

Scenarios for Energy and Resource Development on the North Slope and Adjacent Seas

Research and Monitoring
Prioritization for the NSSI

State and Federal Regulatory Environment

Summary

The U.S. federal system distributes authority widely between the legislative and executive branches, and between the federal, state and local governments. As a result, the regulatory environment in Alaska is governed through multiple levels by federal, state, and local (borough, city, tribal) entities. The public dialogue involves diverse groups of stakeholders, as priorities are set via competitive procedures, and policy outcomes aim to serve a majority interest. Since in economic terms, Alaska is an oil-dependent state, this overview of federal and state regulatory environment will focus on regulations pertaining to land rights, natural resource development and protection, and economic development. But because Alaska is also experiencing great impacts from the effects of climate change, other regulations are also considered from the viewpoint of climate impacts mitigation.

The regulatory process governs commerce, education, law enforcement, natural resource use, health and social services, and transportation among others, and influences planning and implementation of resource extraction activity and economic development.

Overview

“In strictly economic terms, Alaska is an oil-dependent state, exhibiting the lack of diversification typical of all resource-dependent states. In 1991, approximately 86 percent of unrestricted general fund revenues came from oil and gas industry activities, and although that amount declined to 79 percent in 2000, with the price surges of subsequent years the share had increased to 88 percent by 2005.” (1, pg.4) The economic need for oil extraction must be balanced with other important priorities. Many residents of U.S. Arctic are closely linked to regional ecosystems through their use of subsistence resources, whereby they draw at least a portion of their living directly from the land and marine environment (2).

At the state level, the primary agency involved with oil and gas exploration and development is the Alaska Department of Natural Resources (ADNR), while the Alaska Department of Environmental Conservation (ADEC), Alaska Department of Fish and Game (ADF&G) and Alaska Oil and Gas Conservation Commission (AOGCC) also have significant roles in the permitting process.

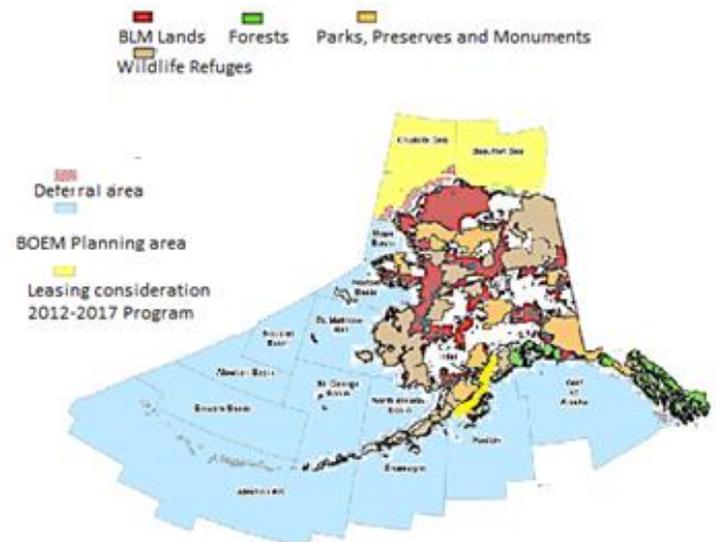


Figure 1. Alaska Public Lands Map and offshore planning areas. Source: U.S. National Park Service

(<http://www.alaskacenters.gov/upload/Land-Ownership-Alaska-7-11.pdf>) and Bureau of Ocean Energy Management (<http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Five-Year-Program/2012-2017/Program-Area-Maps/index.aspx>)

A number of other state departments are also involved in enforcing safety codes but this overview will focus on the above-mentioned agencies, as they have the most authority to mitigate resource impacts (1).

Oil and gas development on federally owned lands and waters are governed by laws implemented by the U.S. Fish and Wildlife Service (FWS), the NOAA-Fisheries, Bureau of Safety and Environmental Enforcement (BSEE), the Bureau of Ocean Energy Management (BOEM), the Environmental Protection Agency (EPA), Bureau of Land Management (BLM), the Corps of Engineers (COE) and the US Coast Guard (USCG) (1).

Local agencies have the authority to adopt local ordinances via Title 29 of Alaska statutes, restricting development within borough and village jurisdiction. Together the above agencies regulate resource management and environmental impacts to land, water, air, and noise/activity (1). Environmental regulations are needed because of negative externalities which no force other than governments can resolve.

What follows is a brief overview of main regulations at the different level of governance either directly relating to, or indirectly influencing resource development, land rights and environmental protection.

