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THE WHITE HOUSE
WASHINGTON

March 12, 1991

9/22/60

EPRG?

Nancy

MEMORANDUM FOR ENVIRONMENTAL POLICY REVIEW GROUP MEMBERS

FROM: ROBERT E. GRADY *RG*
SUBJECT: Forest Convention Principles and Actions

The attached paper outlines principles which might be incorporated in the Global Forest Convention proposed by President Bush at Houston last year. International meetings on a convention framework begin this month and the President is committed to taking a leadership role in the fashioning of that framework. As we have discussed, the G-7 will be looking for a progress report on this issue from the U.S. at the London Summit in July.

A discussion of the attached paper will be the topic of our next EPRG meeting scheduled for Friday, March 15, 1991, at 1:30pm in the Roosevelt Room.

I. STATUS OF ACTIVITIES RELATING TO NEGOTIATIONS

"Core Country" Meeting

Sweden sponsored a meeting in February of 26 countries with major forest lands or which are major forest product consumers. USSR, Czechoslovakia, Mexico, Columbia, Brazil, India, Malaysia, and OECD countries were present. Malaysia, India, and Brazil argued that the meeting should not have been held since it was not UN sponsored.

OECD countries generally supported a free-standing convention. Most developing countries did not object. There was a discussion but no consensus on whether an agreement should include specific binding control measures or a "framework" of general obligations and institutional and procedural mechanisms. There was consensus on covering all forests, balancing use and conservation, commitments to cooperate in science, and that achievements under one convention should be credited under others.

Second Preparatory meeting for UNCED

Discussion of the forest convention process and its substantive character will take place at this meeting, which is scheduled to start in Geneva in March 1991. The objective of the U.S. delegation is to secure agreement to a resolution endorsing the negotiation of a separate global

convention on forests and establishing a process for such negotiations.

U.S. Internal Preparatory Process

U.S. agencies, through the Policy Coordinating Committee (PCC), Subcommittee on Forests, have drafted discussion papers on principles to define general obligations for a convention. State is preparing a paper for the U.S. UNCED delegation on the negotiation process. The Forest Service is currently assessing costs and benefits of potential initiatives.

II. NEXT STEPS

The President proposed at the Houston Summit to begin negotiations as expeditiously as possible on a global forests convention. It would be similar to the free-standing Vienna Convention which provided a framework of general obligations, institutions, and procedures to address the CFC issue.

To continue Presidential leadership on this subject, the U.S. needs to take specific proposals to the London Summit and to gain agreement among the G-7 nations on principles to be supported in the subsequent negotiations.

The following objectives are proposed:

- Define U.S. basic principles for the Convention by March 1991.
- Elements of a draft Convention to be prepared by Spring 1991.
- Agreement among the G-7 countries on Convention principles to be reached at London, July 1991, if sufficient progress has been made with developing countries in the core group negotiations.
- Sign Convention in Brazil, 1992.

The attached draft statement of principles is a result of the work done by the PCC subcommittee on a global forest agreement. It is proposed that a final version of this draft be completed by the end of the month to serve as the basis for U.S. input in the preparation of the draft convention text.

Attachment

PRINCIPLES CURRENTLY BEING CONSIDERED BY WORKING GROUP ON FORESTS

SOVEREIGNTY

Principle: Respect for the sovereignty of countries in which forest resources are located.

SUSTAINABLE DEVELOPMENT: USE AND MANAGEMENT OF FORESTS TO MEET HUMAN NEEDS FOR FOOD, FUEL, SHELTER AND ECONOMIC DEVELOPMENT

Principles: Use and management of forest to meet human needs for food, fuel, shelter and economic development.

Integration of forestry considerations into national and international development policy.

Promotion of efficient timber production and consumption and effective use of wood to reduce demand on forest products from primary forests.

CONSERVATION AND MAINTENANCE OF FOREST DIVERSITY

Principles: Maintain biological diversity of forested ecosystems, including genetic, species, ecosystem and landscape diversity.

Restore forested ecosystems where feasible.

The conservation of biological diversity should be considered as an integral part of all other efforts.

CLIMATE CHANGE AND FORESTRY

Principles: Take actions that maintain national and global forest area, stocking rates, and productivity, and that limit reductions in these forest attributes, in recognition of the broad range of forest-related benefits, which include maintaining global and regional climate stability and carbon stocks.

To the extent feasible, take actions to increase forest area and stocking rates, in order to restore the environmental services (including stabilizing regional and global climates, and expanding carbon stocks in vegetation) formerly provided by forest ecosystems within present national boundaries.

Research and promote adaptive forest management practices in countries and regions susceptible to potential climate change impacts, following technically sound risk assessment of proposed candidate strategies.

Accelerate bioenergy and other energy programs that economically and sustainably meet energy needs of developed and developing economies, to substitute for non-renewable energy sources and ease unsustainable collection of fuel wood from forests, and reduce net greenhouse gas emissions.

Reduce biomass burning both in use as a forest land management practice and in wildfires, by promoting national and global efforts to assess and implement appropriate alternate forest management practices, in order to reduce loss of economic and environmental services offered by forests and associated significant greenhouse gas emissions.

AIR POLLUTION

Principles: Collaborate in the development of critical loads and levels of acidic deposition, ozone, and other regional pollutants as they may agree upon.

Collaborate in implementing specific national and international control measures to achieve national target loads.

Identify forest areas of highest ecological value and strive to ensure that these areas are subject to no damage by air pollution acting either alone or in combination with other anthropogenic stresses.

INDIGENOUS PEOPLES

Principles: Recognition of the rights and interests of indigenous peoples (and other local forest residents) to maintain their own social organization and cultural identity, while assuring them equal opportunity to participate fully in the social, economic and political life of their country, particularly as it pertains to life in the forest.

Local empowerment of indigenous peoples to insure effective participation in planning and decision-making; secure land and resource tenure; and habitat protection, utilizing, to the maximum extent feasible, the assistance of local and international non-governmental organizations.

Definition and strengthening of the current and potential role indigenous peoples play in local, national and international economies, particularly in the sustainable harvest of both timber (including fuelwood) and non-timber forest products.

Encouragement of exchange of information (with mutual protection of intellectual property rights) between external research and technology generation and locally developed technology and indigenous knowledge, as a means of more sustainably managing forest resources.

REFORESTATION AND REHABILITATION. MAINTAIN THE AREA AND INCREASE THE PRODUCTIVITY OF FORESTS THROUGH REFORESTATION, AFFORESTATION, AND THE RESTORATION OF DEGRADED LANDS

Principles: Maintain existing forest area through controlled harvesting, prompt reforestation of areas harvested, and programs to establish forests to replace those converted to agricultural and urban uses.

Establish forest plantations to increase productivity of existing forests where appropriate.

Rehabilitate degraded and deforested land through reforestation, reintroduction of native plants, restoration of natural processes, and implementation of sustainable management practices.

FUELWOOD AND ENERGY

Principles: Find ways to reverse current trends of deforestation and forest degradation due to fuelwood gathering.

Increase rural incomes or subsidize the use of alternative energy sources.

ECONOMIC AND TRADE POLICIES:

Principles: To the extent that the benefits of improvements in the management of forest resources are global, all nations share an interest in such improvements, and all nations should consider the global consequences of their forest policies. (Global participation and cooperation)

All types of forests (tropical, temperate, boreal) and all types of global forest benefits (e.g., biodiversity carbon sequestration), should be addressed in a global forestry agreement. (Comprehensive Coverage)

Nations should be allowed flexibility in their forest management choices to enhance the cost-effectiveness of their responses, and to help accommodate sovereignty interests by allowing nations to manage their forests to meet local needs as well as global requirements.

Market forces should be employed and harnessed to achieve forestry goals, both domestically and internationally.

Progress on forestry should be measured by the final results obtained, to allow maximum scope for creative, diverse, innovative, cost-effective responses.

Sustainable development and management of forests should be encouraged by negotiating multilateral trade measures in the appropriate forum, including, inter alia:

- the elimination or substantial reduction of market access restrictions affecting appropriate products.
- the elimination of substantial reduction of market agricultural subsidies that distort trade and promote deforestation; and
- market promotion and development for appropriate tropical products.

Information on forest resources and markets should be improved and disseminated; and international consultations on forest policies and programs strengthened.

Private sector investment and management practices supporting sustainable development of forest resources should be encouraged.

Estimation of the role of the forest in national income accounts should be improved since accurate national income accounts and other national economic data should include the change in non-market values of forests, as well as their market values. Governments should seek to:

- promote domestic research into the best means of including forest values in the national income accounts and national economic data;

EDUCATION AND TRAINING

Principles: Emphasis on education and training at a variety of levels, focussed on: government officials and decision makers in the formulation and implementation of sound natural resource policies; small scale entrepreneurs involved in extracting and utilizing forest products, as part of sustainable forest management; and women professionals and farmers, as a means of getting technical information to a significant portion of forest resource users.

Greater use of increased/improved short-term, in-country and project-level information exchange and training.

FINANCIAL AND TECHNICAL ASSISTANCE

Principles: Existing bilateral and multilateral assistance resources and institutions-- as well as commercial sources of financing-- should be fully utilized, and redirected where necessary, to address the broad range of forestry issues confronting developing countries.

- support the development in international organizations of improved and more accurate data and methods of record keeping;
- provide special consideration to the urgent need for improved data in developing countries with forest resources.

Insurance, subsidies, guarantees, credits and financing provided by Government agencies should be provided in accordance with the highest principles and standards of prudent forestry management, taking into consideration other societal goals.

Individuals' and local communities' enlightened self interest should be harnessed in the service of forest conservation by giving them, wherever appropriate, an economic stake in adopting sustainable practices. Such measures may include establishing property rights, granting long-term tenure, and developing alternative economic uses for forests and forest products.

Decision-making on forest use and management should be decentralized to the extent appropriate to ensure due consideration of the needs and interests of local populations and resource users and managers, adequate consideration of the particular circumstances of forest in any areas, and reduced likelihood of major failures due to central planning.

RESEARCH AND MONITORING

Principles: Expand inventory of the world's forest resources to assess current availability, current health, and projected changes. This includes sharing of inventory techniques, data, and information regarding forest health and the environment.

Expand forestry science research to improve understanding and management of the biological, physical, social, and economic components of forest resources and forest ecosystems.

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THE WHITE HOUSE
WASHINGTON

ENVIRONMENTAL POLICY REVIEW GROUP

Friday, April 26, 1991
Roosevelt Room
4 p.m.

AGENDA

- (1) Global Convention on Forests

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- (1) Attached are papers which list principles (attachment A), and possible actions (attachment B) for a Global Convention on Forests. They reflect general consensus at the staff level of representatives from State, Justice, CEA, EPA, and OMB. Counsellor Zoellick, Sherpa for the London Summit may make use of these materials at the preparatory meeting in Hong Kong next week.

ATTACHMENT A

PRINCIPLES FOR A GLOBAL FORESTS CONVENTION

The following principles describe the key features and elements of a Global Forests Convention. The "General Principles" define the nature and structure of the Forests Convention while the "Specific Principles..." identify the areas of forest policy and management the Convention should address.

