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CITIZENS' ADVISORY COUNCILS TO ENHANCE CIVIL SOCIETY OVERSIGHT OF RESOURCE INDUSTRIES

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I. Executive Summary

Effective democratic governance depends upon informed public participation, and several international conventions and policy guidelines call for enhanced public participation in environmental management. Yet, large-scale resource development projects generally receive insufficient oversight by, and engagement with, civil society. And in the absence of effective supervision and public engagement, corporate and government vigilance can weaken, complacency increases, environmental and social standards decline, and risks increase. Such insufficient oversight, lower standards, and complacency can result in acute and catastrophic damage, such as oil spills, chemical explosions, mine disasters, overharvest and stock collapse; long-term, chronic environmental degradation; and social tension, mistrust, litigation, and even violence between local people and industry.

To correct this problem, local civil society stakeholders need to be directly involved in the review and oversight of resource industry operations that potentially affect their lives, including extractive industries such as oil, gas and mining; and renewable industries such as agriculture, forestry, and fisheries. Local citizens have much at stake, and much to offer, in the safe and responsible conduct of resource development in their region. To be effectively engaged, citizen stakeholders need their own organization with sufficient funding, staff, authority, broad representation, and independence. It is proposed herein that governments facilitate the establishment of *Citizens' Advisory Councils* (CACs), to provide non-binding, informed public advice, oversight, and engagement with natural resource development. These citizen councils should be funded either from government resource revenues or directly by industry, and should provide advice on all aspects of resource industry projects. Citizen councils should be comprised of all major stakeholder constituencies potentially affected by a resource industry – e.g., indigenous peoples, fishing, farming, conservation, tourism, women, youth, science, and local communities. Properly structured, these CACs will become the *eyes, ears, and the voice* for local citizens regarding large-scale resource development projects

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that may directly affect them. The councils provide an on-going, structured mechanism for greater communication, collaboration, and trust between citizens, government, and industry, and should reduce industry's environmental impact, risk, and footprint. Citizen councils do not substitute for effective governmental oversight, but complement and enhance such. The establishment of such *Citizens' Advisory Councils* is fundamental to industry's "social license to operate," genuine corporate social responsibility, citizen empowerment, environmental justice, government legitimacy, and sustainable development. As such, citizen councils will provide long-term benefit to the public, government, and industry.

II. Introduction

The effective function of democratic governance depends in large part on *informed public participation*, yet even in mature democracies this is often not sufficiently developed. The relationship between government, industry, and civil society is often less than ideal, and if so, this can subvert the common public interest and delay sustainable development. Although government agencies and legislative bodies are entrusted to act in the highest and best interest of the public whom they serve, a large body of modern political and regulatory theory shows that actual practice can diverge from this ideal. For instance, industry can strategically manipulate government policy through legislative and administrative processes – a political dynamic called "regulatory capture" - while the public is marginalized and excluded from meaningful participation. Regulation, legislation, and oversight in such a situation tends to favor industry and disadvantage the public that it was supposed to protect.¹

This dynamic may be particularly evident in resource-rich failed states or in other states where government capabilities are limited, but it can occur in even the most sophisticated industrialized democracies. And such a situation can result in acute environmental damage, chronic degradation, and social unrest. Clearly, sustainable development would benefit from greater involvement by civil society in resource industry oversight. To receive and maintain its "social license to operate," a resource development company (e.g. oil, gas, mining, logging, etc.) must engage collaboratively, honestly, and fairly with civil society in the area of its projects.

Although much discussion in civil society has been devoted to the concept of *transparency*, it is important to distinguish *transparency* from the concept of *informed public participation*. As it is generally used, the term *transparency* simply implies that the public has significant access to government and industry information, and has literally a "clear view" of the workings of government and industry. However, transparency does not guarantee that the public has a formal, active voice in the operations of government and industry. It is entirely possible, indeed often the case, that even with substantial transparency, or passive access to information, the public remains largely uninvolved in many policy decisions that affect their lives.

For instance, even though government provides a significant level of public transparency in the U.S. — through the federal *Freedom of Information Act* (FOIA), state open meetings acts and public records disclosure acts, and other administrative disclosure instruments — there remains an unfortunate lack of informed involvement among much of the public in environmental policy formulation, particularly in resource development. Put simply, transparency is a *necessary but not sufficient* component of informed public participation in democracies. To have a legitimate, informed, and persuasive voice in complex resource industry projects, the public — or at least a representative body of the public — needs to have an active, formalized role in the oversight and liaison with industry and government.²

1 Owen, B.M.; R Breautigam, 1978. *The Regulation Game – Strategic use of the Regulatory Process*. Ballinger, Cambridge, MA.

2 Steiner, R. 2003. *Models of Public Oversight of Government and Industry*. In *Caspian Oil Windfalls: Who Will Benefit*, Open Society Institute, Caspian Revenue Watch.



While advisory committees and public consultation processes have existed for some time, the concept of independent, autonomous, well-funded and permanent *Citizens' Advisory Councils* (CACs) to provide civil society oversight of large-scale industrial projects is relatively recent, indeed still evolving. Three important distinctions between the traditional (and expert) advisory committees and the autonomous *Citizens' Advisory Council* discussed here, are that *traditional* advisory committees:

- Are appointed directly by government or industry, not by affected citizen stakeholders themselves;
- Seldom, if ever, have their own budget and staff sufficient to carry out their mandate; and,
- Do not operate autonomously, but at the direction and discretion of government or industry.

