

# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

## BREAKFAST MEETING

Thursday, January 7, 2010

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 James Mery  
 Denise Michels  
 Lance Miller  
 Mary Nelson  
 Lisa Parker  
 Judy Patrick  
 Charlie Powers  
 Keith Sanders  
 Kenneth Sheffield  
 Keith Silver  
 Jeanine St. John  
 John Sturgeon  
 Dan Sullivan  
 John Zager

1. Call to order – Wendy Lindskoog, President
2. Self Introductions
3. Headtable Introductions
4. Staff Report: Jason Brune, Executive Director
5. Program and Keynote Speaker:

**Fixing the Ballot Initiative Process**  
 Representative Kyle Johansen, Alaska House

### Future Meetings:

- January 21:** *From the Tongass to Tok, A New Decade of Challenges and Opportunities for Alaska Forestry*, Chris Maisch, State Forester
- February 4:** *Alaska Alliance for Cruise Travel*, Speaker TBA
- February 18:** *Economic Impacts of Proposed Cook Inlet Beluga Whale Critical Habitat Designations*, Speakers TBA
- March 4:** *Economic Benefits of Port MacKenzie Rail Extension to the Mainline*, Rick Mystrom, Former Mayor of Anchorage and Economic Development Advisor to Mat-Su Borough

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**Ex-Officio Members**  
 Senator Mark Begich  
 Senator Lisa Murkowski  
 Congressman Don Young  
 Governor Sean Parnell



## Let's fix Alaska's ballot initiative process

A citizen's right to petition their government is a right reserved to the people of Alaska granted by Article 11 of the Alaska State Constitution. The concept of the initiative is based on the principle of direct democracy – the people's ability to change law and policy themselves rather than having to do so through their elected representative. This right is held so close to Alaskans, and it is important to guard this process from abuse.

In the past few election cycles, it has become wildly apparent to Alaskans that their initiative process does not serve the best interests of the people. Special interests have hijacked the citizen's initiative. Sources of funds are hidden. Contributor's identities are veiled. Alaskans deserve better. Alaskans deserve an open and transparent process.

I have introduced legislation that does just that. House Bill 36 will make the initiative process more open to the public, including public hearings and more financial disclosures. The current laws governing the initiative process are easy to skirt, and special interests have used the system to their advantage. The initiative process is a tool that belongs to the people of Alaska, and as such, it should be safeguarded from special interests with self-serving goals.

The financial disclosure process for initiatives is flawed. It is easy for groups to hide sources of money, and to the extent that the voters don't even know about the main funders behind an initiative until the election has come and gone.

This is completely unacceptable, and Alaskans should be outraged that this has been allowed to occur. Allowing financial disclosure loopholes of this magnitude undercut the integrity of our initiative process. House Bill 36 proposes changes to fix these flaws and repair the loopholes. House Bill 36 changes the date of when financial disclosures must begin. Rather than being able to collect money for months and months before having to disclose the source of funds, groups would have to begin financial disclosures as soon as they file their initial paperwork with the Lieutenant

Governor's office. Although initiative groups have to collect a number of signatures in different regions before officially being declared a measure on the ballot, the groups are still influencing public policy. Initiative groups should be filing financial disclosures as soon as they receive their first red cent.

Signature gatherers are an instrumental part of the initiative process. They collect the constitutionally-required signatures necessary to qualify initiatives for the ballot. We often see them outside of the grocery store or any high-traffic zone. Their goal is to gather signatures. Period. They are often paid on a commission basis, so they are motivated to gather as many signatures as possible. They are not paid to answer questions or explain issues. If signature gatherers were paid on an hourly wage basis, they would be more open to take the time to explain the issue or answer questions posed by voters. House Bill 36 proposes that signature gatherers be paid on an hourly or salary basis so that they wouldn't be shuffling people as fast as they can to make their dollar. Restricting the use of per-signature commission is yet another attempt to promote the sharing of information so that voters can make the most informed decision at the ballot box.

Public hearings are a necessary and essential part of the political process. Public hearings are the venue where questions are posed, ideas are vetted, and information is freely shared. Public hearings are the foundation of the lawmaking process. All potential laws that govern our behavior, our property, and our interests are all vetted in a public forum, right? Wrong. There are no public hearing requirements for ballot measures. Laws created via the Legislature and laws created via initiative are equal – they are the laws we are required to live by. However, initiative-created law does not go through a public process that enables citizens to ask questions, criticize, give suggestions, or clarify issues.

Holding public hearings would greatly strengthen the initiative process because they would provide more information to the public. The public deserves to know the ins

and outs of initiatives, just as the ins and outs of legislation are hashed out in committee meetings. House Bill 36 solves this problem by requiring public hearings throughout Alaska. Because of the geographical challenges and dispersed population of our state, a total of ten public hearings are required, two hearings per judicial district. These hearings provide a public forum so voters can ask questions, analyze the issues, and voice their support or opposition. These public hearings won't cost the initiative sponsors a dime; the venue can be provided by the state, and if initiative sponsors cannot afford to travel to the different districts to participate in the hearing personally, they can teleconference. House Bill 36 provides a win-win situation: more information provided to the public, while not costing the ballot measure groups anything but their time.

In addition to the public hearing requirement, House Bill 36 also requires a standing committee of the legislature to review ballot measures. This does not allow the legislature to change the ballot measure because that would be encroaching on a citizen's right to petition their government. Instead, the legislative review allows another public venue for questions to be asked and concepts to be discussed. Also, the legislative review provides a forum for the affected agencies to discuss how the proposed initiative would be administered.

The loopholes with the initiative process have become apparent all over the country, not just in Alaska. About half of the states in the Union have the initiative process, and many of those states are modifying their initiative process with tighter financial disclosures, public hearing requirements, and restructuring signature-gathering methods. These modifications are seen as ways to reinforce the citizen initiative process – to protect it – not to impose onerous and meaningless requirements.

Providing more information to the public is the purpose of House Bill 36. There is no fine print. There is no catch. House Bill 36 returns the power of the initiative back to the rightful owners: Alaskans.

# New Ballot Initiative

By Jason Brune

Our representative democracy allows us to elect people to represent us in both Washington, D.C., and Juneau. Because of that, we as individual Alaskans do not have to vote on every issue that comes before us, be it oil taxes, health care, or otherwise.

However, Alaska is one of 24 states with a process, enshrined by Article XI of our state Constitution, allowing citizens to directly petition their government by means of the ballot initiative. Thus, if it was the will of the people, we could place untold items on our ballots through the initiative process.

Vic Fischer, one of the 55 delegates to the Alaska Constitutional Convention and a previous ballot initiative sponsor, spoke at the 2008 RDC Conference about the initiative process. "Believe it or not, I was one of the people who voted against the article on the initiative because, I argued strenuously at that time, that the initiative is a device that lends itself most to special interests – to groups that want to get something that they cannot get through the Legislature."

Mr. Fischer's words were quite profound, and we have witnessed those special interests embracing

the initiative process over the last decade. In just the past five years the Alaska business community has been the target of numerous punitive ballot initiatives pushed by anti-business and environmental interest groups unable to accomplish their goals through the legislative process.

The oil and gas industry faced an onerous and counterproductive natural gas reserves tax initiative in 2006, which after much effort and expense, was defeated.

That same year a ballot initiative struck the cruise ship industry. It was sold to the Alaska public as a passenger head tax but also included a slew of new regulatory standards, none of which apply to any other business or government in Alaska. This initiative passed and today we are seeing the unfortunate results with over 140,000 fewer cruise ship visitors expected to visit Alaska next year. Fewer visitors generate less bed and sales taxes for communities that rely on them, subsequently increasing the burden on local property tax payers. Fewer visitors also generate fewer jobs.

Most recently, Alaskans defeated an ambiguous anti-mining initiative, financed by undisclosed sources, which many thought was designed to shut down the industry in Alaska altogether. Currently, the

state entity responsible for overseeing elections, the Alaska Public Offices Commission (APOC), is contemplating fines for campaign violations committed by the initiative's proponents. The violations involve nearly \$2 million of campaign funds that were not properly disclosed in what appears to be an intentional effort to mislead Alaska voters.

The aforementioned examples highlight the need for thorough information about both the content of ballot initiatives and the finances involved in the public campaigns, which accompany them. Openness and transparency are fundamentals of good government and yet the most direct and participatory form of law making – the initiative process – remains cloaked in secrecy, depriving Alaska voters of the information they need to make sound public policy decisions.

At its Legislative Tie-in, members of the Alaska State Chamber of Commerce made ballot initiative reform as one of its top 3 priorities to work on during the upcoming legislative session. Members concurred that a more transparent and public process would help ensure the public is well-informed prior to voting on a ballot initiative thereby lowering the risks of unintended conse-

quences when poorly understood ballot initiatives are passed.

