

# Using Human Rights to Improve Environmental Regulation

Rebecca Bratspies  
CUNY School of Law

# Human Rights that Might be Relevant

- Right to Life
- Right to Health
- Right to Food
- Right to Culture
- Right to Property
- Right to a Healthy Environment??

# Law is about more than litigating!

There are legal venues other than a courtroom in which human rights ideas might make a difference.

There are legal questions other than what constitutes a legally enforceable norm of international law.

There are other legal decisionmakers besides judges



# EPA Endangerment Finding

- December 7, 2009,
- **Endangerment Finding:** The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases in the atmosphere threaten the public health and welfare of current and future generations.



# Human Rights

- Focus on how people should be treated by their government and its institutions
- Also, how people should be treated by other governments
- What about “other organs of society”?

# How might human rights improve decisionmaking under domestic environmental law?



# Emerging International Environmental Norms

- Right of access to environmental information
- Prior informed consent
- Right to Participate in Environmental Decisionmaking
- Intergenerational equity
- Common but differentiated responsibility
- Precautionary decisionmaking
- Polluter pays

# Environmental Rights Under United States Law: NEPA

- Section 101(a) recognizes the profound impact of human activity on the interrelations of all components of the natural environment.
- Section 101(b) identifies a continuing responsibility of the Federal Government to “use all practicable means”
  - To fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - To assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;





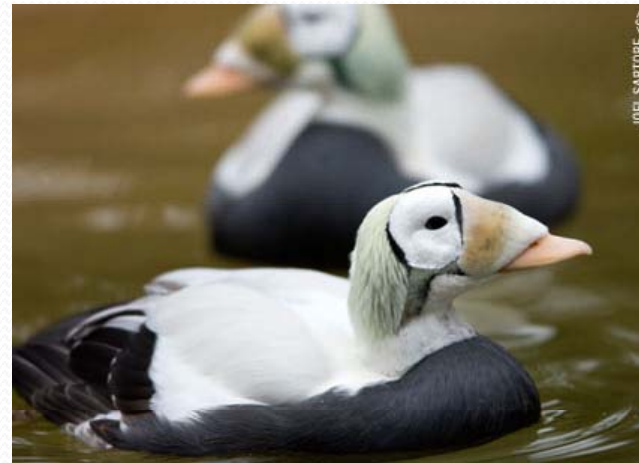
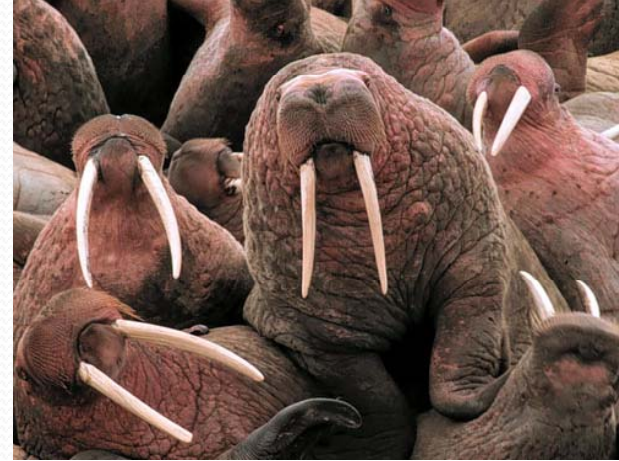
# Practical Impact of NEPA

- Right to demand that environmental consequences of government activities be given due consideration
- Right to the information necessary to facilitate participation in this process
- These rights are enforceable in court
  - But only so long as you have standing
  - And the question is justiciable . . . .
- More problematically, the rights have been interpreted to be wholly procedural

# Oil Exploration in the Chukchi Sea



# Critical Habitat for Threatened and Endangered Species



# Lifeblood for Inuit Communities



Believed to contain 15 billion barrels of recoverable oil







## Lease Sale 193: February 6, 2008

- Shell Oil paid \$2.6 billion for the right to develop the Chukchi Sea Oil Leases
- Under NEPA, this decision was accompanied by an Environmental Impact Statement (EIS)



# EIS for Chukchi Sea

- According to the Federal Register notice, the EIS analyzed the “*potential direct, indirect and cumulative environmental impacts of the sale, including estimated exploration and development and production activities related to the sale, on the physical, biological, and human environments in the Chukchi Sea area.*”
- Yet, the scoping document and the final EIS ignored some of the most obvious environmental impacts from the proposed development.