Together, these structural elements significantly limit the independence and capacity of traditional advisory groups to achieve the goal of effective public participation.

As well, the traditional *review-and-comment* model for government and industry to solicit public engagement in decisions regarding industrial development simply doesn't work effectively, for the following reasons:

- Members of the public often have insufficient time, financial ability, and technical expertise to engage effectively in complex resource development and policy issues.
- There can be an overwhelming amount of information available regarding a development project, much of it technical and unfamiliar, and even multiple projects and policy issues intersecting simultaneously, making it difficult for citizens to assimilate pertinent information and provide informed comment.
- Decisions are often made between industry and government in a less than transparent manner, without informed civil society participation.
- Officials generally solicit public participation late in the decision process, which by such time may have become adversarial.
- After a development project has been approved, industry and government may become less open to, or interested in, public engagement.
- While outside technical experts can conduct site-visits to provide their technical review and recommendations, if there is no standing citizen group to follow through on the recommendations, this process may have limited impact.

This situation is a recipe for distrust, a decline in vigilance, chronic environmental degradation, and even industrial disaster. A more effective paradigm for public participation in industrial/environmental issues is necessary, as described below.

The modern concept of *Citizens' Advisory Councils* (CACs) began to evolve in the late 1970s, focused largely on the environmental risks of marine oil transportation. The oil port of Sullom Voe, in the Shetland Islands, Scotland, established the *Sullom Voe Oil Terminal Environmental Advisory Group* (SOTEAG) at the commencement of the Sullom Voe oil terminal in 1977.³ After the 1989 Exxon Valdez oil spill in Alaska, USA, two *Regional Citizens Advisory Councils* (RCACs) were established in Alaska by the U.S. Congress — the *Prince William Sound RCAC*⁴, and the *Cook Inlet RCAC*.⁵

3 SOTEAG, 2013. *Shetland Oil Terminal Environmental Advisory Group*. www.soteag.org.uk/

4 PWSRCAC, 2013. *Prince William Sound Regional Citizens' Advisory Council*. www.pwsrcaac.org

5 CIRCAC, 2013. *Cook Inlet Regional Citizens' Advisory Council*. www.circac.org



The primary purpose of the Alaska councils is to enhance environmental safety and to reduce the environmental risk and impact of oil industry operations within their regions. Subsequently, similar oil / environmental advisory councils were established in the U.S. coastal states of Maine, California, and Washington. More recently, a CAC has been proposed to provide oversight of all commercial activities in the rich offshore ecosystem of Mauritania, there are CACs in development in the Caspian region providing citizen oversight of revenue flows from Caspian oil, a CAC is proposed for deep sea hydrothermal vent mining off Papua New Guinea, and a CAC has been discussed in the politically volatile oil-producing region of Nigeria's Niger Delta. In 2009, an Arctic RCAC was proposed to enhance oversight of offshore oil and shipping in the Arctic Ocean off Alaska, and after the 2010 Deepwater Horizon drilling disaster in the U.S. Gulf of Mexico, there is a proposal to establish a Gulf of Mexico RCAC, to provide greater oversight of offshore oil and gas activities in the Gulf.⁶

It is important to note the diversity in scope of these citizens councils: they can either be focused narrowly on site-specific industrial projects — such as the councils in Alaska and Scotland focused on oil terminal and tanker environmental safety issues; or, they can be focused more broadly on particular industrial sectors across an entire region/country - such as the council proposed for all offshore oil and gas activities in the U.S. Gulf of Mexico, and the council proposed for all deep sea mining off Papua New Guinea; or, they can focus even more broadly on all industrial activities in a region/country — such as the council proposed for the Mauritania offshore ecosystem to oversee oil, fisheries, and shipping, or the council proposed for the U.S. Arctic, to oversee offshore petroleum development and shipping.

III. Supporting Policy Context

As the concept of *Citizens' Advisory Councils* has gained acceptance in recent years, several institutions have endorsed the concept. As well, the CAC concept is now seen as a mechanism to implement several important international conventions and intergovernmental guidelines pertaining to public access to information and involvement in policy decisions. A brief summary of these is presented here, in chronological order.

1. U.S. Oil Pollution Act of 1990: Federal legislation passed in the U.S. subsequent to the Exxon Valdez oil spill in 1989 (OPA 90), established the first political consensus in the U.S. Congress regarding the need for *Citizens' Advisory Councils*, and established the first two such regional councils in Alaska to operate for as long as the oil industry continues in the regions.⁷ It should be noted that today, over 24 years since the Alaska spill occurred, government science shows that most of the fish and wildlife populations and habitats injured by the spill have yet to fully recover⁸, underscoring the potential for serious long-term ecological impacts from industrial disasters.

Section 5002 of OPA 90, entitled "Terminal and Tanker Oversight and Monitoring", states, *inter alia*, the following:

The Congress finds that:

- a. *Many people believe that complacency on the part of the industry and government personnel responsible for monitoring the operation of the Valdez terminal and vessel traffic in Prince William Sound was one of the contributing factors to the Exxon Valdez oil spill;*

6 Steiner, Rick. 2010. *Establishing Citizens' Advisory Councils in the U.S. Arctic and Gulf of Mexico*. **Policy Matters**, V. 17, IUCN Commission on Environmental, Economic, and Social Policy. pp 92-95. October.

