

The right to know and the right to speak— Citizens' Advisory Councils exercise oversight of petroleum-related risks in Alaska

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Abstract. Public involvement is critical in creating an equitable, democratic, and environmentally sound paradigm for petroleum development. This paper discusses two major and inter-related concepts in this regard— *government transparency* and *informed public participation*. The first part of the paper outlines the ethical and historic context for government transparency, and discusses several legal instruments of transparency in the U.S.— the Freedom of Information Act, the Privacy Act, Open Meetings acts and "Sunshine" laws, "Whistleblower" protections, state information access statutes, and conflict of interest / financial disclosure laws. The second part focuses on a mechanism to provide informed public oversight of petroleum development— Regional Citizens' Advisory Councils (RCACs). The two RCACs established in Alaska subsequent to the Exxon Valdez oil spill in 1989 have essentially become the "eyes, ears, and voice" for local citizens on oil issues. They are well funded (about \$3 million/yr. from the oil industry), have access to oil facilities, independence, and broad representation from citizen groups within the region impacted by oil operations. The groups give local citizens a formalized, direct voice in the corporate and governmental decisions that affect them and their communities. They are comprised of a Board of Directors, a paid staff, and several technical committees. They meet quarterly, review and comment on industry and government operations, and conduct their own independent research to support their policy recommendations. Their recommendations are non-binding, but the RCACs have been responsible for remarkable improvement in the relationship between the oil industry, government, and the public. The paper recommends that all nations establish mechanisms for government transparency, and citizen oversight councils for petroleum sectors. It is proposed here that the scope and structure of new citizens' councils be broader than those in the U.S., to include all aspects of oil and gas development— permitting, exploration, production, transportation, revenue collection, environmental compliance, etc. Funding should come either from the oil industry (preferably as an endowment), or from government oil revenues.

Petroleum development presents societies with both opportunity and risk— a double-edged sword. While the development of reserves can bring socioeconomic benefits, it will also bring with it a constellation of negative impacts. Thus, the public policy challenge is to *maximize the positive impacts and minimize the negative impacts*.

Throughout the 20th century, oil development has helped some societies become more prosperous, but in others

led to social, economic, and environmental decay. Due to its unusual ability to cause problems, a former oil minister in Venezuela called oil "the devil's excrement". Although the history of oil and gas development around the world is rife with poorly planned and operated fields, reckless corporate behavior, environmental degradation, human rights abuses, and corruption, this history need not repeat itself. And as some geologists estimate that humanity has used about half of the commercially recoverable oil on Earth (about 1 tril-



Picture 1. The Trans-Alaska Pipeline, stretching across 800 miles of Alaska from the Arctic coast south to Valdez. (Courtesy State of Alaska)

lion barrels), how we develop (deplete) these remaining finite reserves is extremely important.

The challenge is to create a new paradigm for oil and society— a new way of doing business around the world that will create a more equitable, democratic, and environmentally sound economics from petroleum. A central issue in this new paradigm for oil is how the public is involved. Oil development can foster democratic governance or it can destroy it.

Two of the fundamental principles of democracy are: 1. access to information, or *transparency*; and 2. *informed public participation* in governance. It is important to distinguish between the two principles. *Transparency* implies simply that the public has easy access to government and industry information, and literally a "clear view" of what government and industry are doing. However, transparency does not necessarily mean that the public has a formal, active voice in the operations of government and industry— the concept of *informed public participation*. While

transparency is *passive*— e.g information is accessible— informed public participation is *active*— there is capacity to collect, synthesize, interpret, and understand information, and the capacity therefor to formulate informed opinions and to rationally influence policy.

Although we have considerable government transparency in the U.S. (through legal instruments described below)

there exists a tragic lack of informed public involvement in petroleum policy. And in such a situation, vigilance atrophies, complacency thrives, and government policy drifts away from public interest and toward serving the industry. The lesson is that transparency is a *necessary but not sufficient* component of democratic governance. These two principles must be developed together in order to create stable, prosperous, sustainable societies.

