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INTRODUCTION

The first Trump Administration made significant improvements to land and resource management policy essential to the prosperity of Alaska and the Nation. In many cases, the actions achieved had been stalled for decades under both Democratic and Republican Administrations. Misguided environmental activism that spawned in the Alaska lands debate of the late 1970's had been effective at frustrating meaningful and responsible development of Alaska's abundant natural resources for decades. The Trump Administration recognized that Alaska could host domestic development of the critical mineral and energy resources upon which our energy and national security would depend on for generations. Further still, the Administration's actions began fulfilling the promises the federal government made to Alaska upon statehood 60 years earlier; that it would have control of its fish and wildlife, lands, and navigable waterways.

In one significant achievement, President Trump signed the law lifting the 1980 suspension of oil and gas development in the Nation's most prospective oil field — a small portion of the Coastal Plain in the Arctic National Wildlife Refuge (ANWR) — and his Administration completed the first of two statutorily directed lease sales. The Trump Administration also: freed the National Petroleum Reserve in Alaska (NPR-A) from the anti-development policies imposed under Presidents Clinton and Obama; ended a 40 year-old ban on mineral development and statehood land selections on 28 million acres of Bureau of Land Management (BLM) lands; authorized road access to the critical minerals of the world class Ambler Mining District; completed a decade long environmental review that opened millions of acres to State selection that had previously been withdrawn for constructing the Trans Alaska Pipeline System; ended the last-minute Clinton and then Obama Administration prohibition on essential infrastructure in the Tongass National Forest; and halted the purposeful isolation of a small native village in the Aleutian Islands by an Obama Administration Secretary of the Interior.

The Biden Administration has carried out a four-year assault on Alaska's statehood and economy — seizing opportunity and autonomy from Alaskans in the name of bolstering federal authority. It reversed the diligent efforts of the first Trump Administration, disregarding the needs of Alaskans, as well as statutory mandates, to appease activists with little sense of Alaska's reality. The Biden Administration has hidden behind superfluous environmental review and consultation while enacting policies in conflict with the voice of the very groups claimed to have been consulted. This categorical revocation of the Trump Administration's important work was result driven and not balanced, reflecting only political favors to special interest environmental groups to the detriment of our Nation's economy and security.

Beyond unraveling the years of progress President Trump achieved, the Biden Administration went further to effectively block the State's ownership and management of its navigable waterways and submerged lands; to impede on the State's Clean Water Act primacy; to advance divisive and dubious legal theories and policies to drive a wedge between Alaska's Native and non-Native citizens; and to usurp State management of its fish and game upon which Alaskans

uniquely rely. The Biden Administration's actions were accomplished without Congress, rather, through a series of Presidential Executive Orders, Department of Interior (DOI) Secretarial Orders and Solicitor Opinions, rulemakings, and policy pronouncements.

The majority of the actions requested below are Alaska specific, but several are matters of national concern which have an outsized impact on Alaska. First, the proper scope of the Clean Water Act (CWA) must be clearly outlined for the whole Nation. Second, EPA has overstepped its authority in every state that has CWA primacy. Finally, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) have been weaponized by the Biden Administration in several states. The requested actions in these areas will benefit not just Alaska, but the entire Nation. These three reforms will be lauded by states like Alaska that are continually frustrated by development-stopping federal overreach.

ALASKA SPECIFIC EXECUTIVE ORDER

Alaska requests a single Executive Order, issued on the first day of President Trump's second term, that puts the agencies to work rectifying these issues and creates a cabinet-level task force and six sub-cabinet positions to ensure efficient and effective implementation, and a continued dialogue with the State to keep Alaskans involved in their own future. The requested actions in the Executive Order and laid out in this document all fall within the exclusive discretion of the Executive Branch, allowing President Trump to take this decisive step without any reliance on Congress.

It is essential that the Alaska specific Executive Order be issued as soon as President Trump takes office. The Biden Administration's assault on Alaska was carried out through a multitude of official agency actions; reversal of these actions must comply with time-consuming administrative procedures. The federal agencies will need sufficient time to complete their procedures and litigate any legal challenges. The agency actions Alaska requests are much more likely to survive a future administration if they have been formally issued and successfully defended in court. Directing agency action on day one is the best way to achieve Alaska's priorities with a lasting impact.

Alaska also requests that the Alaska Specific Executive Order form a cabinet level task force and create six Schedule C positions to oversee the implementation of each action directed by the Executive Order. The task force provision would require DOI, Department of the Army (DOA), Department of Commerce (DOC), Environmental Protection Agency (EPA), and the Office of Management and Budget (OMB) to coordinate their efforts of accomplishing the President's Alaska policy goals. The new Schedule C positions should be Alaska Policy Coordinators placed within the critical implementing agencies to carry out the directives of the President's Executive Order and task force, including the: Bureau of Land Management (BLM); US Fish & Wildlife Service (USFWS); National Park Service (NPS); Army Corps of Engineers (Corps); National Marine Fisheries Service (NMFS) Alaska Region; and EPA Alaska Operations Office. These Alaska Policy Coordinators should report directly to their respective Secretary or Administrator on the cabinet level task force and form a working-group that meets regularly to

coordinate the expeditious implementation of the President's policies outlined in the Alaska Specific Executive Order.

Alaskans look forward to working with President Trump's Administration to rectify the four years of disingenuous and partisan infringements.

PRIORITIES

Priority #1. "Get Back to Where We Were" — Reinstate Prior Trump Administration Actions

President Trump did more to fulfill federal promises to the State of Alaska and realize the State's vast potential for the Nation than any prior administration. Unfortunately, President Biden's Administration purposely unwound many of those good works. There are more than 60 federal actions that have specifically reversed Trump Administration policies and attacked Alaska resource development and/or state sovereignty. No Presidential Administration since the Carter Administration has done as much damage to Alaska and its contribution to the Nation as the Biden Administration. Consequently, Alaska requests that President Trump, on the first day of his new Administration, issue an Alaska Specific Executive Order that directs the federal agencies to reinstate actions and processes that were properly implemented during his prior Administration, to include the following actions.

1. Open ANWR Consistent with the Tax Cuts and Jobs Act

In 2017, President Trump signed the Tax Cuts and Jobs Act (Tax Act) into law, codifying a clear mandate to DOI for commercial leasing, exploration, development, and production of oil and gas in the ANWR 1002 Area. The Act required a leasing program to be established as a means of improving energy security while generating revenue for the United States. The law required the Secretary, through BLM, to develop and maintain an oil and gas leasing program within the 1002 Area and conduct at least two area-wide leasing sales, not less than 400,000 acres each, within seven years. The Act required the first lease sale to take place before December 22, 2021, and the second lease sale before December 22, 2024. It also mandated that the Secretary of the Interior grant rights-of-way and easements necessary for the successful development of the oil and gas resources in the 1002 Area and authorize up to 2,000 surface acres to be utilized for production and support facilities.

Under President Trump, BLM executed the Congressional directive. During a multi-year National Environmental Policy Act (NEPA) review process, BLM received almost two million public comments, each of which were considered in developing an environmentally responsible plan for Congress's ANWR oil and gas development program. More than 70 specialists contributed their expertise to the analysis, working more than 30,000 hours to ensure the plan was thorough and robust. BLM moved forward with a final Environmental Impact Statement (EIS) and published the Record of Decision (ROD) for the program in August of 2020. BLM far exceeded Congress' deadline, holding the first lease sale on January 6, 2021, and, pursuant to the

ROD, subsequently entering into contracts for the issuance of 10-year leases that covered more than 400,000 acres.