7 S. Oil Pollution Act, 1990. U.S. Government Printing Office.

8 EVOSTC, 2013. *Exxon Valdez Restoration Plan, 2010 Update: Injured Resources and Services*. Exxon Valdez Oil Spill Trustee Council, May 14, 43 pp. www.evostc.state.ak.us/



- b. *One way to combat this complacency is to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans;*
- c. *A mechanism should be established which fosters the long-term partnership of industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals;*
- d. *Such a mechanism presently exists at the Sullom Voe oil terminal in the Shetland Islands and this terminal should serve as a model for others;*
- e. *Because of the effective partnership that has developed at Sullom Voe, Sullom Voe is considered the safest terminal in Europe;*
- f. *The present system of regulation and oversight of crude oil terminals in the United States has degenerated into a process of continual mistrust and confrontation;*
- g. *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;*
- h. *A pilot program patterned after Sullom Voe should be established in Alaska to further refine the concepts and relationships involved; and*
- i. *Similar programs should eventually be established in other major crude oil terminals in the United States because the recent oil spills in Texas, Delaware, and Rhode Island indicate that the safe transportation of crude oil is a national problem.*

Shortly after the Alaska RCACs were formed, a senior official with the U.S Coast Guard lauded their effectiveness, as follows:

The Regional Citizens Advisory Council of Prince William Sound adds accountability on the part of regulators like me, and the government and industry. We have to operate in the open, and talk about things in the open, and take time to bring the citizenry along with us in the logical path to the solutions for our problems. It's an organized and disciplined way to get citizen involvement in what we do. I think that's good, because the system isn't really worth much unless citizens are involved with it.

*Commander Ed Thompson
United States Coast Guard, 1992*

A subsequent independent review of the two Alaska RCACs in 1993 by the U.S. Government Accounting Office (GAO) agreed with this assessment, as follows⁹:

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 various 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.

And a 1997 academic review of the Alaska RCACs¹⁰ concluded that:

Citizen Advisory Councils are capable of making important contributions to the production of new knowledge in the policy process... and research projects [that they have conducted] have played a central role in allowing the councils to generate new knowledge in a policy area involving complex questions of science and technology.

⁹ U.S. Government Accounting Office, 1993. *Report to Congress on the Alaska Regional Citizens' Advisory Councils*. GAO, Washington D.C., 33.

¹⁰ G.J. Busenburg, 1997. *Citizen Advisory Councils and Environmental management in the Marine Oil Trade*. Doctoral dissertation, University of North Carolina, Chapel Hill, NC. 78.



2. Aarhus Convention: *Citizens' Advisory Councils* provide an effective mechanism to implement the fundamental provisions of the 2001 *UN ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, known as the "Aarhus Convention".¹¹ There are three pillars of the Aarhus Convention, and CACs are of particular relevance in implementing the first two pillars, as follow:

- A. **Access to information:** *any citizen should have the right to have access to a wide array of environmental information of potential relevance to their wellbeing. Public authorities must provide all the information required, and disseminate such in a timely and transparent manner. They may refuse to do so only under limited circumstances (such as national security).*
- B. **Public participation in decision-making:** *the public must be informed regarding all relevant projects, and it must have a legitimate opportunity to participate during the decision-making and legislative process. Decision makers should make use of local people's knowledge and expertise; this contribution is a good opportunity to improve the quality of environmental decisions and outcomes, and to guarantee procedural legitimacy.*
- C. **Access to justice:** *the public has the right to judicial or administrative recourse procedures in case a Party violates or fails to adhere to **environmental law** and the convention's principles.*

3. World Wilderness Congress: In October 2005, the 8th World Wilderness Congress held in Anchorage, Alaska, adopted a resolution calling for the establishment of Regional Citizens Advisory Councils wherever large-scale, extractive natural resource projects are located.

4. UNDRIP: The *U.N. Declaration on the Rights of Indigenous Peoples* (UNDRIP) adopted by the U.N. General Assembly in September 2007, embodies the engagement principle underlying CACs in Articles 18 and 19, as discussed in the 10 December 2012 UNDRIP Business Reference Guide¹² :

Article 18 recognizes that indigenous peoples have a right to participate in decisions that would affect their rights. They must be able to participate through representatives who they choose. Indigenous peoples also have the right to form their own decision-making institutions, which States and other third parties should recognize.

Article 19 requires States to consult and cooperate with indigenous peoples through their own representative institutions, and to obtain their free, prior and informed consent before adopting or implementing legislative or administrative measures that may affect them.

5. IUCN: At its 2008 World Conservation Congress in Barcelona, the *International Union for the Conservation of Nature* (IUCN), also known as the World Conservation Union, adopted Resolution 4.089 supporting CACs (Appendix I); stating, *inter alia*, that:

The World Conservation Congress at its 4th Session in Barcelona, Spain, 5–14 October 2008:

CALLS ON the extractive industry to embrace and support the formation of local Citizens' Advisory Councils being comprised of representatives of civil society in the vicinity of extractive industry projects being undertaken in ecologically sensitive areas, and having the function to provide informed public oversight of these projects in order to minimize their environmental and social impacts.

11 Aarhus, 2013. *Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters* ("Aarhus Convention"). June 1998. <http://www.unece.org/env/pp/introduction.html>

12 UNDRIP, 2013. *U.N. Declaration on the Rights of Indigenous Peoples. UN General Assembly Resolution, 61/295. September 13, 2007.* www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf



And in 2012, IUCN included CACs in its overall *Business Engagement Strategy*, as follows:

IUCN believes that to achieve positive outcomes for both biodiversity and natural resource dependent communities, all stakeholders must participate. To that end, IUCN will develop platforms and dialogues that convene all relevant players, and support the establishment of Citizens Advisory Councils to provide a voice to affected communities.