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Government transparency— the public right-to-know

The fundamental basis of democratic governance is that the government operates "by and for the people." As stated in the U.S. Declaration of Independence, governments derive "their just powers from the consent of the governed." The first amendment to the U.S. Constitution recognizes both the needs for *an informed electorate* as well as the right to free self-expression without fear of government repression. Constitutional scholars interpret the 1st amendment such that the public's "right-to-know" derives directly from and is a fundamental necessity for the

public's "right-to-speak" to be meaningful and informed.

For democratic governance to work, its citizens must have *an active voice* in all the affairs of their government, and to

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have such voice they must *be informed* about the workings of their government. Thus, it is a fundamental responsibility of any democratic government to provide free and open access to government information, and allow for the

active advocacy of public interests with such information.

Regarding the critical importance of the public's right to know, one of the fathers of American democracy, Thomas Jefferson, once wrote: *Whenever the people are well informed, they can be trusted with their own government.*

As citizens make the ultimate decisions regarding who will govern them and how they will govern, they must know what is going on in government. And while it is recognized that certain types of information can be kept secret (e.g. national defense, trade secrets, etc.), Thomas Emerson pointed out in "The Dangers of State Secrecy" that: *As a general proposition, secrecy in a democratic society is a source of illegitimate power.*¹

Emerson suggested that withholding of information by any part of the government is wrong for the following reasons:

- ▶ It is in direct conflict with democratic principles of decision making, and that no rational choice by citizens can be made in the absence of information;
- ▶ It is unjust and morally wrong, just as when due process with access to all relevant information is denied an individual by the judicial system;
- ▶ To the extent that information is withheld from a citizen, the basis of government control over him becomes coercion, not persuasion— the citizen is given no rational ground for analyzing a decision, but must submit to it by force;
- ▶ Secrecy is politically unwise, as it leads not to support but to disaffection— concealment of information leads to anxiety, fear, and extremism;
- ▶ Secrecy undermines confidence in government and produces a credibility gap.

The former director of the Associated Press, Kent Cooper, suggested that government secrecy was ultimately self-defeating because:

- ▶ confidence and loyalty thrive where people have the right to know.



Picture 2. The Trans Alaska Pipeline System marine terminal in Valdez Alaska, where over 15 billion barrels of oil have been loaded onto tankers for shipment south to market since its opening in 1977. (Courtesy State of Alaska)

- ▶ patriotism springs from the people's own convictions, based not upon government propaganda but on full information on all sides of every question.
- ▶ government power, backed by an informed citizenry, is unassailable, because through full availability to the news, an equal partnership between the government and the individual is established, based upon respect for the latter's right to know.

Instruments of government transparency in the U.S.

Freedom of Information Act (FOIA)

To counteract the tendency toward government secrecy in the U.S., the Freedom of Information Act (FOIA) was signed into law on July 4, 1966. The Act requires that "each agency, on request for identifiable records...shall make the records promptly available to any person." FOIA defines a public record as any record retained by any government body, including any document presented to any government body by any government or non-government body. The Act was amended in 1974 and again in 1995 to make it quicker, easier, more efficient and cheaper to access government information. In 1996, Congress passed "Electronic FOIA" to include electronic records.

FOIA provides the public access to files of federal executive agencies, and provides: that disclosure is the rule, not the exception; that all individuals have equal rights of access; that the burden shall be on the government to justify withholding of a document, not on the person who requests it; that individuals improperly denied access to documents have a right to seek injunctive relief in the courts; that there be a change in Government policy and attitude— *to-*

*ward openness.*² When FOIA became law, the U.S. Attorney General commented that "nothing so diminishes democracy as secrecy."

To file a FOIA request, a citizen must identify the proper agency, cite specific documents and/or topics, and demonstrate that releasing the material is in the public interest. FOIA allows documents to be withheld only for reasons provided by nine exemptions as follow: 1. national defense and foreign policy, 2. internal (personnel) rules, 3. exemption by another statute, 4. trade secrets, 5. internal records (that would not otherwise be available in litigation), 6. personal privacy, 7. law enforcement, 8. financial regulation, and 9. petroleum information (maps, geological information, etc.).

Some 26 nations have passed similar information access laws in the past 10 years— Japan, Thailand, Bulgaria, the U.K., South Africa, etc. The U.S. government receives over 2.5 million FOIA requests / yr., and spends about \$250 million / year (about \$1 / per U.S. citizen) in implementing the act. While some argue that this is excessive and unnecessary, citizen advocates counter that this is simply the cost a free nation must pay for government accountability.