On January 21, 2021, President Biden issued Executive Order 13990, directing DOI to review oil and gas leasing in ANWR and suspend all activity. The Secretary followed with Secretarial Order 3401 directing a new analysis of the potential environmental impacts of the Coastal Plain Leasing Program and suspending activity under the leases that had been issued during the Trump Administration. After completing a draft supplemental environmental impact analysis, without receiving comments on that review or providing notice to the leaseholders, Secretary Haaland cancelled the leases.

This action by the Secretary, cancelling lawfully issued and congressionally mandated leases, should be reversed, the ROD should be reinstated, and leases issued on the same terms — consistent with the initial review and decision carried out under President Trump. Executive Order 13990 and Secretarial Order 3401 should be withdrawn. The new Administration should approve a winter exploration program on the newly reissued leases with the necessary rights-of-way and easements required by the law. While the Biden Administration has failed to hold a second lease sale in 2024 as required by the law, the Trump Administration should do so as soon as practicable and preferably after the results of the exploration program are known.

2. Reopen the NPR-A Consistent with Law, Stakeholder Input and the Express Purpose of the Reserve

In 2013 the Obama Administration adopted an Integrated Activity Plan (IAP) for the NPR-A that placed half of the 23-million-acre petroleum reserve off limits to oil and gas leasing. After exhaustive environmental review, the Trump Administration revised this IAP in 2020, allowing for responsible oil and gas leasing across 18.6 million acres (82%) of the NPR-A. The Biden Administration reversed this decision in 2022, returning to the Obama 2013 NPR-A IAP. Further, the Biden Administration revised existing rules for the management of the NPR-A in May of 2024 to effectively preclude any further oil and gas development in the Nation's reserve.

These Biden Administration actions should be reversed by the new Trump Administration. The previous Trump Administration's 2020 NPR-A IAP should be reinstated, finding the Biden Administration's reversion to the 2013 NPR-A IAP unsupported by the record. The Biden BLM NPR-A Management Rule should be rescinded as legally unsupportable because of a flawed NEPA analysis and inadequate consultation. Following the recession of these regulations, the Secretary should update the existing 1976 NPR-A regulations to fully implement the goals of the 1980 amendments to the Naval Petroleum Reserves Production Act of 1976, which direct the Secretary to "conduct an expeditious program of competitive leasing of oil and gas in the Reserve."

It is important to note that NPR-A regulations have also been interpreted to apply to oil and gas leasing and development in ANWR because Congress required the development of ANWR to be conducted "similar to" development in the NPR-A. However, these regulations have not been updated to accommodate for the congressionally directed ANWR oil and gas development

program. Thus, the Trump Administration should revise these rules to provide for development of the ANWR Coastal Plain 1002 Area consistent with the goals and direction of the Tax Act. This should include a review of all leasing and development regulations to ensure that, to the maximum extent possible, they promote the goals of the mandated ANWR development program.

In particular, these new regulations should address § 20001(c)(2) of the Tax Act which requires that BLM issue any rights-of-way or easements across the Coastal Plain "for the exploration, development, production, or transportation" necessary to carry out the oil and gas program. The issuance of such rights-of-way is not discretionary and so regulations should be put in place to provide for an expeditious process for leaseholders to acquire these rights to explore for and develop oil and gas resources.

These new regulations should also address § 20001(c)(3) of the Tax Act, which requires the Secretary, acting through BLM, to authorize up to 2,000 surface acres of federal land on the Coastal Plain to be covered by production and support facilities during the term of the leases under the oil and gas program. Regulations should be adopted to provide the development rights guaranteed to leaseholders by this law.

3. Revoke Key Public Land Orders Restricting Transfer of State Lands

For decades DOI has used old and obsolete Public Land Orders (PLO) to prevent large blocks of federal lands from being rightfully transferred to the State of Alaska and Native corporations. This list of PLOs should be revoked to allow fulfillment of the federal promises made in the Alaska Statehood Act and the Alaska Native Claims Settlement Act (ANCSA).

Perhaps the most damaging PLO to Alaskans has been PLO 5150, and lifting it is one of the top priorities for the State. On December 11, 2020, the first Trump Administration's BLM published the Draft Resource Management Plan (RMP) and EIS for the 56-million-acre Central Yukon planning district to replace a management plan that was over 30 years old. This culminated nearly a decade of work. Significantly, that plan recommended the revocation of the PLO 5150, established in 1972 to guarantee federal access to the Trans Alaska Pipeline (TAPS) route during its construction. TAPS construction was completed in 1977, but PLO 5150 remained, blocking development on millions of acres of land along this key infrastructure corridor.

Critical access and development lands that should belong to the State have been held up for decades and a significant portion of the TAPS corridor now consists of a patchwork of state and federal lands. This dual management scheme is cumbersome, hinders economic development, and is economically and logistically inefficient. This corridor links remote communities and connects the people of the North Slope to the goods, services, and resources available on Alaska's limited road system. Revocation of PLO 5150 would reopen nearly 2.5 million acres to State selection, paving the way for the federal government to convey the approximately 1.4 million acres that are still owed to the State of Alaska in statehood land entitlements. These lands are the highest priority for the State among possible conveyances to fulfill its outstanding land entitlement.

Due to the importance of these lands in the state entitlement process, the land selections blocked by PLO 5150 must be addressed prior to the State taking further action to address its statehood entitlement in other areas of Alaska. The Biden Administration reversed the recommendations of the first Trump Administration, under pressure from environmental special interests, and has decided that the PLO 5150 should remain in place indefinitely. This action should be reviewed and rescinded, vindicating the substantial work that supported the first Trump Administration's decision to open this corridor to State land selection as well as the development of essential infrastructure and natural resources.

In addition to public land withdrawals associated with TAPS construction, further withdrawals were made in relation to the 1971 Alaska Native Claims Settlement Act (ANCSA) that remain in place. ANCSA directed the Secretary of the Interior to withdraw BLM lands from disposal or mineral entry to ensure the status quo until the Alaska Native Corporations (ANCs) could complete their land selections. Originally 57 million acres were withdrawn.[1] The ANCs have completed their land selections but most of the withdrawals remain, frustrating access to public lands otherwise designated for public use. Environmental activist groups have fought to maintain these withdrawals as de facto conservation designations, eliminating opportunities for mineral development and preventing the State from receiving its land entitlements.

In 2004, Congress passed the Alaska Land Transfer Acceleration Act to address lingering ANCSA withdrawals — requiring the Secretary of the Interior to determine if any portion of the withdrawn lands should be opened for mining, selection by the State, and other uses under the public land laws. In 2006, BLM Alaska prepared the required report and recommended revoking the withdrawals on approximately 50 million acres. Notwithstanding more than a decade of environmental review, nothing had been done to implement BLM's recommendation regarding these nearly 50-year-old withdrawals until the first Trump Administration. In 2018, the Trump Administration revoked land withdrawals in the Goodnews Bay area and in 2019 revoked land withdrawals in the Fortymile and the Bering Glacier regions of Alaska. In January 2021, the

[1] PLOs 5169, 5170, 5171, 5172, 5173, 5174, 5175, 5176, and 5178 withdrew lands for selection by ANCs under ANCSA § 11(a)(3) and for classification under ANCSA § 17(d)(1). PLO 5179 withdrew lands in aid of legislation concerning national park, national forest, wildlife refuge, and wild and scenic systems under ANCSA § 17(d)(2) and to allow for classification of the lands under ANCSA § 17(d)(1). PLO 5180 withdrew lands to allow for classification and for protection of the public interest in these lands under ANCSA § 17(d)(1). PLO 5184 withdrew lands legislatively withdrawn by ANCSA § 11 to allow for classification or reclassification of some areas under ANCSA § 17(d)(1). PLO 5186 withdrew lands not selected by the State to allow for classification and protection of the public interest in lands under ANCSA § 17(d)(1). PLO 5188 withdrew lands in former reservations for the use and benefit of Alaska Natives classification and protection of the public interest pursuant to ANCSA § (17)(d)(1). PLO 5353 withdrew lands under the authority of ANCSA § 17(d)(1) pending determination of eligibility of certain Native communities under ANCSA § 11(b)(3) and for classification of lands not conveyed pursuant to ANCSA.

