports from Alaska to the Pacific Rim is possible given the March 2012 announcement by the CEOs of ExxonMobil, ConocoPhillips, and BP on their alignment with the state to pursue a potential large-scale Alaska LNG export project. Based on conservative pricing and volume estimates, this one project could produce upwards of \$140 billion in U.S. exports over a 20-year period.

Federal budget deficit. One of the most significant challenges facing the United States is our large and growing budget deficit. However, a vibrant resource development sector can significantly help the United States address its fiscal problems without having to rely on tax increases, and revenues from resource development on federal lands can significantly reduce federal budget shortfalls. For example, the consulting firm Northern Economics and the University of Alaska's Institute for Social and Economic Research (ISER) estimate that oil production from federal waters off Alaska's northern coast could bring federal revenues of approximately \$167 billion over a 50-year period. The estimated economic activity generated by

such a development – 55,000 jobs throughout Alaska and the United States and \$145 billion in payroll – also would significantly boost federal revenues.

Foreign policy and national security. Reducing our dependence on foreign sources of hydrocarbons will undoubtedly provide benefits to U.S. foreign policy. Additionally, by providing our long-standing allies and important economic partners with increased supplies of energy from the United States, we can deepen our economic and energy relationship with them and enable them to be less dependent on traditional gas exporters such as Russia and Qatar. The foreign policy and national security benefits of such a shift for the United States, as well as for countries receiving greater volumes of Alaska gas, would be substantial.

Global environmental protection. Global environmental protection would also benefit from increased production of natural resources from the United States. This point may seem counterintuitive, but experience bears it out. The United States, as well as states like Alaska, has some of the highest environmental standards in the world. However, when federal regulators delay or shut down resource development projects in the U.S. in the name of environmental protection, it merely drives them to countries with much lower environmental standards. The result is a degradation of the global environment.

IV. Challenges: A Regulatory System That Undermines American Interests

The United States is uniquely positioned to seize the strategic opportunity and benefits that will come from more fully developing our own natural resources. But obstacles remain, the most significant being a regulatory system that is out of balance, resulting in significant delays and costs which ultimately undermine U.S. interests.

A. A Problem to Be Managed, not an Opportunity to be Seized

For too many years, major resource development and related infrastructure projects in the United States have come to be viewed as problems to be managed rather than opportunities to be seized. The recent on-again, off-again saga around the permitting of the Keystone XL oil pipeline from Canada is just the latest example of this problem.

Although Keystone XL has received the most national attention, it is a fairly typical example of a federal permitting system gone awry. During the past three years, Alaskans have witnessed numerous Keystone-like regulatory decisions that have had the effect of delaying, undermining and potentially killing major resource development projects. Last year before this Committee, I had the opportunity to present some of the challenges Alaska faces in pursuing oil and gas development on both federal and state lands. Attachment 1 is an update of the list of federal actions that have delayed responsible resource development in Alaska.

The most dramatic example of federal regulatory delay in Alaska involves Shell Oil Company's attempts to explore for oil in the federal waters off the coast of Alaska. Despite having spent close to \$5 billion, including billions of dollars in lease payments to the federal government, and over five years of preparation work, Shell has yet drill to one exploration well in the federal waters off the coast of Alaska as of this writing. Unlike the Gulf of Mexico, exploration development in Alaska's Outer Continental Shelf (OCS) takes place in very shallow water – 100 to 150 feet – and previously Shell and other companies safely drilled scores of exploration wells in these areas and other parts of Alaska's OCS. Yet, the federal government has moved at a snail's pace in issuing the dozens of permits required for the drilling of a single exploration well. In testimony before the U.S. House Subcommittee on Energy and Power in April 2011, a senior Shell official noted that in the time his company was waiting for federal approval to drill one exploration well off the coast of Alaska, it had drilled over 400 exploration wells in other basins around the world.