The Privacy Act

The 1974 Privacy Act allows citizens to know what government agency records are kept on them; to read, correct, or append information in such files; and to prevent use of such files for other than their original purpose. The Act places restrictions on agencies on the sorts of information they can collect on private individuals, and in which such information can and cannot be communicated within and outside of government.



Picture 3. The Exxon Valdez lies crippled at anchor in April 1989 after spilling over 11 million gallons of oil into Alaska's Prince William Sound.
(Courtesy State of Alaska)

Open Meetings, or "Sunshine" Laws

"Sunshine" laws were named as such from a former U.S. Supreme Court Justice who stated that "sunshine is the best disinfectant." The 1972 *Federal Advisory Committee Act* grew out of the desire of consumer groups for access to advisory group meetings between industry and federal agencies heretofore closed to the public. It requires prior notice of meetings to be published in the Federal Register, and that minutes and records be kept of the meetings. And, the "*Government in the Sunshine Act*" went into effect in 1977, requiring about 50 federal agencies to hold their meetings in public, with 10 exemptions similar to those found in FOIA. But even if under the exemptions an agency meeting may be closed, the Act requires records be kept— transcripts, recordings, minutes, etc.— that "fully and completely describe all matters discussed." The records of closed meetings may be subject to later disclosure through FOIA.

"Whistleblower" protections

The unauthorized leaking of information from government agencies, if it is *to* the public and *in the public interest*, is also protected to some extent by the Civil Service Reform Act (CSRA) of 1978. The Act is intended to protect from administrative retaliation a civil servant who discloses information (other than classified) which he/she believes shows "a violation of any law, rule, or regulation", or "mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

State Information Access laws

All states in the U.S. also have *Public Records Acts* and *Open Meetings Acts*, as counterparts to federal FOIA and "Sunshine" laws. The state statutes, patterned in parallel to the federal statutes, are intended to make state and local government business as open and transparent as possible.

Conflict of Interest/ Financial Disclosure laws

In order for the public to rationally decide whether a government official may have a conflict of interest regarding a particular policy issue, federal and state governments have enacted financial disclosure laws applicable for certain government officials. These generally require people running for an elected office and those appointed to senior government positions (Congress, President, Governor, Legislature, cabinet posts, commissioners, etc.) to report campaign contributions, financial assets, etc., so that the citizenry can see who is giving money to whom. Such financial disclosure requirements provide a disincentive to corruption.

[Note: The September 11, 2001 terror

attacks on the U.S. lead to a significant reassessment of the U.S. government posture toward the collection and release of information. In general, the government expanded its abilities for collection of information and restricted the public's ability to access information.]

Informed public participation

Even in long-established democracies the relationship between government, industry, and the public is problematic and often fails to serve the common public interest. Although government agencies and legislative bodies are legally obligated to operate in the interest of the public, many regulatory agencies are too closely tied to the industries they regulate to provide effective oversight. Regulation and legis-



Picture 4. Crude oil spilled by the Exxon Valdez spread over 15,000 km² of Alaska's coastal ocean, and oiled over 1,500 km of coastline. The spill became the most ecologically damaging oil spill in history. (Courtesy State of Alaska)

lation in such a symbiotic environment tends to favor industry at the expense of the environment, social justice, and economic justice. Our *ideal* of a well-informed, participatory public, a government always receptive to public concerns, and a cooperative industry all

working to protect the public interest is in fact far from the *actual practice* of democracy.

Regional Citizens' Advisory Councils— a model for public oversight of the oil industry

To create a more equitable, transparent, and truly participatory process for important civil society activities such as oil and gas development, it is necessary to establish a well funded, empowered, and independent citizens' organization to provide oversight. The Regional Citizens' Advisory Councils (RCACs) in Alaska represent such an initiative.