6. UNEP Bali Guidelines: At its February 2010 meeting in Bali, the UNEP Governing Council adopted decision SSXII/5: *Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters*, also known as the *Bali Guidelines*. The Bali Guidelines were based on the three pillars of the Aarhus Convention (above). *Citizens' Advisory Councils* specifically support and implement many of these guidelines, in particular Guidelines 1 – 7, *Access to Information*; and Guidelines 8 – 14, *Public Participation* (Appendix II).

7. U.S. Oil Spill Commission: The 2011 *National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President*, recommended establishment of additional Regional Citizens Advisory Councils in the U.S. to provide effective civil society stakeholder engagement in oversight of offshore drilling, stating, *inter alia*¹³:

A mechanism should be created for ongoing local involvement in spill planning and response in the Gulf. In the Oil Pollution Act of 1990, Congress mandated citizens' councils for Prince William Sound and Cook Inlet. In the Gulf, such a council should broadly represent the citizens' interests in the area, such as fishing and tourism, and possibly include representation from oil and gas workers as ex-officio, non-voting members. The citizens' group could be funded by Gulf lease holders. The Commission further recommends that federal regulators be required to consult with the council on relevant issues, that operators provide the council with access to records and other information, and that entities (either in industry or in government) declining the council's advice submit their reasons to the council in writing.

The oil spill commission also endorsed the previous call to establish a *Regional Citizens' Advisory Council* in the U.S. Arctic, as follows:

An Arctic Regional Citizens Council could help assure the active participation of the people who know this region the best in planning and response.

And in its 2013 *Assessment of Progress: Three Years After* review, the commission reiterated the need for the Arctic RCAC¹⁴:

Congress should provide for the Arctic regional citizens advisory council, in order to more effectively involve the people of the region in the decisions, preparations, and planning for the changes taking place in the Arctic.

8. Mining: The concept of CACs for mines was endorsed by the *Mining and Mining Policy in the Pacific* Conference in Noumea, New Caledonia in November 2011.¹⁵ And there is presently a tentative commitment from *Nautilus Minerals* to establish a CAC to engage coastal tribes in Papua New Guinea (PNG) to provide oversight of its planned deep-sea hydrothermal vent (seafloor massive sulphide) mining in the region. There is also a CAC now being discussed for Rio Tinto's *Oyu Tolgoi* copper and gold mine being developed in the South Gobi Desert in Mongolia.

13 U.S. Oil Spill Commission, 2011. *National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling: Report to the President*. Pp. 398. January. www.oilspillcommission.gov/

14 Oil Spill Commission Action, 2013. *Assessing Progress – Three Years Later*. 20 pp., April 17. oscaction.org/

15 SOPAC, 2011. *Mining and Mine Policy in the Pacific: History, Challenges, and Perspectives*. Noumea, New Caledonia. Nov. 21-25, 2011. IRD and Secretariat of the Pacific Community (SOPAC) www.spc.int/.



9. Secretariat of the Pacific Community (SOPAC): The 2012 *Regional Legislative and Regulatory Framework for Deep Sea Mining (DSM)*, conducted as a collaborative in the *Secretariat of the Pacific Community (SOPAC)*, includes the following endorsement of CACs¹⁶:

16.5 The establishment of independent Citizens' Advisory Councils can be an effective means to provide legitimate, informed, effective citizen engagement and monitoring over the life of DSM projects in national waters.

These can provide an advisory function, with representatives (selected by the constituency, not by government or industry) of all major concerned and potentially affected citizen stakeholders (e.g. commercial fishing, tribal entities, tourism, women's groups, conservation organisations, local government and others). A Citizens' Advisory Council may even be able to play a role in contributing to, and informing, the State's function to monitor DSM activities (e.g. through involving members in an onboard observer programme).

10. U.K. Government: In 2012, the U.K. House of Commons Committee on Protecting the Arctic recommended establishment of CACs in all Arctic nations, to provide citizen engagement in Arctic oil development, as follows¹⁷:

The development of Citizens Advisory Councils to engage citizens in oversight of the Arctic oil industry should be part of the Government Strategy for the Arctic.

The January 2013 UK government (administration) response to the Parliamentary Arctic Committee conditionally endorsed the CAC concept, as follows¹⁸:

The Government fully recognises the need for those affected by developments to be able to make their views heard. Such contributions help ensure decisions are properly informed by local concerns. We would therefore welcome the use of Citizens Advisory Councils where these are appropriate to local circumstances.

IV. Structure and Function of a Citizens' Advisory Council

While there is no single model for the structure of a CAC that is applicable in all situations, all CACs should be structured to give local citizens a direct, informed voice in the corporate and governmental decisions that affect them and their communities. A CAC can be established by legislation, executive order, and/or through a private contract between industry and civil society stakeholders. Councils can provide oversight to extractive resource industries and/or renewable resource industries. And a CAC should be used only for *approved* resource development projects, and not in an attempt to justify approval of development that otherwise may not be permitted.

The scope and focus for citizen councils can range from site-specific projects to broad regional industrial oversight. For instance, citizen councils can be established to provide oversight of a specific industrial project (e.g. a mine, or an oil terminal and its tankers); a specific industrial sector across an entire region (e.g., all mining in a region or nation, or all oil and gas development in a region or nation); or more broadly focused on all industrial activity in a region or nation (e.g., petroleum, shipping, fisheries in a marine region of a coastal nation; or logging, mining, and agriculture in a forested terrestrial region or nation).