GENERAL PRINCIPLES

- (1) GLOBAL STEWARDSHIP. Countries have a sovereign right to manage their domestic natural resources pursuant to their domestic policies. They also have a responsibility to engage in cooperative stewardship to improve global environmental quality for mutual benefit. Global stewardship and sustainable development depend upon the integration of healthy environmental quality and robust economic growth.
- (2) GLOBAL PARTICIPATION. Improvements in the management of forest resources will have global benefits. All countries share an interest in promoting such benefits, and all should share in efforts to achieve them.
- (3) INTERNATIONAL COOPERATION. Countries should be encouraged to realize their shared forestry goals through cooperative international arrangements. Such arrangements to improve forest resource management could include provision of education and training, research and monitoring, forest management planning expertise, and financial and technical assistance.
- (4) COMPREHENSIVE COVERAGE. All types of forests -- boreal, temperate and tropical -- and all types of global forest benefits, including economic, environmental, social and cultural -- should be addressed in a Convention. This includes attention to the sustainable use of forests for, inter alia, forest products, biodiversity, greenhouse gas sequestration, and indigenous peoples.

(5) FLEXIBLE, PERFORMANCE-BASED APPROACH. Progress on forestry should be measured by the results obtained, to allow maximum scope for creative, diverse, innovative and cost-effective policies that contribute to global forest benefits. Policies and practices should be flexible and able to respond to changing circumstances and new information. Countries should be able to pursue results through their own choices of specific forest management practices, both to respect the autonomy of sovereign states and to enhance the cost-effectiveness and dynamism of policies by allowing them to match local needs and opportunities.

(6) USE OF MARKET MECHANISMS. To enhance flexibility and effectiveness, the use of market forces and mechanisms to achieve forestry goals should be encouraged, both domestically and internationally.

(7) INTEGRATION OF POLICIES. Policies should comport with forestry objectives in such areas as economics and trade (including taxes, subsidies and tariffs), financial and technical assistance, and property rights and land tenure.

SPECIFIC PRINCIPLES RELATING TO PARTICULAR FOREST CONCERNS

(8) SUSTAINABLE MANAGEMENT. Promote sustainable management and stewardship of forests to meet present and future human needs for economic and ecological services. Act cooperatively for sustainable development combining healthy environmental quality and robust economic growth. Reduce adverse effects on forests by improving the efficiency of using land resources to meet human needs.

(9) CONSERVATION OF FOREST DIVERSITY. Endeavor to conserve, maintain, restore and enhance the biological diversity of forested ecosystems, including genetic, species, ecosystems and landscape diversity.

(10) REFORESTATION AND REHABILITATION. Strive to maintain and increase the total quantity and quality of forests to the extent economically and environmentally justified and appropriate.

(11) CLIMATE CHANGE. Improve the use of forests as sinks and reservoirs for greenhouse gases, and endeavor to help forests adapt to potential climate change and changing atmospheric composition.

(12) AIR POLLUTION. Seek appropriate actions to address the adverse effects of air pollution on forest growth and productivity wherever economically and environmentally justified.

(13) INDIGENOUS PEOPLES AND ESTABLISHED LOCAL COMMUNITIES. Respect the needs of indigenous peoples who use forests as the basis for their livelihood, social organization or cultural identity. Recognize the need of established local communities which depend upon forest resources to have an economic stake in sustainable forest use. Raise local community awareness of the effects of their actions on forests and promote compatibility of their actions with attainment of forest management objectives.

(14). FUELWOOD AND ENERGY. Find means to meet the demands for fuel for cooking, heating and other energy while avoiding deforestation and degradation of forests.

(15) ECONOMICS AND TRADE. Integrate sustainable forest use objectives and policies with economic and trade policies. Harness market forces to achieve national, regional and international forest management goals. Foster use of debt-for-nature swaps and other innovative means.

(16) RESEARCH AND INVENTORY. Expand forestry research, inventory and monitoring of the biological, physical, social, economic and other key variables that affect or are components of forest resources, forest ecosystems, and forest use to meet multiple objectives.

(17) EDUCATION AND TRAINING. Strengthen institutional capabilities, improve education in the science, technology and economics of forests and forest management, and ensure full public access to information and public input to the decision-making processes related to forest management.

(18) FINANCIAL AND TECHNICAL ASSISTANCE. Use financial and technical assistance resources fully and efficiently to help countries implement national, regional and international forestry programs aimed at the conservation and sustainable use of forests. Ensure that development assistance is consistent with sound forest use and stewardship.

POTENTIAL ACTIONS TO IMPLEMENT PRINCIPLES
OF A GLOBAL FOREST CONVENTION

I. WHAT KINDS OF ACTIONS WOULD BE APPROPRIATE FOR A FRAMEWORK
CONVENTION?

A framework convention on global forestry should establish general obligations for the parties. The framework convention could appropriately include:

- development of and means to provide the scientific, technological, and economic knowledge needed as the basis for continuing international discussion and cooperation;
- general obligations for participants to support the principles of the convention in ways suitable to their circumstances;
- appropriate institutions to facilitate continuing scientific, technological and economic assessment, cooperative research, and general obligations;
- provision for any subsequent protocols for which the scientific and other assessments may show a need.

Inventory and Research

An adequate base of scientific, technological and economic knowledge and data about the world's forests is needed, both to support continuing international discussion and cooperation under a Convention and to provide the basis for improved forest management. A cooperative international program could assess the current inventory and status of forest resources, future trends, and the status of non-forest uses which put pressure on forest resources.

Further research is needed in a number of areas, including the biological, physical, social and economic components of forest resources and ecosystems. Examples of areas needing further research include the measurement of multiple benefits, gaining a better understanding of key or leverage variables which affect forests, improving strategies for sound management, and better understanding of causes and alternatives to forest clearing.

Education and Training

Countries with forest resources need to have the scientific and technical human resource capabilities to manage their forests effectively. Countries with expertise in forest management can help build these human and institutional capabilities. Because improved forest management can improve local economic performance at the same time that it delivers global forest benefits, providing education and training can serve the interests of both groups of countries.

Strategies for Improving Forest Management

Countries should undertake, as a general obligation under the framework convention, to develop and publish explicit national strategies for improving forest management.

Bilateral and multilateral assistance institutions should develop strategies to help their assistance programs give forestry objectives appropriate priority and emphasis.

As a part of the development of such strategies, countries and assistance institutions should review policies and practices aimed at non-forest objectives in order to coordinate and integrate them with forestry objectives.

II. SPECIFIC POTENTIAL ACTIONS FOR A FRAMEWORK CONVENTION

The following are specific potential actions which fall into the three categories described above -- inventory and research, education and training, and strategies for improving forest management. They are listed under the headings for specific principles relating to particular forest concerns.

SUSTAINABLE MANAGEMENT

Undertake, as a general obligation, to develop and publish explicit national strategies for improving forest management.

Undertake, as a general obligation, to review major national policies and actions for their impacts on forests.

CONSERVATION OF FOREST DIVERSITY

Support a cooperative international effort to develop ways to measure and monitor biological diversity, to do research in support of the conservation of forest diversity and to provide technical and financial assistance to these efforts. Biological diversity encompasses diversity of species, habitats, and

ecosystems. Additional work is needed to improve understanding and measurement of these factors.

Expand existing efforts to integrate biological diversity goals with multilateral and bilateral development activities.

CLIMATE CHANGE

Support an expanded international cooperative program of research into:

- the potential impacts of climate and atmosphere change on forest productivity, health, and diversity;
- development, demonstration, and enhancement of forest based technologies that are economically sound while reducing further growth in net emissions of greenhouse gases;
- development, demonstration, and enhancement of technologies and practices to increase and enhance natural sinks of greenhouse gases;
- development, demonstration, and enhancement of technologies and management practices that will aid forest managers to adapt to climate and atmosphere change, while maintaining forest productivity, health, and diversity;
- development, demonstration, and enhancement of technologies that use the potential of forests to provide an environmentally acceptable substitute for non-renewable energy sources;

Support an expansion of current international science, technical assistance, training, education, and fire management cooperation with a goal of reducing the destructive loss of forest resources to fire and a goal of reducing the emissions of greenhouse gases from forest and savannah fires.

AIR POLLUTION

Initiate a cooperative effort with countries with temperate and boreal forests to understand the effects of air pollution on forest productivity, health, and diversity; to assess the damage to such forests from air pollution; to determine likely causes; to establish monitoring systems; and to evaluate restorative actions.

REFORESTATION AND REHABILITATION

Support through an appropriate international institution an inventory and assessment of deforested lands to help countries identify those lands that would produce the highest economic and other benefits from afforestation. Both lands recently deforested and lands deforested in the longer term past could be evaluated using satellite imagery and on-the-ground assessment.

Take steps, domestically and through cooperative international arrangements, to maintain and expand the quantity and quality of boreal, temperate and tropical forests.

Cooperatively produce assessments of potential forest land conversions to other uses to help countries to determine the kinds of circumstances in which such conversions are or are not economically sound and sustainable. These assessments could also evaluate the kinds of government policies and arrangements that discourage or encourage conversions of forest lands -- tax structures, forest and agricultural incentives, land tenure arrangements, leasing or contracting procedures for harvest, and so forth.

Cooperatively expand technical and managerial assistance to developing countries to assist them in restoring degraded lands and their associated natural processes. Aid in developing sustainable multiple-use management plans, developing appropriate policy, legislation and administrative management plans.

Encourage public-private initiatives such as the Central America and Mexico Coniferous Resources Cooperative (CAMCORE). This international association of private companies, academic institutions and government agencies has the specific mission of preserving the genetic resources and economic potential of relatively little-known tropical coniferous tree species.

INVENTORY AND RESEARCH

Support a cooperative, international inventory program to:

- develop improved forest inventory and monitoring criteria and techniques;
- carry out an inventory of the world's forests, on a continuing and regular basis, assessing their:
 - o sustainable capability to meet demands for forest products, services, and non-market values;
 - o health;

- o biological diversity, including species, habitat, and ecosystem diversity;
- o deforestation rates and patterns;
- o ecological changes;
- o other current and projected changes, including conversion to other uses; and
- o the effects and sustainability of forest management practices.

Initiate new international cooperative research programs on tropical forestry, agroforestry, sustainable development, forest diversity, forest health management, temperate forests, boreal forests, and reforestation of deforested and degraded forest lands. Proposals could include:

- Expanded emphasis on forestry research in existing research centers of the Consultative Group on International Agricultural Research (CGIAR);
- Establishment of new regional forestry research institutes under CGIAR: U. S. could express interest in cooperating in the development of a tropical forest research center in Latin America in the Amazon basin.
- Increased commitment to support tropical forestry research in existing institutions such as the Institute of Tropical Forestry, Puerto Rico, the Institute of Pacific Islands Forestry, Hawaii, and the tropical woods program at the Forest Products Laboratory, Madison, WI.
- Identification and evaluation of key leverage variables: factors such as timber prices, food prices, taxes and subsidies, tariffs, property rights, air pollution, and others that critically affect forest resource use.
- Establishment of a Boreal Forest Cooperative Program to expand and coordinate research to assess resources; monitor productivity, health and diversity of ecosystems; and evaluate sustainable forestry practices for boreal forests.
- Advanced work in the valuation and comparison of multiple forest benefits, such as commercial forest products, non-forest products such as agriculture, fuelwood, pharmaceuticals, biodiversity, indigenous peoples' homelands, and ecological services.