# Oil Spills are devastating to wildlife





# Proposed Offshore Seismic, Leasing, and Drilling in Arctic Ocean

## MMS Chukchi OCS Development Scenarios

- Possible LNG Facility
- Possible Shorebase
- Possible Offshore Platform
- - - Possible Oil and Gas Pipelines
- ← - - Possible Oil and LNG Tanker Route

## Permitted Seismic Exploration

- (3-D Open Water) ConocoPhillips - 2006
- (3-D Open Water) Shell Oil - 2007
- (3-D On-Ice) Shell Oil - 2007
- (2-D Streamer Survey) GXT - 2008

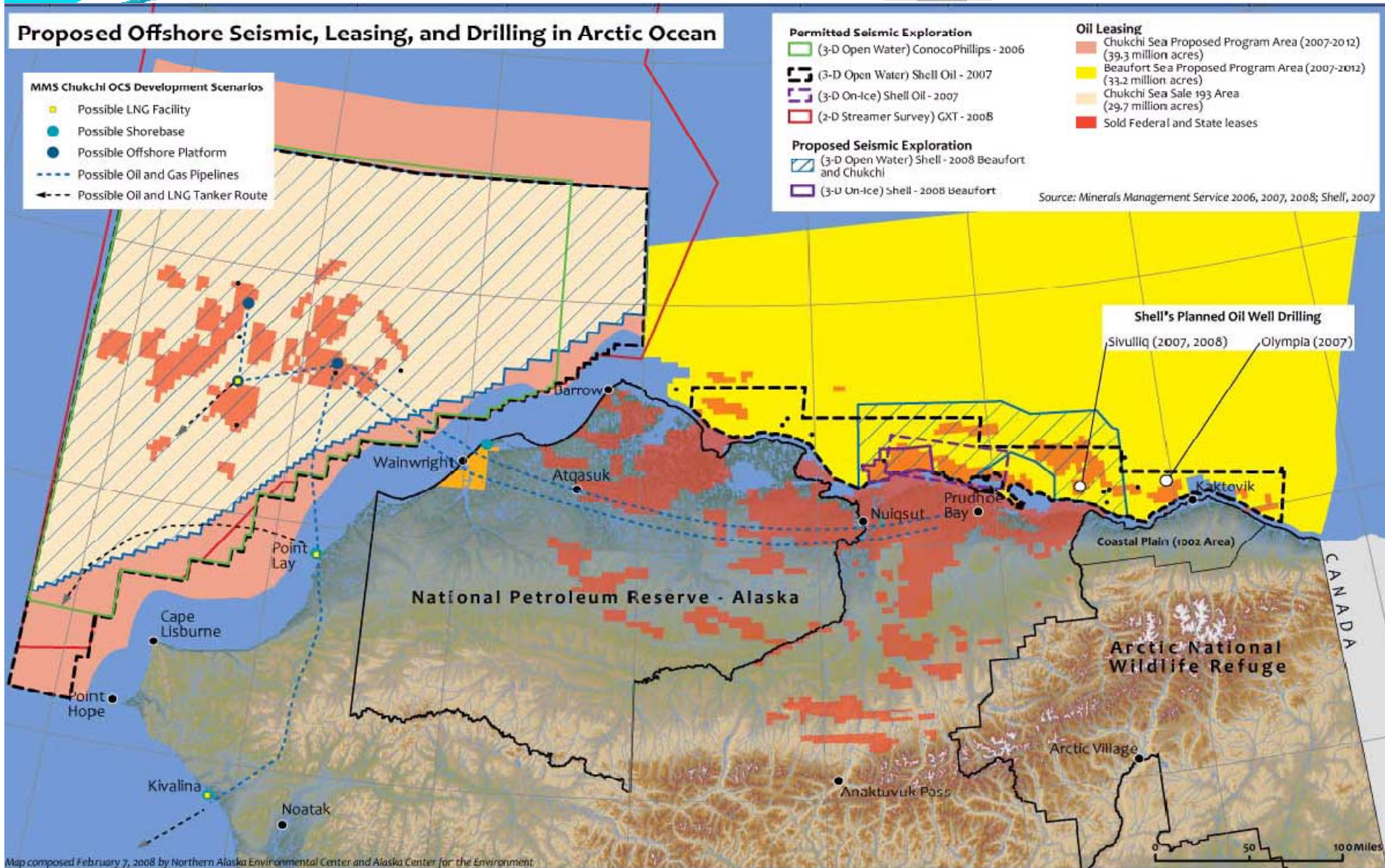
## Proposed Seismic Exploration

- (3-D Open Water) Shell - 2008 Beaufort and Chukchi
- (3-D On-Ice) Shell - 2008 Beaufort

## Oil Leasing

- Chukchi Sea Proposed Program Area (2007-2012) (39.3 million acres)
- Beaufort Sea Proposed Program Area (2007-2012) (33.2 million acres)
- Chukchi Sea Sale 193 Area (29.7 million acres)
- Sold Federal and State leases

