#### Arctic drilling is coming in the status quo – effective citizen suits are critical to prevent U.S. development

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The Arctic Ocean is believed to have one of the largest remaining undeveloped reserves of oil and gas in the world.1 Interest in Arctic offshore exploration and development has grown over the last few years, and several companies have significant plans for new activities in the Arctic.2 While the Arctic holds significant promise for new oil and gas development, its harsh conditions and fragile environment pose a number of unique challenges to the exploration and production industry. As activities in the Arctic expand, one of the major hurdles that companies desiring to conduct offshore operations in the region will have to overcome is obtaining environmental approvals for their proposed activities. This Article compares the regulatory systems of the United States and Norway and the likelihood of citizen group challenges environmental decisions made by regulators.3 Reflecting on recent litigation in the Chukchi Sea and the Gulf of Mexico, we highlight the significant uncertainties and delays that can be associated with citizen suits. Ultimately, we conclude that although there remain regulatory distinctions, post-Deepwater Horizon reforms are bridging the gap between the U.S. and Norwegian regulatory systems. However, companies engaging in new exploration and production activities in the Arctic may prefer to minimize their uncertainty and operate in the territory of those countries where participatory governance structures reduce the likelihood of citizen group challenges to regulatory decisions. II. Challenges of Arctic Spill Response The Arctic environment itself poses unique challenges for oil and gas exploration and production. Among these are the harsh climate conditions and presence of ice, which lead to shorter working seasons. A staff working paper for the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling describing the difficulties of spill response in the U.S. Arctic explains that both the Chukchi and Beaufort Seas present environmental conditions that call into question the effectiveness of common response methods.4 Temperature, winds, and wave action limit responder access and impact dispersion and degradation of oil; locating oil among or captured in ice floes can be difficult and dangerous; and ice poses a physical barrier to mechanical recovery technology such as skimmers and booms.5 Some methods of response proposed for use in the U.S. Arctic rely on strategies and technologies that are untested in Arctic conditions. A "leave-in-place" strategy that tracks oil incorporated into ice in order to recover it once the ice melts has not been used during an actual spill.6 Additionally, in-situ burning, a response technique used in the Deepwater Horizon response, could require chemical herders7 of which there are none currently approved for use in Arctic waters and for which studies on effectiveness of in-situ burning in an Arctic environment have yielded varying results.8 Similarly, a 2001 study found chemical dispersant less than 10% effective on the Alaska North Slope.9 Concerns about toxicity of dispersants and the lengthened time that dispersed oil would remain in the ecosystem in Arctic waters also persist.10 In addition, the potential interactions between oil and sea ice are poorly understood,11 making it difficult to develop effective spill response technologies. Staging a spill response in the U.S. Arctic would be far more difficult than in more developed and less remote regions, such as the Gulf of Mexico. The U.S. Arctic currently lacks the support infrastructure needed to marshal an adequate response. The Coast Guard has only one operational polar icebreaker, the Healy,12 and would need additional icebreakers to respond to spills or emergencies if major drilling began in the Chukchi Sea. The nearest Coast Guard operations base to the Chukchi is about 1,000 miles from leasing sites, making it difficult to conduct search and rescue operations.13 As a result, initial emergency and spill response activities would likely fall to industry and contractors. Even in the Beaufort Sea, which is much closer to shore, there is limited response capability. The small communities in the area can not presently support the large number of response personnel required to respond to a major incident.14 Oil spill response contractors, such as Alaska Clean Seas ("ACS"), have limited offshore response capabilities.15 ACS was established as a non-profit response co-operative for the North Slope onshore operations. It is unlikely that the amount of resources marshaled in the Gulf of Mexico for the Deepwater Horizon spill could be gathered in the U.S. Arctic under current conditions. More than one hundred aircraft and helicopters were used during the Deepwater Horizon response for aerial surveillance and tracking.16 It is generally understood that similar resources are not yet available for rapid response in the U.S. Arctic. Response resources in the U.S. Arctic are presently located hundreds of miles from the drilling area, whereas in the Gulf of Mexico, spill response equipment was available immediately.17 Although the Norwegian Arctic faces some similar environmental challenges as the U.S. Arctic, it has more robust response capabilities for offshore drilling and has characteristics that make such response capabilities easier to amass than in the U.S. Arctic. The Norwegian Arctic does not have the sea ice that greatly complicates operations in the U.S. Arctic. In addition, unlike the remote nature of the U.S. Arctic, the northern Norway is a populated area with a number of cities that have substantial transportation, housing, and economic infrastructure, including significant airports, that would make a Deepwater Horizon-level response in the Barents Sea easier to conduct. As for the governmental response capabilities, as was described above, the U.S. Coast Guard has limited response capabilities in the U.S. Arctic. By contrast, northern Norwegian municipalities, that also have responsibility for response within their jurisdictions, the Norwegian Coast Guard, and the Norwegian Coastal Administration have substantial offshore response capabilities with equipment located across the Norwegian coast.18 There are significant differences in the private sector response capabilities as well. While Alaska Clean Seas is geared mostly towards work on the North Slope, Norway's equivalent private sector association, the Norwegian Clean Seas Association for Operating Companies ("NOFO") has substantial experience in offshore spill response in open seas and coastal waters in the Arctic. It was created following a blowout in the North Sea in 1977.19 The organization maintains five bases with twenty full time employees and fifty reinforcement personnel pledged by operators as well as eighty people hired to maintain and operate oil spill response equipment at the bases.20 NOFO provides tactical and operational command of private sector response resources for oil companies in the event of a spill. As is described in more detail below, the company responsible for the spill has overall responsibility for spill response from offshore facilities under Norwegian law, with the governmental response and coordinating responsibilities falling to the Norwegian Coastal Administration. NOFO's response resources include oil recovery vessels, towing vessels, ocean-going mechanical oil recovery systems, large stocks of dispersion agent, agreements for remote sensing from radar satellites, aircraft, helicopters, vessels and installations, oil recovery equipment for coastal operations, and a specialized task force for organizing and conducting shoreline operations.21 NOFO conducts more than 100 exercises and verifications annually, including oil-on-water R&D and training exercises.22 NOFO's resources are dispersed throughout Norwegian coastal areas in order to quickly respond to spills.23 As mentioned above, Alaska Clean Seas was developed primarily for onshore operations in the North Slope. While it has some response capabilities for offshore operations, Alaska Clean Seas' primary activity and the majority of its equipment remains geared towards the North Slope, near-shore, and onshore water bodies.24 In addition, the oil companies themselves, that are required to provide for oil spill contingencies, have deposits of equipment in various coastal locations.25 II. Comparison of U.S. and Norwegian Regulatory Regimes Norway's regulatory regime governing offshore exploration and development is generally regarded as among the most stringent in the world, and, in the aftermath of Deepwater Horizon, requirements with regard to oil spill preparedness and clean-up in the United States have become more robust. However, there are still significant differences between the legal standards in the United States and Norway. In Norway, the requirements imposed upon operators of offshore exploration and development activities derive from both the Petroleum Activities Act and the Pollution Control Act. Together, these Acts create an affirmative duty of pollution response and cleanup. In contrast, while new regulations require that a party demonstrate it has adequate resources to clean up a spill, the United States' legal regime has traditionally been more focused on the imposition of financial liability for spill cleanup than on creating a structure that governs who will conduct the cleanup. This Part provides a brief overview of the process by which entities may obtain rights to explore portions of the outer continental shelf and the environmental approvals associated with such activities. This Article then describes the spill response planning and demonstration