Trump Administration Secretary of the Interior further revoked ANCSA withdrawals within the Kobuk-Seward Peninsula, Ring of Fire, Bay, Bering Sea — Western Interior, and East Alaska planning areas, totaling approximately 28 million acres.

The Biden Administration refused to implement the Trump Administration 2021 orders and after further environmental review has decided to keep all the original ANCSA land withdrawals in place. Though BLM has made a partial PLO revocation for Alaska Native Vietnam-era veteran land selections, it has refused any other PLO revocations. The consequence of leaving these obsolete withdrawals in place across Alaska is to restrict public access, productive use, and statehood land entitlements through the back door.

Once more, by arbitrarily holding vast swaths of Alaska in indefinite abeyance, the Biden Administration has acted in contravention of the law and ignored the dictates of the Alaska Statehood Act and ANCSA. While the Biden Administration has used these PLOs to gain activist applause, Alaskans are being denied the land that is lawfully theirs as well as the benefits such land facilitates. This senseless targeting of the Last Frontier continues to prevent the long-term settlement of land ownership across the State and bars vital economic opportunity, including responsible resource development.

The Trump Administration should prepare new PLOs based on the environmental record, once again revoking the remaining 50-year-old ANCSA public land withdrawals. In addition to the revocation of PLO 5150 consistent with the previously published Draft Central Yukon RMP, this would include revitalizing the previously executed PLOs 7899, 7900, 7901, 7902, and 7903 providing for the revocation of ANCSA § 17(d)(1) withdrawals on more the 28 million acres of land.

4. Restore the Right-of-Way to the Ambler Mining District

The Ambler Mining District has extensive deposits of critical minerals and could be a secure, reliable U.S. supply-chain resource, essential for our Nation's tech-focused economy, green energy products, and military effectiveness. When Congress created the Gates of the Arctic National Park and Preserve in the 1980 Alaska National Interests Lands Conservation Act (ANILCA) it ensured that access to the known world class mineral reserves of the Ambler Mining District would be preserved. The law included a provision requiring the Secretary of the Interior to provide surface transportation access to connect the Ambler Mining District to the Dalton Highway along TAPS, allowing for a transportation corridor across the Gates of the Arctic National Preserve. The State notified the Obama Administration of its intention to build a road in 2010, but little progress was made until the first Trump Administration. Most of the 211-mile route for the road is on State land but crossing BLM and National Park Service (NPS) land is required.

After extensive environmental review the Trump administration issued 50-year right-of-way permits to the State across BLM and NPS lands on January 6, 2021. Environmental groups sued to stop the road project, and the Biden Administration caved to their demands. The State's federal rights-of-way were immediately suspended and have now been revoked based on a 2024

ROD. This denial is a violation of ANILCA. The new Trump Administration should rescind the unlawful Biden Administration ROD and issue a new decision restoring the right-of-way permits previously granted to the State. In addition, withdrawal of PLO 5150, as previously described, will clear the way for the State to own the public lands necessary for the project.[2]

5. Reinstate Land Exchange Authority for the Road to King Cove

Harsh weather conditions in King Cove, Alaska make the community inaccessible by air for large portions of the year, resulting in emergency evacuations being highly risky and often impossible. The people of King Cove have long sought to develop improved access between their village and the 18-miles-distant City of Cold Bay, where natural conditions reduce the aviation risks. For the King Cove community, access to Cold Bay is their best option for safe and reliable transportation in emergencies. But one thing continues to stand between King Cove and a short, life-saving road — the Izembek National Wildlife Refuge.

The State of Alaska has consistently pursued options that would bring King Cove this essential road connection. In 2009, Congress granted the Secretary of the Interior temporary authority to study and, if in the public interest, to authorize a land exchange and the construction of a road between King Cove and Cold Bay. After completing an EIS in 2013, the Obama Administration concluded that the negative environmental impacts of a road through Izembek outweighed the health and safety benefits a road would provide to the residents of King Cove. The Obama Secretary of the Interior famously announced that bird conservation was more important than the lives of the Native people and declined to exchange lands under the authority of the 2009 statute.

The first Trump Administration revisited this matter and came to the opposite policy conclusion, arguing that the land swap agreement allowing for a road connection simply placed greater weight on the welfare of the people of King Cove, and less weight on any potential minor environmental harms. Environmental groups sued, but the Ninth Circuit Court of Appeals upheld the Trump Administration land exchange, however, shortly thereafter the Biden Administration withdrew the land exchange. The new Trump Administration should rescind the Biden Administration 2023 withdrawal and reinstate the Secretary's 2019 DOI decision to approve a land exchange enabling the road between King Cove and Cold Bay across the Izembek.

6. Allow Roads in the Tongass National Forest

Southeast Alaska is home to the Tongass National Forest, the largest national forest in the United States. The Tongass, at 16.7 million acres — roughly the size of West Virginia — is larger than 48 of the 153 other national forests combined. Within this forest lies an entire region of our vast State including many communities and varied industries. Most of these communities remain

[2] The Secretary could use the land exchange authority provided by Congress in ANILCA to transfer to the State all BLM lands along the Ambler Road corridor in exchange for lands of equal value selected by the State. However, revocation of PLO 5150 is a much-preferred alternative for the State of Alaska.

isolated, not being on a road system, and are often reliant on local resources. Transportation and electric utility infrastructure, the development of critical mineral resources, and the sustainable use of the abundant timber resources have been frustrated by a 23-year history of litigation and federal actions that has frozen the development of this region. For one-third of the State's history the people of Southeast Alaska have been denied the statehood promise of responsible community development at the hands of outside political forces seeking to lock-up Alaska. The negative impacts on the communities in the region are broad reaching. For example, new roads would greatly improve Alaska's ferry connections by allowing shorter ferry runs.

This sad saga all began in 2001 when the Clinton Administration developed a broad rule — the "roadless rule" — to limit logging, road construction, mineral leasing, and other activities in designated roadless areas in national forests across the country. The relatively young nature of the State, the immensity of the Tongass forest, and the unique way in which it engulfs an entire region larger than many states and populated by communities without interconnecting roads made the "roadless rule" concept not only a poor fit, but in fact an intentional action directed at undermining community development in Alaska. The unstated goal at the time was to take the success the Clinton Administration had in shutting down timber harvest in the Pacific Northwest using the ESA and Spotted Owl and to extend similar prohibitions on developing "old growth" in Alaska.

The final roadless rule was published January 12, 2001, literally days before the end of the Clinton Administration and the inauguration of President George W. Bush. The State filed suit challenging the rule and the new Bush Administration delayed the rule's implementation and began work on repealing it. After extensive environmental review they issued an exemption for the Tongass forest in 2003 and finally repealed the entire roadless rule in 2005. This lasted until 2009 when the new Obama Administration immediately sought to undo the actions of President Bush by requiring Secretarial approval for new roads in any roadless area of the national forest system including Alaska. This was followed by the Obama Department of Justice (DOJ) and environmental litigants successfully using the courts to reinstate the 2001 roadless rule in 2011 and find the 2003 Alaska exemption unlawful in 2015, fully reinstating the 2001 Clinton Administration roadless rule in Alaska.