EDUCATION AND TRAINING

Support in close coordination and cooperation with the network of regional forest research institutes and other on-going international programs, the development of a program of formal and technical training designed to assure that all countries with forest resources have the institutional capabilities and access to the most up-to-date scientific resources, information and capabilities:

- needed to manage their forest resources in an economically and environmentally sound manner at the governmental level; and
- needed to provide their farmers, agroforesters, and other non-governmental resource users with the extension services, technical assistance, and other knowledge needed for sound use of forest resources.

FINANCIAL AND TECHNICAL ASSISTANCE

Review bilateral and multilateral assistance programs with a view, inter alia:

- to improve the long-term health and productivity of forest resources for the production of employment, income, forest products, services, recreation, and habitat;
- to developing and publishing explicit strategies which give appropriate priority to projects or aspects of projects which focus on the sustainable use of forest and land resources to meet human needs for food, fuel, shelter, and economic development;
- to ameliorate the adverse effects on the health and productivity of forest and land resources from other economic development projects.

Provide an international institution to coordinate information on debt-for-nature swaps by identifying swap opportunities and partners, drafting model agreements, brokering transactions, and generally assisting countries and non-governmental organizations in such arrangements.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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June 4, 1991

MEMORANDUM TO MEMBERS OF THE ENVIRONMENTAL POLICY REVIEW GROUP

FROM: Robert E. Grady
Associate Director, *RG*
Natural Resources, Energy and Science
Office of Management and Budget

Attached are materials for the four items to be discussed at the EPRG meeting on Wednesday, June 5th.

At TAB A, enclosed is a draft of the "Arctic Protection Strategy" which has been discussed at a Policy Coordinating Committee level, chaired by the State Department. While it has been discussed at this level, it has not yet received policy-level clearance. Agencies should be prepared to discuss policy, budgetary, regulatory, or legislative issues that may arise from this strategy.

At TAB B, please find a short memorandum from Dick Stewart concerning the extraterritorial application of NEPA, and a draft legislative proposal that was developed by the Administration in the 101st Congress in response to legislation that sought to extend dramatically NEPA on an extraterritorial basis.

At TAB C, please find a memo from Dick Stewart discussing the litigation of FOET v. Watkins, which has to do with the incorporation of global climate change concerns into the preparation of environmental impact statements under NEPA.

Attached for your information at TAB D is a copy of Executive Order No. 12114, concerning the environmental effects abroad of major federal actions.

A draft position paper on Antarctica Protection, from the State Department, will be forwarded later this afternoon as soon as it is approved by Bob Zoellick.

Attachments

THE WHITE HOUSE

WASHINGTON

ENVIRONMENTAL POLICY REVIEW GROUP

Wednesday, June 5, 1991
10 a.m., The Roosevelt Room

AGENDA

- (1) DRAFT ARCTIC ENVIRONMENTAL PROTECTION STRATEGY
- (2) STATUS OF NEGOTIATIONS OVER THE PRESERVATION OF
ANTARCTICA RESOURCES
- (3) EXTRATERRITORIAL APPLICATION OF NEPA
- (4) FOET v. WATKINS



United States Department of State

*Assistant Secretary of State for Oceans and
International Environmental and Scientific Affairs*

Washington, D.C. 20520

May 17, 1991

MEMORANDUM

TO: THE POLICY COORDINATING COMMITTEE (PCC)
ON INTERNATIONAL OCEANS, ENVIRONMENT AND
SCIENCE AFFAIRS: ARCTIC

FROM: Curtis Bohlen, Chairman ⁰³
PCC on International Oceans, Environment
and Science Affairs

SUBJECT: Arctic Environmental Protection Strategy:
Clearance

Attached is a copy of the latest draft of the Arctic Environmental Protection Strategy. This latest version is based on further negotiations at the recent working level meeting of Arctic countries in Helsinki, Finland, May 6-8. Text in bold type indicates language which has been changed or revised in recent drafts.

The Arctic countries expect to endorse this Strategy document at a ministerial meeting in Rovaniemi, Finland, June 13-14, 1991. Discussions on this strategy have been ongoing for well over a year, and we are now in the final stages of preparation. As you know, the Strategy will serve as a plan for cooperation and coordination of Arctic countries' efforts to protect the environment. While the Strategy is not a legally binding document, it includes objectives, principles and an action plan which the Arctic countries will endorse at the Rovaniemi meeting, pledging to coordinate their efforts and take appropriate steps in these matters.

The Interagency Arctic Policy Working Group will meet Thursday, May 16 at 10:30 a.m. to go over comments on this latest draft, and we expect there will be additional meetings of this group. Given discussions to date, I believe the major concerns which agencies have raised have been met. In light of the short time left to us before Rovaniemi, I request your agency's clearance on the document as soon as possible, but no later than May 28. There are two outstanding paragraphs of bracketed or alternative language in the strategy (pages 18 and 27). Those marked with an "A" are positions the United States can accept and will support. Other bracketed portions are less

contentious and will be addressed through the interagency process. Based on agency comments, we will be preparing a position paper for the Rovaniemi meeting or any other unresolved issues, which will also be circulated for final clearance.

If there are further issues to resolve, I am prepared to call a meeting of the PCC to do so if it is desired. Please let me know as soon as possible if there are issues that warrant such a meeting.

In the meantime, I appreciate your immediate attention to this issue, and look forward to leading the delegation to the Rovaniemi meeting. If you or your representative are planning on attending, please let us know.

DRAFT

ARCTIC ENVIRONMENTAL PROTECTION STRATEGY

May 8, 1991

1. INTRODUCTION

There is a growing national and international appreciation of the importance of Arctic ecosystems and an increasing knowledge of global pollution and resulting environmental threats. The Arctic is highly sensitive to pollution and much of its human population and culture is directly dependent on the health of the region's wildlife. Limited sunlight, ice cover that inhibits energy penetration, low mean and extreme temperatures, low species diversity and biological productivity and long-lived organisms with high lipid levels all contribute to the sensitivity of the Arctic ecosystem and cause it to be easily damaged. This vulnerability of the Arctic to pollution requires that action be taken now, or degradation may become irreversible.

The governments of the Arctic states have become increasingly aware of the need for, and their responsibility to combat these threats to the Arctic ecosystem. On the initiative of Finland, the eight Arctic countries of USSR, USA, Sweden, Norway, Iceland, Finland, Denmark and Canada have met to prepare a strategy to protect the Arctic environment. The Arctic countries realize that the pollution problems of today do not respect political boundaries and that no state alone will be able to act effectively against environmental threats to the Arctic. They have also been moved by the international call for action expressed by the World Commission on Environment and Development as well as the concerns of the

indigenous peoples living in the Arctic region. The Arctic countries with the participation of Arctic indigenous peoples have developed this environmental protection strategy. The strategy builds on the initiatives already taken nationally and by indigenous peoples to protect the Arctic environment.

It is recognized that this strategy, and its implementation, must incorporate the knowledge and culture of indigenous peoples. It is understood that the cultures and the continued existence of the indigenous peoples have been built on the sound stewardship of nature and its resources.

The use of natural resources is an important activity of Arctic nations. Therefore, this strategy should allow for sustainable economic development in the north so that such development does not have unacceptable ecological or cultural impacts. The strategy must also rely on the best scientific and technological advice that countries are able to produce and share.

Arctic ecosystems are influenced and in some cases threatened by factors occurring also outside the Arctic. In turn, the Arctic also exerts an important influence on the global environment. The implementation of an Arctic Environmental Protection Strategy will therefore benefit both the Arctic countries and the world at large. The strategy is also designed to guide development in a way that will safeguard the Arctic environment for future generations and in

a manner that is compatible with nature.

The Arctic countries are committed to international cooperation to ensure the protection of the Arctic environment and its sustainable and equitable development, while protecting the cultures of indigenous peoples. Only through careful stewardship by Arctic countries and Arctic peoples can environmental damage and degradation be prevented. These are the challenges which must be taken up in order to secure our common future.

The strategy is comprised of a number of component parts, beginning with a statement of objectives. These objectives establish the broad direction in which the eight Arctic countries are intending to move. The objectives are accompanied by statements of principle which are designed to guide the actions of Arctic countries individually and collectively, as they move toward achievement of the objectives. The strategy also describes the problems and priorities which the eight Arctic countries agree need to be addressed at this time.

Tools, whether legal, scientific or administrative, are also reviewed in order to define appropriate mechanisms for implementation of the strategy. This is particularly relevant to that section of the strategy which defines the specific actions that the eight countries will undertake jointly or individually to deal with priority issues and pollution problems. The

implementation of the strategy will be carried out in accordance with international law, including the 1982 United Nations Convention on the Law of the Sea.

Finally, the strategy outlines plans for future cooperation towards the implementation of the strategy.

2. OBJECTIVES AND PRINCIPLES

A) Objectives

The objectives of the Arctic Environmental Protection Strategy are:

- i) To protect the Arctic ecosystem including humans.
- ii) To provide for the protection and enhancement of environmental quality and the sustainable utilization of natural resources, including their use by local populations and indigenous peoples in the Arctic;
- iii) To accommodate the requirements, values and practices of the indigenous peoples related to the protection of the Arctic environment, as determined by themselves;
- iv) To review regularly the state of the Arctic environment;

- v) To identify and eliminate pollution harmful to the environment.

B) Principles:

The Arctic Environmental Protection Strategy and its implementation will be guided by the following principles:

- i) Planning, management and ((development)) activities shall provide for the conservation and protection of Arctic ecosystems and natural resources for the benefit and enjoyment of present and future generations, including indigenous peoples;
- ii) Use and management of these resources shall be based on an approach which considers the value and interdependent nature of ecosystem components;
- 1ii) Development in or affecting the Arctic, shall be planned and conducted on the basis of informed assessments of their possible impacts on the Arctic environment, including cumulative impacts.
- iv) Planning and conduct of development activities in, or affecting the Arctic, shall provide for the maintenance of the

region's essential ecological systems and biodiversity and shall respect the Arctic's significance for and influence on the global climate and shall minimize climatic change;

- v) (((Development)) Activities in, or affecting, the Arctic shall be compatible with the sustainable utilization of Arctic ecosystems and shall take into account the results of scientific investigations and the traditional knowledge of indigenous peoples;
- vi) Information and knowledge concerning Arctic ecosystems and resource use will be developed and shared. This information base should be used in support of planning and should precede development activities;
- vii) Consideration of the health, social, economic and cultural needs and values of indigenous peoples shall be incorporated into planning and development activities;
- viii) Protected areas are important elements of any environmental protection strategy. Therefore, development of a network of such areas shall be encouraged and promoted with due regard for the needs of indigenous peoples;
- ix) International (((scientific))) cooperation to protect the Arctic environment shall be supported and promoted.

- x) Mutual cooperation in fulfilling national and international responsibilities in the Arctic consistent with this strategy, including the use and transfer of the best available technology to protect the environment, shall be promoted and developed.