of financial capacity to respond to a spill required for approval to drill offshore. A. Offshore Leasing and Permitting in the United States The Submerged Lands Act established that all submerged lands and resources associated therewith between 3 and 200 nautical miles from shore are property of the United States while the coastal submerged lands belong to the States.26 Leasing of offshore areas for energy development in the United States is governed by the Outer Continental Shelf Lands Act ("OCSLA").27 Leasing and development of offshore energy resources under OCSLA is carried out by the Bureau of Ocean Energy Management ("BOEM"), within the Department of the Interior.28 The leasing process begins with BOEM developing a 5-year leasing plan for a particular area.29 Under the 5-year leasing plan, BOEM will describe which lease blocks it intends to offer at auction.30 The five-year leasing plan is then carried out through a series of sealed-bid auctions in which an applicant may obtain the right to conduct exploration and development activities in certain portions of the Outer Continental Shelf. Once a lessee has successfully obtained a lease from BOEM, it typically provides a 10-year exclusive right to conduct exploration and development activities in a particular area. Upon discovery of oil or gas within the initial period of the lease, the lease is automatically extended for as long as the well is producing in paying quantities or the lessee is conducting approved drilling operations. Before a lessee can undertake any exploration activities in a particular lease block, it must submit to the Bureau of Safety and Environmental Enforcement ("BSEE") for approval a spill response and exploration plan. This exploration plan will be subject to review under the National Environmental Policy Act ("NEPA"), described in more detail below. In addition, if endangered or threatened species are present in the area, BSEE may be required to consult with the Fish and Wildlife Service or the National Marine Fisheries Service under the Engendered Species Act or the Marine Mammal Protection Act before approving the exploration plan. Similarly, when a project proceeds to the production phase, activity cannot begin until BSEE has approved a lessee's development plan. The development plan will be subject to the same environmental reviews that apply to the exploration plan. In the aftermath of the Deepwater Horizon incident, the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE"), now the BSEE and BOEM,31 added several new requirements that must be met for the approval of both exploration and development plans. Notice to Lessees NTL2010-06 requires that all exploration and development plans submitted for approval must describe the worst-case discharge scenario. NTL2010-06 also requires the applicant to describe proposed measures to prevent a blowout, reduce the likelihood of a blowout, and conduct effective early intervention in the event of a spill.32 In addition, under NTL2010-10, BSEE will evaluate all applications to determine whether lessees have submitted information demonstrating that they can deploy adequate containment resources to respond to a blowout or loss of well control.33 On December 13, 2010, BOEMRE issued additional guidance for deepwater operators on complying with NTL2010-10.34 The guidance outlined what should be included in a containment plan prepared for the purpose of complying with NTL2010-10. Offshore activities are also subject to Clean Water Act ("CWA")\_and Clean Air Act ("CAA") regulations and permitting requirements governing their emissions and discharges. The CWA requires any discharges into navigable waters of the U.S. to be permitted. In the case of a prohibited discharge, such as a spill, reporting of the incident is required.35 Likewise, the CAA requires operators to obtain air permits that have similar reporting requirements in the event of a non-permitted release. B. Offshore Leasing and Permitting in Norway The National Petroleum Directorate ("NPD") and the Petroleum Safety Authority of Norway ("PSA") oversee the resource management and safety, respectively, of the petroleum industry in Norway in conjunction with various Ministries. Additionally, the Norwegian Pollution Control Authority and Norwegian Social and Health Directorate cooperate with PSA on regulating health, environment and safety for offshore operations.36 Offshore leasing and permitting in Norway is carried out under the authority of the Crown under the 1996 Petroleum Activities Act. Before new areas can be opened to petroleum activities, the Ministry of Petroleum and Energy must conduct an evaluation of the impact of new petroleum activities in the area on trade, industry, and the environment.37 By regulation, the Ministry must create a draft impact assessment plan and make it available for public comments for a minimum of six weeks.38 The impact assessment itself must describe the presumed impacts of opening the area to petroleum activities and the impact of future petroleum activities in the area.39 Once the draft assessment has been prepared, it must be submitted to all concerned authorities and central industrial organizations and also posted for public comment.40 At the conclusion of the public comment period, which will typically last three months and must be at least six weeks, the Ministry must decide if additional assessments are needed.41 Once the Ministry has concluded all necessary assessments, the proposal to open the new area must be submitted to Parliament for approval.42 In general, the Ministry will announce areas of production for which it will grant leases and provide a minimum of 90 days for the submission of applications.43 Production licenses, granting exclusive rights for exploration and production, may then be granted to appropriately registered individuals.44 The Ministry announces blocks for which it will accept production license applications, companies submit their applications, and then after negotiations the licenses are awarded. This process can take approximately eighteen months.45 In assessing the applications, the technical expertise of the applicant related to development, research, safety, and the environment, its financial capacity, geological understanding, and experience in the Norwegian Continental Shelf and other locations are all taken into account in granting licenses. The Norwegian Petroleum Directorate ("NPD") and State Pollution Control Authority must approve all exploratory drilling. Prior to starting exploration activities, licensees must submit information required under the Resource Management Regulations to the Norwegian Petroleum Directorate, the Directorate of Fisheries, the Institute of Marine Research, and the Ministry of Defence.46 These regulations also include requirements applicable to the surveys and vessels involved in the exploratory activity. Prior to drilling an exploratory well, the licensee must receive a permit from the NPD. Before beginning development, licensees must submit plans for development and operation of the petroleum deposit to the Ministry of Petroleum and Energy and Ministry of Labour with copies to the NPD and NPS.47 The Ministry coordinates the approval process. The plan must include an overall plan for drilling and well activities as well as a Plan for Development and Operation ("PDO").48 As part of this approval process, the licensee must undertake an environmental and socio-economic assessment (ESIA) that is subject to public hearings before governmental approval. The ESIA contains a detailed account of the impacts on the environment that are anticipated from the proposed exploration and development activities.49 Licensees are subject to the requirements of Norway's Pollution Control Act.50 Under the Pollution Control Act, all persons engaged in exploration and production have a duty to prevent pollution, and in the event of pollution in violation of the Act, the responsible party must stop the pollution and mitigate any resulting damage or nuisance.51 The Pollution Control Act also establishes a Pollution Control Authority with broad regulatory powers. In the event that an activity, such as oil and gas exploration in the Arctic, is proposed at a new site and has the potential to involve serious pollution, the project developer must notify the Pollution Control Authority of its plans.52 Upon receiving such notice, the pollution control authority must determine whether an environmental impact assessment is necessary before the project may be permitted.53 If an environmental impact statement is required, it must be made public and the Pollution Control Authority must convene a public hearing before making a final decision.54 Norway's Pollution Control Regulations establish that any applicant for a permit under § 11 of the Act, which would include operators of oil and gas exploration and development activities, conduct an environmental impact assessment and provide a description of all measures to control pollution in the permit application.55 C. Spill Response and Financial Responsibility Requirements In Norway, the requirements imposed upon operators of offshore exploration and development activities come from both the Petroleum Activities Act and the Pollution Control Act. Together, these Acts create an affirmative duty of pollution response and cleanup. In contrast, while the new NTL2010-10 requires that a party demonstrate it has adequate resources to clean up a spill, the United States' legal regime has traditionally been more focused on the imposition of financial liability for spill cleanup than on creating a structure that governs who will conduct the cleanup. Norway imposes an obligation to respond to a pollution incident on all persons responsible for the incident as well as an obligation