Although Shell has already scaled back its plans for this summer, uncertainty still exists as to whether the company even will be able to drill. The Department of Interior has stated that it will issue its final decision on allowing Shell to drill this summer by August 15.

Furthermore, the Obama Administration's Five Year Outer Continental Shelf Oil and Gas Leasing Program has been hailed as an expansion of energy development in the region. In fact, it will remove large areas from consideration for drilling without consultation with the State of Alaska and without Congressional approval. Since this federal administration has been in office, it has stopped all Arctic OCS leasing and derailed what were once certain, predictable leasing plans accepted by both Democratic and Republican administrations in Washington, D.C.

B. Regulatory Delay and Endless Litigation

In recent years, regulatory delay in the United States has become the rule rather than the exception. Over the years, Congress and the executive branch have developed and accepted a regulatory system that almost guarantees significant delay and endless litigation for resource development projects.

Take for example the minerals sector in the United States. In 2012, the investment firm Behre Dolbear Group's annual global survey of the mineral sector ranked the United States the lowest out of 25 countries in the category of "permitting delays" tying with Papua New Guinea. This was attributed to the fact that because of federal rules that states are bound to enforce results in a 7- to 10-year waiting period to complete permitting work before mine construction and development can begin in the United States. By contrast, in other industrialized countries like Australia and Canada, the average permitting time is about three years.

Overlapping jurisdictions and the endless opportunities provided to opponents of resource development to litigate a project add to these permitting delays. Alaskans witness this type of litigation on almost every resource development or infrastructure expansion project in the state.

C. Jobs and the Environment are Undermined

Unfortunately, potential investors have expressed reluctance to pursue resource development projects in the United States and Alaska, in particular, because of the risk of permitting delays and litigation. We believe that such a reputation discourages investment, significantly hurts job creation and undermines global environmental protection. By discouraging responsible development in our own country, we are passing energy and mineral investment to countries with substandard environmental regulations and little capacity or desire to protect the environment. Take the Russian hydrocarbon sector. Last year, some of America's largest energy companies announced multi-billion dollar investments in the Russian Arctic, even though the U.S. Geological Survey estimates that offshore and onshore Alaska has greater oil potential. The fact that the U.S. regulatory system has delayed or blocked many hydrocarbon development projects in Alaska was likely a factor driving American companies to invest in Russia.

Alaska has some of the world's most comprehensive environmental protections regarding the oil sector. And Russia? Last year, the Associated Press investigated Russia's abysmal record regarding oil spills and pollution. The estimates given in the AP article ranged from 5 million to 20 million tons of oil leaked a year. Even at the lower end, that would be the equivalent of a Deepwater Horizon blowout about every two months. Russia experienced approximately 18,000 oil pipeline ruptures in 2010 – the figure in the U.S. for the same year was 341.

Clearly, the global environment would be much better off if hydrocarbons and other natural resources were produced in countries with the highest environmental standards rather than some of the lowest. Yet, the significant flaws in our own system are partly to blame for the investment in lax overseas jurisdictions where environmental degradation is common.

D. The Good News: Growing Consensus that Regulatory Reform and Modernization is Needed

The good news is the growing recognition that something serious needs to be done. *The Economist* recently ran a cover story called "Over-regulated America" in which it concluded that "America needs a smarter approach to regulation" that will "mitigate a real danger: that regulation may crush the life out of America's economy." Former President Bill Clinton has weighed in similarly. In a *Newsweek* article last year, he lamented that it can take three years or more to permit major economic development projects. His number one recommendation to put Americans back to work was to speed up the regulatory approval process and grant state waivers on environmental rules to hasten start times on construction projects.

We recognize that there are efforts to reform our regulatory system that are being undertaken by the U.S. House of Representatives and I testified last year in support of the U.S. House Natural Resources Committee's American Energy Initiative. The introduction and passage from committee of H.R. 4382 *Providing Leasing Certainty for American Energy Act* and H.R. 4383 *Streamlining Permitting of American Energy Act* are steps in the right direction and we hope that these two bills will be passed on the House floor and transmitted to the U.S. Senate. Another positive sign has been the House passage of H.R. 4402, *National Strategic and Critical Minerals Protection Act*.