Prior to the 1989 Exxon Valdez oil spill disaster in Alaska, the oil companies and the state and federal governments conducted their business largely "out-of-sight / out-of-mind" of the public. With the Exxon Valdez Oil Spill, the political dynamic took a dramatic shift in response to an outraged local public. Shortly after the spill, the Alyeska Pipeline Service Company owners (a consortium of BP, ARCO, Exxon, Mobil, Amerada Hess, Phillips, and Unocal) agreed to citizen demands to establish a citizens' oversight council. To back up oil company promises to fund and cooperate with this new citizens group, the federal Oil Pollution Act of 1990 (OPA 90) mandated the establishment of two national demonstration RCACs in Alaska—one in Prince William Sound, and the other in Cook Inlet. [OPA 90 was the federal government's response to the Exxon Valdez spill, and in addition to the RCACs, it also mandated the phase-in of double-hulled oil tankers in U.S. waters, stricter liability provisions, the establishment of an Oil Spill Liability Trust Fund, and more stringent safety protocols for tanker crews.]

In the OPA 90 RCAC provision, the U.S. Congress noted that "*the pres-*

ent system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation." and "only when local citizens are involved in the process will the trust develop that is necessary to change the present system from confrontation to consensus."

In December 1989, the Prince William Sound (PWS) RCAC was incorporated as a nonprofit corporation, and in February 1990, it entered into a contract with the pipeline owner, Alyeska.³ Through the negotiated contract, Alyeska agreed to provide four things to the PWS RCAC: \$2 million in annual funding, adjusted for inflation; absolute independence from Alyeska; access to Alyeska facilities; and that the contract would continue "for as long as oil flowed through the pipeline".³ The Cook Inlet RCAC was incorporated in December 1990, and entered into a contract with a consortium of oil companies and tanker operators in its region—Cook Inlet Pipeline Co., Kenai Pipeline Co., Phillips Petroleum, Tesoro Alaska Petroleum, UNOCAL, Marathon Oil, and

Cross Timbers—with an annual funding level of approximately \$600,000.⁴

Structure and function of an RCAC— the Prince William Sound, Alaska model

These RCACs provide citizens an advisory role in oil issues in the region, monitor impacts, review spill prevention and response plans, and recommend continual improvements in the system. The concept is to give local citizens a direct voice in the corporate and governmental decisions that affect them and their communities. The group is the primary conduit through which government and industry communicate to the public on oil issues. In a real sense, the RCAC has become *"the eyes, ears, and voice"* for the local public on oil issues. The public relies on the RCACs to safeguard its interests and assure transparency in industry and government. This is a novel, and indeed experimental effort. Among RCACs, the Prince William Sound RCAC (PWS RCAC) is the largest. The PWS RCAC has three main structural components: the board of directors, the staff, and the committees:

Board of Directors: consists of 19 members representing the communities and major citizen constituencies affected by the Exxon Valdez Oil Spill—commercial fishing, Alaska Natives, aquaculture, conservation, recreation, cities, villages, and tourism. Board members are chosen by their respective institutions, and are thus ultimately accountable to the institution they represent. Both the Prince William Sound RCAC and the Cook Inlet RCAC (with a 13-member board) have several *ex-officio*, non-voting board members representing the relevant state and federal agencies.

All board members are volunteers,



Picture 5. Commercial fishing, the economic mainstay of coastal Alaska, was shut down by the oil spill, and has not fully recovered today 18 year later. (Courtesy State of Alaska)

receiving no financial compensation other than for travel expenses to attend meetings and other events (the compensation issue may need to be reconsidered in the emerging democracies in order to attract the best possible people to serve on citizen councils). The RCAC Board of Directors meets at least four times a year, and at each meeting, representatives of industry and government report on their issues of concern and operations and hear from the citizens regarding issues of importance to them. This regular interchange provides a line of communication vital to the interest of each constituency, and results in a constructive climate for problem solving.

The board is responsible for allocating the annual budget. The PWS RCAC has an annual budget that has averaged about \$3 million (FY 2003 was \$3.2 million) of which on average about 38 percent (\$1.14 million/yr.) is devoted to staff, 33 percent (\$1 million/yr.) for contracts and research, and 29 percent (\$860,000) to office rent, supplies, equipment, and audits. An annual audit of all finances is conducted and approved. The U.S. Coast Guard also conducts an annual recertification of the group as being in compliance with the terms of OPA 90. All of the RCAC's work is open to the public on whose behalf it operates, and interested citizens can attend and provide public comment as well. These checks and balances provide a high level of integrity and credibility to the process.