As the first Trump Administration began, the State petitioned the Secretary of Agriculture to once again exempt the Tongass from the roadless rule. The Secretary began work on an exemption. In 2020, after two years of environmental assessment and consultation with Alaska Natives and residents, the Secretary published a final rule exempting the Tongass National Forest from the roadless rule.

But in 2021, President Biden, on his first day in office, issued Executive Order 13990 requiring review of the Trump Administration action. All road construction, mineral development, and timber harvesting in roadless areas of the Tongass National Forest was paused pending completion of the review. On January 27, 2023, the Biden Administration issued a final rule repealing the 2020 Trump Administration rule and reinstating the roadless rule prohibitions against

timber harvest and road construction within the Tongass. The State, the Southeast Alaska electric utility, and 24 Southeast Alaska businesses challenged the Biden Administration rule in court alleging violation of the State's sovereignty, multiple statutes, and the separation of powers. The new Trump Administration should resolve this lawsuit by rescinding the Biden Administration's unlawful action and reinstating the 2020 exemption of Alaska's Tongass Forest from the National Forest System roadless rule.

Priority #2. Restore Trump Administration Position on Lands Into Trust and Native Allotments

1. Background of Taking Lands Into Trust in Alaska and Tribal Jurisdiction Over Alaska Native Allotments

With the passage of ANCSA in 1971, Congress sought to maximize participation by Alaska Natives in decisions affecting their rights and property without creating a reservation system, lengthy wardship, or trusteeship. For over 40 years, federal agencies acknowledged that there was no statutory direction or authority to take lands into trust and thereby create Indian country in Alaska, leaving the vast majority of lands subject to State jurisdiction. There was also a long recognized legal conclusion that Alaska tribes do not have territorial jurisdiction over Native land allotments. As such, very little Indian country exists in Alaska. Such a reservation style jurisdiction was limited to the existing Annette Island Reserve (Metlakatla) and *possibly* three tribal trust parcels that the Secretary of the Interior had taken into trust prior to statehood and ANCSA (10.24 acres for the Angoon Tribe, 15.9 acres for the benefit of the Kake Tribe, and 0.92 acres for the benefit of the Alaska Natives at Klawock).

The federal agencies started to shift from ANCSA during the Obama Administration and have strayed even further during the Biden Administration. President Biden's Secretary of the Interior asserts that she has the authority to take lands into trust in Alaska. Biden's Secretary exercised this invented authority to take land in downtown Juneau and declare those lands a reservation. The State has filed litigation challenging the Secretary's authority, and although it persuaded the district court to vacate the decision because it was "arbitrary and capricious," the district court nevertheless affirmed the Secretary's authority to take lands into trust. The State appealed the authority issue, and the Tribe cross appealed on the validity of the specific action.

In response to the State's arguments in the lands into trust litigation DOI also changed its 31-year-old position regarding Native allotments. DOI Solicitor Bob Anderson withdrew a 1993 Solicitor's Opinion that concluded Alaska tribes do not have territorial jurisdiction over Alaska Native allotments and replaced it with a new Solicitor's Opinion that concluded the opposite. Through the new Anderson Opinion, the federal government now asserts that Alaska Tribes have

jurisdiction over 4 to 6 million acres of Native allotment lands in Alaska.[3] The Native Village of Eklutna is now relying on Anderson's Opinion in reversing a decision the National Indian Gaming Commission (NIGC) issued during the first Trump Administration. That prior decision held that Eklutna did not have territorial jurisdiction over a Native allotment and therefore did not have "Indian lands" as required by tribal gaming laws. Thus, through the baseless Anderson Opinion, there is a risk that for the first time Alaska will have casino gambling thrust upon it by the federal government.

2. Alaska's Recommended Actions on Lands into Trust

The above demonstrates a convoluted, back-and forth history of recent attempts by Democrat administrations to eliminate long held DOI legal positions on the jurisdictional status of land in Alaska, and by Republican administrations to implement the intent of Congress.

The legality of DOI putting lands into trust in Alaska was recently before Alaska's Federal District Court in *State of Alaska v. Newland*.[4] The three primary questions to DOI's authority include: (1) did ANCSA implicitly repeal the Secretary's authority to take lands into trust in Alaska; (2) given the clear statement through ANCSA that Congress did not intend Alaska Natives to have reservations or lengthy wardships, is the creation of reservations in Alaska a major question that requires clear Congressional authority; and (3) if the Secretary does have authority to put lands into trust in Alaska, is that authority limited to federally recognized tribes under federal jurisdiction in 1934 consistent with the U.S. Supreme Court's decision in *Carcieri*? The district court in *Newland* found ANCSA did not impliedly repeal the Secretary's authority to take land into trust, and the major questions doctrine did not apply. However, it did remand the case back to DOI for a determination whether Tlingit & Haida meets the definition of Indian under § 19 of the Indian Reorganization Act (IRA), as interpreted by the U.S. Supreme Court in *Carcieri v. Salazer*.[5] The State appealed that order to the Ninth Circuit, leaving additional litigation before DOI will actually make this determination.

First, it is critical that litigation proceed. The ping-pong nature of the various administrations over the last 30 years demonstrates that the court must resolve the fundamental

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[3] President Biden's DOI is ignoring a decision issued by District Judge Dabney L. Friedrich, *Native Village of Eklutna, v. DOI*, No. 19-cv-2388, 2021 U.S. Dist. LEXIS 180474, 2021 WL 4306110 (D.D.C., Sept. 22, 2021).

[4] *Alaska v. Newland*, No. 3:23-cv-00007, 2024 U.S. Dist. LEXIS 112920, 2024 WL 3178000 (D. Alaska, June 26, 2024).

[5] In *Carcieri v. Salazer*, 555 U.S. 379 (2009), the U.S. Supreme Court held that the Secretary could only put tribal lands into trust under § 5 of the IRA if the § 19 definition of Indians was met, which requires the tribe to have been a federally recognized tribe under federal jurisdiction in 1934. However, DOI has taken the position that the second sentence of § 19, stating Eskimos and other aboriginal peoples of Alaska shall be considered Indians, makes *Carcieri* inapplicable and federal recognition and authority before 1934 not required. In *Newland* Judge Gleason disagreed and remanded that case for determination if Tlingit & Haida met one of the definitions of Indian.

question of whether DOI has authority to take lands into trust in Alaska. The various stop-and-start legal efforts caused by changes in administrative interpretation have left this issue in limbo. Alaska's goal is to have this case before the U.S. Supreme Court in the next four years, and a specific request of Alaska to a new administration is to not delay litigation. Thus, Alaska requests DOI and DOJ support final decision of *Newland* by the U.S. Supreme Court as rapidly as possible and not make interim changes in administrative positions that would moot the litigation.

Second, while *Newland* continues before the federal courts, DOI should halt any processing of other applications during the pendency of the litigation, which it can do under its discretion.

Third, if the U.S. Supreme Court determines there are circumstances in which the DOI Secretary has authority to take lands into trust in Alaska, the Trump Administration will need to address the questions raised in the remand order in *Newland*, including how to apply *Carcieri* to Alaska generally, and to Tlingit & Haida specifically. That should be done via a Solicitor's Opinion that clarifies the second sentence of § 19 of the IRA does not limit the application of *Carcieri* in Alaska. The Opinion should also include a one-time comprehensive list of the Alaska tribes, if any, that were under federal jurisdiction when the IRA became law in 1934. The land acquisition regulations at 25 CFR § 151 should also be updated to ensure only tribes truly under federal jurisdiction in Alaska are considered Indians under § 19 of the IRA.