*The Chamber agreed to work with the Alaska Legislature to pass legislation that, at a minimum, establishes:*

1. A streamlined financial disclosure system including disclosure of the first dollar spent or collected – prior to an initiative being formally certified for the ballot – and online filing so that Alaskans can follow the money from the beginning and access important information prior to the election.

2. An opportunity for meaningful public involvement and vetting of proposed initiatives to increase awareness and ensure the public is well-informed prior to voting, e.g. requiring public hearings in a majority of election districts prior to petition certification and requiring a standing committee of the Legislature to hold a hearing on the proposed initiative prior to an election.

Last session, Rep. Kyle Johansen introduced legislation, HB 36, that may go a long way to achieving the outlined goals.

In addition, Gov. Sean Parnell also expressed his support for initiative reform at this year's RDC Conference. "Ballot initiatives are powerful tools to change public policy – and the campaigns behind

them are super-funded and super-charged. Alaska's voters deserve to know what interests and dollars are behind those campaigns. For these reasons, you can count on my support for ballot initiative reform. In my view, that reform should focus on financial disclosure. The right to see the money behind the campaigns is the very least Alaskans should expect."

*The Alaska State Chamber of Commerce is joining forces with the following organizations to reform the ballot initiative process:*

1. Resource Development Council for Alaska
2. Alaska Cruise Association
3. Alaska Miners Association
4. Alaska Oil and Gas Association
5. Alaska Forest Association
6. Alaska Support Industry Alliance
7. Council of Alaska Producers
8. Alaska Trucking Association
9. Alaska Builders & Contractors
10. Associated General Contractors of Alaska

Once the Legislature adopts these reforms, Alaskans will finally have access to an open and transparent initiative process.

*Jason Brune is the executive director of the Resource Development Council.*

# Alaska State Chamber of Commerce: 2010 Priorities

## **Limit Growth of Government to FY 2010 Budget Level**

The Alaska State Chamber of Commerce will work with the Administration and the Alaska State Legislature to pass legislation that maintains state spending at Fiscal Year (FY) 2010 levels.

In the event that spending increases are approved by the Alaska State Legislature and the Governor of Alaska, we urge the passage of legislation that requires that any increases in state spending beyond FY 2010 levels, must be offset by corresponding budget cuts, or changes to the Permanent Fund, or the establishment of a statewide income, or statewide sales tax to raise sufficient revenue to pay for any growth of government beyond FY 2010 levels.

## **Encourage Increased Oil and Gas Production**

The Alaska State Chamber of Commerce encourages the Alaska State Legislature and Administration to establish laws, regulatory and taxation policies that will support a significant increase in responsible oil & gas exploration, development and production in Alaska. This includes in-field

work on existing resources.

Encourage and support State Legislators and Administration, in cooperation with the industry and federal regulators, to identify and reduce unnecessary costs for new oil production, and create and aggressive investment environment.

## **Ballot Initiative Reform**

The Alaska State Chamber of Commerce shall work with the Alaska Legislature to pass legislation that makes the drafting, signature gathering and financing of ballot initiatives, both prior to and after certification, more transparent to Alaska voters. We urge the Alaska Legislature to pass legislation that, at a minimum, establishes:

1. A streamlined financial disclosure system including disclosure of the first dollar spent or collected – prior to an initiative being formally certified for the ballot – and online filing so that Alaskans can follow the money from the beginning and access important information prior to the election.

2. An opportunity for meaningful public involvement

and vetting of proposed initiatives to increase awareness and ensure the public is well-informed prior to voting, e.g. requiring public hearings in a majority of election districts prior to petition certification and requiring a standing committee of the Legislature to hold a hearing on the proposed initiative prior to an election.

## **2010 Federal Priority**

### **Support for Oil and Gas Exploration and Development in Alaska's Outer Continental Shelf (OCS) Waters**

The Alaska State Chamber of Commerce strongly supports offshore oil and gas exploration and production in Alaska's Beaufort Sea, Chukchi Sea, Cook Inlet and Bristol Bay. The Chamber asks the Alaska Congressional Delegation and Governor to support responsible development of these valuable resources and organize a concerted effort to encourage Congress and the Obama Administration to enact offshore revenue sharing for states and local communities.

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 36(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/16/09

Referred: Finance

Sponsor(s): REPRESENTATIVES JOHANSEN, MILLETT, AND WILSON, Johnson, Kelly

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to ballot initiative proposal applications and to ballot initiatives."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 \* **Section 1.** AS 15.13.040(k) is amended to read:

4 (k) Every individual, person, nongroup entity, or group contributing a total of  
5 \$500 or more to a group organized for the principal purpose of influencing the  
6 outcome of a proposition, **and every individual, person, nongroup entity, or group**  
7 **contributing a total of \$500 or more to a group organized for the principal**  
8 **purpose of filing an initiative proposal application under AS 15.45.020 or that has**  
9 **filed an initiative proposal application under AS 15.45.020,** shall report the  
10 contribution or contributions on a form prescribed by the commission not later than 30  
11 days after the contribution that requires the contributor to report under this subsection  
12 is made. The report must include the name, address, principal occupation, and  
13 employer of the individual filing the report and the amount of the contribution, as well  
14 as the total amount of contributions made to that group by that individual, person,  
15 nongroup entity, or group during the calendar year.

1 \* **Sec. 2.** AS 15.13.050(a) is amended to read:

2 (a) Before making an expenditure in support of or in opposition to a candidate  
3 or before making an expenditure in support of or in opposition to a ballot proposition  
4 or question **or to an initiative proposal application filed with the lieutenant**  
5 **governor under AS 15.45.020**, each person other than an individual shall register, on  
6 forms provided by the commission, with the commission.

7 \* **Sec. 3.** AS 15.13.065(c) is amended to read:

8 (c) Except for reports required by AS 15.13.040 and 15.13.110 and except for  
9 the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the  
10 provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person  
11 to make contributions to influence the outcome of a ballot proposition. In this  
12 subsection, in addition to its meaning in AS 15.60.010, "proposition" includes

13 **(1)** an issue placed on a ballot to determine whether

14 **(A)** [(1)] a constitutional convention shall be called;

15 **(B)** [(2)] a debt shall be contracted;

16 **(C)** [(3)] an advisory question shall be approved or rejected; or

17 **(D)** [(4)] a municipality shall be incorporated;

18 **(2) an initiative proposal application filed with the lieutenant**  
19 **governor under AS 15.45.020.**

20 \* **Sec. 4.** AS 15.13.110(e) is amended to read:

21 (e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall  
22 shall report 30 days after its first filing with the lieutenant governor. Thereafter, each  
23 group shall report within 10 days after the end of each calendar quarter on the  
24 contributions received and expenditures made during the preceding calendar quarter  
25 until reports are due under (a) of this section.

26 \* **Sec. 5.** AS 15.13.110 is amended by adding a new subsection to read:

27 (g) An initiative committee, person, group, or nongroup entity receiving  
28 contributions exceeding \$500 or making expenditures exceeding \$500 in a calendar  
29 year in support of or in opposition to an initiative on the ballot in a statewide election  
30 or an initiative proposal application filed with the lieutenant governor under  
31 AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter

1 on the contributions received and expenditures made during the preceding calendar  
 2 quarter until reports are due under (a) and (b) of this section. If the report is a first  
 3 report, it must cover the period beginning on the day an initiative proposal application  
 4 is filed under AS 15.45.020 and ending three days before the due date of the report.

5 \* **Sec. 6.** AS 15.13.400(4) is amended to read:

6 (4) "contribution"

7 (A) means a purchase, payment, promise or obligation to pay,  
 8 loan or loan guarantee, deposit or gift of money, goods, or services for which  
 9 charge is ordinarily made, **and includes the payment by a person other than**  
 10 **a candidate or political party, or compensation for the personal services of**  
 11 **another person, that is rendered to the candidate or political party,** and  
 12 that is made for the purpose of

13 (i) influencing the nomination or election of a  
 14 candidate;

15 (ii) [, AND IN AS 15.13.010(b) FOR THE PURPOSE  
 16 OF] influencing a ballot proposition or question; **or**

17 (iii) **supporting or opposing an initiative proposal**  
 18 **application filed with the lieutenant governor under AS 15.45.020** [,   
 19 INCLUDING THE PAYMENT BY A PERSON OTHER THAN A  
 20 CANDIDATE OR POLITICAL PARTY, OR COMPENSATION FOR  
 21 THE PERSONAL SERVICES OF ANOTHER PERSON, THAT ARE  
 22 RENDERED TO THE CANDIDATE OR POLITICAL PARTY];

23 (B) does not include

24 (i) services provided without compensation by  
 25 individuals volunteering a portion or all of their time on behalf of a  
 26 political party, candidate, or ballot proposition or question;

27 (ii) ordinary hospitality in a home;

28 (iii) two or fewer mass mailings before each election by  
 29 each political party describing the party's slate of candidates for  
 30 election, which may include photographs, biographies, and information  
 31 about the party's candidates;

1 (iv) the results of a poll limited to issues and not  
2 mentioning any candidate, unless the poll was requested by or designed  
3 primarily to benefit the candidate;