to provide assistance to the governmental response. Under Norway's Petroleum Activities Act, a licensee must maintain efficient emergency preparedness at all times.56 In the event of a release, the licensee has primary responsibility to respond and return the environment to a state that is as close as possible to pre-spill conditions.57 In addition, the Ministry is granted the authority to require other licensees to make available necessary contingency resources and take other measures to obtain spill response resources in the event of an emergency.58 In addition, Norway's Pollution Control Act requires all permittees whose activities may cause acute releases to have an emergency response system.59 To fulfill this requirement, the party must provide the necessary emergency response equipment to prevent, detect, stop, remove, and limit the impact of the pollution.60 An emergency response system will be deemed adequate when it is determined to be in reasonable proportion to the probability of acute pollution and the extent of damage that may arise.61 In addition, Norway requires that operators demonstrate that they have the financial capacity to carry out a response activity, should one be necessary. Finally, Norway's Pollution Control Act does give third parties with a legal interest in the matter the right to file claims for restitution for losses resulting from a pollution event. NOFO, described in an earlier section, is private industry's main coordinating association for its spill response in addition to capabilities of individual operators. The required private industry response and contingency system is complimented by a municipal contingency system to combat pollution that occurs within its jurisdiction but which is not covered adequately by the polluter's response. In addition, the Norwegian government has its own contingency system developed to respond to major incidents and to coordinate response by all entities involved via the Norwegian Coastal Administration. The Norwegian Coastal Administration coordinates the response according to the national emergency response system. In contrast, prior to the Deepwater Horizon incident, the United States' legal regime was almost exclusively focused on establishing financial liability for the damages caused by a spill, rather than on creating a structure for spill response. Passed in response to the Exxon Valdez incident, the Oil Pollution Act of 1990 establishes that a responsible party will be liable for all costs associated with the removal of oil from the environment as well as all damages to natural resources, property, revenues, or public services.62 However, a party's liability for damages to private parties, in addition to the cost of removal, under the Oil Pollution Act is capped at $75,000,000 for an offshore facility unless the spill was the result of a violation of regulations.63 In the event of a spill at an offshore facility resulting in a discharge into waters of the United States, the operator may also face liability under the Clean Water Act, including civil penalties of up to $32,500 per day and natural resource damages.64 While the United States' system thus establishes financial responsibility in the event of a spill, it does not impose the responsibilities for actual spill response that exist in the Norwegian scheme. However, the BOEM requirement that applicants for new development permits must demonstrate comprehensive spill response capabilities is already having a practical impact on the U.S. permitting process. NTL2010-10 and the guidance issued for it require an operator to demonstrate that it has access to and can deploy surface and subsea containment resources to adequately respond to a blowout or loss of well-control.65 This includes addressing capabilities for debris removal and access to subsea containment and capture equipment, subsea utility equipment, riser systems, Remotely Operated Vehicles ("ROVs"), capture and support vessels, and storage facilities.66 The requirement that applicants for new development permits must demonstrate spill response preparedness will be of particular importance to operators of new facilities in the U.S. Arctic because of the unique challenges of Arctic spill response, described above. Thus, the need to demonstrate spill response capacity may become a significant hurdle that must be cleared in obtaining permits for Arctic exploration and development activities and certainly brings the U.S. legal requirements closer to those of Norway. Shell, the first company to receive approval for an exploration plan in the U.S. Arctic since the Deepwater Horizon blowout included in its plans special response vessels, a stand-by rig for relief well drilling, and other resources to provide rapid response in the case of a spill or blowout.67 This level of preparedness may become a standard requirement for any operations in the U.S. Arctic, where response capabilities are currently much more limited than in the Gulf. That said, BOEM's and BSEE's resources have been called into question as to their effectiveness at evaluating operators' response capabilities and enforcement of the regulations on the books. III. Ability of Citizen Groups to Bring Challenges The other major factor to be considered in evaluating environmental permitting for new Arctic exploration and development is the ability of citizen groups to bring legal challenges that can impose significant delays in the permitting process. As described in the sections below, the powerful citizen suit provisions of United States' environmental laws create an avenue for third parties to challenge permitting decisions and delay planned exploration and development. While both U.S. and Norway's systems provide for public hearings throughout the licensing and permitting process, the U.S. citizen suit provisions provide a much more potent opportunity for the individuals to voice their opposition to offshore development and halt such development despite a governmental approval. As the regulatory regime in the U.S. moves closer to the stringent requirements of Norway, the complications that arise from citizen suits could, on balance, render the U.S. a less attractive location for Arctic exploration and development. Given the sensitivity of the Arctic ecosystem, environmental groups have already begun and will certainly continue to bring legal challenges in an attempt to halt Arctic exploration and development. This Part describes the two main statutes under which citizen suit challenges have been brought and provides a discussion of ongoing suits. This Part then describes the more limited right of public challenge that is available under Norway's Public Administration Act. In the United States, individual citizens or citizen groups may file citizen suits and act as "private attorneys general" to enforce environmental laws against both the federal government and private parties. Most major environmental laws contain a citizen suit provision that expressly authorizes suits against the federal government for failure to perform certain non-discretionary duties under the statute and against private parties for particular violations of the law or permits required thereunder.68 The basic idea of the citizen suit is that private citizens may supplement agency enforcement where the government's resources are too limited to prosecute all violators of environmental laws.69 Citizen suits have played a significant role in environmental enforcement in the United States: reportedly seventy-five percent of all environmental civil suits filed between 1973 and 2002 were citizen suits.70 A. National Environmental Policy Act The National Environmental Policy Act ("NEPA") applies to all major federal actions significantly affecting the human environment.71 Major federal actions include the issuance of federal permits, use of federal funds, and federal policy decisions that result in the irretrievable commitment of resources.72 Therefore, NEPA applies not only to the creation of 5-year leasing plans but also to BOEM's decisions to approve individual exploration and development plans. NEPA requires that the environmental impacts of a project and alternatives, including the no action alternative, must be evaluated, but it does not require the agency to take any particular course of action once the environmental impacts have been assessed.73 For each action that may have a significant impact on the environment, the federal agency must conduct an environmental assessment. The outcome of the environmental assessment will either be a finding of no significant impact, allowing the agency to proceed to make its decision on the project, or a decision to undertake a full environmental impact statement. Should an environmental impact statement be required, it can take over a year to collect and assemble the requisite environmental data. While NEPA does not have a citizen suit provision, an agency's failure to follow NEPA's required procedures can be challenged under the Administrative Procedures Act. A NEPA challenge typically alleges either that an agency opted for an environmental assessment when a full environmental impact statement was required or that the environmental impact statement (EIS) prepared by the agency was inadequate because it failed to fully consider all appropriate, relevant information. NEPA litigation can be a source of significant delays in the permitting process. The litigation itself causes delays, and furthermore, if the citizen-plaintiffs are successful in their suit, the court may choose to remand the decision to the agency for preparation of an EIS or supplemental EIS. While such additional analyses are ongoing, the agency cannot issue any permits that depend upon them. An important example of NEPA litigation regarding oil and gas activities