3. Alaska's Recommended Actions on Native Allotments

As part of DOI's efforts to bolster its position in *Newland*, it recently issued Solicitor Robert Anderson's Opinion M-37079, which reversed the longstanding DOI position that federally recognized Indian tribes do not have jurisdiction over Native allotments.[6] There are reportedly 4 to 6 million acres of Native allotments in Alaska. With this Opinion, DOI asserts in *Newland* that Alaska Tribes have jurisdiction over these Native allotments and that placing lands into trust — which creates new Indian country that Alaska Tribes exercise jurisdiction over — is not a major question.

This policy is already having a direct impact in Alaska. The Native Village of Eklutna relied on the policy to request the NIGC to reconsider its prior decision that the Tribe did not have territorial jurisdiction over a Native allotment. The NIGC complied, granting Eklutna a gaming ordinance in July of 2024. This decision is immediately challengeable and there is a 6-year statute of limitations. It appears the decision granting the permit relied entirely on the change in position described in the Anderson Opinion (M-37079). Alaska requests that the Trump Administration act quickly to correct this administratively by withdrawing that Opinion and restoring the previously long-held DOI policy. This would be rather simple, as the Trump Administration could recognize that it is bound by the district court's decision in *Native Village of Eklutna, v. DOI*, No. 19-cv-2388, 2021 U.S. Dist. LEXIS 180474, 2021 WL 4306110 (D.D.C., Sept. 22, 2021*)*, which held that the previous Solicitor's Opinion issued by Thomas Sansonetti (M-36975) was a "correct"

[6] https://www.doi.gov/sites/default/files/documents/2024-02/m37079-partial-wd-m36975-and-clarification-trbl-jurisdiction-over-ak-native-allotments-2124.pdf.

application of ANCSA. DOI should then engage in rulemaking to ensure consistent application of the law and prevent future manipulations through a Solicitor's Opinion or other guidance document. Specifically, 43 CFR § 2561.3 (Alaska Native Allotment Act regulation) and 43 CFR § 2569.801 (Dingell Act – Vietnam Veterans Native Allotment Act regulation) should be amended to clarify that Alaska tribes do not have territorial jurisdiction over Alaska Native Allotments.

Priority #3. Federal Recognition of Alaska's Title to its Submerged Land

1. Background on the Transfer of Submerged Lands in Alaska

The equal footing doctrine and the Submerged Lands Act of 1953 recognizes that every state in the Union receives title to land submerged beneath navigable waterways upon statehood. Yet BLM continues to assert ownership over the vast majority of Alaska's 12,000 rivers and more than 3 million lakes. Under § 315 of the Federal Land Policy and Management Act (FLPMA), the Secretary of the Interior has the authority to confirm Alaska's ownership by issuing a Recordable Disclaimer of Interest (RDI) for these submerged lands.[7] But for over 50 years BLM has played a cat and mouse game to maintain control of Alaska's waterways. Despite the State identifying more than 200 of the most obviously navigable rivers ripe for disclaimer in 1992, BLM has issued only 36 RDIs.[8]

BLM's current RDI process forces Alaska to petition for their own land piecemeal and wait for the agency to determine if the waterway's condition in 1959 would have met its contrived standard of navigability. In several cases BLM has taken more than a decade to decide whether it would allow Alaska to call its land its own. Faced with regulatory hurdles and administrative delay tactics, the State's only alternative is filing a quiet title action to remove the cloud BLM has placed on Alaska's title. After repeated judicial losses and regardless of other agencies finding waters navigable, BLM has held steadfast to its policy of willful blindness — claiming all of Alaska for itself until proven otherwise.

The Secretary or designated official has significant discretion in issuing an RDI. The State, as the applicant, must provide documentation to show title "to the satisfaction of the authorized officer" and that officer may waive any or all of the application requirements "if in his/her opinion they are not needed to properly adjudicate that application."[9] BLM has not articulated what

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[7] *See* 43 U.S.C. § 1745 ("[T]he Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid . . . ."); *see also* 43 C.F.R. § 1864 (1984) (regulations implementing statutory authority to issue RDIs).

[8] U.S. GOV'T ACCOUNTABILITY OFF. (GAO), GAO-23-106235, ALASKA LAND MANAGEMENT: RESOLVING OWNERSHIP OF SUBMERGED LANDS, 7 (2023).

[9] 43 C.F.R. § 1864.1-2 (c)(3), (d).

standards it uses to determine navigability[10] but federal courts have rejected many of the requirements BLM has imposed.[11]

2. Alaska's Recommended Actions for Submerged Lands

A second Trump Administration could effectively address BLM's foot dragging through unilateral approval of Alaska's pending RDI applications and restructuring the RDI process. Alaska has seven in-process applications that the Secretary could approve under existing regulations based on the evidence submitted by the State.[12] However, to bring finality to the State's title to the millions of acres underlying Alaska's navigable waters, the regulations for issuing RDIs should be updated to systematically produce timely and accurate disclaimer of State-owned lands.

For efficiency and consistency, Interior should promulgate regulations that require an RDI to issue for submerged lands if any federal agency has found the waterway to be navigable. The regulations should also place the burden on BLM to prove that a waterway is not navigable once a state submits an application and require an RDI to automatically issue if BLM does not make a decision within one year of the application being submitted. Finally, the new RDI regulations should outline a standard BLM will follow in making its navigability determinations. The regulations should explain that the standards for navigability are:

- it was susceptible to use for trade or travel at the time of statehood via means customary at the time of statehood;
- evidence of actual use of the waterway for trade or travel is not required;
- susceptibility to personal or recreational use is sufficient;
- two-way traffic is not required;
- trade or travel need not be without difficulty or portage;
- a clear channel is not required;
- a mean channel depth of eight inches or greater for one-third of the open-water season creates a presumption of navigability;
- navigability for at least one-third of the open water season is sufficient;

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[10] BLM has only provided the general platitudes that they look to historical evidence of pre-statehood use and the physical characteristics of the waterway to determine navigability. *See* GAO, ALASKA LAND MANAGEMENT: RESOLVING OWNERSHIP OF SUBMERGED LANDS, at 5-7 (2023).

[11] *See Alaska v. United States*, No. 3:18-cv-00265, 2024 U.S. Dist. LEXIS 33700 (D. Alaska, Feb. 27, 2024) (rejecting agency arguments that navigability requires commercial use of waterway at time of statehood, can be determined by depth alone, and that downstream floating alone is insufficient).

[12] *See* https://dnr.alaska.gov/mlw/paad/nav/rdi/#inprocess.

- waterways with a Strahler Stream Order four are presumptively navigable and all higher order waterways are definitively navigable;
- if contemporary conditions are sufficient to support navigability by watercraft meaningfully similar to those customarily used at the time of statehood, the same conditions are presumed to have been present at the time of statehood, absent evidence of substantial change in the interim; and
- airboats, jetboats, canoes, and inflatable rafts are among the watercrafts customarily used for trade or travel or meaningfully similar to such crafts for waterways within Alaska.

After repairing the process, some of the existing damage to Alaska can be repaired through Executive Order. Due to DOI's inconsistent position on navigability, the State estimates that 200,000 acres of submerged lands it inherently owns has been wrongfully counted against Alaska's Statehood Act entitlements. An Executive Order directing BLM to reconcile Statehood Act land patents to exclude submerged lands beneath navigable waters would rectify this injustice.