3. PROBLEMS AND PRIORITIES

At the first meeting in 1989 of the eight Arctic countries there was early recognition that many of the environmental problems that individual nations had been addressing, were in fact shared amongst the eight. To begin with, six specific pollution issues were identified as requiring attention. These issues were associated with oil, acidification, persistent organic contaminants, radioactivity, noise and heavy metals. State of the Environment Reports were prepared on each of these topics and have been published separately. It was also agreed that these will be updated as necessary.

It was recognized that the ability to completely understand these issues was restricted by the lack of a comprehensive scientific data base and coordinated monitoring program on the state of Arctic ecosystems. Furthermore, the potential impact of these specific pollutants on Arctic flora and fauna underlined the need to consider establishing a mechanism to facilitate a cooperative

approach to their conservation. Other environmental problems including the depletion of the ozone layer and global warming were not addressed because they were already being considered in other fora. It was also determined that since the Arctic environment is particularly vulnerable to accidental discharges and uncontrolled releases of pollutants, enhanced mechanisms to address environmental emergencies in the Arctic were needed.

3.1 Persistent Organic Contaminants

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Chlorinated organic contaminants comprise a large class of chemicals including industrial organics (e.g. polychlorinated biphenyls (PCBs), hexachlorobenzene (HCB)), agricultural organics (e.g. hexachlorocyclohexane (HCH), DDT/DDE, chlordane, toxaphene, aldrin), by-products of anthropogenic activities (e.g. dioxins, furans), and chemical transformation products (e.g. dieldrin from the oxidation of aldrin). The use and production of some of these compounds has been stopped or restricted in some countries, however, many are still widely manufactured and used on a global basis. They are hazardous environmental contaminants due to their high stability and persistence in the environment, potential for bioaccumulation and high chronic toxicity, and the large quantities

which have been released into the environment.

Although the major use of chlorinated organic contaminants has been at mid-latitudes, and the Arctic has few sources of its own, virtually all chlorinated contaminants detected at southern latitudes have also been found in the Arctic. These contaminants reach the Arctic environment via long-range transport by rivers, the atmosphere and ocean currents from more industrialized centres, particularly Asia, Europe and North America. Studies have suggested that due to slow turn-over processes, the rate of breakdown of chlorinated organic contaminants may be considerably slower than in temperate ecosystems which may result in a prolonged threat to the environment. Due to the highly lipophilic nature of most chlorinated organic contaminants, they become concentrated in the fatty tissues of species in the Arctic food chain. The highest levels of contaminants are therefore detected in the blubber and fat tissue of animals at the top of the food chain (e.g. polar bears, whales and seals). This is of particular concern in the Arctic because of the high level of consumption of lipid-rich wildlife foods by residents, resulting in a pathway of these contaminants to humans.

Levels of chlorinated organic contaminant residues measured in the tissues of terrestrial mammals have been found to be much lower than those found in the tissues of marine mammals. The most abundant organic contaminants which have been found in marine

mammals are toxaphene, chlordane and PCBs.

The presence of chlorinated organic contaminants has been reported in human populations throughout the world. Northern residents are at a greater risk of accumulating high levels of contaminants due to their high consumption of lipid-rich wildlife. The level of PCBs in breast milk samples collected from Inuit women in northern Quebec was approximately five times higher than that of Caucasian women living in southern Quebec.

The variable and generally sparse database on chlorinated organic contaminants in the Arctic prohibits for the most part, the determination of any spatial trends. However, existing data on the levels of chlorinated organic contaminants in fish, marine mammals and other wildlife suggest that levels are similar over a wide geographic area in the circumpolar north. In Canadian studies, chlordane compound residue levels in polar bear fat have been reported to be four times higher in 1984 than in 1969, while levels of DDT did not change and other chlorinated contaminants measured were twice as high.

Concentrations of chlorinated organic contaminants in the Arctic ecosystem are generally lower than in heavily polluted areas such as the Great Lakes, or the Baltic Sea. There are, however, some exceptions - the more volatile compounds (e.g. HCB, toxaphene) are often detected in the Arctic at concentrations similar to those in

source regions.

Little is known about the potential effects of chlorinated organic contaminants on the ecosystem. However, there is evidence that a broad spectrum of contaminants is reaching the Arctic and there is sufficient toxicological data as well as field data to make reasonable extrapolations with regard to ecosystem consequences in the Arctic. Chronic effects of chlorinated organic contamination observe in other regions (eg. reproductive failure, bill and foot abnormalities, cancer) are of the most significance. The lower concentrations detected in the Arctic do not diminish the potential significance of their effects on ecosystem health.

The UN ECE Task Force on persistent organic pollutants has determined that similar environmental problems to those caused by chlorinated organic contaminants may be expected from a wide range of other persistent organic compounds (eg. organobromines). Accordingly, subsequent sections of this strategy consider appropriate mechanisms and actions to deal with the broad issue of persistent organic pollutants in the Arctic.

3.2 Oil Pollution

The Arctic is one of the areas most vulnerable to adverse impacts from chronic and acute oil pollution. This is due to physical

environmental conditions such as low temperature, periods with little or no light, ice cover etc. Low temperatures lead to reduced evaporation of the more volatile, toxic oil components. Dark, cold winters in the Arctic lead to reduced ultraviolet radiation and biological decomposition of oil. In areas of drift ice, oil dispersal caused by wave action is also reduced. Oil in iced areas will be trapped between ice floes or under the ice, and only partly transported to the ice surface. These factors result in a generally slower decomposition of oil in the Arctic than in temperate regions. The period in which a particular oil spill can be harmful to wildlife is thus comparatively longer in the Arctic.

The marginal ice zone is particularly vulnerable to oil pollution. A large part of the primary production in the Arctic, is found in this zone, which makes it extremely important for the whole Arctic ecosystem.(((A reduction of primary production caused by an oil spill could reduce the zooplankton stand. Such a reduction could affect other organisms in the food chain - from zooplankton and epontic communities, to fish, then to seals and finally to polar bears and seabirds))). (((Although there is no evidence that an oil spill reduces primary productivity to a significant degree, direct effects on marine life can be devastating))) THIS COULD REPLACE THE BRACKET ABOVE.

Feathers and fur contaminated by oil quickly lose their insulating properties, and the oil will often cause skin inflammation. Both will lead to a negative energy balance of the affected animal.

Ingested oil, in particular unweathered oil with a high content of volatile substances, can cause serious intoxication of birds and mammals. No studies indicate that any of these species tend to avoid oil spills.

The amount of information available on oil spills in the Arctic, and probably the accuracy of the estimated quantities, varies considerably. Information on continuous discharges is scarce, and estimates of indirect oil transport (atmosphere, ocean currents, and rivers) have not been available. Order of magnitude calculations show that river transport is the main contribution of oil pollution to the Arctic (estimated at 200,000 metric tons per annum).

The risk of oil spills is mainly connected with shipping activity and exploration and production of oil. Their occurrence will depend on the level of activity in the Arctic, the technical standards of the activity and the preventative measures taken.

The physical constraints caused by Arctic conditions imply particular technological challenges regarding oil spill clean up. Effective methods and techniques for containing and cleaning up oil spills from water and ice are currently limited.

The available information on oil pollution in the Arctic is scarce.

More information is needed, obtained with standardized methodologies in order to have comparable data for the whole region, with special emphasis on riverine inputs and concentrations in surface marine waters.

3.3 Heavy Metals

Levels of heavy metals have been found in the air, precipitation, ocean waters, soils, rivers, lakes and bottom sediments of the Arctic as well as in marine, freshwater and terrestrial biota. These levels occur as a result of natural phenomena as well as from regional sources and global transport.

Heavy metal concentrations in air and precipitation are mainly due to long-range transport from industrial centres and to a lesser extent local mining activities. The air transport results in a deposition of heavy metals on vegetation, snow, and the sea which generally decreases from south to north. Around some industrial centres, however, local sources dominate.

The temporal trends of long-range heavy metal pollution of the Arctic particularly mercury, cadmium and lead have been determined by analyzing ice cores from glaciers. There has been an increasing trend since the middle of the 19th century

and a sharp increase in the 20th century. Recent analyses of vegetation seem to indicate that a decrease may now be occurring.

The concentrations of heavy metals in lakes and rivers are generally higher than in Arctic sea water. A decrease in pH caused by acid precipitation increases the dissolution rates of heavy metals which may increase the rate of accumulation in the biota.

In the Arctic marine environment the concentrations of heavy metals in water are low compared to more southerly latitudes. However, the concentrations in biota increase in the food chain, and in the top level predators such as seals and whales the concentrations, especially of cadmium, increase to levels much higher than observed in other areas. For example, in some Canadian studies, cadmium levels in narwhal kidney were among the highest ever reported in marine mammals. This build-up is probably due to naturally occurring phenomena, but such occurrences make increases in the concentrations of heavy metals in the Arctic marine environment as a result of industrial sources more problematic than elsewhere.

The high concentrations of heavy metals in marine mammals and some bird species constitute a problem in districts where tissues from such animals constitute a significant part of the

diet. Thus increased concentrations of mercury have been found in Greenlanders from hunting districts.

3.4 Noise

The waters of the Arctic region are a unique noise environment mainly due to the presence of ice. The ambient noise is strongly influenced by the dynamic processes of ice formation, melt, deformation and movement. This situation is different from ice free waters. In periods where ice cracking and wind noise are absent, areas covered by shore-fast ice are among the quietest underwater environments.

Human activities create noise types and levels, which may disturb marine mammals, or mask the "natural" sounds of importance to those mammals. Some types of noise may affect fish as well as marine mammals. There are a number of serious gaps in our knowledge of the effects of underwater noise on marine mammals, including the inability to assess the effect of repeated noise exposure on stocks.

There is considerable evidence that most types of disturbance do not cause mortality. However, some noisy activities, including low level overflights by aircraft of seals and walrus at haul out sites, can cause mortality through stampedes or abandonment.

Many marine mammals seem able to adapt to or at least tolerate many types of disturbances or increased noise levels. However the scarcity of direct evidence of serious consequences from disturbances does not necessarily mean that marine mammals are not stressed or affected in some other way. Noise from human activities may cause short-term or long-term behavioral reactions and temporary displacement of various marine mammals. The biological significance of most of these reactions is unknown.

Moving sound sources, notably boats and aircraft, seem to be more disturbing than stationary sources, e.g. dredges and drillships. The effects on fish and wildlife of cumulative exposure to noise are largely unknown.

3.5 Radioactivity

There have been two major causes of radioactive contamination affecting the Arctic region: atmospheric nuclear-weapons testing during the 1950s and 1960s and the accident at the Chernobyl nuclear power plant in 1986. Of greatest concern are the longer-lived radionuclides, including Strontium-90 (29 year half-life), Cesium-137 (30 year half-life), and Plutonium-239 (24,000 year half-life). Studies have shown that these fallout derived radionuclides are efficiently retained by surface vegetation in this nutrient-poor environment and are biologically recycled in Arctic ecosystems. As a result, those indigenous

peoples and local populations consuming caribou or reindeer with elevated levels of radionuclides as their main food may have accumulated higher levels.

