

# Alaska Department of Natural Resources



FEDERAL REGULATORY ISSUES  
AFFECTING ECONOMIC  
DEVELOPMENT IN ALASKA

2/17/11



# SOA's Duty: Maximize Resource Development Consistent with the Public Interest

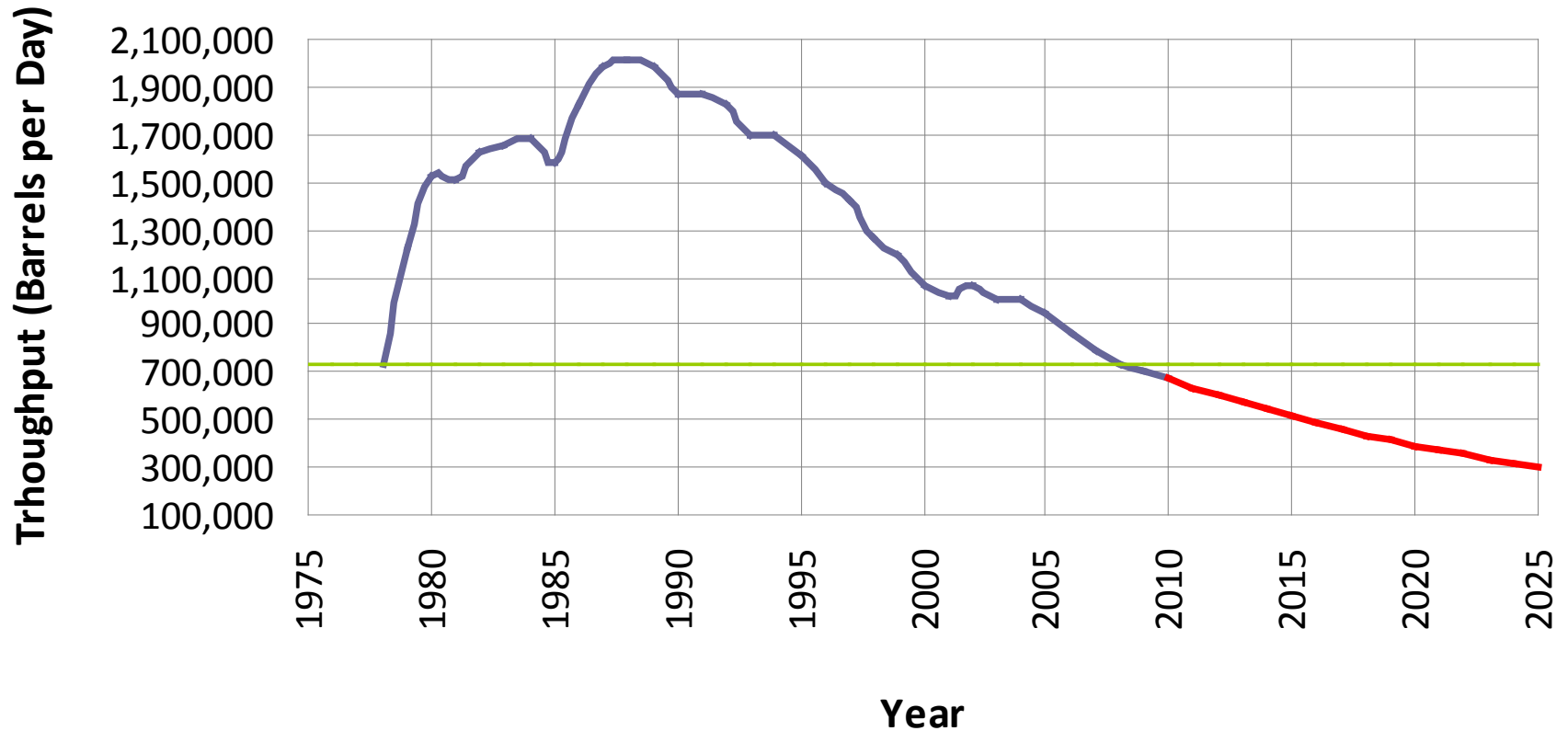


- Article 8, Section 1 of the Alaska Constitution provides that “it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.”
- Article 8, Section 2 provides that the “legislature shall 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.”
- AS 38.05.180(a) provides that “the people of Alaska have an interest in the development of the state's oil and gas resources to maximize the economic and physical recovery of the resources; maximize competition among parties seeking to explore and develop the resources; maximize use of Alaska's human resources in the development of the resources”

