



PRELIMINARY REPORT

TO THE ALASKA STATE LEGISLATURE

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AAPC PRELIMINARY REPORT: GOVERNANCE AND INDIGENOUS CHAPTER

5 State of Alaska's Arctic

The “State of Alaska’s Arctic” chapter is designed to be a stand-alone document that reviews and evaluates gaps in knowledge, potential opportunities, challenges facing the region, and strategic assets at the community, regional and state level. The Commission’s Policy Teams were co-chaired by Legislators, who guided the work of their teams to investigate the topic areas addressed in the remainder of the document. *Note: these areas will be further developed in 2014 with significant additions and revisions based on subject matter expertise, agency input and public comment anticipated and planned for.*

5.1 Governance and Indigenous Perspectives

Introduction

Good governance is the foundation and fundamental goal of an Alaskan Arctic Policy. Well-established principles highlight some of the most important aspects of good governance in the Arctic³, including a commitment to: economically and environmentally vibrant communities through balanced resource development and respect for the environment in which Alaskans live; sustainable communities that respect Alaskans’ cultures, practices and traditional values; and leadership, collaboration, and transparent and inclusive decision making that achieves outcomes that benefit Arctic peoples and all Alaskans.

These principles are reflected in Alaska’s Constitution, specifically Section 1.2 that states, “All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.” In addition, Section 8.1 lays out the policy of the state of Alaska to “encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest,” and Section 8.2 vests the Legislature with the authority to “provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people,” subject to the sustained yield requirements of Section 8.4. The Constitution also provides for varying levels of government and jurisdiction, and provides for maximum local self-government in Section 10.1.

Background

Governance in the Arctic spans international, national, state and local levels, but it is important to understand and recognize the degree to which tribal governance and indigenous peoples exert influence on decision making in the Alaskan Arctic. The U.S. is one of many countries with indigenous populations that have inhabited the Arctic for thousands of years and includes the

³ Arctic Research and Policy Act of 1984, Section 112

traditional cultural boundaries of the Iñupiat, Yupik, Siberian Yupik, Cup'ik, Aleut, Athabascan and Gwich'in peoples. Nearly 53,000 people live in the Alaskan Arctic, with more than 37,000 people (70%) identifying as Alaska Native or 'Alaska Native and another race.'⁴ Alaska Native cultures have distinct language, familial, historical, cultural and traditional ties to the lands and resources in the Alaskan Arctic and across international borders.

Alaska Natives are engaged in multiple arenas of governance that touch every aspect of the lives of Arctic peoples, including the Arctic Council, the International Whaling Commission, state and federal co-management of subsistence resources, borough and city governments, and tribal governments.⁵

In addition, the federal government has a unique relationship with Alaska Native tribes. Federal executive departments and agencies are required to engage in meaningful consultation and collaboration with tribal officials in development of federal policies that have tribal implications, and are charged with strengthening the government-to-government relationship between the United States and federally recognized tribes. Alaska Native Corporations⁶ are also consulted, in part due to their role in land management, and this provides an avenue for Alaska Natives to be directly involved in responsible development of natural resources and to develop businesses that support these activities, on behalf of their people. This is accomplished in a similar way to other state and federal public outreach during review and adjudications of planning or development processes.

In addition to tribal governance, Alaska has unique local or regional government, all of which have important roles in governance. Unlike most other states that typically have local government structures consisting of many overlapping local government service providers, Alaska's system of local government is simple, efficient and effective. A city government is a municipal corporation and political subdivision of the state of Alaska. It generally encompasses a single community. Presently, there are 145 city governments in Alaska. Like a city, an organized borough in Alaska is a municipal corporation and political subdivision of the state of Alaska. However, organized boroughs are intermediate-sized governments – much larger than cities. Presently, there are 16 organized boroughs in Alaska. All local governments in Alaska – general law cities, home rule cities, general law boroughs, and home rule boroughs – enjoy broad powers. All local governments have certain fundamental duties such as conducting elections and holding regular meetings of the governing bodies. Beyond this, the duties of municipalities in Alaska vary considerably.⁷