A [Other radioactive threats to the environment exist, e.g. accidental discharges associated with nuclear (((power sources and mishandling and improper storage of radioactive waste.))))(((power plants, fuel reprocessing facilities, underground nuclear weapons testing, storage and disposal of radioactive waste.))) (((Attention should also be given to the threats caused by the cumulative exposure to natural or background radiation, and its combined effect with radiation from anthropogenic sources.))) ((More attention, should be given to the threats caused by cumulative exposure to natural or background radiation, together with radiation derived from anthropogenic sources.)))

A number of bilateral and multilateral arrangements, including those with the International Atomic Energy Agency (IAEA), address issues related to exchange of information, early notification of radiation release, emergency preparedness and response to nuclear accidents and transboundary movement of radioactive materials.

3.6 Acidification

The most important acidifying substances are sulphur and nitrogen compounds emitted mainly by vehicles and industrial activities.

Long-range transport is the most important factor influencing the air quality in the Arctic, especially in winter. Until now, little emphasis has been placed on the effects of acid deposition on Arctic ecosystems. Furthermore, knowledge derived from studies in temperate zones is not directly relevant to the Arctic.

One of the most well known examples of a problem associated with acidity in the Arctic is the Arctic haze phenomenon produced from acid aerosols. Arctic haze has been under intense study and much is known about its nature, distribution and composition.

The interaction between acidic deposition and the soils of different ecosystems is an important component of the acidification process. A continuous excessive acid load leads to the mobilization of aluminum. The combined effects of acid deposition and the stresses already induced by the harsh climate increase the possibility of vegetation damage in the Arctic.

Critical loads, rates of acidification, and conditions influencing cold climate environments need more detailed regional monitoring and research. In general, northern ecosystems are under greater stress than temperate ecosystems.

4. INTERNATIONAL MECHANISMS FOR THE PROTECTION OF THE ARCTIC ENVIRONMENT

Before determining the specific actions required to protect the Arctic environment, a review of existing and proposed international and bilateral agreements and policy declarations pertaining to the Arctic environment has been completed. This review has revealed the existence of a number of mechanisms that may be employed to protect the Arctic environment, and provides a useful tool for the implementation of the strategy. It has also identified the existence of some important gaps.

4.1 Persistent Organic Contaminants

Legal instruments which currently control air pollution do not specifically limit the emission and production of persistent organic contaminants. Work is underway within the UN ECE Convention on Long-Range Transboundary Air Pollution (LRTAP) to review the problem and identify specific control actions. There is a need to develop further international measures on the (((emissions)))(((use and emissions)))) of persistent organic contaminants. Any new international legal instruments would need to target contaminant reductions in the industrialized areas of Asia, Europe and North America. Consequently, proper management and protection of the Arctic ecosystem from the effects of these contaminants will require cooperation through effective bilateral and multilateral agreements among both circumpolar and non-circumpolar nations.

4.2 Oil Pollution

The main international instruments relevant to oil pollution in the Arctic are:

- 1) the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC Convention);
- 2) the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Convention on Intervention);
- 3) the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention);
- 4) the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention);
- 5) the 1974 Convention on the Prevention of Marine Pollution from Land-Based Sources (Paris Convention);
- 6) the International Convention for the Prevention of Pollution from Ships (MARPOL 1973/78); and
- 7) the 1982 United Nations Convention on the Law of the Sea.
- 8) the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation.

Certain issues with respect to oil pollution in the Arctic are insufficiently covered by the existing international agreements and conventions. For example, some instruments are limited in their

application and only partially apply to the Arctic region. There is a need to consider the possibility of extending the geographic scope of these instruments. The provisions of the various instruments also need to be further assessed to determine their adequacy under Arctic conditions taking into account the particularly vulnerable nature of the region.

Strict standards in the transportation of oil in the Arctic are needed. Such standards should be developed under the framework of the International Maritime Organization (IMO). Arctic states should consider becoming parties to or applying the relevant principles of the various existing conventions and agreements on oil pollution management.

4.3 Heavy Metals

The UN ECE LRTAP Convention is one of the major international convention which limits harmful atmospheric emissions. Work is currently under way within this forum to identify and decide upon specific control actions to deal with heavy metals.

Control of emissions of heavy metals to the marine environment are governed by a number of international agreements. Both the United Nations Convention on the Law of the Sea, 1982 and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters, 1972 provide opportunities for controlling the

discharge of heavy metals. The potential may also exist for controlling the input by river transport of heavy metals into the Arctic marine environment through the Paris Convention, 1974.

4.4 Noise

Existing legal instruments do not address the effects of noise on the Arctic ecosystem. There may be a need for Arctic states to agree on the adoption of procedures to ensure that in the planning and conduct of activities in the Arctic, measures are taken to facilitate the adequate monitoring of the potential disturbance from noise including the verification of predicted effects and the identification of any unforeseen effects. Such evaluations should ensure that environmental protection measures are given due consideration.

4.5 Radioactivity

The IAEA Convention on Early Notification of a Nuclear Accident, 1986 provides an adequate mechanism for cooperation and exchange of information applicable in the Arctic region. In addition, there are a number of bilateral agreements in existence which provide for such events as the early notification of accidental radioactive discharges (eg. Finland and the USSR, 1987). With respect to emergency preparedness, a number of bilateral and multilateral agreements have been concluded between the Arctic countries that

both supplement and provide greater precision to the International Atomic Energy Agency (IAEA) arrangements. These should be examined to ensure that the specific environmental conditions of the Arctic are addressed.

What is now needed are practical mechanisms between national authorities to implement the coordination of emergency measures within the existing international legal framework of the IAEA.

4.6 Acidification

The Arctic is exposed to the long range transport of acidifying substances from various sources. A number of control measures have been introduced at the United Nations Economic Commission for Europe (ECE) and bilaterally. Although, in general, these measures do not contain provisions relating specifically to the Arctic region, they do refer to emission sources that affect the Arctic..

Arctic acidification is a complex phenomenon resulting from a wide range of different types of activities also conducted outside the Arctic itself. The extent of acidification in the Arctic is still uncertain, although there is recognition of problems such as Arctic haze. There is however, insufficient knowledge of the critical loads, to allow for agreement on common standards. The lack of comparable data also presents problems. Consequently, improved

monitoring and research directed at the rate and nature of acidification processes under Arctic conditions are needed.

Under both the 1985 and 1988 protocols to the UN ECE LRTAP Convention for the Reduction of Sulphur and Nitrogen Oxide Emissions or their Transboundary Fluxes, the Cooperative Program for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP) is to report annually to the LRTAP Executive Body its calculations of budgets, transboundary fluxes and deposition of sulphur and nitrogen oxides. EMEPs geographical scope is currently limited to Europe but it is suggested that EMEP might be utilized for collecting data on Arctic acidification in cooperation with the Arctic Monitoring and Assessment Program (AMAP). It is considered important that Arctic countries become parties to all the relevant agreements in this field. This is particularly relevant for those countries in the northern hemisphere where there are major sources of sulphur and nitrogen emissions.

5. ACTIONS

The eight Arctic states agree to proceed cooperatively with the following action plan. These commitments will begin the process of addressing the serious environmental issues identified and assessed through the preparation of specific state of environment reports.

These issues will require regular updates for evaluation by the eight Arctic states on the progress being made, and to advise on possible new courses of action.

5.1 Persistent Organic Contaminants

- i) In order to further define the likely sources, pathways, sinks and effects of these pollutants, and to expand the data base to cover all the component parts of the Arctic environment, the eight Arctic countries will undertake cooperative monitoring (AMAP) and research related to the problem of persistent organic contaminants in the Arctic ecosystem.
- ii) In order to achieve an early reduction in the movement of persistent organic contaminants into the Arctic environment, the eight Arctic countries will support the process now under way within the UN ECE LRTAP Convention to further define the problem and to develop proposals for international action on the control of these substances under the Convention.
- iii) The Arctic countries will also address the problem of persistent organic contaminants under existing or proposed international agreements and will review other mechanisms to advance this issue in other international

fora.

((((iv) The eight Arctic countries agree to phase out the use and production of DDT, PCBs, Chlordane and Toxaphene and to phase out, reduce and/or control the use of other priority persistent organic contaminants as identified in action item (v) or))))

((((iv) The eight Arctic countries agree to implement measures to reduce and or control the use of the following polluting substances: chlordane, DDT, toxaphene, and PCBs and take concerted action in appropriate international fora to consider possible approaches to address problems posed by these and other persistent organic contaminants.

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v) A list of priority persistent organic contaminants together with a timetable for a program of emission elimination and control, will be prepared. (in cooperation with international fora).

5.2 Oil Pollution

i) In order to achieve better documentation of the level of oil pollution in the Arctic environment, the initiation of monitoring of hydrocarbons as a part of the AMAP, will play a important role.

- ii) There is also a need to(((consider)))(((discuss))) establishment of a reporting system on discharges and spills, with regard to provide adequate documentation on the pollution threat, in the Arctic.
- iii) The elements agreed upon in the document 'Proposal for Measures to Protect the Marine Environment in the Arctic' will comprise the basis for further cooperation in combatting oil pollution.
- iv) The Arctic countries agree to adhere to the strictest international standards regarding discharges irrespective of origin.
- v) The Arctic countries agree to undertake joint actions in relevant international fora to further strengthen recognition of the particularly sensitive character of ice-covered parts of the Arctic Ocean.
- vi) The elements agreed upon in the document Emergency Prevention, Preparedness and Response will comprise the basis for further cooperation with regard to emergency response.

5.3 Heavy Metals

- i) An improved understanding of the dynamics of heavy metals in the Arctic ecosystem is required. The countries will undertake a program of coordinated research and monitoring to identify sources, pathways and sinks of heavy metals; spatial and temporal trends and ecological effects with special emphasis on human health effects.
- ii) The eight Arctic countries agree to implement measures to reduce the release of heavy metals by industrial activities and to take concerted action in accordance with appropriate international agreements (e.g. UN ECE LRTAP Convention).

5.4 Noise

- i) The effects of noise associated with Arctic marine and terrestrial projects should be evaluated as part of the project planning and approval processes, and if major adverse noise effects on the specific components of Arctic ecosystems are predicted, then measures should be implemented to avoid or mitigate the impact.
- ii) Efforts should be made to improve the data base on marine mammal auditory function, communication and behaviour and the current noise exposure modelling techniques. For

specific project evaluations, site-specific data should be addressed before and during the evaluation. This includes determining how much exposure migrating stocks are encountering throughout the year.

((((iii) Agree to apply the principles concerning the protection and preservation of the marine environment as reflected in the 1982 United Nations Convention on the Law of the Sea.)))))TO MAYBE BE LIFTED OUT BY USA

5.5 Radioactivity

- i) The Arctic Monitoring and Assessment Program (AMAP) should address radioactivity. Common standards and techniques for monitoring and analysis, consistent with IAEA standards and technology should be developed.
- ii) Future monitoring and health assessments should consider the cumulative effects from exposure to natural or background radiation together with radiation derived from anthropogenic sources.
- iii) Further consideration should be given to the development of more specific measures, consistent with IAEA procedures, for cooperation amongst Arctic countries to deal with emergencies caused by the accidental release of

radioactive substances and to provide mutual assistance in the harsh Arctic environment.