in the Arctic is Native Village of Point Hope v. Salazar.74 The case concerns lease sale number 193, which was held by the Minerals Management Service (now BOEM and BSEE) in February 2008. In their suit, a coalition of native Alaskan groups and environmental groups challenged the adequacy of the environmental impact statement covering the 5-year leasing program for the Chukchi Sea. Plaintiffs alleged that the EIS was inadequate for a number of reasons, including a failure to include essential missing information about the Chukchi Sea and a failure to evaluate the lease sale's impact in the context of a warming climate.75 On July 21, 2010, the District Court of Alaska issued a preliminary decision remanding the EIS to BOEMRE for the incorporation of additional public comment and analysis of a hypothetical very large oil spill scenario.76 The court order further enjoined all activity under lease sale 193 until BOEMRE corrected the deficiencies in its EIS.77 This injunction was limited by an August 5, 2010 order in which the court stated that the injunction "does not apply to activities outside of Lease Sale 193 or to organizations not a party to this lawsuit, nor does it preclude BOEM78 from issuing permits under its permitting authorities to Statoil or others or prohibit routine paper transactions relating to Lease Sale 193."79 BOEMRE released a draft Supplemental Environmental Impact Statement ("SEIS") in October 2010 for public comment and a revised version of the draft in May 2011.80 The agency issued a final supplemental EIS on August 18, 2011, ahead of the court's October 3rd deadline.81 This suit resulted in an almost four-year delay from the time of the original sale. Similar efforts to halt Shell's exploration plans in the Beaufort Sea have begun as well. In September, certain environmental groups along with the Village of Point Hope filed a petition with the Ninth Circuit for review of Shell's offshore exploration plan for the Beaufort Sea tentatively approved by BOEMRE on August 4, 2011.82 The petition challenges this approval of the exploration plan under both NEPA and OCSLA. B. Endangered Species Act The Endangered Species Act ("ESA") provides protection for species listed as engendered or threatened. Among these protections are the designation of critical habitat for all endangered species and the prohibition on take of species.83 "Take" is broadly defined under the ESA and can include killing, harming, harassing, or even disrupting the habitat of a listed species.84 The ESA requires that a federal agency considering an action that may impact an engendered or threatened species consult with either the U.S. Fish and Wildlife Service ("FWS") or National Marine Fisheries Service ("NMFS") before taking a final action.85 If impacts are expected to be insignificant, such consultation may be informal. However, in most cases, the consultation will require FWS or NMFS to issue a biological opinion detailing the potential impacts of the proposed action on an endangered species and its designated critical habitat. The project may proceed only if the biological opinion concludes that the proposed action will not jeopardize the continued existence of the species.86 If a private party plans to engage in an activity that may result in the take of an endangered species, it must obtain an incidental take permit.87 The ESA has an express citizen suit provision that permits citizens to sue to enjoin any person from taking an endangered species or compel the United States to comply with the requirements of the Act.88 Environmental groups have often filed ESA challenges to offshore oil and gas activities that will impact listed marine mammal species. In fact, several groups have filed a notice of intent to sue Interior, BOEMRE, the NMFS, and the FWS for violating the Marine Mammal Protection Act ("MMPA") and the Endangered Species Act when approving ten projects in the Gulf of Mexico.89 Plaintiffs allege that the agencies' approval of these activities violated the ESA and MMPA because the approvals are agency actions that require consultation with NMFS under the ESA and results in a "take" of marine mammals without the authorization of the NMFS. In addition, the Southern Environmental Law Center filed a suit on behalf of Defenders of Wildlife challenging 221 drilling leases issued since the Deepwater Horizon incident because BOEMRE allegedly did not consider the impact of the spill in its environmental reviews of the leases.90 They cite both NEPA and the ESA in that suit. Given the significant number of endangered species in the Arctic, including the recently-listed polar bear, that are characterized as under threat from a number of other environmental stressors such as climate change, it is reasonable to expect numerous citizen suits will be filed with respect to the potential endangered species impacts of Arctic exploration and development. In addition, the other required procedures of the ESA may introduce additional delays in permitting. For example, Shell's newly-approved exploration plan for the Chukchi Sea is a conditional approval that does not permit any exploration activities until critical habitat consultation for the polar bear is completed. Even after the critical habitat consultation is completed, there is a risk of a citizen suit challenge, in part because such lawsuits are so easy to file in the U.S. C. Petitions for Review under Norway's Public Administration Act In contrast to the citizen suit system in the United States, a citizen's right to seek review in Norway is limited. Norway's Public Administration Act provides certain limited rights for agency review and public challenge but not for judicial review. Review of Activities under the Pollution Control Act expressly arises under Norway's Public Administration Act.91 Given the structure of the Public Administration Act, it would also appear that decisions made under the Petroleum Industries Act could be challenged. The Public Administration Act permits individual administrative decisions to be appealed by a party or any other individual with a legal interest in the case.92 The Act specifies that such appeals will be made to the next most senior agency.93 In the case of the Pollution Control Act, decisions taken by the Pollution Control Authority may be appealed to the Ministry of the Environment.94 Review of decisions by the National Petroleum Directorate under the Petroleum and Resource Management Regulations can be appealed to the Ministry of Petroleum and Energy.95 Unless otherwise provided by the King, the Public Administration Act prohibits additional appeal beyond the first agency appeal, meaning that there is no right to judicial review of an agency decision made under the Act.96 As neither the Pollution Control Act nor the Petroleum Activities Act provides an independent means for citizens to seek judicial review, the right of citizens to challenge agency decisions related to exploration and development in the Arctic is limited to a single administrative appeal. Furthermore, the Public Administration Act requires that any such appeal be filed within three weeks of the date of notification of an administrative decision.97 Furthermore the most important aspect in shaping whether citizen suits will be filed may be the structure of Norwegian petroleum governance as a whole rather than the existence of legal means by which a challenge may be brought. In a recent presentation, the Norwegian Minister of Foreign Affairs highlighted Norway's leadership role in the development of ecosystem based management in the Arctic,98 and that Norway views its participatory resource governance model as a major strategic resource to be exported.99 Thus, it is possible that Norway's governance structure, which employs a system that evaluates competing uses and emphasizes public dialogue may result in regulatory decisions that are less likely to be challenged. Therefore companies wishing to pursue exploration and development in the Norwegian Arctic face a much lower risk of delay from citizen challenges. IV. Conclusions Norway has traditionally had a more stringent regulatory system governing offshore drilling and oil response responsibilities than the United States. However, changes to the permitting approval process in the U.S. post-Deepwater Horizon have made U.S. requirements tougher. Even so, the two systems differ in that Norway places primary legal responsibility for cleanup with the operators while the U.S. primarily places financial responsibility with the operators and responsibility for organizing the response with the government. As the two countries' regulatory requirements become more comparable, the differences in the possibility of facing citizen suits may become a more important distinction for operators. The long delays in obtaining clearance to drill that operators can face from citizen suits in the United States can make operating in the U.S. Arctic less predictable and thus less attractive than similar operations in Norway, which limits this type of challenge in its system. Norway's lack of judicial review opportunities mean that permitting and licensing decisions do not face the possibility of such lengthy delays. In addition, questions of funding and resources continue to plague the U.S. system, limiting Coast Guard response capabilities and slowing down the permitting approval process. This uncertainty may also encourage operators to look to a more stable and established offshore regulatory system such as Norway's, particularly when paired with the limited ability to challenge governmental permitting and approval decisions. Additionally, environmental factors such as the greater accessibility and lack of sea ice in the Norwegian Arctic may make it a more inviting location within which to operate.