Alaska, other states and Canada are not waiting for federal regulators to take action. They are undertaking reforms to make state permitting processes more efficient, timely, and certain. States as politically diverse as Alaska, California, Massachusetts, Indiana, and Kansas are fully engaged in modernizing their regulatory systems. This is a bipartisan effort driven by policymakers' recognition of the economic benefits of allowing large-scale development projects to proceed in a responsible manner.

V. Conclusion: The Opportunity is Here, We Must Seize It

Fully repositioning the United States as the world's global leader in responsible resource development is within our reach. As we look to this promising future, federal policy makers should focus on some key actions to help us achieve this goal.

Undertake comprehensive permitting reform and modernization. This does not mean cutting corners on environmental protection. It is possible to responsibly develop resources and be good stewards of the environment. For example, Alaskans were warned that the trans-Alaska pipeline and North Slope oil fields would decimate caribou herds. The opposite has happened. The caribou herd that summers at Prudhoe Bay, the nation's largest oil field, has grown by the tens of thousands. States are now leading the way on permitting reform efforts. Canada is also undertaking a top-to-bottom effort to modernize and bring certainty to its regulatory system. The federal government should draw from these examples to redouble its efforts to enact comprehensive reforms. This also means opening more federal lands to responsible resource exploration and development.

Work with and learn from the states. The recent dramatic upswing in oil and gas production in the United States has had little to do with federal policies. In fact, many would argue that it is happening in spite of federal policies. The real action has been with the states. In Alaska, for example, state leaders are embracing permitting reform as well as developing and implementing comprehensive strategies to increase oil production, spur more LNG exports to Asia, and create a domestic supply of rare earth minerals. The federal government should take a more cooperative approach in working with states on natural resource development and energy strategies rather dictating policies from Washington with little state input or involvement.

A domestic energy and resource development renaissance lies ahead which will significantly benefit our country and citizens. We should embrace it.

Attachment 1

Excerpts from April 13, 2011 Testimony before the U.S. House of Representatives Subcommittee on Energy and Power (Updated August 2, 2012)

Many of the most promising oil and gas resources in Alaska are on federal lands. Development of these lands, in particular from the OCS, ANWR, and NPR-A, could result in production of over a million barrels of oil a day. Unfortunately, the federal government has consistently restricted access to these lands, made decisions that have added significant delays to promising projects, and pursued policies that have chilled the investment climate.

More specifically, the federal government has made a series of decisions that prevent or stall responsible development of domestic energy.

NPR-A (A Region Specifically Set Aside for Oil Exploration and Production)/CD-5 Permit Denial

In 2010, the U.S. Army Corps of Engineers (Corps) derailed ConocoPhillips (CP) development of CD-5, which is a field on the eastern edge of the National Petroleum Reserve-Alaska (NPR-A). Once infrastructure is in place, it will open satellite fields in the eastern NPR-A to development. The State, CP, and Native communities worked with the Corps for years on the project to ensure that responsible safeguards are in place to open this field to development. In response to concerns raised by some stakeholders, the project was modified to minimize environmental impacts and the project garnered strong support from all stakeholders. After years of collaboration, the permits were considered a foregone conclusion. The first production from CD-5 was expected to start in 2012.

Nevertheless, the Corps reversed course and denied CP's permits to construct a drill pad, a pipeline/vehicle bridge across the Nigliq Channel in the Colville River Delta, and access roads. The Corps concluded that there are practicable alternatives to the bridge, drill pad, and roads that would have fewer environmental consequences. This decision was apparently impacted by the EPA's designation of the Colville River as an Aquatic Resource of National Importance (ARNI)¹, in which the EPA can determine that issuance of a permit will result in unacceptable adverse impacts.