16 RLR, 2012. *Pacific-ACP States Regional Legislative Framework for Deep Sea Minerals Exploration and Exploitation*. Secretariat of the Pacific Community, July. Suva, Fiji. 58 pp. www.spc.int/

17 UK Arctic Committee, 2012. *Protecting the Arctic*. UK House of Commons Environmental Audit Committee, Second Report of Session 2012-2013. Sept. 20, 238 pp. www.publications.parliament.uk/pa/cm201213/cmselect/.../171.pdf

18 UK Arctic Committee, 2013. *UK Government Response to HC Arctic Committee Report*, 16 pp. January. www.publications.parliament.uk/pa/cm201213/cmselect/.../171.pdf



A CAC may also be appropriate to enhance civic oversight of other major industrial projects that pose significant risk to local people, including large dams, nuclear power plants, and chemical plants. Whether focused on one project or all industrial projects in a region, the geographic scope for CAC attention should include the entire area potentially affected by the industrial project/s.

The citizen council should become the primary conduit through which government and industry communicate with local civil society on environmental and social issues deriving from resource development. The overall goal for a CAC is to reduce the risk and environmental/social impact of resource industry, and enhance communication and engagement between civil society, industry, and government. In a real sense, the CAC should become “*the eyes, ears, and voice*” for the local public on resource industry issues. A proposed structure is described below.

1. Board of Directors: A *Citizens’ Advisory Council* should be directed by a Board of Directors - the “Council” - consisting of members representing communities and major citizen constituencies potentially affected by resource industry – the “stakeholders.” Board members can either be compensated for time and services they provide to the council, or they can serve as unpaid volunteers. As example, Board members for the Alaska oil oversight councils serve as unpaid volunteers, typically dedicating a few days each month to council business and meetings, and they direct a full time, paid professional staff (see below).

Regarding who should be represented, as discussed by Applegate 1998¹⁹:

The goal should be to involve not only those who regularly participate in such decisions (the usual suspects), but also those whose ability to participate meaningfully is limited. This would include both disadvantaged groups (e.g., ethnic minorities, poor people) and affected persons who are not affiliated with an organized interest group.

These Board seats might, for instance, represent indigenous people, fishing, farming, conservation, recreation, tourism, women, youth, local communities, science & technology, and so on. As a fundamental requirement of independence, CAC Board members must be chosen by, and answer solely to, their respective constituencies – CAC representatives should not be chosen by industry or government. Each council should be structured in a way that is customized to regional stakeholders, so as to represent environmental and social interests of local peoples. To do such, an assessment of stakeholder constituencies should be conducted within the region potentially impacted by an industrial activity, perhaps as part of the project’s environmental & social impact assessment, and the composition of the CAC Board should derive from that assessment. As example, the Prince William Sound RCAC in Alaska has a Board of Directors comprised of 19 member organizations from the region, including Alaska Natives, commercial fishing, tourism, conservation, aquaculture, business, and local municipalities.

A CAC may also have several *ex-officio*, non-voting, Board members representing the relevant governmental agencies. It must remain clear however that *ex-officio* members are non-voting, and participate solely at the discretion of the council. These *ex-officio* members must not be allowed to dominate council deliberation.

The Board should meet regularly (e.g. quarterly), and at each meeting representatives of industry and government should be asked to report on their past and future operations, and any issues or concerns, as well to listen to citizen concerns. 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 hiring staff, making policy recommendations, and allocating the annual budget.

19 Applegate, John S. 1998. *Beyond the Usual Suspects: The Use of Citizens Advisory Boards in Environmental Decision Making*. Indiana Law Journal, Volume 73, Issue 3, Article 4. July 1, pp. 57. <http://www.repository.law.indiana.edu/ilj/vol73/iss3/4>



2. Staff: The day-to-day activity of the CAC should be the responsibility of a paid, professional staff. Depending on the desire of the Board, staffing can include an executive director, science and technical coordinator, public information manager, community liaison, finance manager, project managers, and administrative assistants, etc. The staff serves at the discretion of, and answers to, the council's executive director. As example, the Prince William Sound RCAC has a full-time, paid, professional staff of 18, including an executive director, two deputy directors, public information manager, community liaison, finance manager, seven project managers, and several administrative assistants.

3. Committees: Some of the work by a CAC can be conducted by technical committees, each with a dedicated staff liaison. For instance, committees could be formed for governmental affairs, accident prevention and response, environmental monitoring, public health, labor practices, facility oversight, revenue monitoring, and so on. These committees should be appointed by the Board based on expertise, interest, and willingness to serve. The committees should meet regularly to discuss any and all issues within their purview, draft and recommend policy actions to the Board, and conduct research approved and financed by the Board.

4. Mission: The broad mission of a CAC is to enable citizen stakeholders to ensure the highest standards of environmental and social responsibility of an industrial project and/or all industrial activity in a particular region. Its goal is to reduce the deleterious environmental and social impact and risk of resource development, and enhance communication and engagement between civil society, industry, and government.

The CAC should be empowered *to provide non-binding advice and oversight for all aspects of large-scale resource development in their region*, either extractive or renewable resource industries. Specifically, a citizen council can provide oversight, advice, and advocacy on issues such as the following: where to allow development, rates of reserve extraction/harvest levels, *Best Available and Safest Technology* (BAST) standards, biodiversity conservation, risk assessment and accident prevention, response preparedness, liability standards, environmental monitoring, biodiversity offsets, invasive species control, social impact mitigation programmes, transport routes and methodologies, regulatory reform, government revenues and taxes, waste management, remediation and restoration, labor practices, human rights, human health, and so on. The citizen council should review and submit written comments on all existing and proposed project operations. This can include legislation, regulations and permits, and industry policy, procedures, and financial matters. And, the citizen council should exist for the lifetime of the resource project.