Arctic drilling causes militarization – kills Russia and China relations, causes BMD deployment and risks conflict

Gabriel 13

[Dana, independent security researcher for Intellihub. U.S. Arctic Ambitions and the Militarization of the High North, 7/23/13, <http://intellihub.com/2013/07/23/u-s-arctic-ambitions-and-the-militarization-of-the-high-north/>]

With back-to-back chairmanships, it gives both countries an opportunity to increase cooperation on initiatives that could enhance the development of a shared North American vision for the Arctic. The U.S. has significant geopolitical and economic interests in the high north and have released a new national strategy which seeks to advance their Arctic ambitions. While the region has thus far been peaceful, stable and free of conflict, there is a danger of the militarization of the Arctic. It has the potential to become a front whereby the U.S. and other NATO members are pitted against Russia or even China. In an effort to prevent any misunderstandings, there are calls for the Arctic Council to move beyond environmental issues and become a forum to address defense and security matters. In May, Canada assumed the chairmanship of the Arctic Council where they will push for responsible resource development, safe shipping and sustainable circumpolar communities. The Arctic Council is the leading multilateral forum in the region and also includes the U.S., Denmark, Finland, Iceland, Norway, Sweden and Russia. During the recent meetings, members signed an Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic which seeks to improve coordination and planning to better cope with any such accidents. In addition, China, India, Japan, Singapore, South Korea, along with Italy were granted permanent observer status in the Arctic Council. With the move, China has gained more influence in the region. The potential for new trade routes that could open up would significantly reduce the time needed to transport goods between Europe and Asia. The Arctic is an important part of China’s global vision, as a place for economic activity and a possible future mission for its navy. In order to better reflect the realities of politics in the high north, there are calls to expand the Arctic Council’s mandate to also include security and military issues. Writing for the National Post, Rob Huebert of the Canadian Defence & Foreign Affairs Institute explained that, “One issue that has not received much attention is the need to discuss the growing militarization of the Arctic. While **the Arctic Council is formally forbidden from discussing military security** in the Arctic, the time has arrived to rethink this policy.” He went on to say, “The militaries of most Arctic states are taking on new and expanded roles in the region that go beyond their traditional responsibilities, which may create friction in the region.” Huebert also stressed that, “These new developments need to be discussed to ensure that all Arctic Council member states understand why they are occurring, and increase the confidence of members that these new developments are not about a conflict in the Arctic, but about the defence of core strategic interests.” He further added, “It is easy to see how both the Americans and Russians will become increasingly concerned about the security steps that the other is taking. But now is the time for all to openly discuss these developments so that old suspicions and distrusts do not resurface.” As part of efforts to strengthen Arctic security cooperation, in June, the Northern Chiefs of Defence Meeting was held in Greenland. It brought together representatives from the U.S., Canada, Denmark, Russia, Sweden, Norway, Finland and Iceland. Gen. Charles Jacoby, Commander of North American Aerospace Defense Command (NORAD) and U.S. Northern Command (USNORTHCOM) also attended the event. The second annual gathering was used as an, “opportunity for direct multilateral and bilateral discussions focused on Northern issues. Topics discussed included the sharing of knowledge and expertise about regional operational challenges; responsible stewardship of the North; and the role Northern militaries can play in support of their respective civil authorities.” The Northern Chiefs of Defence meeting has become an essential forum to address common Arctic safety and security concerns. Ahead of Secretary of State John Kerry’s trip to attend the Arctic Council Ministerial Session in May, the White House unveiled a National Strategy for the Arctic Region. It outlined strategic priorities including advancing U.S. security interests, pursuing responsible stewardship and strengthening international cooperation. The document acknowledged competing environmental and economic goals, but in the end sets an aggressive agenda for the exploitation of Arctic oil, gas and mineral reserves. In addition, the strategy recommended enhancing national defense, law enforcement, navigation systems, environmental response, as well as search-and-rescue capabilities in the Arctic. It also builds off of National Security Presidential Directive-66 issued by the Bush administration in 2009. In coordination with the new plan, the U.S. Coast Guard has released their Vision for Operating in the Arctic Regionwhich will work towards improving awareness, modernizing governance and broadening partnerships. According to James Holmes, professor of strategy at the U.S. Naval War College, the Coast Guard and Air Force could become the military’s odd couple in defending America’s Arctic front. Several months back, Congressman Don Young testified in front of Armed Services Committee in support of Alaska national defense priorities. He proclaimed, “We must be able to project power into the Arctic environment and extensive Arctic training is needed to do that.” Some have pointed out that the true nature surrounding U.S. plans to shift additional missile interceptors to Alaska is not to protect against a North Korean threat, but is instead aimed at control over Arctic resources. Meanwhile, there have also been renewed discussions about Canadian participation in the U.S. anti-ballistic missile shield, a move that could damage relations with Russia and China. In order to enhance its presence and security in the Arctic, the U.S. is increasing cooperation with Canada. This includes expanding joint military exercises and intelligence gathering operations in the region. Professor Michel Chossudovsky of Global Research has described Washington’s militarization of the Arctic as part of the process of North American integration. In December 2012, the U.S. and Canada signed the Tri-Command Framework for Arctic Cooperation which is part of efforts to further merge USNORTHCOM, Canadian Joint Operations Command (CJOC) and NORAD. A press release explained that the framework is designed to, “promote enhanced military cooperation in the Arctic and identify specific areas of potential Tri-Command cooperation in the preparation for and conduct of safety, security and defense operations.” USNORTHCOM, CJOC and NORAD have also pledged to work closer together with regards to planning, domain awareness, information-sharing, training and exercises, capability development, as well as in the field of science and technology. In the coming years, the Arctic will become an even more important part of North American perimeter security. While the Arctic remains a region of strategic interest to the alliance, Secretary General Anders Fogh Rasmussen recently rejected a direct NATO presence. For a number of years, Norway has been pushing for NATO to increase its focus in the Arctic and have called for more joint northern exercises. Even though NATO has yet to truly define its role in the area, Arctic member countries are stepping up military and naval operations in the high north. In the future, NATO’s mandate could include economic infrastructure and maritime security. It could also serve as a forum for discussing Arctic military issues. Expanding NATO activity in the region might signal the militarization of the Arctic which could raise tensions with both Russia and China. There are fears that the Arctic could become an arena for political and military competition. With potential new shipping routes and countries further staking their claims to the vast untapped natural resources, defending strategic and economic interests may lead to rivalries in the region. There is also the possibility that conflicts which originate in other parts of the world could spillover and affect the stability of the Arctic