Land rights regulations

Land rights policies are only indirectly tied to subsistence issues in Alaska but are frequently linked in public discussions. Tribal status and the question of hunting and fishing rights differ quite a bit from that of Lower 48 tribes. The Alaska Native Claims Settlement Act extinguished hunting and fishing rights, leaving the regulation of wildlife to state and federal agencies even on ANCSA lands. Through the Alaska National Interest Lands Conservation Act's (ANILCA) so-called "rural preference" rule, priority is given in the management and permitting of subsistence activities to rural residents on federal lands, but on state lands participation in subsistence activities is open to all state residents regardless of place of residence or tribal (non)status.

Land rights on the other hand weight heavily in the issue of resource development especially with regards to subsurface rights. Subsurface rights in Alaska belong to the state and federal governments and ANCSA regional corporations.

Natural resource management

The different mandates of federal and state agencies seek to ensure simultaneously viable, sustainable resource development and optimal environmental protection. For example, the ADEC's mandate is to "conserve, improve and protect Alaska's natural resources and environment to enhance the health, safety, economic and social well-being of Alaskans." (3) The ADNR's stated mission is to "Develop, conserve, and maximize the use of Alaska's natural resources consistent with the public interest."(4) These multiple objectives and multi-level agency involvement results in an integrated management system of Alaska's natural resources. Two main coordinating systems are used in the regulation of large projects: environmental analyses and the Joint Pipeline Office (JPO) right-of-way approvals (1). Terrestrial and marine resource development may trigger very different review processes, and varying degree of support from stakeholders. As for who may have the highest stakes in the regulation of natural resources: subsurface rights owners, those living near proposed development (often represented by tribal entities and NGOs), and interested industry representatives are the ones most immediately impacted by resource development policies, while environmental NGOs and the greater State of Alaska feel the ripple effects of outcomes.

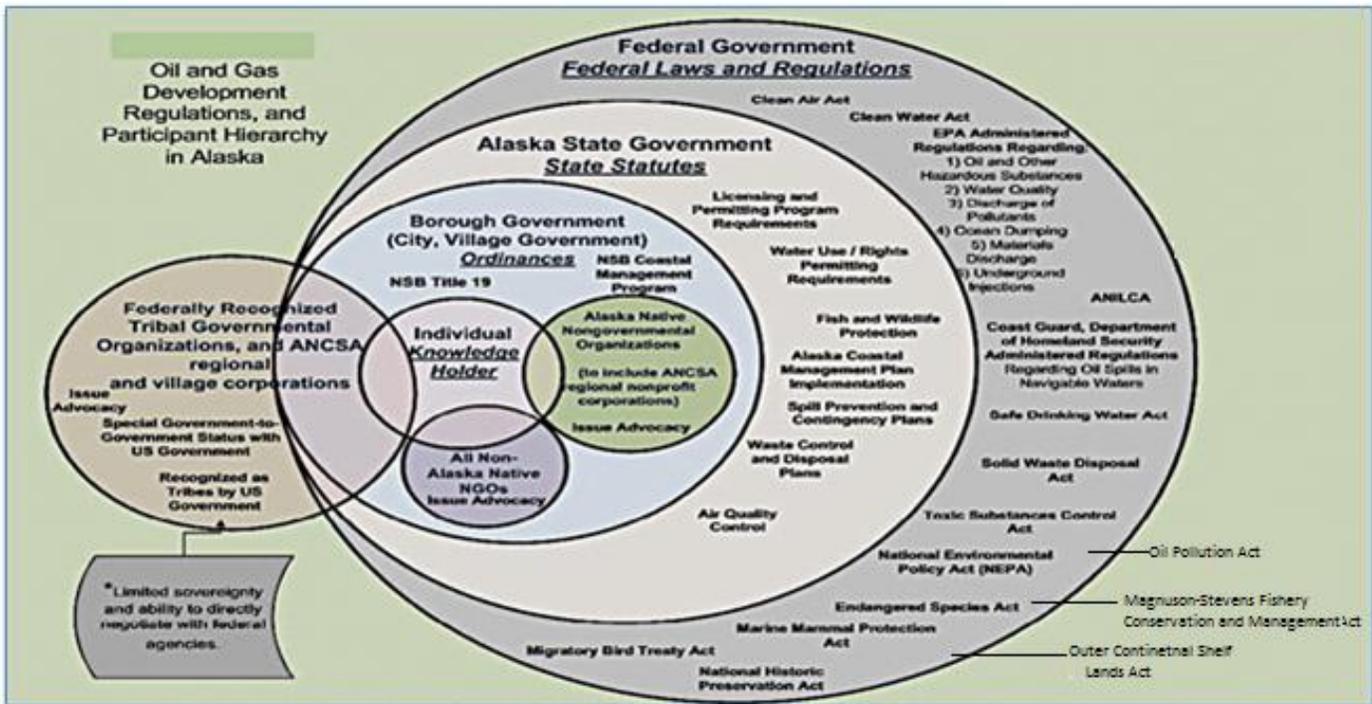


Figure 2: Oil and Gas Development Regulations and Participant Hierarchy in Alaska. Graphics by Berill Blair (2010). Information based on ADNR publications (<http://dog.dnr.alaska.gov/>) and Case, D. and Voluck, D. *Alaska Natives and American Laws* (2002).