4 (v) any communication in the form of a newsletter from  
5 a legislator to the legislator's constituents, except a communication  
6 expressly advocating the election or defeat of a candidate or a  
7 newsletter or material in a newsletter that is clearly only for the private  
8 benefit of a legislator or a legislative employee; or

9 (vi) a fundraising list provided without compensation  
10 by one candidate or political party to a candidate or political party;

11 \* **Sec. 7.** AS 15.13.400(6) is amended to read:

12 (6) "expenditure"

13 (A) means a purchase or a transfer of money or anything of  
14 value, or promise or agreement to purchase or transfer money or anything of  
15 value, incurred or made for the purpose of

16 (i) influencing the nomination or election of a candidate  
17 or of any individual who files for nomination at a later date and  
18 becomes a candidate;

19 (ii) use by a political party;

20 (iii) the payment by a person other than a candidate or  
21 political party of compensation for the personal services of another  
22 person that are rendered to a candidate or political party; [OR]

23 (iv) influencing the outcome of a ballot proposition or  
24 question; **or**

25 **(v) supporting or opposing an initiative proposal**  
26 **application filed with the lieutenant governor under AS 15.45.020;**

27 (B) does not include a candidate's filing fee or the cost of  
28 preparing reports and statements required by this chapter;

29 (C) includes an express communication and an electioneering  
30 communication, but does not include an issues communication;

31 \* **Sec. 8.** AS 15.45.080 is amended to read:



1           **Sec. 15.45.080. Bases of denial of certification.** The lieutenant governor shall  
2 deny certification upon determining in writing that

3                   (1) the proposed bill to be initiated is **not confined to one subject or**  
4 **is otherwise** not in the required form;

5                   (2) the application is not substantially in the required form; or

6                   (3) there is an insufficient number of qualified sponsors.

7   \* **Sec. 9.** AS 15.45.090(a) is amended to read:

8                   (a) If the application is certified, the lieutenant governor shall prepare a  
9 sufficient number of sequentially numbered petitions to allow full circulation  
10 throughout the state. Each petition must contain

11                   (1) a copy of the proposed bill [IF THE NUMBER OF WORDS  
12 INCLUDED IN BOTH THE FORMAL AND SUBSTANTIVE PROVISIONS OF  
13 THE BILL IS 500 OR LESS];

14                   (2) an impartial summary of the subject matter of the bill;

15                   (3) a statement of minimum costs to the state associated with  
16 certification of the initiative application and review of the initiative petition, excluding  
17 legal costs to the state and the costs to the state of any challenge to the validity of the  
18 petition;

19                   (4) an estimate of the cost to the state of implementing the proposed  
20 law;

21                   (5) the statement of warning prescribed in AS 15.45.100;

22                   (6) sufficient space for the printed name, a numerical identifier, the  
23 signature, the date of signature, and the address of each person signing the petition;  
24 and

25                   (7) other specifications prescribed by the lieutenant governor to ensure  
26 proper handling and control.

27   \* **Sec. 10.** AS 15.45.110(c) is amended to read:

28                   (c) A circulator may not receive payment or agree to receive payment [THAT  
29 IS GREATER THAN \$1 A SIGNATURE], and a person or an organization may not  
30 pay or agree to pay an amount, **based on the number of registered voters who sign a**  
31 **petition. This subsection does not prohibit a person or an organization from**

1       employing a circulator and

2                   (1) paying an hourly wage or salary;

3                   (2) establishing express or implied minimum signature  
4       requirements for the circulator;

5                   (3) terminating the petition circulator's employment if the  
6       circulator fails to meet certain productivity requirements; or

7                   (4) paying discretionary bonuses based on the circulator's  
8       reliability, longevity, and productivity [THAT IS GREATER THAN \$1 A  
9       SIGNATURE, FOR THE COLLECTION OF SIGNATURES ON A PETITION].

10   \* **Sec. 11.** AS 15.45 is amended by adding a new section to read:

11               **Sec. 15.45.195. Public hearings.** (a) At least 30 days before the election at  
12       which an initiative is to appear on the ballot, the lieutenant governor or a designee of  
13       the lieutenant governor shall hold two or more public hearings concerning the  
14       initiative in each judicial district of the state. Each public hearing under this section  
15       shall include the written or oral testimony of one supporter and one opponent of the  
16       initiative.

17               (b) The lieutenant governor shall provide reasonable notice of each public  
18       hearing required under this section. The notice must include the date, time, and place  
19       of the hearing. The notice may be given using print or broadcast media. The lieutenant  
20       governor shall provide notice in a consistent fashion for all hearings required under  
21       this section.

22   \* **Sec. 12.** AS 15.58.010 is amended to read:

23               **Sec. 15.58.010. Election pamphlet.** Before each state general election, and  
24       before each state primary **or special** election at which a ballot proposition is scheduled  
25       to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least  
26       one election pamphlet to each household identified from the official registration list.  
27       The pamphlet shall be prepared on a regional basis as determined by the lieutenant  
28       governor.

29   \* **Sec. 13.** AS 15.58.020(b) is amended to read:

30               (b) Each primary **or special** election pamphlet shall contain only the  
31       information specified in (a)(6) and (a)(9) of this section for each ballot measure

1 scheduled to appear on the primary election ballot.

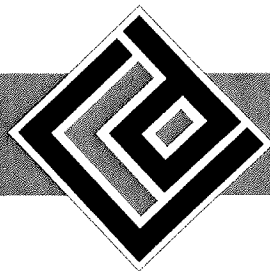
2 \* **Sec. 14.** AS 24.05 is amended by adding a new section to article 4 to read:

3 **Sec. 24.05.186. Review of initiatives certified by the lieutenant governor by**  
4 **standing committees of the legislature.** (a) A standing committee of the legislature  
5 shall consider an initiative that the lieutenant governor has determined was properly  
6 filed under AS 15.45.160.

7 (b) A standing committee shall conduct reviews under this section within 30  
8 days after the convening of the legislative session preceding the statewide election at  
9 which the initiative proposition must appear on the election ballot under  
10 AS 15.45.190.

11 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 **APPLICABILITY.** This Act applies only to an initiative, the application for which is  
14 filed with the lieutenant governor under AS 15.45.020 on or after the effective date of this  
15 Act.



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

December 23, 2009

Public Comments Processing  
Attn: FWS-R7-ES-2009-0042  
Division of Policy and Directives Management  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Drive, Suite 222  
Arlington, VA 22203

Re: Comments of the Resource Development Council - Proposed Rule to Designate Critical Habitat for the Polar Bear (FWS-R7-ES-2009-0042)

To Whom It May Concern:

This letter is in response to the U.S. Fish and Wildlife Service's request for comments on the Proposed Rule to Designate Critical Habitat for the Polar Bear (FWS-R7-ES-2009-0042). The Resource Development Council for Alaska, Inc., (RDC) strongly opposes the overly broad and excessive designation of critical habitat for the polar bear as identified in the Proposed Rule. We urge the Service to substantially reduce the area identified as critical habitat, in accordance with the best available scientific and commercial data. Critical habitat designations should be confined to those areas that are absolutely essential to the conservation needs of polar bears.

RDC is a statewide, non-profit business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism and fisheries industries. RDC's membership includes Alaska Native corporations, local communities, organized labor and industry support firms. Our purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through responsible resource development.

RDC and its members support ongoing polar bear research, management and conservation. A number of our members include major industry and local government stakeholders operating within the historic and current range of the polar bear. These stakeholders, including the North Slope Borough, Arctic Slope Regional Corporation (ASRC) and oil and gas companies, have been major contributors to the extensive research conducted on polar bears and have played a significant role in advancing the scientific community's understanding of the polar bear and its habitat. This experience, especially the unparalleled traditional knowledge and understanding of the polar bear by the Iñupiat community, should be taken into consideration as the Service identifies critical habitat, essential biological features, and the need for special management measures. In light of this experience and knowledge, RDC endorses the separately filed comments of the Alaska Oil and Gas Association (AOGA) and encourages the

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Greg Baker  
Dave Benton  
Jason Bergerson  
Allen Bingham  
Dan Britton  
Dave Carey  
Patrick Carter  
Dave Chaput  
Steve Connelly  
Bob Cox  
Allan Dolynny  
Paula Easley  
Ella Ede  
Mark Eliason  
Joe Everhart  
Carol Fraser  
Dan Graham  
Chuck Greene  
Scott Habberstad  
Mark Hanley  
Karl Hanneman  
Rick Harris  
Tom Henderson  
Paul Henry  
Becky Hultberg  
Teresa Imm  
Bill Jeffress  
Mike Jungreis  
Frank Kelty  
Kip Knudson  
Thomas Krzewinski  
Linda Leary  
Carri Lockhart  
John MacKinnon  
Mary McDowell  
Ron McPheters  
James Mery  
Denise Michels  
Lance Miller  
Mary Nelson  
Lisa Parker  
Judy Patrick  
Charlie Powers  
Keith Sanders  
Kenneth Sheffield  
Keith Silver  
Jeanine St. John  
John Sturgeon  
Dan Sullivan  
John Zager  
Ex-Officio Members  
Senator Mark Begich  
Senator Lisa Murkowski  
Congressman Don Young  
Governor Sean Parnell

Service to give serious consideration and weight to the comments filed by ASRC, the North Slope Borough and the State of Alaska.