#### Diplomacy fails

Tassinari 12(Fabrizio Tassinari is a non-resident Senior Fellow at the German Marshall Fund and the Head of Foreign Policy and EU Studies at the Danish Institute for International Studies, September 7, 2012, “Avoiding a Scramble for the High North”, http://blog.gmfus.org/2012/09/07/avoiding-a-scramble-for-the-high-north/)

The geopolitics of the Arctic are stuck in a paradox: The more regional players restate the importance of international cooperation, the more some pundits and policymakers seem to conclude that the Arctic **risks descending into competition and even conflict.** The world is awakening to the growing strategic importance of the High North. As the Arctic ice melts due to global warming, it opens up new opportunities, from shorter shipping lanes to newly accessible oil and gas reserves; respectively, about 13 percent and 30 percent of the world’s undiscovered resources are in the Arctic, according to the U.S. Geological Survey. These discoveries are usually followed by declarations of the littoral nations to the effect that any potential disagreements over them will be resolved peacefully. However, beneath expressions of goodwill, the Arctic debate is often characterized **by a sense of urgency**, and even forms of alarmism. In recent years, instances of growing securitization of the Arctic have abounded. Back in 2008, a paper by Javier Solana, then the EU’s foreign policy’s chief, and the European Commission warned about “potential conflict over resources in Polar regions” as they become exploitable due to melting ice. In 2010, NATO’s supreme allied commander in Europe, Adm. James Stavridis, argued that “for now, the disputes in the North have been dealt with peacefully, but climate change could alter the equilibrium.” Then there are actions that speak louder than prepared speeches — from the famous August 2007 expedition that planted a Russian flag on the North Pole’s seabed to the annual summer military exercises carried out by Canada to assert its sovereignty in the North. Although the Russian stunt was most likely aimed at nationalist domestic audiences, some observers view these exercises as the expressions of competing national interests. As the scholar Scott Borgerson ominously put it: “The Arctic powers **are fast approaching diplomatic gridlock**, and that could eventually lead to the sort of armed brinkmanship that plagues other territories.” The geopolitical constellation in and around the region provides a ready justification for such an assessment. While no-one really imagines the United States, Canada, Norway, and Denmark fighting over the Arctic, some of their politicians have occasionally framed rhetoric in more peppered terms than one might expect. Russia, the fifth Arctic littoral nation, typically treads a fine line between declarations of cooperation and **an innate instinct for great-power competition**. Add to that the EU, which is seeking to carve its own role, and Asia’s giants, above all China, for which the opening of the Northeast passage may reduce sailing distance with Europe by some 40 percent, and it is not hard to conjure up the prospect of an Arctic race building up.

#### Arctic competition causes nuclear war

Wallace and Staples 10 (Michael Wallace and Steven Staples. \*Professor Emeritus at the University of British Columbia and President of the Rideau Institute in Ottawa “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue,”http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” 55 Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. 56 In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, **and foresaw greater capabilities to protect U.S. borders in the Arctic**. 57 The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. 58 Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. 59 The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. 609 Ridding the Arctic of Nuclear Weapons: A Task Long Overdue Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, **deep concerns are being expressed over the fact that two nuclear weapon states** – the United States and the Russian Federation, which together own 95 per cent of the nuclear weapons in the world **– converge on the Arctic and have competing claims**. These claims, together with those of other allied NATO countries – Canada, Denmark, Iceland, and Norway – could, if unresolved, **lead to conflict escalating into the threat or use of nuclear weapons**.” 61 Many will no doubt argue that this is excessively alarmist, but **no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly**. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.” 62

#### Extinction – it’s categorically different from all other impacts

Bostrom 2 (Nick, PhD Philosophy – Oxford University, “Existential Risks: Analyzing Human Extinction Scenarios”, Journal of Evolution and Technology, Vol. 9, March, http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why **it is useful to distinguish them from other risks**. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a **whole – even the worst of these catastrophes are** mere ripples **on the surface of the great sea of life**. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[[2]](http://www.nickbostrom.com/existential/risks.html#_ftn2) At any given time we must use our best current subjective estimate of what the objective risk factors are.[[3]](http://www.nickbostrom.com/existential/risks.html#_ftn3) A much greater existential risk **emerged with the build-up of nuclear arsenals in the US and** the USSR. **An all-out nuclear war was a possibility with both a substantial probability and with consequences that might** have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[[4]](http://www.nickbostrom.com/existential/risks.html#_ftn4)  Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’spotential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

#### BMD deployment makes escalation likely – destroys Arms control, US Russia and Chinese relations

Regehr 13

[Ernie, O.C., Senior Fellow in Arctic Security at Disarming Arctic Security, Missile Defence and the Arctic

, 6/14/13, <http://isnblog.ethz.ch/security/missile-defence-and-the-arctic>]