At the request of its Board or committees, the CAC should commission independent scientific studies, consultancies, and reports on issues of interest or concern to its citizen stakeholders. This research should contribute to the factual basis of the council's policy recommendations to industry and government. And if conducted jointly with government and industry, this research will foster a more cooperative spirit among these groups, thereby minimizing conflict and contention. The CAC should monitor and play an active role in all industry and government oversight and monitoring of the resource industry project.

The recommendations of the CAC are generally *advisory* and *non-binding*, and while government regulators and industry are generally not required to adopt the council's advice, many recommendations will likely be adopted if they result from thorough research and vetting by the council in a collaborative process. The Alaska citizens' councils operate by consensus but, as stated in Ginsburg et.al. 1993²⁰:

20 Ginsburg, P; S. Sterling; S. Gotteherer, 1993. *The Citizens' Advisory Council as a means of mitigating environmental impacts of terminal and tanker operations*. Marine Policy, September. 404-411.



...too much can be made of consensus. Some government and industry representatives appear to believe that consensus is the only measure of a successful process. Yet agreement — all consensus is — is meaningless if it fails to make systems safer.

And all of the CAC's work should be open to the public on whose behalf the council operates, and interested citizens should be able to attend and provide public comment at all meetings. A robust public outreach and communications effort should be developed by the CAC, with a website, regular newsletters, and other outreach mechanisms appropriate to local social conditions.

V. Funding

Substantial and stable funding for such a group is critical. The budget should be commensurate with the mission and responsibilities of the CAC, and include sufficient funds to commission independent research and technical reports as the CAC deems appropriate, support a professional staff, and cover all necessary administrative costs, including travel. One important thing that distinguishes the CAC concept from other advisory structures is that the CAC has sufficient funding to conduct its work independently.

Budgets for citizen councils should be commensurate with the costs and relative monetary values of local economies. As example, the Prince William Sound RCAC in Alaska has an annual budget of approximately \$4 million (USD), paid through contract by the consortium of oil companies that own and operate the Trans Alaska Pipeline. Other citizen councils can have smaller or larger budgets, depending on the local cost of doing business and the scope of a council's mission. For instance, councils with a limited scope of responsibility and in a low-cost economy could conceivably operate with a budget of perhaps \$200,000 (USD) per year. Other councils, with a broader mandate in a high-cost economy, may need as much as \$10 million (USD) per year - the amount that is currently proposed for the Gulf of Mexico RCAC in the U.S.

Regarding funding, the key is that the amount must be sufficient to carry out the group's responsibilities effectively — including staff, contracts, and administration - and funding must be stable year-to-year. For the Prince William Sound RCAC, about 1/3 of the group's annual budget is devoted to staff; 1/3 to administration (office rent, supplies, equipment, audits, etc); and 1/3 for research grants and contracts. This is a reasonable budget allocation target for other citizen councils.

There are several possible avenues for financial support for CACs, as follow:

- **Direct funding by industry:** Funding can come directly from the 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 a substantial one-time endowment from which the CAC could operate in perpetuity off the investment earnings of the permanent endowment.
- **Financial institutions requiring the establishment of a CAC as a condition of their loan:** Lacking direct support by the companies, *International Financial Institutions* (IFIs), and domestic financial institutions, can require companies receiving loans for a resource development project to establish and fund such independent CACs as a condition of their loan. The financial institutions can stipulate audit and review protocols, stakeholder representation, level of funding, and government and industry cooperation that must be put in place as a stipulation of the loan.



- **Government support:** Governments themselves can establish and fund such citizen councils from public revenues derived from industry projects, thereby removing industry from any direct role in the group's budget.
- **Interim, start-up support from philanthropic, non-governmental organizations (NGOs):** If none of the above financial instruments are available initially, then the assistance of an outside, philanthropic NGO can be solicited. As an interim CAC proves its worth as a mechanism for informed public participation, then its funding should be transferred to government or industry for continuing support.

VI. Accountability

To provide for accountability and to prevent financial corruption, a CAC should commission annual financial audits by independent accounting firms, and results of annual audits should be reported in their publicly available annual reports. Clear conflict of interest and disclosure policies for directors and staff should be instituted. As well, the establishing instrument (legislation or contract) can require periodic recertification of the CAC by a government agency or independent institution, to confirm that the group continues to fulfill its original vision and mission. As example, the Alaska RCACs are required to be recertified regularly by the U.S. Coast Guard.

To minimize the risk of industry co-option, CAC members must remain accountable solely to their respective stakeholder groups, and have high standards of transparency and openness. Ultimately, it is the civil society stakeholders represented in a CAC that control the process - not government or industry.

