

Bristol Bay 404(c) Discussion Matrix
HQ Briefing 9/08/2010

I. Timing		Pros	Cons
A. During the permitting process	<ol style="list-style-type: none"> 1. Traditional process 2. Permit and NEPA processes will generate considerable information informing the decision. 	<ol style="list-style-type: none"> 1. Proponents will have spent tens of millions of dollars. 2. Little EPA involvement in determining information to be collected and analyzed. 3. If EPA vetoes the resulting permit, only that project would be prohibited, potentially setting up subsequent rounds of permitting, vetoing, etc. 4. Political backlash will be much worse after NEPA and 404 processes. 	
B. Proactive before permit applications	<ol style="list-style-type: none"> 1. Preamble to the regulations expresses preference for advance 404(c) action. 2. A proactive 404(c) will provide the regulated community clarity on what can and cannot be permitted allowing for more efficient and timely development of permitted projects. 3. An advanced process can facilitate targeted information collection and better planning by project proponents. 4. Promotes sustainability goals. Can serve as a model of proactive watershed planning for sustainability. Similar to “alternative futures” watershed planning being used in Region 10. 5. Responsive to Tribal concerns. 	<ol style="list-style-type: none"> 1. Never been done before in the history of the CWA. 2. Immediate political backlash from Alaska. 3. Immediate dedication of resources, however, we would refocus work to address highest priority. 4. Litigation risk. 	

II. Process		Pros	Cons
<p>A. Regulatory decision making mode – 404(c) process</p>	<ol style="list-style-type: none"> 1. Established legal procedure. 2. EPA control of the process and decision. 	<ol style="list-style-type: none"> 1. There is no real public discussion – public involvement is to comment then sue if they have the resources (NEPA, 404 permit, 404(c)). 2. EPA would have less control of the “spin” and political debate. 	
<p>B. Inclusive public discussion :</p> <ol style="list-style-type: none"> 1) Address three key questions 2) Hold three public information sessions 3) Develop decision document for RA as output 	<ol style="list-style-type: none"> 1. EPA can begin the process in a neutral position, collect information, provide information to public, and building a position iteratively. 2. Starting in a neutral position can deflect political backlash. 3. Building a position iteratively by breaking the process into questions to be addressed can help build a public position and derail opposition. 4. Can involve State and Tribes upfront and work to meet their needs. 	<ol style="list-style-type: none"> 1. Possible FACA complications, however, process could be structured to alleviate those concerns. 2. Longer timeframe than just starting the 404(c) process 3. More Resources 	
<p>i. As part of the 404(c) process</p>	<ol style="list-style-type: none"> 1. Established legal/regulatory process/framework 	<ol style="list-style-type: none"> 1. Sets precedent for future 404(c) actions. 2. Not adhering strictly to the regulation. 	
<p>ii. Leading to a decision whether to initiate the 404(c) process.</p>	<ol style="list-style-type: none"> 1. Starts in a neutral position 2. Open and transparent process leading to a public recommendation. 3. Helps to develop a stronger record upfront. 4. Expands on Lisa Jackson’s priorities – Protecting America’s waters; Expanding the Conversation on Environmentalism and working for Environmental Justice; and building strong State and Tribal Partnerships 	<ol style="list-style-type: none"> 1. May have to address complications in representing 36 Tribes. 	