More specifically, the District Engineer found that CP should use Horizontal Directional Drilling (HDD) under the Nigliq Channel to access the reservoir. The HDD alternatives effectively eliminate a road, including the Nigliq Channel bridge, that would have provided

¹ An Aquatic Resource of National Importance (ARNI) is a resource-based threshold used to determine whether a dispute between the EPA and the Corps regarding individual permit cases are eligible for elevation under the 1992 Memorandum of Agreement between the two agencies—an agreement required by Section 404(q) of the Clean Water Act..

direct access between CD-5 and existing production, operations, logistics, and transportation infrastructure at the Alpine facilities, and access for local hunters to subsistence resources.

Many Alaskans viewed the Corps decision as a blanket attempt to shut-down NPR-A development. The District Engineer's decision was opposed by all the affected surface and subsurface land owners, most of them Alaska Natives. (The State owns the subsurface rights of two leases affected, as well as the Nigliq Channel river bed.)

The permit denial was eventually appealed and the Corps' Pacific Ocean Division issued a decision on December 2, 2010, remanding the District Engineer's denial of CP's permit request to the District Engineer. Nevertheless, the status of CD-5, after seven years of delays, remains uncertain, thereby chilling the investment climate over the entire NPR-A.

DOI's Wild Lands Designation

Another decision chilling the investment climate in the NPR-A and beyond is BLM's Wild Lands policy. Secretary Salazar issued Secretarial Order 3310 in December, 2010, which purportedly empowered the BLM to convert vast areas of Alaska, including the NPR-A, into a de-facto wilderness area without Congressional oversight or approval. Fortunately, Congress has so far refused to provide any funding for BLM to implement Order 3310. State officials have heard from many resource companies who have said if state lands receive a Wild Lands designation they may not continue to invest in Alaska. If it's ever implemented, the Wild Lands policy would chill the investment climate and shut down resource development in the NPR-A, an area set aside specifically for oil and gas development. Other states share our concern, and we have joined in litigation in federal district court in Utah to abolish the Wild Lands policy.

OCS Permitting Delays Shutting Down Exploration Activities

The greatest potential for significant oil and gas production lies in the OCS. In recent years, Shell and other leading energy companies have spent billions of dollars to acquire leases and explore the OCS. Shell has also received approval for several exploration plans and has acquired over 34 federal permits to drill exploration wells. Yet its exploration plans have been repeatedly derailed; first by the 9th Circuit Court of Appeals in 2008 and more recently by the DOI and the Environmental Protection Agency (EPA).

Shell has proposed drilling activities for the Beaufort Sea on its leases. In November 2006, Shell submitted the first version of its exploration plan for the Beaufort Sea region. Shell's exploration plan details its plan to drill up to twelve exploratory wells on twelve lease tracts in the Beaufort Sea between 2008 and 2011. (The lease blocks stretch from the Colville River Delta eastward to the Canadian border.)

Litigation filed by environmental groups, however, derailed these development plans. See *Alaska Wilderness League v. Salazar*, 548 F.3d 815 (9th Cir. 2008), vacated 559 F.3d 916 (9th Cir. 2009), dismissed as moot 571 F.3d 859 (9th Cir. 2009).

Shell submitted a new exploration plan for the Beaufort Sea, which was approved by MMS. After the MMS approved the development plan, environmental groups filed suit. In the spring of 2010, Shell, the State, and the Obama Administration successfully defended the permits before the 9th Circuit. It looked like Shell was finally going to be able to drill exploration wells in the OCS. Then the Macondo well disaster happened and the Obama Administration reversed course and suspended all operations in the OCS.