### **The Proposed Rule is unprecedented**

The Proposed Rule is unprecedented in a number of ways. Foremost, it applies to a species whose population worldwide has more than doubled over the past 40 years. In fact, polar bear populations are stable or increasing, despite the warming trend of the past 20-plus years and the recession of sea ice. This fact is a strong indication that protections in place today are effective in protecting polar bears.

No species has ever been listed under the Endangered Species Act (ESA) where the scientific consensus indicated the species continued to occupy its entire historical range at sustaining population levels. In Alaska, polar bears are abundant and are near historic population highs. No listings or critical habitat designations have occurred when an animal or plant was at the level of health the polar bear finds itself in today.

In its petition to list the polar bear under the ESA, the Center for Biological Diversity (CBD) claims that the species' current health is irrelevant. It argues that climate change will threaten polar bears in the future. However, the leading indicators of a species risk in ESA listings and critical habitat designations are current population, trend and the range of the species. Because of their healthy status in these leading indicators, a listing of the polar bear is unnecessary.

Second, it is not clear how critical habitat designations would help polar bears. Given the limitations of the ESA itself, the listing will not stop sea ice from melting. In fact, the U.S. Geological Survey (USGS) has concluded that restrictions on human activities would not prevent polar bear habitat – Arctic sea ice – from disappearing during the summer months. This conclusion alone calls into doubt the usefulness of the ESA and its critical habitat designations. If an ESA listing is not going to stop polar bear habitat from melting away and arrest the threat to the bears themselves, why spend the time and money to impose significant burdens on industry, government agencies, society, landowners, and others when there is no benefit to the species? The Service should clearly identify and make public – prior to making a final decision on critical habitat – how the designation of critical habitat for polar bears will slow the loss of sea ice. Specifically, we would like to know how critical habitat designations would reverse the global phenomena of climate change.

Third, like the proposed listing itself, the major studies conducted by USGS, which were used to justify an ESA listing, are filled with uncertainty and doubt. The USGS admits to the limitations inherent in its studies and concedes that “uncertainty in projections of Arctic climate change is relatively high.” These limitations and high levels of uncertainty in climate change models call into question any conclusions and critical habitat designations. The USGS studies do not change the fact that the proposed listing itself is unprecedented and based on highly-speculative risks outlined in carbon-emission scenarios and various climate change models. In fact, the USGS admits its models are highly unreliable and it reaffirmed that there continues to be a lack of science demonstrating in a *reliable* manner that polar bears are *likely* to become extinct in the *foreseeable future*. A key principal issue in this debate continues to be whether the extent and pace of summer sea ice decline in the Arctic over the next century is *reliably predictable* and, if so, is *likely* to threaten the polar bear with extinction.

Fourth, the critical habitat designation is unprecedented because of its massive scope. The Proposed Rule calls for the largest critical habitat area ever proposed, overlaying approximately 200,500 square miles – an area larger than 48 of the 50 U.S. states, and exceeding the size of California by nearly 50,000 square miles. Within this massive area is nationally-significant oil and gas activity that has coexisted with polar bears for 40 years. Moreover, oil and gas production in this region is the foundation of Alaska's economy

and new prospects have the potential to sustain the state's economy for decades, as well as reduce America's dependence on foreign oil.

Fifth, there is a strong consensus among the major stakeholders that live, own land and have business operations within or near the areas proposed for critical habitat designation. All of these interests – the North Slope Borough, local government authorities, Arctic Slope Regional Corporation, Native village corporations, Native subsistence users, the State of Alaska, and the oil industry – agree that the proposed critical habitat designations are overly broad and excessive. Given these diverse interests often disagree on various public policy issues, the strong consensus among them on the Proposed Rule speaks to the urgent need for the Service to reconsider and revise its proposal.

Sixth, as noted in AOGA's comments, the Service's proposal for critical habitat carries an alarmingly high degree of uncertainty and disagreement regarding the legal consequences of the proposed action. The Service has stated that designation of critical habitat will not have new or significant effects on energy supply, distribution or use, given the agency's longstanding findings conclude that the oil industry in Alaska has minimal impact on polar bears, does not pose a threat to the survival or recovery of the species and is more rigorously regulated under the Marine Mammal Protection Act (MMPA) than the provisions of the ESA. Yet the CBD and other environmental groups have made it clear that the designation of critical habitat should both form a mandatory legal basis for regulation of greenhouse gas emissions under the ESA, and should also provide an effective means of defeating or impeding oil and gas exploration and development in the Arctic and the adjacent Outer Continental Shelf (OCS). As a result of these conflicting views on the legal consequences of the proposed listing, AOGA explained in its comments that the oil industry, state and local governments, and Native interests are trapped by the vast disconnect between the Service's findings and assurances on the one hand, and the intentions of CBD and other environmental groups on the other hand. Litigation regarding both the scope of critical habitat designations and subsequent alleged "adverse modification" of critical habitat by oil and gas activities and other development is certain.

### **Proposed Critical Habitat lacks important clarifications and should be substantially reduced (Unit 1)**

Under the ESA, critical habitat is to be limited to specific areas occupied by a species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations. In addition, the ESA requires that decisions to designate critical habitat may only be made after consideration of the economic impact, the impact on national security, and any other relevant impact. Any area otherwise qualifying for designation as critical habitat may be excluded from designation if the benefits of excluding the area outweigh the benefits of including the area, unless excluding an area would result in the extinction of the species concerned.

In short, RDC believes the Proposed Rule, in its critical habitat designations, largely lacks clarification of the features essential to the conservation of polar bears. Moreover, there is a lack of demonstrated need in the Proposed Action for special management considerations. Under the ESA, special management considerations may be required only where the existing legal framework provides inadequate management measures or protections.

As noted earlier, the Service's proposal to designate an area larger than California as polar bear critical habitat, including an area containing the nation's largest producing oil fields, is excessive and should be substantially reduced. Proposed sea-ice critical habitat (Unit 1) comprises 93 percent of the proposed critical habitat for polar bears. Sea-ice critical habitat extends a minimum distance of 85 miles from the Alaska coast at the U.S.-Canadian border, and a maximum distance of 200 miles into the Arctic Ocean to the limits of the U.S. Exclusive Economic Zone boundary. This huge unit alone is larger than any other currently existing critical habitat designation.

The Service's proposal to designate this entire area as critical habitat is excessive because polar bears do not occupy areas with less than 15 percent ice concentration. The proposed definition of sea-ice habitat Primary Constituent Element (PCE) includes all sea ice over waters 300 meters or less in depth that occur over the continental shelf. This definition is overly broad and should be revised to exclude those areas comprising less than 15 percent ice concentrations. These areas do not contain biological features essential to the conservation of polar bears. Instead, they are equivalent to open water and do not provide a stable platform for polar bears to hunt seals, rest, or avoid the hazards posed by storms in open waters. As a result, designation of such areas as a PCE and as critical habitat is inappropriate.

The Service notes in the Proposed Rule that polar bears prefer habitat with sea ice concentrations that are conducive for hunting seals, provide safety from high seas, and prevent them from becoming separated from the main pack ice. These conditions occur in sea ice located over the OCS in concentrations exceeding 50 percent, with areas of 80 to 100 percent ice concentrations receiving the highest use by polar bears.

The Service asserts that sea-ice habitat may require special management measures, yet it does not fulfill its statutory obligations under the ESA and the federal Administrative Procedure Act regarding the relationship between sea-ice habitat and such management measures because the assertion is not explained or supported within the Proposed Rule. The Service's proposal does not explain why special management measures may be needed for sea-ice habitat.

To put this particular issue in perspective, when sea ice covers the 200,000 square mile area comprising Unit 1, polar bears move widely in widely dispersed low densities across the area. The area is primarily uninhabited, inaccessible and inhospitable to humans. Given the character of the area, polar bear sea-ice habitat is not a biologically limiting factor. In those few circumstances where activities do occur on ice habitat, such activities occur in a very small fraction of Unit 1 and are intensively managed for the protection of the environment and wildlife. Any oil and gas activity within Unit 1 must comply with federal, state, and North Slope Borough statutes, regulations, and ordinances, including the MMPA, the ESA, the Clean Water Act, the Clean Air Act, the Outer Continental Shelf Lands Act, the Coastal Zone Management Act, Alaska's Coastal Management Program and the Oil Pollution Act of 1990.