Priority #4. Return Primacy of Fish and Game Management to State

1. Background on Federal Encroachment over the State's Fish and Game Management

The first Trump Administration enacted Executive and Secretarial Orders that emphasized improving collaborative and transparent relationships with the states, easing lengthy and overly burdensome permitting and regulatory requirements, and increasing opportunities for public use on federal lands. This was a breath of fresh air. Alaskans finally saw relief on the horizon from a permanent federal bureaucracy dedicated to stifling the exercise of its statehood rights to manage its resources for the benefit of its citizens. Efforts through DOI Secretarial Orders respecting state primacy in the management of fish and game and directives to improve consistency of federal actions with state fish and wildlife management were a start, but meaningful reform was either not completed or quickly reversed by the Biden Administration. DOI regulatory and policy measures continue to negatively impact the ability of the State to fulfill its constitutional and statutory responsibilities as the recognized manager of fish and wildlife resources.

State agencies have traditionally been the primary managers of fish and game within their borders, fostering populations into the national treasure they are today. In Alaska, these rights were bestowed to us under the terms of our statehood compact and subsequently confirmed in other Congressional actions including ANILCA. Yet recent federal activity has made it increasingly difficult, if not impossible, for the State to properly manage fish and game resources in the roughly 61% of the State owned by the federal government.

With each passing year, and particularly during the Obama and Biden Administrations, federal agencies have increasingly intruded into Alaska's authority to manage fish and game resources and their uses. Despite the special Congressional compromises in ANILCA, which

established or redesignated all of Alaska's national park system units and wildlife refuges, it has become difficult for the public to hunt and trap, and for the State to conduct its everyday work, in park units and refuges in Alaska because nationwide policies overwhelm the State's prerogatives guaranteed in law. The NPS and USFWS often dismiss these concerns as minor or local, even though Alaska refuges and park units comprise a majority of the land area in the national park and refuge systems. As a result, fish and wildlife management and public use in Alaska are hindered by national policies which simply do not recognize the unique management situation in Alaska or the unique legal guarantees for fish and wildlife use and management by Alaskans. The pattern that has emerged is one where the federal agencies first identify the state-managed activity with which they disagree and then formulate and implement a policy with which to restrict it.

Alaska desperately needs the Trump Administration to reverse the agency overreach by including the actions recommended below in an Alaska Specific Executive Order, including a comprehensive review, in consultation with the State, to identify and resolve the myriad of federal policies and regulations that undercut Alaska's right to manage its fish and game.

2. Alaska's Recommended Actions Related to Reestablishing State of Alaska Primacy in the Management of Lands and Wildlife

The Biden Administration DOI inaccurately represents the State's management for sustained yield — as required by the Alaska Constitution — as being in inherent conflict with DOI statutes, regulations, and policies, where conflict was not perceived in the past. DOI administrative direction also veers away from the intent of Congress in the National Wildlife Refuge System Improvement Act and ANILCA to retain the status quo of the State being the primary manager of fish and resident wildlife populations and their harvest. Even though Alaska's national preserves and refuges were created with public hunting and fishing, fisheries projects, and state fish and wildlife management activities clearly in mind, recent federal agency actions frame these uses as being in direct and sometimes irreconcilable conflict with their statutory missions.

For example, ANILCA requires the U.S. Forest Service (Forest Service) to manage lands for multiple use and sustained yield, just as the State is required to do by the Alaska Constitution. Yet, the Forest Service ignored productive land uses in its Chugach National Forest Land Management Plan. In reaction to the State's planned infrastructure improvements in the Chugach area, the Forest Service stepped in with the Management Plan to restrain the State by creating a new 1.4-million-acre conservation area and designating new wild and scenic rivers. ANILCA created millions of acres of conservations units, but Congress specifically chose not to include the Chugach among them. ANILCA § 704 required the Secretary of Agriculture to study the land and submit a report to the President and Congress within three years. For more than forty years Congress has declined to turn the Chugach forest into a conservation unit, yet the Forest Service asserts that it may do so unilaterally. When the State objected to the Management Plan due to its inconsistency with ANILCA, the Forest Service cited its own policies as "higher level direction" that justify ignoring Congress and locking out Alaskans from yet another corner of their state.

The Chugach National Forest Management Plan is just one example of systemic overreach by federal land management agencies that impose their own view of environmental stewardship to the exclusion of those who know and value the land most. Another example is BLM's Landscape Health Rule which boldly asserts that prioritizing conservation over productive uses is consistent with the multi-use and sustained yield principles that require a balance of environmental protection with natural resource production. These agency actions should be reversed to restore the balanced approach to land management that was prescribed by Congress, as well as the State's role in that management. But regulatory changes are necessary to address the deeper issue of agencies claiming new and expansive authorities.

Alaska requests that the Trump Administration direct federal land management agencies, through Executive Order, to enact regulations that recognize: ANILCA study areas and rivers have not been converted to conservation units and may not be managed as such without express Congressional direction; the multiple use and sustained yield principles require a balance of productive uses, development, and long-term preservation; the State plays a crucial role in evaluating and selecting management policies; land management plans may not categorically prioritize a single consideration or use over all other potential uses; and the benefits of public access, infrastructure, and resource development to the local community, state, and Nation must be considered in management decisions.

3. Alaska's Recommended Actions Related to Federal Subsistence Management

Alaska requests a Presidential Executive Order requiring the regulations promulgated by the Secretaries of Interior and Agriculture be amended to overhaul the federal government's approach to providing the rural subsistence priority on federal public lands required by ANILCA. ANILCA recognizes that the State has primary responsibility to manage its fish and wildlife resources. The State has comprehensive expertise in subsistence management, earned through decades of providing for the subsistence needs of Alaskans. Unfortunately, however, under the Biden Administration, the Federal Subsistence Board has taken unilateral action without even consulting the State.

ANILCA only requires that there be a priority for rural subsistence users under very specific conditions, and in no way requires the establishment of a duplicative federal management regime. Alaska is well suited to administer the ANILCA subsistence requirements and stands ready to work with federal stakeholders. Thus, President Trump should issue an Executive Order that overhauls how the federal government implements the rural priority found in ANILCA.

First, the Executive Order should require the start of the regulatory process to eliminate the Federal Subsistence Board, which is a creature of regulation and not of statute. Instead, the Secretary of Interior should take direct control of providing a rural subsistence priority in the taking of fish and game on federal public lands. It should be the Secretary and the staff in the Alaska office that provide oversight and order closures after consultation with the State. If ANILCA is

properly followed, only closing or restricting access to fish and game under specific circumstances, the work associated with implementing a federal subsistence program greatly diminishes.

Second, as contemplated by ANILCA, the Executive Order should require a system where the Secretary works more closely with the State than has been done in recent years. It should order the Secretary to enter into a memorandum of understanding (MOU) with the Alaska Department of Fish and Game that clearly articulates the roles of each in subsistence management. The State currently provides for the management of fish and game populations and has a system in place for Alaskans to participate in that management down to the local level. Under the Executive Order and MOU, the State would follow that process to determine if one of the stipulations under ANILCA is being met and transmit this information and supporting data to the Secretary, who in turn would then form his own record in deciding whether to issue a closure order.

Third, while the State is supposed to be actively consulted on subsistence actions, during COVID-19 the federal government (via the Federal Subsistence Board) used emergency and special actions to avoid prior consultation with the State. Additionally, the Federal Subsistence Board has been delegating its authority to federal agencies that are informing, rather than consulting with, the State when implementing closures. The Executive Order should prohibit both practices.