Staff: The day-to-day activity of the PWS RCAC is the responsibility of a paid staff of 18, located in two offices—one in Anchorage, where Alyeska headquarters are located; and the other in Valdez, where the pipeline terminal is located. Staffing includes an executive director, two deputy directors, public information manager, community liai-

son, finance manager, seven project managers, and administrative assistance (The Cook Inlet RCAC has a staff of six). The staff serves at the pleasure of the Council's executive director.

Committees: Much of the council's work is conducted by four technical committees, each with a dedicated staff liaison: Oil Spill Prevention and Response; Terminal Operations and Environmental Monitoring; Port Operations and Vessel Traffic Systems; and Scientific Advisory. These volunteer committees are appointed based on expertise, interest, and willingness to serve. The committees meet regularly to discuss any and all issues within their purview, draft and recommend policy actions to the RCAC Board, and conduct research approved and financed by the Board. The Cook Inlet RCAC has three committees: Environmental Monitoring; Prevention, Response, Operations, and Safety; and Educational Outreach.

Responsibilities: The work of the council is multifaceted. The broad mission is to organize citizens to promote the environmentally safe operation of the Alyeska Pipeline Service Company terminal in Valdez and the oil tankers that use it. Within this mission, the council reviews and submits written comments on operations of the pipeline terminal and tankers. This oversight, review, comment, and recommendation can cover state and federal legislation, regulations and permits, industry policy and procedure, and so on.

At the request of its committees, the RCAC commissions independent scientific studies and reports on relevant issues to the public, the media, government agencies, legislative bodies, and the industry. This research often forms the basis of policy recommendations. Conducted jointly with government

and industry, this research has fostered a more cooperative spirit among these groups, minimizing conflict and contention. The RCAC monitors and plays an active role in all spill drills and exercises, and recommends improvements in post-drill debriefing.

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RCAC successes

The recommendations of the RCAC are *non-binding*, and government regulators and industry do not always take the council's advice. Yet many recommendations are adopted because of the thorough research and vetting facilitated by the council's public/industry/government framework that provides regular meetings to discuss research objectives, methodologies and results.

The successes of the PWS RCAC attest to the sort of cooperative problem solving that can be accomplished with genuine, informed public participation. Overall, the citizens' council has been a primary driver in the improvement of the system for oil transportation through Prince William Sound, making it arguably the safest system anywhere in the world. The following are some of the more significant improvements that the RCAC either recommended or played a pivotal role in:

- ▶ Deployment of powerful, maneuverable tugs to escort all outbound, laden tankers
- ▶ Monitoring the compliance with

phase-in requirements for double-hull tankers

- ▶ Installation of ice-detecting radar to warn of iceberg hazards in the shipping lanes
- ▶ Development of nearshore spill response strategies and contingencies
- ▶ Improved Vessel Traffic System (VTS) surveillance of all tankers in the system
- ▶ More stringent weather restrictions and speed limits for tanker traffic
- ▶ More stringent tanker inspection, in Alaska and beyond
- ▶ Advocacy for better government oversight, more personnel, and more funding
- ▶ Deployment of weather buoys along the shipping lanes for real-time weather
- ▶ Improved spill contingency plans, response equipment, and training
- ▶ Improved understanding of community impacts from technological disasters
- ▶ Conducted comprehensive environmental monitoring to assess oil impacts
- ▶ Pioneered the control of ballast water treatment to control exotic species
- ▶ The construction of a Vapor Control System to capture volatile hydrocarbon vapors released during tanker loading
- ▶ Improved fire prevention and response capability at terminal and on tankers

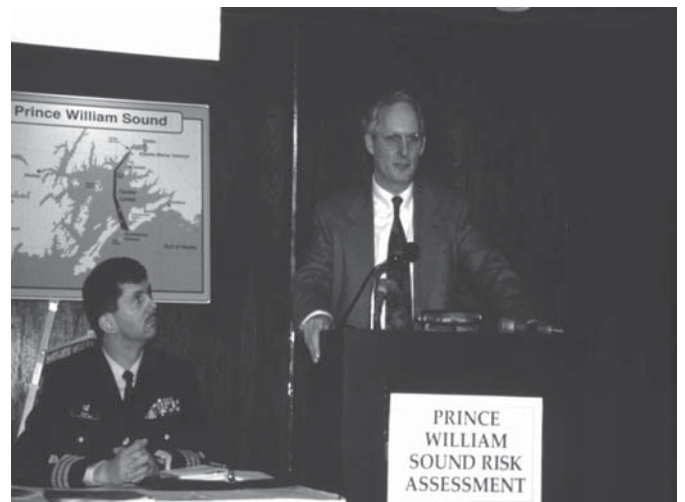
An official U.S. government review in 1993 of the two Alaska "demonstration" RCAC programs concluded that: "The demonstration programs have substantially increased the level of citizens' involvement with the oil industry and with government regulators in the environmental oversight of oil terminal and tanker operations. Through vari-

