



COUNSEL TO GREAT COMPANIES

New Federal Regulations and Implications for Alaska Industry

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Eric Fjelstad

Perkins Coie LLP

Today's Topics

Preliminary Thoughts

Offshore

Water

Mining

Wildlife

Conclusions

Preliminary Thoughts

Federal Regulatory Programs

- Always expanding
- Focus on process

Reaching inflection point

- Shift to action/results
- Focus on legacy decisions

Legacy Decisions

- California Redwoods (1978) - \$440 M for taking of 27,000 acres
- Everglades wilderness (1978)
- ANILCA (1980) – 157 Million acres of federal protected areas (parks, wilderness)
- New World Mine (1996) - \$67 M buyout
- Tongass (1996) - \$135 M/timber rights
- Roadless Rule (2001) – 58.5 Million acres

Offshore – DOI Arctic Drilling Rule

- Timing: 2015?
- Mandatory measures rather than voluntary
- Likely focus: drilling and spill containment/response.
- May require standby drill rig for relief well.

Offshore – Chukchi Sea Lease Sale 193

- 2008 Lease Sale in Chukchi Sea.
- Several NGOs and Native Village of Point Hope challenged BOEM's NEPA analysis.
- 2010 – EIS remanded to BOEM
- 2013 – SEIS upheld by District Court.
- January 2014: Ninth Circuit reversed.

Offshore – Chukchi Sea Lease Sale 193

- 1 billion barrel oil field not big enough.
- Let's see what the emails say.
- (Bad) luck of the draw on panel ...
- Draft SEIS issued on October 31, 2014.
- Public Comment closes December 22, 2014.

Offshore - Marine Spatial Planning

April 2013 – Final Implementation Plan

Is process complete?

Will program morph into one with teeth?

Alaska connection

Beth Kerttula, White House Dir. Ocean
Policy

Water

- WOTUS rulemaking to expand jurisdiction of Clean Water Act.
- Relevance: Expanded federal permitting
 - Expands traditional jurisdiction to the extended “spiderweb” of tributaries and marshes.
 - Who needs water?

Is this “water”?



Water

404 Permits

3 key implications

- *must avoid water if practicable

- *mandatory mitigation

 - \$5-\$20 K/acre

- *expanded federal permitting (EA or EIS)

More on Water - Antidegradation

EPA regulations addressing degradation of waters.

- wastewater discharge permits
- 404 fill permits

Significant new requirements.

- Moves focus of permitting “upstream” into operations
- Can you afford to do more?

Mining

EPA Regulations on bonding – when not if
More 404(c) “veto” actions/watershed planning?
U.S. is the Saudi Arabia of coal

But, expect war on coal to continue

- Fight against exports;
- ash rule
- streamside buffer rule
- GHG regulations

And Finally, ESA Issues

- ESA listings are ongoing and controversial.
- Cook Inlet Beluga
- Climate-focused listings

Cook Inlet Beluga Whale

Listed under ESA (2008)

Critical Habitat – Upper Cook Inlet (2011)

Recovery Plan (underway)

Incidental Take Authorizations EIS (2014)

Will address cumulative effects of “takes”



Bearded Seal Case

- Seals listed as threatened in December 2012.
- Basis for listing was "habitat alteration stemming from climate change".
- Listing challenged by AOGA, North Slope Borough, ASRC, and State, among others.

Bearded Seal Case

- Issue in case: was it appropriate for NMFS to look 100 years into the future in projecting effects of climate change on sea ice habitat?
- Parties agreed that climate change is an appropriate consideration for listing purposes.
- But disagreed over using a 100-year timeline.

Bearded Seal Case

- ESA uses term “foreseeable future”, but doesn't define it.
- Polar bear listing (upheld by courts) was based on 45-year projection of effects of climate change.

Bearded Seal Case

- Federal District Court concluded:
"Forecasting more than 50 years into the future is simply too speculative and remote to support a determination that the bearded seal is in danger of becoming extinct."
- Listing Vacated.

Conclusion

Contact Information
EFjelstad@perkinscoie.com
(907) 263-6973