Environmental laws and regulation

The National Environmental Policy Act (NEPA) is the federal framework providing for an environmental review process. Other important federal legislations include the National Emissions Standards for Hazardous Air Pollutants, the Clean Air Act, the Safe Drinking Water Act, and many others (for more information see <http://www2.epa.gov/regulatory-information-topic>). Current and proposed regulations exist intended to mitigate impacts from climate change; these programs mainly approach the vehicle manufacturing industry and greenhouse emissions via emissions standards and various incentivized CO₂ credit programs aimed to improve the energy efficiency of newly manufactured vehicles (5).

Disaster relief laws

Disaster and emergency preparedness and response are coordinated within and across the various political subdivisions. (a) Federal disaster relief legislation was first enacted via the Disaster Relief Act of 1974 that established the process of presidential disaster declarations, and continued with the establishment of the Federal Emergency Management Agency (FEMA) in 1979. The 1988 Stafford Act amended the 1974 act, further systematizing the process of orderly assistance, creation of disaster preparedness programs and warning systems (6). The Disaster Mitigation Act of 2000 sets forth the legal basis and conditions of disaster mitigation grant assistance available to State, local and tribal governments (6). (b) The State of Alaska Division of Homeland Security and Emergency Management oversees the mitigation against major disasters and emergencies declared by the Governor and/or the President (7). At the borough level, emergency preparedness and disaster response planning inform emergency operations, and take into account local capacities and resource needs (8). When local capacities are overwhelmed, disaster relief needs are communicated and elevated to state or federal authorities as needed.

For Alaska Native Villages affected by erosion and flooding determining the appropriate level of service is a policy decision that rests with Congress. The U.S. Government Accountability Office has written several reports and made recommendations. Some of these recommendations were implemented (9). Progress has been limited relocating threatened Alaska Native villages because of the cost and many do not qualify for federal funds because the federal law does not recognize unincorporated Alaska Native villages in unorganized borough. Of the villages exploring relocation options, Newtok has made the most progress (15) and (16).

Trends

Policy trends in Alaska seem to follow the pattern of policy change predicted by the punctual equilibrium theory: a period of equilibrium of incremental policy change is punctuated by a critical period of major policy reform (10). For example, ANCSA and the Trans-Alaska Pipeline Authorization Act are legacies of the pipeline “punctuation” resulting in a long period of policy equilibrium around oil production (10). Federal, state, and borough future priorities, with a mixed range of emphasis, each focus on issues of human health, climate change impacts mitigation, economic development and food security (11,12,13). As the Arctic is receiving increased international attention, and as the U.S. is about to assume the Chairmanship of the Arctic Council beginning in 2015, these priorities will remain at the center of policy discussions.

Uncertainties and Driver interactions

As we look to the future to consider important local, regional and global drivers of regulatory change, the following relationships may influence the political, social and economic landscape of Alaska:

- Global politics: International policies and treaties such as United Nations Convention on the Law of the Sea (UNCLOS) impact on resource use and commerce, while intergovernmental entities such as the Arctic Council impact the tone of global geopolitical dialogue. Indigenous groups organizing across nation states and various NGOs and informal networks may also increase in importance (14).
- Global demand for oil and gas: Rising and falling oil prices influence Alaska’s economy to a great extent while global availability of shale and alternative oil and gas will impact on the attractiveness of Arctic oil and gas development. Oil and gas production drives Alaska’s economy, but it also translates to a strategic commodity and political influence on the national and world markets.
- Changing climate: Opening Arctic waters will change the landscape of marine transportation, potentially boosting some coastal infrastructure and economies. Increased coastal erosion, flooding and diminishing sea ice will however negatively impact local and state economies, and subsistence activities. The future of NSB and state regulatory authority for coastal activities is uncertain because the state no longer participates in the coastal zone consistency review process.



Figure 3. Land ownership in Alaska. Source: Alaska Department of Natural Resources

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