ous projects and activities, the citizen councils have provided extensive input into matters such as oil-spill contingency plans, tanker navigation and escort procedures, and oil terminal operations. Industry and government officials acknowledge that many of the councils' projects and activities have been helpful."⁵

As described in the "RCAC Retrospective", there have been many important lessons learned over the group's history.⁶ Some lessons with relevance in other regions are as follows:

- ▶ Cooperation works better than confrontation.
- ▶ Conflict is inherent, but common ground is possible.
- ▶ Trust between citizens and industry is difficult to establish and even harder to maintain, but can be maintained by regular informal meetings.
- ▶ Sufficient funding is essential
- ▶ A citizens' group can be independent with industry funding with proper safeguards.
- ▶ Agreeing on how to disagree reduces conflict
- ▶ Logic and using science make passion persuasive
- ▶ It pays to acknowledge industry and regulators when they act right
- ▶ All affected citizens should be represented on RCACs boards
- ▶ Board members do not have to be technical experts
- ▶ Funding should not have strings attached
- ▶ Advisory groups should be mandated by state or federal statute
- ▶ A clear mission and identity should be established early on

An overall lesson is that citizens are clearly more effective if they have formal relationships with those who make decisions that affect them.



Picture 6. The Prince William Sound Regional Citizens' Advisory Council was established in 1989, giving voice to the region's citizens in matters involving oil transportation and spill prevention. The Council sponsored a Risk Assessment, which identified further safety measures to be implemented.
(Courtesy State of Alaska)

The challenges and opportunities for establishing RCACs

Given the obvious benefits to public process regarding oil and gas issues in the United States that have derived from the establishment of these citizens' councils, it is recommended that the citizens and governments elsewhere consider the establishment of such groups as well. Although there may be initial resistance to the concept within industry, government, and perhaps the public, none of this should prove insurmountable. The importance of these citizens' councils is paramount—they are not government, they are not industry, but they are *established and operated solely by and for the citizens of the region*.

Although other RCACs could have similar characteristics to those in existence in the U.S., they should have a *broader scope* of responsibility. These RCACs could be empowered *to provide over-*

sight on all aspects of petroleum development in their region—permitting, exploration, production, transportation, refining, public revenue collection, risk management, and environmental compliance. The RCACs should provide oversight, advice, and advocacy on issues such as the following: where to allow petroleum development, rates of reserve extraction, Best Available Technology (BAT) standards, accident prevention and response preparedness, legal liability, environmental monitoring, regulatory reform, petroleum revenues and taxes, and so on. They should have a voice in the selection of export routes and transportation methodologies. With regard to the public collection and use of petroleum revenues, the RCACs should monitor and advise government and the public on all industry financial matters—revenues, costs, taxes, royalties, etc. And, they should commission annual audits of both industry and government petroleum revenues.

All major constituencies in the regions should be represented, with directors being democratically chosen by their respective interest groups. The government should agree to become cooperative partners with these groups, granting them access to information and deliberations. The citizens' councils should also advocate strong public access statutes similar to the United States FOIA, as well as open meetings acts and other public disclosure instruments.

Funding: Substantial and stable funding for such a group / groups is critical. The budget should be commensurate with the responsibilities of the new RCACs, and include sufficient funds to commission independent research and technical reports as the RCACs deem appropriate. If there is one thing that distinguishes the RCAC concept from other advisory structures, it is that the

RCACs have sufficient funding to do the research that they feel is necessary, greatly enhancing the justification for their policy recommendations.