The role of local government needs to be included in any discussion of governance because it will be Alaska's communities – particularly coastal communities – that will bear the most risk

⁴ 2010 Census

⁵ See appendix – Tribal Governance

⁶ See appendix – Alaska Native Claims Settlement Act

⁷ http://commerce.alaska.gov/dnn/Portals/4/pub/Local_Gov_AK.pdf

and potential opportunity, depending on geography and distance from economic activity. Specifically, local government will be faced with many questions related to increased activity and potential development in the Arctic:

- Does the local government have or want a specific tax code to address the activity such as policies for taxing oil field or mining equipment?
- Is increased activity going to adversely impact current infrastructure or utilities, including docks, electric, water and sewer and solid waste? Who pays for necessary improvements?
- Does the local government have codes to deal with the activity? Are there zoning issues?
- Does the community realize the impacts to social services that might come with increased activity?
- What are the environmental impacts of the activity?
- How will communities balance the positive benefits of economic development?
- How will increased revenues maintain community infrastructure and support schools and other educational resources?

Clearly, local government has a distinct and important role to play in the Arctic because potential and real activity will impact communities in ways that haven't been fully realized.

Governance at the state level is defined by the Alaska Statehood Act of 1958, which granted the state approximately 105 million acres of land intended to help Alaska develop an economic base. Alaska was also granted ownership of state submerged lands beneath navigable waterways and submerged lands up to three miles offshore, and was given the primary authority to manage fish and wildlife on all lands and waters. The state of Alaska is the largest landholder after the federal government and has responsibilities as such.

The state of Alaska has a constitutional duty to responsibly develop and utilize Alaska's abundant natural resources for the benefit of its citizens, and to safeguard world-class fish, wildlife and the natural environment. These mandates are primarily achieved through state agencies entrusted with natural resource management responsibilities. The state of Alaska also has responsibilities to provide for the health, safety and education of its people.

The state of Alaska provides input to federal decision making and activities through state-federal agency coordination efforts, data and information sharing, submission of formal comments, and litigation. The state has a formal role in several coordinating entities active in the Arctic region, including:

- North Pacific Fishery Management Council
- Alaska Ocean Observing System
- North Slope Science Initiative
- Arctic Landscape Conservation Cooperative and Western Alaska Landscape Conservation Cooperative

- 362 • Alaska Climate Change Executive Roundtable
- 363 • North Pacific Research Board
- 364 • Arctic Policy Group

365 In part to keep interested Alaskans informed about the Arctic Council, the Office of the
366 Governor hosts a bi-monthly Alaska Ad Hoc Arctic Council Working Group meeting and
367 conference call. The call brings a diverse group of Alaskans together with the U.S. Department
368 of State Arctic Affairs Officer, federal agency heads of delegation to Arctic Council working
369 groups, and the Alaska Congressional delegation staff.

370 In addition to the activities of the executive branch and state agencies, the Alaska State
371 Legislature acts in many ways to support the residents of the Alaskan Arctic region, perhaps
372 most notably through funding infrastructure projects but also through public bodies that focus on
373 the region. The Alaska State Legislature created the Alaska Northern Waters Task Force in 2010
374 and their final report has been available since January 2012. One of the report's
375 recommendations was the creation of an Alaska Arctic Policy Commission (AAPC),
376 subsequently formed by HCR 23 during the 2012 legislative session. In addition, the Legislature
377 has passed several Arctic-relevant resolutions in recent years, including: HJR 15 "Supporting the
378 Arctic Caucus" and HJR 19 "Urging U.S. Senate to ratify the Law of the Sea Treaty" in 2011;
379 and SJR 17 "Supporting the Arctic Council Task Force" and HJR 34 "Asking Congress to fund
380 icebreakers and a Coast Guard Arctic base" in 2012.