VII. Lessons / Recommendations

Expanding upon the lessons learned from existing *Citizens' Advisory Councils*²¹, some suggested general guidelines for future CACs are as follow:

- The overall goal of a *Citizens' Advisory Council* (CAC) should be to reduce the environmental and social impact and risk of resource development, while enhancing communication and engagement between civil society, industry, and government.
- A CAC should be established for *approved* resource development projects, and should not be used to justify approval of a project or development that otherwise may not be permitted.
- A CAC can be established by legislation, executive order, regulation, stipulation in the project permit, or through private contract between industry and civil society stakeholders.
- A CAC can focus on extractive industry such as mining or petroleum; renewable industry such as fisheries, agriculture, forestry and renewable energy development; or other industrial projects that could affect local communities, such as dams, nuclear power plants, or chemical plants.
- A CAC can be focused specifically on one industrial project, an industrial sector across a region, or all industrial activities in a region.
- A CAC should exist for the lifetime of the project or commercial activities in the region.
- Sufficient and stable funding is essential — for professional staff, research, travel, and administration — and funding should be guaranteed by contract or legislation.

21 RCAC, 1996. *RCAC Retrospective: The Successes and Lessons of a Citizens' Advisory Group*. PWS Regional Citizens' Advisory Program, 15 pp. www.pwsrcac.org.



- The geographic scope of a CAC should extend across the entire region potentially affected by an industrial project or industrial sector.
- The CAC should represent all major civil society stakeholder groups that are potentially affected by a resource development project/s.
- To ensure independence, CAC Board members should be appointed/elected by, and answer only to, their respective stakeholder groups — they should not be controlled by industry or government.
- Board members do not have to be experts.
- Board members can either be compensated for time and services they provide to the council, or they can serve as unpaid volunteers.
- A CAC can be independent even with industry funding, with proper safeguards. Funding should come unconditionally, with ‘no strings attached.’
- The CAC should be represented in any emergency response command structure for an emergency or accident ensuing from the industrial activity.
- Work of the CAC must be open and transparent.
- A CAC should have reasonable access to industry facilities and industry information.
- Cooperation often works better than confrontation.
- Conflict is inherent, but common ground and consensus is possible.
- Agreeing on how to disagree reduces conflict.
- Logic makes passion persuasive, using science, etc.
- A clear mission and identity should be established early on.

VIII. Conclusion

Given the obvious benefits to democratic governance and sustainable development, it is recommended that governments facilitate the establishment of *Citizens’ Advisory Councils* for oversight of natural resource industries, both extractive and renewable. These CACs should become an effective mechanism for greater communication between citizen stakeholders, industry, and government.

Citizen councils are a workable mechanism to operationalize several intergovernmental agreements, including the Aarhus Convention, IUCN Resolution 4.089, UNDRIP, and the UNEP Bali Guidelines, and are conceptually supported by the governments of the U.K, U.S., and the Secretariat of the Pacific Community. And these CACs create greater collaboration and synergy between industry, government, and the public, thereby enhancing trust, and reducing environmental and social impacts.

As stated in Ginsburg et.al.,1993²²:

Inherent in the need for a citizens’ advisory group is the concept of questioning, challenging, and testing industry and government decisions. In the long run, the [citizens’ council’s] appropriate role is to maintain a healthy challenge of industry and government decisions to protect the public interest.

22 Ginsburg, P; S. Sterling; S. Gottheherer, 1993. op. cit. (as in 19 above)



Properly structured, the CACs provide a win-win-win:

- *industry* benefits by having a reliable mechanism to communicate with all civil society stakeholders; reducing misunderstanding, social unrest, accident risk, litigation, and political tensions; securing and maintaining its “social license to operate;” helping to satisfy company shareholders and insurers that corporate risk is effectively managed; and enhancing a company’s overall corporate social responsibility (CSR) profile;
- *government* benefits by having a trusted, well-informed civic partner with which to ensure the public interest, enhancing the political legitimacy of government; and
- *civil society* stakeholders benefit by having ‘a seat at the table,’ where they can become better informed of the details and risks of resource projects, express concerns and suggestions directly to industry and government policymakers, and to become involved in decisions that affect them – all fundamental aspects of citizen empowerment, environmental justice, and sustainability.

As summarized by the *US Presidential/Congressional Commission on Risk Management*, effective public participation/citizen council processes achieve the following positive results²³:

- Supports democratic decision-making.
- Ensures that public values are considered.
- Develops the understanding needed to make better decisions.
- Improves the knowledge base for decision-making.
- Reduces the overall time and expense involved in decision-making.
- Improves the credibility of agencies responsible for managing risks.
- Generates more acceptable, readily implemented risk management decisions.

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 civil society stakeholders of the region*. Legitimate civil society engagement by establishing *Citizens’ Advisory Councils* is fundamental to the new paradigm for corporate environmental and social responsibility in the 21st century. If effectively structured and managed, citizen councils will provide an unprecedented level of *transparency, informed public participation, and citizen empowerment* with regard to industrial activities - important prerequisites to achieving a prosperous, equitable, just, and sustainable society.

²³ DOE, 1997. U.S. *Presidential/Congressional Commission on Risk Assessment and Risk Management, Framework for Environmental Health Risk Management*. 39, U.S. Department of Energy.



IX. Recommended First Step – Scoping Meetings

It is respectfully recommended that national governments and/or industry, with the technical assistance of UNEP and/or IUCN, host initial scoping meetings between representatives of resource industry (e.g., oil and gas, mining, forestry, agriculture, fisheries), government, and civil society organizations to discuss the *Citizens' Advisory Council* concept, and to explore opportunities to establish such councils in their regions. These scoping meetings should identify resource development projects and sectors, existing and proposed, that might benefit from the establishment of a *Citizens' Advisory Council*, stakeholder groups that should be represented, scope and responsibilities, and potential funding mechanisms.