In determining whether special management measures or protections may be required, the Service should consider the statutes, regulations, and ordinances now in place. It should also recognize the fact that sea-ice habitat is not a biologically limiting factor, given the polar bear's widely dispersed movement across a largely uninhabited and inhospitable area. Given these facts, there is not a compelling need for special measures or protections different from those afforded by the MMPA and other existing management authorities.

### **Terrestrial Denning Habitat (Unit 2)**

Unit 2 encompasses 5,668 miles of land, an area which is nearly 20 percent larger than the state of Connecticut. The proposed terrestrial denning critical habitat consists of a five-mile swath of the North Slope coastline from Barrow to the Kavik River, and a 20-mile wide coastal zone, including the Arctic National Wildlife Refuge, extending to the Canadian border.

While RDC recognizes that successful denning is essential for polar bears, we do not believe that special management measures or protections are necessary in the future for polar bear dens. These dens should continue to be protected through the long-standing and proven management measures applied under the MMPA.

Most of the area in Unit 2 proposed as critical habitat for the purposes of polar bear terrestrial denning is not supported by the best scientific and commercial data available. As a result, the Proposed Rule is overly broad. Although areas of actual denning occur within Unit 2 and there are other areas that hold the potential for denning, most of the area proposed for critical habitat designation does not contain biological or physical features identified by the Service as essential for polar bear conservation. In fact, approximately 99 percent of Unit 2 does not contain essential features for polar bear denning. Potential polar bear denning habitat has been mapped by the Service and by the USGS, and is based clearly on defined features with the capacity to catch enough drifting snow to be suitable for den construction. These areas are readily distinguishable from the broad expanses of unsuitable wetland tundra and shallow lakes occurring across most of the coastal plain. As a result, Unit 2 should be reduced to only those areas containing actual denning habitat.

In addition, substantial data exists on dens as a result of measures initiated under the MMPA. Forward looking infrared (FLIR) imagery of maternal polar bear dens in winter and data from radio-collared bears have provided a substantial body of reliable scientific information about the location of dens, especially those near actual or potential human activities. These data reveal that actual denning habitat occurs in very small and well-defined proportions of the coastal plain (less than one percent), and that maternal polar bear dens do not occur on most habitat within Unit 2.

Despite the significant body of information regarding the location of potentially suitable denning habitat and the location of actual dens, the Proposed Rule intends to designate as critical habitat a huge swath of the coastal plain from Barrow to the Canadian border on the basis that 85 percent of all known dens have been located somewhere within this massive area. Essentially, the Service is arbitrarily proposing the designation of critical habitat on a broad regional scale. The best available data indicates this is both inaccurate and unnecessary. Moreover, the best available data demonstrates that more than 99 percent of the proposed area does not qualify as denning habitat. Given the best available data, the Service must revise and substantially narrow Unit 2 to reflect the actual location of polar bear denning habitat.

Moreover, terrestrial denning habitat in the U.S. Beaufort Sea coastal plain is plentiful, widely distributed and undisturbed. There is vastly more potential habitat available than is currently used and it is highly unlikely that terrestrial denning habitat will become a limiting factor for polar bears, even when all foreseeable development activity is taken into account.

RDC disagrees with the Proposed Rule's assertion that special management considerations and protections may be required for polar bear terrestrial denning habitat "to minimize the risk of human disturbances and crude oil spills associated with oil and gas development and production, and the risk associated with commercial shipping." As noted earlier, oil and gas development and production in Alaska's Arctic is regulated under the provisions of the MMPA. Such development has been effectively managed by the MMPA as oil and gas development has not been a source of mortality to polar bears. It is well documented that interaction between polar bears and the oil and gas industry as regulated under the MMPA is "minimal" and that the reasonably foreseeable impacts of all oil and gas activity on polar bears is likely to be negligible. The Service has also concluded that the measures and protections afforded under the MMPA incidental take regulatory program provide a greater level of protection for polar bears than procedures available under the ESA.

RDC does agree with the Service that the best available data supports not designating shoreline areas of the Chukchi Sea as terrestrial denning critical habitat and we concur with the Service's assessment that designation of denning habitat along Alaska's west coast between Barrow and the Seward Peninsula is not warranted by the best available science. The Proposed Rule reaffirmed that the core denning areas for the Chukchi and Bering Seas populations occur along the Russian Chukotka coast and Wrangel Island. An extensive record of radio-tagged female bears demonstrates that very few of them have historically denned along the west coast.



### **Barrier Island Habitat (Unit 3)**

The Proposed Rule designates all barrier island lands within the Beaufort and Chukchi Seas, as well as a one-mile buffer zone of water, ice or land surrounding all barrier islands, as critical habitat. In addition, the buffer zones are designated as “no disturbance zones” in the Proposed Rule. While the smallest of the three proposed critical habitat units, this is still a large area, more than twice the size of Delaware. As with Unit 1 and 2, the proposed designations are overly broad and unjustified and are not supported by the best available science.

Not all barrier island habitat is of equal value to polar bears. In fact, some islands are unsuitable or are not used by polar bears because of the absence of topographic relief. Some islands are not suitable for denning and lack other features necessary for such activity. Bears do use some of these islands and surrounding lands for resting and transit to other areas, but they also use man-made islands and causeways for the same purposes.

With regard to the designation of barrier island buffer zones as “no disturbance zones,” such action exceeds the Service’s authority in designating critical habitat. RDC concurs with the comments of the American Petroleum Institute (API) in that the designation of critical habitat serves to mandate consultation under ESA Section 7 to ensure that federal actions do not destroy or adversely modify PCEs within the designated area. API noted that designation of buffer areas as “no disturbance zones” conflates the Service’s designation of critical habitat with the Service’s Section 7 responsibilities and, in effect, unlawfully prejudices the Section 7 consultation process for specific proposed actions.

### **Oil and gas exploration and development should be excluded from critical habitat**

RDC believes the benefits of oil and gas development on the North Slope and future development in the Chukchi and Beaufort Seas far outweigh the benefits of including areas of oil and gas activity in critical habitat. Oil and gas development and production in the Arctic provides immense benefits to the state and the nation and is clearly in the nation’s best interest from an economic and national security standpoint. Alaska oil and gas production is important to national energy needs and development has the potential to create tens of thousands of new jobs and hundreds of billions of dollars in revenues to the federal government.

In contrast, the Service itself has repeatedly concluded that the conservation benefits of designating critical habitat are minimal, while the process consumes agency resources and results in significant costs. Meanwhile, oil and gas activity has not in the past and is unlikely to in the future pose a danger to the polar bear or its habitat. In addition, such activity will continue to be regulated effectively under the MMPA.

We believe these relevant facts and benefits clearly support excluding areas of oil and gas exploration and development and other activities (see page 8) from the designation of critical habitat. Moreover, the strong prospect of litigation and its economic consequences should also support excluding areas of oil and gas activity from critical habitat. Certain litigation would likely target government permits for future oil development in or near critical habitat. The polar bear has been adopted as a symbol of global warming and is being used as part of a broad campaign by national environmental groups to block oil and gas leasing, exploration and development in the Arctic. Critical habitat designations will at a minimum delay, disrupt and increase the costs of oil and gas development. As a result, critical habitat and subsequent litigation will likely result in less oil and gas activity in Alaska.

RDC is very concerned that the listing of polar bears under the ESA and the proposed critical habitat designations could result in severe unintended economic consequences to both the national and Alaska

economies and significantly impact U.S. energy production. The listing and the proposed critical habitat designations could even jeopardize the economic viability of the Alaska Natural Gas Pipeline and therefore kill prospects for its construction and delivery of gas to Lower 48 markets (see page 9.)

The overly broad critical habitat designations could make it difficult to obtain any federal or state permits that have the potential to affect polar bears and their habitat – directly or indirectly. When the specter of litigation is included in the picture, investment in new energy projects in Alaska and elsewhere could be deflected to other prospects overseas, meaning less domestic energy development and a greater reliance on foreign imports. At the very least, the proposed critical habitat designations will highly likely result in delays and higher costs with no corresponding benefit to polar bears.

Proponents of the 2008 listing have openly called for the entire energy-rich North Slope of Alaska to be designated critical habitat and have admitted their goal is to force the U.S. government to address global climate change. They want to use the ESA and its critical habitat designations to stop production of fossil fuels and stop oil and gas development in the Arctic.

RDC applauds the Department of the Interior for acknowledging that it does not intend to use the ESA to address carbon emissions or other issues of global climate change. The department has correctly assessed the law gives it no room to address the broader issues that may be causing receding ice. However, our concern is if the proposed over reaching critical habitat designations move forward and include areas of current and future oil and gas exploration and development, a frenzy of litigation will likely occur as any threat, whether it is perceived or real, would invite third-party litigants to challenge virtually any operation or proposed project.