(((((iv) Agree to apply the principles concerning the protection and preservation of the marine environment as reflected in the 1982 United Nations Convention on the Law of the Sea.)))))

v) All relevant data concerning previous studies and measurements should be collated in the existing relevant data bases of which information should be exchanged between the governments and institutions concerned.

5.6 Acidification

i) Regional Arctic research programs should be developed to assess the effects of acid deposition on representative sensitive Arctic ecosystems.

ii) Consideration should be given to expanding deposition monitoring programs, within the framework of AMAP and existing networks such as the ECE/EMEP deposition monitoring network, to encompass measurement of acid deposition in the Arctic.

iii) Emphasis should be placed on defining critical loads for

sensitive Arctic ecosystems. In the event that these loads are being exceeded, steps should be taken to reduce those emissions contributing to the problem, in accordance with the ECE LRTAP convention.

6. ARCTIC MONITORING AND ASSESSMENT PROGRAM

((TWO TEXTS OF THE INTRODUCTION ARE TO BE CONSIDERED AND COMMENTS SUBMITTED TO FINLAND BY 20 MAY)))

The pollution data available from the Arctic region are with a few exceptions based on national research programmes carried out within limited subject areas and not characterized by extensive international cooperation. The six State of the Environment reports have dramatically illustrated the lack of comprehensive Arctic data upon which assessments of the health of the Arctic environment can be made. This is particularly evident in the lack of information on sources of pollution, processes important for the transport, deposition and accumulation of pollutants, biological effects and trends. The lack of comprehensive data of this nature will be particularly critical in the development of programs to assess and address such problems as the long range transport of pollutants. There appear to be few international agreements that specifically address Arctic environmental monitoring. However, there are several agreements relevant to environmental monitoring generally that indirectly apply to the Arctic. In addition, it should be noted that some

cooperative programs exist (eg. UNEP Man and the Biosphere Program) that do not take place within a particular legal

6.2 Action

- i) Distinguishing human induced changes from changes caused by natural phenomena in the Arctic will require monitoring of contaminant emissions, transport and deposition, and of selected key indicators of the Arctic biological environment. The eight Arctic countries should therefore agree to establish an Arctic Monitoring and Assessment Program (AMAP) to fulfil this objective.
- ii) The AMAP should be implemented through the establishment of an Arctic Monitoring and Assessment Task Force and a small secretariat.
- iii) AMAP should as far as possible be based on existing programs. Thus, one of the important tasks of the AMAP will be to coordinate and review existing national programs and to develop these programs when appropriate in an international framework.
- iv) As a first priority, the AMAP should focus on persistent organic contaminants and on selected heavy metals and radionuclides.

- v) The eight Arctic countries should receive regular 'State of the Arctic Environment Reports' which would summarize results obtained through the AMAP.

7 . C O N S E R V A T I O N O F
((TERRESTRIAL))))))))))))))))))
ARCTIC FLORA AND FAUNA

POTENTIAL FOR DOCUMENT TO TOTALLY EXCLUDE REFERENCES TO MARINE
FLORA AND FAUNA.

(((TO BE MOVED TO #9))))

The health of arctic flora and fauna is a key concern of the Arctic countries. These flora and fauna assume special significance in this region since they are an essential factor helping to define the culture and survival of the people living there. Although isolated geographically from the industrialized temperate regions of the globe, it has now been amply demonstrated that this has not excluded Arctic flora and fauna from the negative consequences of human activities in mid latitudes. The impacts on the Arctic have escalated over the past several decades and both the scientific community and Arctic people have been pointing to the danger signals. Many of these concerns are enumerated in the six Arctic State of the Environment reports. They confirm that Arctic flora,

fauna and their habitats are being threatened by large scale economic development projects; long range transport of pollutants; and degradation of habitats.

The problems facing Arctic flora, fauna and habitats are not confined to any one country but are circumpolar in nature. Furthermore, because of the uniqueness of Arctic ecosystems, strategies to deal with these problems will differ from those of other regions.

Several multilateral and bilateral agreements which pertain to the conservation of Arctic flora and fauna and their habitats are currently in existence. Most however, have been designed to be universally applicable to, or to apply to, a wider geographical area than the Arctic. Only the Agreement on Conservation of Polar Bears and some individual provisions in other agreements provide a specific Arctic focus.

The eight Arctic countries should therefore seek to create a distinct forum for scientists and conservation managers engaged in Arctic flora, fauna and habitat related activities to exchange data and information on issues such as shared species and habitats and to collaborate for more effective research, resource management and conservation.

7.2 Action

TO BE MOVED TO ANNEX.

(((((POTENTIAL FOR MINISTERIAL SIGNATURE))))))

The Governments of the eight Arctic countries (Canada, Denmark, Finland, Iceland, Norway, Sweden, the Union of Soviet Socialist Republics, and the United States of America);

Mindful of the need to protect Arctic flora and fauna, their diversity, and the Arctic systems upon which they depend;

Recognizing also the special relationship of Arctic flora and fauna and their habitats to indigenous people;

Recognizing the benefits to be gained from a sharing of scientific and management information, traditional knowledge, and other data with respect to Arctic flora and fauna and their habitats;

Desiring to enhance cooperation with a view to improving research and management aimed at the conservation of Arctic flora and fauna, their diversity, and the Arctic systems on which they depend;

Have reached the following understanding:

SECTION 1

1. The eight Arctic countries will cooperate for the conservation of Arctic flora and fauna, their diversity, and their habitats. Such cooperation shall include, inter alia, exchanges of research and management information and data, and coordination of research, on the following:

- (a) Arctic species, their health and habitats;
- (b) the laws, regulations and practices of the Parties with respect to the conservation and management of such species; and
- (c) the importance and relationship of such species to indigenous people.

2. Each country will provide to the other countries, as appropriate, such information, publications, and/or documents as may be agreed under the terms of this document.

3. The eight Arctic countries will seek to develop other forms of cooperation, including exchanges of experts, of traditional knowledge, and of other data, as well as engaging in joint projects, bilateral or multilateral meetings, symposia, and joint publications, to meet the intent of this document.

4. The eight Arctic countries will each seek to develop more

effective laws, regulations and practices for the conservation of Arctic flora and fauna, their diversity, and their habitats.

SECTION 2

The eight Arctic countries agree to establish a mechanism for furthering the following aims:

- (a) Promoting and facilitating exchanges of information and personnel as provided for in this document;
- (b) Making recommendations with respect to the priorities, the orientation and the nature of research and monitoring programmes of the Arctic countries;
- (c) Proposing strategies for enhanced conservation of Arctic species and their habitats; and
- (d) Regularly compiling and disseminating information on activities regarding the protection of Arctic flora and fauna.

SECTION 3

The eight Arctic countries will consult, as deemed appropriate with the International Arctic Science Committee and other bodies on any matter that falls within the scope of this document.

SECTION 4

By October 1991 each Country will identify to the others its national agency designated to coordinate the cooperation envisaged by this document.

SECTION 5

The Countries agree that the terms and conditions of the cooperation and exchanges provided for in this document will be subject to the laws and regulations of the Countries.

SECTION 6

Each country will make its best efforts to provide resources adequate to carry out its responsibilities under this document. It is understood that the ability of each country to carry out long-term activities is subject to the availability of funds, and that countries will seek to ensure long-term funding for those projects which are, of necessity, long-term in nature.

7. PROTECTION OF THE ARCTIC MARINE ENVIRONMENT

The eight Arctic Countries recognize their particular interests and responsibilities as neighbouring states in the Arctic, and

emphasize the need to take preventive measures directly or through competent international organizations, consistent in particular with the 1982 United Nations Convention on the Law of the Sea regarding marine pollution in the Arctic, irrespective of origin . To this end the Arctic countries agree to:

- i) Apply the principles concerning the protection and preservation of the Marine Environment as reflected in the 1982 United Nations Convention on the Law of the Sea, and, in accordance with the continuing development of international environmental law, to further strengthen rules in order to protect the Arctic;
- ii) Take measures as soon as possible to adhere to the strictest relevant international standards regarding discharges irrespective of origin;
- iii) Undertake joint actions in relevant international fora to further strengthen recognition of the particularly sensitive character of ice-covered parts of the Arctic Ocean;
- iv) Review, in accordance with the general aims of this environmental strategy, the relevance to the Arctic of international instruments connected with the protection of the marine environment, with the aim that all Arctic

countries accede, where appropriate, to the instruments, or apply the principles and regulations embodied therein;

- v) Jointly support the initiatives of international organizations in developing mandatory standards in order to improve the protection against accidental pollution affecting the marine environment, and actively ensure application of such standards;
- vi) Carry out studies of pollution in the monitoring activities within AMAP.

8. EMERGENCY PREVENTION, PREPAREDNESS AND RESPONSE

At the same time as the Arctic is exhibiting signs of serious contamination from pollutants carried via long range transport from mid latitudes, there has been an increase in development activities and shipping within the Arctic. These activities can have serious environmental consequences in the Arctic as a result of accidents leading inter alia to spills and discharges of oil and other harmful substances. The vulnerability of the Arctic ecosystem to these sudden intrusions will be variable. Some limited mapping of areas sensitive to oil spills has been conducted but more remains to be done. The relative hazard/risk associated with different activities is also not well documented, nor is the geographic

distribution of high risk activities.

There are a number of bilateral and multilateral arrangements which presently exist to deal with accidental pollution, such as the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation. There are other multilateral conventions related to nuclear accidents or radiological emergencies supplemented by bilateral agreements on the exchange of information and reporting relative to nuclear plants and events.

The UN ECZ has started work on an international convention, on the prevention and control of the transboundary effects of industrial accidents. A part of the work is the establishment or reinforcement of regional and subregional mechanisms for response, assistance and exchange of information on environmental emergencies.

8.1 Actions

The Arctic countries agree to the following framework for taking early cooperative action on emergency prevention, preparedness and response in the Arctic. They also agree to convene a meeting of experts to consider and recommend the necessary system of cooperation, which could include inter alia the following elements:

- 1) Actions to combat significant accidental pollution from any source.

- ii) Coordination and harmonization of preventive policies, strategies and measures.
- iii) Establishment of a system for early notification in the event of significant accidental pollution or an imminent threat of such pollution.
- iv) Assessment of the risks for significant accidental pollution and of the adverse effects in such cases so as to enable the parties to take the necessary preventive, preparedness and response measures.
- v) Inclusion of studies of effects of accidental pollution in conjunction with the monitoring activities of AMAP,
- vi) Cooperation in the conduct of research into and development of methods and technologies for prevention of, preparedness for and response to significant accidental pollution in the Arctic.
- vii) Cooperation in developing a system for exchange of information on research and new developments regarding methods and technologies on response in the Arctic.
- viii) Exchange of information on legislative and administrative measures as well as policies.

- ix) Measures for providing information to the public and public participation.
- x) Further enhance regional bilateral and multilateral cooperation in the Arctic regarding prevention, preparedness and response by developing, as appropriate, contingency plans, training programs, as well as other measures to facilitate assistance to the parties, in particular mutual assistance for efficient emergency response in the event of significant accidental pollution, or the imminent threat of such pollution.