Appendix I

IUCN Resolution 4.089: *Establishing Citizens' Advisory Councils for large-scale extractive industry projects*

CONSIDERING the potential impacts of large-scale extractive industry development projects (oil, natural gas, coal, minerals) on ecological, economic, social and cultural systems;

RECOGNIZING that local people potentially affected by large-scale extractive industry projects can play a critical oversight role in ensuring that the highest environmental, economic, social and cultural standards are met by companies and government; that local peoples are often at a significant financial and political disadvantage in engaging industry and government; and that local peoples have an inalienable right to know about, provide prior consent to, advise, consult with, and otherwise engage with such projects;

ALSO RECOGNIZING that multinational extractive industries would benefit from the greater engagement of local citizens, in an honest, transparent and truly representative process, to enhance the responsible conduct of their industrial operations;

NOTING that Citizens' Advisory Council models exist around the world whereby local people are empowered and funded to provide effective oversight to such projects;

RECALLING that Resolution 38 of the 8th World Wilderness Congress (30 September – 6 October 2005) resolved that "Extractive industries should support an independent citizens' advisory group that will observe, verify, advise, and inform for the life of projects they start";

ALSO RECALLING that the World Bank's 2004 Extractive Industry Review recommended, among other things, the improvement of stakeholder consultation, as well as prior informed consent by local people as a precondition to project approval; and;

CONSIDERING that IUCN is in a unique position to advocate the establishment of such mechanisms for citizen oversight of extractive industries in ecologically and culturally sensitive areas;

The World Conservation Congress at its 4th Session in Barcelona, Spain, 5–14 October 2008:



1. CALLS ON the extractive industry to embrace and support the formation of local *Citizens' Advisory Councils* being comprised of representatives of civil society in the vicinity of extractive industry projects being undertaken in ecologically sensitive areas, and having the function to provide informed public oversight of these projects in order to minimize their environmental and social impacts; and

2. URGES IUCN's members and governments, in those countries in which extractive industry projects are being undertaken in ecologically sensitive areas, to support and encourage the formation of local *Citizens' Advisory Councils*;

In addition, the World Conservation Congress, at its 4th Session in Barcelona, Spain, 5–14 October 2008, provides the following guidance concerning implementation of the IUCN Programme 2009–2012:

3. REQUESTS the Director General to:

- (a) prepare a list of large-scale extractive industry projects in ecologically sensitive areas around the world in consultation with the IUCN Commission on Ecosystem Management (CEM) and the IUCN Commission on Environmental, Economic, and Social Policy (CEESP); and
- (b) inform IUCN's members and governments in those countries where extractive industry projects are being undertaken in ecologically sensitive areas of the value of such Advisory Councils.

Appendix II

UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Guidelines 1 – 14):

I. Access to information

Guideline 1 - Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request (subject to guideline 3), without having to prove a legal or other interest.

Guideline 2 - Environmental information in the public domain should include, among other things, information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information.

Guideline 3 - States should clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, taking into account the public interest served by disclosure.

Guideline 4 - States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment.



Guideline 5 - States should periodically prepare and disseminate at reasonable intervals up-to-date information on the state of the environment, including information on its quality and on pressures on the environment.

Guideline 6 - In the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public to take measures to prevent such harm is disseminated immediately.

Guideline 7 - States should provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

II. Public participation

Guideline 8 - States should ensure opportunities for early and effective public participation in decision-making related to the environment. To that end, members of the public concerned should be informed of their opportunities to participate at an early stage in the decision-making process.

Guideline 9 - States should, as far as possible, make efforts to seek proactively public participation in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.

Guideline 10 - States should ensure that all information relevant for decision-making related to the environment is made available, in an objective, understandable, timely and effective manner, to the members of the public concerned.

Guideline 11 - States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

Guideline 12 - States should ensure that when a review process is carried out where previously unconsidered environmentally significant issues or circumstances have arisen, the public should be able to participate in any such review process to the extent that circumstances permit.

Guideline 13 - States should consider appropriate ways of ensuring, at an appropriate stage, public input into the preparation of legally binding rules that might have a significant effect on the environment and into the preparation of policies, plans and programmes relating to the environment.

Guideline 14 - States should provide means for capacity-building, including environmental education and awareness-raising, to promote public participation in decisionmaking related to the environment.



About the Author

Richard Steiner is Professor and a Conservation and Sustainability Consultant. From 1980 – 2010, a marine conservation professor with the University of Alaska, stationed in the Arctic, Prince William Sound, and Anchorage, and was responsible for the university's conservation and sustainability extension effort. He then advised the emergency response to the Exxon Valdez oil spill in 1989, helped found the Regional Citizens Advisory Councils and the Prince William Sound Science Center, helped formulate federal and state oil spill legislation, and first proposed settling the legal case between Exxon and the government and applying much of the \$1 billion settlement toward acquisition and protection of ecologically critical habitat along the coastline of the oil spill region. Subsequently, he worked globally on oil/environment issues, including oil spill prevention, response, damage assessment, and restoration, advising the United Nations, governments, NGOs, and industry, including in Russia, Pakistan, Lebanon, Nigeria, central Asia, and the Americas. He drafted the U.N. manual on environmental damage assessment for marine oil spills; and was an adviser during the Deepwater Horizon Gulf of Mexico spill in 2010. Today he consults internationally on conservation and sustainability issues through Oasis Earth, focused on Arctic conservation, energy and climate change, marine conservation, establishment of Citizens Advisory Councils for oversight of resource industry, and extractive industry responsibility.

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Notes

A series of horizontal green lines for writing notes.