381 The next level of governance to consider is the role of the national government. U.S. Arctic
382 Policy is codified in NSPD-66, which includes the following goals:

- 383 • Meet national security and homeland security needs in the Arctic
- 384 • Protect the Arctic environment and its biological resources
- 385 • Ensure natural resource management and economic development are environmentally
386 sustainable
- 387 • Strengthen institutions for cooperation among the eight Arctic nations
- 388 • Engage the Arctic's indigenous communities in decisions that affect them
- 389 • Enhance scientific monitoring and research into local, regional and global environmental
390 issues

391 On May 10, 2013, the White House released the National Strategy for the Arctic Region
392 (NSAR), emphasizing three lines of effort: Advancing U.S. Security Interests, Pursuing
393 Responsible Arctic Region Stewardship, and Strengthening International Cooperation. The
394 NSAR is intended to position the United States to respond effectively to challenges and
395 emerging opportunities arising from significant increases in Arctic activity due to the
396 diminishment of sea ice and the emergence of a new Arctic environment. It defines U.S. national
397 security interests in the Arctic region and identifies prioritized lines of effort, building upon
398 existing initiatives by federal, state, local and tribal authorities, the private sector, and

international partners, and aims to focus efforts where opportunities exist and action is needed. It is designed to meet the reality of a changing Arctic environment, while simultaneously pursuing the global objective of combating the climatic changes that are driving these environmental conditions. The strategy directs the U.S. to consult and coordinate with the state of Alaska and Alaska Natives (recognizing tribal governments' unique legal relationship with the United States).

The NSAR will be implemented by more than 20 federal agencies that have responsibilities including resource management; scientific research; homeland security; emergency preparedness and response; maritime and aeronautical safety; and supporting communities. Many stakeholders in the Alaskan Arctic work closely with these agencies to achieve a wide range of management goals; these partners include state agencies, tribal governments and Alaska Native organizations, municipal governments, industrial and commercial interests, and conservation organizations. It is worth highlighting that the NSAR recognizes the state of Alaska as a key partner in its implementation.

Given the extent of federal agency involvement in the Arctic, coordination occurs through a number of inter-agency working groups – the Arctic Policy Group, National Ocean Council, Interagency Arctic Research Policy Committee, Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska, and the Committee on Marine Transportation – that meet periodically to review, develop and implement U.S. programs and policies in the Arctic.

Coordination between tribal, local/regional, state and national levels of governance is important in the face of increasing international attention paid to the Arctic. A critical starting point from which to consider international governance is the Arctic Council. The Arctic Council is the premier intergovernmental forum for Arctic issues and is made up of eight member nations, six Permanent Participants and observers. The state of Alaska supported the Arctic Council as it formed international agreements for search and rescue and marine oil pollution preparedness and response. The state has urged the U.S. Department of State to look to the Arctic Council to coordinate science and to inform best practices, yet asked that federal agencies look to Alaska when developing new standards and requirements for domestic land and waters.

Alaska is represented by the U.S. Secretary of State, the Senior Arctic Official, and federal Heads of Delegation. Four of the Permanent Participants represent Alaska Natives and send delegations from Alaska to engage in all levels of Arctic Council activities, with non-voting seats at the same table as Arctic nations. Canada assumed the Chairmanship of the Arctic Council in May 2013, and the United States is slated to Chair starting in 2015. The theme of Canada's Chairmanship is "development for the people of the North," with a focus on responsible Arctic resource development, safe Arctic shipping and sustainable circumpolar communities. In 2011, the Arctic Search and Rescue Agreement was negotiated and signed under the auspices of the

436 Arctic Council and in 2013 the Council negotiated the signing of an Agreement on Cooperation
437 on Marine Oil Pollution Preparedness and Response in the Arctic.