10. FURTHER COOPERATION

Continuity and further cooperation are essential for increasing the protection of the Arctic environment. In order to ensure this continuity and cooperation, the eight Arctic countries agree to hold regular Meetings on the Arctic Environment.

The date and venue of the next meeting will be agreed upon at the preceding meeting. Decisions on the agenda and participation of observers will be made and communicated to interested parties in advance of the meeting.

The decision to invite observers should be based on a pragmatic and functional evaluation of their involvement in and contribution to

Arctic environmental questions.

In order to facilitate the participation of Arctic indigenous peoples the following organizations will be invited as observers: the Inuit Circumpolar Conference, the Nordic Saami Council and the U.S.S.R. Association of Small Peoples of the North.

The Meetings on the Arctic Environment shall serve to:

- coordinate actions to implement and further develop the Arctic Environmental Protection Strategy;
- initiate cooperation in new fields relevant to the environmental protection of the Arctic;
- make necessary recommendations in order to protect the Arctic environment;
- improve existing environmental regimes relevant to the Arctic.
- assess and report on progress on actions agreed upon.

Information Needed on
Possible Impacts of Arctic Strategy Document

Please indicate whether implementation of the draft Arctic Environmental Protection Strategy document would lead to (a) additional budget resources or program growth beyond currently approved levels or (b) changes in legal authorities or regulations which could have significant policy or programmatic implications. Please provide a specific description of any such impacts.



U.S. Department of Justice

* TAB B *

Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

March 11, 1991

TO: Robert E. Grady
Associate Director
Natural Resources, Energy and Science
Office of Management and Budget

Richard Porter
Special Assistant to the President and
Executive Secretary, Domestic Policy Council

FROM: Dick Stewart *DS*
Assistant Attorney General

SUBJECT: Extraterritorial environmental impact assessment

As a follow-up to my December 1990 and February 1991 memoranda to you on the above issue, I would like to renew the suggestion that the Administration convene a small policy group to develop an Administration position on how best to assess the extraterritorial environmental impacts of federal actions without restricting the President's foreign policy powers. This work could build on the legislative proposal (copy attached) that we developed last session as an alternative to a bill that sought to extend the National Environmental Policy Act (NEPA) extraterritorially, and on CEQ's analysis of the current Executive Order, E.O. 12114. The group could also consider a related issue, environmental impact assessment of treaties.

The need for policy direction in this field is growing rapidly. Matters pending that raise extraterritorial and/or treaty impact assessment questions include, among others:

- o Negotiation of the North American Free Trade Agreement.
- o Implementation of the ECE Convention on Transboundary Environmental Impact Assessment.
- o The draft Foreign Assistance bill, and other pending or draft bills on Star Wars testing, Antarctica, etc.

Some agencies feel that development of Administration policy on NEPA abroad should await the outcome of our certiorari petition in Lujan v. Defenders of Wildlife (opposing application of the Endangered Species Act in foreign countries). Apart from taking a formal public stance on the issue, I do not believe it advisable to delay discussions, and suggest that a policy-level group from CEQ, EPA, USTR, and the Departments of State, Defense and Justice (and possibly USAID) be convened in the near future.

Proposal for addition of a new title to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq.:

**TITLE III--IMPACT OF AGENCY ACTIONS ON THE ENVIRONMENT
OUTSIDE UNITED STATES JURISDICTION**

301. Assessment of impacts of agency actions on the environment outside United States jurisdiction.

(a) **ISSUANCE OF GUIDANCE BY COUNCIL.** -- Not later than 1 year after the date of the enactment of this title, the Chairman of the Council, in consultation with the Secretary of State and other affected agencies, shall issue guidance to federal agencies to assist them in establishing procedures concerning agencies' assessments of the significant impacts of major federal actions, including extraterritorial actions, on the environment outside the jurisdiction of the United States and its territories and possessions, including the environment outside the jurisdiction of any nation. Such guidance shall take into account foreign policy, national security, and constitutional concerns.

(b) **DEVELOPMENT OF PROCEDURES.** -- Each agency, in consultation and coordination with the Chairman and the Secretary, shall, taking into account the guidance issued by the Chairman, the particular mission, goals and programs of that agency, and foreign policy, national security and constitutional considerations, establish, not less than 2 years after the date of enactment of this title, procedures which provide for the formal assessment of the significant impacts of that agency's major federal actions, including extraterritorial actions, on the environment outside the jurisdiction of the United States and its territories and possessions, including the environment outside the jurisdiction of any nation.

(c) **SELECTION AND IMPLEMENTATION OF PROCEDURES.** -- Selection and implementation of the procedures specified in subsection (b) is a matter wholly committed to agency discretion.

(d) **RIGHTS OF ACTION.**

(1) **No right of action except as specified.**

Except as provided for in paragraph (2) below, nothing in this title shall be construed to create a cause of action, or to give rise to judicial review under Chapter

- 2 -

7 of Title 5, U.S.C. (known as the Administrative Procedure Act), under this Act, or under any other provision of law. The selection and implementation of the guidance specified in subsection (a) and the procedures under subsections (b) and (c) of this section are committed to agency expertise and discretion.

(2) **Authorization; jurisdiction.** Any resident of the United States may commence a civil action on his own behalf against the Chairman of the Council for failure to issue guidance under subsection (a) within 1 year after the date of enactment of this title, or against an agency for failure to issue procedures under subsection (b) within two years after the date of enactment of this title. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order such agency head to issue such guidance or such procedures, as the case may be, except that in no event may a district court issue an injunction restraining the performance of any act or duty under this title. Judicial review under this title shall be limited to a determination of whether the Chairman or the agency has issued the guidance or the procedures within the time limits specified.

(3) **Notice.** No action may be commenced under paragraph (2) of this section prior to sixty days after written notice has been given to the head of any agency alleged to have failed to issue procedures within the time limits specified in this title, and to the Attorney General.

(4) **Venue.** Venue for actions brought under paragraph (2) shall be in the United States District Court for the District of Columbia.

(5) **Protection of U.S. interests.** Whenever any action is brought under this title, the plaintiff shall serve a copy of the complaint on the Attorney General, the Chairman, and the head of any agency involved.

(e) **CONGRESSIONAL OVERSIGHT.** The Chairman in consultation with the Secretary of State, shall submit to the Congress regular reports, beginning three years after the date of the enactment of this title and continuing every other year thereafter, on the progress made by agencies in implementation of this title.

(f) **RELATIONSHIP TO OTHER PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT.** In event of any inconsistency between this title and any other provision of this Act, the provisions of this title shall control.



ATTORNEY-CLIENT PRIVILEGED - LITIGATION SENSITIVE - FOIA EXEMPT

Office of the Assistant Attorney General

April 23, 1991

MEMORANDUM

TO: Robert E. Grady
Associate Director
Natural Resources, Energy and Science
Office of Management and Budget

FROM: Dick Stewart *DS*
Assistant Attorney General

SUBJECT: FOET v. Watkins (NEPA/Global Climate Change Case)

In May 1989, plaintiffs filed the above-referenced lawsuit, challenging every action of the Departments of Energy, Interior and Agriculture for failing to include discussions of global warming in their EIS's and their NEPA documentation.

To date, plaintiffs have identified fifty programs or actions they specifically challenge¹, but continue to press their broad allegations that challenge each and every activity of each defendant agency. Plaintiffs have also advised us that they will not provide a final list of specific actions challenged, and intend to add more specific actions to the current list as the litigation continues.

At our last status conference on February 25, 1991, the court requested that both parties appear at the next status conference prepared to set a summary judgment schedule. We advised the court that a final list of challenged actions would be necessary before a briefing schedule could be established.

Our next status conference is scheduled for April 25. On April 22, we filed a Motion to Establish Summary Judgment Schedule. Our motion for summary judgment, which would not be heard before the fall, will seek to dismiss the lawsuit on procedural grounds such as standing.

¹For example, plaintiffs challenge DOE's Energy Conservation Program, DOE's Clean Coal Technology Demonstration Program, DOI's Minerals Management Service's oversight of outer continental shelf leasing operations, DOI's BLM Federal Coal Management Program, USDA's Forest Service's commercial timber and reforestation activities and USDA's Soil Conservation Service's National Conservation Program.

On the merits, the issue before the court would be whether each agency action was arbitrary or capricious in the way it considered whether climate changes would be a reasonably foreseeable significant adverse environmental impact of a decision. In the case of an action already implemented, the issue would be whether climate change is a significant new circumstance requiring a supplemental EIS.

Should we proceed to this phase of the litigation, there are a number of concerns. For example, the court may wish to hear experts debate the foreseeability of climate changes and we may need to obtain credible expert testimony. In addition, plaintiffs will clearly use this opportunity to criticize the administration in the media. Moreover, we risk a debate on the science of climate change before the court and a ruling by the judge -- who is no expert -- that global climate change is a reasonably foreseeable impact of federal agency actions, generally or in a wide range of EISs.

Settlement Discussions

Based on these concerns, the Department of Energy, which is already including discussions of global climate change in its NEPA documentation, has requested that settlement be pursued. DOE feels strongly that if expert witnesses were required, their own scientists might not be able to testify that global climate change is not reasonably foreseeable.

The Department of Agriculture, which has also begun discussing climate change in a few of its NEPA documents, is also willing to explore settlement. USDA is currently formulating a generic policy statement to guide agency personnel preparing NEPA documents as to how to treat global climate change. USDA is apparently going to advise that while agencies may calculate their actions' effects on net emissions of greenhouse gases, numerous uncertainties make the ultimate effects on climate not foreseeable.

The Department of the Interior has also been discussing settlement over the months ago. To date, however, they have provided no position. We do believe that the Department of the Interior is concerned that a settlement might not be consistent with the public interest.

We believe the issues presented in this case may implicate the federal government broadly. Other agencies, such as Transportation, might also be named as defendants; and the government's top experts in the prediction of climate change are in NASA, NOAA, and elsewhere, not principally DOE, USDA and DOI.

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Plaintiffs would probably urge that defendant agencies agreeing that "global warming" may be, in appropriate circumstances, a reasonably foreseeable impact of increased levels of greenhouse gases in the Earth's atmosphere and that they would, in appropriate circumstances, include consideration of the emissions of greenhouse gases and global warming in their NEPA review process on a prospective basis. I would propose for discussion a settlement based on the presume that the extent and timing of any global warming produced by GWG is too uncertain to be the subject of NEPA analysis, but that agencies would, in appropriate circumstances, consider the effects of their actions on net GWG emissions. Such an approach could well be inconsistent with our efforts to secure all updated "report cards" on the effects of our programs on net GWG. I suggest you assemble a group to discuss this litigation, perhaps in the context of EO 12114 as well as NEPA.

disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. General Provisions.

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

1-803. Executive Order No. 11752 of December 17, 1973, is revoked.