Source: Minerals Management Service 2006, 2007, 2008; Shell, 2007



**Shell's Planned Oil Well Drilling**  
 Sivulliq (2007, 2008)      Olympla (2007)

Map composed February 7, 2008 by Northern Alaska Environmental Center and Alaska Center for the Environment

# Global Warming and Sea Ice





## At the same time . . .

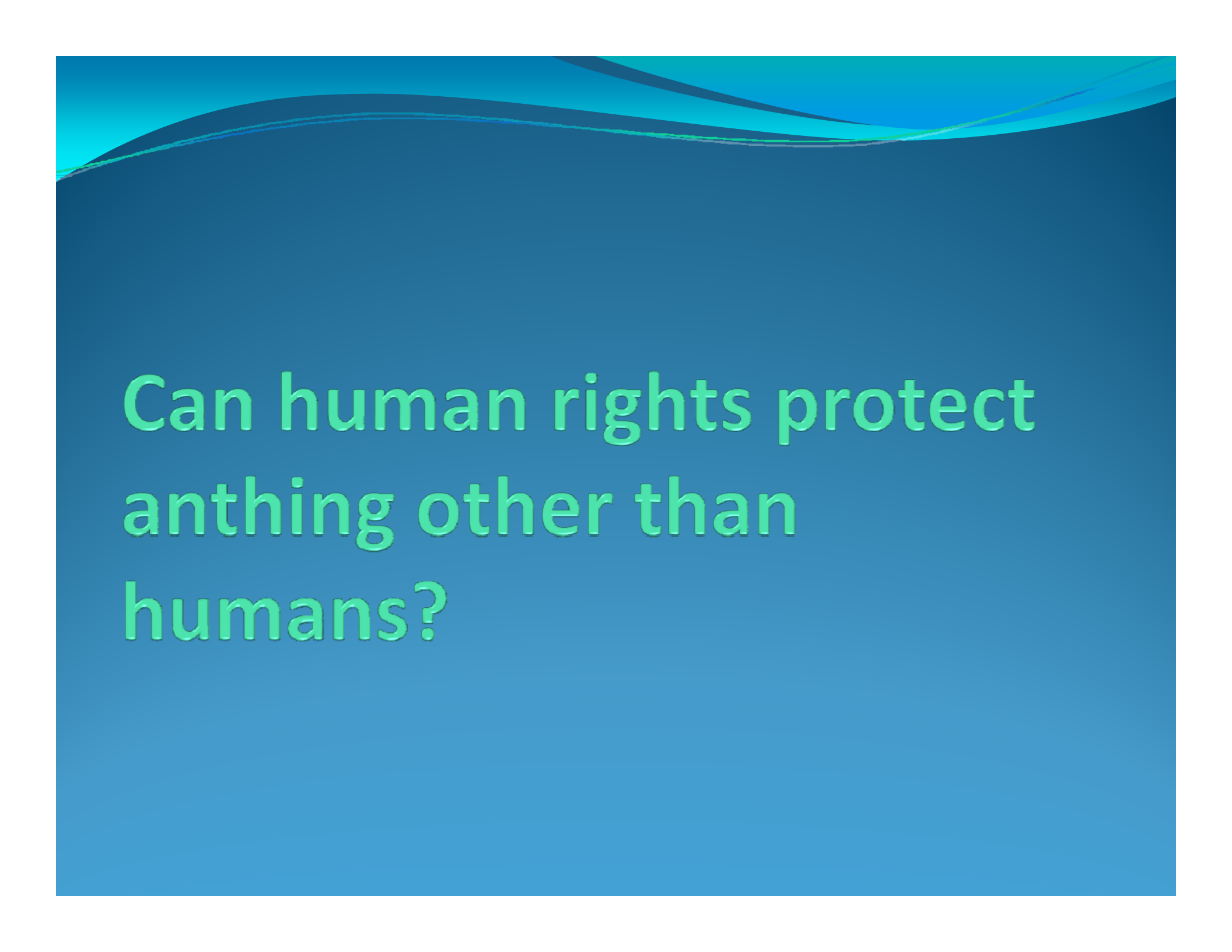
- USGS predicting that most polar bears will be gone in the next 50 years, along with the sea ice on which they depend
- FWS considering whether to list the polar bear as threatened under the Endangered Species Act





# What do Human Rights Offer?

- More robust public participation
- Active solicitation of participation, particularly by indigenous groups
- RESULT: Scope of activity to investigate might be different;
  - Would this lead to better results
  - Would this lead to inter-generational equity?
  - To Intra-generational equity?



Can human rights protect  
anything other than  
humans?