438 Secretary Hillary Clinton, U.S. Department of State, and Secretary Ken Salazar, U.S.
439 Department of Interior, attended the Nuuk ministerial meeting in 2011, becoming the first
440 secretarial level officials to attend an Arctic Council (AC) meeting. Secretary John Kerry, U.S.
441 Department of State, attended the 2013 ministerial meeting in Kiruna, Sweden. Increased interest
442 in the AC has been driven both by changes in the region and by the international acceptance of
443 the Council's role as the lead forum for international discussion of Arctic issues. Starting at the
444 Nuuk meeting, by addressing Arctic search and rescue as well as initiating an oil spill response
445 instrument, the ministers made a number of decisions that reflect and advance the growth of the
446 Arctic Council as an institution.

447 By taking on increasingly important topics and negotiating binding commitments, the Arctic
448 Council is evolving from a forum for discussion and technical assessment into an agenda-setting
449 and policy-shaping organization. However, it should be noted that the majority of Arctic Council
450 work does not result in binding agreements and that the Council is limited in the nature of
451 binding agreements it can produce, as agreements must be approved through the domestic
452 process of each member nation. For example, the U.S. cannot commit to major new requirements
453 without Senate treaty approval (a process it has avoided for Arctic Council agreements). Of
454 concern are any new restrictions imposed on Alaskans through an international body, especially
455 when those restrictions may not have been supported by an open and transparent domestic
456 process involving Alaskan stakeholders and domestic authorities.

457 In addition to the Arctic Council, the Arctic Parliamentarians of the Arctic Region serve as a
458 forum for international Arctic cooperation. The Arctic Parliamentarians is a body whose
459 delegates are appointed by the national parliaments of the Arctic nations. Every two years the
460 Conference of Parliamentarians is held in an Arctic location. Senator Lisa Murkowski is the U.S.
461 representative to the Standing Committee of Parliamentarians of the Arctic Region, which is
462 responsible for the work between conferences. In addition to supporting the establishment of the
463 Arctic Council and promoting Arctic Council work, the Standing Committee has Arctic Council
464 observer status.

465 There are many other forums for international engagement in governance, including the
466 International Maritime Organization and the International Whaling Commission. Each deserves
467 Alaska's participation and full attention as the Arctic receives increased levels of attention and
468 activity; especially important for Alaskans to fully understand are the ramifications of ratification
469 of the United Nations Convention on the Law of the Sea (UNCLOS)⁸.

⁸ The Alaska State Legislature is on record as supporting ratification and the Commission will consider more fully in 2014 the issues surrounding the Law of the Sea Treaty such as paying taxes without representation and potential limitations to scientific research.

164 countries have joined the UNCLOS, an international agreement establishing the rights and responsibilities of nations in their use of the oceans, and defining guidelines for businesses, environmental protection, and the management of natural resources within and beneath the oceans. The United States remains the only large, maritime non-signatory and the only Arctic nation yet to ratify. The U.S. Senate is responsible for approving international treaties and has yet to vote on UNCLOS.

The other four Arctic Ocean coastal nations (Canada, Norway, Russia, and Denmark/Greenland) have signed the treaty and are thereby eligible to submit their extended continental shelf claims to the United Nations. The state of Alaska has a long history of support for ratification, and recently the Alaska Northern Waters Task Force's (ANWTF) priority governance recommendation was that the United States Senate ratify UNCLOS. The ANWTF report included this salient quote from President George W. Bush: "[Ratification] will secure U.S. sovereign rights over extensive marine areas, including the valuable natural resources they contain. Accession will promote U.S. interests in the environmental health of the oceans. And it will give the United States a seat at the table when the rights that are vital to our interests are debated and interpreted."

Discussion and Considerations

As the Arctic Council develops as an institution addressing significant policy concerns, it provides an increasingly useful forum through which the state of Alaska can influence Arctic policy. There are a number of ways to do this. Delegates from the state of Alaska can be invited to participate in U.S. delegations at all levels of meetings, task forces and working groups. For example, the state of Alaska provided a delegate to the U.S. team that negotiated the Oil Pollution Preparedness and Response Agreement. The state does not have the authority to direct PP activity but, some of the State's constituents directly influence Arctic Council policy through the four Permanent Participants representing Alaska Natives. The state of Alaska can also continue to provide expert advice to and review of the range of technical and policy documents created by various Arctic Council working groups.