[Sec. 1-8 amended by EO 12580 of Jan. 23, 1987, 52 FR 2923, 3 CFR, 1987 Comp., p. 193]

Executive Order 12114—Environmental effects abroad of major Federal actions

SOURCE: The provisions of Executive Order 12114 of Jan. 4, 1979, appear at 44 FR 1957, 3 CFR, 1979 Comp., p. 356, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

SECTION 1

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

SECTION 2

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the

United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authority and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2-3: (i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. *Exemptions and Considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

SECTION 3

3-1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires prep-

aration of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

Executive Order 12123—Offshore oil spill pollution

SOURCE: The provisions of Executive Order 12123 of Feb. 26, 1979, appear at 44 FR 11199, 3 CFR, 1979 Comp., p. 366, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 303(b)(3), 305, and 312(a) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 674, 677, and 684, 43 U.S.C. 1813(b)(3), 1815, and 1822), relating to the Offshore Oil Spill Pollution Fund, and by Section 301 of Title 3 of the United States Code, and in order to assign certain management responsibilities related to protecting the environment from offshore oil spill damage, it is hereby ordered as follows:

1-1. Assertion of Oil Pollution Claims.

1-101. The authority vested in the President by Section 303(b)(3) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978, hereinafter referred to as the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)), is delegated to the Secretary of Commerce with respect to those natural resources which are subject to his management or control.

1-102. The authority vested in the President by Section 303(b)(3) of the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)) is delegated to the Secretary of the Interior with respect to those natural resources which are subject to his management or control.

1-2. Determination of Financial Responsibility and the Assessment and Compromise of Penalties.

The Secretary of the Department in which the Coast Guard is operating is hereby delegated the following authorities:

1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels:

1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities; and

1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compromise of penalties concerning vessels.

[Sec. 1-2 amended by EO 12418 of May 5, 1983, 48 FR 20891, 3 CFR, 1983 Comp., p. 187]

Executive Order 12418—Transfer of functions relating to financial responsibility of vessels for pollution liability

SOURCE: The provisions of Executive Order 12418 of May 5, 1983, appear at 48 FR 20891, 3 CFR, 1983 Comp., p. 187, unless otherwise noted.

By the authority vested in me as President by the Constitution and statutes of the United States of America, in order to transfer certain functions relating to the financial responsibility of vessels for water pollution and establish the authority of Federal agencies to respond to dis-

charges or substantial threats of discharges of oil and hazardous substances, it is hereby ordered as follows:

SECTION 1. [Deleted]

[Sec. 1 amends EO 11735 of Aug. 3, 1973, this chapter, p. 798. The amendments have been incorporated into that order.]

SEC. 2. [Deleted]

[Sec. 2 amends EO 12123 of Feb. 26, 1979, this chapter, p. 816. The amendments have been incorporated into that order.]

SEC. 3. [Deleted]

[Sec. 3 amended EO 12316 of Aug. 14, 1981, which was revoked by EO 12580 of Jan. 23, 1987.]

SEC. 4. The Secretary of the Department in which the Coast Guard is operating is hereby delegated the authority vested in the President by Sections 311(p) (1)-(2) of the Federal Water Pollution Control Act, as amended (86 Stat. 870, 33 U.S.C. 1321(p) (1)-(2)), as those sections are incorporated by reference in Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act of 1973 (Public Law 93-153, 87 Stat. 586, 587), relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline.

SEC. 5. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all steps necessary or appropriate to effectuate the transfer of records, property, personnel, and positions and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, as provided in this Order, from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating.

SEC. 6. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred from the Federal Maritime Commission to the Secretary of the Department in which the Coast Guard is operating by the delegation made in this Order shall remain in effect until amended, modified, or revoked.

Executive Order 12580—Superfund implementation

SOURCE: The provisions of Executive Order 12580 of Jan. 23, 1987, appear at 52 FR 2923, 3 CFR, 1987 Comp., p. 193, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq.*) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan.* (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and regional response teams as the regional counterpart to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response

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Issue: What position should the Administration take regarding legislative proposals to extend the National Environmental Policy Act (NEPA) extraterritorially? What strategies should the Administration develop to effectuate this position?

Action Forcing Events: Congress is currently considering legislation (H.R. 1271) which would expressly require the preparation of Environmental Impact Statements under NEPA for major federal actions or impacts occurring outside the borders of the United States. A similar bill passed the House last session; a 10/10/89 Statement of Administration Policy on that bill noted "serious concerns". The Administration threatened a veto of the Senate version on constitutional and policy grounds (10/9/90 DOJ letter). It is not known if a veto could be sustained.

Background: The statute. NEPA is a procedural statute which requires that before any major federal action is taken that could significantly affect the environment, the action agency must assess the environmental impacts of the proposed action and alternatives to it. NEPA imposes no substantive environmental goals; however, persons harmed by the agency action may challenge the agency's failure to follow NEPA's procedural requirements. While NEPA can usefully direct an agency to consider environmental consequences, NEPA is also often used by interested persons as a vehicle for stopping or delaying federal projects which they oppose.

The Executive Order. NEPA applies to "major federal actions significantly affecting the quality of the human environment". Intra-administration debate about NEPA's extraterritorial reach culminated in 1979 in the signing of Executive Order 12114. That E.O. requires agencies to assess the extraterritorial consequences of activities which significantly affect the environment outside the U.S., except where a participating country's environment is affected (where impact assessment would be the responsibility of the host country). E.O. 12114 states that it does not give rise to a cause of action in the courts. Agency compliance with the E.O. has varied widely.

Litigation. Suits challenging agency failure to follow NEPA with respect to federal activities outside the U.S. have thus far not been successful. In NRDC v. NRC, the D.C. Circuit in 1981 declined to require a NEPA analysis of the impacts in the Philippines of nuclear materials export. Last year in Greenpeace v. Stone, the Hawaii Federal District Court refused to

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require a NEPA analysis of the possible effects on Germany and the oceans of the transport of chemical munitions for destruction from Germany to Johnson Atoll in the South Pacific. (The Army had complied with E.O. 12114.) Both decisions rested on (1) the absence in NEPA of any clear indication that it applies abroad; (2) the foreign relations implications of such application; and (3) the sufficiency of the environmental documentation that the agencies in question had prepared.

A case now pending challenges NSF's proposal to build an incinerator in Antarctica to burn food wastes. Suits are also likely challenging (1) Navy activities in Japan, (2) a radio transmitting station in Israel, and (3) a medfly eradication program in Guatemala. Litigation is also possible over the effects in Mexico of the North American Free Trade Agreement (NAFTA). Pending climate litigation seeks NEPA analysis of domestic activities (see other memo); litigants might also seek to use NEPA as a vehicle for challenging the global impacts of from U.S. programs at home and abroad.¹

Current legal position. Since 1979, the Administration's position has been that as a matter of law, NEPA does not extend extraterritorially, because, under the relevant legal test, Congress did not clearly indicate its intent that NEPA so extend. In addition, such extension could raise serious constitutional and policy questions. In a March, 1991 decision, EEOC v. Aramco, the Supreme Court reaffirmed the doctrine that laws do not apply extraterritorially unless the intent of Congress to do so is clear; thus, it appears likely that the Court will make the determination of congressional intent regarding extraterritoriality on a statute-by-statute basis. In the fall of 1991, the Court will hear argument on the government's appeal from the 8th Circuit's decision in Lujan v. Defenders of Wildlife, which held that the Endangered Species Act (ESA) applies to U.S. activities in foreign countries.

¹ A related issue concerns the applicability of NEPA to the negotiation of treaties. It could be argued that the CEQ and State Department NEPA regulations treat international agreements as "major federal actions" triggering NEPA requirements, even though NEPA itself may not cover negotiations; moreover, any attempt to apply NEPA to the negotiation, signature, or transmittal of international instruments, or to use NEPA litigation as a vehicle for challenging their domestic and/or extraterritorial impact, would likely raise constitutional and foreign policy concerns.

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Since 1979 it has also been the Administration's position that E.O. 12114 governs extraterritorial environmental impact assessment, and that the E.O.'s express provision that it does not give rise to a cause of action precludes private parties from enforcing the E.O. in court.

Current policy position: The Administration has opposed judicial and legislative extraterritorial extension of NEPA for the following reasons:

(1) Such extension would thrust the courts into the foreign policy sphere, and subject foreign policy decisions to cumbersome, slow, and unpredictable NEPA litigation. This process is incompatible with the flexibility, dispatch, and executive discretion necessary for the conduct of foreign policy.

(2) NEPA challenges to foreign activities might force courts to deal repeatedly with non-justiciable political questions. Such questions, for example, would arise if American courts were to determine the NEPA propriety of U.S. activities that are being conducted on foreign soil at the request of the host government. Similarly, it would be inappropriate for the judiciary to review the foreign policy factors that the Executive had weighed in determining to undertake an activity abroad.

(3) While it would be constitutionally permissible for Congress to impose NEPA obligations on executive actions which are delegated to the President by Congress, it is unconstitutional to interfere with the President's inherent power as Commander in Chief or his exclusive authority to conduct foreign affairs. Drafting legislation which distinguished between inherent and delegated powers would be difficult. Any foreign policy action could be subject to challenges arguing that a NEPA statement should first be done, and that the action should be enjoined until the court can decide if the power being exercised is inherent or delegated. The conduct of U.S. foreign policy should not be haunted by such judicial intrusions.

(4) If the action involves a foreign government, that government might arguably be a "party necessary for just adjudication" of the suit. Failure to join it (e.g., in the event it declined to waive its sovereign immunity) might result in dismissal of the suit; on the other hand, if it were joined, foreign officials and citizens might be called as witnesses. The foreign sovereign might try to use the lawsuit as foreign

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policy "leverage" to extract concessions from the U.S. government.

(5) If the foreign government had its own NEPA-type statute, and a court in that country found that the statute had or had not been complied with, an American court would be put in the position of determining what weight to give to that judgment. Such pronouncements could embarrass both the foreign sovereign and the U.S.

(6) If NEPA were applied to the effects abroad of activities at home (as H.R. 1271 proposes), would anyone in the world have standing to challenge U.S. domestic actions? For example, could a resident of a low-lying country have standing to seek to enjoin a federal action (e.g., setting CAFE standards) by alleging that the agency had not adequately considered the potential global climate change effects of the project on that person? Such litigation could greatly complicate our bilateral relationships and our negotiation of international environmental agreements.

Policy decision: From one viewpoint, if the U.S. undertakes activities that have impacts outside its borders, should it not, as a global citizen, be required to consider the environmental consequences of those activities before undertaking them? From this viewpoint, the global environment is at stake, and all the U.S. is being asked to do is to behave in accordance with its own laws. The fact is, the U.S. can and does require extraterritorial assessments under E.O. 12114; however, that E.O. has often been honored only intermittently, and there is no legal mechanism by which citizens can hold U.S. agencies accountable for their non-compliance with the E.O.

From another vantage point, providing a legal right to challenge U.S. actions abroad would drive a stake through the heart of the President's foreign policy power. From this perspective, allowing such litigation would also undermine the sovereignty of other nations, and disrupt consensus-based international agreements governing areas beyond the jurisdiction of any nation. In this view, citizens should bring such complaints to their governments, who should in turn resolve them through bilateral and multilateral dispute resolution; private litigation should not be allowed to press domestic courts into making an end run around diplomatic processes.