# Top Priority: Arresting TAPS Decline



## January Average Throughput



# Importance of Partnership



- Overcoming challenges hinges on partnership
- Federal Government moving from protecting environment to proactively shutting-down resource development
- Recent federal decisions have delayed or vetoed critical projects

# State Lands: Surrounded By Feds



# Specific Development Plans Delayed or Vetoed



- CD-5
- OCS Exploratory Drilling
- OCS Moratorium
- Point Thomson EIS Delays

# Broader Policies Jeopardizing Future Development



- **NPR-A Wildlands**
- **ANWR National Monument**
- **ANWR Wilderness Designation**
- **ESA – Polar Bear Critical Habitat Designation**

# Solutions



- Re-double efforts with Obama Administration
- Act as a cooperating agency
- Educate public about shut-downs and delays
- Encourage congressional action
- Last resort: Litigation



# Alaska Department of Law



## Federal Regulatory Issues Affecting Economic Development in Alaska 2/17/11



# Law's Mission



- ✦ Continue to Advance Core Services
  - Fostering Responsible Development is a Core Service
- ✦ State-Federal Relations
  - Areas where state and federal cooperation is working well
  - Areas where a core state interest requires federal challenge



# General Examples where State-Federal Cooperation is Working Well



- Department of Environmental Conservation's (DEC) air permitting program
- DEC assumption of National Pollutant Discharge Elimination System (NPDES) permit program under the federal Clean Water Act
- Cleanups at federal facilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and other federal and state laws

# Specific Examples of State Cooperation with Federal Programs



- ✦ Defended Army Corps of Engineers Clean Water Act permit authorizing disposal of mine tailings, allowing Kensington Mine to open
- ✦ Worked with EPA to incorporate revised DEC regulations into Red Dog Mine Clean Water Act permit
- ✦ Intervened on side of U.S. in *Point Hope v. Salazar* and *Center for Biological Diversity v. U.S.*
  - Outer Continental Shelf cases
    - challenging the OCS 5-year plan
    - challenging to OCS Lease Sale 193 (Chukchi Sea)
    - Challenging Shell's Beaufort and Chukchi Sea OCS exploration plans
- ✦ Supported U.S. Forest Service authorization of Logjam timber sale

# Areas Where a Core State Interest Requires Challenge Because of Federal Overreach



- **Endangered Species Act**
  - U.S. Fish and Wildlife Service
    - ✦ Species listings
    - ✦ Critical habitat designations
- **Clean Water Act**
  - Environmental Protection Agency
    - ✦ Wetlands fill permit 404 (b) and (c) elevated scrutiny
      - CD-5
      - Tanana River Bridge
- **Wilderness and “Wild Lands” designations**
  - Bureau of Land Management
    - ✦ Designations could tighten permit requirements
- **ANWR Comprehensive Conservation Plan “wilderness” study**
  - U.S. Fish and Wildlife Service
- **OCS drilling “moratorium”**
  - Department of Interior
- **Clean Air Act**
  - Environmental Protection Agency
    - ✦ Offshore oil and gas exploration
      - Shell Beaufort Sea drilling plans
      - State air permitting primacy
- **Effect of Presidential Executive Order adopting a National Oceans Policy**

# Endangered Species Act



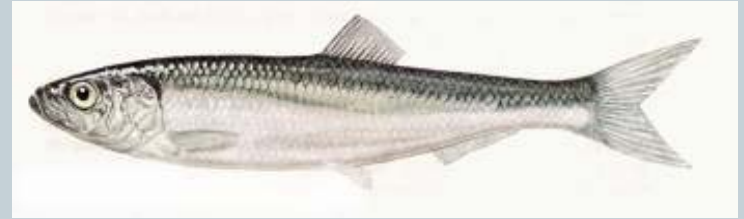
- Comprehensive Strategy
  - ✦ Challenging unwarranted listings
  - ✦ Challenging unwarranted critical habitat designations
- Listings and designations can affect
  - Shipping
  - transportation
  - oil and gas development
  - mining
  - commercial, sport and subsistence fishing and hunting

# Endangered Species Act



## ○ Listing petitions

- Polar bears
- Beluga whales in Cook Inlet
- Steller sea lions
- Humpback whales
- Pacific walrus
- Seals (ringed and bearded)
- SE Alaska Pacific herring



## ○ Critical Habitat Designations

- Polar bear
- Cook Inlet Beluga whale

# Endangered Species Act



- Pending Lawsuits and appeals

- Polar bears
- Beluga whales
- Steller sea lions
- Humpback whales
- Ribbon seals