Participation in the Arctic Council derives benefits to the state. The Arctic Council remains an important forum for exchanging technical information, and the state of Alaska can also benefit from the Arctic Council by continuing to contribute to and learn from this information exchange. For example, the Sustaining Arctic Observing Networks (SAON) is a project that integrates data from each nation into an Arctic-wide network. Alaska can also benefit from practical agreements that will help to protect the people of the state - the Search and Rescue agreement commits nations to minimum levels of response infrastructure to help save lives.

The state clearly benefits from the heightened visibility of the Arctic through the work of the Arctic Council. People across the world have become more aware of issues such as economic challenges, food security, health and social welfare, and infrastructure needs in the region, and

507 this awareness can help the state of Alaska educate others, including the federal government,
508 about our needs and goals.

509 Finally, the Arctic Council can serve as a forum for creating new requirements and rules that can
510 help to protect the state. For example, the Arctic Council can suggest rules (or recommend that
511 another institution address them, such as the International Maritime Organization) that address
512 the safety of activities that take place beyond state or federal jurisdiction (e.g., shipping).
513 Because there are a number of ways in which the state of Alaska can benefit from the Arctic
514 Council and pursue its Arctic Policy, the state should continue tracking projects of particular
515 importance to the state and contributing as a member of the U.S. delegations to the Arctic
516 Council via Senior Arctic Officials meetings, Task Forces and working groups. The state and its
517 agencies have been active in the region since statehood, accumulating a wealth of experience and
518 expertise. Every state agency is engaged in work related to the Arctic. Some noteworthy
519 activities with particular relevance to the Arctic region, and which might impact Arctic decision
520 making, include:

- 521 • Conducting exercises and maintaining equipment specifically designed for Arctic search
522 and rescue (DMVA)
- 523 • Engaging in oil spill prevention, preparedness and response (DEC)
- 524 • Monitoring of trans-boundary contaminants (DEC)
- 525 • Addressing rural water and sanitation needs (DEC)
- 526 • Monitoring, conducting research, and managing fish and wildlife populations across the
527 Arctic region (DF&G)
- 528 • Documenting subsistence needs and providing subsistence opportunity (DF&G)
- 529 • Working with proposed development projects to mitigate impacts to fish and wildlife
530 resources and their habitats (DF&G)
- 531 • Leading efforts to improve statewide digital mapping (DNR)
- 532 • Developing expertise in permitting and regulation of resource development activities in
533 Arctic environments (DNR)
- 534 • Contributing to deep draft Arctic port and improved airport infrastructure planning
535 throughout the region (DOT&PF)
- 536 • Coordinating and conducting project permitting (DOT&PF)
- 537 • Building capacity and expertise to conduct comprehensive health impact assessments to
538 inform resource development activities (DHSS)
- 539 • Collaborating with the University of Alaska Fairbanks to study shipping and related
540 considerations for commerce and international trade (DCCED)

541 Consistent with the core state government functions mentioned above, current statewide
542 priorities that are as essential to the future of Alaska's Arctic as to any other region of the state
543 include: resources and energy; education; public safety; transportation and infrastructure; and
544 military support.

Indigenous perspectives are extremely relevant and important to consider when evaluating future decision making. Given tribal governance capacity and sovereignty as well as the economic capability brought to bear by Alaska Native Corporations, it is important to recognize the interest and concerns of Arctic indigenous peoples in Alaska. The cultures of Arctic Alaska Natives are diverse, however there are common interests and concerns about a developing Arctic. The Arctic's Alaska Native communities have been developing solutions to tackle challenges affecting the residents of the Arctic that include lack of infrastructure (e.g., transportation, communications), high energy costs, public safety, high cost of living, and issues affecting social well-being. The following areas⁹ express a good representation of priorities for consideration, though are by no means comprehensive or final:

- Food security – access to and utilizations of subsistence resources for customary and traditional use – is paramount to the health and well-being and survival of Alaska Native peoples and cultures
- Meaningful and direct inclusion in decision making
- Responsible development of natural resources and infrastructure that benefit the U.S. as a whole and benefits the peoples of the Arctic
- Use of local and traditional knowledge in research as well as identification of research priorities of Alaska Native communities
- Incorporating traditional knowledge when assembling information upon which to base decision making and to encourage the use of traditional knowledge at all levels of decision making
- Development of a ready workforce to participate in economic activities in the Arctic.
- Increased opportunities to develop local economies
- Ratifying the Law of the Sea Treaty¹⁰
- Continuation of traditional and cultural practices including subsistence hunting, fishing, gathering and practice of language and culture
- Reducing bureaucratic processes that require engagement at many levels and which can burden stakeholders and communities

In an increasingly busy Arctic, it is critical that Alaska strengthen and improve the structures, processes, and practices that determine how relations among people are regulated, how decisions are made, and the role that citizens have in this process. This includes utilizing transparent public processes that engage stakeholders, lead to informed decision making, and hold decision makers accountable. It must include coordination among jurisdictions, cooperation at all levels of government – including international, national, state, local and tribal – with clearly defined functions and roles, and balancing multiple values to protect, promote, and enhance the well-being of the Alaskan Arctic including the people, flora, fauna, land, water and other resources.

⁹ These touch on all facets of Arctic policy and development, as reflected in the Department of Interior report "Managing for the Future in a Rapidly Changing Arctic," the Inuit Circumpolar Council "Inuit Arctic Policy," and other documents prepared by local entities.

¹⁰ Inuit Arctic Policy

581 *Conclusion: Policy Recommendations*

582 Strategic Recommendations

- 583 • Continue to pursue, and actively expand, all avenues of participation in the Arctic Council,
584 including involvement in Working Groups and by building partnerships with Permanent
585 Participants.
- 586 • Develop, where lacking, and build upon existing programs to improve transparency and
587 community/local inclusion in decision making through state coordination of multi-agency
588 permits, state and federal coordination of permits and plans, and meaningful involvement
589 of regional stakeholders in development activities or plans that affect them.

590 Other Recommendations

- 591 1. The state of Alaska has had limited participation in Arctic Council activities as part of
592 U.S. delegations.
- 593 A. The state of Alaska should continue to pursue, and actively expand, all avenues of
594 participation in the Arctic Council, including involvement in Working Groups and by
595 building partnerships with Permanent Participants.
- 596 2. There is a gap in effective communication and formal consultation between Arctic
597 communities and other stakeholders and state and federal agencies.
- 598 A. The state of Alaska should develop a program that achieves transparency and
599 community/local inclusion in decision making through state coordination of multi-
600 agency permits, state and federal coordination of permits and plans, and meaningful
601 involvement of regional stakeholders in development activities or plans that affect
602 them.
- 603 3. There is lack of information or centralized access to Arctic-specific information to guide
604 governance decisions at all levels.
- 605 A. The state of Alaska should facilitate the establishment of a clearinghouse of Arctic
606 information that is useful for Alaska residents and communities.
- 607 4. Alaska's offshore and maritime interests are hampered by the U.S. inability to ratify the
608 Law of the Sea Treaty.
- 609 A. The state of Alaska urges the United States Senate to ratify the United Nations
610 Convention on the Law of the Sea.
- 611 5. Alaska lacks clear and consistent cross-border information sharing and scenarios
612 planning.

- 613 A. The state of Alaska should foster and strengthen international partnerships with other
614 Arctic Nations, establishing bilateral partnerships with, in particular, Canada and
615 Russia, to address emerging challenges in the Arctic. For example, forming a
616 Beaufort Regional Business Council to work with Canada and/or a Chukchi Regional
617 Business Council to work with Russia on shipping traffic and other issues.
618