As it stands now, the Proposed Rule would designate all of the coastal North Slope as critical habitat, including the energy-rich northern areas of National Petroleum Reserve – Alaska (NPR). A 2002 U.S. Geological Survey assessment of NPRA resulted in a mean estimate of 10.6 billion barrels of oil and 61 trillion cubic feet (tcf) of natural gas. An assessment of the 1002 Area of Arctic National Wildlife Refuge (ANWR) gave a mean estimate of 10.4 billion barrels of technically-recoverable oil. Overall, government reports indicate as much as 124 tcf of natural gas could be in place beneath the North Slope. Offshore in the Chukchi and Beaufort Seas, the U.S. Minerals Management Service (MMS) estimates 130 tcf of natural gas is in place, along with 27 billion barrels of oil, nearly twice what has been produced on the North Slope to date. Responsible and cautious development of these onshore and offshore energy resources would greatly benefit Alaska and its residents, and would play a major role in boosting domestic energy production. However, once critical habitat designations are in place, litigation challenging development in or near those designations will have a negative effect on new energy exploration.

The potential economic implications to Alaska of the polar bear listing and its expansive proposed critical habitat designations are frightening. Ninety percent of the Alaska's unrestricted revenue base comes from North Slope oil production. An ESA listing and third-party lawsuits from litigants with a variety of motivations would, at a minimum, discourage investment, which would likely result in less exploration, translating into lower production, which in turn would constrict revenues to the State, compromising its ability to provide services to rural and urban Alaskans. A more dire outcome would likely occur if litigants were to challenge virtually every oil and gas lease sale and project near or in critical habitat areas. On a national scale, litigants could effectively hold the nation's best onshore and offshore energy prospects hostage as they move to block virtually any new oil, gas and other fossil fuel development in the Arctic. This could bring the economy, especially in Alaska, to its knees and sharply raise the cost of energy for all Americans. Moreover, if litigants are successful in limiting domestic energy production, the nation will be forced to import more oil from overseas where less protective environmental and emission standards often apply.

## **Impact of third-party litigation**

To imagine the potential impact of third-party litigation on North Slope communities and resource development, one only needs to look at the forest products industry in Southeast Alaska. Timber sales in this region are routinely litigated by non-development interests. As a result, the U.S. Forest Service has been unable to supply adequate amounts of timber allowed by the current Tongass National Forest land management plan to the few surviving local sawmills. The industry is now a mere shadow of itself, having lost thousands of jobs over the past two decades. Local communities have experienced severe economic downturns and the annual harvest from the Tongass has fallen beyond 50-year lows.

In response to those who claim an ESA listing of polar bears and its critical habitat designations would have no negative impact on Alaska, the oil industry and local communities, the Service should consider the severe impacts the forest products industry experienced from the listing of the Northern Spotted Owl under the ESA. Beginning in the late 1980s, lawsuits to protect the habitat of the spotted owl withdrew huge acreage of national forests from timber harvesting. President Clinton's Northwest Forest Plan set aside 24.5 million acres for spotted owl recovery under the ESA. This caused an 80 percent drop in overall timber harvests in the Pacific Northwest, which must be considered an opportunity loss. The estimated losses alone resulting from the owl recovery plan ranged from a low of \$33 billion to a high of \$46 billion. Those losses were borne out by mill closures and job losses. Since 1989, when environmental lawsuits began, through 1994, 424 lumber mills closed in the Pacific Northwest alone. More than 27,000 loggers and mill workers lost their jobs. Furthermore, as logging communities across the Northwest lost direct timber-related jobs, the jobs of thousands of other employees providing goods and services to local timber-dependent communities dried up.

Additionally, numerous local communities lost major revenues derived from the forest products industry. As mills closed and employees lost their jobs, the revenue base of many communities fell sharply. Lower revenues to state and federal governments also resulted when the sale of national forest timber products fell sharply. Even local school districts lost funding as timber-dependent counties lost tax income, population and commercial activity.

The economic costs of mill closures and lost jobs also had severe social consequences. As more logging families lost their incomes and became unable to pay their debts, the pressures within families increased, leading to social issues like alcohol and drug abuse, domestic violence, children dropping out of school and families becoming separated.

The unwarranted and overly broad proposed critical habitat designations for the polar bear could result in similar economic and social impacts, especially in Alaska, without any added benefit to the bear.

## **Other economic exclusions: ASRC, other Native and North Slope Borough lands**

Native-owned lands, including those owned by ASRC, village corporations, and local governments such as the North Slope Borough, should be excluded from proposed critical habitat designations for economic reasons. Moreover, Native and local community lands in Northwest Alaska and on the Seward Peninsula should also be excluded. With regard to the Red Dog Mine port, this critical facility and adjacent lands must remain exempt from critical habitat designation. Likewise, the Port of Nome and other coastal facilities on the Seward Peninsula should remain exempt, too. The Port of Nome is a vital point of commerce in Western Alaska and it also is an important infrastructure component for current and future mining. Other coastal lands that may some day serve as critical infrastructure and port development for potential new mineral development in Northwest and Western Alaska, including ASRC's Western Arctic Coal deposit (which may hold up to 25% of the world's known coal resources), should be excluded from critical habitat.

Minerals are the state's second largest export commodity. In recent years, mineral exports accounted for 30% of the state's export total and consist primarily of zinc and lead from the Red Dog Mine. These resources are exported out of the Red Dog port on the Chukchi Sea. *(The Northwest Alaska region is highly mineralized and there is potential for the development of new prospects in the region. Infrastructure will be key to such development and some of this infrastructure is likely to be built on the coast.)*

Red Dog, one of the largest zinc mines in the world, both in terms of production and reserves, employs more than 475 people of which 56 percent are NANA Regional Corporation (NANA) shareholders. In 2007, it paid \$48.9 million in annual wages and benefits and spent \$130.7 million for services and goods purchased from Alaskan companies. Red Dog is the sole taxpayer to the Northwest Arctic Borough and the payment for 2007 amounted to \$11 million.

Through the Alaska Native Claims Settlement Act (ANCSA), Congress created Native regional corporations such as ASRC and NANA and provided them with lands to benefit their people financially and culturally. In the case of ASRC and NANA, Congress intended for them to use their region's natural resources to benefit their people. Congress intended for these natural resources to be developed in order to give the local Native population a means for economic independence.

Congress settled aboriginal claims to Alaskan land by transferring title to the surface and subsurface estate of millions of acres in Alaska to ASRC, NANA and ten other land-owning regional corporations. It did so with the expectation that these regional corporations would be the engines for economic development and help provide for the well being of Alaska Natives within their regions. Through the resource revenue-sharing mechanism of Section 7(i) of ANCSA, all Native regional corporations in Alaska share from the proceeds of resource development. As a result, Native corporations and their shareholders across the entire state share in the revenues generated from the development of natural resources on ASRC and NANA lands.

ASRC and NANA have grown into major economic forces in Alaska, providing jobs for their people, tax revenues for their villages and local boroughs, and cash dividends to shareholders. ASRC itself owns approximately five million acres of land on the North Slope, an area nearly the size of Massachusetts. In just a few short decades, the Iñupiat have adapted from an economy largely based on subsistence to a mixed economy. The cash portion of that mixed economy depends mostly on oil and gas and the development of other natural resources to provide jobs, economic activity and a tax base for local governments, which in turn provide basic amenities such as schools, health care and sanitation facilities – all of which are largely taken for granted by Americans elsewhere. The Iñupiat's ability to maintain their traditions, communities and basic services all depend on their ability to access natural resources on their lands. Moreover, since ASRC, NANA, and other Native entities provide important services to the oil and gas and mining industries, it is imperative these industries have access to new oil, gas, and mineral development opportunities on state and federal lands, both onshore and offshore. Onerous restrictions and regulations, as well as overreaching critical habitat designations, will diminish the Iñupiat's ability to do the very things Congress intended for them to do. They and their business partners on the North Slope and in Northwest Alaska must retain the ability to use the resources on their lands in a responsible manner.

### **Critical habitat could jeopardize the Alaska natural gas pipeline**

The proposed critical habitat designations could jeopardize the long-term economics of the proposed Alaska gas pipeline. The pipeline is a top national energy priority and is considered vital to Alaska's future. The gas pipeline is projected to begin generating revenues to the state about the time oil production and corresponding revenues from such production falls below levels required to sustain state services to residents.

New natural gas discoveries beyond the North Slope's 35 tcf of known reserves are vital to ensuring the long-term profitability of any gas pipeline. But the proposed critical habitat designations and third-party lawsuits could potentially block access to highly prospective areas that may hold more than 200 tcf of natural gas. If this were to happen, investors would simply direct their capital toward other opportunities in their global portfolios. Unfortunately, this would only serve to crimp domestic production and result in an increase in America's reliance on foreign sources of energy, as noted earlier in these comments. Moreover, since environmental laws and regulations tend to be weaker outside America, an increase in foreign energy production to satisfy America's domestic energy needs could result in increased impacts to the environment abroad.