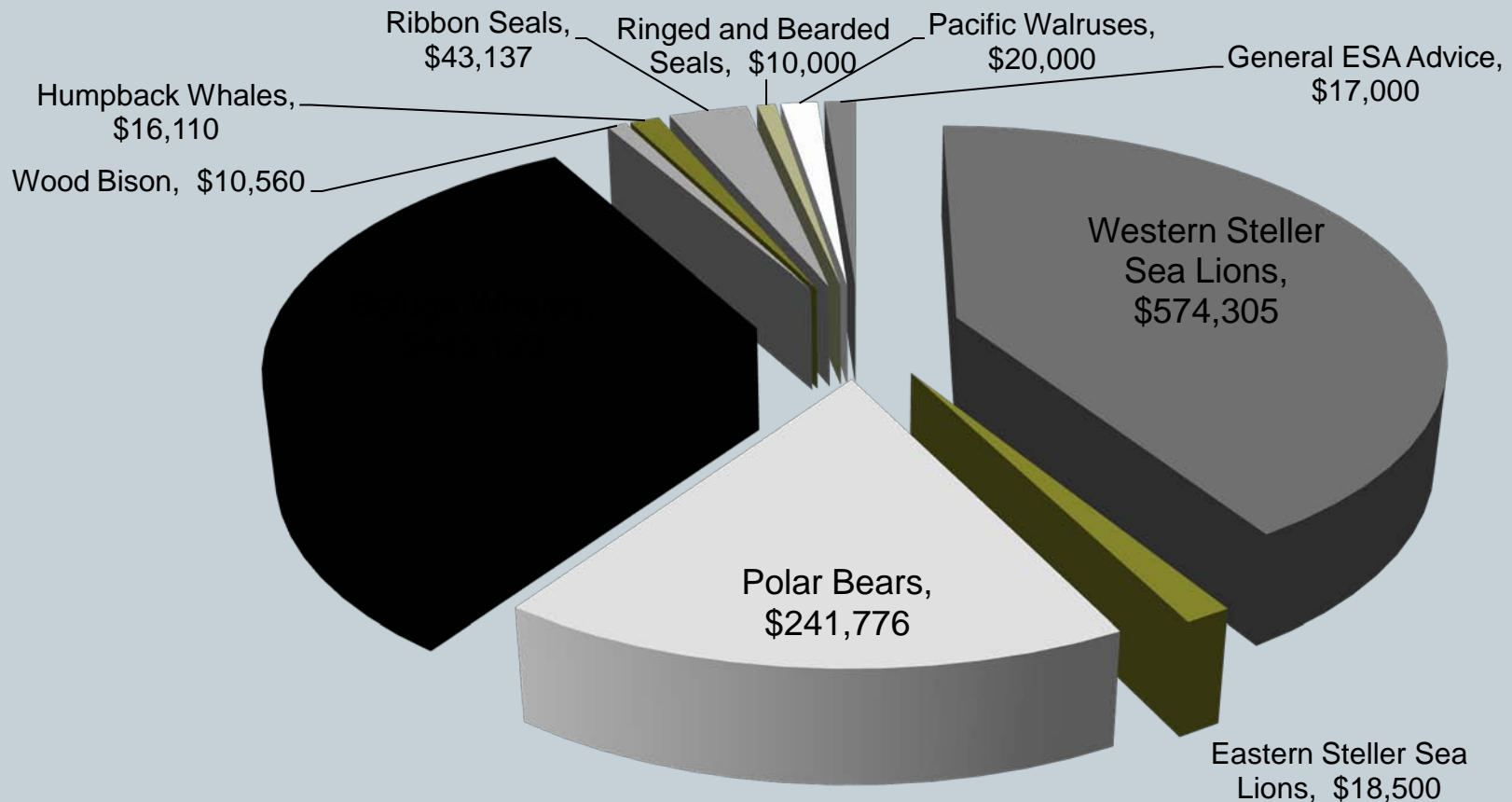
# Endangered Species Act



- Threatened lawsuits
  - State's notice of intent to sue to challenge 187,000 square miles of critical habitat designation for polar bear



# ESA FY11 Budget Expenditures (\$1,396,875)



# Assisting DNR and DEC in requesting prompt federal review of NPR-A challenges



- Challenges to petroleum exploration in the National Petroleum Reserve-Alaska (NPR-A)
  - Clean Water Act wetlands fill permit for CD-5 project



# Advising DNR on response to BLM Wilderness and “Wild Lands” designations



- Interior Secretary Salazar ordered the evaluation of **72 million+ acres of federal land in Alaska for wilderness characteristics, potentially** allowing federal government to create de-facto wilderness in Alaska without congressional oversight
  - ✧ Affects permitting and right of way determinations
  - ✧ Changes the multiple use mandate otherwise applicable to BLM lands