4. Alaska's Recommended Actions Related to the National Park Service

The NPS has significantly expanded its discretionary authority to preempt state fish and wildlife regulations, absent a conservation concern, harming the State's ability to manage for population sustainability and subsistence uses. Existing rules allow the NPS to close or limit all uses in Alaska park units with limited or no public engagement for indeterminate periods of time, impacting consistency with state regulations and increasing the complexity of the regulations for the public. These rules should be rescinded. In their place, the NPS should affirm the State's authority to manage sustainable populations of fish and wildlife, including for subsistence, and restore the Alaska-specific closure process, which applies specific criteria for emergency, temporary, and permanent closures.

The NPS manages lands determined "eligible" for recommendation for wilderness designation (i.e., meet the Wilderness Act criteria for having wilderness character) but not proposed for wilderness designation to "preserve their eligibility for designation." This applies to the vast majority of NPS managed lands in Alaska and impacts public use and state management of fish and wildlife in significant ways. This is contrary to ANILCA which guarantees there will be no more wilderness designations in Alaska. In addition, NPS has inappropriately proposed limiting public uses mandated by Congress for specific park units without providing supporting data or an objective rationale for the decision. This has resulted in unnecessary restrictions on public hunting and fishing as well as State fish and wildlife management activities. This places the State in the impractical position of proving a negative, rather than explaining possible effects

and their likelihood according to the available science to inform decisions. These policies should be changed to reflect the guarantees given to the State by law.

5. Alaska's Recommended Actions Related to the U.S. Fish and Wildlife Service

The USFWS should adopt State hunting and fishing regulations wherever possible. This is the practice in many states but not in Alaska. For example, the USFWS requires trappers to obtain a federal trapping permit to trap on several Alaska wildlife refuges where it is not necessary for any conservation purposes and duplicates the state requirement to obtain a trapping license. USFWS refuge managers then use discretionary authorities through trapping permits to restrict state trapping allowances and seasons and bag limits, absent any public process or notice, circumventing the regulatory authorities of the State. The USFWS has adopted a "Furbearer Management Plan" that supersedes the management authorities of the State and is both duplicative of State efforts for managing wildlife and their use, and out of date with current conditions. All Alaska refuge regulations should be reviewed and harmonized with State fish and game regulations.

6. Alaska's Recommendations Regarding the Endangered Species Act and Marine Mammal Protection Act

The USFWS and NMFS administration of the ESA and MMPA in Alaska has been used as a weapon against critical energy and mineral development. The repeal and replacement of Trump Administration ESA rules has allowed the Biden Administration to designate as critical habitat areas that are currently not occupied by the listed species or are considered peripheral or potential future habitat. This is inconsistent with the plain language and intent of the ESA to designate as critical habitat those areas within the species' current range in which essential physical or biological features are present at the time of listing. The USFWS and NMFS have greatly expanded their authority, in the name of climate change, to designate critical habitat areas that do not presently support the species or contain the essential physical and biological features. The possibility or likelihood of shifting climate regimes and changing habitat conditions is more appropriately addressed during 5-year status reviews, not by attempting to base current designations on unknown and speculative future conditions.

Additionally, federal agencies have inconsistently applied the standard for initiation of 12-month status reviews. For example, the NMFS has recently had a positive 90-day finding for Gulf of Alaska chinook salmon despite acknowledging the petition had "numerous factual errors, omissions, incomplete references, and unsupported assertions and conclusions[.]" This invites other frivolous petitions that are unfounded and cost significant resources to counter.

Alaska has been singled out for vast areas of critical habitat designations, with 5 of the 6 largest designations in the Nation off the coast of Alaska. The process used to designate critical habitat in Alaska has been biased and unfair and transparently aimed at shutting down the fossil fuel industry in the Arctic. The USFWS and NMFS have given themselves unbounded discretion to determine the scale at which critical habitat should be designated for a listed species. The

agencies can then justify designating critical habitat areas that are larger than necessary, especially where relevant data on physical or biological features is unavailable at a smaller scale.

Excessively large designations, such as those for polar bear and ice seal critical habitat, do little to help the species yet unnecessarily burden individuals, the State, local governments, and Native groups. Each designation consists of several hundred thousand square miles well beyond the habitat that is biologically essential, covering an area about the size of Texas. Together, the designations cover the Alaska coastline and all U.S. waters of the northern Bering, Chukchi, and Beaufort seas, literally the entire northern region of Alaska. The increase in costs and permitting time periods is a great concern to our Nation's energy and mineral security, particularly where these abundant species are listed solely on the basis of potential climate-change effects 100 years into the future.

The USFWS and NMFS have also improperly merged ESA and MMPA into recovery planning and § 7 permitting. For example, under the ESA the recovery standard is the removal of the risk of extinction. However, the services have set the recovery objective to mirror those of the MMPA which are focused on recovery to optimal population levels. This makes it nearly impossible to delist a species and makes the species which are no longer at risk of extinction subject to § 7 consultations until certain levels are attained.

Alaska recommends these specific actions:

- The use of the ESA by the Biden Administration to foreclose fossil fuel development in Alaska should be reviewed in consultation with the State to produce recommendations for regulatory reform and align management actions with the requirements of the law. This should include the rescinding of Biden Administration ESA regulations and the reinstatement of the first Trump Administration regulations.
- Under the ESA a species may be listed as threatened if it is likely to become endangered in the "foreseeable future." This term has gone un-defined, allowing federal agencies to lock-up public land based on highly speculative modeling that predicts conditions in the distant future, in some cases out to 100 years. "Foreseeable future" should be defined in regulation to allow consideration of only those conditions that may be reliably predicted with a high degree of certainty.
- ESA rules should be adopted that prohibit the use of long-term climate change models to justify engendered species listings and require that optimum sustainable population models include humans as part of the ecosystem. The USFW has used these easily manipulated models, with little scientific value, to "project" future declines in population and set unrealistic species population goals in order to justify listings of species that are not currently endangered.

- Firm standards should be developed for review of 90-day findings for publicly submitted ESA petitions.
- Regulations should make clear that not all listings require designation of critical habitat, vast critical habitat designations are disallowed, and area designations limited to areas critically important to recover.
- Most ESA data is State generated, yet federal agencies consistently exclude the State from the process of interpretating its data. Regulations should be adopted to provide the State with the right to be involved in that data use, and to remove deference given to federal agencies in interpretation of State data in court challenges.
- The ESA and MMPA regulatory programs should be separated, as intended by Congress.
- Regulatory authority for the MMPA is derived from the Marine Mammal Commission, and its Commissioners are political appointees. It is important that Commissioners be appointed that embrace the above policies and a proper reading of the MMPA.

Priority #5. Waters of the United States

1. Background on Alaska and WOTUS

The definition of Waters of the United States (WOTUS) defines the scope of the federal CWA and whether activity affecting a waterbody (or wetland) is regulated under federal law or is solely under state purview. Since 2015, the EPA and Corps have changed the regulatory definition multiple times with each changing federal administration. This fluctuation itself is problematic as it creates uncertainty for the regulated community and places landowners in a position of not knowing if they can move dirt on their land without potential EPA or Corps enforcement actions.