More specifically, DOI Secretary Salazar, in congressional testimony and at a press conference in Alaska, stated that he was imposing an Arctic Moratorium on OCS exploration and development. The State sued the DOI, alleging that the moratorium conflicted with several federal laws. The Bureau of Ocean Energy Management and Regulatory Enforcement (BOEMRE) responded by denying the existence of a moratorium; they then began to process Shell's exploration plan. For these reasons, the U.S. District Court granted the federal government's summary judgment motion. One day before the court's decision, however, NOAA stated in a federal register that it would not issue an incidental take authorization for Shell because DOI had suspended operations in the OCS.

Shell recently announced that it was scaling back its planned Arctic drilling this summer as it awaits resolution on one of its drill ships and testing of its oil spill containment barge. We are eagerly waiting the Department of Interior's final decision on whether to issue Shell its drilling permits. After acquiring over 34 permits in support of its drilling operations and spending billions of dollars over the past five years, Shell still has not drilled one well in the Alaska OCS.

ANWR Wilderness Designation

The USGS has demonstrated that perhaps the greatest potential in America for an onshore elephant-size field is in the 1002 Area of ANWR. Despite this potential, the federal government has consistently refused to open the 1002 Area to exploration. Most recently, the USFWS has issued a draft revised refuge management plan and EIS that evaluates whether to recommend that Congress designate the 1002 Area in ANWR as "Wilderness," which would essentially lockup ANWR from oil and gas development. The USFWS has refused to evaluate potential oil and gas activity in the refuge, and refused to consider public comments on that topic. USFWS has said that they intend to issue the final management plan and EIS this fall. The State believes that such action conflicts with federal laws—under the National Environmental Protection Act (NEPA) and the Alaska National Interest Lands Conservation Act (ANILCA), the USFWS must consider the benefits of oil and gas development before making a recommendation to Congress on a Wilderness designation.

These decisions have been made in the face of overwhelming public support for oil and gas development in the 1002 Area. Polls consistently show that over 73% of Alaskans support ANWR development. The North Slope communities, including residents of ANWR, also strongly support development. In addition, over the past 30 years almost every single member of the Alaska State Legislature has voted on resolutions in support of ANWR exploration and development.

For these reasons the state continues to protest any plan or wilderness review process that further encumbers the potential for oil and gas development on the coastal plain of ANWR. It makes no sense to the state that the USFWS wants to lock up an estimated 10 billion barrels of domestic oil. Oil and gas development in the 1002 Area would provide secure on-shore domestic supply of energy for the nation, create tens of thousands of jobs nationwide, ensure the continued operation of the TAPS for years to come, and could help meet U.S. demand for 25 years or more.

200,000 Square Miles of Critical Habitat Designated for Polar Bears

The polar bear and its habitat are already well managed and conserved by Alaska, international agreements, conservation programs, and state and federal law. These laws and policies make the polar bear one of the most protected species in the world. Nonetheless, the USFWS recently designated nearly 200,000 acres of the North Slope—which covers an area larger than the size of California—as critical habitat for the polar bear. Never before has the USFWS interpreted its authority to designate such a vast expanse of critical habitat for a species. Worse, the USFWS acknowledges that the designation will not provide significant additional conservation measures for the polar bear and its habitat and that the primary claimed threat to the species (loss of sea ice due to climate change) will not be alleviated by this designation.

Despite providing no benefits, the critical habitat designation imposes another layer of costly regulation on Alaska, its citizens, and its economy. The state and many others believe that the USFWS's massive critical habitat designation violates federal law, will impede North Slope resource development, and will generate countless lawsuits filed by environmental groups to stall every phase of an oil and gas development project. Such lawsuits would delay projects, foment regulatory uncertainty, and increase the cost of doing business in Alaska.

Ocean Zoning/Marine Spatial Planning

President Obama in July 2010 signed an Executive Order creating a new federal bureaucracy tasked with setting ocean policy and requiring marine spatial planning (ocean zoning) in all U.S. waters. Executive Order 13547 could have significant adverse impacts on commercial use and development in the oceans and coastal zone.