There are several possible avenues for financial support:

► **Direct funding by the petroleum industry:** Funding could come directly from the oil and gas companies and/or their consortia (as in Alaska), but must contain sufficient safeguards against industry bias and control. Industry funding would be best in the form of an endowment from which the RCAC could operate off the investment earnings.

► **Financial institutions requiring the establishment of RCACs as a condition of their loan:** Lacking direct support by the oil and gas

companies, the International Financial Institutions (IFIs) could require companies receiving loans to establish and fund such independent, credible public participation as a condition of their loan. The IFIs could stipulate what sort of audit, review protocols, representation, and government and industry cooperation must be put in place to ensure the highest levels of integrity and effective action of the groups.

► **Government support:** The governments of the region could themselves establish and finance such citizen participation from public revenues derived from oil and gas projects, thereby removing industry from any direct role in the group's budget.

The International Financial Institutions could require companies receiving loans to establish and fund independent, credible public participation as a condition of their loan.

- *Interim, start-up support from philanthropic, non-governmental organizations (NGOs):* If none of the above financial instruments is attainable in the short-term, then the assistance of an outside, philanthropic NGO should be solicited. As the interim RCACs prove themselves a worthy mechanism for informed public participation in the region, then their funding should be picked up directly by government or industry.

A concern often voiced regarding establishing RCACs in the emerging democracies and other areas is that of *financial corruption*. And although the Alaska case is admittedly different, its structural safeguards against corruption are applicable anywhere. The RCACs commission annual financial audits by independent firms and report their results in their publicly available annual reports. Both the U.S. Coast Guard (the federal liaison agency) and Alyeska (the contracting oil industry body) have the right to conduct yearly financial audits of the RCAC—and on occasion avail themselves of this right. Thus there are straightforward audit and disclosure mechanisms that can prevent corruption.

Another related concern regarding the establishment of RCACs is possible *industry co-option* of the group. While there is no absolute safeguard against this tendency, the groups can be designed to limit this threat. RCAC members being accountable to their respective institutions, together with transparent activity, are the foremost safeguards against co-option. As board representatives have to report regularly to their host institution, it is the institution's responsibility to ensure that its views and concerns are addressed. If an interest group feels its RCAC representative is not working for

their interests, they can correct or replace that representative. Importantly, board appointments to an RCAC are made by the represented groups themselves— not the host government or industry. Ultimately, it is the citizens' groups represented in an RCAC that control the process— not government or industry.

The other challenge to the RCAC concept in some emerging democracies is that of *government persecution of citizen activists*. This is an extremely serious, fundamental problem that must be addressed whenever and wherever it occurs. Democratic governance depends on the rights of citizens to free speech and dissent. Governments that fail to protect these rights must be challenged to do so by the international community. Democratic governments must have laws and regulations in force to aggressively prosecute any such actions against its citizens. The establishment of RCACs may help some governments that are wary of citizen dissent come to value public attitudes and insights.



Picture 7. As a result of citizen demands, regular oil spill response drills are held, using local fishing vessels. (Courtesy State of Alaska)

Conclusion— a new paradigm for oil and society

In closing, it should be underscored that the success of corporations in the 21st century will be measured not just by their bottom-line profits, but also by social and environmental responsibility, citizen involvement, ethics, justice, and honesty. Governments will be assessed by how well they protect the rights and interests of their citizens. In this regard, citizen's involvement is critical.

All nations should establish instruments of *transparency* and *informed public participation* as outlined above. This should include enactment of a Freedom of Information Act (FOIA), Open Meetings Act, Privacy Act, Whistleblower protections, and Conflict of Interest / Financial Disclosure laws for public officials. Further, petroleum producing states should require the establishment of *Regional Citizen Advisory Councils* (RCACs) for a nation's petroleum sector, to be funded either from government

oil and gas revenues or from industry itself. Citizens need to be involved in the oversight of petroleum operations that will affect their lives, and to do this they will need an organization with money, staff, authority, broad representation, and most of all, independence.

The establishment of RCACs would provide an unprecedented level of *transparency* and *informed public participation* with regard to industrial activities in fulfillment of the promise of democratic governance— an important prerequisite to achieving a prosperous, equitable, just, and sustainable society.