While the WOTUS definition is a matter of national concern, it is particularly problematic for Alaska because so much of the State is covered by waterbodies and wetlands. Broad, vague, or technically complex WOTUS definitions allow project-specific manipulation, functionally giving the federal government control over nearly all industrial and construction activity in the State. Alaska also has unique issues with respect to the extent of infrastructure and development generally (and the policy tradeoffs inherent in environmental protection decisions), geographic breadth of wetlands, permafrost, and lack of comprehensive waterbody survey data, presenting challenges not encountered by most states generally or in such magnitude. Further, the traditional mitigation measures required to obtain dredge and fill permits in the Lower-48 are not available in Alaska. Restoration and remediation historically are used to offset any new impacts from a project; that is, in order to permit a project in one location, a project proponent is often required to restore degraded wetlands located somewhere else. Most Alaska wetlands remain untouched, and there simply are not degraded wetlands available to offset new developments. As a result, the Corps has

denied permits that would provide base-level infrastructure that is taken for granted in the Lower-48, resulting in significant impacts to the State's remote communities.

2. Alaska's Recommended Actions Related to WOTUS

EPA most recently changed its WOTUS definition following the U.S. Supreme Court's decision in *Sackett*,[13] but this change did not capture the full breadth of the decision and leaves the door open for significant federal overreach. Alaska requests that the new Trump Administration issue an Alaska Specific Presidential Executive Order that requires regulations be adopted that detail how wetlands will be handled in Alaska, including that:

- Alaska, and other states, be empowered to make controlling jurisdictional determinations, especially where a state has primacy in CWA implementation (currently the federal government asserts that only EPA or the Corps may issue an official, definitive jurisdictional determination).
- Alaska permafrost and permafrost wetlands be presumptively determined beyond the scope of jurisdictional "adjacent wetlands" as they are clearly distinguishable from waterbodies as geographic feature.
- The "Alaska 1% rule" be readopted to forgo compensatory mitigation in Alaska until a threshold level of environmental disturbance is surpassed.[14]
- The Corps maintain its geographically limited scope of considerations for CWA § 404 analyses rather than adopting the broad and ambiguous Council on Environmental Quality (CEQ) standards as currently proposed, and CEQ adopt similarly limited regulations.

Priority #6. State Primacy on Environmental Enforcement

EPA and other federal agencies should embrace state primacy in the implementation of federally mandated environmental programs. Congress intended and provided for states to implement several regulatory programs called for under federal statutes, including the CWA, Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Safe Drinking Water Act (SDWA). Over time, however, the federal agencies have twisted Congressional intent by establishing highly detailed rules governing substantive standards and processes for implementing the programs that they then force states to adopt and implement against regulated parties. Even after a state has received primacy, agencies have been expending extraordinary resources to scrutinize state programs in incredibly granular detail — essentially duplicating every ounce of state work. This overzealous

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[13] *See Sackett v. EPA*, 598 U.S. 651 (2023) (rejecting EPA's expansive definition of "waters of the United States," thus limiting EPA jurisdiction under the CWA).

[14] *See* https://dec.alaska.gov/media/13267/1994-wetlands-initiative.pdf at 6, n. 13 (noting that the proposed rule was withdrawn).

and redundant oversight is a tremendous waste of public resources and robs states of the latitude and flexibility Congress intended them to have.

The environmental statutes give these agencies sufficient discretion to trust their state partners and uphold Congressional intent. These priorities may be achieved through updated regulations that better define the federal role within the cooperative structure the environmental statutes provide. The incoming administration should end the overreach and eliminate waste by:

- Reducing resources allocated to EPA programs and offices that are duplicating and wasting state efforts by supervising state programs in unnecessary and granular detail.
- Transferring resources to states so the federal government is coming closer to actually funding the federal programs implemented by states; there is unanimous support among state environmental agencies, across the political spectrum, for this proposition.[15] Beyond stressing state resources for programs states are already implementing, a lack of federal funding for federal programs has been a significant hurdle for states that would otherwise be willing to take on primacy programs — this is particularly pronounced for the CWA § 404 dredge and fill program.
- Recognizing the diversity of circumstances around the country, EPA published standards (e.g., effluent limit guidelines, etc.) should be recommendations, not requirements, for states implementing the federal statute.
- Limiting federal enforcement actions to those requested by state primacy programs for support in implementing the federal statute.
- Limiting federal oversight of state primacy programs to verifying that: the appropriate state authority issues compliance orders; public notice procedures are followed; and any statutory timeline is followed.
- Clarifying that where a state has primacy of the CWA § 404 program, the 404(c)-veto authority remains exclusive to the implementing state. And any use of the 404(c) veto in states without primacy requires prior approval from the state.

EPA efforts should be less focused on duplicating state work and more focused on supporting state primacy programs by providing technical information and resources, researching treatment or control technologies, and providing sufficient funding to carry out federal requirements.

[15] *See* ECOS FY25: "Increased Federal Support Needed for State Implementation of Federal Programs" - The Environmental Council of the States (ECOS).

Priority #7. Alaska Focused Department and Agency Leadership

Undoing the policy measures the Biden Administration has put in place to lock-up Alaska's resource wealth and diminish the statehood promise of economic growth and resiliency will take strong political leadership, in both Alaska and in Washington. Experience shows that, while often well intentioned, the career agency leadership will not engage the dramatic reforms needed with the sense of urgency and accountability required to be successful. Alaska asks that the President sign an Executive Order creating a cabinet level task force requiring the DOI, DOA, DOC, EPA, and OMB to work together to accomplish the President's Alaska specific policy goals including those discussed above. As a part of this Executive Order, the State requests that the President direct the creation of six new Schedule C positions located in Alaska and within the critical implementing agencies at the DOI (BLM, USFWS and NPS), DOA (Corps), EPA (Alaska Operations Office), and the DOC (NOAA Alaska Region) for the purpose of overseeing the execution of the President's Alaska specific policies. These agency Alaska Policy Coordinators should report directly to the respective Secretaries or, in the case of the EPA, the Administrator, and should, along with the Administrator of the OMB Office of Information and Regulatory Affairs, form a sub-cabinet working group to coordinate the expeditious implementation of the President's Alaska policy.

Additionally, during the transition to a second Trump Administration, it is essential for Alaska that the right candidates with the right direction and drive be selected for other key federal positions that have an outsized impact on Alaskans. The State requests consultation on these particular positions to ensure a dutiful restoration of federal-state relations and timely reinvigoration of the Nation's domestic critical mineral and energy resource supply. These positions include:

- BLM Director (Senate confirmed)
- BLM Alaska Regional Director (career)
- DOI Alaska Regional Solicitor (appointed)
- EPA Assistant Administrator for Water (Senate confirmed)
- EPA Region 10 Administrator (appointed)
- Forest Service Region 10 Regional Forester (appointed)
- NOAA Assistant Administrator for Fisheries (Senate confirmed)
- NOAA Fisheries Alaska Regional Administrator (career)
- NPS Alaska Regional Director (career)
- USFWS Alaska Regional Director (career)
- USFWS Director (Senate Confirmed)
- USGS Director (appointed)
- DOI Senior Advisor for Alaska Affairs (appointed)
- Ambassador at large for Arctic Affairs (Senate confirmed)
- Arctic Executive Steering Council Executive Director (appointed)

CONCLUSION

With dynamic cooperation between the State and the new Trump Administration, the Biden Administration's offensive on Alaska can come to a swift end. A single Alaska Focused Executive Order will set the federal agencies to work ending the land grab, unleashing Alaska energy, fulfilling the promises of statehood, restoring fish and wildlife access with expert State management, and reining in agency authority to fit within their organic statutes. Though all of these actions will revitalize Alaska, clarification in the environment and wildlife protection spheres will benefit the whole Nation. These priorities will be diligently achieved with a cabinet level task force and six Schedule C Alaska Policy Coordinators that are included in the Executive Order. This effort will exemplify the return of states to their constitutional role across the Nation. With the Trump Administration's support, Alaska can move towards a productive economy and serve as a staple of domestic development that promotes resource security as well as national security.