### **Beyond oil and gas development: local community concerns**

The proposed critical habitat designations carry significant impacts well beyond oil and gas development in the Arctic. All projects, big and small, including expansion of municipal facilities and services in villages to critical gravel mining, will be placed in jeopardy by a high level of uncertainty, a regulatory quagmire, litigation delays and outright stoppages. Through ANCSA, Congress intended for ASRC and the Iñupiat people to build a future for their culture based on their land and natural resources. But now the Iñupiat see their future at risk from the proposed massive critical habitat designations. Below is a brief summary of highly relevant concerns addressed in the comments of ASRC and the North Slope Borough. RDC shares these concerns (as addressed earlier in these comments) as they speak directly to potential impacts of the proposed critical habitat designations on the Iñupiat people, as well as others who live and do business within the North Slope Borough.

- Iñupiat people depend on the land proposed as critical habitat for their livelihood, under the Congressional direction of ANCSA to develop a diversified economy within a for-profit corporate structure. Their future, as set in motion under ANCSA in 1971, depends on their continued ability to properly and perpetually utilize the lands and natural resources in Northern Alaska. This is a critical "relevant factor" for the Service to consider that warrants major changes to the Proposed critical habitat designations to reduce the burden on activities in the North Slope Borough.
- The Service listed polar bears as threatened under the ESA based on its conclusions that global climate change was causing changes to polar bear habitat to the detriment of the species. North Slope Borough residents are not responsible for these causes and cannot correct them, yet the heavy burden of the proposed designations will fall on North Slope communities and the region's economy. The Service must revise the proposed designations to avoid this disparate impact on Arctic Alaska and Alaska Natives who will be profoundly affected.
- The Service has determined numerous times that polar bears are not put at risk by the economic and ongoing activities on Alaska's North Slope, including activities associated with oil and gas, natural resources and other development. Given these conclusions, the proposed critical habitat designations of over 200,000 square miles on water and land are shocking and unnecessary. It will impose the heaviest burden on those least responsible for any threat to the polar bear. Such massive designations are not necessary to the needs of the species based on the government's own conclusions.
- In the absence of the Service revising its regulations defining "adverse modification" of critical habitat to address court decisions calling into question the current regulations, the Service's assertion that designation of critical habitat will impose no incremental burden over listing of the polar bear is questionable. Without knowing the regulatory meaning of "adverse modification," we are left questioning what the proposed designations will mean for Section 7 consultations. Or worse, those who live, work and do business on the North Slope will face years of litigation over their

activities as third party advocates pursue policy goals at the expense of the North Slope Borough and others.

- The Service has ignored the burdens of the proposed designations beyond Section 7 consultations, including (as noted earlier) the chilling effect of the designations on investment and development in the region. It is also ignoring the cumulative impact of multiple ESA actions in the same geographic location. Between overlapping species listings and protective zones, with multi-season restrictions, Alaska's Arctic is being colored as "off limits" for future development. The citizens' suit provision of the ESA increases the risk that even if the Service may authorize future activity, the region will face burdensome third-party litigation over activities within polar bear critical habitat.

These local concerns are real. The proposed designations will clearly raise the cost of projects and potentially prevent some from moving forward. Such projects include new port development and expansion of village infrastructure. For example, the village of Kaktovik is planning a new airstrip. With no road system connecting villages, air transportation is essential on the North Slope and in Northwest Alaska. People and all goods must move by air or water, meaning local communities must have ports and airstrips. In addition, the proposed designations also have the potential to compromise the original purpose of municipal land entitlements – economic development. The proposed designations must not hinder essential economic and resource development, nor block the ability of North Slope, Northwest Alaska and Seward Peninsula communities to grow in the future.

In conclusion, RDC urges the Service to withdraw and significantly modify the over reaching proposed critical habitat designations to avoid potentially severe impacts the Proposed Rule will have on Alaska, the oil and gas industry, the economy, and the Iñupiat people. The livelihoods of those who live and work on the North Slope and elsewhere are at risk. Their future, as well as Alaska's economy, largely depends on access to and development of natural resources across Northern and Northwest Alaska on federal, state, North Slope Borough, and Native corporation lands. These interests and activities have coexisted with polar bears for decades. Yet the burdens of critical habitat designations will fall most heavily on local communities, Native corporations, the oil and gas industry and the State of Alaska. None of these entities are the source of the perceived threat to polar bears and none are responsible for and cannot control climate change.

RDC appreciates the opportunity to comment on the Proposed Rule and requests the opportunity to comment on any new economic analysis or future proposal for exclusions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.



Carl Portman  
Deputy Director

cc: Governor Sean Parnell  
Senator Lisa Murkowski  
Senator Mark Begich  
Congressman Don Young



Dear Alaska Business Partner:

With the decision from the cruise industry to move portions of their fleet and their marketing dollars out of Alaska, we now must face 2010 with creative minds to keep our Alaska tourism businesses viable. We continue to watch for news of further reduction in port visits in the Alaska cruise industry for 2011 and we believe we cannot sit back and wait for the Alaska Legislature, Governor's office, or anyone other than ourselves to affect change that will bring our industry back to life.

To advance our goals, we are developing a new support group called the **Alaska Alliance for Cruise Travel (AlaskaACT)**. Our Mission Statement is simple:

*Alaska Alliance for Cruise Travel is an Alaskan statewide, non-profit, membership-funded organization made up of business and individuals benefiting from cruise travel. Through AlaskaACT, these stakeholders will work together to promote accurate information and support responsible development and growth of Alaska Tourism and the Cruise Industry.*

To aid our efforts, we will be working closely with the Resource Development Council for Alaska (RDC) which has a strong legislative voice and an active tourism committee. We continue to support the marketing efforts overseen by the Alaska Travel Industry Association (ATIA).

In November, we kicked off our organization with a tourism panel at RDC's annual conference in Anchorage. Over 350 people listened to Rick Erickson from Cruise Lines Agencies point out the decline in cruise passengers in 2010. Paul Landis from CIRI Alaska Tourism explained the decrease in tourism jobs they will have available to Alaskans next year, and the negative impact to multiple levels of suppliers doing business with the industry. The panel ended with Steve Hites from Skagway Streetcar Company passionately describing the attack on our industry and the dismal future that lies ahead of us if we don't act NOW.

Future speaking opportunities, public relations plans and visits with our legislature are being designed for the near future. In addition to these activities our organization's efforts are focusing on the following goals:

- Create a positive business environment in Alaska for the cruise and tourism industries
- Encourage the Alaska Legislature and Administration to work toward a resolution of the current legal issues between the State and the cruise industry
- Oppose inequitable taxation directed at the cruise industry
- Support equitable environmental laws for the cruise industry
- Commit its resources to advancing the restoration and stability of the Cruise Industry *in the best interest of Alaska, and Alaskans.*
- Encourage accurate and honest reporting by the media
- Educate Alaskans about the economic benefits and positive environmental effects of the cruise industry on Alaska
- Support the cruise industry in their efforts to protect and preserve the environment through reasonable and attainable legislation

Our businesses need a healthy cruise market to remain viable and continue to employ thousands of Alaskans. We believe the future looks dire and the time for action is now. If you agree and have an interest as an individual or a business to work towards stabilization of our Alaska cruise industry, we need your help and would like to hear back from you.

Although our new organization already has built a strong momentum, we can't do it alone. We need a well thought-out grassroots, public relations effort to promote communication to our Legislature, city councils, friends and neighbors.

**The tourism industry in Alaska needs your help.** There are many ways to make a difference – please complete this form electronically at [www.alaskaact.com](http://www.alaskaact.com), or complete the fields below and fax to: 907-276-3887, or email to: [info@alaskaact.com](mailto:info@alaskaact.com)

Name \_\_\_\_\_ Organization: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email/Phone: \_\_\_\_\_

- Please send me AlaskaACT's newsletters and other information
- I can help with contacting legislative representatives
- I can help give presentations as part of a speaker bureau
- I can be available to discuss these issues with reporters
- I would like to write a compass piece for my local newspaper
- You may use my company and/or individual name as a supporter in your efforts
- I can organize an event to have a member of AlaskaACT speak in my community

Who is your State Senator? \_\_\_\_\_

Who is your State Representative? \_\_\_\_\_

Which Alaskan communities do you conduct business in? \_\_\_\_\_

**We ask you to please distribute this form and encourage your employees, colleagues, friends and family to become members of AlaskaACT today.**

To learn more about AlaskaACT's efforts and current issues, please visit [www.alaskaact.com](http://www.alaskaact.com).

Thank you!