Point Thomson EIS Delay

ExxonMobil has committed to a Point Thomson development plan to produce approximately 10,000 barrels of natural gas condensate starting in 2014. The project's Environmental Impact Statement (EIS), however, has not been processed in a timely fashion. As a result, the start-up date for the project has been delayed from 2014 to 2015.

The U.S. Army Corps of Engineers (Corps) recently published the final EIS for the Point Thomson project, but it does not include a preferred alternative for the project, leaving serious questions about how the agency plans to proceed.

Also troubling to the State of Alaska is that the Corps has excluded state regulators from agency discussions regarding the Least Environmentally Damaging Practicable Alternative (LEDPA) for the project. The project is solely located on state lands, yet the State has been carved out of the decision-making process. Because it is not involved in these deliberations, the State may be limited in its ability to proactively plan for the numerous state permits needed for ExxonMobil to begin construction in winter 2012-2013.

Expansion of EPA's Jurisdiction Over Wetlands

The EPA and the U.S. Army Corps of Engineers have developed "Draft Guidance on Identifying Waters Protected by the Clean Water Act," for determining whether a waterway, water body, or wetland is protected by the Clean Water Act. The federal agencies draft guidance sets out a new process and standards for making jurisdictional determinations over waters and wetlands throughout the nation. The consequences of applying the guidance are that more waters and wetlands will be found jurisdictional and any activities in those waters and wetlands will be subject to lengthy and expensive permitting reviews. Expanding the EPA's jurisdiction over wetlands and waterways will have a profound impact in Alaska in light of Alaska's vast coastline (nearly 34,000 miles), over three million lakes, and over 15,000 anadromous fish streams. In addition, the State of Alaska has over 174 million acres of wetlands, more than in all other states combined. Accordingly, almost all public infrastructure development, such as schools, water and sewer utilities, roads, or airport projects -- or private infrastructure development -- involve wetlands, or in many instances, non-navigable waters.

Contrary to Congress' directive in the Clean Water Act that the EPA and the Corps consult and cooperate with the States in developing programs and comprehensive solutions to protect the nation's waters, there has been no apparent consultation with the states, certainly not with Alaska, in the promulgation of the draft guidance.

The federal agencies have also violated the Administrative Procedure Act because they have failed to go through formal rulemaking. An agency cannot sidestep its formal rulemaking requirements by merely issuing a guidance document that will influence its permitting decisions.

Clean Water Act and EPA Overreach

Although EPA now has no permit to issue for most development projects in Alaska, the agency participates in meetings regardless of Cooperating Agency status and appears to be expanding its oversight role through USACE's administration of Section 404 permitting. Citing authority under Section 404(c) of the Clean Water Act, EPA Region X has embarked upon a Bristol Bay Watershed Assessment (BBWA) to study possible impacts of development on Bristol Bay as a way to inform EPA, should it decide to enter into the 404(c) process. The State of Alaska has formally expressed its opposition to the BBWA and the preemptive use of EPA 404(c) veto authority in the absence of an actual Section 404 permit application in a March 9, 2012 letter from State Attorney General Michael Geraghty to EPA Region X Administrator Dennis McLerran, but EPA proceeded with the BBWA. Further, the area reviewed encompasses roughly 15 million acres and consists largely of State-owned lands. EPA's aggressive schedule undercuts the reliability of the assessment, when compared to the intensive, multi-year NEPA review schedules that are required to address specifically proposed projects.

The 2008 Mitigation Rule issued by the EPA and the Corps established stringent compensatory wetlands mitigation rules and procedures that the USACE must follow in administering CWA Section 404. Because of the preponderance of wetlands in the state, Alaska is disproportionately impacted by the 2008 Rule. Alaska gets no "credit" for the vast tracts of wetlands locked up in federal Conservation System Units and, because of the lack of disturbed wetlands in Alaska that could be restored to meet mitigation requirements, just about the only means for meeting mitigation requirements is the placement of conservation easements on lands that have potential for development.