The Obama Administration’s decision earlier this year to withdraw plans to develop or deploy the Phase VI interceptors of the NATO system was an important nod to Russian concerns, but that was followed by an announcement that the US would add another 14 interceptors in Alaska, bringing the total there to 40. In effect, a US/NATO signal of modest restraint in Europe was accompanied by a significant, 50 per cent, expansion in Alaska. The change of plans in Europe is good news from the point of view of nuclear disarmament advocates inasmuch as it will help make the Russians more amenable to joining President Obama in pursuit of a new round of nuclear arms reduction talks. But the Alaskan expansion, at a cost of $1 billion (a distinctly modest sum in the Pentagon’s world), keeps strategic BMD alive (if not well, from the point of view of performance), and an ongoing thorn in US-Russian security relations. The 40 Alaskan interceptors are of concern to Russia, not for what they represent now (40 interceptors of dubious reliability are not a threat to a strategic deterrent of 1,500-plus warheads), but for what they could become. Russia also has concerns specific to the Arctic. In 2009 Russia’s envoy to NATO worried that with Arctic ice in retreat, NATO is poised to advance into the region, and, more particularly, US ships with strategic missile defence capabilities could potentially be deployed there as well.10 Russia fears the Americans could potentially exploit further reductions in Russia’s arsenal with a dramatic surge in BMD interceptors rendering Russia’s deterrent ineffective. In response, as Russia’s Deputy Prime Minister was recently reported as saying, Russia has been led to carry out a “rearmament program” that will not involve new deployments now but will make it possible for Russia to undertake rapid expansion if conditions change.11 The American pro-BMD constituency has been trying to draw heightened attention to what some accounts describe as Russian military operations to simulate monitoring and attacks on US missile defence assets. The Washington Free Beacon blog has a lengthy April 2013 account, also published in the Washington Times,12 which quotes US officials as saying the Russians have simulated attacks on missile defences in Asia and against ground-based interceptors in Alaska. It also claims that a new Russian reconnaissance ship, the Yuri Ivanov13, which is to begin service in 2014, will be tasked, among other things, to monitor US missile defence installations in Alaska.14 China, is also giving growing voice to its BMD concerns. The Chinese concern is not focused on the European- based interceptors, but on Aegis systems in the Pacific and on Alaskan interceptors. Both systems represent a much more immediate threat to China’s minimum deterrent force of fewer than 50 missiles that could reach North America. Chinese experts recently told the Wall Street Journal that China “was likely to respond to the US missile defense plans by upgrading plans to modernize China’s relatively small nuclear arsenal.” A Major General at China’s Academy of Military Science notes: “The current development, especially the deployment of missile-defense systems in East Asia would be, in Chinese eyes, a very, very disturbing factor having implications for the calculation of China’s nuclear and strategic arsenal.”15 And Chinese concerns will only heighten when they see comments like the following, from a US military official, that the US is explicitly planning to be able to surge deployments of the Aegis system: “Part of what’s in the budget is to get us a sufficient number of ships to allow us to have a global deployment of this capability on a constant basis, with a surge capacity to any theater at a time.”16 As the Bulletin of the Atomic Scientists puts it, “while the intention behind US missile defense is not to threaten Russia or China’s ability to strike the United States with nuclear weapons, both Russia and China fear otherwise. Moscow’s concerns about US missile defenses in Europe appear to be the main stumbling block to further bilateral US and Russian nuclear arms reductions. China, meanwhile, is concerned that the expansion of US regional defenses in East Asia is designed to counter both North Korea and China’s growing arsenal of conventionally-armed theater ballistic missiles, and could be augmented by long-range interceptors that would threaten its strategic nuclear deterrent.”17 US-Russian and US-Chinese18 tensions over BMD do not make it easier for them to cooperate in other contexts, such as Syria, and it would be unrealistic to assume that these tensions will not also at some level undermine cooperation in the Arctic. Direct linkages are unlikely and would not be helpful, but, as a Chinese Foreign Ministry spokesperson recently told reporters in Beijing in response to the announcements of additional interceptors to be deployed in Alaska: “**Strengthening anti-missile deployments and military alliances can only deepen antagonism and will be of no help to solving problems**.”19 He was not referring to the Arctic, of course, but there is no reason to believe that the Arctic would somehow be exempt from the effects of such antagonisms. The pursuit of an Arctic security community is, to say the least, not bolstered by BMD dynamics. It is impossible to expect full cooperation within the context of an Arctic security community when those same states are at loggerheads on other issues in other regions of the globe (especially when much of the hardware at the heart of those disagreements – interceptors in Alaska, radars in Greenland, and nuclear weapons in Russia – are based in the Arctic). Ending BMD unilateralism is important for many reasons, most especially for issues related to global strategic dynamics and nuclear arms control and disarmament – and it is important for the Arctic as well. It would be a significant strategic miscalculation and a confusion of priorities to allow a major and expensive weapons system of dubious technical capability to absorb scarce resources. It is doubly significant when that same system serves to undermine the urgent and absolutely necessary spirit of cooperation on which positive development in the Arctic depends for there to be constructive progress on a broad range of environmental and security issues.

#### China relations solve extinction

**Cohen, 9** (William S. Cohen is chairman and CEO of The Cohen Group, a strategic business consulting firm based in Washington, D.C. Secretary Cohen served as U.S. secretary of defense, Maurice R. Greenberg is chairman and CEO of C.V. Starr & Co., Inc. Mr. Greenberg retired four years ago as chairman and CEO of American International Group (AIG) after more than 40 years of leadership, creating the largest insurance company in history, “Smart Power in U.S.-China Relations,” pg online @ http://csis.org/files/media/csis/pubs/090309\_mcgiffert\_uschinasmartpower\_web.pdf //ef)