AlaskaACT Steering Committee

John Litten, Sitka Tours, Spokesman for AlaskaACT  
Bob Berto, TEMSCO Helicopters/Cruise Lines Agencies of Alaska  
Jason Brune, Resource Development Council  
Tim Cerney, Fountainhead Development Corporation  
Gary Danielson, White Pass & Yukon Route  
Bob Dindinger, Alaska Travel Adventures  
Ken Dole, Promech Air/Waterfall Group  
Carol Fraser, ARAMARK  
Steve Hites, Skagway Street Car  
Holly Johnson, Wings Airways/Taku Glacier Lodge  
Paul Landis, CIRI Alaska Tourism Corporation  
Bill MacKay, Alaska Airlines

**Follow us on Twitter: AlaskaACT**



*One of the year's most anticipated business events*

## **2010 Annual World Trade Center Alaska Statewide Economic Forecast Luncheon**

Wednesday, 13 January 2010

12:00 pm - 1:30 pm (Doors open at 11:30 am)

Howard Rock Ballroom, Sheraton Hotel

Anchorage Alaska

Single (1) Registration \$40 • Sponsored Table (10 persons) \$500

Sponsored By:



Come find out what's in store for 2010. This is a unique opportunity to gain a statewide perspective on the prospects in 2010 for Alaska's major industries, state and federal government spending, and how this will affect communities and jobs. You will also hear about the international picture and how it impacts Alaska.

**The Statewide Economic Review and 2010 Forecast.** Presented by Pat Burden, President of Northern Economics. Burden will report on the state's major industries, their contribution to Alaska's economy, and how they will perform in 2010.

**An International Economic Update.** Presented by a Senior Economist from Wells Fargo. The economist will discuss economic trends in markets most important to Alaska's export industries.

**How Exports Benefit Alaska's Economy.** Presented by Greg Wolf, Executive Director of World Trade Center Alaska. Wolf will report on Alaska's major export markets, export commodities and services, and the impact of exports on Alaska's economic well-being.

This is one business lunch you cannot afford to miss. To ensure your seat, please make your reservation today. Fax or mail the enclosed registration form or call World Trade Center Alaska at (907) 278-7233.



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**ANILCA Seminar**  
**March 2 & 3, 2010**  
**Embassy Suites**  
600 E. Benson Blvd., Anchorage



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*Anyone who wants to understand Alaska and its future  
must understand ANILCA...  
the Alaska National Interest Lands Conservation Act of 1980*

\$500 cost includes comprehensive ANILCA Study Guide and CD, lunches, continental breakfasts and lively discussion with guest speakers

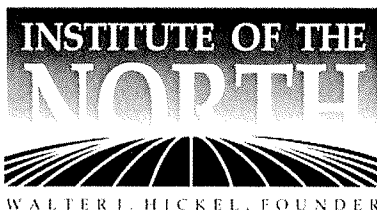
- 8:30 am – 4:30 pm
- 25 participants minimum
- special hotel rates available

Contact: (907) 771-2443 or [nhemsath@institutenorth.org](mailto:nhemsath@institutenorth.org)

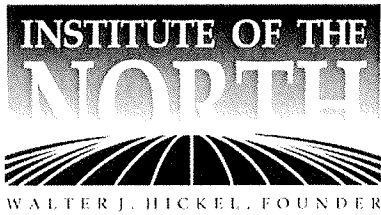
*If you can't make this seminar, please contact us about other opportunities.*

**Participants will gain an understanding of:**

- Alaska's land history (especially Statehood and ANCSA) and ANILCA
- The key provisions of ANILCA
- Ten exceptions written by Congress in ANILCA to guarantee the continuation of the Alaska lifestyle
- The intent of Congress, including the "no more" clause
- Subsistence – ANILCA provisions and how it is managed today
- General hunting, fishing and trapping on federal lands
- Access to inholdings and across Wilderness Preserves in National Forests, Parks, Refuges and other Conservation System Units and the definition of "compatible with the purposes of a CSU"
- Navigable waters, submerged lands and RS2477s – who owns them and what is their status?
- Wilderness Act exceptions in ANILCA
- ANWR and ANILCA
- Management planning and ANILCA
- ANILCA and the State of Alaska



Presented by the **Institute of the North**  
509 West Third Avenue, Suite 107  
Anchorage, Alaska 99501  
[www.institutenorth.org](http://www.institutenorth.org)



**The Institute of the North / ANILCA Seminar**

March 2 & 3, 2010

Embassy Suites

600 E. Benson Blvd., Anchorage

Mr    Mrs    Ms.

\_\_\_\_\_ *Full name – first, middle initial, last*

\_\_\_\_\_ *Preferred informal first name*

\_\_\_\_\_ *Title/function*

\_\_\_\_\_ *Company or Organization*

\_\_\_\_\_ *Business/Agency address*

\_\_\_\_\_ *City*

\_\_\_\_\_ *State*

\_\_\_\_\_ *Zip*

\_\_\_\_\_ *Business phone*

\_\_\_\_\_ *Fax*

\_\_\_\_\_ *e-mail*

\_\_\_\_\_ *Residential/Cell phone*

\_\_\_\_\_ I would like to have the ANILCA Study Guide and CD in advance. Please advise me how and when I can obtain these materials.

*(Optional)* I heard about this seminar from \_\_\_\_\_

\_\_\_\_\_ *Signature*

\_\_\_\_\_ *Date*

**DAILY SCHEDULE AND MEALS:** Coffee will be available at 8 am, with sessions to begin each morning at 8:30 am and run until 4:30 pm. Lunch will be included.

**FEES:** Seminar, including ANILCA study guide, reference materials and meals - **\$500**

**METHOD OF PAYMENT:** Please make checks payable to **The Institute of the North**

Check

VISA

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American Express

Credit Card Number \_\_\_\_\_

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Signature \_\_\_\_\_

**Mail, fax or email this form with payment**

Institute of the North

509 West Third Avenue, Suite 107

Anchorage, AK 99501

**FAX:** 907 / 771-2466

Attention: Nancy Hemsath

**TEL:** 907 / 771-2443

**EMAIL** [nhemsath@institutenorth.org](mailto:nhemsath@institutenorth.org)

**PLEASE FILL OUT THE ATTACHED ASSESSMENT**

## ASSESSMENT OF THE LEVEL OF YOUR ANILCA BACKGROUND AND YOUR AREAS OF INTEREST

This seminar was prepared for both those who know very little about ANILCA and those who work with its provisions on a regular basis. The following feedback will help us prepare for your participation.

- I know very little about ANILCA and would like a general introduction to its history, its key concepts and the influence it has on major Alaska issues.
- I know quite a bit about ANILCA but want to learn more.
- I work with ANILCA issues regularly but need a deeper understanding of many of its provisions.

Specifically, I am interested in the following ANILCA related issues:

- All of the issues listed below
- The Alaska context – our history and visions
- The battle for statehood, the Compact, and building an economy on the “commons”
- The struggle leading to the passage of ANILCA, the mobilization of national conservation interests and the intent of Congress when the bill passed
- The geographic context of the Conservation System Units
- Management principles for the Conservation System Units (parks, etc.) in Alaska – revising management plans and the step-down planning process
- Alaska exceptions written by Congress to enable the continuation of the Alaska way of life and a healthy economy
- Access across Conservation System Units and to inholdings; the definition of "compatible with the purposes of a conservation unit" as it relates to access
- Wilderness reviews and exceptions to the Wilderness Act in Alaska
- Subsistence, including definitions of rural priority, customary trade and management
- General hunting and fishing in National Parks and on other federal lands
- The Arctic National Wildlife Refuge and the debate over the 1002 area
- How ANILCA interfaces with the Alaska Native Claims Settlement Act – access, 17(b) easements, Native allotments, etc.
- Who owns what, including navigable waters, submerged lands and valid existing rights including RS2477 rights-of-way
- Recordable Disclaimers of Interest

Thank you. See you in March!



121 West Fireweed Lane, Suite 250  
Anchorage, Alaska 99503  
(907) 276-0700

[www.akrdc.org](http://www.akrdc.org)

### Membership Application

Resource Development Council for Alaska, Inc.  
121 W. Fireweed Lane, Suite 250  
Anchorage, AK 99503-2035

(907) 276-0700    [resources@akrdc.org](mailto:resources@akrdc.org)    [www.akrdc.org](http://www.akrdc.org)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

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City/State/Zip: \_\_\_\_\_

Phone Numbers Work: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

Website Address: \_\_\_\_\_

Referred by: \_\_\_\_\_ Date: \_\_\_\_\_

Annual Membership Categories		
	<u>Corporate</u>	<u>Individual</u>
PLATINUM	\$3000 or more	\$500 or more
GOLD	\$1500	\$300
SILVER	\$750	\$150
BASIC	\$500	\$75

Please circle the category in which your organization should be classified:

- Communications • Construction • Engineering/Environmental • Finance  
 Fishing • Government • Legal/Consulting • Media • Mining • Native Corporations  
 Oil and Gas • Retail/Wholesale • Support Services • Timber • Tourism  
 Trade/Business Organizations • Transportation • Utilities/Energy

Method of payment: Enclosed is a check for: \$ \_\_\_\_\_ or

MC/VISA/AMEX# \_\_\_\_\_ Exp. Date: \_\_\_\_\_

The Resource Development Council for Alaska, Inc. is classified a non-profit trade association under IRS Code 501(c)(6). Membership dues and other financial support may be tax deductible as an ordinary and necessary business expense, however, 15.9% of the dues are non-deductible. Dues are not deductible as charitable contributions for federal income tax purposes.