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Notes

- 1 Emerson, 1974.
- 2 Foerstel, 1999.
- 3 PWSRCAC
- 4 CIRCAC
- 5 U.S. GAO, 1993.
- 6 PWSRCAC, 1996.

References/ Further Reading

- Busenberg, G. *Citizen Advisory Councils and Environmental Management in the Marine Oil Trade*. Technical report based on doctoral dissertation, University of North Carolina, Chapel Hill (1997): 78, 1997.
- CIRCAC, Annual Reports, publications, newsletter available from Cook Inlet RCAC. Kenai, Alaska, USA. ph: 907-283-7222; fax: 907-283-6102; e-mail: circac@circac.org; and on Worldwide Web: www.circac.org
- Commission on Protecting and Reducing Government Secrecy*, 1997 report. At www.access.gpo.gov/congress/commissions/secrecy/index.html
- Emerson, T.I., "The Dangers of State Secrecy", *The Nation*, March 30, 1974
- Foerstel, H.N., *Freedom of Information and the Right*



Picture 8. After strong, well reasoned citizen input, the oil tanker transport system in Alaska is much safer than when the Exxon Valdez occurred, and is arguably one of the safest anywhere in the world. The tanker in the background is outbound with a load of oil, and has an escort tug. (Courtesy State of Alaska)

to Know. Greenwood Press, Conn., London, 1999
FOIA Group. at www.foia.com
Ginsberg, P., S. Sterling, S. Gotteherer, "The Citizens' Advisory Council as a Means of Mitigating Environmental Impacts of Terminal and Tanker Operations." *Marine Policy* (September 1993): 404-411, 1993.
Gordon-Murnane, Laura, "Access to Government Information in a Post 9/11 World", *Searcher* v. 10 no. 6. June. P. 50-62, 2002.
McKay, D.J., *Tapping Officials' Secrets: The Door to Open Government— Alaska*, 1989.
Michael, J., *Freedom of Information in the United States*, in Public Access to Government-Held Information: A Comparative Symposium, London, Stevens & Son Ltd, 1987.
National Freedom of Information Coalition at www.reporters.net/nfoic/newsletters.html

Project on Government Secrecy. (Federation of American Scientists) at www.fas.org/spp/
PWSRCAC, Annual Reports, publications, and newsletter available from PWS RCAC, Anchorage, Alaska, USA. ph: 907-277-7222; fax: 907-277-4523; e-mail: rcac@anch.pwsrcac.org; and on Worldwide Web: www.pwsrcac.org
PWSRCAC, *RCAC Retrospective: The Successes and Lessons of a Citizens' Advisory Group*. PWS RCAC document file code: #5006.645. 1996.
Robinson, J.S., *Tapping the Government Grapevine*, Oryx Press, Phoenix, New York, USA, 1988.
U.S. GAO, *Report to Congress on the Alaska Regional Citizens' Advisory Councils*. GAO, Washington, D.C. (1993): 33.
Wentworth, J., "The Public Has a Right to Know", *Spectrum*, v. 73 No. 2. Spring, 2000.

Reflections on integrating a rights-based approach in environment and development

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Abstract. The article reflects on how Oxfam Novib, a development organisation, has integrated a rights based approach (RBA) in its general work and mission of poverty eradication, and what lessons can be learned by conservation actors. Although historically human rights, development, and conservation have had a rather uncomfortable relationship, the authors maintain that a rights based approach and sustainable use of natural resources are compatible. An RBA to development seeks to transform the vicious cycle of poverty and marginalisation into a virtuous cycle in which people can seek the fulfilment of their rights from duty-bearers. The authors describe how Oxfam Novib has situated its work on the use of natural resources within the right to a sustainable livelihood. In practice, this means that at the local level, an RBA to environmental programs begins with a thorough analysis of local realities, and the inclusion of men and women in problem definition and proposal making. The analysis of who is accountable and how the situation can be redressed then informs the choice of strategies that can be used. Yet, many problems experienced at the local level are generated at higher levels. Hence, for Oxfam Novib, an RBA to environment requires changing policies, practices, beliefs and ideas, and building and reinforcing the capacity of rights holders and duty bearers. Moreover, seeking a government's responsibility for environment, poverty and exclusion requires active citizenship. Responsibility for the environment calls for joint work in mutual solidarity, as everyone has an obligation towards each other, the earth, and future

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