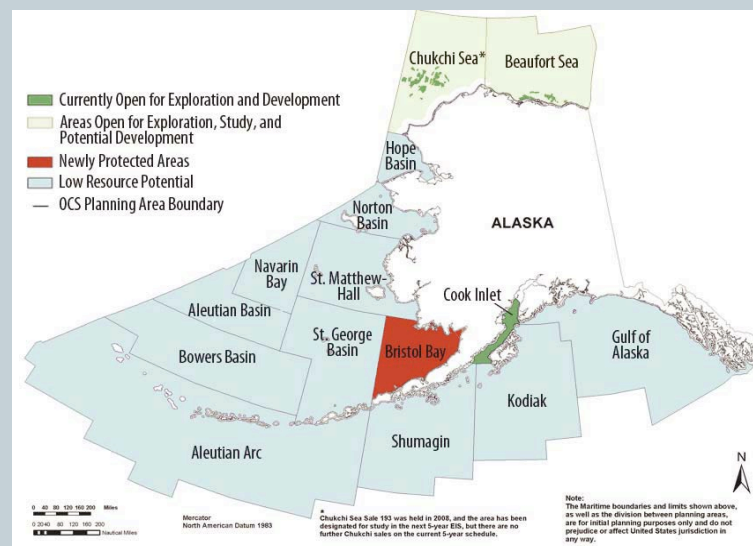
# Advising Governor on ANWR wilderness plan

- U.S. Fish and Wildlife Service revised the Arctic National Wildlife Refuge (ANWR) Comprehensive Conservation Plan, evaluating wilderness
  - ✧ Dept. of Law provided legal advice to Governor who wrote President Obama urging him to respect ANILCA



# Challenged Interior's purported imposition of a “moratorium” on development in Alaska OCS

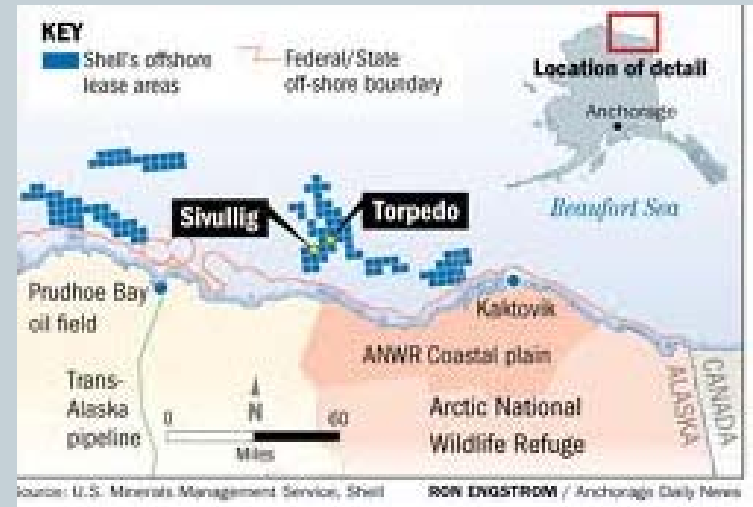
- In *Alaska v. Salazar*, based on Interior's unequivocal denial of a “moratorium,” clarity achieved



# Assisting DEC's request for prompt EPA action on Shell's Clean Air Act permit application



- Environmental Appeals Board (EAB) remanded Shell's application for further work
  - EAB questioned EPA's analysis of impacts of nitrogen dioxide emissions from drill ships
  - Shell now postponing plans to drill exploratory wells this summer



# Challenges and Opportunities



- Support--as legally appropriate--**responsible resource development**
  - ✦ Develop a comprehensive long term development strategy
    - Endangered Species Act
      - Unwarranted listings
      - Unwarranted designations of critical habitat
    - Outer Continental Shelf exploration
      - Challenges when warranted
    - Clean Air and Water Acts
      - Challenges when warranted



# Challenges and Opportunities



- Develop a 5-year **interdepartmental** plan
- Coordinate and cooperate
  - ✦ Legislative and executive branches of state government
  - ✦ All executive agencies
    - Department of Natural Resources
    - Department of Environmental Conservation
    - Department of Commerce Community and Economic Development
    - Department of Law
    - Department of Fish and Game

# Challenges and Opportunities



- Cooperate and coordinate with stakeholders **outside and inside** state government
  - Municipalities
  - Boroughs
  - Native corporations and tribes
  - Other states
    - ✦ Washington and Oregon joined to de-list the Stellar sea lions
  - Allies like National Association of Attorneys General and Association of Fish and Wildlife Agencies