The evolution of Sino-U.S. relations over the next months, years, and decades has the potential to have a greater impact on global security and prosperity than any other bilateral or multilateral arrangement. In this sense, many analysts consider the US.-China diplomatic relationship to be the most influential in the world. Without question, strong and stable U.S. alliances provide the foundation for the protection and promotion of U.S. and global interests. Yet within that broad framework, the trajectory of U.S.-China relations will determine the success, or failure, of efforts to address the toughest global challenges: global financial stability, energy security and climate change, nonproliferation, and terrorism, among other pressing issues. Shepherding that trajectory in the most constructive direction possible must therefore be a priority for Washington and Beijing. Virtually **no major global challenge can be met without U.S.-China cooperation**. The uncertainty of that future trajectory and the "strategic mistrust" between leaders in Washington and Beijing necessarily concerns many experts and policymakers in both countries. Although some U.S. analysts see China as a strategic competitor—deliberately vying with the United States for energy resources, military superiority, and international political influence alike— analysis by the Center for Strategic and International Studies (CSIS) has generally found that China uses its soft power to pursue its own, largely economic, international agenda primarily to achieve its domestic objectives of economic growth and social stability.1 Although Beijing certainly has an eye on Washington, not all of its actions are undertaken as a counterpoint to the United States. In addition, CSIS research suggests that growing Chinese soft power in developing countries may have influenced recent U.S. decisions to engage more actively and reinvest in soft-power tools that have atrophied during the past decade. To the extent that there exists a competition between the United States and China, therefore, it may be mobilizing both countries to strengthen their ability to solve global problems. To be sure, U.S. and Chinese policy decisions toward the respective other power will be determined in large part by the choices that leaders make about their own nations interests at home and overseas, which in turn are shaped by their respective domestic contexts. Both parties must recognize—and accept—that the other will pursue a foreign policy approach that is in its own national interest. Yet, in a globalized world, challenges are increasingly transnational, and so too must be their solutions. As demonstrated by the rapid spread of SARS from China in 2003, pandemic flu can be spread rapidly through air and via international travel. Dust particulates from Asia settle in Lake Tahoe. An **economic downturn in one** country can and **does trigger an economic** **slowdown** in another. These challenges can no longer be addressed by either containment or isolation. What constitutes the national interest today necessarily encompasses a broader and more complex set of considerations than it did in the past As a general principle, the United States seeks to promote its national interest while it simultaneously pursues what the CSIS Commission on Smart Power called in its November 2007 report the "global good."3 This approach is not always practical or achievable, of course. But neither is it pure benevolence. Instead, a strategic pursuit of the global good accrues concrete benefits for the United States (and others) in the form of building confidence, legitimacy, and political influence in key countries and regions around the world in ways that enable the United States to better confront global and transnational challenges. In short, the global good comprises those things that all people and governments want but have traditionally not been able to attain in the absence of U.S. leadership. Despite historical, cultural, and political differences between the United States and China, Beijing's newfound ability, owing to its recent economic successes, to contribute to the global good is a matter for common ground between the two countries. Today there is increasing recognition that no major global challenge can be addressed effectively, much less resolved, without the active engagement of—and cooperation between—the United States and China. The United States and China—the worlds first- and third-largest economies—are inextricably linked, a fact made ever more evident in the midst of the current global financial crisis. Weak demand in both the United States and China, previously the twin engines of global growth, has contributed to the global economic downturn and threatens to ignite simmering trade tensions between the two countries. Nowhere is the interconnectedness of the United States and China more clear than in international finance. China has $2 trillion worth of largely U.S. dollar-denominated foreign exchange reserves and is the world's largest holder—by far—of U.S. government debt. Former treasury secretary Henry M. Paulson and others have suggested that the structural imbalances created by this dynamic fueled the current economic crisis. Yet. China will almost certainly be called on to purchase the lion's share of new U.S. debt instruments issued in connection with the U.S. stimulus and recovery package. Secretary of State Hillary Rodham Clinton's February 23.2009, reassurance to Beijing that U.S. markets remain safe and her call for continued Chinese investment in the U.S. bond market as a means to help both countries, and the world, emerge from global recession underscored the shared interest—and central role—that both countries have in turning around the global economy quickly. Although China's considerable holdings of U.S. debt have been seen as a troubling problem, they are now being perceived as a necessary part of a global solution. Similarly, as the world’s two largest emitters of greenhouse gases, China and the United States share not only the collateral damage of energy-inefficient economic growth, b­­ut **a primary responsibility to shape** any ultimate **global** **solutions to climate change**. To date, cooperation has been elusive, owing as much to Washington's reluctance as to Beijing's intransigence. Painting China as the environmental bogeyman as an excuse for foot-dragging in policymaking is no longer an option; for its part, China, as the world's top polluter, must cease playing the developing-economy card. Yet energy security and climate change remain an area of genuine opportunity for joint achievement. Indeed, U.S.-China cooperation in this field is a sine qua non of any response to the energy and climate challenges. The sheer size of the Chinese economy means that collaboration with the United States could set the de facto global standards for etficiency and emissions in key economic sectors such as industry and transportation. Climate change also provides an area for cooperation in previously uncharted policy waters, as in emerging Arctic navigational and energy exploration opportunities. Washington and Beijing also share a deep and urgent interest in international peace and stability. The resumption of U.S.-China military contacts is a positive development. As two nuclear powers with worldwide economic and strategic interests, both countries want to minimize instability and enhance maritime security, as seen by parallel antipiracy missions in the waters otT Somalia. Joint efforts in support of United Nations peacekeeping, nonproliferation, and counterterrorism offer critical areas for bilateral and multilateral cooperation. Certainly, regional and global security institutions such as the Six-Party Talks concerning North Korea or the UN Security Council require the active engagement of both Washington and Beijing. Even more broadly, crisis management in geographic regions of mutual strategic interest like the Korean peninsula, Iran, or Burma require much more Sino-U.S. communication if the two countries are to avoid miscalculation and maximize opportunities to minimize human sutfering. Increasing the number of mid-level military-to-military exchanges would help in this regard. The United States and China could do more to cooperate on law enforcement to combat drug trafficking and organized crime in Western China. Afghanistan is competing with Burma as the main provider of narcotics to China; Washington could use its influence with the International Security Assistance Force in Kabul to develop a joint antinarcotics program. This could potentially build networks and joint capabilities that might be useful for U.S.-China cooperation on the issue of Pakistan. In addition, Washington should also encourage NATO-China cooperation along the Afghan border. Collaborating under the auspices of the Shanghai Cooperation Organization (SCO) might provide an additional framework for Beijing and Washington to address Central Asian security issues in a cooperative manner. 1he SCO, which includes Pakistan as an observer and will convene a multinational conference on Afghanistan in March 2009, has long made curbing narcoterrorism in Afghanistan a priority. In addition, the VS. Drug Enforcement Agency and the Chinese Anti-Narcotics Bureau should expand cooperation on interdiction and prosecution of heroin and meth traffickers. To be sure, there are a number of areas of serious divergence between Washington and Beijing. This should surprise no one. The United States has disagreements with even its allies. Two large powers with vastly dilferent histories, cultures, and political systems are bound to have challenges. History has shown, however, that the most effective way of addressing issues is for the U.S. and Chinese governments to engage in quiet diplomacy rather than public recrimination. In the U.S.-China context, there is often little to be gained—and much to be lost in terms of trust and respect—by a polarizing debate. Any differences, moreover, must not necessarily impede Sino-U.S. cooperation when both sides share strong mutual interests. I;. Scott Fitzgerald wrote that "the test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function."3 Effective policy toward China by the United States, and vice versa, will require this kind of dual-minded intelligence. Moreover, working together on areas of mutual and global interest will help promote strategic trust between China and the United States, facilitating possible cooperation in other areas. Even limited cooperation on specific areas will help construct additional mechanisms for bilateral communication on issues of irreconcilable disagreement. In fact, many of the toughest challenges in U.S.-China relations in recent years have been the result of unforeseen events, such as the accidental bombing of the Chinese embassy in Belgrade in May 1999 and the EP-3 reconnaissance plane collision in April 2001. Building trust and finding workable solutions to tough problems is the premise behind the Obama administrations foreign policy of smart power, as articulated by Secretary of State Clinton. Smart power is based on, as Secretary Clinton outlined in her confirmation hearing, the fundamental belief that 'We must use... the full range of tools at our disposal—diplomatic, economic, military, political and cultural—picking the right tool, or combination of tools, for each situation."' As the CS1S Commission on Smart Power noted in November 2007, "Smart Power is neither hard nor soft—it is the skillful combination of bothIt is an approach that underscores the necessity of a strong military, but also invests heavily in alliances, partnerships and institutions at all levels... .°5 As such, smart power necessarily mandates a major investment in a U.S.-China partnership on key issues. 'The concept enjoys broad support among the Chinese and American people and, by promoting the global good, it reaps concrete results around the world. There should be no expectation that Washington and Beijing will or should agree on all, or even most, questions. But the American and Chinese people should expect their leaders to come together on those vital issues that require their cooperation. U.S.-China partnership, though not inevitable, is indispensable.

#### Russia relations solve nuclear war

Allison 11 (Graham, Director – Belfer Center for Science and International Affairs at Harvard’s Kennedy School, and Former Assistant Secretary of Defense, and Robert D. Blackwill, Senior Fellow – Council on Foreign Relations, “10 Reasons Why Russia Still Matters”, Politico, 2011, http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6)

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

#### Arms control solves extinction

**Collins and Rojansky**, 8/18/**2010** (James – director of the Russia and Eurasia Program at the Carnegie Endowment for International Peace, ex-US ambassador to the Russian Federation, and Matthew – deputy director of the Russia and Eurasia Program, Why Russia Matters, Foreign Policy, p. http://www.foreignpolicy.com/articles/2010/08/18/why\_Russia\_matters)

Russia's nukes are still an existential threat. Twenty years after the fall of the Berlin Wall, Russia has thousands of nuclear weapons in stockpile and hundreds still on hair-trigger alert aimed at U.S. cities. This threat will not go away on its own; cutting down the arsenal will require direct, bilateral arms control talks between Russia and the United States. New START, the strategic nuclear weapons treaty now up for debate in the Senate, is the latest in a long line of bilateral arms control agreements between the countries dating back to the height of the Cold War. To this day, it remains the only mechanism granting U.S. inspectors access to secret Russian nuclear sites. The original START agreement was essential for reining in the runaway Cold War nuclear buildup, and New START promises to cut deployed strategic arsenals by a further 30 percent from a current limit of 2,200 to 1,550 on each side. Even more, President Obama and his Russian counterpart, Dmitry Medvedev, have agreed to a long-term goal of eliminating nuclear weapons entirely. But they can only do that by working together.